

Control Number: 29801



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

**APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY FOR: § PUBLIC UTILITY COMMISSION
(1) RECONCILIATION OF ITS FUEL §
AND PURCHASED POWER COSTS §
FOR 2002 AND 2003; (2) A SPECIAL §
CIRCUMSTANCES FINDING; AND § OF TEXAS
(3) RELATED RELIEF §**

**JOINT RESPONSE TO TEXAS INDUSTRIAL ENERGY CONSUMERS' AND OFFICE
OF PUBLIC UTILITY COUNSEL'S STATEMENTS OF POSITION REGARDING
NON-UNANIMOUS STIPULATION
(Filename: 7F3.doc; Total Pages: 4)**

Southwestern Public Service Company (SPS), the City of Amarillo (City), West Texas Municipal Power Agency (WTMPA), and the Canadian River Municipal Water Authority (CRMWA) file this Joint Response to Texas Industrial Energy Consumers' (TIEC) and Office of Public Utility Counsel's (OPC) Statements of Position Regarding Non-unanimous Stipulation and state the following. The Staff (Staff) of the Public Utility Commission of Texas (Commission), the other signatory to the Non-unanimous Stipulation (Stipulation) filed on April 25, 2005, does not oppose this response. SPS, the City, WTMPA, CRMWA, and Staff shall be referred to as the Stipulating Parties.

TIEC and OPC have filed position statements regarding the Stipulation that seek to gain for themselves the benefits of the Stipulation and avoid the effects of the Proposal for Decision that held against TIEC and OPC on virtually all issues, while depriving SPS of the going forward benefits of the regulatory plan agreed to in the Stipulation. The Commission should order that the Stipulating Parties issue notice as requested and require that the matter be heard (either at the State Office of Administrative Hearings or at the Commission itself) so that a binding decision can be reached¹ and regulatory certainty can be achieved.²

¹ See *City of El Paso v. Public Utility Commission of Texas*, 839 S.W.2d 895 (Tex. App. – Austin 1992), *rev'd on other grounds*, 883 S.W.2d 179, 183-184 (Tex. 1994). See also, Tex. Pub. Util. Comm'n, *Petition of Southwestern Public Service Company for a Fuel Reconciliation*, Docket No. 14174, Second Order on

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All parties were aware that SPS was willing to settle this proceeding if it could achieve a roadmap for the future, telling it how it should operate its business. The Stipulating Parties recognized that this was a worthy goal and entered into an Agreement in Principle embodying the terms of the Stipulation prior to the issuance of the Proposal for Decision. One of the key aspects of the Agreement in Principle was that all of the Stipulating Parties agreed that it would remain in effect notwithstanding the issuance of a Proposal for Decision. Each of the Stipulating Parties recognized that they had received bargained-for benefits from the Agreement in Principle and that the overall effect of the Agreement in Principle (embodied in the Stipulation) was to create a regulatory plan that was consistent with the public interest.

TIEC's and OPC's contention that a hearing seeking Commission approval of the Stipulation is unnecessary is contrary to the Commission's own rules.³ It also would result in TIEC and OPC obtaining for their constituents the portions of the Stipulation they deem beneficial while avoiding the remaining portions of the Stipulation that are beneficial to the Stipulating Parties and SPS's other customers or an adverse ruling under the Proposal for Decision.

As contemplated by the Stipulation, in their Joint Response to Order No. 14 the Stipulating Parties indicated that SPS and the City would file testimony in support of the Stipulation, requested that notice of the Stipulation's regulatory plan be given and that the intervention deadline be re-opened to afford interested parties the right to intervene and support or contest that regulatory plan, and requested a hearing so that the Stipulation could be fully considered by the Commission.

The Stipulating Parties respectfully request that the Commission reject TIEC's and OPC's attempts to avoid the regulatory certainty that a full hearing on the Stipulation will provide and grant the Stipulating Parties' requests: (1) to provide additional notice, (2) to re-open the intervention

Rehearing at 2-4 (Mar. 14, 1996).

2 If the Stipulating Parties had chosen not to settle, then the Commission's decision would have provided regulatory certainty in the future. The Stipulating Parties are merely seeking to achieve the same type of regulatory certainty through the Stipulation.

3 P.U.C. PROC. R. 22.206.

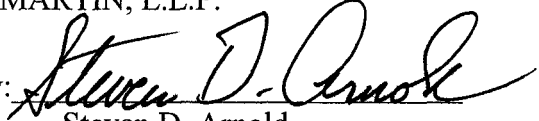
deadline, and (3) for a hearing on the merits of the Stipulation, and that the Commission approve the Stipulation in its entirety and grant the Stipulating Parties any other relief to which they may be entitled.

XCEL ENERGY

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Respectfully submitted,

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ATTORNEYS FOR SOUTHWESTERN
PUBLIC SERVICE COMPANY

CERTIFICATE OF SERVICE

I certify that on the 16th day of May 2005, a true and correct copy of this instrument was served on all parties of record by hand delivery, Federal Express, certified mail, or facsimile transmission.

A handwritten signature in black ink, reading "Steven D. Arnold", is written over a horizontal line.