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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 AND OBJECTION OF AIR LIQUIDE INDUSTRIAL TO ARIZONA INVESTMENT COUNCIL'S JOINDER, REQUEST FOR ORAL ARGUMENT AND REQUEST TO RESCHEDULE THE HEARING TO MARCH 3, 2008

Air Liquide Industrial U.S. LP ("Air Liquide") hereby files this Response to the Arizona Investment Council's ("AIC") Joinder to the Motion to Dismiss ("Motion") filed by New West Energy Corporation ("NWE") on February 1, 2008. In addition, Air Liquide hereby objects to AIC's request for oral argument on February 19, 2008, and to reschedule the hearing in this proceeding to March 3, 2008.

I. RESPONSE TO AIC'S JOINDER.

AIC argues that because Arizona Corporation Commission ("Commission") Staff witness Geoffrey Crandall has identified several issues that require resolution, Sempra Energy Solutions' L.L.C.'s ("SES") application for a certificate of convenience and necessity ("CC&N") is premature, and therefore granting approval is not in the public interest. What AIC fails to mention or even recognize is that the issues identified by witness Crandall – from the use of exit fees to "discriminatory" pricing – have already been addressed by the Commission, the State Legislature and Arizona courts.

On May 29, 1998, the Arizona Legislature passed the Electric Power Competition Act. This act required the Commission and public power entities to work together to ensure that rules, procedures and orders governing retail electric competition were applied uniformly statewide. In addition, counsel for AIC is fully aware that the issues now raised by witness Crandall were addressed during working group meetings ordered by the Commission prior to its adoption of the Retail Electric Competition Rules ("Rules"). Various participating groups (divided by subject matter) were comprised of several affected utilities, merchant generators, marketers, consumer protection groups, industrial and commercial customers and governmental entities. Topics included, but were not limited to: stranded cost recovery, standard offer service, provider of last resort, competitive metering and meter reading, an environmental portfolio standard, the independent scheduling administrator, distributed generation, system benefit charges and process standardization. Counsel for AIC participated in most of these proceedings.

The Commission has issued several orders and decisions based on the information generated by these workshops, and despite legal challenges to the Rules, they continue to provide a framework for direct access and retail electric competition in Arizona. As evidenced by the various filings in this proceeding, no party can argue otherwise. Instead, NWE and AIC contend that retail electric competition should be revisited before ruling on SES' application. However, SES has relied (and is relying) on the current regulatory framework in moving forward with business plans to become a certificated electric service provider. Neither SES nor any other potential electric service provider that is willing to offer service in the state should be told to "come back later, if at all" when the statutory and regulatory framework actually encourages the development of retail electric markets. Therefore, the amount of time and resources already expended by parties interested in the continued development of retail electric markets warrant a decision on SES' application based on its merits.

II. OBJECTION TO REQUEST FOR ORAL ARGUMENT AND DELAY.

AIC's argument that this proceeding represents the potential for the Commission and all parties involved to expend "an enormous amount of resources only to reach the obvious conclusion that much needs to be done before a CC&N is granted to anyone" ignores the present state of the Rules, and is entirely incorrect in its presumption. Nothing needs to be done, except to process SES' application in this proceeding, in order to grant SES a CC&N. Consequently, Air Liquide strongly objects to AIC's request that the hearing scheduled for February 19, 2008, be used instead for oral argument on NWE's Motion, and then depending on the outcome, to commence an evidentiary hearing on March 3, 2008, if necessary.

Neither NWE nor AIC have provided a legal basis to support the Motion, as SES's Response eloquently points out. Thus, no oral argument is necessary. However, if the Administrative Law Judge is inclined to grant the Motion, then due process warrants an oral argument before the members of the Commission.

With respect to AIC and NWE's request to reschedule the hearing to March 3, 2008, the parties have already been made aware - including counsel for both AIC and NWE – that Air Liquide witness Kevin C. Higgins cannot be available on March 3rd or 4th, 2008. Therefore, Air Liquide respectfully requests that the request to change the evidentiary hearing date to March 3, 2008, be denied.

RESPECTFULLY SUBMITTED this 7th day of February 2008.

FENNEMORE CRAIG, P.C.

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