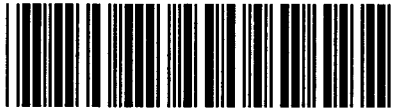


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Addendum StartPage: 0

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**SOAH DOCKET NO. 473-04-6558  
DOCKET NO. 29801**

**APPLICATION OF SOUTHWESTERN § BEFORE THE STATE OFFICE  
PUBLIC SERVICE COMPANY FOR: (1) §  
RECONCILIATION OF ITS FUEL COSTS § OF  
FOR 2002 AND 2003; (2) A FINDING OF §  
SPECIAL CIRCUMSTANCES; AND (3) §  
RELATED RELIEF § ADMINISTRATIVE HEARINGS**

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S  
RESPONSE TO OFFICE OF PUBLIC UTILITY COUNSEL'S  
FOURTEENTH REQUEST FOR INFORMATION  
QUESTION NOS. 14-1 THROUGH 14-24  
(Filename: 10B19.doc; Total Pages: 111)**

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**SOAH DOCKET NO. 473-04-6558  
DOCKET NO. 29801**

<b>APPLICATION OF SOUTHWESTERN PUBLIC SERVICE COMPANY FOR: (1) RECONCILIATION OF ITS FUEL COSTS FOR 2002 AND 2003; (2) A FINDING OF SPECIAL CIRCUMSTANCES; AND (3) RELATED RELIEF</b>	<b>§ § § § § §</b>	<b>BEFORE THE STATE OFFICE  OF   ADMINISTRATIVE HEARINGS</b>
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**SOUTHWESTERN PUBLIC SERVICE COMPANY'S  
RESPONSE TO OFFICE OF PUBLIC UTILITY COUNSEL'S  
FOURTEENTH REQUEST FOR INFORMATION  
QUESTION NOS. 14-1 THROUGH 14-24**

Southwestern Public Service Company (SPS) files this response to Office of Public Utility Counsels' (OPC) Fourteenth Request for Information.

**I. WRITTEN RESPONSES.**

SPS's written responses to OPC's Fourteenth Request for Information are attached and incorporated by reference. Each response is stated on or attached to a separate page on which the request has been restated. SPS's responses are made in the spirit of cooperation without waiving SPS's right to contest the admissibility of any of these matters at hearing. Pursuant to P.U.C. PROC. R. 22.144(c)(2)(A), each response lists the preparer or person under whose direct supervision the response was prepared and any sponsoring witness. When SPS provides certain information sought by the request while objecting to the provision of other information, it does so without prejudice to its objection in the interests of narrowing discovery disputes pursuant to P.U.C. PROC. R. 22.144(d)(5). Pursuant to P.U.C. PROC. R. 22.144(c)(2)(F), SPS stipulates that its responses may be treated by all parties as if they were made under oath.

## **II. INSPECTIONS.**

If responsive documents are more than 100 pages but less than eight linear feet in length, the response will indicate that the attachment is VOLUMINOUS and, pursuant to P.U.C. PROC. R. 22.144(h)(2), the attachment will be made available for inspection at SPS's voluminous room at 1150 Capitol Center, 919 Congress Ave., Austin, Texas 78701, telephone number (512) 476-7137. If a response or the responsive documents are provided pursuant to the protective order in this docket, the response will indicate that it or the attachment is either CONFIDENTIAL or HIGHLY SENSITIVE as appropriate under the protective order. Highly sensitive responses will be made available for inspection at SPS's voluminous room, unless they form a part of a response that exceeds eight linear feet in length; then they will be available at their usual repository in accordance with the following paragraph. Please call in advance for an appointment to ensure that there is sufficient space to accommodate your inspection.

If responsive documents exceed eight linear feet in length, the response will indicate that the attachment is subject to the FREIGHT CAR DOCTRINE, and, pursuant to Commission Procedural Rule 22.144(h)(3), the attachment will be available for inspection at its usual repository, SPS's offices in Amarillo, Texas, unless otherwise indicated. SPS requests that parties wishing to inspect this material provide at least 48 hours' notice of their intent by contacting Steven D. Arnold of Hinkle, Hensley, Shanor & Martin, L.L.P., 1150 Capitol Center, 919 Congress Ave., Austin, Texas 78701; telephone number (512) 476-7137; facsimile transmission number (512) 476-7146. Inspections will be scheduled to accommodate all requests with as little inconvenience to the requesting party and to SPS's operations as possible.

XCEL ENERGY

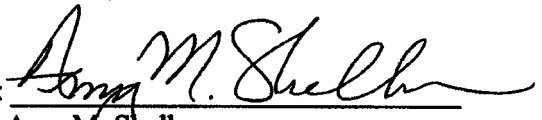
Jerry F. Shackelford  
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e-mail: jerry.f.shackelford@xcelenergy.com  
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(512) 478-9232 (FAX)

Respectfully submitted,

HINKLE, HENSLEY, SHANOR  
& MARTIN, L.L.P.

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& BAILEY, L.L.P.

By:   
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(806) 372-9761 (FAX)

ATTORNEYS FOR SOUTHWESTERN  
PUBLIC SERVICE COMPANY

## **RESPONSES**

### **QUESTION NO. 14-1:**

Please explain the method by which SPS determined the amount of the ARCO settlement that should be credited to Texas retail ratepayers in this fuel reconciliation.

### **RESPONSE:**

SPS allocated the cash settlement amount to each of its jurisdictions using an energy (kWh) allocator.

Preparer(s): Michael E. Mally

Sponsor: Michael E. Mally

**QUESTION NO. 14-2:**

Please provide documentation of calculations supporting the allocation of the ARCO settlement credit to Texas retail ratepayers in March 2003.

**RESPONSE:**

Refer to Exhibit No. OPC14-2(HS), which is HIGHLY SENSITIVE.

Preparer(s): Michael E. Mally

Sponsor: Michael E. Mally



**QUESTION NO. 14-3:**

Please provide all documentation, including that from any prior Texas PUC proceeding, in which SPS discussed the ARCO settlement efforts and its plans or commitments to credit these back to Texas retail ratepayers.

**RESPONSE:**

As stated in the Direct Testimony of Barry Johnson filed in Docket Nos. 22742 and 26186, SPS has made the following commitment:

SPS has agreed to return to the ratepayers any awards recovered by TUCO in the Texas State Court Litigation.

Furthermore, in response to a request for information from City of Amarillo, Question No. COA2-14, in Docket No. 19512, SPS made the following commitment:

If TUCO is successful in recovering any amounts previously allowed as recoverable fuel expense those amounts will be refunded to Southwestern's ratepayers.

In response to a request for information from Office of Public Utility Counsel, Question No. OPC4-1, in Docket No. 26186, SPS made the following commitment:

SPS and TUCO have agreed to provide any benefits arising from this litigation to the benefit of SPS's ratepayers upon resolution of the litigation.

In response to a request for information from Office of Public Utility Counsel, Question No. OPC31-7, in Docket No. 26186, SPS made the following commitment:

. . . any recovery by TUCO on the merits of its various causes of action will be passed through to SPS for the benefit of its ratepayers.

Finally, refer to the Section 3 of the Stipulations filed in Docket Nos. 19512, 22742, and 26186, which provide that if the courts rule that TUCO's interpretation of the contracts is correct, SPS has agreed that all amounts recovered as a result of the overcharges will be returned to SPS's customers.

Although SPS has not been able to search the entire record of the prior Texas PUC proceedings with respect to this question, the foregoing reflect the essence of SPS's plans or commitments to credit any award recovered back to SPS's ratepayers.

Preparer(s): Barry Johnson

Sponsor: Barry Johnson

**QUESTION NO. 14-4:**

Please provide a copy of all SPS or TUCO documentation that discussed damage estimates prepared for use in the Texas State Court Litigation and the decision to settle the litigation prior to trial.

**RESPONSE:**

Refer to Exhibit No. OPC14-4V, which is VOLUMINOUS, for copies of the exhibits prepared by Norwest Mine Services, Inc., that subject to resolution of ARCO's then pending objections and court approval, were to be offered at trial as TUCO's estimation of its damages. Refer to SPS's responses to Office of Public Utility Counsel's Ninth Request of Information, Questions Nos. OPC 9-12, OPC 9-13, and OPC 9-15 for documents responsive to "the decision to settle the litigation."

Preparer(s): Barry Johnson, John Coates

Sponsor: Barry Johnson

**QUESTION NO. 14-5:**

Please refer to the testimony of Mr. Johnson, Bates 350, lines 14-20, and provide the following information:

- a. Explanation and documentation of the potential Arch liability described.
- b. Documentation of SPS's/TUCO's calculations of potential Arch liability.
- c. SPS/TUCO calculations comparing the Settlement CSA value with the potential liability.
- d. Explanation of how SPS would provide its ratepayers with the future value of this settlement if it divests Tolk and/or Harrington prior to 2010.
- e. All offers and counteroffers exchanged between Arch and SPS/TUCO related to this settlement.

**RESPONSE:**

- a. Arch Coal Company and its related entities (Arch) purchased the Thunder Basin Coal Company (Thunder Basin) from Atlantic Richfield Company (ARCO) effective June 1, 1998. In connection with this purchase, Arch acquired the Coal Supply Agreement between TUCO INC. (TUCO) and Thunder Basin for the purchase and sale of coal burned at the Tolk Station. For the period of time from June 1, 1998 through the price re-opener in the Coal Supply Agreement effective July 1, 2001 (at which time the Base Price charged to TUCO was rolled back to market and TUCO's claim for damages was no longer accruing), TUCO paid Arch, under protest, the amounts due under the Coal Supply Agreement's disputed pricing provisions. As the recipient of these payments and under the provisions allocating risk under the ARCO/Arch purchase agreement, Arch would have ultimately been responsible for damages awarded for claims related to overcharges occurring after Arch acquired Thunder Basin. No "Arch specific" damage calculations, documents, or trial exhibits were prepared as Arch was not a party to the lawsuit. Refer to Exhibit No. OPC 14-4V for copies of the exhibits prepared for trial that itemize TUCO's claim under the Tolk Coal Supply Agreement, which includes through a review of the referenced time period, Arch's exposure on claims asserted by TUCO.
- b. Refer to subpart (a).
- c. There are none. Refer to subpart (a).
- d. SPS has no plans to dispose of its coal plants prior to 2010; therefore, it has not developed any strategy to return the future value of the settlement if it divests them.

- e. Refer to SPS's response to Office of Public Utility Counsel's Ninth Request for Information, Question No. OPC 9-15.

Preparer(s): John Coates, Barry Johnson

Sponsor: Barry Johnson

**QUESTION NO. 14-6:**

Please provide the definition and method that SPS used to calculate load factor by rate class for any part of the reconciliation period.

**RESPONSE:**

By agreement, OPC has withdrawn this question.

**QUESTION NO. 14-7:**

Please provide, for each Texas rate class and for each month of the reconciliation period, both the maximum load and the load factor.

**RESPONSE:**

By agreement, OPC has withdrawn this question.

**QUESTION NO. 14-8:**

Please refer to the testimony of Mr. Johnson, Bates 335: Please provide a copy of the stipulation and Final Order which discuss coal stockpile inventory targets.

**RESPONSE:**

Refer to Exhibit No. OPC14-8 for a copy of the Stipulation, First Amendment to Stipulation, and Final Order in Docket No. 19512.

Preparer(s): James Bagley  
Sponsor: Barry Johnson



**QUESTION NO. 14-9:**

Please explain why SPS considers it necessary to obtain approval of its proposed new coal stockpile inventory targets in this fuel reconciliation.

**RESPONSE:**

In Docket No. 19512, the Commission entered an order that included the inventory target levels. Modifying those target levels as requested in this proceeding would therefore involve modifying the terms of a Commission order. The only means of doing that is to obtain the Commission's approval of the modification.

Preparer(s): Barry Johnson  
Sponsor: Barry Johnson

**QUESTION NO. 14-10:**

Please refer to the testimony of Mr. Johnson, Bates 340: Please provide a copy of both the settlement in Docket No. 21190 and any Final Order which discuss divestiture of the Tolk and Harrington stations.

**RESPONSE:**

Refer to Exhibit No. OPC14-10V, which is VOLUMINOUS, for a copy of the Stipulation and Final Order in Docket No. 21190.

Preparer(s): James Bagley  
Sponsor: Barry Johnson

**QUESTION NO. 14-11:**

Please provide SPS's best estimate of the date when it expects to divest its coal units as a result of the settlement in Docket 21190 and include any documentation related to this projected date.

**RESPONSE:**

SPS has no plans to divest its coal units.

As part of the stipulation that was approved in Docket No. 21190, SPS agreed to a number of items that were designed to implement the market power standards established by Chapter 39, Subchapter I, of PURA. Among these agreements was SPS's commitment to divest itself of a minimum of 1,750 MW of generating capacity by January 1, 2002. The stipulation also provided that by January 1, 2006, SPS would have to divest a total of either 2,843 MW of generating capacity, or 3,184 MW of generating capacity, depending on the outcome of its transition to competition proceeding that was filed on December 1, 2000.

In 2001, the Texas Legislature re-examined the requirements of Chapter 39, Subchapter I, of PURA as they related to SPS. As a result, the Legislature passed House Bill 1692 (Act of May 26, 2001, 77<sup>th</sup> Leg., R.S., H.B. 1692 (HB 1692)), which delayed electric restructuring for SPS until at least January 1, 2007. The divestiture related provisions of the settlement in Docket No. 21190 were eliminated in June 2001 when HB 1692, was signed into law. Refer to the last sentence of Section 39.402(a) of PURA.

Preparer(s): David T. Hudson

Sponsor: Michael E. Mally

**QUESTION NO. 14-12:**

Please refer to Exhibit No. OPC4-10V, Bates 49, lines 11-12: Please provide an explanation of the ways the Texas Commission and FERC have been encouraging broadening wholesale markets over the years since the last SPS Texas base rate case in 1993.

**RESPONSE:**

Both the FERC and the Commission have encouraged participation in regional transmission markets with regional transmission tariffs. Refer to FERC Order Nos. 888, 889, 2000, 2003, and 2004. Also refer to P.U.C. SUBST. R. 25.236(a)(8)(B).

Preparer(s): David T. Hudson  
Sponsor: Michael E. Mally

**QUESTION NO. 14-13:**

Please refer to Exhibit No. OPC4-10V, Bates 49, lines 12-13: Please explain the specific changes referred to in the comment that "...the form of wholesale contracts is evolving even as we move to an open-access competitive wholesale market structure." Please include also changes that have occurred to date since this referenced testimony was prepared.

**RESPONSE:**

The statement refers to the FERC requirements that utilities unbundle their wholesale contracts and separately price wholesale power sales from transmission services. Refer to FERC Orders Nos. 888 and 889. The purpose of these rules is to encourage competition in wholesale power and natural gas markets by ensuring "comparable access" to electric and natural gas transmission systems for all competitors. Most recently, utilities have been implementing FERC Order Nos. 2000, 2003, and 2004 dealing with regional transmission organizations, large-generation interconnection agreements and procedures, and standards of conduct for transmission providers.

Prepared by: David T. Hudson  
Sponsor: Michael E. Mally

**QUESTION NO. 14-14:**

Please refer to Exhibit No. OPC4-10V, Bates 61, "Maximum Firm Contracts and Wholesale Contingent Sales." Please provide an update of this spreadsheet to include the reconciliation period in this proceeding.

**RESPONSE:**

The information called for by this question was not complete by the deadline for filing. SPS will supplement this response as soon as possible.

**QUESTION NO. 14-15:**

Please provide a copy of SPS's FERC Form 1 for each year of the reconciliation period.

**RESPONSE:**

Refer to Exhibit No. OPC14-15V, which is VOLUMINOUS, for a copy of the FERC Form 1 for 2002 and 2003.

Preparer(s): James Bagley  
Sponsor: Cathy Schwartz

**QUESTION NO. 14-16:**

Did SPS file an Annual Report as described in Section 39.257 of PURA for any part of the reconciliation period? If so, please provide a copy of any such reports for the reconciliation period.

**RESPONSE:**

No.

Preparer(s): David T. Hudson  
Sponsor: Cathy Schwartz



**QUESTION NO. 14-17:**

Please provide copies of all Peak Demand and Sales Reports filed by SPS with the Texas PUC for any parts of the reconciliation period.

**RESPONSE:**

None.

Preparer(s): James Bagley  
Sponsor: Michael E. Mally

**QUESTION NO. 14-18:**

Please provide a copy of all Update Reports for Electric Utilities which SPS filed with the Texas PUC for any part of the reconciliation period.

**RESPONSE:**

Refer to Exhibit No. OPC14-18.

Preparer(s): James Bagley  
Sponsor: Michael E. Mally

**QUESTION NO. 14-19:**

Please provide copies of all Quarterly Wholesale Electricity Transaction Reports filed by SPS with the Texas PUC for any part of the reconciliation period.

**RESPONSE:**

The information called for by this question was not complete by the deadline for filing. SPS will supplement this response as soon as possible.

**QUESTION NO. 14-20:**

Please identify, by date and hour, the three off-system sales which resulted in the lowest margins in the reconciliation period. For these three sales, please provide the following information.

- a. Sales revenue.
- b. Fuel cost, transmission cost, and other cost of sales.
- c. Specific generating units which were on-line at the time of the sale.
- d. Energy generated for the hour by each unit which was on-line at the time of the sale.
- e. Amount of sales, in terms of MW, for the hour.

**RESPONSE:**

The information called for by this question was not complete by the deadline for filing. SPS will supplement this response as soon as possible.

**QUESTION NO. 14-21:**

Please explain whether or not SPS made any firm capacity/energy sales or exchanges in accordance with Service Schedule C of the Western System Power Pool Rate Schedule FERC No. 6. If so, please provide details of such transactions, including identity of the other party to the sale or exchange, effective dates, relevant MW's and MWH's, (*sic*) prices, and any type of transaction confirmations. If so, where are these transactions found in the fuel reconciliation filing schedules?

**RESPONSE:**

The information called for by this question was not complete by the deadline for filing. SPS will supplement this response as soon as possible.

**QUESTION NO. 14-22:**

Please explain whether SPS is a "...FERC regulated public utility and that [SPS] has been authorized to sell power like that provided for under this Service Schedule at market-based rates," as set out in Section C3.6 at Bates 4175 of Volume 11 of 11 of the workpapers to Schedule FR-7.

**RESPONSE:**

Yes.

Preparer(s): David T. Hudson

Sponsor: Michael E. Mally

**QUESTION NO. 14-23:**

Please identify any Texas PUC or FERC Docket which relates to the need for, construction of, and/or costs of Cunningham Units 3 and/or 4.

**RESPONSE:**

The Cunningham Units are located near Hobbs, New Mexico. These units were approved by the New Mexico Public Regulation Commission in Case Nos. 2690 and 2717. Fuel costs for these units were included in Docket Nos. 19512, 22742, and 26186.

Preparer(s): James Bagley  
Sponsor: Michael E. Mally

**QUESTION NO. 14-24:**

Please provide a copy of the Order in Texas PUC Docket No. 17525 which covered the Blackhawk purchase power agreement.

**RESPONSE:**

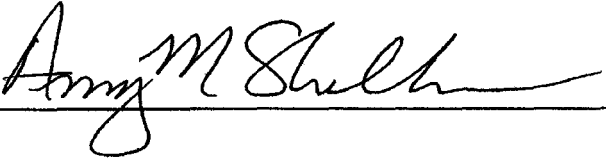
Refer to Exhibit No. OPC14-24.

Preparer(s): James Bagley  
Sponsor: Patricia A. Gambino



**Certificate of Service**

I certify that on the 7th day of October 2004 a true and correct copy of the foregoing instrument was served on all parties of record by hand delivery, Federal Express, regular first class mail, certified mail, or facsimile transmission.

  
\_\_\_\_\_

PETITION OF SOUTHWESTERN )  
 PUBLIC SERVICE COMPANY FOR: )  
 (1) RECONCILIATION OF ITS FUEL AND )  
 PURCHASED POWER COSTS FOR )  
 1995 THROUGH 1997; (2) FINDINGS )  
 OF SPECIAL CIRCUMSTANCES; AND )  
 (3) RELATED RELIEF; AND INQUIRY )  
 INTO THE COMPANY'S FUEL- )  
 PROCUREMENT BILLING PRACTICES )

BEFORE THE STATE OFFICE  
 OF  
 ADMINISTRATIVE HEARINGS

REC'D  
 99 SEP  
 PUBLIC UTILITIES

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PETITION OF SOUTHWESTERN ) BEFORE THE STATE OFFICE  
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(1) RECONCILIATION OF ITS FUEL AND )  
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1995 THROUGH 1997; (2) FINDINGS ) OF  
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(3) RELATED RELIEF; AND INQUIRY )  
INTO THE COMPANY'S FUEL- )  
PROCUREMENT BILLING PRACTICES ) ADMINISTRATIVE HEARINGS

Description	Amount
December 31, 1994, Over-recovery Balance	\$4,080,287
Fuel and Purchase Power Cost: 1/95 — 12/97	(675,884,629)
Fuel Revenue Collected: 1/95 — 12/97	653,461,622
Docket No. 14174 Refund	(4,155,338)
Docket No. 16605 Surcharge Recovery	6,851,336
Wholesale Non-Firm Margin Credit Transfers: 1/95 — 12/97	6,259,436
Wyoming Federal Court Litigation	(12,180,035)
Southwestern's legal expenses related to Wyoming Federal Court Litigation	(253,974)
Ault Audit Items	666,598
Fuel and Purchased Power Under-Recovery balance at 12/31/97	(21,154,699)
Docket No. 17410 Surcharge Recoveries 1/98 — 12/98 Actual	6,555,442
Overcharge Claim Against ARCO (amended)	5,645,542
Reconciled Fuel Under-recovery Balance (amended)	(8,953,713)
Overcharge Claim Against ARCO (amended)	(5,645,542)
Fuel Under-recovery Balance including Unreconciled Deferred Amount	(14,599,255)
Reconciled Accumulated Interest Balance	(1,055,425)

**SECTION 3. EFFECT OF AMENDMENT.** Except as modified by this amendment, the stipulation shall remain in full force and effect according to its original terms.

**SECTION 4. MULTIPLE COUNTERPARTS.** Each copy of this amendment to stipulation may not bear the signatures of all the Signatories but will be deemed fully executed if all copies together bear the signatures of all Signatories.

Fully and duly authorized representatives of the Signatories have signed this stipulation as of the date first set forth above.

GENERAL COUNSEL OF THE PUBLIC UTILITY  
COMMISSION OF TEXAS

By:   
Thomas F. Best  
Assistant General Counsel

SOUTHWESTERN PUBLIC SERVICE COMPANY

By:   
Jerry F. Shackelford  
Attorney of Record for Southwestern  
Public Service Company

## Certificate of Service

I certify that on this 7<sup>th</sup> day of September 1999 a true and correct copy of the foregoing instrument was served on all parties of record by hand delivery, expedited delivery service, certified mail, or facsimile transmission.

*[Handwritten signature]*

**SOAH DOCKET NO. 473-98-1299  
PUC DOCKET NO. 19512**

PETITION OF SOUTHWESTERN	)	BEFORE THE STATE OFFICE
PUBLIC SERVICE COMPANY FOR:	)	
(1) RECONCILIATION OF ITS FUEL AND	)	
PURCHASED POWER COSTS FOR	)	
1995 THROUGH 1997; (2) FINDINGS	)	OF
OF SPECIAL CIRCUMSTANCES; AND	)	
(3) RELATED RELIEF; AND INQUIRY	)	
INTO THE COMPANY'S FUEL-	)	
PROCUREMENT BILLING PRACTICES	)	ADMINISTRATIVE HEARINGS

**STIPULATION**

(Filename: TJ7.W; Total Pages: 21)

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**SOAH DOCKET NO. 473-98-1299  
PUC DOCKET NO. 19512**

<b>PETITION OF SOUTHWESTERN</b>	)	<b>BEFORE THE STATE OFFICE</b>
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<b>(1) RECONCILIATION OF ITS FUEL AND</b>	)	
<b>PURCHASED POWER COSTS FOR</b>	)	
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<b>OF SPECIAL CIRCUMSTANCES; AND</b>	)	
<b>(3) RELATED RELIEF; AND INQUIRY</b>	)	
<b>INTO THE COMPANY'S FUEL-</b>	)	
<b>PROCUREMENT BILLING PRACTICES</b>	)	<b>ADMINISTRATIVE HEARINGS</b>

**STIPULATION**

The parties to this stipulation, dated as of June 9, 1999, are the General Counsel ("General Counsel") of the Public Utility Commission of Texas ("Commission" or "PUC") and Southwestern Public Service Company ("Southwestern" or "SPS"). The foregoing shall be referred to individually either as a Signatory or by the acronym assigned above, and collectively as the Signatories. The Signatories submit this stipulation to the Commission as representing a just and reasonable disposition of the issues in this docket consistent with the public interest; the Signatories request approval of this stipulation and entry of the proposed findings of fact and conclusions of law in Exhibit A.

On June 22, 1998, Southwestern, pursuant to Sections 36.203 and 36.205 of the Public Utility Regulatory Act, TEX. UTILS. CODE ANN. §1.001 *et seq.* (Vernon 1998) ("PURA"), filed its petition with the Commission seeking: (1) to reconcile its fuel expenditures with the amounts it collected under its fixed fuel factors and surcharge from January 1995 through December 1997 ("Reconciliation Period"); (2) findings of special circumstances pursuant to P.U.C. SUBST.

R. 23.2323.23(b)(2)(B)(v); and (3) related relief in the form of a prospective sharing of margins from wholesale non-firm sales.

By this agreement, the Signatories resolve all issues between them with respect to the fuel reconciliation, and stipulate and agree as follows:

**SECTION 1. SOUTHWESTERN HAS TAKEN ADVANTAGE OF OPPORTUNITIES IN THE FUEL AND PURCHASED POWER MARKETS TO REDUCE COSTS DURING THE RECONCILIATION PERIOD.** Based on the pre-filed testimony of the Signatories and the agreements in this stipulation, Southwestern has taken advantage of opportunities in the fuel and purchased power markets to reduce costs during the reconciliation period.

**SECTION 2. DURING THE RECONCILIATION PERIOD, SOUTHWESTERN PRUDENTLY MANAGED ITS FUEL AND FUEL-RELATED CONTRACTS, GENERATION OF ELECTRICITY, MAINTENANCE OF ITS GENERATING FACILITIES, AND THE DISPATCH OF ITS GENERATING UNITS.** Based on the pre-filed testimony of the Signatories and the agreements in this stipulation, Southwestern prudently managed its fuel and fuel-related contracts, generation of electricity, maintenance of its generating facilities, and the dispatch of its generating units during the reconciliation period.

**SECTION 3. AGREEMENT TO DEFER CONSIDERATION OF A PORTION OF ARCO'S LABOR CHARGES TO TUCO UNTIL NEXT FUEL RECONCILIATION.** Southwestern's audit of TUCO INC. ("TUCO") raised contract interpretation questions concerning a portion of the labor price components of the coal price invoiced to TUCO by its coal supplier, Thunder Basin Coal Company ("ARCO"), of approximately \$1,700,000 in 1996 (and an estimate, without reviewing

documentation, of possible overcharges of approximately \$10,200,000 from 1992 through 1997). This claim shall be referred to as the "Overcharge Claim Against ARCO."

The Overcharge Claim Against ARCO is involved in two pending lawsuits: (a) *TUCO Inc. v. Thunder Basin Coal Company and Atlantic Richfield Company*, No. 79,483-C (District Court of Potter County, 251<sup>st</sup> Judicial District of Texas), and (b) *Thunder Basin Coal Company v. TUCO, Inc. and Southwestern Public Service Company*, No. 20041, (Sixth Judicial District, Campbell County, Wyoming). On March 6, 1998, the Wyoming court, in Cause No. 20041, granted a summary judgment in favor of ARCO; that decision was appealed to the Wyoming Supreme Court as Cause No. 98-139 and 98-140, *TUCO Inc. and Southwestern Public Service Company v. Thunder Basin Coal Company*. On April 27, 1999, the Wyoming Supreme Court entered its order reversing the lower court's ruling and ordering a stay of the Wyoming proceedings pending the outcome of the Texas proceeding.

The outcome of these lawsuits will determine whether the Overcharge Claim Against ARCO can be pursued or whether the charges by ARCO were proper under its agreements with TUCO. If the courts rule that TUCO's interpretation of the contracts is correct and TUCO is successful in establishing overcharges in this litigation, Southwestern agrees that all amounts recovered as a result of overcharges will be returned to Southwestern's ratepayers; if, however, the courts determine that ARCO's interpretation of the labor component of the contracts is correct and that its charge was proper, then the previously recovered coal cost will not require adjustment.

Because the Overcharge Claim Against ARCO has not been fully resolved, to ensure appropriate regulatory oversight the parties have agreed that the \$10.2 million Overcharge Claim Against ARCO shall not be reconciled or otherwise reviewed in this proceeding but, rather, all issues

of the labor price component of the Overcharge Claim Against ARCO shall be deferred to Southwestern's next reconciliation. Pending judicial interpretation of TUCO's agreements with ARCO, no Signatory shall be deemed to have agreed that the fuel costs represented by the amount of the alleged Overcharge Claim Against ARCO are reasonable, necessary, or prudent. No Signatory shall be presumed, by virtue of executing this stipulation, to have waived any right to contest the recovery of any fuel costs represented by the Overcharge Claim Against ARCO in Southwestern's next fuel reconciliation proceeding. Similarly, Southwestern shall not be precluded from asserting any ground, other than a Signatory's execution of this stipulation, to support the recovery of any costs included in the Overcharge Claim Against ARCO or assert as a defense to any claim that the fuel costs included in the Overcharge Claim Against ARCO should be disallowed.

**SECTION 4. AGREEMENT THAT COSTS RECOVERED FROM WHEELABRATOR SHALL BE TREATED AS HAVING BEEN RECEIVED DURING THE RECONCILIATION PERIOD.** As a result of audits and investigations, in 1999 Southwestern's ratepayers received credits of \$666,598.39 (\$1,227,747.01 total company) representing recovery of improper charges by TUCO's coal handling suppliers, Swindell-Dressler Energy Supply Company and Wheelabrator Coal Services Company, during the Reconciliation Period. Southwestern shall treat these recoveries as having been made ratably during the Reconciliation Period even though they were not paid to ratepayers until 1999. An adjustment of \$81,031 will be deducted from Southwestern's requested recovery to reflect the interest related to this treatment.

**SECTION 5. AGREEMENT REGARDING FUTURE COAL-RELATED AUDITS.** Southwestern shall ensure that the internal audit staff whose services it uses to audit TUCO: (a) continues annual audits of the contracts and transactions of coal purchases with TUCO, emphasizing

compliance/management fraud techniques; and (b) participates in continuing education that focuses on the area of compliance auditing and fraud auditing.

Southwestern will require TUCO to perform annual audits beginning in 1998 of its contractors in accordance with generally accepted audit procedures. Southwestern also will require TUCO to use a qualified independent auditor to perform audits on TUCO's vendors. Southwestern will require TUCO to audit each of its contractors that provide supplies or services that are priced based on the contractor's actual costs or operations (e.g., cost pass through, productivity sharing provisions). TUCO shall not be required to audit fixed-price contracts, index adjusted pricing contracts with publicly available indices or index data, or any other agreement with pricing structures that are not related to the contractor's actual costs. The parties recognize that TUCO's right to audit ARCO is the subject of currently pending litigation and, accordingly, cannot currently be subject to this obligation.

Southwestern shall require TUCO to perform a performance audit of Wheelabrator. The performance audit shall be an audit to determine whether Wheelabrator is acquiring and using its resources economically and efficiently in accordance with prudent and safe practices and whether or not Wheelabrator is complying with established policies regarding matters of economy and efficiency.

Southwestern shall file future annual audits performed by it of TUCO and TUCO's audits of its contractors in a separate project established for those purposes. For each audit, Southwestern shall file the engagement letter, a description of the scope of the audit, the audit program description, and the final audit report. The information filed in the project shall be made available to any party requesting a copy of the documents filed in the project. In addition, any party requesting additional

audit documentation shall be provided a copy of the requested information. The parties recognize that certain audit information may be confidential; in that event, the protective order in force in this docket shall govern the production of that information.

Southwestern also shall strongly encourage TUCO to: (w) ensure that its auditors continue annual audits of the contracts and transactions of coal handling purchases with Wheelabrator, emphasizing compliance/management fraud techniques; (x) ensure that its auditors participate in continuing education that focuses on the area of compliance auditing and fraud auditing; (y) have its auditors ensure that Wheelabrator implements and adheres to a system of strong internal controls and policies, particularly those related to purchasing practices; and (z) engage an independent audit firm to perform audits of Wheelabrator for 1998 and 1999, which should focus specifically on contract compliance and billing procedures, documenting evidence as to whether or not Wheelabrator has corrected the various deficiencies reported in the independent accountant reviews covering the reconciliation period.

**SECTION 6. AGREEMENT REGARDING COAL INVENTORY LEVELS.** Southwestern shall direct TUCO to target average coal inventories at the following levels:

- a. Harrington Station:
  - i. From July-December of 2000: 41 burn days, or 9,869,520 MMBtu.
  - ii. Calendar year 2001: 39 burn days, or 9,388,080 MMBtu.
  - iii. Calendar year 2002: 35 burn days, or 8,425,200 MMBtu.
- b. Toik Station:
  - i. From July-December of 2000: 41 burn days, or 10,135,200 MMBtu.
  - ii. Calendar year 2001: 39 burn days, or 9,640,800 MMBtu.
  - iii. Calendar year 2002: 35 burn days, or 8,652,000 MMBtu.

If average inventory levels are maintained at more than the amounts set forth above, then Southwestern shall not be allowed to recover the carrying costs on the levels above the targets shown above.

**SECTION 7. TRANSACTIONS WITH AFFILIATES.** Southwestern's fuel and purchased power transactions with its affiliates during the Reconciliation Period satisfy the statutory standards for cost allocations to Texas jurisdictional customers and meet all other applicable requirements.

**SECTION 8. SPECIAL CIRCUMSTANCES REQUEST.** Southwestern's litigation with Thunder Basin Coal Company and the resulting judgment and purchases of replacement coal have resulted in lower fuel expenses than would otherwise have been the case, and the benefits received by ratepayers exceed the cost they would otherwise have paid. Accordingly, Southwestern should be granted a special circumstances finding under P.U.C. SUBST. R. 23.23(b)(2)(B)(v) permitting it to recover the Thunder Basin judgment and related litigation cost.

**SECTION 9. WITHDRAWAL OF REQUEST TO SHARE MARGINS FROM WHOLESALE NON-FIRM SALES.** Because the Commission is now considering a proposed rule that will address the sharing of margins from wholesale non-firm sales, Southwestern withdraws its request for such a sharing in this docket without prejudice to its rights to request sharing in the future.

**SECTION 10. PRELIMINARY ORDER ISSUES.** General Counsel and Southwestern have reached the conclusion that the mechanisms and methods of sharing risks (Issue No. 5); benchmarking tools (Issue No. 6); and incentive mechanisms (Issue No. 7) should be considered in a broad-based generic proceeding as opposed to this historical proceeding.

**SECTION 11. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.** The Signatories shall take all reasonable steps to ensure that the Administrative Law Judge and the Commission

adopt the proposed findings of fact and conclusions of law in Exhibit A and that the order entered by the Commission is consistent with this stipulation in all material respects.

The Signatories agree that the provisions of this stipulation are the result of extensive negotiations and that the terms and conditions of this stipulation are interdependent. The Signatories agree that settling the issues in this proceeding is in the public interest, and, for this reason, they have entered into this stipulation to resolve among themselves all issues in this case. This stipulation is a compromise and settlement among the Signatories, and no Signatory is bound beyond its obligation to support this stipulation and to take all reasonable steps in future proceedings to ensure that the terms of this stipulation are given full effect. A Signatory's support of this stipulation may differ from its position or testimony in other dockets. To the extent there is a difference, the Signatories are not waiving their positions in other dockets. Because this is a stipulated agreement, the Signatories are under no obligation to take the same positions as set out in this stipulation in other dockets, other than dockets to implement this stipulation, whether those dockets present the same or a different set of circumstances.


**SECTION 12. EFFECT OF MODIFICATION OF STIPULATION.** If the Commission enters an order inconsistent with this stipulation, any Signatory may withdraw its consent to this stipulation, and the withdrawing Signatory's agreement to this stipulation shall be extinguished. The withdrawing Signatory shall not be deemed to have in any way waived or compromised any right to urge that a different result, methodology, or position is required by law or the facts.

**SECTION 13. MULTIPLE COUNTERPARTS.** Each copy of this stipulation may not bear the signatures of all the Signatories but will be deemed fully executed if all copies together bear the signatures of all Signatories.

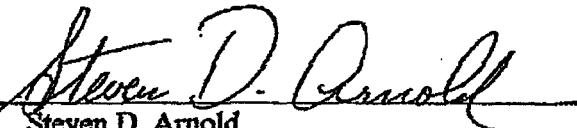


Fully and duly authorized representatives of the Signatories have signed this stipulation as of the date first set forth above.

GENERAL COUNSEL OF THE PUBLIC UTILITY  
COMMISSION OF TEXAS

By:   
Thomas F. Best  
Assistant General Counsel

SOUTHWESTERN PUBLIC SERVICE COMPANY

By:   
Steven D. Arnold  
Attorney of Record for Southwestern  
Public Service Company

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**EXHIBIT A - PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**PROPOSED FINDINGS OF FACT***Procedural History*

1. Southwestern Public Service Company ("Southwestern") is an investor-owned electric utility providing retail electric service in Texas.
2. On June 22, 1998, Southwestern, pursuant to Sections 36.203 and 36.205 of the Public Utility Regulatory Act, TEX. UTILS. CODE ANN. §1.001 *et seq.* (Vernon 1998) ("PURA"), filed its petition with the Public Utility Commission of Texas ("Commission") seeking: (1) to reconcile its fuel expenditures with the amounts it collected under its fixed fuel factors from January 1995 through December 1997 ("Reconciliation Period"); (2) findings of special circumstances pursuant to P.U.C. SUBST. R. 23.23(b)(2)(B)(v); and (3) related relief in the form of a prospective sharing of margins from wholesale non-firm sales.
3. Southwestern provided notice of this proceeding by publishing notice once each week for two consecutive weeks in each newspaper of general circulation in each county in its Texas service area. In addition, Southwestern provided direct notice to its Texas jurisdictional customers by bill insert. Notice of this proceeding also was given by publication in the *Texas Register*.
4. The Office of Public Utility Counsel ("OPC"), the Texas Industrial Energy Consumers ("TIEC"), the City of Amarillo ("City"), the Texas Cotton Ginners' Association ("TCGA"), the Burlington Northern Santa Fe Railway Company ("BNSF"), and Dean Allen intervened. The BNSF later withdrew its intervention.
5. On July 6, 1998, the Commission referred this docket to the State Office of Administrative Hearings ("SOAH").
6. On August 12, 1998, the Commission issued a Preliminary Order identifying the issues or areas that must be addressed in this proceeding. This action was taken pursuant to Section 2003.047(e) of the Administrative Procedure Act, TEX. GOV'T. CODE ANN. § 2003.047(e) (Vernon Supp. 1996).
7. On August 19, 1998, the Commission's General Counsel ("General Counsel") filed its complaint asking the Commission to initiate an inquiry into the billing practices and patterns of Southwestern's fuel procurement contractors. This proceeding was docketed as Docket No. 19770, *Inquiry of the General Counsel into the Billing Practices and Patterns of*