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Addendum StartPage: 0

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

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

PUBLIC UTILITY COMMISSION
BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S MOTION FOR ENTRY OF
PROTECTIVE ORDER APPENDED TO ITS APPLICATION**

(Filename: 7B2.doc; Total Pages: 20)

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PUBLIC SERVICE COMPANY FOR:	§	BEFORE THE STATE OFFICE
(1) RECONCILIATION OF ITS FUEL	§	
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(3) RELATED RELIEF	§	

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S MOTION FOR ENTRY OF
PROTECTIVE ORDER APPENDED TO ITS APPLICATION**

Southwestern Public Service Company (SPS) files this motion for entry of the protective order appended to its application and states the following.

When SPS filed its application in this proceeding, it appended the protective order that has been used in recent SPS fuel proceedings (the most recent of which is Docket No. 29670, *Application of Southwestern Public Service Company for Authority to Surcharge its Fuel Under-recoveries*) and requested that it govern this docket. When Staff filed its response to Order No. 1, it recommended that the Commission enter its standard protective order to govern this docket. In response to Staff's recommendation, on June 17, 2004, the Commission issued its order entering the protective order recommended by Staff. Staff has now fully reviewed the protective order that SPS appended to its application and has authorized SPS to state that Staff concurs that the protective order proposed by SPS should be entered in this docket. For convenience, that protective order is attached to this pleading as Exhibit A.

WHEREFORE, SPS respectfully requests that the Commission issue an order stating that the protective order attached to this pleading as Exhibit A (rather than the standard protective order

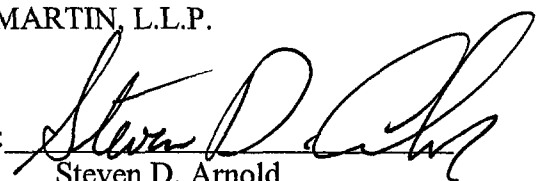
entered on June 17, 2004) shall govern this proceeding and granting SPS any other relief to which it may be entitled.

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ATTORNEYS FOR SOUTHWESTERN
PUBLIC SERVICE COMPANY

CERTIFICATE OF SERVICE

I certify that on the 24th day of June 2004, 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.

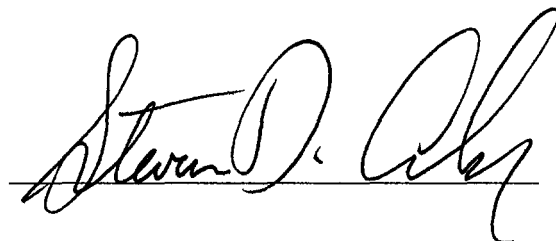
A handwritten signature in black ink, appearing to read "Steven D. Oley", is written over a horizontal line.

EXHIBIT A – PROTECTIVE ORDER PROPOSED BY SPS

DOCKET NO. _____

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

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials) by a party, including information whose confidentiality is currently under dispute.

The obligations of confidentiality in this Protective Order shall continue in effect for three years following entry of this Protective Order, except that as to fuel and fuel-related contracts and materials derived from those contracts the obligations of confidentiality in this Protective Order shall continue in effect until the later of: (a) three years following entry of this Protective Order; (b) the entry of a final, non-appealable judgment fully disposing of this docket (including any proceedings after remand and all appellate proceedings related thereto); or (c) expiration of the term of the contract.

1. Entry of this Protective Order shall not be construed as in any fashion affecting the right of any party to challenge any claim of confidentiality asserted by the party disclosing protected materials (Disclosing Party), and each party shall be deemed to have reserved all rights in this regard.

2. (a) Upon producing or filing a document, including, but not limited to, records stored or encoded on a computer disk or other similar electronic storage medium in this proceeding, the Disclosing Party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face “PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____” or words to this effect (Protected Materials) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include not only the documents so designated, but also the substance of the

information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.

(b) “Protected Materials” shall not include any information or document contained in the public files of the Public Utility Commission of Texas (Commission or PUC) or any other federal or state agency, court, or Local Governmental Authority subject to the Public Information Act. “Protected Materials” also shall not include documents or information which at the time of, or prior to, disclosure in these proceedings, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. For the purposes of this Protective Order, a “Reviewing Party” is a party to this docket who has complied with the provisions of this Protective Order.

4. (a) On or before the date the response to a discovery request containing Protected Materials or Highly Sensitive Protected Materials is due, the Disclosing Party shall file with the Commission and deliver to potential Reviewing Parties a written statement, which may be in the form of an objection, indicating: (1) any and all exemptions to the Public Information Act, TEX. GOV’T. CODE ANN., Chapter 552 (Vernon Supp. 2003) claimed to be applicable to the alleged Protected Materials, (2) the reasons supporting the Disclosing Party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials, and (3) that counsel for the Disclosing Party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.

(b) (1) Except as otherwise provided in this Protective Order, a Reviewing Party shall be permitted access to “Protected Materials” only through its “Reviewing Representatives.” Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in these proceedings. At the request of the PUC Commissioners or their staff, copies of Protected Materials may be produced by the Commission Staff or the Office of Policy Development to the Commissioners. The Commissioners and their staff shall be informed of the existence and coverage

of this Protective Order, with the intention that those persons observe the restrictions of the Protective Order during their consideration of and deliberation on Docket No. _____.

(2) The term “Highly Sensitive Protected Materials” is a subset of “Protected Materials” and refers to documents or information which the Disclosing Party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as set forth below in Subparagraph 4(c)) would expose the Disclosing Party to unreasonable risk of harm, including, but not limited to: (i) customer-specific information protected by §32.101(c) of the Public Utility Regulatory Act; (ii) contractual information pertaining to contracts that specify that their terms are confidential or which are confidential pursuant to Order entered in litigation to which the Disclosing Party is a party; (iii) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (iv) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____,” or words to this effect, and shall be consecutively Bates Stamped in accordance with the provisions of Subparagraph 2(a) of this Protective Order. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures in Paragraph 11 for challenging the Disclosing Party’s designation of information as Protected Materials also apply to information that the Disclosing Party designates as Highly Sensitive Protected Materials.

(3) No copies shall be made of any “Highly Sensitive Protected Materials” (except as provided in Subparagraph 4(b)(5) below) and they shall be made available for inspection only at the locations specified in Subparagraph 7(a). Limited notes may be made of Highly Sensitive Protected Materials, which are restricted to a description of the document and a general characterization of its subject matter but may not state any substantive information contained in such Highly Sensitive Protected Materials.

(4) With the exception of Commission Staff (Staff) and the Office of Public Utility Counsel (OPC), the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are: (i) counsel for the Reviewing Party, (ii) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel or, (iii) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel; PROVIDED, HOWEVER, persons in category (iii) are further limited by Subparagraph 4(b)(5) below. Reviewing Representatives for Staff and OPC for the purpose of access to Highly Sensitive Protected Materials shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

(5) A producing party shall provide one copy of Highly Sensitive Protected material specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Subparagraph 4(b)(4) above, and be either outside counsel or an outside consultant. Other representatives of the reviewing party who are authorized to view Highly Sensitive Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected documents provided to a Reviewing Party may not be copied except as provided in Subparagraph 4(b)(3) and shall be returned along with any copies made pursuant to Subparagraph 4(b)(3) to the producing party within two weeks after the close of the evidence in this proceeding. The restrictions contained herein do not apply to Staff or OPC.

(6) Notwithstanding any other permission granted within this Protective Order, a Reviewing Party who: (i) is or was a customer of the Disclosing Party, or (ii) is a non-customer of the Disclosing Party but a potential competitor of a customer of the Disclosing Party, or (iii) is a non-customer of the Disclosing Party but a potential competitor of the Disclosing Party, shall be permitted access to "Highly Sensitive Protected Materials" only through procedures set forth as follows: No copies shall be made of any "Highly Sensitive Protected Materials" and they

shall be made available for inspection only at specified locations. The Reviewing Party's Representatives for the purposes of access to Highly Sensitive Protected Materials must be persons who either are counsel for the Reviewing Party or who are outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel. Limited handwritten notes may be made of Highly Sensitive Protected Materials which are restricted to a description of the document and a general characterization of its subject matter but shall not state any substantive information contained in such Highly Sensitive Protected Materials.

(c) (1) The procedures set forth in Subparagraphs 4(c)(1) through 4(c)(5) apply to responses to requests for documents or information that a Disclosing Party designates as "Highly Sensitive Protected Materials" provided to the Staff or OPC in recognition of the statutory responsibilities assigned to those parties. To the extent the requirements of Subparagraphs 4(c)(1) through 4(c)(5) conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Subparagraphs shall control.

(2) When, in response to a request for information by a Reviewing Party, a Disclosing Party makes available for review documents or information claimed to be "Highly Sensitive Protected Materials," the Disclosing Party shall also deliver one copy of the "Highly Sensitive Protected Materials" to the Staff and to OPC in Austin as applicable. PROVIDED HOWEVER, that in the event such "Highly Sensitive Protected Materials" are voluminous, the materials will be made available for review by the Staff or OPC at the designated office in Austin, Texas. The Staff or OPC may request such copies as are necessary of such voluminous material under the copying procedures set forth in Subparagraph 7(b)(2), below.

(3) The Staff's and the OPC's counsel may deliver the copy of "Highly Sensitive Protected Materials" received by it to the appropriate members of their respective staffs and outside consultants for review, provided such staff members and outside consultants first sign the certification set out in Paragraph 5.

(4) The Staff and OPC may not make additional copies of the "Highly Sensitive Protected Materials" furnished to them unless the Disclosing Party agrees in writing otherwise, or, upon a showing of good cause, the Presiding Officer directs otherwise. Limited notes

may be made by the Staff and OPC of Highly Sensitive Protected Materials furnished to them and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

(5) In the event of a request for any of the “Highly Sensitive Protected Materials” under the Public Information Act, an authorized representative of the Commission or OPC or any party subject to the Public Information Act may furnish a copy of the requested “Highly Sensitive Protected Materials” to the Attorney General together with a copy of this Protective Order after notifying the Disclosing Party that such documents are being furnished to the Attorney General. For the purposes of this Subparagraph 4(c)(5), such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the Attorney General.

(d) Notwithstanding any other permission granted by this Protective Order, a Reviewing Party who is a present or potential competitor, supplier or bidder for sales or purchases of fuel or fuel-related transportation services or purchased power to a Disclosing Party and/or its corporate affiliates shall be permitted access to Protected Materials only as follows: Access to any Protected Materials, whether Highly Sensitive Protected Materials or otherwise, shall only be through a Reviewing Party’s Representatives who are: (i) counsel for the Reviewing Party, or (ii) outside consultants for the Reviewing Party working under the direction of Reviewing Party’s counsel, and (iii) employees of the Reviewing Party working with and under the direction of Reviewing Party’s counsel; provided, however, persons in category (iii) shall not include persons involved in pricing, marketing or acquiring of fuel supplies or power and shall only include those other persons needed to allow representation of the Reviewing Party’s status and interests as an electric service customer. Further, Reviewing Party shall notify the Disclosing Party at least seven days in advance of any proposed review or revealing directly or indirectly of Protected Information to persons in category (iii) so that the Disclosing Party and/or competing fuel suppliers may object, if necessary, to the participation of those specific persons. Such notice to the Disclosing Party shall contain the name, title and functional department of such person in category (iii) as well as any present or prior involvement of such person in pricing, marketing or acquiring fuel supplies or power. Notwithstanding any other provision of this Protective Order, in no event shall an entity

described in this Subparagraph be permitted access to information pertaining to a Disclosing Party's or its affiliates' dealings with that particular entity or that entity's corporate affiliates/joint ventures. The Reviewing Party Representatives described in this Subparagraph shall not disclose such Protected Information to Recipient or others and shall use such Protected Materials only in the instant proceeding. Reviewing Party's Representatives described in this Subparagraph shall have access to Protected Materials only for limited inspection and only at the locations specified in Subparagraph 7(a). Limited notes may be made of Protected Materials which are restricted to a description of the document and a general characterization of its subject matter but may not state any substantive information contained in such Protected Materials.

5. (a) Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification set forth in the Attachment to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of this Protective Order, which is substantially similar to the Protective Order approved in Docket No. _____, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification set forth in the Attachment to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

(b) A copy of each signed certification shall be provided to Counsel for the Disclosing Party. Any Reviewing Representative may disclose Protected Materials to any other

person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order for the duration thereof, even if no longer engaged in these proceedings.

6. Except for Highly Sensitive Protected Materials which cannot be copied and Protected Materials which are voluminous, the Disclosing Party shall provide a Reviewing Party one copy of the Protected Materials. Except for Highly Sensitive Protected Materials which cannot be copied, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record. Except as limited by Subparagraphs 4(b)(3), 4(b)(5), 4(b)(6), and 4(c)(4), a Reviewing Party may take notes or derive other information from the Protected Materials provided in response to this Paragraph 6.

7. (a) (1) Where the Protected Materials are voluminous, they will be made available between 9:00 a.m. and 4:30 p.m., Monday through Friday (except state and federal holidays), in the Disclosing Party's voluminous room at the location specified by the Disclosing Party for voluminous material in accordance with P.U.C. PROC. R. 22.144(h), and at other mutually convenient times upon reasonable request.

(2) Whether materials are "voluminous" will be governed by P.U.C. PROC. R. 22.144(h)(1) with respect to information furnished in response to discovery requests by parties.

(b) (1) With the exception of Staff and OPC, the Protected Materials may be reviewed only during the "reviewing period," which period shall commence upon entry of this Protective Order and shall continue until conclusion of these proceedings. As used in this Protective Order, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal,

the Commission conducts a remand proceeding, then the reviewing period for the remanded proceedings is extended to the exhaustion of available appeals, or the running of the time for making such appeals, as provided by applicable law.

(2) Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection pursuant to Subparagraph 7(a), or they may make photographic or mechanical copies of the Protected Materials, subject to the conditions provided for in Paragraph 6; provided, however, that before photographic or mechanical copies can be made, the Reviewing Party seeking photographic or mechanical copies must complete a written receipt for copies on a form to be supplied by the Disclosing Party identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

8. (a) Except for Staff and OPC, all Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation, (i) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings, or (ii) any business or competitive endeavor of whatever nature. Reviewing Representatives of Staff and OPC shall have access to Protected Materials solely for the purposes of: (1) this docket and (2) performing their official duties as employees or agents of Staff or OPC, as appropriate, but in all cases subject to the confidentiality obligations imposed by this Protective Order.

(b) Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective

Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

9. (a) If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial or administrative body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the Presiding Officer and served under seal to the counsel of record for the Reviewing Parties. The Presiding Officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before another administrative body, the filing party shall utilize confidentiality procedures (or request creation of such procedures) which are no less restrictive than those set forth in this Protective Order. If filing before a judicial body, the filing party: (i) shall notify the party which provided the information within sufficient time so that the providing party may seek a temporary sealing order, and (ii) shall otherwise follow the procedures set forth in Rule 76a, Texas Rules of Civil Procedure.

(b) No later than 21 days prior to hearing, any party providing Protected Materials will file an index of documents designated as Protected Materials or Highly Sensitive Protected Materials. However, the failure to list a document deemed or claimed to contain Protected Material shall not constitute a waiver of the document's protected or highly sensitive protected status. Furthermore, providing party has the right to amend the list of documents containing Protected Material at any time, including during the hearing on the merits.

10. In the event that the Presiding Officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three full working days, unless

otherwise ordered, from the date the party asserting confidentiality receives the Presiding Officer's order. The party asserting confidentiality will notify the Staff that it has received the Presiding Officer's order within three full working days of the receipt of said order. Such notification will be by written communication. This provision only establishes a deadline for appeal of a Presiding Officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three working days, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal; further deadlines with respect to such appeals and attendant confidentiality protections are set forth in Subparagraph 11(d) below.

11. (a) During pendency of Docket No. _____, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written notice by Motion to challenge the designation of information as Protected Materials.

(b) In the event that the party asserting confidentiality wishes to contest such proposed disclosure or request for change in designation, the party asserting confidentiality shall file its objection to such proposal, with supporting sworn affidavits, if any, and may file a request for a prehearing conference, within five working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection or request within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five working days after the party asserting confidentiality files its objection and supporting affidavits, counsel for the party asserting confidentiality shall indicate by written filing that he or she has reviewed all portions of the materials in dispute and believes in good faith that they should be held to be confidential under current legal standards. Responses to such an

objection, with supporting affidavits, if any, shall be filed within five working days after receipt of the objection. By the same date, counsel for the party challenging such confidentiality shall indicate by written filing either that he or she has reviewed all portions of the materials in dispute and believes in good faith that they should not be held to be confidential under current legal standards, or alternatively that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If the party asserting confidentiality wishes to submit the material in question for in camera inspection, it shall do so no later than five working days after filing its objections to disclosure or request for a prehearing conference.

(c) If the party asserting confidentiality files an objection, the Presiding Officer will determine whether the proposed disclosure or change in designation is appropriate. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the Presiding Officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such Presiding Officer's ruling.

(d) Any party electing to challenge, in the courts of this state, a Commission or Presiding Officer determination allowing disclosure or a change in designation shall have a period of ten days from: (i) the date of an unfavorable Commission order or (ii) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten days from the date of the order to obtain a favorable ruling from the state supreme court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this Subparagraph.

12. Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order shall be construed as an acknowledgment by any party that the Protected Materials (including Highly Sensitive Protected Materials) are entitled to confidential treatment.

13. All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.

14. Following the conclusion of these proceedings, as that term is defined in Subparagraph 7(b)(1), each Reviewing Party must, no later than 30 days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party pursuant to Paragraph 6 or Subparagraph 7(b)(2), and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. Promptly following the conclusion of these proceedings, as that term is defined in Subparagraph 7(b)(1), counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Protective Order shall prohibit counsel for each Reviewing Party from retaining two copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

15. This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act, and any other applicable law, provided that parties subject to those acts will give the party asserting confidentiality notice, if possible under those acts, prior to disclosure pursuant to those acts.

16. (a) If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (1) prior to such release the Reviewing Party notifies the party asserting confidentiality of such order within five calendar days in advance of the release of the information in order for the party asserting confidentiality to contest any release of the confidential information, and (2) the Reviewing Party uses its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated in this Subparagraph.

(b) The term “best efforts” as used in the preceding Paragraph requires that the Reviewing Party’s attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body or written opinion of the Texas Attorney General which was sought in compliance with the Public Information Act. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order.

(c) “Notification” in subsection (a) above shall constitute written notice to the party asserting confidentiality at least five calendar days prior to release; including if Reviewing Party receives a request under the Public Information Act. However, the Commission or OPC or any other party subject to the Public Information Act may provide a copy of Protected Materials to the Attorney General as provided in Subparagraph 4(c)(5).

17. In the event of a breach of the provisions of this Protective Order, a Disclosing Party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. A Disclosing Party shall not be relieved of proof of any element required to establish the right to injunctive relief.

SIGNED at Austin, Texas, the _____ day of _____ 2004.

PUBLIC UTILITY COMMISSION OF TEXAS

Administrative Law Judge

DOCKET NO. _____

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

CERTIFICATION PURSUANT TO PROTECTIVE ORDER

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of this Protective Order, which is substantially similar to the Protective Order approved in Docket No. _____, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date