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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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JEFF HATCH-MILLER
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Arizona Corporation Commission
DOCKETED

FEB 11 2008

DOCKETED BY *MM*

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

Docket No. E-03964A-06-0168

**AIC'S REPLY IN SUPPORT OF
ITS JOINDER IN THE NEW
WEST MOTION TO DISMISS**

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Arizona Investment Council ("AIC") submits this reply to the responses of Sempra Energy Solutions ("Sempra") and Intervenor Air Liquide Industrial U.S. LP ("Air Liquide") to its Joinder in the New West Motion to Dismiss without Prejudice (the "Motion").

Air Liquide makes much of the facts that, in the late 1990s, the Legislature passed the Electric Power Competition Act and the Commission enacted several versions of the Electric Competition Rules, as well as conducted a series of working groups on various deregulation subjects. How precisely that relates to today's situation following the California market meltdown, the Commission's decision to halt divestiture and the Court of Appeals invalidation of many Rules is never explained. All of those events have had a dramatic impact on what deregulation can be and the policy to be applied in the aftermath has not been determined.

Air Liquide posits that Sempra "has relied (and is relying) on the current regulatory framework...to become a certificated electric service provider."¹ In reality, however, there is no current regulatory framework. Portions of three of the Rules have been held either unconstitutional or in excess of the Commission's authority. Six more rules—including the one

¹ Air Liquide Response, p. 2, ll. 19-21, emphasis in original.

1 on Certificates of Convenience and Necessity—are not in effect because they have not been
2 submitted for Attorney General certification—no doubt because the Commission has stated it
3 needs to reassess the situation: “to protect the public interest, we must take further action to
4 regulate the transition to competition.”² As Staff states in supporting the Motion, the Rules are
5 not only “stale...but also incomplete.” That clearly is no “regulatory framework” upon which to
6 move forward.

7 Sempra argues, in its Response, that the Joinder adopts a Motion which is “predicated
8 upon a collective set of presuppositions as to the current thinking of members of the
9 Commission...”³ What Sempra misses is that the Motion has been filed precisely so as to avoid
10 guessing about the Commission’s current attitude. The Applicant and Air Liquide want to force
11 a rush to judgment which clearly is not in the public’s interest. Only last October, the
12 Commission received an update on the status of restructuring, including information on states
13 with competition where recent rate increases have ranged from 12% to more than 70%.⁴

14 This Application has been pending for almost two years. A short delay to determine
15 whether the Commission wishes to proceed protects the public’s interest and prejudices no one.
16 The stakes, obviously, are quite high. As Staff notes, “the public policy implications of retail
17 electric competition should be considered before the Commission grants any specific CC&Ns.”⁵

18 AIC requests that the Administrative Law Judge suspend the current procedural schedule
19 and issue a Recommended Opinion and Order for the Commission’s consideration granting the
20 Motion to Dismiss without Prejudice. If the Administrative Law Judge concludes that the

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22 _____
² Decision No. 65154, p. 23.

³ Response to Motion to Dismiss, p. 4, ll. 10-11.

23 ⁴ Ken Rose, Institute of Public Utilities, “Status of Competition/Restructuring in the Electric Supply Industry,” p. 2,
Arizona Corporation Commission, October 4, 2007.

24 ⁵ Staff Response, p. 2.

1 Motion should be denied, AIC requests that recommendation be referred to the Commission as
2 well before this matter proceeds further.

3 RESPECTFULLY SUBMITTED this 11th day of February, 2008.

4 GALLAGHER & KENNEDY, P.A.

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