



Control Number: 27576



Item Number: 331

Addendum StartPage: 34

SOAH DOCKET NO. 473-03-2933
PUC DOCKET NO. 27576

APPLICATION OF TEXAS-NEW
MEXICO POWER COMPANY FOR
FINAL RECONCILIATION OF FUEL
COSTS UNDER P.U.C. PROC. R.
25.236(g)

§
§
§
§
§

RECEIVED BY THE
BEFORE THE STATE OFFICE

PUBLIC UTILITY COMMISSION
FILING OFFICE

ADMINISTRATIVE HEARINGS

TEXAS-NEW MEXICO POWER COMPANY'S
CORRECTED FILING TO ITS REPLY BRIEF

Texas-New Mexico Power Company ("TNMP") filed its reply brief on September 11, 2003. TNMP's brief included as Addendum A proposed findings of fact, conclusions of law, and ordering paragraphs. In that addendum, TNMP inadvertently included an incorrect number sequence for the findings of fact. TNMP files Addendum A with the numbering sequence corrected.

Respectfully submitted,

TEXAS-NEW MEXICO POWER COMPANY



SHAUNA L. LORENZ

State Bar No. 00795488

JOE P. REYNOLDS

State Bar No. 24006457

GJERSET & LORENZ LLP

Attorneys for Texas-New Mexico Power Company

2801 Via Fortuna

Terrace 7, Suite 500

Austin, Texas 78746

512.899.3930

512.899.3939 Fax

GARY W. BOYLE

Senior Counsel

TEXAS-NEW MEXICO POWER COMPANY

4100 International Plaza

Fort Worth, Texas 76109

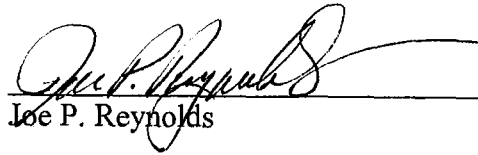
817.737.1386

817.737.1333 Fax

ATTORNEYS FOR TEXAS-NEW
MEXICO POWER COMPANY

CERTIFICATE OF SERVICE

Counsel for Texas-New Mexico Power Company certifies that a copy of this document was served on all parties of record in this proceeding on September 12, 2003, by hand delivery, facsimile, or United States mail, postage pre-paid.



Joe P. Reynolds

ADDENDUM A

to

TNMP Reply Brief

A. FINDINGS OF FACT

Jurisdiction, Notice, and Procedural History

1. Texas-New Mexico Power Company ("TNMP") is an investor-owned utility providing retail electric service within the State of Texas.
2. On April 1, 2003, TNMP filed an application with the Public Utility Commission of Texas ("the Commission") for reconciliation of fuel revenues and expenses for the period of January 1, 2000, through the meter read January 2002, under P.U.C. SUBST. R. 25.236.
3. On April 24, 2003, the Commission issued an Order of Referral of the docket to the State Office of Administrative Hearings ("SOAH").
4. On May 30, 2003, the Commission issued a Preliminary Order listing issues to be addressed in this proceeding and providing that the list was not intended to be exhaustive of issues that may be addressed.
5. On July 2, 2003, TNMP filed proof of notice of TNMP's application in this proceeding. TNMP provided notice of the application once a week for two consecutive weeks in newspapers having general circulation in the counties served by TNMP. TNMP also provided individual notice to those parties participating in TNMP's previous fuel reconciliation proceeding, P.U.C. Docket No. 22745, by serving these parties on April 1, 2003, with a copy of its Application for Reconciliation of Fuel Costs. TNMP completed its notice on June 6, 2003.
6. The assigned administrative law judge ("ALJ") convened a prehearing conference on May 1, 2003, and designated the following as parties: TNMP; the Public Utility Commission of Texas, Legal & Enforcement Division ("Commission Staff"); Texas Industrial Energy Consumers ("TIEC"); Cities of Alvin, Dickinson, Fort Stockton, Friendswood, La Marque, League City, Lewisville, and Texas City ("Cities"); the State of Texas; and the Office of Public Utility Council ("OPC").
7. Pursuant to their request, the ALJ aligned the Cities.
8. The ALJ provided notice to all parties of the evidentiary hearing to begin on August 20, 2003.

9. On September 5, 2003, the parties filed a Notice of Agreement that the calculation of post-reconciliation interest the interpretation of P.U.C. SUBST. R. 25.263(h)(4) are issues more appropriately to be determined by the Commission during the true-up proceeding described in P.U.C. SUBST. R. 25.263.
10. As noticed, the ALJ conducted an evidentiary hearing on the application on August 20–22, 2003, in Austin, Texas. All designated parties appeared to present evidence and argument. After submission of briefs and reply briefs by the parties, the ALJ closed the record on September 15, 2003.

Uncontested Issues

11. TNMP properly accounted for the amount of fuel-related revenues collected pursuant to the fuel factors and surcharges in effect during the reconciliation period.
12. TNMP properly accounted for the amount of fuel-related expenses associated with its affiliate transaction as required by statute and Commission rules.
13. TNMP's eligible fuel expenses for the reconciliation period included one transaction with an affiliate of TNMP in January 2002.
14. In calculating its reconcilable fuel costs, TNMP accurately accounted for revenues from off-system sales in a manner consistent with Commission rules and orders.
15. TNMP operates within ERCOT, which is governed by an ISO; there is a generally applicable tariff for firm and non-firm transmission service in ERCOT; and all off-system sales transactions are made only if they result in a lower cost of energy for TNMP's retail customers.
16. TNMP applied 90% of its off-system sales margins as an offset to eligible fuel expense.

Reasonableness of Walnut Creek Lignite Supply Contract

17. TNMP and Walnut Creek Mining Company (WCMC) were parties to a Fuel Supply Agreement (Contract) under which TNMP purchased lignite to fuel its TNP One power plant.
18. On May 11, 2000, WCMC offered to reduce the price of lignite purchased by TNMP by 11% in exchange for TNMP's waiver of some of its rights to purchase alternate fuels for test burn purposes and TNMP's agreement to include additional lignite reserves in the Contract (May 11 Offer).

19. Based on the contemporaneous documentation, TNMP actually believed at the time of the May 11 Offer that it was assured of a 10% price reduction through arbitration if it rejected the May 11 Offer.
20. Based on all of the evidence in the record, including the price of alternate fuels, TNMP was justified in believing that it would prevail in arbitration and receive a 10% price reduction if it rejected the May 11 Offer.
21. The May 11 Offer represented an incremental 1% price reduction when compared to the likely result of price redetermination arbitration.
22. Based on available information at the time of the May 11 Offer, TNMP reasonably believed that the requested waiver of test burns would negatively impact its ability to gain a second 10% price reduction in 2006.
23. Based on available information at the time of the May 11 Offer, TNMP reasonably believed that the additional reserves were worth \$38 million to WCMC.
24. Notwithstanding the text of the May 11 Offer, it represented WCMC's first settlement offer to TNMP.
25. TNMP settled the prior price redetermination with WCMC by agreeing to a price reduction of 18.9%.
26. Based on all of the available information at the time of the May 11 Offer, TNMP reasonably believed that it would be able to obtain, through additional negotiation, a price reduction greater than 11%.
27. TNMP acted at all times during the WCMC price redetermination with the interests of the customers in lower fuel costs foremost in its collective thinking.
28. TNMP acted at all times in a manner that it reasonably believed would result in the lowest price for fuel under the Contract.
29. The 1% incremental price reduction included in the May 11 Offer was insufficient consideration for WCMC's demand that TNMP waive five years of test burns and that TNMP permit inclusion of the additional reserves.
30. TNMP's rejection of the May 11 Offer was within the range of actions that a reasonable utility manager would have taken based on the information available to TNMP when it rejected the offer.
31. TNMP's rejection of the May 11 Offer was prudent.

32. The Contract granted TNMP a right to purchase alternate fuels in a limited amount for the purposes of test burns only.
33. During the reconciliation period TNMP purchased limited amounts of western coal and petroleum coke for test burn purposes according to the terms of the Contract.
34. TNMP purchased western coal for the purpose of conducting a test burn so that it could satisfy its burden of proof in a price redetermination arbitration if one became necessary.
35. TNMP used the western coal it purchased in a test burn and used the results of that test burn as evidence at the price redetermination arbitration.
36. TNMP's purchase and use of western coal during the reconciliation period was prudent.
37. Based on the requirements of the Contract, the only reasonable means of supporting a price reduction in arbitration was through a test burn of an alternate fuel.
38. TNMP conducted a test burn of petroleum coke during the reconciliation period to provide support for petroleum coke as an alternate fuel if western coal proved unusable or was otherwise insufficient for purposes of the price redetermination arbitration.
39. TNMP used a limited amount of petroleum coke in its test burn because it had previously tested petroleum coke and only needed to update the data from that test.
40. TNMP avoided purchasing more petroleum coke because it believed that doing so would violate both the letter and spirit of the Contract.
41. Purchase of an amount of petroleum coke in excess of that needed for test burn purposes as Staff has suggested was not within the range of actions that a reasonable utility manager would have taken under the circumstances.
42. TNMP's purchase and use of petroleum coke during the reconciliation period was prudent.

Reasonableness of TNMP/Constellation Power Supply and Service Agreement

Off-System Sales Margins

43. No off-system sales occurred after TNMP entered the Constellation contract.

44. TNMP's RFP that led to the Constellation contract reflect in their pricing the value of the transfer of TNMP's right to sell excess energy under the agreements it had in place.
45. Constellation reflected in its pricing to TNMP the value of obtaining the right to sell excess energy under the agreements TNMP had in place.
46. TNMP's customers received 100% of the value of the off-system sales that Constellation reflected in its pricing to TNMP.
47. TNMP's customers would have received only 90% of the value of off-system sales if TNMP had retained the right to sell excess energy from the agreements it transferred to Constellation.
48. The Constellation contract, as executed, did not allow TNMP to sell excess energy under the agreements it transferred to Constellation.
49. The Constellation contract allowed Constellation the sole right to utilize the energy under the agreements TNMP transferred to Constellation, including the right to utilize those agreements to generate off-system sales profits for Constellation.
50. The Constellation contract did not require Constellation to benefit TNMP when Constellation utilized the energy under the agreements TNMP transferred to Constellation.
51. Section 3.12 in the Constellation contract allowed TNMP to sell available energy in excess of Adjusted Metered Load allowed TNMP to sell energy that exceeded the energy take requirements incorporated into the Constellation contract through the projected load curve.
52. This provision of the Constellation contract was intended to mitigate TNMP's exposure for continuing to be obligated to pay for the energy take requirements that were incorporated into the Constellation contract even in the face of continued declining load that might result from competition.
53. Section 3.12 did not allow TNMP to sell energy available under the agreements TNMP transferred to Constellation.
54. It was reasonable for TNMP to transfer rights to off-system sales that would provide TNMP's customers lower pricing under the Constellation contract.
55. It was reasonable for TNMP to have no revenues for off-system sales from June 2001 through the end of the reconciliation period.

O&M Expenses as Eligible Fuel Expense

56. In Docket 17751, the Commission found that by eliminating the PCRf, the demand component of purchased power costs would remain in TNMP's base rates and the energy component of purchased power costs would be removed from TNMP's base rates and rolled into TNMP's fuel factor.
57. In Docket 17751, the Commission approved a fuel factor incorporating all of TNMP's purchased power energy charges.
58. The purchased power energy charges the Commission incorporated into TNMP's fuel factor included both fuel-related and non-fuel related energy charges.
59. Some of the non-fuel related energy charges that were incorporated into TNMP's fuel factor in Docket 17751 were labeled as O&M energy charges.
60. In Docket 22745, the Commission approved as eligible fuel expense all of TNMP's purchased power energy expenses, including purchased power energy expenses labeled as O&M energy charges.
61. In TNMP's earnings monitoring report dockets, the Commission excluded all of TNMP's purchased power energy costs from TNMP's base rate expenses, including purchased power energy expenses labeled as O&M energy charges.
62. In this docket TNMP included in eligible fuel expense all of its purchased power energy expenses, including purchased power energy expenses labeled as O&M energy charges.
63. The Constellation purchased power energy expense labeled as an O&M energy charge is no different than the other non-fuel purchased power energy expenses that the Commission has included in TNMP's eligible fuel expense in prior dockets.
64. The underlying basis for the Constellation purchased power energy expense labeled as an O&M charge is not relevant to whether that purchased power energy charge should be included in TNMP's eligible fuel expense.
65. The Constellation purchased power energy expense labeled as an O&M charge does not necessarily represent the recovery of Constellations, trading, scheduling, and procurement functions.
66. The Constellation purchased power energy expense, including the energy expense labeled as an O&M charge, was reasonable and necessary to serve TNMP's customers.

Heat Rate Pre- and Post-Constellation Contract

67. During 2001, TNMP served the majority of its base load through TNP One and the Constellation resource served load requirements only after TNP One was utilized.
68. During 2002 and beyond, the Constellation resource replaced TNP One and served all of TNMP's base load needs.
69. The Constellation Contract served more base load needs in 2002 and beyond than it did in 2001 and served all of the intermediate and peaking needs in both time periods.
70. When TNMP negotiated the Constellation contract in May 2001, the projected cost of power for 2001 was higher than the projected cost of power for 2002 and beyond.
71. When TNMP negotiated the Constellation contract in May 2001, the projected natural gas prices for 2001 were higher than the projected natural gas prices for 2002 and beyond.
72. TNMP incorporated a higher heat rate into the Constellation contract in 2001 than the heat rate in 2002 and beyond to reflect the disparity in the type of load served between the two time periods and to reflect the disparate price of market power between the two time periods.
73. The higher heat rate in 2001 than in 2002 did not shift costs under the Constellation contract from the unregulated period into the regulated period.
74. TNMP had no obligation to shift purchased power benefits or savings from the unregulated period into the regulated period.
75. TNMP had no obligation to obtain flat pricing under the Constellation contract for both the regulated and unregulated periods when market pricing and load factor justified disparate pricing between the two periods.
76. TNMP could not know in May 2001 whether its earnings monitoring docket would result in positive or negative earnings for 2001.
77. When TNMP negotiated the Constellation contract in May 2001 TNMP was ambivalent as to whether the Constellation contract contained higher demand costs or higher energy costs.
78. TNMP paid more in demand costs under the Constellation contract than it would have paid had it kept its existing resources in place.

- 79. The higher heat rate in 2001 than in 2002 did not shift costs from demand to energy costs within the 2001 regulated time period.
- 80. It was reasonable for TNMP to incorporate into the Constellation contract a higher heat rate in 2001 than in 2001.

Natural Gas Pricing Terms

- 81. In June 2001 TNMP agreed with Constellation to lock-in the then current price of natural gas futures for the Constellation contract supply for the remainder of the reconciliation period.
- 82. In June 2001, when TNMP locked-in the price of natural gas for the Constellation contract supply, the natural gas prices had demonstrated extreme volatility over the previous 12 months.
- 83. The Constellation contract exposed 100% of TNMP's purchased power energy expenses to natural gas pricing.
- 84. TNMP chose to lock-in natural gas prices to protect its customers from the potential for the extraordinary natural gas price spikes that had been experienced from July 2000 through January 2001.
- 85. It was reasonable for TNMP to use a natural gas price lock to protect its customers from the potential for natural gas price spikes.
- 86. TNMP relied on industry indicators and futures market prices when it decided to enter the Constellation price amendment.
- 87. The natural gas price TNMP locked-into for its Constellation contract supply accurately reflected the price of natural gas futures that were trading openly on the market in June 2001.
- 88. The pricing TNMP locked-in in June 2001 reflected the market price of natural gas.
- 89. The pricing TNMP locked-in for natural gas component of the Constellation contract pricing in June 2001 was reasonable.

Ancillary Services Costs as Eligible Fuel Expenses

- 90. TNMP's ancillary services are a defined product that TNMP purchases as an energy product under the Constellation contract.
- 91. The amount TNMP pays for ancillary services under the Constellation contract is dictated solely by the provisions of the Constellation contract.

92. The amount TNMP pays for ancillary services under the Constellation contract is not impacted by the ERCOT charges other load entities pay for reserves.
93. TNMP's ancillary services provided by Constellation are assessed based on TNMP's energy usage, unlike the demand-related charges other load entities pay for ERCOT reserves.
94. Ancillary service costs incurred under the Constellation contract were based on the amount of energy TNMP used to serve its load.
95. The ancillary service charges TNMP paid under the Constellation contract were purchased power energy charges.
96. TNMP's ancillary service purchased power energy charges were reasonable and necessary to serve TNMP's customers.

Reasonableness of Panda Paris Power Contract – O&M Expense as Eligible Fuel Expense

97. TNMP included in its calculation of eligible fuel expense all of its purchased power energy charges, including those labeled as O&M energy charges under the Panda/Lamar contract.
98. The Panda/Lamar purchased power energy expense labeled as an O&M energy charge is no different than the other non-fuel purchased power energy expenses that the Commission has included in TNMP's eligible fuel expense in prior dockets.
99. The Panda/Lamar purchased power energy expense, including the energy expense labeled as an O&M charge, was reasonable and necessary to serve TNMP's customers.

Appropriateness of ERCOT Charges as Eligible Fuel Expense

100. TNMP's eligible fuel expense included \$4,643 in ERCOT charges for black start services.
101. TNMP pays ERCOT for black start services based on a demand charge.
102. Demand charges are a base rate cost for TNMP.
103. ERCOT demand charges for black start services should not be included in TNMP's eligible fuel expense.
104. TNMP included in its eligible fuel expense ERCOT OOM capacity charges.

105. OOM capacity charges are a re-dispatch fee required to clear congestion on a transmission line.
106. OOM capacity charges provide the same transmission line re-dispatch service as OOM energy charges.
107. It is appropriate for TNMP to include OOM capacity charges as an eligible fuel expense because it is a transmission line re-dispatch service.

Allocation of Costs in January 2002

108. The Commission required TNMP to switch its native customers to be served by TNMP's affiliated REP, First Choice Power on the native customer's meter-read date in January 2002.
109. TNMP assigned its eligible fuel expenses equally between native customers that had been formally switched over from TNMP to First Choice Power and native customers that had not been formally switched over.
110. All customers that were switched from TNMP to First Choice Power were previously TNMP's native customers.
111. TNMP's native customers that switched from TNMP to First Choice Power included both price to beat customers and non-price to beat customers.
112. There is no Commission precedent that dictates how purchased power resources should be allocated between native customers served by TNMP and native customers switched to First Choice Power.
113. There is no basis for assigning higher cost resources to native customers that have been switched to First Choice Power.
114. It was reasonable for TNMP to allocate costs equally between native customers that had been switched to First Choice Power and those that had not.

Overall Management of Resources and Eligible Fuel Expense

115. TNMP's overall administration and management of its fuel and purchased power contracts was reasonable and resulted in the best overall benefits to ratepayers during the reconciliation period.
116. All the fuel and purchased power energy expenses TNMP included in its eligible fuel expense were appropriately categorized as eligible fuel expense.

117. All the fuel and purchased power energy expenses TNMP incurred were reasonable and necessary to serve TNMP's customers.
118. All the ERCOT charges and transmission fee charges TNMP included in its eligible fuel expense were appropriately categorized as eligible fuel expense, except the ERCOT charges related to black start service described in Findings of Fact 100-103.
119. All the ERCOT charges and transmission fee charges TNMP included in its eligible fuel expense were reasonable and necessary to serve TNMP's customers.

B. CONCLUSIONS OF LAW

1. TNMP is a public utility as that term is defined in the Public Utility Regulatory Act ("PURA"), TEX. UTIL. CODE ANN. (Vernon 2000 & Supp. 2002) at § 11.004, and an electric utility as that term is defined in PURA at § 31.002(1).
2. The Commission has authority over TNMP and jurisdiction over the subject matter of this application under PURA §§ 14.001, 36.001, and 36.203, and P.U.C. SUBST. R. 25.236.
3. SOAH has jurisdiction over matters related to conduct of the hearing and preparation of a proposal for decision in this proceeding, pursuant to PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2000).
4. This docket was processed in accordance with the requirements of PURA and the Administrative Procedure Act., TEX. GOV'T CODE ANN. § 2001.001-.902 (Vernon 2000).
5. TNMP provided notice of this proceeding in compliance with P.U.C. SUBST. R. 25.235(b).
6. This matter does not constitute a major rate proceeding, as defined by P.U.C. PROC. R. 22.2.
7. Good cause existed to suspend the six-month deadline in P.U.C. Subst. R. 25.237(g).
8. During the reconciliation period TNMP properly accounted for the amount of fuel-related revenues collected pursuant to the fuel factors and surcharges in effect during the reconciliation period as required by P.U.C. SUBST. R. 25.236(d)(1)(C).
9. TNMP's fuel expenses during the reconciliation period comply with the requirements of P.U.C. SUBST. R. 25.236(d)(1)(B) with regard to TNMP's accounting of its one affiliate transaction during the reconciliation period.

10. TNMP properly accounted for revenues and expenses from off-system sales as required by P.U.C. SUBST. R. 25.236(a)(7)(C).
11. TNMP is entitled to retain 10% of the margins from off-system sales as it meets the requirements of P.U.C. SUBST. R. 25.236(a)(8).
12. During the Reconciliation period, the agreements that provided lignite and natural gas to TNP One were reasonable and necessary.
13. During the Reconciliation period, TNMP prudently managed its fuel agreements that supplied lignite and natural gas to TNP One.
14. During the Reconciliation period, TNMP's purchased power procurement practices were prudent.
15. During the Reconciliation period, TNMP's purchased power contracts were reasonable and necessary.
16. During the Reconciliation period, TNMP prudently managed its purchased power supply agreements to provide overall benefits to TNMP's customers.
17. Pursuant to the Commission orders in Dockets 17751 and 22745 and the PUC substantive rules, TNMP properly included as eligible fuel expense all purchased power energy costs incurred.
18. Except as explained in Findings of Fact 100-103, TNMP properly recorded its expense or revenue impacts from ERCOT's move to a single control area.
19. TNMP's allocation of costs in January 2002 were reasonable and appropriate to address the transition to competition.
20. During the reconciliation period, TNMP's eligible fuel expenses, as modified by the findings of fact and conclusions of law, were reasonable and necessary expenses that were incurred to provide reliable electric service to retail customers pursuant to P.U.C. SUBST. R. 25.2346(d).

C. ORDERING PARAGRAPHS

In accordance with the above findings of fact and conclusions of law, the Public Utility Commission of Texas issues the following Order:

1. The application of TNMP for reconciliation of fuel and purchased power revenues and expenses for the period January 1, 2000 through the meter read January 2002 is granted as modified by this order and consistent with the above findings of fact and conclusions of law.

2. Pursuant to PURA Sec. 39.262(d), TNMP's transmission and distribution utility shall be credited with the cumulative over-recovery balance to be incorporated into the final true-up proceeding
3. The issues of allocating the over-recovery to customer rate classes and calculating interest for the post-reconciliation period shall be addressed in the final true-up proceeding.
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

Y:\Client Docs\TNMP\27576 Fuel Rec 2003\Findings of Fact.doc