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February 6, 2002

Nancy Cole, Supervisor
Document Control
Arizona Corporation Commission
1200 W. Washington
Division: Hearing
Phoenix, AZ 85007

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2002 FEB - 8 A 10: 47
AZ CORP COMMISSION
DOCUMENT CONTROL

Re: Arizona Public Service Company
Docket No. E-01345A-01-0822

Dear Ms. Cole:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of the Opposition to Arizona Public Service Company's Attempted Filing of Supplemental Brief by Sempra Energy Resources. I have also enclosed two copies to be conformed and returned to our office in the enclosed self-addressed stamped envelope.

Please let me know if you have any questions, and thank you for your assistance.

Sincerely,

Lawrence V. Robertson, Jr.

LVR:cl
enclosures

Arizona Corporation Commission
DOCKETED

FEB 08 2002

DOCKETED BY

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9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10 IN THE MATTER OF THE ARIZONA) Docket No. E-01345A-01-0822
11 PUBLIC SERVICE COMPANY'S)
12 REQUEST FOR A VARIANCE OF) **OPPOSITION TO ARIZONA PUBLIC**
13 CERTAIN REQUIREMENTS OF A.C.C.) **SERVICE COMPANY'S ATTEMPTED**
14 R14-2-1606) **FILING OF SUPPLEMENTAL BRIEF**
15 _____)

16 Sempra Energy Resources ("Sempra") hereby submits its opposition to the February 1, 2002
17 attempt by Arizona Public Service Company ("APS") to supplement the brief APS filed in the
18 above-captioned proceeding on December 19, 2001.

19 **DISCUSSION**

20 **Procedural Background:**

21 On December 5, 2001 a Procedural Conference was held to discuss procedural issues and the
22 appropriate scope of this proceeding. [December 11, 2001 Procedural Order, page 1, lines 11-12]
23 On December 11, 2001 a Procedural Order was issued which noted that

24 "At the [December 5, 2001] Procedural Conference, it was
25 determined . . . that the parties would file briefs on December 19,
26 2001 addressing the appropriate procedural mechanism for the
27 Commission's consideration of this requested variance and whether
28 additional due process requirements are needed. . . ." [December 11,
2001 Procedural Order, page 1, lines 24-27] [emphasis added]

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In addition, the Procedural Order directed

". . . that the parties shall file briefs on the issues identified at the Procedural Conference and herein, no later than December 19, 2001." [December 11, 2001 Procedural Order, page 2, lines 9-10][emphasis added]

On December 19, 2001, APS, Sempra and several other parties of record filed briefs pursuant to the deadline established by the Chief Administrative Law Judge.

APS's Failure to Show "Good Cause":

The December 11, 2001 Procedural Order allowed for the simultaneous filing of one brief by each party discussing the issues which had been identified at the December 5, 2001 Procedural Conference and in the Procedural Order. Those issues included whether APS's request for a variance should be processed and considered pursuant to A.R.S. §40-252.

By its February 1, 2002 filing, APS in effect is seeking to submit a reply brief. It should not be allowed to do so, and its request for leave to "supplement" its December 19, 2001 brief should be denied.

In its February 1, 2002 filing APS states that "the ALJ's" proposed ruling frankly took APS by surprise. [APS February 1, 2002 filing, page 1, lines 20-21] [emphasis added] Quite frankly, APS's statement strains credulity, given the aforementioned language from the December 11, 2001 Procedural Order and the discussion which occurred at the December 5, 2001 Procedural Conference. APS may have chosen to "focus" on issues other than the possible applicability and appropriateness of A.R.S. §50-252 in the discussion set forth in its brief. [APS February 2, 2002 filing, page 1, lines 17-20] But, that does not mean it was not aware that that was one of the issues to be briefed. To the contrary, the applicability and appropriateness of A.R.S. §40-252 was clearly an issue.

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APS offers no excuse for its briefing failure; and it has none. While the December 11, 2001 Procedural Order invests the Chief Administrative Law Judge with authority to subsequently "rescind, alter, amend or waive any portion of this Procedural Order" [page 3, lines 8-9], such change should only be for good cause. Through its February 1, 2002 filing, APS is requesting that the December 19, 2001 deadline for filing briefs be extended as to it. However, it has not shown the requisite "good cause" to support such an extension; and none in fact exists.

**INCORPORATION BY REFERENCE OF GROUNDS FOR
OPPOSITION BY OTHER PARTIES:**

Sempra incorporates herein by reference as additional grounds for opposition to APS's request, the February 4, 2002 Response of Panda Gila River, L.P. and the February 4, 2002 Response of the Arizona Competitive Power Alliance.

CONCLUSION

WHEREFORE, for the reasons discussed above, Sempra requests (i) that the Chief Administrative Law Judge and/or Commission enter an order denying APS's request for leave to supplement its December 19, 2001 brief, and that (ii) the Chief Administrative Law Judge and the Commission not consider APS's untimely arguments.

DATED this 5th day of February, 2002.

Respectfully submitted,

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1 Original and ten (10) copies
2 mailed this 6th day of February,
3 2002, to:

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington St.
7 Phoenix, Arizona 85007

8 Copy of the foregoing
9 sent via facsimile and mailed
10 this 6th day of February,
11 2002, to:

12 Lynn Farmer
13 Chief Administrative Law Judge
14 Hearing Division
15 Arizona Corporation Commission
16 1200 W. Washington St.
17 Phoenix, Arizona 85007

18 Christopher Kempley
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23 A copy of the of the foregoing
24 was mailed on this 6th day of February,
25 2002, to:

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