ORIGINAL

0000174411

BEFORE THE ARIZONA CORPORATION COMMISSION

2016 OCT 31 P 4: 57

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2016 OCT 31 P 4: 57

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2016 RENEWABLE ENERGY STANDARD AND TARIFF IMPLEMENTATION PLAN	DOCKET NO. E-01933A-15-0239
IN THE MATTER OF THE APPLICATION OF 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 THE PROPERTIES OF TUCSON ELECTRIC POWER COMPANY DEVOTED TO ITS OPERATIONS THROUGHOUT THE STATE OF ARIZONA AND FOR RELATED APPROVALS.	DOCKET NO. E-01933A-15-0322 **NOTICE OF FILING INITIAL POST-HEARING JOINT BRIEF ON BEHALF OF FREEPORT MINERALS CORPORATION, ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION AND NOBLE AMERICAS ENERGY SOLUTIONS LLC**

INITIAL POST-HEARING JOINT BRIEF

October 31, 2016

Arizona Corporation Commission
DOCKETED

OCT 31 2016

DOCKETED BY

TABLE OF CONTENTS

Freeport Minerals Corporation ("Freeport"), Arizonans for Electric Choice and Competition (collectively "AECC") and Noble Americas Energy Solutions LLC ("Noble Solutions"), hereby submit this Post-Hearing Joint Opening Brief ("Brief") in the above-captioned Docket.

INTRODUCTION

The Arizona Corporation Commission ("Commission") is required by law to set "just and reasonable" utility rates. On a macro level, the Commission is charged with balancing the interests of Tucson Electric Power Company, Inc. ("TEP" or "Company") and its ratepayers, and authorizing an annual revenue requirement that will allow TEP an opportunity to recover through rates prudently incurred costs of operation and earn its authorized rate of return. In this proceeding, AECC and Noble Solutions support the August 25, 2016 Settlement Agreement Regarding Revenue Requirement ("Revenue Settlement") as a fair compromise of several contested revenue requirement issues, and a clear benefit to ratepayers by the reduction in TEP's original revenue increase request of nearly $28 million (from $109.5 million to $81.5 million). However, this is where the agreement ends, and signatory parties like AECC and Noble Solutions are free to advocate for a revenue allocation that fairly allocates the revenue increase among customer classes. In that regard, the Revenue Settlement expressly reserved rate design as an issue for litigation.

It is often said that ratemaking is more of an art than a science, and this particular rate case raises several questions about how much of the Revenue Settlement increase should be attributed to each customer class.[1] On a micro level, the Commission is charged with balancing the interests of different customer classes using basic cost-of-service principles, like matching cost-causation with cost-recovery among ratepayers.

[1] As parties to the Revenue Settlement, AECC and Noble Solutions are required to utilize the proposed $81.5 million revenue increase as a baseline for all their rate design proposals.

However, in this proceeding TEP, the Arizona Investment Council ("AIC") and Commission Staff support revenue allocations proposals which produce rates for large industrial and commercial customers that do not properly allocate revenue responsibility based upon cost causation and thus are not "just and reasonable," while simultaneously opposing various proposals that would allow these customers an opportunity to ameliorate the burdensome subsidies they have been paying for many years. Several of these proposals are discussed below.

The most immediate way the Commission can support and incent economic development in TEP's service territory is to take meaningful steps at this time to eliminate inter-class rate subsidies altogether. AECC's revenue allocation proposal adheres to one of the most basic cost-of-service principles, which is to align cost recovery with cost causation. As more fully detailed herein, AECC's proposal strikes a proper balance, while still providing approximately $40 million in subsidies to the Residential Class consistent with the concept of gradualism. For a company like Freeport (TEP's largest customer which owns and operates the Sierrita Copper Mine), eliminating between $4.2 million and $5.6 million in annual rate subsidy payments proposed by TEP and Staff represents an immediate, meaningful and positive impact upon its ability to control power costs, and can help to keep Sierrita competitive on a global scale. In addition, traditional rate design principles must also make room for innovation and change, as evidenced by the need to address the integration of distributed generation, renewable projects and customer choice (to name a few) into the provision of electric service to Arizona residents and businesses.

Accordingly, AECC and Noble Solutions have also proposed several third-party alternative generation service programs that incorporate market-based solutions for large customers seeking to control their power costs, allowing the Commission to adopt a more robust and vibrant rate design that facilitates real and wider economic development, not the kind limited only to a specific type of customer as proposed by TEP and AIC.[2] The evidence in this proceeding demonstrates that de facto competitive retail electric service already exists in TEP's service territory, which supplements the traditional cost-plus monopoly paradigm, and now incorporates a "mixed monopoly-competition" model that allows certain customers to choose their source of electric generation from a competitive market. Ironically, that is a market in which TEP itself is now competing with its pilot TEP-Owned Residential Solar program ("TORS"), which involves a cost shift of $0.02 per kWh to non-eligible customers who are subsidizing rates for those residential customers "lucky enough" to be chosen to participate in this program. Yet, and ironically, TEP (and certain other parties) disingenuously argue that none of the alternative generation service programs proposed by AECC and Noble Solutions are in the public interest because they may result in potential cost-shifts to non-participating or non-eligible customers, and benefit only a few large customers also "lucky enough" to be chosen to participate.

Suffice it to say, these arguments inherently employ a clear double standard. Moreover, the "evidence" provided in opposition mainly by TEP and AIC is speculative, and relies heavily on pre-filed testimony in another rate proceeding submitted by Arizona Public Service Company ("APS") concerning its AG-1 Tariff, which is yet to be tested through cross-examination and evidence from AG-1 program supporters. The 60MW buy-through program proposed by AECC and Noble Solutions in this case is different, in that anticipated possible revenue loss is built into the program structure and allocated only to those customers eligible for the program. As a consequence, their proposed buy-through program by design should not erode upon the $81.5 million revenue requirement

[2] The Economic Development Rate ("EDR") tariff proposed by TEP and AIC would only apply to manufacturing facilities using at least 3MW with a 75% load factor, and which export 65% of their goods out of state. The tariff is to be effective for only a five year period.

provided for in the Revenue Settlement. This is also true of the alternative 150MW five-year opt-out program proposed by AECC and Noble Solutions, which provides for a five-year transition charge to be paid by program participants.

Furthermore, by limiting the scope of the program to only between 60-150MW, TEP can timely and effectively incorporate the expected loss of electric load into its Integrated Resource Plan ("IRP") and proportionately reduce reliance on new costly generation resources, which will benefit all customers. This advance planning feature is also a benefit inherent in the opt-out and franchise alternative generation service programs proposed by AECC and Noble Solutions.

While revenue allocation and proposed alternative generation service programs are matters that AECC and Noble Solutions primarily have focused on during the hearings in this proceeding, there are other issues that, when evaluated in the broad context of a rate case, must also be resolved. These include:

- The need to re-structure the current PPFAC to create a 70/30 risk sharing mechanism to keep customer and TEP interests aligned;
- Reversing a change in the PPFAC Plan of Administration that shifted profits realized from new long-term contracts to the benefit of TEP shareholders instead of TEP customers;
- Adopting AECC's proposed unbundled rates for Large General Service (LGS), Large Power Service (LPS) and High Voltage rate schedules; and
- Revising TEP's Cost of Service calculations so that they more accurately reflect the true cost of service for customer classes.

These issues will also be addressed herein.

In summary, the Commission must determine whether it is ready to take meaningful steps to eliminate _all_ rate subsidies, thus sending the true cost based signals to customers to allow them to make long term decisions on renewable energy and helping to sustain businesses and jobs in TEP's service territory, or whether it wants to approve a revenue allocation that falls significantly short of the basic ratemaking principle of matching cost-recovery responsibility with cost-causation. In addition, the Commission must determine whether it is prepared to approve one or more economic development and sustainability programs that apply to a wider range of commercial and industrial interests, or whether it will be satisfied merely with TEP's proposed EDR, which the evidence clearly demonstrates is very limited in scope and duration, hard to even qualify for and is unlikely to spur the economic development desired by the Commission. Finally, the Commission must determine if it is formally ready to acknowledge the "mixed monopoly-competition" nature of the electric industry which now exists in Arizona today, and expand the opportunities for customer choice and price competition and access to alternative generation service inherent in that model to commercial and industrial customers, or whether it will continue to allow choice for only a select class of customers.

AECC and Noble Solutions urge the Commission to choose on the side of broad-based economic development, innovation and change and customer choice, and adopt the revenue allocation and alternative generation service proposals sponsored by AECC and Noble Solutions as being in the broad public interest.

DISCUSSION

I. REVENUE ALLOCATION

One of the major challenges in this proceeding has been for parties to accurately portray the impact of their revenue allocation proposals on various customer classes in a manner that can easily be analyzed and evaluated by the Commission.[3] This is highlighted by the fact that TEP's own President and CEO, David Hutchens, was under the impression that his company was proposing a rate *decrease* for Freeport's Sierrita mine when the Company's own rate schedules demonstrate that Freeport would receive a

[3] Hearing Transcript ("Tr.") at 961-962.

$614,675 annual *increase* under TEP's current revenue allocation proposal.[4] TEP witness Craig Jones later acknowledged that TEP is in fact proposing a rate increase for Freeport.[5]

During his oral summary, AECC and Noble Solutions' expert witness Kevin Higgins produced several tables in Exhibit AECC-12 that contain an accurate depiction of both TEP and Staff's recommended rate spreads by applying current 2016 margin and fuel rates to post-migration loads. After analyzing the data, both TEP witness Craig Jones and Staff witness Howard Solganick confirmed that these tables provide the Commission with an accurate accounting of the revenue allocations being proposed by TEP, Staff and AECC in this proceeding.[6] Answering an inquiry posed by ALJ Rodda, TEP witness Craig Jones confirmed that Exhibit AECC-12 allows for "a clear understanding of what's going on within the classes."[7] As a result, the Commission can trust and rely on the information contained in Exhibit AECC-12 when evaluating the revenue allocation proposals offered by TEP, AECC and Staff. AECC's cost of service analysis, calibrated for the Revenue Settlement, provides the most reasonable basis for allocating costs in this case.

Of the three, AECC's revenue allocation proposal best serves the broad public interest because it (i) significantly reduces the inter-class subsidies that are an impediment to economic development and sustainability, (ii) brings all customer classes closer to rate parity and a unitized rate of return ("UROR") of 1.00, while still adhering to the concept of "gradualism", and (iii) corrects certain distortions in TEP's cost-of-service study, providing the Commission with a more accurate basis on which to structure a proper rate design.

---

[4] Tr. at 164; 170-172.
[5] Tr. at 2159.
[6] Tr. at 2160; 2341.
[7] Tr. at 2182.

A. **The Commission Should Move to Eliminate All Subsidies.**

TEP and other parties have proposed new rate designs to eliminate alleged intra-class subsidies amongst residential ratepayers in response to the expansion of, and need to integrate within its distribution system, solar distributed generation facilities. TEP is proposing to replace the subsidies that result from the Company's Net Metering program with an expansion of its own TORS program that would shift approximately $0.02 per kWh of costs to non-participating customers. While $0.02 per kWh may be "smaller" by comparison, it is a subsidy nonetheless.[8]

Inexplicably, TEP and certain other parties do not have the same sense of urgency to address and correct the inter-class subsidies that have burdened commercial and industrial customers for many years, involving hundreds of millions of dollars. Eliminating these inter-class subsidies is not only consistent with basic ratemaking principles, but can serve as an immediate economic development and sustainability tool for TEP.[9] In that regard, a table measuring the amount of class subsidies included in TEP, Staff and AECC's final spread proposals (based on margin revenue) is highlighted below:

TEP[10]

Customer Class	Proposed Margin Revenue	Subsidy Paid/(Received)
Residential	327,768,312	(65,280,282)
General Service	180,501,853	31,096,260
Large General Service	96,255,565	24,576,959
Large Power Service	56,404,499	**6,645,308**
High Voltage 138kV[11]	17,177,856	**4,246,566**
Lighting	4,211,298	(1,260,450)
Total	682,319,384	24,361

[8] Tr. at 175-179.

[9] Tr. at 1709-1710; 1816-1817.

[10] Data source: TEP Witness Craig Jones Rejoinder Testimony, Exhibit CAJ-RJ-1, Sch. H-2-2.

[11] Freeport is the only member in the 138kV class.

STAFF[12]

Customer Class	Proposed Margin Revenue	Subsidy Paid/(Received)
Residential	330,389,025	(62,659,569)
General Service	173,782,573	24,376,979
Large General Service	97,778,732	26,100,126
Large Power Service	57,892,333	**8,133,143**
High Voltage 138kV	18,562,241	**5,630,951**
Lighting	3,890,251	(1,581,498)
Total	682,295,154	131

AECC[13]

Customer Class	Proposed Margin Revenue	Subsidy Paid/(Received)
Residential	352,570,805	(40,477,788)
General Service	175,896,150	26,490,557
Large General Service	86,738,121	15,059,516
Large Power Service	49,759,191	**0**
High Voltage 138kV	12,931,290	**0**
Lighting	4,399,465	(1,072,284)
Total	682,295,023	-

As illustrated by this table, TEP is proposing that Freeport *pay* an annual subsidy of over **$4.21 million** in margin revenue, while Staff proposes a **$5.63 million** subsidy for Freeport. This subsidy is overly burdensome, and does not produce a "just and reasonable" rate for Freeport. Customers in the LGS class would collectively pay anywhere from **$24.58 million** (TEP) to **$26.10 million** (Staff) in rate subsidies annually, while Large Power Service customers would collectively pay anywhere from **$6.65 million** (TEP) to **$8.13** million (Staff) annually. By contrast, Staff is proposing that members of the Residential Class *receive* **$62.66 million** annually in rate subsidies, while

[12] Data source: Staff Witness Howard Solganick Surrebuttal Testimony, Exhibit HS-6 & HS-6 workpaper (Confidential).

[13] AECC modified Staff's Proposed GS, LGS, LPS and 138kV Sales Revenue to capture the impact of adjustments to current revenues to reflect the impact of load migration among classes.

TEP is proposing approximately **$65.28 million**. These numbers are staggering, and highlight the burden that large customers have been paying as they represent reductions in the subsidies paid in current rates.

No party provided any justification for these subsidies. Some parties, like TEP and Staff, acknowledged that the Commission should be working to eliminate them altogether, but suggest doing so only gradually over a number of rate cases in order to dampen the impact to the subsidy-receiving classes.[14] However, both TEP and Staff's revenue allocation proposals fall substantially short of any meaningful moves towards rate parity for all customers classes. By way of illustration, under Staff's revenue allocation proposal, Freeport would pay rates producing a **22.25%** rate of return annually for TEP when the Company is authorized an overall rate of return of just **7.19%**.[15] This would produce a **3.093** UROR on rates paid by Freeport for the Sierrita mine. Even Staff's own expert witness Howard Solganick acknowledged that he was not able to make the numbers fit for the 138kV class in Staff's revenue allocation proposal, resulting in a higher revenue increase than he intended. [16] Power is second only to labor as Sierrita's largest operating cost.

Other parties, like Freeport, Kroger and Wal-Mart presented evidence demonstrating that large subsidies and TEP's high electric rates have a detrimental effect on economic development and sustainability. The societal benefits that these customers bring through local economic stimulus, job creation and tax base are important factors that the Commission must consider when determining the broad public interest. How does a rate subsidy help a residential ratepayer when that customer does not have a job to pay his or her utility bill? Sierrita alone produced **$250.7** million in economic benefits to Pima County in 2015, and **$343.6** million for the state of Arizona as a whole. While the recent

---

[14] Tr. at 177-179; 2400-2402 , Rebuttal Testimony of Craig Jones at. 11.
[15] Surrebuttal Testimony of Howard Solganick, Exhibit H-6.
[16] Tr. at 2410-2411.

reduction in mining operations at Sierrita was based in part on the falling price of copper, the ability to continue existing operations – or even some day resume former operations and thereafter expanded operations – in a highly competitive market is based on several factors, including the ability to manage and control power costs at specific sites.[17]

Simply put, Freeport can ill-afford to pay between $4.2 million and $5.6 million in rate subsidies each year and keep Sierrita competitive relative to its other mining assets located in areas where such large subsidies do not exist. Accordingly, AECC urges the Commission to take meaningful steps towards eliminating inter-class subsidies in this rate proceeding consistent with promoting economic development and sustainability in TEP's service territory, and adherence to basic cost-of-service ratemaking principles, recognizing that Arizona law requires "just and reasonable" rates.

B. **AECC's Revenue Allocation Proposal Promotes the Broad Public Interest, and Should be Adopted.**

AECC's recommended change in class revenues includes two versions; one that incorporates a funding mechanism to facilitate the original 60MW buy-through proposal made by AECC and Noble Solutions in order to shield TEP from any anticipated revenue loss, and one that does not require such a funding mechanism.[18] AECC proposes to set the revenue requirement for both the LPS and 138kV classes at cost using Mr. Higgins' adjusted cost-of-service analysis, calibrated for the revenue requirement presented in the Revenue Settlement, and the updated class load data included in TEP's rebuttal filing.[19] AECC is also proposing to reduce the revenue allocation for the LGS and GS classes such that the rates for each of these classes is no more than 12.5% above the cost of service.[20]

---

[17] Tr. at 1706; Surrebuttal Testimony ("SB.") of Michael D. McElrath at 6.

[18] Surrebuttal Testimony of Kevin C. Higgins at 17. AECC and Noble Solutions' alternative 150MW opt-out proposal would be funded by program participants, and therefore would have no impact on revenue allocation. Likewise, because a franchise agreement would only affect Freeport and the Sierrita mine, the continued payment of fixed costs recovery would fall solely on Freeport. A more detailed discussion of the three alternative generation service proposals is addressed in Section II of this Brief.

[19] Higgins SB. at 18.

[20] *Id.*

Under AECC's proposal, the UROR's for each customer class would move closer to parity at 1.00, with LPS and 138kV customers paying actual cost-of-service rates as shown in the following table.

Rate Class	Proposed UROR
Residential Service	0.56
General Service	1.77
Large General Service	1.94
Large Power Service	1.00
138kV	1.00
Lighting	0.25
Total	1.00

Larger customers would receive a rate decrease, and although residential customers would experience a larger rate increase (18.2%) than what is being proposed by either TEP (11.9%) or Staff (12.7%), they nonetheless would continue to receive over **$40 million** in rate subsidies annually from other rate classes under the AECC proposal.[21] This movement towards rate parity represents meaningful gradualism. Furthermore, it is more in line with the Commission's final order in the UNS Electric, Inc. ("UNS") rate proceeding, which Staff witness Solganick apparently ignores as a non-concern.[22]

On the other hand, having participated as a witness in the UNS rate proceeding like Mr. Solganick, TEP witness Craig Jones recognized the Commission's decision to adopt a revenue allocation that brought customer classes closer to rate parity than proposed by either Staff or UNS, and was not against a similar result in this proceeding.[23] TEP witnesses David Hutchens and Craig Jones testified that the revenue allocation the Company proposed in its Rejoinder Testimony was markedly different than what was included in its original application as a way to "compromise" on certain rate design issues,

[21] Exhibit AECC-12.
[22] "Q. And in the Unisource case Staff recommended something similar in terms of moving the classes to rate parity, is that correct? A. Yes. Q. And you understand that both the hearing officer and the Commission later on in that case decided to move the classes even closer? A.When I got into this business I got over that concern." Tr. at 2413.
[23] Tr. at 2528-2529.

primarily with Staff. However, the need for compromise outside a global settlement cannot serve as justification for a revenue allocation that, like Staff's, fails to produce "just and reasonable" rates for commercial and industrial customers.[24]

C. <u>AECC's Rate Design and Revenue Allocation Proposals More Accurately Reflect Cost of Service Rates</u>.

AECC's rate design proposal also corrects several distortions contained in TEP's original class cost-of-service study. Because the customer related components on Schedule G-6-1 for the LPS and 138kV classes are inflated and inconsistent with the composition of allocated costs on Schedules G-3 and G-4, TEP's proposal to increase basic service charges for LPS and 138kV customers from $2,000 and $3,000 to $10,000 and $15,000 per month, respectively, should be rejected.[25]

Likewise, TEP allocates the cost of distribution transformers to members of the LPS class, despite the fact that 12 of 18 customers actually own their own transformers. Even TEP witness Edwin Overcast testified that this would represent a cost-shift that should be avoided.[26] Curiously, TEP was quick to accept AECC 's recommended corrections to the Company's cost-of-service calculation when it benefitted residential ratepayers by $23 million, but was unwilling to make an adjustment of less than $2 million that its own expert testified should be undertaken as a general matter of policy in order to avoid cost-shifts.

Finally, TEP overstates distribution charges and understates generation charges in its unbundled rate design.[27] TEP concedes that some additional costs can be moved to the generation component of the rate, but does not make any modifications in its final design even though there does not appear to be any basis for disagreement with AECC's

[24] Staff 's basic premise that no customers should receive a rate decrease in this proceeding is flawed, based on a Commission policy that does not exist and ignores the cost-of-service data clearly demonstrating that some customer classes are paying above cost-of-service rates, and therefore deserve a rate decrease.
[25] Higgins SB. at 30.
[26] Tr. at 766.
[27] Higgins SB. at 31.

treatment of fixed must-run costs and ancillary services.[28]

Accordingly, AECC recommends that the Commission approve these specific modifications to rate design, including the specific unbundled rate designs presented by AECC and Noble Solutions' witness Mr. Higgins in his surrebuttaal testimony, adjusted as he describes for the final class revenue requirements, and require TEP to correct the depiction of classified and functionalized costs in its class cost-of-service study in its next rate case in order to establish an accurate basis for rate design.[29]

D. <u>**TEP's Proposed Changes to the Lost Fixed Cost Recovery Mechanism Should be Rejected**</u>.

When the Commission approved the Lost Fixed Cost Recovery Mechanism ("LFCR") as part of a settlement in TEP's last rate case, the limitation on its scope was an important aspect for parties like AECC to agree to its inclusion in the resulting settlement agreement.[30] In this proceeding, TEP is proposing changes to move the LFCR further to the design as originally proposed in the Company's last rate case to include recovery of generation, fixed must-run costs, as well as the remaining 50% of demand charge revenue currently excluded from the calculation. In addition, TEP is proposing to increase the year-over-year cap from 1% to 2% due to the expansion of LFCR eligible costs.

AECC has concerns about whether the LFCR is even needed, since a significant part of TEP's lost fixed cost recovery issues can be addressed through proper rate design.[31] Several other parties expressed similar concerns, noting that the LFCR should be limited to recover the costs that were intended when it was originally approved.

In fact, LGS customers should be exempt from the LFCR going forward. Since the premise of the LFCR is to insulate TEP from the loss of fixed-cost recovery from customers

---

[28] *Id.*
[29] *Id.* at 30.
[30] Direct Testimony ("DT.") of Kevin C. Higgins at 55.
[31] Delivery service energy charges should be eliminated and TEP should recover all its delivery service costs from demand-billed customers through customer and demand charges.

conserving energy or utilizing energy efficiency tools, TEP can still mitigate the loss through a greater proportion of fixed cost recovery being included in the customer charge and demand charges. This is especially true for members in the LGS class, where TEP is proposing to increase the customer charge to $1,000 per month.[32] Furthermore, excluding the LGS class from the LFCR would not shift costs to other classes of customers, since the only LFCR costs that should be recorded by TEP are those directly attributed to the participating classes.

The evidence in this proceeding clearly demonstrates that expanding the LFCR is not in the public interest, and that TEP's concerns about recovery of lost fixed costs are better addressed through rate design. Thus, the Commission should reject TEP's proposal.

E. **<u>The Commission Should Adopt a 70/30 Risk-Sharing Mechanism in the Purchased Power and Fuel Adjustment Clause ("PPFAC") in Order to Better Align Customer and Shareholder Interests</u>.**

Currently, TEP passes through 100% of all cost deviations for purchased power and fuel to its customers. Without risk, there is little incentive for the Company to keep power and fuel costs down. AECC believes that providing TEP with proper incentives to produce the greatest possible benefit to its customers will cause TEP to be more cost conscious in its procurement decisions. This risk-sharing proposal should not be construed as an indictment on past TEP procurement activity, but rather as a means to produce even more cost savings that TEP and its shareholders can share with customers. Indeed, getting the best possible deal from every transaction should be TEP's goal, and not merely making sure that the Company did not act imprudently, or that the resulting deal was not unreasonable, which is basically the standard in any prudency review.[33] By taking a more pro-active approach and sharing in the risk and rewards, both customers and TEP can benefit. By contrast, these performance incentives are eliminated when PPFAC costs are merely passed through to

---

[32] Higgins DT. at 54.
[33] Higgins SB. at 42-43.

ratepayers.

In addition to adopting the proposed 70/30 risk-sharing mechanism, the Commission should change the way margins from new long-term sales contracts are treated in the PPFAC. Prior to TEP's last rate case, margins from all wholesale transactions were credited to customers through the PPFAC – except the margins from those long-term contracts that were used in the calculation of jurisdictional demand allocations. As part of the 2013 Settlement Agreement, the PPFAC Plan of Administration was changed to assign 100% of margins from new contracts longer than 1-year to the benefit of shareholders rather than customers. This is no longer acceptable to AECC and is unreasonable in the context of the current rate proceeding.

Case in point – TEP's Supplemental IRP filing made on September 30, 2016 indicates that the Company is planning to make firm sales to Navopache Electric starting in 2017.[34] This was not disclosed during the rate proceeding despite data requests from AECC regarding such sales. This sales contract has implications for the jurisdictional allocation (which has been settled) and the treatment of margins in the PPFAC from new long-term sales. Despite having no fixed generation costs allocated to Navopache in this rate proceeding, TEP wants to retain 100% of the margins from this forthcoming sale with no credit to customers. Flowing 100% of the margins to TEP for a new contract that is not allocated any non-fuel costs creates an undeserved windfall for TEP. However, if AECC's proposal is adopted, the margins from this sales contract would flow back to customers (who paid, or are paying, for the assets to generate these sales) through the PPFAC.

Simply put, all revenue from wholesale sales, irrespective of term, should be credited against fuel and purchased power costs and included in the PPFAC, unless such sales are allocated an appropriate share of system costs. Accordingly, AECC urges the Commission

---

[34] TEP Supplemental Report to 2016 Preliminary Integrated Resource Plans filed in Docket No. E-00000V-15-0094 on September 30, 2016, at 31.

to reverse the change to TEP's PPFAC Plan of Administration approved in the last general rate case and shift the benefits of new long-term contracts back to customers.

II. ALTERNATIVE GENERATION SERVICE PROPOSALS

AECC and Noble Solutions are proposing three alternative generation service programs in this proceeding. These proposals are intended to provide large customers an opportunity to manage their power costs through participation in the competitive generation market, which in turn are far more likely to spur economic development and sustainability in the local community than the EDR program proposed by TEP. A competitive market in the sale of electric generation is, after all, the public policy of this state.[35] In fact, solar generation customers in TEP's service territory are already benefitting from a "mixed monopoly-competition" model, and the choices they make are no different than if a large customer was to purchase electricity from a 3rd party electric generation service provider.[36]

Allowing large commercial and industrial customers to purchase electric generation from the competitive market can also reduce risk for TEP and its ratepayers. More specifically, removing load from TEP's IRP process can help to delay and/or reduce the acquisition of new generation assets, relieving other customers from having to pay the fixed costs associated with an ever increasing rate base.[37] In addition, allowing a company like Freeport to secure generation service on its own can further reduce risk to TEP's other ratepayers in the event the Sierrita mine reduces operations further, leaving TEP's remaining customers to pay for fixed costs to serve the mine that otherwise could be avoided. In that regard, TEP witness David Hutchens conceded that Freeport currently remains TEP's "riskiest" customer. Additionally, large corporate customers seeking to limit their carbon imprint could purchase utility-scale renewable energy from the

[35] A.R.S. §40-202.B.
[36] Tr. at 815.
[37] McElrath SB. at 9-10; Higgins SB. at 8-9.

competitive market, which TEP acknowledges is much more cost efficient than smaller scale distributed generation systems.[38] Competitive markets also facilitate change and innovation, and if the public policy goal is to increase the use of renewable energy in Arizona, then consumer demand will drive this transition much more efficiently than government mandates. One need only look at the airline and telecommunications industry to see the benefits to consumers after decades of competition.

Several Commissioners have already expressed support for buy-through programs as a means to attract new businesses to Arizona. Further, the weight of the evidence demonstrates that AECC and Noble Solutions' proposed market-based solutions will not impact either TEP or non-eligible customers. Accordingly, the Commission should approve one or more of AECC and Noble Solutions' alternative generation service programs to allow for customer choice and improve the opportunity for economic development in TEP's service territory, where commercial and industrial rates currently act as a barrier to the location and expansion of new business.

A. AECC and Noble Solutions' Original Buy-Through Proposal Will Not Result in Lost Revenue to TEP, Nor Will it Shift Costs to Other Ratepayers.

AECC and Noble Solutions' original buy-through proposal ("Buy-Through") allows eligible customers an opportunity to purchase up to 60MW of generation from the competitive market. Modeled after TEP's own buy-through proposal and expanded in scope to 60MWs instead of 30MWs, the Buy-Through incorporates changes to pricing, terms of return to standard generation service and the mechanics of fixed generation cost recovery. Assuming that the Revenue Settlement is adopted, it is expected that TEP's revenue deficiency ascribed to the loss of fixed generation revenues under the Buy-Through would be $7,470,705, apportioned to the classes eligible for the Buy-Through

[38] Direct Testimony of Carmine Tilghman at 9-10.

program. As such, TEP and the customer classes not eligible to participate would be held harmless. Over time, as TEP is able to account in the IRP process for the role of the Buy-Through in reducing the Company's need for generation resources, and if the program were to remain in place for an extended period, the basis for ascribing any loss of fixed generation revenues to Buy-Through participants would diminish and eventually disappear.[39]

Not surprisingly, TEP and AIC do not support adoption of the Buy-Through. Their arguments fall into one of several categories:

1) The Commission should wait until the results of APS' AG-1 program have been considered next year in APS' rate case before determining whether adoption of a pilot buy-through program in this rate proceeding is warranted;

2) TEP might experience revenue loss in excess of $7.5 million as a result of the program;

3) There might be cost shifts to other customers through an increase in purchased power and fuel costs due to the loss of 60MWs of load;

4) In the event eligible customers seeking to participate make up more than the 60MW of available load, a lottery system will produce "winners" and "losers." Furthermore, those who choose not to participate, or who seek to participate but are not selected, would be paying higher rates than if the Buy-Through program was not in place; and

5) The EDR is a viable economic development tool that can attract new businesses, or incent the expansion of existing businesses, in TEP's service territory, thus obviating the need for a Buy-Through program..

[39] Higgins SB. at 9.

These arguments lack merit for the following reasons:

1) The Buy-Through program proposed in this proceeding is very different from APS' AG-1 program in a particularly important way; it contains a funding mechanism to absorb TEP's projected loss of fixed generation revenue that was not a feature in APS' AG-1 Tariff. Whereas APS agreed to absorb any revenue deficiency as part of a larger settlement agreement, TEP and non-eligible customers do not have to pay for the cost of the program.[40]

2) Although TEP witness Craig Jones testified that TEP might incur a revenue deficiency in an amount larger than $7.5 million, he was not able to demonstrate how this might occur.[41] Rather, Mr. Jones' concerns were based on speculation, and he was unable to demonstrate how Mr. Higgins' calculation of the expected revenue loss was either incomplete or inaccurate. By contrast, Mr. Higgins testified in detail how he reached the $7.5 million figure.[42]

3) TEP witness Mike Sheehan presented previously undisclosed information in his oral summary as to how a loss of 60MW of load could increase purchased power and fuel costs by approximately 1.0-1.5%.[43] But, this conclusion is based on logically inconsistent assumptions. When a utility loses load to a buy-through program, the utility should re-dispatch its resources by backing off its *most expensive* generation resources first.[44] However, TEP's analysis implies that the purchased power and fuel costs

[40] Tr. at 945.
[41] Tr. at 2644-2647.
[42] Higgins DT. at 39-40.
[43] Tr. at 1239.
[44] Tr. at 2336- 2337.

displaced by the buy-through customer are only 2.1441 cents/kWh – well below TEP's *average* cost of 3.2559 cents/kWh. Furthermore, TEP estimates that a buy-through customer could obtain power in the Palo Verde wholesale market at 2.758 cents/kWh. Thus, it is unreasonable to assume that TEP would not be able to sell its freed-up 60MW into that same market, at roughly the same price.

4) AECC and Noble Solutions have proposed capping the Buy-Through program at 60MW – a modest amount when compared to other proposals. While some eligible customers may not be selected to initially participate, due to the program's size limitations, the rates they would pay under AECC's revenue allocation proposal would still be *less* than what either TEP or Staff is proposing. Furthermore, the notion that eligible customers would not otherwise want to pay slightly higher rates in exchange for just having the opportunity to seek to participate is not supported by the weight of the evidence. To the contrary – Freeport, Wal-Mart and Kroger witnesses all provided testimony that their companies are willing to pay slightly higher rates to fund a Buy-Through program because of the opportunity it presents for meaningful cost savings.[45] In a sense, they would all be "winners."

Furthermore, if one were to apply the "winners" and "losers" concept as a means for rejecting a program, then the Commission would have to reject continuation of the TORS program, as only a certain number of customers would be able to participate, despite higher demand. Likewise, the Commission would also have to reject TEP's proposed re-classification of customer classes, since the evidence demonstrates that while some

[45] Tr. at 851; 1726; 1861.

customers will experience a rate decrease as a result of migration (winners), some will experience a rate increase (losers).[46]

5) The EDR is not a viable or meaningful alternative to the Buy-Through as an economic development tool for TEP. Based on the record in this proceeding, in order for a new or expanding business to qualify for the program, it must have a minimum of 3MW of load with a load factor of at least 75%, involve a manufacturing facility exporting at least 65% of its goods out of state, and qualify for either of two state tax credits, one of which is set to expire in 2017.[47] On cross-examination, TEP witness Dallas Duke could not identify how many existing customers might qualify for the EDR. AIC witness Gary Yaquinto did not realize that companies like Facebook, Wal-Mart or Kroger cannot even qualify for the EDR, despite his testifying that they certainly "might" take advantage of this tariffed rate.[48] Simply put, the EDR is a tariff that would only apply to a handful of industry specific (manufacturers) customers, while the Buy-Through would apply to a more broad range of customers – an aspect that makes it a substantially more attractive economic development program for TEP.[49]

Although Staff originally did not oppose the Buy-Through proposal as long as there were no detrimental impacts on other customers, Staff's position changed upon the filing of Staff Witness Solganick's Surrebuttal Testimony. The reasons Mr. Solganick provides for opposing the Buy-Through are convoluted at best. For instance, Mr. Solganick states that "Because the Company is not supporting the concept, there is no

---

[46] TEP Exhibit 43; Tr. at 1359.

[47] AECC Exhibit-13; Tr. at 1377. Given the relative size of tax savings versus electric rates, AECC and Noble Solutions contend that it is the tax credits that are the economic development driver, not the EDR itself.

[48] Tr. at 1168-1169.

[49] According to TEP witness Craig Jones, "a bunch" of customers would qualify to be eligible for the Buy-Through. Tr. at 2533.

record describing the benefits (or costs) to non-participating customers."[50] Yet despite stating that there is no record, Mr. Solganick goes on to explain potential impacts to both eligible and non-eligible customers, and to customers "left behind" based on algebra.[51]

It is clear from his testimony that Mr. Solganick is simply opposed to buy-through mechanisms. In fact, when asked why he did not provide any constructive criticism on how a buy-through program proposed by any party in this proceeding might be improved to comport with Staff's requirements, he simply shrugged and stated he was not asked to do such an analysis.[52] Disappointingly, Mr. Solganick's testimony concerning the Buy-Through is hardly the objective viewpoint one would expect Staff to take when addressing a highly disputed issue between TEP and its customers.

For instance, Mr. Solganick provides a novel argument that the Buy-Through would put competitors at a "competitive disadvantage" by allowing some entities to purchase market generation, while others would have to pay TEP's standard offer rates. However, under cross-examination, he conceded that (i) an ability to compete among customers who might be in competition with one another is based on a number of factors, or which their cost of energy is just one, (ii) all customers in TEP's service territory who might qualify under either TEP's or AECC and Noble Solutions' proposed buy-through programs are not necessarily in competition with one another, and (iii) he had no evidence that approval of a buy-through program would, in fact, result in uneven competition among TEP's largest customers.[53] In fact, he could have made the same arguments about the EDR, where some customers would get special discounted rates while their competitors do not. Again on cross-examination, Mr. Solganick conceded this point but still defended the EDR based on its limited duration, though the 60MW Buy-Through

---

[50] Surrebuttal Testimony of Howard Solganick at 20.

[51] Curiously, Mr. Solganick provides four and half pages of testimony on an issue with respect to which he claims that there is no record of the benefits or costs to non-participating customers.

[52] Tr. at 2497.

[53] Tr. at 2424-2425.

program would be limited in duration as well.[54] Having been caught in the inconsistency of his argument when applied to both the Buy-Through and EDR, Mr. Solganick then gets to the "real criticism of the buy-through program," which is a lack of record about the impacts to other customers.[55]

Contrary to Mr. Solganick's concerns about the evidentiary record, Mr. Higgins provided *extensive* testimony on the Buy-Through proposal and how it works to shield both TEP and non-eligible customers from any cost shift. The evidentiary record is full of pre-filed and oral testimony concerning potential impacts and benefits to non-eligible and non-participating customer, and even though Mr. Solganick was one of the last witnesses to provide oral testimony, he still believed that there was not enough in the record on this issue.[56] Under Mr. Higgins' proposal, the impact is clear – a slight increase in rates to members in the eligible class. And the record is also clear that of those customers participating in this proceeding that would be affected, Freeport, Wal-Mart and Kroger all would be willing to pay slightly higher rates (which under AECC's proposed revenue allocation are still lower than the rates proposed by TEP and Staff) for the chance to participate. TEP and AIC attempted to provide evidence concerning impacts to other customers, but as noted above – such evidence is speculative, unsupported or based on incorrect and self-serving assumptions.

Mr. Solganick is clearly wrong when he states there is no record about the potential impacts and benefits a Buy-Through program will have; and, rather than approach that subject critically and objectively, Mr. Solganick provides a one-sided algebraic analysis based on assumptions favorable to opponents of the Buy-Through without addressing any potential counter-arguments, such as what benefits non-participating customers can expect if market prices are high (as opposed to the hypothecated low figure used in the algebraic

[54] Tr. at 2416.
[55] *Id.*
[56] Tr. at 2417.

equation) or the beneficial impact of TEP not having to build or acquire new generation to serve load that has permanently migrated off the system.

AECC and Noble Solutions believe that there is ample evidence in the record for the Commission to determine that (i) the Buy-Through program is overwhelmingly supported by large customers that would be eligible for the program, but still might not be selected to participate, (ii) the Buy-Through program is much more likely to provide incentives for actual and meaningful economic development, as opposed to the EDR, in a manner that shields TEP and other ratepayers from the revenue deficiency that might result, and (iii) adopting the Buy-Through program will serve the broad public interest.

B. <u>"Five Year Opt-Out" Program</u>

As discussed in Section II.A above, through Kevin Higgins' June 24, 2016 prepared Direct Testimony (Rate Design), AECC and Noble Solutions proposed the Buy-Through program as a means by which competitive electric generation service could be made available to TEP's large commercial and industrial customers. In so doing, AECC and Noble Solutions endeavored to provide members of TEP's LGS, LPS and 138 kV customer classes with an opportunity for "customer choice" and "price competition" currently not available to them under the Company's existing rate structures. In that regard, while TEP's November 5, 2015 rate case filing did include the Company's version of a buy-through program in the form of its Experimental Rider 14, it is quite clear from the hearing record that the Company does not support Commission approval of Experimental Rider 14, or any other form of buy-through program.

Thereafter, during the July 10, 2016 portion of the Commission's Open Meeting in UNS Electric's recent rate case, several members of the Commission expressed an interest in learning more about a form or forms of competitive electric generation service programs for large commercial and industrial customers, which might considered as an alternative to the Buy-Through program. Accordingly, and with the intent of being responsive to that expression of Commissioners' interest, AECC and Noble Solutions developed an "opt-out" alternative form of program for competitive electric generation service, drawing in part upon the "opt-out" program which has been in effect on Portland General Electric's ("PGE") system for more than a decade. The resulting "opt-out" program was set forth in Mr. Higgins' August 25, 2016 prepared Surrebuttal Testimony, as described below. In that regard, as Mr. Higgins observed at the beginning of this portion of his prepared Surrebuttal Testimony, "While I believe the buy-through proposal detailed in my Direct Testimony is reasonable, I also believe the alternative proposal, which I characterize as a 'five-year opt-out buy-through' also is a reasonable alternative, and [similarly] would be a means to enhance the economic development of the State if adopted." [57] The "five-year opt-out" program contains the following principal features:

1) The program is open to any customer with an aggregated load of 1,000 kW or greater using facilities that have a maximum billing demand of at least 200kW over the 12- month period prior to enrollment.

2) Initially, program participation would be capped at 150 MW, which is comparable to the PGE program, given the relative size of PGE and TEP, with PGE's load for larger non-residential customers being approximately twice the size of TEP's. Over time, in conjunction with the IRP Process, the program cap would be increased to match projected load growth and/or to offset the acquisition of new generation resources.

3) Participating customers would not pay for TEP's unbundled generation charges (inclusive of fixed generation charges, base power supply charges, the PPFAC, the Environmental Compliance Adjustor, and the Renewable Energy Standard and Tariff ("REST") Surcharge), but would be required to

[57] Exhibit AECC-10 at page 9, lines 17-21.

pay a transition charge for five (5) years. The transition charge would be published prior to a 30-day enrollment period each year. For any vintage enrollment period (e.g. 2017-2021) the transition charge would be locked in at the outset and would apply for the duration of the transition period. At the conclusion of the transition period, participating customers would have no further transition charge obligation to TEP.

4) The transition charge would require the participating customer to pay the difference between the cost of service unbundled generation charges (inclusive of base power supply charges, but exclusive of riders) and the market price of power, where the market price of power and base power supply charges are projected for five (5) years and shaped to reflect class seasonal and on-peak loads and adjusted (upward) for wheeling costs and line losses. For the purpose of this calculation, the fixed generation charge would be based on the unbundled generation rates in effect at the time of enrollment.

5) Participating customers would continue to pay TEP' unbundled distribution and transmission charges, both throughout the five-year transition period and after the transition period is concluded.

6) Participating customers located within a TEP-transmission constrained area would also continue to pay TEP's unbundled fixed must-run generation costs, both throughout the five-year transition period and after the transition period has concluded. At the same time participating customers paying this charge would be entitled to service from TEP's must-run facilities at cost-based energy rates during periods of transmission congestion.

7) Participating customers could only return to receiving generation service from TEP at cost-based rates following three-years' advance notice to TEP.

8) Imbalance charges would apply to participating customers when scheduled power deliveries did not match actual participating customer loads.

As indicated above, AECC and Noble Solutions are proposing the "five-year opt-out" program as an alternative means by which the Commission can extend to TEP's large commercial and industrial customers a meaningful opportunity for "customer choice" and "price competition" in connection with their receipt of electric generation service. In so doing, they believe that they have been constructively responsive to the request of several Commissioners during the July 10, 2016 Open Meeting in the UNS Electric rate case for more information on competitive generation service programs. While the "five-year opt-out" program utilizes a "sleeve" arrangement similar to the "sleeve" arrangement that would be utilized in connection with the Buy-Through alternative program also jointly proposed by AECC and Noble Solutions, it is also distinctly different in many ways, as discussed above. Thus, these two (2) programs offer the Commission two (2) proven alternative options from which to choose in responding to the legitimate interest of an important ratepayer "constituency" of TEP.

More specifically, that "constituency" is comprised of the members of TEP's LGS, LPS and 138kv classes of customers who could qualify to seek to participate in either AECC's and Noble Solutions' jointly proposed Buy-Through or "five-year opt-out" program. Their aforesaid collective "legitimate interest" is having a meaningful opportunity for "customer choice" and "price competition" in connection with the provision of generation service. In that regard, we know from TEP witness Craig Jones' testimony that there is a "bunch" of customers from those customer classes who would qualify to seek to participate in AECC and Noble Solutions' Buy-Through program. Presumably there are a similarly large number who would qualify to seek to participate in the "five-year opt-out" program, should they desire to pursue that option, if made available to them. We also know from Mr. Jones' testimony that the aggregate test period non-coincidental peak period demand of the LGS, LPS and 138kv classes of customers was 575 MW, or 21 percent of the Company's test period non-coincident peak demand of 2,712 MW. Thus, this grouping of customers with a collective interest in having an opportunity for "customer choice" and "price competition" in connection with the satisfaction of their requirements for generation service is clearly a customer "constituency" as deserving of Commission recognition at this time with respect to those public policy precepts as the Distributed Generation rooftop solar constituency.

C. <u>Franchise Agreement</u>

Since TEP's last rate case, Freeport purchased TEP's dedicated substation serving the Sierrita mine on the anticipation that – based on the basic rate allocation principle that customers should pay for only the facilities needed to provide service to them – the allocation of fixed costs to Sierrita would be reduced in the next rate proceeding.[58] Instead, TEP is proposing to raise Sierrita's rates by $614,675. Despite comments from Company representatives about the importance of the Sierrita mine to TEP, its ratepayers and the surrounding community, Freeport has not been presented with any meaningful solution to *immediately* reduce its power costs at Sierrita.[59] Unlike APS, which has entered into several special contracts with new large customers, is seeking to establish a high load-factor rate in its pending rate case and continues to administer its AG-1 tariff program, TEP's approach to economic development and sustainability has been lacking in both effort and originality.

As a result, Freeport has proposed that TEP enter into a franchise agreement with Morenci Water & Electric Company ("MWE") similar to the franchise agreement between MWE and Graham County Electric Cooperative, Inc. ("Graham") approved by the Commission in 2006. This franchise agreement allows MWE, which is a public

---

[58] Tr. at 1708.
[59] Tr. at 1711.

service corporation regulated by the Commission, to provide power directly to Freeport's Safford mine, which is located in Graham's service territory. Likewise, a Franchise Agreement between MWE and TEP would allow Freeport to utilize its unique position in Arizona to essentially provide the Sierrita mine with generation service through a Commission-regulated affiliate (MWE), as well as a Federal Energy Regulatory Commission (FERC) certified exempt wholesale generator.[60] Freeport already has a wholesale relationship with TEP, and would continue to pay for fixed costs through transmission rates and franchise charge.[61]

Additionally, Freeport is willing to enter into long-term contracts so that TEP can pursue resource planning that does not have to account for the prospect of having to serve Sierrita at some future date. In short, Freeport will bear the short and long-term market risk in the price of electric generation, which is a another means to insulate TEP's other customers from paying for fixed costs (i.e. generation assets) in the event the Sierrita mine is closed altogether.[62] The economic impact of a Sierrita closure would be much more than just TEP's margins on lost power sales; it would include the loss of jobs, need for vendor services and a large tax base.[63]

The Franchise Agreement can provide Freeport immediate relief from TEP's burdensome electric rates, and Freeport urges the Commission to direct TEP to enter into such an agreement with MWE for the specific purpose of allowing Sierrita to obtain generation service at market prices.

III. LEGAL ISSUES

During the evidentiary hearings in this proceeding, counsel for certain parties endeavored to suggest through cross-examination that implementation of one or more of

---

[60] Tr. at 1713.
[61] Tr. at 1714.
[62] Tr. at 1712.
[63] Tr. at 1713.

AECC and Noble Solutions' alternative generation proposals might be accompanied by certain legal issues, as distinguished from regulatory and public policy considerations. In connection with the forgoing, AECC and Noble Solutions believe that their alternative generation service proposals are consistent with sound regulatory policy and in furtherance of the public interest given the underlying record and circumstances surround this proceeding.

There is no Arizona Constitutional provision that prohibits the provision of electric generation service to customers in Arizona by a third-party provider. In fact, it is the statutorily declared public policy of this state that a competitive market exist in the sale of electric generation service.[64] In that regard, AECC and Noble Solutions' three (3) alternative generation service proposals are legal under Arizona law for the following reasons:

- They further the public policy of the state "that a competitive market exist in the sale of electric generation service";
- They help implement the strategic goal of the Commission to "transition to electric competition as soon as possible";
- They are similar to programs already approved by the Commission (i.e. APS' AG-1 tariff and the franchise agreement between MWE and Graham);
- They are similar to the TORS and RCS programs proposed by TEP in that they provide choice and competitive options to TEP customers in a "mixed monopoly-competition" structure;
- They are similar to third-party providers of rooftop solar units who also provide choice and competitive options to TEP customers;
- They provide a solid foundation for expanding customer choice consistent with the Retail Electric Competition Rules ("Electric Competition Rules"), and the customer

[64] A.R.S. §40-202.B.

choice concept underlying those rules; and

- Under Arizona law, electric utilities do not have an exclusive right to provide electric generation service within their CC&N boundaries.[65]

For a more detailed and robust analysis of Arizona law concerning choice and competition in electric generation service, and the state of the Retail Electric Competition Rules, AECC and Noble Solutions hereby incorporate by reference the Reply Brief filed in this consolidated proceeding (Docket No. E-01933A-15-0239) on June 24, 2016, which includes AECC's legal briefs filed in Docket No. E-00000W-13-0135.

As stated above, there are no legal impediments that prohibit the Commission from implementing competition in electric generation, or adopting any of the alternative generation service programs proposed by AECC and Noble Solutions in this proceeding.

CONCLUSION

"It is change, continuing change, inevitable change, that is the dominant factor in society today. No sensible decision can be made any longer without taking into account not only the world as it is, but the world as it will be." – Isaac Asimov. AECC and Noble Solutions encourage the Commission to apply this same principle in this rate case, and recognize that the decision it makes on choice and competition in generation should take into account not only how the electric industry works today, but how it will work in the future.

[65] *City of Mesa v. Salt River Project Agricultural Improvement District*, 52 Ariz. 91, 373 P.2d 722 (1962); *Phelps Dodge Corp. v. Arizona Elec. Power Coop, Inc.* 207 Ariz. 95, 83 P.3d 573 (App. 2004).

RESPECTFULLY SUBMITTED this 31st day of October, 2016.

FENNEMORE CRAIG, P.C.

By: ______________________

Patrick J. Black
C. Webb Crockett
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
Attorneys for Freeport Minerals Corporation and Arizonans for Electric Choice and Competition
pblack@fclaw.com
wcrocket@fclaw.com

By: ______________________ FOR

Lawrence V. Robertson, Jr.
Attorney for Noble Americas Energy Solutions LLC
tubaclawyer@aol.com

ORIGINAL and 13 copies filed this 31st day of October, 2016 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered/mailed this 31st day of October, 2016 to:

Jane L. Rodda
Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Janice M. Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Thomas Broderick, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY mailed/emailed
this 31st day of October, 2016 to

Parties of Record:

By: ______________________