



1 ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

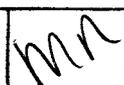
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Arizona Corporation Commission
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8 IN THE MATTER OF SEMPRA ENERGY
9 SOLUTIONS APPLICATION FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY FOR COMPETITIVE RETAIL
12 ELECTRIC SERVICES.

Docket No. E-03964A-06-0168

11 **RUCO'S REPLY TO SEMPRA'S RESPONSE TO RUCO'S RESPONSE TO NWE'S**
12 **MOTION TO DISMISS**

13 Sempra Energy Solutions ("Sempra") filed a Response to the Residential Utility
14 Consumer Office's ("RUCO") Response to the Motion to Dismiss that was filed by New
15 West Energy Corporation ("NWE"). In its Response, Sempra characterized RUCO's
16 Response as "in effect" a new motion, because RUCO had proposed that the Arizona
17 Corporation Commission ("Commission") dismiss Sempra's application with prejudice.
18 Inasmuch as Sempra characterizes RUCO's Response as a new motion, RUCO offers this
19 reply.

20 Sempra contends that RUCO's "response or motion" is subject to the same defects
21 as Sempra raised as to NWE's original motion. NWE has responded to those arguments
22 in its Reply, and RUCO joins in NWE's arguments therein.

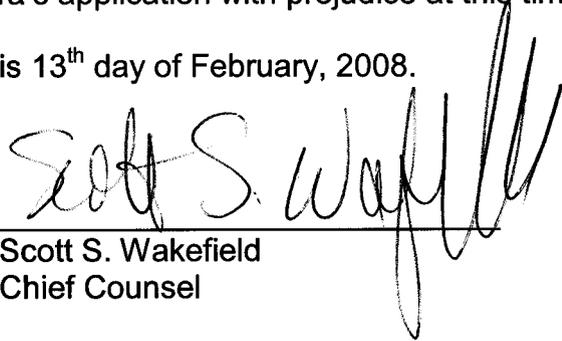
23 Sempra's Response also addressed RUCO's citation to A.A.C. R14-3-109(C) as
24 support for the proposition that the Commission does have authority to dismiss an

1 application pending before it, and that it can do so at a stage prior to the conclusion of a
2 hearing. Sempra argues that that rule contemplates possible dismissal for “significant
3 events that do or do not occur during the course of a hearing.” But nothing in the text of
4 the rule limits dismissal to the period after the hearing has begun or that the event or non-
5 event triggering dismissal must occur during the course of a hearing. Further, it would be
6 absurd for the rule to permit a dismissal based on an event or non-event that occurred
7 during the course of a hearing, but not permit dismissal based on the same event or non-
8 event occurring before the hearing began. NWE’s Motion to Dismiss (and RUCO’s
9 Response) is based on the premise that the events outlined therein (including the Track A
10 Decision, the *Phelps Dodge* decision, and failure of the Commission to take any further
11 action to adopt revised competition rules) justifies dismissal of Sempra’s application. The
12 fact that these events/non-events occurred before the hearing on Sempra’s application
13 began, rather than after, is of no consequence to the policy behind the Motion—that it
14 would be a waste of the Commission’s and the party’s resources to proceed with the
15 hearing if the Commission is inclined to determine that retail competition is not in the public
16 interest.

17 Sempra also criticizes RUCO’s proposal that the application should be dismissed
18 with prejudice, claiming that the Commission should not reach that conclusion without
19 developing an evidentiary record in the hearing. But nothing prohibits the Commission
20 exercising its *legislative* authority and concluding that retail electric competition is not
21 appropriate. When the Commission adopted its Electric Competition Rules in the first
22 instance in 1996, it did so without having held evidentiary hearings. It is likewise free to
23 reach a conclusion today on the appropriate framework for the electric industry without
24

1 holding a hearing. In a number of previous dockets the Commission has dealt with the
2 implications of the Electric Competition Rules and other efforts to bring competition to this
3 vital industry. The Commission can reach the conclusion that competition for retail electric
4 service is not appropriate without further exploration of the issue. Thus, it is within the
5 Commission's authority to dismiss Sempra's application with prejudice at this time.

6 RESPECTFULLY SUBMITTED this 13th day of February, 2008.

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9 Scott S. Wakefield
Chief Counsel

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12 AN ORIGINAL AND THIRTEEN COPIES
13 Of the foregoing filed this 13th day of
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