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APPLICATION OF TEXAS GENCO, LP	§	BEFORE THE STATE OFFICE
AND CENTERPOINT ENERGY	§	
HOUSTON ELECTRIC, LLC, TO	§	
RECONCILE ELIGIBLE FUEL	§	OF
REVENUES AND EXPENSES	§	
PURSUANT TO SUBST. R. 25.236	§	ADMINISTRATIVE HEARINGS

STAFF'S REPLY TO INITIAL BRIEFS

COMES NOW the Staff of the Public Utility Commission ("Staff"), representing the public interest, and files its Reply to Initial Briefs.

- I. Introduction**
- II. Kerr-McGee Costs**
- III. Imputed Capacity**
- IV. Out Of Merit Replacement Capacity (OOMC)**

B. Does the fuel rule permit recovery of OOMC cost in eligible fuel expense?

Both the City of Houston¹ and OPC² cite the ALJ's opinion in TNMP's pending fuel reconciliation proceeding³ for the proposition that "OOMC costs" should be excluded from eligible fuel. The opinion expressed in the PFD has not yet been ruled upon by the Commission. However, more important is the fact that the ALJ's recommendation stands in contrast to three final Commission decisions cited in Staff's Initial Brief⁴ holding that congestion management fees are properly accounted for in FERC Account No. 565 as re-dispatch fees and are therefore,

¹ City of Houston's Initial Brief at 7

² Office of Public Utility Counsel's Initial Brief at 20.

³ *Application of Texas-New Mexico Power Company for Final Reconciliation of Fuel Costs Under P.U.C. Substantive Rule 25.236(g)*, Docket No. 27576, PFD at 74 (November 19, 2003).

eligible fuel expenses. As explained in Staff's Initial Brief, OOMC costs and congestion management fees are both re-dispatch fees and therefore eligible fuel expenses.

Staff hopes the Commission will agree that the fees allocated to HL&P by ERCOT so that ERCOT could discharge its statutory duty to manage grid congestion (the OOMC costs) cannot logically be characterized as the capacity component of some hypothetical purchased power agreements as some interveners contend.⁵ Staff believes that it requires too great of a legal fiction to characterize mandatory administrative fees as voluntary purchased power agreements - a finding the Commission would necessarily have to make before it could conclude that these costs are excludable as capacity under section (a)(4) of the fuel rule.

These "OOMC costs" are re-dispatch fees which are eligible fuel expenses – a conclusion this Commission has already reached three times.

V. Joint Operating Agreement

VI. Conclusion and Recommendations

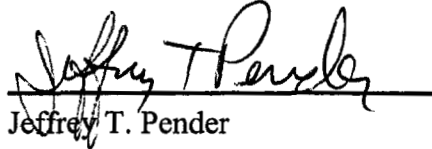
⁴ Staff's Initial Brief at 8.

⁵ The City of Houston ("COH") claims OOMC costs are properly accounted for in FERC Account 555 (fuel rule (a)(4)), which concerns only purchased power agreements. COH Initial Brief at 7. Therefore, according to the COH's reasoning, OOMC costs must be purchased power agreements. OPC and GCCC imply that OOMC costs must be purchased power agreements because they claim that OOMC costs are excluded from eligible fuel under Section (a)(4) of the fuel rule which concerns only purchased power agreements. OPC Initial Brief at 19; GCCC Initial Brief at 13.

Respectfully submitted,

Thomas S. Hunter
Division Director-
Legal and Enforcement Division

Keith Rogas
Director – Legal and Enforcement Division,
Electric Section

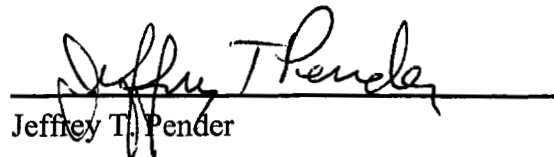
A handwritten signature of Jeffrey T. Pender in black ink, written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Jeffrey T. Pender, staff attorney, certify that a copy of this document was served on all parties of record in this proceeding on December 22, 2003, in the following manner: email and facsimile transmission.

A handwritten signature of Jeffrey T. Pender in black ink, written over a horizontal line.