



Control Number: 32766



Item Number: 1175

Addendum StartPage: 0

SOAH DOCKET NO. 473-06-2536  
PUC DOCKET NO. 32766

APPLICATION OF SOUTHWESTERN §  
PUBLIC SERVICE COMPANY FOR § BEFORE THE STATE OFFICE  
(1) AUTHORITY TO CHANGE §  
RATES; (2) RECONCILIATION OF §  
ITS FUEL COSTS FOR 2004 AND §  
2005; (3) AUTHORITY TO REVISE § OF  
THE SEMI-ANNUAL FORMULAE §  
ORIGINALLY APPROVED IN §  
DOCKET NO. 27751 USED TO §  
ADJUST ITS FUEL FACTORS; AND § ADMINISTRATIVE HEARINGS  
(4) RELATED RELIEF §

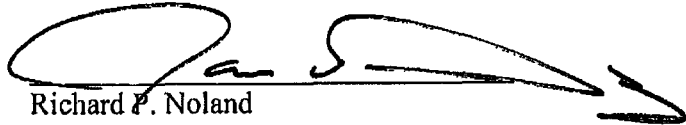
**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
SPS'S THIRD REQUEST FOR INFORMATION TO OPL**

Occidental Permian Ltd. (OPL) files this response to Southwestern Public Service Company's ("SPS") Third Request for Information (RFI) to OPL. SPS's Third RFI was received on January 3, 2007. In accordance with Order No. 10 entered on October 11, 2006, and due to the Commission having been closed for a holiday and severe weather, this response is due on January 18, 2007. This response is therefore timely. All parties may treat these answers as if they were filed under oath.

OPL files these responses without agreeing to the relevancy of the information sought and without waiving its right to object at the time of the hearing to the admissibility of information produced herein.

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Respectfully submitted,

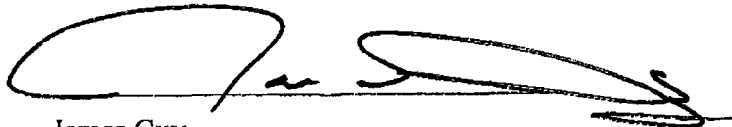


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**CERTIFICATE OF SERVICE**

I, James Guy, certify that a copy of this document was served on all parties of record in this proceeding on January 18, 2007, by first class mail, e-mail, facsimile transmission and/or hand-delivery.



James Guy

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
SPS'S THIRD REQUEST FOR INFORMATION TO OPL**

**SPS 3-1.** Does OPL consider a wholesale market-based rate transaction agreement under a master agreement to be a contract? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

A transaction agreement under a master agreement typically sets forth some, but not all, of the commercial terms of service between the parties to a contract. The witness is not an attorney and is not responding as to whether this combination of documents would contain all the elements required to be a contract.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-2.** Please identify each rule or order Occidental contends SPS has violated in determining its eligible fuel costs for Texas retail customers. Provide the complete basis for each such contention.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker is not an attorney and this response does not necessarily include a comprehensive list of each rule or order that OPL may allege at the final hearing or in briefing that SPS has violated in seeking relief in this proceeding. Subject to this clarification, SPS has violated P.U.C. SUBST. R. 25.236 because its proposed fuel expenses for the reconciliation period were not reasonable and necessary expenses incurred to provide reliable electric service to retail customers. Further, SPS entered into several contracts for wholesale sales that were imprudent at the time SPS entered into those contracts, as set forth in Mr. Brubaker's direct testimony on fuel reconciliation.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-3.** Referring to the Direct Testimony of Maurice Brubaker. Provide the definition of "native load" sales and provide all support for Occidental's definition.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

See Mr. Brubaker's direct testimony at pages 7 and 8, and also OPL's response to SPS 2-2.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-4.** Referring to the Direct Testimony of Maurice Brubaker. Provide the definition of "non-native load" sales and provide all support for Occidental's definition.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

A "non-native load" sale is any sale that does not qualify as "native load."

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-5.** Is an "off-system" sale the same thing as a non-native load sale? If not, please explain your answer and provide all support for such a position.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As Mr. Brubaker understands this term, an "off-system" sale typically would not be to a captive customer and, thus, would not be a native load sale, as set forth on page 7 of Mr. Brubaker's direct testimony.



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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-6.** Is a 15-year wholesale full-requirements sale to a wholesale customer within SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As explained on page 7 of Mr. Brubaker's direct testimony, there are three basic characteristics of native load service. In order to determine whether a particular sale would be designated as native load, all of these characteristics must be evaluated in the context of the agreement. The question does not provide detail on all of these characteristics or on the specific provisions of the agreement and, therefore, Mr. Brubaker is unable to determine whether such a sale would be a native load sale.

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**SPS 3-7.** Is a 15-year wholesale full-requirements sale to a wholesale customer outside SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

See response to SPS 3-6. In the absence of other information, it is not likely that load outside of the control area would be without supply alternatives, and thus it would not qualify as native load.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
SPS'S THIRD REQUEST FOR INFORMATION TO OPL**

**SPS 3-8.** Provide all support for distinguishing between wholesale customers inside SPS's control area from customers outside SPS's control area and provide all support for your position

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker assumes that this question is asking for support for distinguishing wholesale customers inside SPS's control area from customers outside SPS's control area for the purpose of determining if a particular customer would be designated as native load. Based on that clarification, please see Mr. Brubaker's responses to SPS 3-6 and SPS 3-7.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-9.** Is a 15-year wholesale partial-requirements sale to a wholesale customer within SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

See response to SPS 3-6.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-10.** Is a 15-year wholesale partial-requirements sale to a wholesale customer outside SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

See response to SPS 3-6. In the absence of other information, it is not likely that load outside of the control area would be without supply alternatives, and thus it would not qualify as native load.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-11.** Is a 5-year wholesale full-requirements sale to a wholesale customer within SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a 5-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-12.** Is a 5-year wholesale full-requirements sale to a wholesale customer outside SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a 5-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load. In addition, it is not likely that load outside of the control area would be without supply alternatives, and thus it would not be a native load sale.

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**SPS 3-13.** Is a 5-year wholesale partial-requirements sale to a wholesale customer within SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a 5-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load.



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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-14.** Is a 5-year wholesale partial-requirements sale to a wholesale customer outside SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a 5-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load. In addition, it is not likely that load outside of the control area would be without supply alternatives, and thus it would not be a native load sale.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-15.** Is a one-year wholesale full-requirements sale to a wholesale customer within SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a one-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load.

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**SPS 3-16.** Is a one-year wholesale full-requirements sale to a wholesale customer outside SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a one-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load. In addition, it is not likely that load outside of the control area would be without supply alternatives, and thus it would not be a native load sale.

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SPS 3-17. Is a one-year wholesale partial-requirements sale to a wholesale customer within SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a one-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load.

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**SPS 3-18.** Is a one-year wholesale partial-requirements sale to a wholesale customer outside SPS's control area a native load sale? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As a general matter, a one-year term would not qualify as native load because the utility would not have a long-term and continuing obligation to serve the load. In addition, it is not likely that load outside of the control area would be without supply alternatives, and thus it would not be a native load sale.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-19.** Provide all support and precedence for distinguishing between wholesale customers with a one-year contract and customers with longer-term wholesale contracts.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker has not made a distinction between wholesale customers with a one-year contract and customers with longer-term wholesale contracts. Rather, to determine whether a sale to a customer is a native-load sale, Mr. Brubaker testifies that one must evaluate a particular load using the three basic characteristics listed on page 7 of his direct testimony, including whether a utility has a long-term and continuing obligation to serve the load.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-20.** Was Occidental a member of TIEC in May 2001?

**RESPONSE:** (Preparer/Sponsor: N/A)  
(Attachments: None)

Consistent with a letter agreement filed by SPS on January 12, 2007, SPS has withdrawn this request.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-21.** Is it Mr. Brubaker's position that SPS can assign and charge system average fuel costs to native load wholesale customers? If no, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker has not taken a position on how SPS may charge its wholesale customers. Mr. Brubaker's testimony addresses how fuel costs should be attributed to certain wholesale sales and how those attributed costs should be used as an offset in calculating the Texas Retail Fuel Adjustment Factor.

If a particular transaction meets the criteria for native load service as set forth on pages 7 and 8 of Mr. Brubaker's testimony and was not imprudent or otherwise improper when entered into, then system average fuel costs could be assigned for purposes of the Texas Retail Fuel Adjustment.



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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-22.** Referring to page 4 of Mr. Brubaker's testimony, lines 15-18, please identify each instance that SPS's fuel assignment practices are inconsistent with the Public Utility Commission of Texas's (Commission) fuel cost recovery rules. Provide a complete explanation for each alleged inconsistency.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

As explained on page 12 of Mr. Brubaker's testimony, the purpose of the fuel rule is to allow a utility to recover reasonable and necessary expenses associated with fuel and purchased power.

It is Mr. Brubaker's testimony that the practice of engaging in voluntary non-native load wholesale transactions that increase the cost of fuel and purchased power should not be permitted to impact the cost of fuel recovered from retail customers. Only reasonable and necessary expenses not imprudently incurred to provide retail service should be flowed through the fuel adjustment clause. See also the response to SPS 3-2.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-23.** Please provide Mr. Brubaker's understanding of whether any wholesale sales are mandatory under the Federal Power Act or whether all wholesale sales are voluntary. Provide all support for your answer.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Although Mr. Brubaker is not an attorney his general understanding is that, at least in the post-Order 888 environment, wholesale sales are not mandatory.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-24.** Provide Mr. Brubaker's understanding at the time his testimony was prepared of whether SPS's sale of wholesale power to Manitoba Hydro was in the US or not in the US. Provide all support for Mr. Brubaker's understanding at the time his testimony was prepared.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker has not researched where title to the power transferred. Moreover, where title transfers is not material to Mr. Brubaker's testimony.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-25.** Please provide Mr. Brubaker's understanding at the time his testimony was prepared of whether the sales of power to EPE, Los Alamos County, Manitoba Hydro, Midwest Energy, OG&E, PNM, TEA and WAPA were wholesale firm power sales or non-firm power sales. Provide all support for Mr. Brubaker's understanding at the time his testimony was prepared.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker's understanding was that although these sales were ostensibly characterized as firm, to the best of Mr. Brubaker's knowledge each contract contained curtailment provisions, which made them subordinate to firm native load sales.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
SPS'S THIRD REQUEST FOR INFORMATION TO OPL**

**SPS 3-26.** Referring to page 7 of Mr. Brubaker's testimony, provide all support for the concept described on lines 9-15. Provide, without limitation, any references to statutes, rules, or Commission orders supporting this concept.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

See response to SPS 3-3.

In addition, Mr. Brubaker would note that the principles set forth on page 7 of his testimony underlie the fundamental concept behind the regulation of sales of electricity by electric utilities to retail customers. It is fundamental to the regulatory compact that, in exchange for planning to serve all retail electric customers, and assuming other regulatory obligations, a utility is given (sometimes with limited exceptions) an exclusive franchise to serve. This means that insofar as other electric suppliers are concerned, the customer is captive and has no viable alternatives. It also means that because there is not a competitive market, customers must be protected by regulation which sets prices based on reasonably and prudently incurred costs and the costs of assets that are used and useful. As a part of this regulatory compact, the utility has a long-term and continuing obligation to serve the load. These principles are fundamental to the concept of retail rate regulation.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-27.** Provide all support for Mr. Brubaker's position that SPS is obligated to supply power to any particular wholesale customer.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker has not taken the position that SPS is obligated to supply power to any particular wholesale customer.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-28.** Provide all support for the position that a 15-year firm power sale to a wholesale customer is an "opportunity" sale.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Assuming that the reference is to line 17 of page 8 of Mr. Brubaker's testimony, the term "opportunity" was used to underscore the point that these are transactions into which SPS entered voluntarily.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-29.** Is an opportunity sale the same thing as a non-native load sale? If not, please fully describe each term as understood by Mr. Brubaker and also describe the distinction between the two terms.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

In the general sense that the term is used on Page 8, the word "opportunity" is descriptive of the non-native load transactions being described.



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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-30.** Is it Mr. Brubaker's understanding that a utility has an obligation to construct and operate its system to meet in a reliable manner the electric needs of a wholesale customer with a 15-year contract? If not, please explain your answer in detail.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Whether a utility has an obligation to construct and operate its system to meet in a reliable manner the electric needs of a wholesale customer depends upon a number of factors, including the specific terms of the contract. Absent additional information, Mr. Brubaker is unable to determine whether a utility has such an obligation under the hypothetical 15-year contract referenced above.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-31.** Is it Mr. Brubaker's position that one wholesale customer should have a preference to system average power over another wholesale customer of SPS? If so, please provide all bases for differentiation and provide all support for your answer.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker has not taken a position on how SPS may charge its wholesale customers. Mr. Brubaker's testimony addresses how fuel costs should be attributed to certain wholesale sales and how those attributed costs should be used as an offset in calculating the Texas Retail Fuel Adjustment Factor.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-32.** Assume a wholesale firm requirements power sale is made to Customer A under a 15-year cost-based contract. Assume a similar wholesale firm requirements power sale is made to Customer B under a 15-year contract with the same nature and character of service except that the contract is market-based. Is there any basis for treating these two wholesale customers differently for determining eligible fuel expense in Texas? If so, provide a complete explanation for your answer and provide all support for your position.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

The answer to the question depends upon whether Customer A possesses all of the characteristics required to qualify as a native load customer, as set forth in Mr. Brubaker's testimony and in response to these RFIs. In particular, if these contracts were imprudent or otherwise improper at the time they were entered into, whether they were cost-based or market-based would be irrelevant to determining the eligible fuel expenses in Texas.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-33.** Referring to page 13 of Mr. Brubaker's testimony, is it Mr. Brubaker's position that each of SPS's wholesale contracts reach their term, including sales to cost-based cooperative customers, SPS should be required to terminate those contracts? Provide all support for your position.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker takes no position on what SPS should do with its contracts. Mr. Brubaker's testimony addresses only the assignment of fuel costs for purposes of determining the Texas retail fuel adjustment charges.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-34.** Is it Mr. Brubaker's understanding that a wholesale customer on whose behalf a utility has an obligation to construct and operate its system to meet in a reliable manner the electric needs of a wholesale customer is a firm customer of the utility? If not, please provide all support for your answer.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Whether a customer is a "firm customer" depends upon the specific terms of the contract.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-35.** Is it Mr. Brubaker's position that SPS should allow an industrial customer to expand its power consumption if the increased power sales to the industrial customer will have an adverse impact on other retail customers? If so, please explain why this should be allowed when wholesale sales should not be allowed.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Assuming that the industrial customer in question is a retail customer in the utility's service territory and served at regulated rates, Mr. Brubaker understands that SPS must serve all of its retail customers consistent with its approved tariff rates and the Commission's rules. This is true regardless of whether the customer is an industrial, residential or irrigation customer.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
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**SPS 3-36.** Were any Occidental employees involved in TIEC's participation in Docket No. 29801? If so, please identify such persons and state the title and position.

**RESPONSE:** (Preparer/Sponsor: N/A)  
(Attachments: None)

Consistent with a letter agreement filed by SPS on January 12, 2007, SPS has withdrawn this request.

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**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
SPS'S THIRD REQUEST FOR INFORMATION TO OPL**

**SPS 3-37.** Refer to page 35 of Mr. Brubaker's testimony. Provide all factors as understood by Mr. Brubaker that influence the commitment and merit order dispatch of generating units on a utility's system.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Please see Mr. Brubaker's response to SPS's RFI 2-5.



**SOAH DOCKET NO. 473-06-2536  
DOCKET NO. 32766**

**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
SPS'S THIRD REQUEST FOR INFORMATION TO OPL**

**SPS 3-38.** Provide a detailed description of Mr. Brubaker experience in the operation and merit order dispatch of utility generating units.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

Mr. Brubaker received a B.S. degree in electrical engineering, with a specialty in power systems. Mr. Brubaker's M.S. degree is in control system science and technology and the program included, among other things, electric utility control and dispatch. Mr. Brubaker has read numerous books and articles on electric utility dispatch and operations; has participated in discussions with utility system planners, operators and production cost modelers; has reviewed numerous production dispatch simulations and participated in numerous cases involving the determination of avoided costs, all of which require an understanding of how utility systems operate.

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DOCKET NO. 32766**

**OCCIDENTAL PERMIAN LTD.'S RESPONSE TO  
SPS'S THIRD REQUEST FOR INFORMATION TO OPL**

**SPS 3-39.** Provide Mr. Brubaker's understanding of merit order dispatch principles and provide all support relied on by Mr. Brubaker.

**RESPONSE:** (Preparer/Sponsor: Maurice Brubaker)  
(Attachments: None)

In general, merit order dispatch principles refer to the concept of dispatching available generation capacity, subject to system constraints, so as to minimize the cost of meeting the load. Doing so entails dispatching the lowest cost resources first, again subject to system constraints. For example, see Economics of Electric Utility Power Generation authored by W. D. Marsh, in particular Chapter 8. Also, see response to SPS 3-37.