



BEFORE THE ARIZONA CORPORATION COMMISSION  
DOCKETED

JUN 04 1999

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
TONY WEST  
COMMISSIONER

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IN THE MATTER OF THE APPLICATION OF  
SEMPRA ENERGY TRADING CORP. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RETAIL ELECTRIC SERVICES AS AN  
ELECTRIC SERVICE PROVIDER PURSUANT TO  
A.A.C. R14-2-1601 *ET SEQ.*

DOCKET NO. E-03675A-98-0740

DECISION NO. 61742

OPINION AND ORDER

DATE OF HEARING: April 22, 1999

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Teena Wolfe

APPEARANCES: Mr. Michael W. Patten, BROWN & BAIN, PA, on behalf of Applicant Sempra Energy Trading;

Mr. Todd Wiley, GALLAGHER & KENNEDY, on behalf of Arizona Electric Power Cooperative, Graham County Electric Cooperative, Duncan Valley Electric Cooperative, Trico Electric Cooperative, Inc., (for Russell Jones) and Sulphur Springs Valley Electric Cooperative, Inc. (for Christopher Hitchcock);

Mr. Jeffrey Guldner, SNELL & WILMER, LLC, on behalf of Arizona Public Service Company;

Mr. Scott S. Wakefield, Chief Counsel, on behalf of Intervenor Residential Utility Consumer Office; and

Ms. Janice Alward, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On December 22, 1998, Sempra Energy Trading Corp. ("Sempra") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate Of Convenience and Necessity to provide retail electric services as an Electric Service Provider pursuant to A.A.C. R14-2-1601 *et seq.* ("Application"). In its Application, Sempra proposed to provide competitive retail electric service as a Load-Serving Entity and as an Aggregator in all areas of the State of Arizona which the Commission has designated as open to retail electric competition.

On February 11, 1999, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter, in which it recommended approval of the Application following a hearing.

By Procedural Order dated March 2, 1999, all the Affected Utilities as defined by the Retail Electric Competition Rules<sup>1</sup> were joined as parties in this matter with the opportunity to respond to Sempra's Application, and were given notice that if the Application is granted, and if the Certificates of Convenience and Necessity ("Certificates" or "CC&Ns") of the Affected Utilities have not already been rescinded, altered, or amended prior to such grant to Sempra, the CC&Ns of the Affected Utilities will be rescinded, altered, or amended pursuant to A.R.S. §40-252. Those parties so joined and noticed include Tucson Electric Power Company, Arizona Public Service Company, Citizens Utilities Company, Arizona Electric Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric Cooperative, Graham County Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative, Navopache Electric Cooperative, Ajo Improvement Company, and Morenci Water and Electric Company, and are referred to collectively herein as "Affected Utilities."

Other parties who requested and were granted intervention in this matter include NEV Southwest, L.L.C. ("NEV"), the Residential Utility Consumer Office ("RUCO"), Enron Corp. ("Enron"), Cyprus Climax Metals Company ("Cyprus"), and ASARCO Incorporated ("ASARCO").

This matter came before a duly authorized Hearing Officer of the Commission at the Commission's offices in Phoenix, Arizona on April 22, 1999. Applicant and Staff presented evidence at the hearing. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

<sup>1</sup> A.A.C. R14-2-1601 *et seq.*, which were stayed on the date the March 2, 1999 Procedural Order was issued. Decision No. 61311 (January 11, 1999) stayed the effectiveness of the Retail Electric Competition Rules. Pursuant to Decision 61634 (April 23, 1999), Staff has forwarded new Proposed Retail Electric Competition Rules ("Proposed Rules") to the Office of the Secretary of State for Notice of Proposed Rulemaking. Sections 1601 of both the stayed Rules and the Proposed Rules define the same entities as "Affected Utilities."

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1           1.     On December 22, 1998, Sempra filed its Application requesting certification as an  
2 Electric Service Provider ("ESP") with authority to provide competitive retail electric service as a  
3 Load-Serving Entity and as an Aggregator in all areas of the State of Arizona which the Commission  
4 has designated as open to retail electric competition.

5           2.     Sempra Energy Trading Corp. is a Delaware corporation that is wholly owned by  
6 Sempra Energy Holdings, Inc., which is in turn owned fifty percent by Enova Corporation and fifty  
7 percent by Pacific Enterprises. Enova Corporation is the parent company of San Diego Gas &  
8 Electric Company. Pacific Enterprises is the parent company of Southern California Gas Company.  
9 Both Enova Corporation and Pacific Enterprises are wholly owned subsidiaries of Sempra Energy.

10          3.     On December 24, 1998, Sempra's Notice of Filing Application for a Certificate of  
11 Convenience and Necessity was docketed with the Commission.

12          4.     On February 11, 1999, Staff filed its Staff Report in this matter, recommending that  
13 Sempra be granted a CC&N as an ESP with authority to provide competitive retail electric service as  
14 a Load-Serving Entity and as an Aggregator.

15          5.     By Procedural Order dated March 2, 1999, the Affected Utilities were joined as parties  
16 in this matter with the opportunity to respond to the Application, and were given notice that if the  
17 Application is granted, and if the CC&Ns of the Affected Utilities have not already been rescinded,  
18 altered, or amended prior to such grant to Applicant, the CC&Ns of the Affected Utilities will be  
19 rescinded, altered, or amended pursuant to A.R.S. §40-252.

20          6.     Other parties who requested and were granted intervention in this matter include NEV,  
21 RUCO, Enron, Cyprus, and ASARCO.

22          7.     Sempra caused notice of the hearing in this matter to be published in the Arizona  
23 Republic on March 10, 1999.

24          8.     On April 22, 1999, a public hearing was held as scheduled, at which Mr. Perssy  
25 Mergeanian for Applicant and Mr. Lynn J. Garrett for Staff presented evidence.

26          9.     At the hearing, the parties stipulated to incorporate into the record in this proceeding  
27 the testimony and cross-examination of Mr. Williamson and Mr. Shand of Commission Staff in the  
28 proceedings on the application of PG&E Energy Services Corporation for a Certificate of

Convenience and Necessity to Supply Competitive Services as an Electric Service Provider, Docket  
No. E-0359A-98-0389.

10. Sempra intends to offer retail electric power sales to large industrial customers in  
Arizona.

11. Sempra owns 52% of Energy America, L.L.C., which is currently a registered Electric  
Service Provider in California. Sempra's affiliate Sempra Energy Solutions is also a registered  
Electric Service Provider in California.

12. Sempra stated that its affiliate, Energy America, L.L.C. may apply for a CC&N at a  
future date for authority to offer service to residential and small commercial customers in Arizona.

13. Staff indicated in its Staff Report that Sempra's affiliates Enova Corporation and  
Pacific Enterprises have jointly and severally guaranteed certain trade obligations of Sempra with  
credit-worthy contracting parties in connection with authorized transactions and in connection with  
funding. At the hearing, Sempra stated that it would be amenable to filing documentation specifying  
the extent of those guarantees.

14. The Application proposed a maximum tariff rate of \$25 per kilowatt hour for electric  
energy and aggregation provided pursuant to contract between Sempra and nonresidential,  
commercial and industrial customers.

15. Sempra does not seek certification at this time as a Meter Service Provider or Meter  
Reading Service Provider, but requests Commission authorization to resell those services to its  
customers.

16. Staff stated in its Staff Report and at the hearing that Sempra's tariff is acceptable and  
presented in a format consistent with competitive tariffs previously approved by the Commission.

17. In its Staff Report, Staff recommended that the Application be approved subject to the  
following conditions:

(a) Sempra shall not be authorized to provide competitive service in the certificated  
area of an Affected Utility until the Commission has reached a final resolution in  
that Affected Utility's respective Stranded Cost filing;

(b) Prior to provision of any other competitive service not approved at this time,

Sempra shall apply to the Commission for approval;

- (c) Sempra shall have a Service Acquisition Agreement with the Utility Distribution Company in each service area to be served, and such Service Acquisition Agreement shall be approved by the Director, Utilities Division prior to the provision of service;
- (d) Sempra shall either be approved by the Arizona Independent System Administrator as its own Scheduling Coordinator, or have a service agreement with an Arizona Independent System Administrator-approved Scheduling Coordinator;
- (e) Sempra shall acquire a financial guarantee bond in the initial amount of \$100,000 to be adjusted in the future on the basis of sales volume and any amounts that the applicant collects by way of deposits or advance payments; and
- (f) Prior to provision of any competitive service, Sempra shall acquire all relevant tax licenses from lawful taxing authorities within the State of Arizona.

18. Staff also recommended in its Staff Report that Sempra should not be allowed to provide competitive retail electric services in areas opened to competition by enacted HB 2663 until April 1, 1999, or further order of the Commission, whichever occurs first.

19. Sempra has acquired experienced technical and operational personnel from San Diego Gas & Electric Company, and has experience in wholesale energy trading throughout the WSCC.

20. Sempra is certified by the California Independent System Operator to operate as a Scheduling Coordinator, and intends to become certified by the Arizona Independent System Administrator so that it may serve as its own Scheduling Coordinator in Arizona.

21. Sempra possesses the requisite technical and financial capability to provide competitive ESP services as a Load-Serving Entity and as an Aggregator within the State of Arizona.

CONCLUSIONS OF LAW

1. Sempra is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Sempra and the subject matter of the Application.

3. Notice of the hearing was given in accordance with law.

4. The Arizona Legislature's enactment of House Bill 2663 and the Commission's

1 issuance of Decision Nos. 59943, 60977, 61017, and 61634 have made it clear that competition in the  
2 provision of retail electric services is the public policy of Arizona.

3 5. Sempra should receive a CC&N as an ESP authorized to provide services as a Load-  
4 Serving Entity and as an Aggregator.

5 6. Sempra's CC&N should be subject to the conditions recommended by Staff in  
6 Findings of Fact No. 17 above.

7 7. Sempra should be authorized to resell Meter Services and Meter Reading Service to its  
8 customers.

9 8. Rates and terms and conditions of service adopted herein are fair, reasonable and  
10 consistent with the Proposed Rules and with the underlying policies of the Arizona Constitution.

11 9. The Affected Utilities received notice of the possibility of rescission, alteration or  
12 amendment of their existing CC&Ns should Sempra receive a CC&N to supply competitive services  
13 as an Electric Service Provider within the service territories of the Affected Utilities.

14 10. The Affected Utilities had an opportunity to be heard on the possibility of rescission,  
15 alteration or amendment of their existing CC&Ns.

16 11. Issuance of a CC&N requires the Certificate holder to make an adequate investment  
17 and to render competent and adequate service.

18 12. There was no evidence presented in this proceeding indicating that any of the Affected  
19 Utilities had failed to render adequate service or had charged unreasonable rates.

20 13. Sempra should file documents to be approved by the Director, Utilities Division, that  
21 clarify the extent of the financial commitment Sempra has received from its affiliates.

22 14. Granting Sempra's Application for a CC&N to supply Competitive Services as an ESP  
23 within the service territories of the Affected Utilities is in the public interest, because it will provide a  
24 reasonable opportunity for the potential benefits of competition to develop in the State of Arizona.

25 15. It is not in the public interest to rescind, alter or amend the CC&N of any Affected  
26 Utility prior to final resolution of the Stranded Cost issues for that Affected Utility.

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ORDER

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2 IT IS THEREFORE ORDERED that the application of Sempra Energy Trading Corp. for an  
3 Electric Service Provider Certificate of Convenience and Necessity is hereby granted, and that  
4 Sempra Energy Trading Corp. is thereby authorized to supply competitive retail electric services as a  
5 Load-Serving Entity and as an Aggregator in all areas of the State of Arizona which are opened to  
6 retail electric competition.

7 IT IS FURTHER ORDERED that prior to providing service within the service area of any  
8 Utility Distribution Company, Sempra Energy Trading Corp. shall have a Service Acquisition  
9 Agreement with that Utility Distribution Company approved by the Director, Utilities Division.

10 IT IS FURTHER ORDERED that prior to providing service, Sempra Energy Trading Corp.  
11 shall either have a service agreement with a Scheduling Coordinator certified by the Arizona  
12 Independent System Administrator or become certified by the Arizona Independent System  
13 Administrator as its own Scheduling Coordinator.

14 IT IS FURTHER ORDERED that prior to providing service, Sempra Energy Trading Corp.  
15 shall acquire a financial guarantee bond in the initial amount of \$100,000 to be adjusted in the future  
16 on the basis of sales volume and any amounts that Sempra Energy Trading Corp. collects by way of  
17 deposits or advance payments.

18 IT IS FURTHER ORDERED that prior to providing service, Sempra Energy Trading Corp.  
19 shall acquire all relevant tax licenses from lawful taxing authorities within the State of Arizona.

20 IT IS FURTHER ORDERED that within thirty days of the date of this Decision, Sempra  
21 Energy Trading Corp. shall file documents to be approved by the Director, Utilities Division, that  
22 clarify the extent of the financial commitment Sempra Energy Trading Corp. has received from its  
23 parent companies.

24 IT IS FURTHER ORDERED that Sempra Energy Trading Corp. is hereby authorized to resell  
25 Meter Services and Meter Reading Services to its customers.

26 IT IS FURTHER ORDERED that prior to the provision of any other Competitive Service not  
27 approved at this time, Sempra Energy Trading Corp. shall apply to the Commission for approval.

28 IT IS FURTHER ORDERED that Sempra Energy Trading Corp. shall not be authorized to

provide Competitive Services in any certificated area of any Affected Utility until the Certificate of Convenience and Necessity of the respective Affected Utility has been amended.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

*Carl Kernick*  
CHAIRMAN

COMMISSIONER

*Tony West*  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 4<sup>th</sup> day of June, 1999.

*Brian C. McNeil*  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT  
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*John D. ...*

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