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

OF COUNSEL TO
MUNGER CHADWICK, P.L.C.

February 8, 2008

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

Arizona Corporation Commission
DOCKETED

FEB 11 2008

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

DOCKETED BY 

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 Applicant's Response to RUCO's Response to New West Energy Corporation's Motion To Dismiss.

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

Sincerely,

Lawrence V. Robertson, Jr.

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FEB 8 2008

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

ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

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FEB 8 2008

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

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|--------------------------------------|---|-----------------------------|
| IN THE MATTER OF THE APPLICATION OF |) | DOCKET NO. E-03964A-06-0168 |
| SEMPRA ENERGY SOLUTIONS FOR |) | |
| APPROVAL OF A CERTIFICATE OF |) | APPLICANT'S RESPONSE TO |
| CONVENIENCE AND NECESSITY FOR |) | RUCO'S RESPONSE TO NWEC'S |
| COMPETITIVE RETAIL ELECTRIC SERVICES |) | MOTION TO DISMISS |

I.
INTRODUCTION

In its February 6, 2008 Response to New West Energy Corporation's Motion To Dismiss ("RUCO's Response), RUCO "suggests" that the Commission "dismiss Sempra's application with prejudice." In effect, RUCO has filed a new motion, inasmuch as (i) it's suggestion is in reality a request for relief, and (ii) the relief it requests is substantively quite different from that which has been requested by New West Energy Corporation ("NWEC"). Accordingly, and pursuant to the Eighteenth Ordering Paragraph of the December 4, 2007 Procedural Order issued in this proceeding, Sempra Energy Solutions LLC ("Applicant") hereby submits this Response to RUCO's Response or motion.

II.
RUCO'S RESPONSE OR MOTION IS SUBJECT TO THE SAME
DEFECTS AS NWEC'S MOTION

In its "Background" section, RUCO essentially reiterates a summary of the information and allegations contained in NWEC's Motion. Thus, it is subject to the same defects and criticisms discussed in Section III of Applicant's February 6, 2008 Response ("Response") to NWEC's February 1, 2008 Motion To Dismiss ("Motion"). In other words, RUCO's arguments are predicated upon (i) it's presupposition(s) as to the current state of mind of the members of the

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1 Commission with regard to retail electric competition, rather than an actual knowledge of that
2 state of mind, and (ii) an incorrect understanding of the applicability of the Phelps Dodge
3 decision to the circumstances of this proceeding. At the risk of stating the obvious,
4 presuppositions as to yet-to-be proven and irrelevant facts are not a legitimate basis upon which
5 to request a dismissal of Applicant's Application in this proceeding, with or without prejudice.

6 In addition, RUCO's Response is subject to the same legal defects discussed in Sections I
7 and II of Applicant's Response to NWECE's Motion as NWECE's Motion itself. More
8 specifically, RUCO is unable to identify any legal requirement that Applicant has failed to
9 satisfy in connection with its Application, and RUCO thus cannot credibly contend that the
10 Commission lacks the jurisdiction and authority to act upon the Application. Further, RUCO's
11 motion is untimely. In that regard, RUCO first filed testimony, or pled, in this proceeding on
12 July 3, 2007, or eight (8) months ago.

13 In connection with the foregoing, RUCO's citation of and reliance upon A.A.C. R14-3-
14 109(C) also is misplaced. When read in its entirety, the "dismissal of proceeding" therein
15 contemplated and provided for relates to significant events which do or do not occur during the
16 course of a hearing. Such events do not include a change in the hearing posture of a party
17 (including the Commission's Staff) to the proceeding.

18
19 **III.**
20 **RUCO SEEKS A PROCEDURAL MEANS**
21 **TO ACHIEVE A "BOOTSTRAPPED"**
22 **SUBSTANTIVE RESULT**

23 RUCO's goal is to preclude the resumption of retail electric competition in Arizona under
24 any circumstances, and at anytime. RUCO could not have declared its objective more clearly
25 that it did with the following statement:

26 "...the Commission should signal broadly to the public that it will
27 not pursue retail electric competition by dismissing the application
28 with prejudice." [RUCO Response at page 3, lines 8-9] [emphasis
added]

As contrasted with the Commission Staff witnesses and NWECE's witnesses, who
recommend that certain questions should be resolved or studies conducted before a decision is

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1 made by the Commission as to whether or not to authorize the resumption of retail electric
2 competition, RUCO's approach is simplistic. In effect, RUCO is asking the Commission to
3 accept RUCO's adversarial assertion that the resumption of retail electric competition would not
4 be in the "public interest" as an established fact, without considering any evidence relating to
5 that question which has been tested through the hearing process. In other words, RUCO is trying
6 to achieve a "bootstrapped" policy result through a procedural vehicle, rather than on the basis of
7 a substantive evidentiary record. If opposition to a filed application provided a sufficient legal
8 basis upon which to grant such summary dismissal, the Commission would have very few
9 matters to decide in any given year, and the business of utility regulation in the State of Arizona
10 would abruptly grind to a halt.

11 RUCO is entitled to adopt and assert such an "all or nothing" line of argument as an
12 advocate. But the assigned Administrative Law Judge and the Commission should not, for a
13 single moment, seriously consider an unsubstantiated argument of that nature as a basis for a
14 substantive ruling on the question of whether either NWECA's Motion or RUCO's separate
15 motion to dismiss should be granted.

16 Moreover, Applicants have filed Rebuttal Testimony demonstrating that resumption of
17 retail choice by granting the Application would be in the "public interest" and rebutting the
18 contrary assertions of RUCO and other parties. In addition, contrary to the picture that RUCO
19 tries to paint, the underlying framework for retail electric competition has not been completely
20 invalidated in Arizona, nor is there an insufficient regulatory framework in place such that the
21 Commission cannot move forward and grant Applicant's request for a CC&N at this time.
22 Although the Phelps Dodge decision invalidated some of the Electric Competition Rules, it also
23 upheld a number of them, and those continue to be in force and effect. In that regard, many of
24 those that the court did invalidate were invalidated solely on the basis that they had not been
25 submitted to the Attorney General of the State of Arizona for review, and not because of any
26 perceived detriment to the "public interest." Further, the fundamental jurisdiction and authority
27 of the Commission under both the Arizona Constitution and statutes to regulate the electric
28 industry in Arizona was not altered by the Phelps Dodge decision; and, the statutes confirming

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1 the Commission's authority to implement retail choice and declaring that the service territories
2 of the incumbent utilities and public entities shall be open to competition remain in force and
3 effect.

4 Clearly, the Commission has before it ample evidence to indicate that a hearing on SES'
5 Application is in order. At the conclusion of that hearing, the Commission may make an
6 informed decision, based upon substantive evidence, whether it desires, through Applicant, to
7 resume retail electric competition in Arizona at this time. However, the mere fact that RUCO
8 opposes retail competition, based upon its perception of what is or is not in the "public interest,"
9 does not provide a sufficient basis upon which to deny SES a hearing on its Application. In that
10 regard, the following language from the December 20, 2007 Procedural Order issued in this
11 proceeding would appear to be most pertinent:

12 "Precluding a party from presenting facts regarding the public
13 interest implications of granting a CC&N to an applicant runs
14 counter to the purpose of an administrative proceeding such as this
15 one and could deprive the Commission of information helpful to its
16 determination." [Procedural Order at page 9, lines 15-17]

17 **IV.**
18 **CONCLUSION**

19 For the reasons discussed above, RUCO's request that the Application in this proceeding
20 should be dismissed with prejudice should be denied.

21 Dated this 8th day of February 2008.

22 Respectfully submitted,
23 Lawrence V. Robertson, Jr.

24 and

25 Theodore Roberts
26 Attorneys for Sempra Energy Solutions, L.L.C.

27 By: Lawrence V. Robertson, Jr.

28 Lawrence V. Robertson, Jr.

The original and thirteen (13) copies of the
foregoing Response will be filed on

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February 8, 2008 with:

Docket Control
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A copy of the foregoing Response will be
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