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ADMITTED TO PRACTICE IN:
ARIZONA, COLORADO, MONTANA,
NEVADA, TEXAS, WYOMING,
DISTRICT OF COLUMBIA

February 5, 2008

Arizona Corporation Commission
DOCKETED

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

FEB - 8 2008

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2008 FEB - 8 A 11: 31
ARIZONA CORPORATION
DOCKET CONTROL

Re: Sempra Energy Solutions LLC
Docket No. E-03964A-06-0168

To Whom It May Concern:

Enclosed for filing in the above-referenced docket on behalf of Sempra Energy Solutions LLC are the original and thirteen (13) copies of the Applicant's Response to New West Energy Corporation's Motion To Dismiss ("Response").

Also enclosed are two (2) additional copies of the Response. I would appreciate it if you would "filed" stamp the same and return them to me in the enclosed addressed and prepaid envelope.

Please let me know if you have any questions. Thank you for your assistance.

Sincerely,

Angela R. Trujillo

Angela R. Trujillo
Secretary

Lawrence V. Robertson, Jr.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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3 **COMMISSIONERS**

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4 **MIKE GLEASON, Chairman**
5 **WILLIAM A. MUNDELL**
6 **JEFF HATCH-MILLER**
7 **KRISTIN K. MAYES**
8 **GARY PIERCE**

FEB 6 2008

ARIZONA CORP. COMM
400 W CONGRESS STE 218 TUCSON AZ 85701

9 IN THE MATTER OF THE APPLICATION OF) DOCKET NO. E-03964A-06-0168
10 SEMPra ENERGY SOLUTIONS FOR)
11 APPROVAL OF A CERTIFICATE OF) APPLICANT'S RESPONSE TO
12 CONVENIENCE AND NECESSITY FOR) MOTION TO DISMISS
13 COMPETITIVE RETAIL ELECTRIC SERVICES)

14 Pursuant to the Eighteenth Ordering Paragraph of the December 4, 2007 Procedural
15 Order issued in the above-captioned and above-docketed proceeding, Sempra Energy Solutions
16 LLC ("Applicant") submits its Response to the Motion To Dismiss ("Motion") filed by New
17 West Energy Corporation ("NwEC") on February 1, 2008.

18 **I.**

19 **THERE IS NO BASIS IN LAW TO**
20 **SUPPORT THE MOTION TO DISMISS**

21 Nowhere in its Motion does NwEC assert that Applicant has failed to satisfy any Rules
22 of Practice and Procedure or filing requirements of the Commission which are applicable to the
23 March 16, 2006 Application and the July 2, 2007 Amended Application (collectively
24 "Application") which are the subject of this proceeding. Nor is NwEC in a position to do so.
25 For, in reality, there has been no such failure upon the part of the Applicant.

26 Similarly, there is no basis in the Arizona Rules of Civil Procedure for granting the
27 Motion. A.A.C. R14-3-106(k) provides that reference may be made to the Arizona Rules of
28 Civil Procedure for guidance when procedural circumstances arise which are not specifically
addressed in the Commission's Rules of Practice and Procedure. The Commission's Rules of

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1 Practice and Procedure do not prescribe specific criteria for ruling upon motions to dismiss.
2 However, Rule 12(b) of the Arizona Rules of Civil Procedure does provide such guidance.

3 More specifically, Rule 12(b) sets forth the following grounds upon which a motion to
4 dismiss may be predicated:

- 5 "1. Lack of jurisdiction over the subject matter.
- 6 2. Lack of jurisdiction over the person.
- 7 3. Improper venue.
- 8 4. Insufficiency of process.
- 9 5. Insufficiency of service of process.
- 6 6. Failure to state a claim upon which relief can be granted.
- 7 7. Failure to join a party under Rule 19."

10 It is readily apparent from the outset that none of these grounds for dismissal is
11 applicable to either Applicant or the circumstances surrounding this proceeding. The
12 Commission clearly has jurisdiction over both the subject matter of the Application, and the
13 person of Applicant. Given the nature of the relief requested by the Application and Applicant,
14 the Commission is not only a proper venue, it is the only venue. Given the public notice process
15 utilized by the Commission, as well as the ample opportunity for intervention which that process
16 affords, it cannot credibly be said that there has been either an insufficiency of process or an
17 insufficiency of service of process. To the contrary, the presence and actions of NWECA to date
18 in this proceeding readily dispel any suggestions of a failure of process. Similarly, because of
19 the procedural and factual circumstances surrounding this proceeding, there has been no failure
20 to join a party under Rule 19.

21 The only remaining ground for dismissal under Rule 12(b) is that set forth in Rule
22 12(b)(6):

23 "Failure to state a claim upon which relief can be granted. [emphasis
24 added]

24 However, that ground is also inapplicable to the circumstances of this proceeding. More
25 specifically, the inclusion of the word "can" relates to the jurisdiction and authority of the forum
26 to grant the relief which has been requested. In this instance, it is quite clear that the
27 Commission possesses the requisite jurisdiction and authority, provided that it exercises the same
28 in a manner which complies with the applicable requirements of the decision of the Arizona

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Court of Appeals in Phelps Dodge Corp. vs. Ariz. Elec. Power Group. 207 Ariz. 95, 83 p. 3d 573 (App. 2004) The arguments set forth by NWEAC in its Motion go to the question of whether the Commission should grant the Application as a matter of regulatory policy, and not to the legal question of whether it has the jurisdiction and authority to do so.

In view of the preceding discussion, it is abundantly clear that there is no basis in law to support NWEAC's Motion, and accordingly the same should be denied.

**II.
THE MOTION IS UNTIMELY**

As discussed in Section I above, NWEAC has not cited, and cannot cite, any of the Commission's Rules of Practice and Procedure or filing requirements which the Application and Applicant have failed to satisfy. In addition, there are no legal grounds under Rule 12(b) of the Arizona Rules of Civil Procedure to support the Motion.

However, assuming arguendo, that such a ground did exist under Rule 12(b), NWEAC has failed to comply with the "spirit" of that rule's requirement as to when a motion to dismiss is to be filed. More specifically, Rule 12(b) requires that a motion to dismiss

"...shall be made before pleading if a further pleading is permitted."
[emphasis added]

In that regard, a "pleading" in effect is defined as

"Every defense, in law or fact, to a claim for relief in any pleading..."

When examined in the context of this proceeding, the "claim for relief" is the Application; and, NWEAC in effect filed a substantive pleading responding thereto when it filed the Direct Testimony of NWEAC witnesses Peter Fox-Penner and Frank G. Graves on August 31, 2007. Thus, NWEAC failed to file its motion to dismiss in accordance with the timing requirement of Rule 12(b), because it failed to file the Motion "before pleading." To allow NWEAC to file a motion to dismiss at this late stage in this proceeding, more than 6 months after it was granted intervention and less than 3 weeks before the evidentiary hearing begins, would allow NWEAC to obstruct the purpose of Rule 12(b)'s timeliness requirement, which is to raise at the outset of a

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1 proceeding any question(s) as to the legal capacity of the forum to grant the relief which has
2 been requested.

3 In view of the preceding discussion, NWECE's Motion should be denied for lack of
4 timeliness as to the filing thereof.

5
6 **III.**
7 **THE MOTION IS PREDICATED**
8 **UPON UNSUBSTANTIATED PRESUPPOSITIONS**

9 The Merriam Webster Dictionary defines the word "presuppose" as follows:

10 "to suppose beforehand...to require beforehand as a necessary
11 condition..." [The Merriam-Webster Dictionary, 1997 Edition]

12 NWECE's Motion is clearly predicated upon a collective set of presuppositions as to the current
13 thinking of the members of the Commission with regard to the subject of retail electric
14 competition, as indicated by the following statement in the introductory section of the Motion:

15 "It is very probable that the Commission will at the conclusion of the
16 proceeding dismiss or defer a decision on the Application pending the
17 consideration of the many open issues surrounding retail electric
18 competition. This motion requests that the Commission consider this issue
19 now to avoid the considerable time and expense of the hearing." [Motion
20 at page 1, lines 23-27] [emphasis added]

21 However, NWECE cites nothing of a current nature to support its conjecture as to the current state
22 of mind of the individual members of the Commission, or the Commission as a whole.

23 For example, two (2) of the three (3) members of the Commission, whose
24 correspondence NWECE cites in the subsection of its Motion entitled "The Unanswered
25 Questions," are no longer members of the Commission; and, NWECE provides no citation to
26 support its suggestion that the questions the two (2) past Commissioners raised are of interest or
27 concern to the current members of the Commission, including Commissioner Mundell.
28 Moreover, the questions attributed to Commissioner Mundell were raised by him six (6) years
ago; and, much has happened in the area of competition in the electric utility industry since then,
both in Arizona and nation-wide.

Furthermore, it should not be assumed that the questions remain "unanswered." More
specifically, a review of the questions posed and the context in which they arose, namely, APS'

1 Request for Variance, indicates quite clearly that the Commissioners at that time were concerned
2 about the prospect of *wholesale* competition and its potential effects on Arizona consumers.
3 Those concerns were addressed by the issuance of the Commission's Track A and Track B
4 decisions that halted the impending transfer of APS and TEP's generation facilities, and
5 established the mechanisms by which both utilities were to conduct their future competitive
6 wholesale power solicitations.

7 Similarly, NWEC's citations to and discussions of Decision No. 65154 and the
8 Commission Staff's Electric Competition Advisory Group are in no manner indicative of the
9 current thinking of the current members of the Commission with regard to the subject of retail
10 electric competition. Decision No. 65154 was issued on September 10, 2002, five (5) years ago;
11 and, as NWEC notes, the Electric Competition Advisory Group has not been active for more
12 than four (4) years. Moreover, it is disingenuous at best to suggest, as NWEC attempts to do,
13 that comments submitted by Arizona Public Service Company more than four and one-half (4 ½)
14 years ago represent any conclusions reached by the Electric Competition Advisory Group as a
15 whole. Further, although both APS and TEP have been granted intervenor status in this
16 proceeding, neither to date has filed testimony nor presented any other pleading or argument
17 supporting the views expressed by NWEC.

18 In addition, NWEC's attempted reliance on the Phelps Dodge decision as a reason for
19 dismissal of the Application is misplaced. The Application has been filed under the
20 Commission's general statutory authority to grant certificates of convenience and necessity to
21 electric public service corporations, and the Commission's regulations promulgated in
22 connection therewith. Furthermore, Applicant has included in testimony and exhibits previously
23 filed in this proceeding information sufficient to provide the Commission with that information
24 necessary to enable the Commission to make those findings and conclusions as to "fair value"
25 and "just and reasonable rates" required of it by the Phelps Dodge decision. Thus, in reality, that
26 decision has not "left major holes" in the Commission's ability to legally act upon and decide the
27 Application, despite NWEC's attempt to so suggest.

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Similarly, as NWECE itself acknowledges, Decision No. 68485 is no barrier to the Commission's ability to consider and decide the Application. NWECE clearly endeavors to impute into that decision an unwillingness on the part of the Commission to consider and decide applications relating to the resumption of retail electric competition in Arizona as of this point in time. However, NWECE's own Motion concedes that Decision No. 68485

“...only addressed issues regarding the AISA [Arizona Independent Scheduling Administrator].” [Motion at page 8, line 16] [emphasis added]

In that regard, the language NWECE cites from the decision also is in the nature of “dicta,” and it is approximately two (2) years old. It does not necessarily reflect the current thinking of the members of the Commission; and, it clearly does not constitute a barrier to their ability to consider and decide the Application.

As a final line of argument to support the Motion, NWECE attempts to rely upon its selective discussion of prepared testimony which thus far has been filed in this proceeding, but such testimony has yet to be subjected to and tested by cross-examination by the parties and questions from the assigned Administrative Law Judge and members of the Commission. Moreover, Applicant will be filing extensive Rebuttal Testimony in this proceeding within two (2) days, which responds to issues raised and arguments made by NWECE, the Commission's Staff and RUCO in previously filed testimony. In that regard, sound regulation requires that all testimony presented be subjected to cross-examination and questions from the bench and/or the Commissioners before any substantive decision is reached on issues raised and arguments made by the parties; and, “fair play” requires that no substantive decision(s) be reached which exclude(s) consideration of Applicant's testimony.

The predicate presupposition in this instance is NWECE's suggestion that the “concerns” and “issues” it seeks to suggest [see Motion at page 9, lines 10 – page 10, line 5] cannot in fact be satisfactorily addressed and resolved by the Commission within the context of this proceeding for purposes of consideration of and a decision upon the Application. However, NWECE fails to cite any facts to support this assertion. Moreover, and ironically in this regard, NWECE concedes

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1 in the first paragraph of its "Summary of Arguments" portion of the Motion the possibility of
2 such satisfactory consideration and disposition of the issues by the Commission:

3 "As discussed more fully below, the following unresolved issues may lead
4 the Commission to conclude that Sempra's application is premature."
5 [Motion at page 2, lines 2-3] [emphasis added]

6 In view of the preceding discussion, it is abundantly clear that NWECE's Motion is
7 predicated upon a collection of presuppositions, the actual existence of which it has failed to
8 demonstrate. At most, it has conjectured at length, which is an insufficient basis to support a
9 motion to dismiss. Accordingly, the Motion should be denied.

10 **IV.**
11 **THE MOTION REPRESENTS AN ATTEMPT TO**
12 **OBSTRUCT THE RESUMPTION OF RETAIL ELECTRIC**
13 **COMPETITION BECAUSE NWECE IS (i) UNPREPARED TO**
14 **COMPETE, AND (ii) MAY ALSO BE ACTING UPON**
15 **BEHALF OF ITS CORPORATE PARENT**

16 Attached hereto as Appendix "A" and incorporated herein by this reference is a copy of
17 Applicant's First Set of Data Requests to NWECE, and NWECE's pertinent responses thereto.
18 NWECE's responses disclose the following facts:

- 19 1) NWECE's incorporators were members of the same Phoenix law firm
20 that has represented the Salt River Project ("SRP") in electric utility
21 industry matters for several decades.
- 22 2) The members of the Board of Directors of NWECE were also the
23 members of the Board of Directors of SRP.
- 24 3) SRP has always owned all of the 1,000 shares of stock issued by
25 NWECE.
- 26 4) NWECE has no employees at present.
- 27 5) NWECE has not had any employees since 2003.
- 28 6) NWECE has never had any retail electric customers in the State of
Arizona. It's only customers were in the State of California.
- 7) NWECE has had no retail electric customers anywhere since 2001.
- 8) NWECE has made no decision as yet as to whether to file an
Application with the Commission for a certificate of convenience and

1 necessity to provide competitive retail electric service in the event that
2 the Commission issues a decision granting one to Applicant in this
proceeding.

3 Against this background, Applicant submits it is abundantly clear that NWEC is not
4 prepared to engage in retail electric competition at present or in the immediate future. Whereas,
5 Applicant is prepared to actively participate in Arizona upon receipt of the requisite
6 authorization from the Commission, and satisfaction of such conditions precedent, if any, as may
7 be set forth in such authorization.

8 In addition, it is reasonable to infer that NWEC's corporate thinking and actions in this
9 proceeding may be substantially influenced by the view of SRP's Board of Directors and senior
10 management. Given that Applicant is seeking authorization from the Commission to offer retail
11 electric service in competition with SRP in SRP's electric service area, it would not be
12 unreasonable to conclude that SRP would endeavor to obstruct Applicant's efforts in that regard
13 by any lawful means available to SRP. In fact, SRP originally intervened in this proceeding, and
14 then withdrew its intervention after NWEC had been granted intervention. Coincidence,
15 perhaps, but highly unlikely.

16 In view of the foregoing, two (2) questions arise in connection with the Motion which
17 was filed on February 1, 2008. First, is NWEC at this point in time, given its status as a dormant
18 corporate entity, nothing more than a "stalking horse" for SRP in this proceeding? Second,
19 despite its discussion of asserted unresolved policy "concerns" and "issues" relating to retail
20 electric competition, is the true purpose of NWEC's Motion simply an attempt to interpose an
21 absolute obstacle to the resumption of retail electric competition in Arizona? Applicant believes
22 these questions must seriously be considered in connection with a ruling on NWEC's Motion.

23 **V.**
24 **CONCLUSION**
25 **AND**
26 **REQUEST FOR ORAL ARGUMENT**
27 **BEFORE THE COMMISSION**

28 For the reasons discussed above, Applicant believes that NWEC's Motion should be
denied forthwith by the assigned Administrative Law Judge. However if the assigned

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1 Administrative Law Judge is uncertain how to rule, or is disposed to grant the Motion, then
2 Applicant requests that the matter be set for oral argument before the members of the
3 Commission.

4 The nature of NWEAC's Motion is such that, if granted, it will terminate a proceeding
5 which began almost two (2) years ago, and one in which Applicant and seven (7) other parties
6 have invested a substantial amount of effort, time and money preparing testimony and exhibits,
7 participating in various procedural activities and preparing for hearing. In other words, such a
8 ruling would be substantive in nature and effect. As Applicant interprets A.R.S. § 40-253 and
9 the Commission's Rules of Practice and Procedure, it appears that they may not provide
10 Applicant with a means of appeal or request for review by the members of the Commission, in
11 the event of a ruling by the assigned Administrative Law Judge which would terminate this
12 proceeding at this time. Under these circumstances, Applicant believes that the opportunity to
13 present oral argument before the members of the Commission would be both appropriate and
14 required by due process of law prior to the issuance of any ruling or order granting the Motion.

15 Dated this 5th day of February 2008.

17 Respectfully submitted,
18 Lawrence V. Robertson, Jr.

19 and

20 Theodore Roberts
21 Attorneys for Sempra Energy Solutions, L.L.C.

22 By: Lawrence V. Robertson, Jr.
23 Lawrence V. Robertson, Jr.

24 The original and thirteen (13) copies of the
25 foregoing Response will be filed on
26 February 6, 2008 with:

27 Docket Control
28 Arizona Corporation Commission
c/o 400 West Congress, Suite 218
Tucson, Arizona 85701

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1 A copy of the foregoing Response will be
2 emailed February 6, 2008 to:

3 Teena Wolfe, Administrative Law Judge
4 Hearing Division
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8 Christopher Kempley, Chief Counsel
9 Janet F. Wagner
10 Legal Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Ernest Johnson, Director
15 Utilities Division
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APPENDIX “A”

(New West Energy Corporation’s Responses
to Sempra Energy Solutions’ First
Set of Data Requests)

Sempra Energy Solutions LLC
Docket No. E-03964A-06-0168
February 5, 2008

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January 25, 2008

VIA ELECTRONIC MAIL

Lawrence V. Robertson, Jr.
2247 East Frontage Road
P. O. Box 1448
Tubac, SX 85646

Re: *Sempra Application for CC&N*
ACC Docket No. E-03964A-06-0168

Dear Larry:

Enclosed is New West Energy Corporation's response to Sempra's First Set of Data Requests. If you have any questions, please do not hesitate to contact us.

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.



By

Kenneth C. Sundlof, Jr.

KCS/mri
Enclosure

cc: Ted Roberts (w/encl.)
Senior Regulatory Counsel
Sempra Energy Law Department
101 Ash Street, HQ 12B
San Diego, CA 92101-3017

New West Energy Corporation's Responses to
Sempra Energy Solutions LLC First Set of Data Requests

ACC Docket No. E-03964A-06-0168

- SES 1.1 When was New Energy West Corporation ("NWEC") incorporated?
- a. Please list the incorporators of NWEC.
 - b. Please describe the nature of any business or employment relationship which existed between the incorporator(s) of NWEC and Salt River Project ("SRP") at the time NWEC was incorporated.
 - c. Please list the individual members of the initial Board of Directors.
 - d. Please describe the nature of any business or employment relationship which existed between each of the members of NWEC's initial Board of Directors and SRP.
 - e. Please provide a copy of NWEC's Articles of Incorporation and NWEC's By-Laws as original adopted.
 - i) Please provide a copy of any subsequent amendment(s) of NWEC's Articles of Incorporation or By-Laws.

Response:

New West Energy Corporation was incorporated on April 29, 1997

- a. ***John Christian and Anne Kleindienst***
- b. ***Both incorporators were attorneys with the law firm of Jennings, Strouss & Salmon, P.L.C. Jennings, Strouss & Salmon, P.L.C., represents SRP.***
- c. ***William W. Arnett
Bruce Brooks
James Diller
Martin Kempton
Clarence C. Pendergast, Jr.
Gilbert R. Rogers
Eldon Rudd
Carl E. Weiler
Fred J. Ash
Ann M. Burton
Dwayne E. Dobson
James Marshall
Dale C. Riggins
Emil M. Rovey
William P. Schrader
John Williams, Jr.***
- d. ***William P. Schrader was President of SRP***

**John Williams, Jr. was Vice President of SRP
All the other New West Energy board members were
board members of SRP**

e. See attached

- SES 1.2 Was NWEC incorporated as a profit or non-profit corporation?
- a. If NWEC was incorporated for profit, how many class(es) of shares were provided for in the Articles of Incorporation.
 - b. If NWEC was incorporated for profit, were any shares of its stock issued?
 - c. If NWEC was incorporated for profit, and shares were issued, were any of its shares issued to any of the following:
 - i) SRP
 - ii) Any employee(s) of SRP
 - iii) Any member(s) of SRP's Board of Directors
 - iv) Any trust or other form of depository arrangement controlled by SRP, one or more of SRP employees, and/or one or more members of SRP's Board of Directors?

Response: New West Energy Corporation is a profit "C" corporation.

a. The Articles of Incorporation provide for one class of shares

b. Yes, 1000 shares

c. SRP has always owned 100% of the issued shares

- SES 1.3 Is NWEC currently in existence and in good standing under the laws of the State of Arizona

Response: Yes

- SES 1.4 Does NWEC have any employees at present?
- a. If so, please list each employee and his/her position with NWEC.
 - i) If so, please provide a written description of the responsibilities for each such position.
 - b. If not, when did NWEC cease to have any employees, and why did it cease to have any employees?
 - c. If NWEC has employees, but they are not full-time employees, please explain why they are not full-time employees and when NWEC ceased to have full-time employees.

Response: No

a. Not applicable

b. New West Energy ceased having employees in 2003. New West Energy had ceased active ESP activities in 2001 and had no need for employees.

c. Not applicable

SES 1.5 Does NWEC have any retail electric customers in the State of Arizona or elsewhere at the present time?

- a. If so, please indicate how many such customers NWEC has at present and the number of such customers, by state.
- b. If none, please indicate if NWEC ever had any retail electric customers in the State of Arizona or elsewhere.
 - i) If so, please indicate the number of such customers, by state, which NWEC had, and the time period(s) during which NWEC had commercial relationships with such customers.
 - ii) If so, please describe why such customer relationship(s) ceased to exist.
- c. If NWEC never had any retail electric customers in the State of Arizona or elsewhere, please so indicate.

Response: No.

a. Not applicable

b. New West Energy had approximately 2,000 to 3,000 retail electric customers in California. NWEC did not provide retail electric service in Arizona. New West Energy's contracts with its California customers ended between December 2000 and March/April 2001. New West Energy did not continue providing retail electric service in California because of the California energy crisis.

c. Not applicable

SES 1.6 In the event that the Arizona Corporation Commission ("ACC") should grant Sempra Energy Solutions LLC's request for an Electric Service Provider ("ESP") Certificate of Convenience and Necessity ("CC&N"), will NWEC make application to the ACC for an ESP CC&N?

- a. If so, when?
- b. If not, please explain why not?

Response: This decision has not been made by New West Energy.

SES 1.7 In the event that the Arizona Corporation Commission ("ACC") should deny Sempra Energy Solutions LLC's request for an Electric Service Provider ("ESP") Certificate of Convenience and Necessity ("CC&N"), will NWEAC make application to the ACC for an ESP CC&N?

- a. If so, when?
- b. If not, please explain why not?

Response: ***This decision has not been made by New West Energy.***

SES 1.8 Does NWEAC believe that it would be detrimental to NWEAC's business interest(s) if the ACC granted an ESP CC&N to Sempra Energy Solutions LLC in the above-docketed proceeding?

- a. If so, please describe in detail why NWEAC believes that such action would be detrimental to NWEAC's business interests.

Response: ***New West Energy is not currently engaged in the provision of retail electric service. It is the position of New West Energy that deregulation faces serious issues and risks, and that for the foreseeable future it does not make sense for the State of Arizona to pursue retail electric deregulation. New West Energy has an interest in insuring that if deregulation is re-implemented in Arizona, that it be done in a manner that is fair to and does not provide undue risk to market participants including the incumbent utilities and electric customers.***