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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF SEMPRA ENERGY SOLUTIONS FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR COMPETITIVE RETAIL ELECTRIC SERVICES

DOCKET NO. E-03964A-06-0168

RESPONSE OF AIR LIQUIDE INDUSTRIAL TO NEW WEST ENERGY CORPORATION'S MOTION TO DISMISS

Air Liquide Industrial U.S. LP ("Air Liquide") hereby files this Response to New West Energy Corporation's ("NWE") Motion To Dismiss the above captioned docket, filed on February 1, 2008 ("Motion"). By this Response, Air Liquide hereby incorporates the arguments set forth in Sempra Energy Solutions, L.L.C.'s ("SES") Response to NWE's Motion.

In addition, Air Liquide asserts that NWE's reference to pre-filed testimony in this proceeding actually undermines the Motion by highlighting the predicate upon which the Motion is based – that those wishing to block electric retail competition echo concerns expressed by Commissioners during the competition hiatus. By conceding that the "process" for direct access and retail competition is already in place, it is incumbent upon those wishing to *change* Commission policy – not SES – to develop an evidentiary record and secure an Order that states otherwise. This is precisely the position taken by the Administrative Law Judge in denying SES' Motion to Strike the testimony submitted by NWE and the Residential Utility Consumer's Office.

> As RUCO noted, the public interest is a necessary element of the Commission's analysis in this proceeding, and as New West pointed out, Arizona courts have long recognized the Commission's duty to make a public interest determination in addressing CC&N issues.
>
> Precluding a party from presenting facts regarding the public interest implications of granting a CC&N to an applicant runs counter to the purpose of an administrative proceeding such as this one and could deprive the Commission of information helpful to its determination.

See December 20, 2007 Procedural Order at 9.

It is inconsistent for NWE to argue that, on the one hand, testimony concerning the public interest is vital to a determination of important public policy goals by the Commission in this proceeding, yet on the other hand, deny the Commission the opportunity to make such a determination. To NWE, the public policy question has already been answered by testimony filed in this proceeding, as well as concerns echoed by Commissioners (some past, some present) outside a formal hearing process. What NWE ignores is that the public policy question regarding the benefits of electric retail competition for Arizona ratepayers has <u>already</u> been answered in the affirmative in formal Commission proceedings. Therefore, SES's application is not "premature" as it was filed consistent with the Commission's policy to encourage the development of retail electric markets within the state. Indeed, as witness Kevin Higgins testified:

> Approval of SES's Application would simply allow the process that has already been designed to go forward.

For the reasons set forth herein, as well as the reasoning set forth in the SES Response to NWE's Motion, Air Liquide respectfully requests that the Administrative Law Judge deny NWE's Motion.

RESPECTFULLY SUBMITTED this 6th day of February 2008.

FENNEMORE CRAIG, P.C.

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