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DOCKET NO. 26186

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**APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY FOR: (1) §
RECONCILIATION OF ITS FUEL AND §
PURCHASE POWER COSTS FOR 2000 §
THROUGH 2001; AND (2) RELATED §
RELIEF §**

PUBLIC UTILITY COMMISSION

FILING CLERK

OF TEXAS

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S
OBJECTIONS TO OFFICE OF PUBLIC UTILITY COUNSEL'S
FOURTH REQUEST FOR INFORMATION**

(Filename: 60B.doc; Total Pages: 5)

Pursuant to P.U.C. PROC. R. 22.144(d), Southwestern Public Service Company (SPS) specifically objects to Question No. 4-10 of Office of Public Utility Counsel's (OPC) Fourth Request for Information and states the following in support of its objections.

1. SPS received OPC's Fourth Request for Information by fax on July 17, 2002. Pursuant to P.U.C. PROC. R. 22.144(d), SPS has 10 days to file these objections. Thus, these objections are timely filed.
2. In accordance with the parties' discussions regarding objections to OPC's Fourth Request for Information, OPC has agreed to withdraw Question No. 4-4. In addition, at the time of this filing, the parties have not been able to agree on a resolution to objections to Question Nos. 4-14 and 4-15 due to the unavailability of the parties' experts. The parties have agreed to extend all discovery deadlines for both parties on a day for day basis until further discussions can resume on Wednesday, July 31, 2002.

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Objections to Office of Public Utility Counsel's Fourth Request for Information

3. Counsel for SPS have negotiated in good faith with OPC's counsel in an effort to resolve SPS's objection to OPC 4-10, however the parties have not been able to reach an agreement, necessitating the filing of these objections.

SPECIFIC OBJECTIONS

Question No. 4-10:

Please provide copies of all memoranda, briefs and such other documents providing legal advise, analysis, or opinion involving the G.E. Railcar Lease Controversy.

OBJECTION:

There are no documents prepared by either SPS's in-house or outside counsel addressing legal advise, analysis or opinion involving the G.E. Railcar Lease Controversy. As discussed in the Direct Testimony of Barry Johnson, at page 33, lines 20-21, SPS encouraged TUCO to perform "relevant legal analysis of the contract interpretation theories asserted by GE." On behalf of TUCO, who is not a party to this docket, SPS objects to Question No. 4-10 to the extent that documents responsive to this request are privileged and protected under the Texas Rules of Evidence and the Texas Rules of Civil Procedure.

SPS objects to the extent the question seeks to invade attorney-client communications, which are privileged under TEX. R. EVID. 503. SPS further objects to this question to the extent that responsive documents are protected work product, constituting the mental impressions, conclusions, opinions, and/or legal theories of an attorney that have been prepared in anticipation of litigation. TEX. R. CIV. PROC. 192.5. Additionally, SPS objects to this question to the extent that it seeks to invade confidential communications between attorneys for SPS and TUCO, and their employees and

representatives, which are subject to the “joint defense privilege.” Pursuant to TEX. R. EVID. 503(b)(C), communications between attorneys representing different parties and their representatives concerning matters of common interest are privileged. The joint defense privilege “occurs in the ‘joint defense’ or ‘pooled information’ situation where different lawyers represent clients who have some interests in common.”¹ Both TUCO and SPS shared a common interest in resolving the contract termination dispute with GE. It was TUCO who took the lead in challenging GE’s interpretation of the contract and negotiating amendments to the leases. The result was, in part, a reduction in the lease rates paid to GE - the benefits of which were ultimately passed on to the ratepayer through lower coal costs.

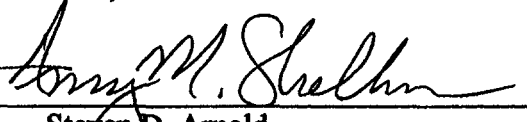
WHEREFORE, PREMISES CONSIDERED, SPS requests that its objections to Question No. 4-10 be sustained and that its obligations to respond to the objected questions of OPC’s Fourth Request for Information be vacated.

XCEL ENERGY

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Respectfully submitted,

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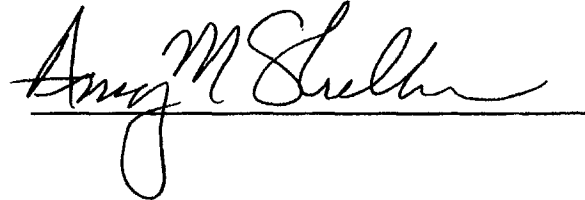
¹ *Ryals v. Canales*, 767 S.W.2d 226, 228 (Tex. App. – Dallas 1989, motion to file mandamus overruled).

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**ATTORNEYS FOR SOUTHWESTERN PUBLIC
SERVICE COMPANY**

Certificate of Service

I certify that on July 29, 2002 this instrument was filed with the Public Utility Commission of Texas a true and correct copy of it was served on the parties by hand delivery, regular mail, Federal Express, certified mail, or facsimile transmission.

A handwritten signature in cursive script, reading "Amy M. Sullivan", is written over a horizontal line.