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APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY FOR §
RECONCILIATION OF ITS FUEL §
COSTS FOR 2002 AND 2003, A FINDING §
OF SPECIAL CIRCUMSTANCES AND §
RELATED RELIEF §

BEFORE THE PUBLIC UTILITY COMMISSION
FILED CLERK

PUBLIC UTILITY COMMISSION
OF TEXAS

RESPONSE TO NON-UNANIMOUS STIPULATION

TO THE HONORABLE ALJ FIELD:

COMES NOW, the Office of Public Utility Counsel ("OPC") responding to the Non-
Unanimous Stipulation ("NUS") filed in this case, stating:

I.

General

In general OPC does not oppose the parties' stipulation as written. The stipulation sets out commitments between the parties on how they will address certain issues not only in this case but in future cases as well. OPC believes that the Commission can issue an order consistent with this settlement by simply adopting the black box settlement. The stipulation's other paragraphs are not relevant to this case but reflect agreements between certain parties to this case.

This is the only reasonable interpretation of the stipulation. This is because the stipulating parties have agreed on evidence for future proceedings—something the Commission cannot do. This is also one of the reasons OPC decided to not be a signatory party.

OPC does request the Commission to enter an order directing SPS to file a base rate and fuel reconciliation proceeding based on the test year agreed to by the stipulating parties.

II.
“Black Box Settlement”
(§ 1, NUS)

OPC does not oppose the stipulating parties as to the Black Box Settlement and urges the Commission to approve the black box settlement dollar amount of an \$18 million reduction in eligible fuel expenses for the reconciliation period. Commission approval of the black box settlement dollar amount promotes the public interest and is within the range of values established by the expert testimony in this case.

III.
Base Rate and Fuel Reconciliation Case
(§§ 2 and 5, NUS)

OPC agrees with the stipulating parties that SPS file a base rate and fuel reconciliation case by May 31, 2006. OPC additionally asks this Commission to direct SPS to so file. The record evidence establishes that SPS has not had a base rate case before the Commission since 1992, over ten years ago. Since that time the record reveals a substantial and significant increase in SPS wholesale sales compared to the more modest increase in SPS retail sales. This dramatic shift of its wholesale sales vis à vis its retail sales should impact the various class load assumptions underlying the cost allocations used to set SPS’s base rates. Consequently, it is in the public interest for SPS to file a base rate case no later than May 31, 2006. It is also judicially and administratively efficient to incorporate its fuel reconciliation proceeding with the base rate case.

IV.
Treatment of NCO
(§ 3, NUS)

OPC agrees with the stipulated parties that SPS treat its traditionally non-eligible fuel expenses as base rate items. Stipulating parties commitments do nothing more than follow the statute and Commission’s substantive fuel rule.

V.
Delay in Retail Competition
(§ 4, NUS)

OPC takes no position on SPS's intent to postpone retail competition. OPC does not believe it can bind future administrations on legislative recommendations which is what this section purports to do.

VI.
Wholesale Capacity and Interruptible Sales

OPC agrees with the stipulating parties in that SPS should use incremental costing involving its competitive wholesale sales.

VII.
Electric Commodity Trading Margins
(§ 7, NUS)

OPC agrees with the stipulating parties that SPS's trading margins are eligible fuel revenues subject to sharing. The sharing of electric commodity trading margins supported by the record evidence in this case. OPC would note that the proposed sharing ratio between SPS and the ratepayers is not consistent with the current fuel rule; however, it is consistent with other jurisdictions.

VIII.
Affiliate Transactions
(§ 8, NUS)

OPC cannot agree with § 8, NUS in its entirety.

IX.
Renewable Energy Credits ("REC")
(§ 9, NUS)

OPC has no objection to the stipulating parties' establishment of a formula to set the market price of RECs created by the purchase of wind energy.

X.
**Coal Inventory, SPS Withdrawal of Special Circumstance Request, Withdrawal of Request
to Share in Margins, Property Tax Refund, Purchases from e-Prime**
(§§ 10, 11, 12, 13, and 14, NUS)

OPC has no objection to these stipulating paragraphs. They involve dispositions of certain contested issues for this rate case only. The requested action is either a matter of right by SPS (to withdraw requested relief on certain issues) or a matter supported by the record evidence in this case.

XI.
SO₂ Credits
(¶ 15, NUS)

OPC agrees with the stipulating parties that the purchases and sales of SO₂ credits be considered eligible fuel expenses and revenues. This finding is supported by the record evidence and law. In its July 2, 1999¹ order promulgating fuel rule amendments, the Commission did not include a discussion of SO₂ in the fuel rule. In doing so it adopted the reasoning of a rulemaking participant that argued “different utilities may require different mixes of base and eligible fuel treatment of expenses and revenues associated with SO₂ allowances.” OPC is asking the Commission to find that SPS’s purchase and sales of SO₂ credits are eligible fuel expenses and revenues for this case.

XII.
Reimbursement of City’s Rate Case Expense
(§ 16, NUS)

OPC has no objection to this section.

¹ Re: *Adoption of Amendments to P.U.C. Subst. Rules §§ 25.234, 25.236, 25.237, and 25.238*, 24 Tex. Reg. 4998 (July 2, 1999).

XIII.
Procedure Affecting Stipulation
(§§ 17, 18, and 19, NUS)

OPC has no position as to these sections except as to § 18. As brought out above, the Commission may not bind itself to relying upon evidence developed in this case for a decision in a future proceeding despite evidence proffered in that future proceeding to the contrary. To do so would violate the non-stipulating parties due process rights to be heard. Also the Commission cannot agree to not follow the law and its substantive regulations. The Commission should only approve the stipulation for purposes of determining the facts in this case and to clarify that it cannot be bound in future proceedings. The stipulation binds the stipulating parties, not the Commission in future proceedings.²

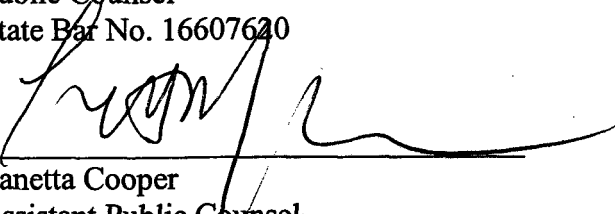
XIV.
Request for Hearing

OPC does not request a hearing at this time. OPC does not believe any additional evidence is necessary at this time. However, should SPS or another party determine that the record should include additional evidence, then OPC reserves the right to object to the testimony, file responsive testimony, and request a hearing.

² This does not mean that Principles of (res judicata, collateral estopped or stare decisis) do not apply. The stipulation itself cannot be used as authority for these principles. The Commission must make specific findings of fact and conclusions of law based on the record evidence and the law in order for the principles listed above to apply.

Respectfully Submitted,

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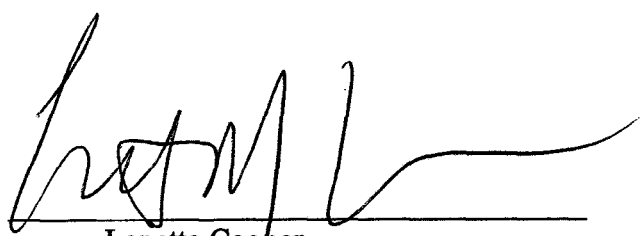
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CERTIFICATE OF SERVICE

Docket No. 29801

I certify that today, May 12, 2005 I served a true copy of the foregoing *Office of Public Utility Counsel's Response to Non-Unanimous Stipulation* on all parties of record in the captioned proceeding via United States First-Class Mail, hand-delivery or facsimile transmission.



Lanetta Cooper