

Control Number: 27576



Item Number: 357

Addendum StartPage: 0

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

January 9, 2004

RECEIVED
2004 JAN -9 PM 3:05
PUBLIC UTILITY COMMISSION
FILING CLERK

Mr. Stephen Journey, Director
Office of Policy Development
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

**RE: Exceptions and Replies in 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. SUBST. R. 25.236(g)***

Dear Mr. Journey:

The Commissioners are scheduled to consider the Proposal for Decision (PFD) I issued in the above-referenced case on January 15, 2004. Texas-New Mexico Power Company (TNMP) and the Office of Public Interest Counsel filed exceptions to the PFD. Commission Staff and the State of Texas filed statements advising me that they had no exceptions. Cities filed replies.

I have reviewed the exceptions and replies and forward my responses for the Commission's consideration.

TNMP'S EXCEPTIONS

TNMP complains generally throughout its exceptions that I did not consider its evidence and did not address its positions in the PFD. These complaints are without merit. I considered all of evidence the Company has referenced in its exceptions as well as every argument contained in TNMP's closing briefs. While much of the evidence could not be openly set forth because TNMP tendered 90 percent of its evidence under seal as confidential, highly sensitive business documents, I set forth the reasons I was not persuaded by the Company's evidence and arguments in the PFD.

As a final general comment, I would note that TNMP has used its exceptions partly to respond to my analyses of the issues with several new arguments and assertions. Supplementing closing briefs with new arguments is not an appropriate use of exceptions.

Response to Exceptions and Replies

SOAH Docket No. 473-03-2933; PUC Docket No. 27576

Page 2

Lignite Fuel Expense Challenge

After reviewing the exceptions and replies, I find no basis to change my recommendation on this issue. TNMP's exceptions reiterate the arguments made in its closing briefs and include new arguments and explanations that could have been presented during the proceeding. I find that the exceptions use the same circular logic TNMP used in its closing briefs. The Company failed to satisfy its burden of proof and of persuasion on this issue. I refer the Commission to Cities' replies, which set forth logical and persuasive reasons why Staff and Cities were correct on this issue and why TNMP should not prevail.

Purchased Power Costs Challenge

Excess Energy/Off-System Sales: I find no basis to change my recommendations on this issue. Section 3.8(e) of the Constellation contract does not, as TNMP argues, transfer all existing contract rights to Constellation. Rather, the provision makes Constellation TNMP's agent in dealing with those contracts. Cities' replies contain the correct recitation of the record regarding this evidence.

O&M Expenses as Eligible Fuel Expenses

I find no basis to change my recommendations on the issues concerning the O&M expenses. Cities' replies contain the correct recitation of the record regarding the law, the evidence, and the proper amount of the disallowance.

Allocation of January 2002 Expenses

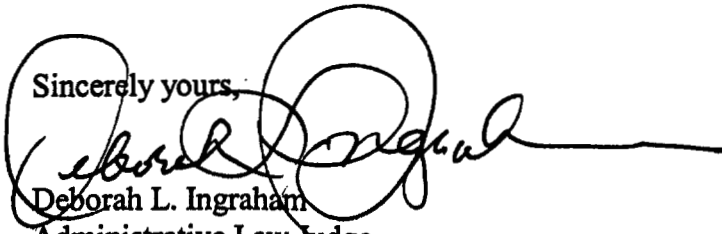
I find no basis in the exceptions to change my recommendation on this issue.

OPC'S EXCEPTIONS

I find no basis in OPC's exceptions to change my recommendations on the heat rate and natural gas issues.

Should you have any questions or wish a more detailed response to the lengthy exceptions and replies, please do not hesitate to contact me. I will also be happy to answer any questions the Commissioners may have at the Open Meeting.

Sincerely yours,



Deborah L. Ingraham
Administrative Law Judge

cc: All Parties of Record