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APPLICATION OF SOUTHWESTERN § BEFORE THE STATE OFFICE
PUBLIC SERVICE COMPANY FOR §
RECONCILIATION OF ITS FUEL § OF
COSTS FOR 2002 AND 2003, A FINDING §
OF SPECIAL CIRCUMSTANCES, AND § ADMINISTRATIVE HEARINGS
RELATED RELIEF

**ORDER NO. 11
DENYING MOTION FOR LEAVE TO CONDUCT
EXPEDITED DISCOVERY**

To better balance workload within the State Office of Administrative Hearings (SOAH), this case has been reassigned to the undersigned Administrative Law Judge (ALJ).

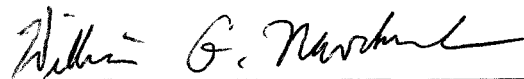
On December 9, 2004, the Office of Public Utility Counsel (OPC) filed a motion for leave to conduct expedited discovery of the West Texas Municipal Power Agency (WTMPA) in the form of an request for information (RFI). OPC argues that WTMPA's supplemental statement of position, filed on December 8, 2004, was filed late and thereby denied OPC the opportunity to conduct discovery concerning facts that WTMPA alleged therein. OPC seeks documents that would support WTMPA's assertion in that statement that all of Southwestern Public Service Company's (SPS) wholesale power tariffs, including WTMPA's tariff, are on file with [the Federal Energy Regulatory Commission (FERC)] and provide that average fuel costs are assigned to these sales in accordance with FERC's fuel recovery regulations. OPC asks the ALJ to order WTMPA to respond to this request by December 13, 2004.

WTMPA opposes the motion and argues that its supplemental statement of position was timely filed, its motion to intervene notified OPC that WTMPA was a wholesale customer of SPS, OPC had an opportunity to conduct the discovery it seeks, and the documents that OPC seeks are not reasonably calculated to lead to admissible evidence.

The motion is denied. OPC has had the opportunity to seek discovery since the Application was filed on May 28, 2004,¹ and specifically from WTMPA since it intervened on July 19, 2004. However, WTMPA is entitled to 20 days to respond, absent good cause shown to the contrary.² OPC has shown no such good cause to require WTMPA to respond in a shorter period of time.

Contrary to OPC's assertion, WTMPA's supplemental statement of position was timely filed not less than three days before the scheduled December 14, 2004, hearing in compliance with the Commission's rules.³ Moreover, WTMPA's motion to intervene indicated it was a wholesale customer of SPS, which should have alerted OPC and given OPC an opportunity to inquire into the terms of that service. Additionally, to require WTMPA to put aside its hearing preparations in order to respond to OPC's RFI with less than five days to go is unreasonable.

SIGNED December 10, 2004.



**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

¹16 TAC § 22.144(a).

²16 TAC § 22.144(c)(1).

³16 TAC § 22.124.