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August 3, 2010

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

Arizona Corporation Commission
DOCKETED
AUG 3 2010
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Re: Docket No. E-00000A-02-0051
Docket No. E-00000A-01-0630

To Whom it May Concern:

This letter is in response to the July 8, 2010 letter submitted to this docket by Lawrence V. Robertson, Jr. on behalf of Sempra Energy Solutions LLC (SES). During the Commission Staff's July 7, 2010 meeting, Assistant Director Elijah Abinah stated that responses to SES' proposal can be sent to Staff for consideration before it issues its report to the Commission. As such, the Arizona Transmission Dependent Utility Group ("ATDUG")[1] hereby submits this response.

The Commissioners should not reinitiate the SES CC&N application docket if for no other reason than it would be contrary to Decision No. 70485 issued by the Commissioners on September 3, 2008. The Order states:

> IT IS FURTHER ORDERED that Sempra Energy Solutions LLC's application for a Certificate of Convenience and Necessity to provide competitive retail electric service is hereby suspended *pending the Commission's determination* regarding whether the public interest would be served by granting Certificates of Convenience and Necessity authorizing the provision of competitive electric services to end users in Arizona. (emphasis added)

The Commission has not made a determination. Therefore, it cannot use Docket No. E-03964A-06-0168 as a vehicle by which to make that determination—the lack of determination being the very reason the Commission originally suspended SES' application process.

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[1] Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation & Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Hohokam Irrigation and Drainage District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

Moreover, under SES' proposal interested parties will be forced to participate in such determination via the hearing process in order to continue to raise concerns such as "cherry picking," a concern for many docket participants. Near mandatory participation for these parties would be costly and unfair. Not only will parties be expending time and money to determine a general policy issue, but they will also inevitably be using resources to argue or defend one specific entity's issues involving a competitive market, should the proposed hearing reach that point.

Additionally, using CC&N applications to avoid the rule-making process is unconstitutional. The regulatory process exists for a reason—to allow public input. The Arizona Administrative Procedure Act, A.R.S. §§ 41-1001, *et seq.*, defines a rule as "an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(17). If the conditions on SES' CC&N application are so general that all interested stakeholders are advised to get involved, it is arguably a policy of general applicability requiring rule-making. On the other hand, if the issues are so specific as to avoid being considered a policy, then, the CC&N application is not the appropriate vehicle for the Commissioner's to make a determination about competitive markets in Arizona.

In conclusion, the procedural suggestion made by SES is premature, undermines the Commission's Order in Decision No. E-03964A-06-0168 and evades the rule-making process, while forcing interested parties to spend unnecessary time and money on an individual application. Therefore, ATDUG does not believe that SES'proposal would be beneficial in any way and should not be considered by Commission Staff or the Commission as an appropriate vehicle for deciding a larger policy issue.

Sincerely,

Karlene E. Martorana
Robert S. Lynch

cc: All participants in Docket No. E-00000A-02-0051
All participants in Docket No. E-00000A-01-0630
All Commissioners