

Southwestern Public Service Company's Fuel Procurement Contractors ("Docket No. 19770").

8. OPC and TIEC intervened in Docket No. 19770.
9. On October 7, 1998, the Commission referred Docket No. 19770 to SOAH.
10. On October 19, 1998, SOAH consolidated Docket Nos. 19512 and 19770 under the common style of Docket No. 19512, *Petition of Southwestern Public Service Company for: (1) Reconciliation of its Fuel and Purchased power Costs for 1995 through 1997; (2) Findings of Special Circumstances; and (3) Related Relief; Inquiry of into the Company's Fuel Procurement Billing Practices.*
11. On June 9, 1999, Southwestern and the Legal Division of the Commission's Office of Regulatory Affairs ("Legal Division") filed a Non-unanimous Stipulation ("Stipulation").

Reconciliation Request and Interim Fuel Proceedings

12. This docket reconciles the fuel and purchased power expenses of \$1,248,674,221.76 (\$675,884,629.02 Texas retail) for January 1, 1995, through December 31, 1997, a period of 36 months ("Reconciliation Period"), except for the disallowances of \$1,227,747.01 (\$666,559.39 Texas retail).
13. During the Reconciliation Period, Southwestern incurred \$687,901,249 of total fuel and purchased power expenses for Texas retail customers (including the special circumstance amount), but only \$653,461,622 in revenues were collected. After accounting for the beginning balance, refunds, credits, and surcharges, Southwestern's under-collection as of December 31, 1997, was \$21,154,699. A surcharge authorized in Docket No. 17410 will reduce the reconciled under-collection to approximately \$4.4 million, and the unreconciled under-collection to approximately \$14.6 million.
14. During this Reconciliation Period, fixed fuel factors approved in Docket No. 9177 ^u were used through April 1996. From May through December 1996, revised fixed fuel factors

^u Tex. Pub. Utils. Comm'n, *Petition of Southwestern Public Service Company for Authority to Establish Fixed Fuel Factors as to be Exempt from Notice Requirements*, Docket No. 9177, 15 P.U.C. BULL. 1978 (May 2, 1990) (mem.).

approved in Docket No. 15453^{2/} were used. From January through December 1997, revised fixed fuel factors approved in Docket No. 16605^{3/} were used.

15. The periodic wholesale non-firm sales margin crediting methodology authorized in Docket No. 10602^{4/} was used during this Reconciliation Period. In Docket No. 14174,^{5/} the Commission ordered Southwestern to flow through 100 percent of the margins from the wholesale non-firm sales to the ratepayers effective on March 14, 1996.

Agreement of the Parties

16. The parties recommend approval of Southwestern's petition, as amended and modified by the Stipulation.
17. The Stipulation recommends that the \$10.2 million Overcharge Claim Against ARCO shall not be reconciled or otherwise reviewed in this proceeding but, rather, all issues of the labor price component of the Overcharge Claim Against ARCO shall be deferred to Southwestern's next reconciliation.
18. The Stipulation recommends that Southwestern shall ensure that the internal audit staff whose services it uses to audit TUCO: (i) continues annual audits of the contracts and transactions of coal purchases with TUCO, emphasizing compliance/management fraud techniques; and (ii) participates in continuing education that focuses on the area of compliance auditing and fraud auditing.
19. The Stipulation recommends that Southwestern will require TUCO to perform annual audits beginning in 1998 of its contractors in accordance with generally accepted audit procedures. Southwestern also will require TUCO to use a qualified independent auditor to perform audits on TUCO's vendors. Southwestern will require TUCO to audit each of its contractors that provide supplies or services that are priced based on the contractor's actual costs or operations (e.g., cost pass through, productivity sharing provisions). TUCO shall not be required to audit fixed-price contracts, index adjusted pricing contracts with publicly

^{2/} Tex. Pub. Utils. Comm'n, *Petition of Southwestern Public Service Company for Authority to Revise its Fixed Fuel Factors and for Related Good-Cause Exceptions*, Docket No. 15453 (Apr. 24, 1996) (not published).

^{3/} Tex. Pu. Utils. Comm'n, *Petition of Southwestern Public Service Company for Authority to Revise Fuel Factors, Surcharge Under-Recovery of Fuel Expenses, and for Related Good-Cause Waivers*, Docket No. 16605 (Jan. 15, 1997) (not published).

^{4/} Tex. Pub. Utils. Comm'n, *Petition of Southwestern Public Service Company for Permanent Authorization of Periodic Opportunity Sales Margin Credits*, Docket No. 10602, 17 P.U.C. BULL. 2056 (Feb. 5, 1992) (mem.).

^{5/} Tex. Pub. Utils. Comm'n, *Petition of Southwestern Public Service Company for Fuel Reconciliation*, Docket No. 14174, 21 P.U.C. BULL. 924 (Mar. 14, 1996).

available indices or index data, or any other agreement with pricing structures that are not related to the contractor's actual costs. The parties recognize that TUCO's right to audit ARCO is the subject of currently pending litigation and, accordingly, cannot currently be subject to this obligation.

20. The Stipulation recommends that Southwestern shall require TUCO to perform a performance audit of Wheelabrator. The performance audit shall be an audit to determine whether Wheelabrator is acquiring and using its resources economically and efficiently in accordance with prudent and safe practices and whether or not Wheelabrator is complying with established policies regarding matters of economy and efficiency.
21. The Stipulation recommends that Southwestern shall file future annual audits performed by it of TUCO and TUCO's audits of its contractors in a separate project established for those purposes. For each audit, Southwestern shall file the engagement letter, a description of the scope of the audit, the audit program description, and the final audit report. The information filed in the project shall be made available to any party requesting a copy of the documents filed in the project. In addition, any party requesting additional audit documentation shall be provided a copy of the requested information. The parties recognize that certain audit information may be confidential; in that event, the protective order in force in this docket shall govern the production of that information.
22. The Stipulation recommends that Southwestern also shall strongly encourage TUCO to:
(i) ensure that its audit staff continues annual audits of the contracts and transactions of coal handling purchases with Wheelabrator, emphasizing compliance/management fraud techniques; (ii) ensure that its auditing staff participates in continuing education that focuses on the area of compliance auditing and fraud auditing; (iii) have its audit staff ensure that Wheelabrator implements and adheres to a system of strong internal controls and policies, particularly those related to purchasing practices; and (iv) engage an independent audit firm to perform audits of Wheelabrator for 1998 and 1999, which should focus specifically on contract compliance and billing procedures, documenting evidence as to whether or not Wheelabrator has corrected the various deficiencies reported in the independent accountant reviews covering the Reconciliation Period.
23. In the Stipulation Southwestern agrees to withdraw its request for such a sharing in this docket without prejudice to its rights to request sharing in the future.
24. In the Stipulation, the signatories agreed that Southwestern's request to reconcile its fuel and purchased power costs from January 1995 through December 1997 should be approved, as modified in the Stipulation. This resulted in an agreed reconciliation as shown in the following table:

Stipulated Reconciliation Result	
Description	Amount
December 31, 1994, Over-recovery Balance	\$4,080,287
Fuel and Purchase Power Cost: 1/95 — 12/97	(875,884,629)
Fuel Revenue Collected: 1/95 — 12/97	653,461,822
Docket No. 14174 Refund	(4,155,338)
Docket No. 16805 Surcharge Recovery	6,851,336
Wholesale Non-Firm Margin Credit Transfers: 1/95 — 12/97	6,259,436
Wyoming Federal Court Litigation	(12,180,035)
Southwestern's legal expenses related to Wyoming Federal Court Litigation	(253,974)
Ault Audit Items	666,598
Fuel and Purchased Power Under-Recovery balance at 12/31/97	(21,154,699)
Docket No. 17410 Surcharge Recoveries 1/98 — 12/98 Actual	6,555,442
Overcharge Claim Against ARCO	10,200,000
Reconciled Fuel Under-recovery Balance	(4,399,255)
Overcharge Claim Against ARCO	(10,200,000)
Fuel Under-recovery Balance including Unreconciled Deferred Amount	(14,599,255)
Reconciled Accumulated Interest Balance	(1,055,425)

25. The Stipulation is reasonable and should be approved.

Coal Contracts and Administration

26. Southwestern procures coal from TUCO for Southwestern's two coal-fueled electric generating facilities, Harrington and Tolk Stations, under a long-term sole supplier contract for each station ("Coal Supply Agreements"), both of which were executed on April 30, 1979.
27. During the Reconciliation Period, TUCO had long-term coal supply agreements with Thunder Basin, a subsidiary of ARCO, dedicated to supplying the coal to Southwestern.
28. During the Reconciliation Period, TUCO had long-term transportation agreements and entered into spot transportation agreements as necessary to satisfy Southwestern's coal transportation requirements.

29. Southwestern's coal procurement activities resulted in reasonable and necessary cost of fuel to its ratepayers during the Reconciliation Period in the amount of \$836,227,627 (\$452,634,794 Texas retail), except for the disallowances of \$1,227,747.01 (\$666,559.39 Texas retail).
30. The Coal Supply Agreements allow TUCO to bill Southwestern monthly for the sum of: (a) the FOB mine cost of coal; (b) the cost of transportation from the mine to the unloading facilities; (c) the costs incurred for furnishing railcars and for handling, storing, crushing, processing, weighing, and delivering coal; (d) all assessments and taxes (except federal and state income taxes) levied for any activity thereunder; (e) the cost of financing coal inventories; (f) the cost of coal losses; and (g) the margin to TUCO.
31. In October 1996, Southwestern and NexGen/TUCO negotiated an amendment to the TUCO margin component of the coal price as provided for in the 1989 amendment previously approved by the Commission in Docket No. 9030.⁹ The margin to TUCO is designed to allow TUCO to recover, among other things, coal inventory charges for stockpile coal at Harrington and Tolk.
32. The Stipulation recommends that Southwestern shall direct TUCO to target average coal inventories at the following level:
- a. Harrington Station:
 - i. From July-December of 2000: 41 burn days, or 9,869,520 MMBtu.
 - ii. Calendar Year 2001: 39 burn days, or 9,388,080 MMBtu.
 - iii. Calendar Year 2002: 35 burn days, or 8,425,200 MMBtu.
 - b. Tolk Station:
 - i. From July-December of 2000: 41 burn days, or 10,135,200 MMBtu.
 - ii. Calendar Year 2001: 39 burn days, or 9,640,800 MMBtu.
 - iii. Calendar Year 2002: 35 burn days, or 8,652,000 MMBtu.

If average inventory levels are maintained at more than the amounts set forth above, then Southwestern shall not be allowed to recover the carrying costs on the levels above the targets shown above.

⁹ Tex. Pub. Utils. Comm'n, *Petition of General Counsel for a Fuel Reconciliation for Southwestern Public Service Company*, Docket No. 9030, 17 P.U.C. BULL. 395 (June 3, 1991).

Wheelabrator Issues from Docket No. 19770

33. The relationship between TUCO and Southwestern is controlled by the Coal Supply Agreements, which specifically delineate the parties' rights and obligations.
34. Southwestern has a right under the Coal Supply Agreements to audit TUCO's expenditures for purchasing and delivering coal. Southwestern has no right to involve itself in the day to day operations of TUCO or TUCO's subcontractor, Wheelabrator.
35. In August 1997, TUCO retained Marilyn C. Ault to complete an audit of all charges made to TUCO by Wheelabrator under the Wheelabrator Agreements for 1995 and 1996.
36. On December 9, 1997, Dean Allen, a Wheelabrator employee, wrote a letter to General Counsel, Charles E. Johnson, Esq. ("Dean Allen Letter"), complaining of certain practices he alleged were followed by Wheelabrator.
37. In response to TUCO's audits and the Dean Allen Letter, Wheelabrator recognized that improper charges were made to TUCO.
38. In correspondence to TUCO dated September 25, 1998, Wheelabrator identified and discussed each of these charges. With its letter, Wheelabrator enclosed a check for \$271,722.01 (\$146,866.96 Texas retail), which fully reimbursed TUCO for these improper charges. This payment to TUCO was passed through to Southwestern for the benefit of its ratepayers.
39. Ault completed a preliminary report on September 17, 1998, and provided supplements on November 18, 1998, and January 6, 1999, for the period of 1995, 1996, and 1997.
40. TUCO and Ault were unable to resolve all of the questions relating to certain charges by Wheelabrator for 1995 and 1996. The unresolved questioned costs were brought to the attention of Wheelabrator.
41. TUCO deducted 956,025 (\$519,731 Texas retail) from Wheelabrator's pending invoices for Operation and Maintenance Expense.
42. The Stipulation recommends that the recovery of the improper charges by TUCO's coal handling suppliers during the Reconciliation Period shall be treated as having been made ratably during the Reconciliation Period even though they were not paid to ratepayers until 1999. The Stipulation recommends that an adjustment of \$666,598 will be deducted from Southwestern's requested recovery to reflect this treatment.

Gas Contracts and Administration

43. Southwestern's gas and fuel oil procurement activities resulted in reasonable and necessary cost of fuel to its ratepayers during the Reconciliation Period of \$433,850,545 (\$234,835,403 Texas retail).
44. Southwestern's gas administration activities resulted in more competitive options.

Affiliate Transactions

45. Southwestern's fuel and purchased power transactions with its affiliates during the Reconciliation Period satisfy the statutory standards for cost allocation to Texas jurisdictional customers and meet all other applicable requirements.

Special Circumstances Request

46. Southwestern is seeking a finding that special circumstances exist under P.U.C. SUBST. R. 23.23(b)(2)(B)(v) to permit it to recover approximately \$12.4 million in Texas-jurisdictional costs it incurred to lower coal costs during the Reconciliation Period in connection with Wyoming Federal Court Litigation with Thunder Basin.
47. A dispute developed regarding the volumes of coal that TUCO (and in turn, Southwestern) was required to take during the Reconciliation Period under the Revised Federal Coal Supply Agreement for Harrington Station dated February 20, 1976, between ARCO (later assigned to Thunder Basin) and TUCO.
48. ARCO/Thunder Basin filed a lawsuit in Wyoming federal court seeking a determination that TUCO (and ultimately Southwestern) must purchase 12,861,933 tons of coal under the Federal Agreement during calendar years 1995 through 1997.
49. A jury trial resulted in a determination that TUCO (and ultimately Southwestern) was obligated to purchase the disputed 3,861,933 tons under the Federal Agreement during 1995 through 1997. A judgment for \$22,346,407.22 (\$12,180,034.97 Texas retail) was based on the jury's evaluation of Thunder Basin's damages because of the failure to purchase the disputed volume at the higher-than-market contract price.
50. Southwestern reasonably incurred approximately \$465,961 in expenses related to defending this action during the Reconciliation Period, \$253,974 of which is allocable to its Texas retail jurisdiction. The Stipulation recommends the recovery of these expenses as eligible fuel.
51. The judgment relieved TUCO and Southwestern of the obligation to buy the disputed volumes under the contract and allowed them to purchase lower-price spot coal to replace the disputed 3,861,933 tons.

52. Southwestern was able to realize a net savings to the ratepayers of \$8,470,539 (\$4,616,915 Texas retail) by purchasing the lower priced spot coal and paying the judgment and litigation expenses instead of paying the contract price for the coal.

PROPOSED CONCLUSIONS OF LAW

1. Southwestern is a public utility as defined in Sections 11.004(a) and 31.002(1) of PURA.
2. The Commission has jurisdiction and authority over Southwestern's and this matter under Sections 14.001, 36.001, 36.203 and 36.205 of PURA and P.U.C. SUBST. R. 23.23(b).
3. Southwestern provided adequate notice to affected persons.
4. The fuel and fuel-related expenses Southwestern seeks to reconcile, as agreed in the Stipulation, are reasonable.
5. Southwestern's gas and coal contracts have been properly administered.
6. Southwestern's fuel and fuel-related affiliate transactions during the Reconciliation Period were reasonable and necessary and the price paid by Southwestern was not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a non-affiliated person for the same item or class of items.
7. The Thunder Basin judgment and Southwestern's own litigation expenses in the Thunder Basin litigation resulted in lower coal costs than would otherwise have been the case and the resulting benefits received by the ratepayers exceeded the costs ratepayers would otherwise have paid.
8. The Stipulation is reasonable and should be approved.

Certificate of Service

I certify that on this 9th day of June 1999 a true and correct copy of the foregoing instrument was served on all parties of record by hand delivery, expedited delivery service, certified mail, or facsimile transmission.

**PUC DOCKET NO. 19512
SOAH DOCKET NO. 473-98-1299**

PETITION OF SOUTHWESTERN	§	BEFORE THE PUBLIC UTILITY
PUBLIC SERVICE COMPANY FOR: (1)	§	
RECONCILIATION OF ITS FUEL AND	§	
PURCHASED POWER COSTS FOR	§	
1995 THROUGH 1997; (2) FINDINGS OF	§	
SPECIAL CIRCUMSTANCES; AND (3)	§	
RELATED RELIEF; AND INQUIRY	§	
INTO THE COMPANY'S FUEL-	§	COMMISSION
PROCUREMENT BILLING	§	
PRACTICES	§	

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PUBLIC UTILITY COUNSEL
OFFICE OF REGULATORY AFFAIRS

ORDER

This Order approves Southwestern Public Service Company's (SPS or Southwestern) petition for reconciliation of fuel and purchased power costs for 1995 through 1997 (Petition), and request for a finding of special circumstances, except as modified by the parties' non-unanimous stipulation² and this Order. Through this Order, the Commission affirms the Proposal for Decision (PFD) issued by the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) on February 24, 2000, with the exception of the ALJ's recommended adjustment of the Thunder Basin judgment and litigation expenses. The Commission concludes that proper application of P.U.C. SUBST. R. 25.236(a)(6) requires the deletion and addition of certain findings of fact (FoF) and conclusions of law (CoL). Specifically, pursuant to TEX. GOV'T CODE § 2001.058, the Commission determines that FoF No. 32 and CoL No. 8 shall be deleted, and new FoF No. 32A and CoL 8A be added to modify the ALJ's recommended adjustment to the Thunder Basin litigation expenses and judgment subject to the special circumstances exception. In addition, the Commission adds Ordering Paragraph No. 1A to ensure full compliance with the parties' stipulation regarding filing of future annual audits as the imposition of a requirement to file two past audits.

¹ The parties to the stipulation are the Office of Regulatory Affairs (ORA) and Southwestern Public Service Company. Various parts of the stipulation are contested by the Office of Public Utility Counsel (OPC), the Texas Industrial Energy Consumers (TIEC), and the City of Amarillo, intervenors in this proceeding.

² The non-unanimous stipulation consists of the stipulation filed on June 9, 1999, and the first amendment to stipulation, filed on September 7, 1999.

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I. DISCUSSION

In the PFD, the ALJ recommended that the Commission find that special circumstances exist to justify treating the Thunder Basin judgment and related litigation expenses as reconcilable fuel expenses, but that this amount be reduced by an expense amount currently recovered in base rates in order to avoid any double recovery. Accordingly, the ALJ recommended that SPS recover only \$ 8,887,788 pursuant to the special circumstances exception.

P.U.C. SUBST. R. 25.236(a)(6) establishes a special-circumstances test by which an electric utility may recover otherwise ineligible expenses as eligible fuel expenses. In determining whether special circumstances exist the Commission is required to consider, in addition to other factors,

whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.³

The ALJ concluded that: (1) the expenditures resulted in lower fuel expenses for customers; (2) the total savings in fuel expenses exceed the total expenses that customers would have paid; and (3) there is no pending or prospective rate case in which SPS can recover the judgment and litigation expenses.

SPS's current base rates recover \$3,556,221 in expenses booked to FERC Account 923-Outside Services. Account 923 is designed for all types of outside services, including litigation expenses, but does not include unanticipated contingencies such as court judgments. The Commission concurs that the special circumstances exception should be granted for the Thunder Basin litigation expenses and judgment, but finds that the ALJ's adjustment to these amounts is improper. The ALJ's recommendation to reduce the Thunder Basin litigation expenses *and*

³ P.U.C. SUBST. R. 25.236(a)(6).

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judgment by the total amount of FERC Account 923 expenses currently recovered in base rates fails to properly distinguish between the Thunder Basin litigation expenses, and the Thunder Basin judgment. Any such offset should apply only to the Thunder Basin litigation expenses in view of the scope and nature of FERC Account 923. Accordingly, the Commission determines that the \$253,974 in Thunder Basin litigation expenses allocable to SPS's Texas retail jurisdiction shall not be recovered as eligible fuel expenses pursuant to the special circumstances exception, given that such amount is already recovered in SPS's base rates through FERC Account 923. The Texas retail portion of the Thunder Basin judgment, \$12,180,034.97, shall not be offset by FERC Account 923, as that account is not designed to recover amounts attributable to judicial judgments.

Based on the foregoing, the Commission finds in accordance with the Administrative Procedure Act (APA)⁴ that the ALJ failed to distinguish between the Thunder Basin litigation expenses and judgment in applying the adjustment related to the FERC Account 923 expenses currently recovered through base rates. Accordingly, FoF 32 and CoL 8 are deleted, and FoF 32A and CoL 8A are added. Furthermore, Ordering Paragraph 1A is added to ensure full compliance with the parties' stipulation regarding filing of annual audits.

II. Findings of Fact and Conclusions of Law

The Commission adopts the following findings of fact and conclusions of law:

⁴ TEX. GOV'T CODE ANN. § 2003.049(g)(2) (Vernon 1999).

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A. Findings of Fact

Procedural History

1. On June 22, 1998, Southwestern Public Service Company (Southwestern) filed a petition with the Public Utility Commission of Texas (PUC or Commission) seeking to reconcile \$15,029,696 as eligible fuel and fuel-related expenses for the period of January 1995 through December 1997 (Reconciliation Period) pursuant to the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. § § 36.203 and 36.205 (Vernon 1998 & Supp. 2000).
2. Southwestern provided notice of this proceeding by publishing notice once each week for two consecutive weeks in newspapers of general circulation in each county in its Texas service area. In addition, Southwestern provided direct notice to its Texas jurisdictional customers by bill insert. Notice of this proceeding was also given by publication in the *Texas Register*.
3. On July 6, 1998, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH).
4. The Office of Public Utility Counsel (OPC), the Texas Industrial Energy Consumers (TIEC), the City of Amarillo (City), the Texas Cotton Ginners' Association (TCGA), and the Burlington Northern Santa Fe Railway Company (BNSF) intervened in the proceeding.
5. On August 12, 1998, the Commission issued a Preliminary Order identifying the issues or areas that must be addressed in this proceeding.
6. On August 19, 1998, the Commission's General Counsel, now the Legal Division of the Office of Regulatory Affairs (ORA) filed an *Inquiry of the General Counsel into the Billing Practices and Patterns of Southwestern Public Service Company's Fuel*

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Procurement Contractors, Docket No. 19770 (Docket No. 19770) after Dean Allen, an employee of Wheelabrator Coal Service Company (Wheelabrator) complained of certain practices he alleged were followed by Wheelabrator.

7. On October 7, 1998, the Commission referred Docket No. 19770 to SOAH.
8. On October 19, 1998, Docket No. 19770 was consolidated with Docket No. 19512 under the common style of *Petition of Southwestern Public Service Company for: (1) Reconciliation of its Fuel and Purchased Power Costs for 1995 through 1997; (2) Findings of Special Circumstances; and (3) Related Relief; and Inquiry into the Company's Fuel-Procurement Billing Practices.*
9. Dean Allen, a customer of Southwestern, intervened in the consolidated proceeding.
10. On June 9, 1999, Southwestern and ORA filed a Non-unanimous Stipulation (Stipulation) resolving all issues between them, which was amended on September 7, 1999.

Reconciliation Request and Interim Fuel Proceedings

11. During the Reconciliation Period, Southwestern incurred \$687,901,249 of total fuel and purchased power expenses for Texas retail customers (including the amounts for which a special-circumstances request is being made), but Southwestern collected only \$653,461,622 in revenues. After accounting for the beginning balance, refunds, credits, and surcharges, Southwestern's under-collection as of December 31, 1997, was \$21,154,699. A surcharge authorized in Docket No. 17410 will reduce the unreconciled under-collection to approximately \$14.6 million.
12. During this Reconciliation Period, Southwestern applied fixed fuel factors approved in Docket No. 9177 through April 1996. From May through December 1996, Southwestern

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used revised fixed fuel factors approved in Docket No. 15453, and from January through December 1997, Southwestern used revised fixed fuel factors approved in Docket No. 16605.

13. The periodic wholesale non-firm sales-margin crediting methodology authorized in Docket No. 10602 was used during this Reconciliation Period. In Docket No. 14174, the Commission ordered Southwestern to flow through 100 percent of the margins from the wholesale non-firm sales to the ratepayers effective on March 14, 1996.

Stipulation Between Southwestern and General Counsel

14. Southwestern and General Counsel recommend approval of Southwestern's petition to reconcile its fuel and purchased-power costs from January 1995 through December 1997, as amended and modified by the Stipulation. This resulted in an agreed reconciliation as shown in the following table:

Description	Amount
December 31, 1994, Over-recovery Balance	\$4,080,287
Fuel and Purchase Power Cost: 1/95 - 12/97	-675,884,629
Fuel Revenue Collected: 1/95 - 12/97	653,461,622
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Wholesale Non-Firm Margin Credit Transfers: 1/95 - 12/97	6,259,436
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Ault Audit Items	666,598
Fuel and Purchased Power Under-Recovery balance at 12/31/97	-21,154,699
Docket No. 17410 Surcharge Recoveries 1/98 - 12/98 Actual	6,555,442
Overcharge Claim Against ARCO	5,645,542
Reconciled Fuel Under-recovery Balance	-8,953,713
Overcharge Claim Against ARCO	-5,645,542
Fuel Under-recovery Balance Including Unreconciled Deferred Amount	-14,599,255
Reconciled Accumulated Interest Balance	-1,055,425

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15. OPC, the City, TIEC, and Dean Allen contest all or parts of the Stipulation.

Special Circumstances-Request for Thunder Basin Judgment and Related Legal Expenses

16. Southwestern is seeking a finding that special circumstances exist under P.U.C. SUBST. R. 25.236(a)(6) to permit it to recover approximately \$12.4 million in Texas-jurisdictional costs it incurred to lower coal costs during the Reconciliation Period in connection with Wyoming federal court litigation involving Thunder Basin Coal Company (Thunder Basin), a subsidiary of Atlantic Richfield Company (ARCO).
17. Southwestern procures coal from TUCO Inc. (TUCO) for Southwestern's two coal-fueled electric generating facilities, Harrington and Tolk-Stations, under a long-term sole supplier contract for each station (Coal Supply Agreements), both of which were executed on April 30, 1979.
18. TUCO had long-term coal supply agreements with Thunder Basin, dedicated to supplying the coal to Southwestern.
19. Prior to the Reconciliation period a dispute arose between TUCO and ARCO/Thunder Basin about the amount of coal that TUCO and, in turn, Southwestern, were required to take during the Reconciliation Period under the Revised Federal Coal Supply Agreement (Federal Agreement).
20. ARCO/Thunder Basin filed a lawsuit in Wyoming federal court seeking a determination that TUCO (and ultimately Southwestern) was required to purchase a total of 12,861,933 tons of coal under the Federal Agreement for the calendar years 1995 through 1997. TUCO contended that it was obligated to purchase only 9,000,000 tons for the three-year period.

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21. A jury awarded Thunder Basin damages totaling \$22,346,407.22 (\$12,180,034.97 Texas retail) against Southwestern for tortiously interfering with Thunder Basin's contract with TUCO.
22. The judgment relieved TUCO and Southwestern of the obligation to buy the disputed 3,861,933 tons of coal under the contract and allowed them to purchase lower-priced-spot coal.
23. Southwestern incurred approximately \$465,961 in expenses related to defending this action during the Reconciliation Period, \$253,974 of which is allocable to its Texas retail jurisdiction. The Stipulation recommends the recovery of these expenses as eligible fuel. —
24. Southwestern realized a net savings to the ratepayers of \$8,470,539 (\$4,616,915 Texas retail) by purchasing the lower-priced-spot coal and paying the judgment and litigation expenses instead of paying the contract price for the coal.
25. The Thunder Basin judgment and Southwestern's own litigation expenses in the Thunder Basin litigation resulted in lower coal costs than would otherwise have been the case, and the resulting benefits received by the ratepayers exceeded the costs ratepayers would otherwise have paid.
26. Southwestern's litigation efforts against Thunder Basin/ARCO were reasonable, necessary, and prudent.
27. Southwestern litigation expenses of \$465,961 were reasonable, necessary, and prudent.

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28. Southwestern's base rates are not currently under review in a general rate case, and there is little or no possibility that they will be reviewed in the near future.
29. Pursuant to P.U.C. SUBST. R. 25.236(a)(6), special circumstances exist to justify treating the Thunder Basin judgment and litigation expenses as reconcilable fuel expenses: (1) the expenditures have resulted in, and are reasonably expected to result in, lower fuel expenses for Southwestern's Texas customers, and (2) the total savings in fuel expenses accruing from those expenditures exceed the total expenses that Southwestern's Texas customers would have paid in the absence of the expenditures.
30. The Texas share of the Thunder Basin judgment and litigation expenses is \$12,434,009.
31. Southwestern recovers through its base rates \$3,556,221, booked to FERC Account 923-Outside services.
32. DELETED
- 32A. To preclude double recovery of the Thunder Basin litigation expenses, in view of the \$3,556,221 currently recovered by Southwestern through base rates through FERC Account 923- Outside Services, the \$253,974 in litigation expenses allocable to its Texas retail jurisdiction shall not be recovered as eligible fuel expenses pursuant to the special circumstances exception.

Eligible Fuel Expenses under the SPS/TUCO Coal Supply Agreements

33. During the Reconciliation Period, TUCO had long-term transportation agreements and entered into spot transportation agreements as necessary to satisfy Southwestern's coal transportation requirements.

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34. Southwestern's coal procurement activities resulted in reasonable and necessary cost of fuel to its ratepayers during the Reconciliation Period in the amount of \$836,227,627 (\$452,634,794 Texas retail), except for the disallowances of \$1,227,747.01 (\$666,559.39 Texas retail).
35. The Coal Supply Agreements allow TUCO to bill Southwestern monthly for the sum of:
(a) the FOB mine cost of coal; (b) the cost of transportation from the mine to the unloading facilities; (c) the costs incurred for furnishing railcars and for handling, storing, crushing, processing, weighing, and delivering coal; (d) all assessments and taxes (except federal and state income taxes) levied for any activity thereunder; (e) the cost of financing coal inventories; (f) the cost of coal losses; and (g) the margin to TUCO.
36. Wheelabrator is TUCO's coal handling subcontractor, which performs the unloading, handling, crushing, processing, weighing, and delivery of coal on behalf of TUCO.
37. The unloading of coal from trains and the handling, storing, crushing, processing, weighing, and conveying of coal occurs on property owned and operated by Wheelabrator located adjacent to Southwestern's generating plant sites.
38. Southwestern pays TUCO a delivered price for ready-to burn coal delivered to the generating station coal bunkers.
39. The point of delivery of coal from TUCO to Southwestern is at the generating station coal bunkers located on the generating plant sites.

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40. The contractual arrangement by which Southwestern takes delivery and pays TUCO a delivered price for coal at the generating-station-coal bunkers has been in place since 1979.
41. Southwestern's Coal Supply Agreements with TUCO have been reviewed previously in all of Southwestern's prior fuel reconciliation proceedings, including *Petition of General Counsel for a Fuel Reconciliation for Southwestern Public Service Company*, Docket No. 9030, 17 P.U.C. BULL. 395 (June 3, 1991) and *Petition of Southwestern Public Service Company for Fuel Reconciliation*, Docket No. 14174 (Mar. 14, 1996)(not published), which were fully litigated proceedings. The Commission approved the structure of the Coal Supply Agreements in Docket No. 9030.
42. The Commission's findings in the prior proceedings govern the eligibility of costs related to the TUCO contract.
43. In October 1996, Southwestern and NexGen/TUCO negotiated an amendment to the TUCO margin component of the coal price as provided for in the 1989 amendment previously approved by the Commission in Docket No. 9030. The margin to TUCO is designed to allow TUCO to recover, among other things, coal inventory charges for stockpiled coal at Harrington and Tolk.
44. The September 30, 1996, Margin Amendments reduced the margin component of the price of coal paid to TUCO, but the structure of the Coal Supply Agreements remained unchanged.
45. Because the margin is less than the margin that existed in prior proceedings, the current margin is a reasonable eligible fuel expense.

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Timing of Coal Inventory Reductions

46. The Stipulation recommends that Southwestern shall direct TUCO to target average coal inventories at the following level:

Harrington Station:

From July-December of 2000: 41 burn days, or 9,869,520 MMBtu.

Calendar Year 2001: 39 burn days, or 9,388,080 MMBtu.

Calendar Year 2002: 35 burn days, or 8,425,200 MMBtu.

Tolk Station:

From July-December of 2000: 41 burn days, or 10,135,200 MMBtu.

Calendar Year 2001: 39 burn days, or 9,640,800 MMBtu.

Calendar Year 2002: 35 burn days, or 8,652,000 MMBtu.

47. Contractual and operational constraints prevent Southwestern from achieving the coal inventory reductions earlier than proposed in the Stipulation. The timetable for reducing Southwestern's coal-inventory levels recommended in the Stipulation is reasonable.
48. Southwestern agrees that if inventory levels are maintained at more than the amounts set forth above, then Southwestern shall not be allowed to recover the carrying costs on the levels above the targets shown above

Issues from Docket No. 19770

49. The relationship between TUCO and Southwestern is controlled by the Coal Supply Agreements, which specifically delineate the parties' rights and obligations.

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50. Southwestern has a right under the Coal Supply Agreements to audit TUCO's expenditures for purchasing and delivering coal.
51. In August 1997, TUCO retained Marilyn C. Ault to complete an audit of all charges made to TUCO by Wheelabrator under the Wheelabrator Agreements for 1995 and 1996.
52. The Stipulation recommends that the recovery of the improper charges by TUCO's coal handling suppliers during the Reconciliation Period shall be treated as having been made ratably during the Reconciliation Period even though they were not paid to ratepayers until 1999. The Stipulation recommends that an adjustment of \$666,598 will be deducted from Southwestern's requested recovery to reflect this treatment.

Timing and Content of Audit Reports

53. The Stipulation recommends that Southwestern shall ensure that the internal audit staff whose services it uses to audit TUCO: (i) continues annual audits of the contracts and transactions of coal purchases with TUCO, emphasizing compliance/management fraud techniques; and (ii) participates in continuing education that focuses on the area of compliance auditing and fraud auditing.
54. The Stipulation recommends that, beginning in 1998, Southwestern will require TUCO to perform annual audits of its contractors in accordance with generally accepted audit procedures. Southwestern also will require TUCO to use a qualified independent auditor to perform audits on TUCO's vendors. Southwestern will require TUCO to audit each of its contractors that provide supplies or services that are priced based on the contractor's actual costs or operations (e.g., cost pass through, productivity sharing provisions). TUCO shall not be required to audit fixed-price contracts, index adjusted pricing contracts with publicly available indices or index data, or any other agreement with

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pricing structures that are not related to the contractor's actual costs. The parties recognize that TUCO's right to audit ARCO is the subject of currently pending litigation and, accordingly, cannot currently be subject to this obligation.

55. The Stipulation recommends that Southwestern shall require TUCO to perform a performance audit of Wheelabrator. The performance audit shall be an audit to determine whether Wheelabrator is acquiring and using its resources economically and efficiently in accordance with prudent and safe practices and whether or not Wheelabrator is complying with established policies regarding matters of economy and efficiency.
56. The Stipulation recommends that Southwestern shall file future annual audits performed by it of TUCO and TUCO's audits of its contractors in a separate project established for those purposes. For each audit, Southwestern shall file the engagement letter, a description of the scope of the audit, the audit program description, and the final audit report. The information filed in the project shall be made available to any party requesting a copy of the documents filed in the project. In addition, any party requesting additional audit documentation shall be provided a copy of the requested information. The parties recognize that certain audit information may be confidential; in that event, the protective order in force in this docket shall govern the production of that information.
57. The Stipulation recommends that Southwestern also shall strongly encourage TUCO to:
(i) ensure that its audit staff continues annual audits of the contracts and transactions of coal handling purchases with Wheelabrator, emphasizing compliance/management fraud techniques; (ii) ensure that its auditing staff participates in continuing education that focuses on the area of compliance auditing and fraud auditing; (iii) have its audit staff ensure that Wheelabrator implements and adheres to a system of strong internal controls and policies, particularly those related to purchasing practices; and (iv) engage an independent audit firm to perform audits of Wheelabrator for 1998 and 1999, which

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should focus specifically on contract compliance and billing procedures, documenting evidence as to whether or not Wheelabrator has corrected the various deficiencies reported in the independent accountant reviews covering the Reconciliation Period.

58. The audit requirements of the Stipulation are reasonable and in the public interest. Because a 90-day deadline for the audits could impair a thorough audit, requiring a deadline is not in the public interest.
59. There is no indication that the business practices of Southwestern's fuel contractors were fraudulent.

Interest on Deferral Portion of ARCO's Labor Costs

60. Southwestern's audit of TUCO raised questions about the labor-pricing components of the coal invoices TUCO received from its coal supplier, Thunder Basin/ARCO. The issue is involved in two pending lawsuits. TUCO contends that it was overcharged \$10.2 million.
61. The \$10.2 million Overcharge Claim Against ARCO (\$5,645,541.77 on a Texas jurisdictional basis) is not to be reconciled or otherwise reviewed in this proceeding because to do so would be inconsistent with the Commission's goal of having a fuel reconciliation proceeding track a company's actual costs. Rather, it is reasonable to defer consideration of the Overcharge Claim against ARCO until Southwestern's next fuel reconciliation.
62. It is likewise reasonable to defer consideration of the interest that accumulated during the Reconciliation Period on the \$10.2 million Overcharge Claim until Southwestern's next reconciliation.

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Gas Contracts and Administration

63. Southwestern's gas and fuel oil procurement activities resulted in reasonable and necessary cost of fuel to its ratepayers during the Reconciliation Period of \$433,850,545 (\$234,835,403 Texas retail).
64. Southwestern's gas administration activities resulted in more competitive options.

Affiliate Transactions

65. Southwestern's fuel and purchased power transactions with its affiliates during the Reconciliation Period were reasonable and necessary, and the costs allocated to Texas jurisdictional customers were no higher than Southwestern would have paid for fuel and power purchased from non-affiliated entities.

Margin

66. Under the terms of the Stipulation, Southwestern will not share margins from wholesale non-firm sales in this proceeding, but Southwestern is not prevented from requesting sharing arrangements in future proceedings.

City's Rate-Case Expenses

67. The City of Amarillo filed affidavits detailing its rate case expenses in the amount of \$58,821.49. There are no expenses in excess of 12 hours per day per person, no luxury lodging, and no first class airfares or meals in excess of \$25.00 per person per meal.

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69. The City's rate case expenses of \$58,821.49 are reasonable.

B. Conclusions of Law

1. Southwestern is a public utility as defined in the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. §§11.004(a) and 31.002(1) (Vernon 1998 & Supp. 2000).
2. The Commission has jurisdiction and authority over Southwestern and this matter under PURA. §§ 14.001, 32.001, 36.203 and 36.205.
3. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of the proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.049(b) (Vernon 2000.)
4. Southwestern provided adequate notice to affected persons pursuant to P.U.C. SUBST. R. 25.235(b).
5. Southwestern's petition complied with the requirements of P.U.C. SUBST. R. 25.236(c).
6. Southwestern met its burden of proof as specified in P.U.C. SUBST. R. 25.236(d). Unless stated otherwise, all matters addressed in the findings of fact that constitute eligible fuel, fuel-related, and purchased power expenses were reasonable and necessary expenses incurred by Southwestern during the period of reconciliation, and should be reconciled in this proceeding.
7. Pursuant to Findings of Fact Nos. 16 through 29, Southwestern has satisfied the special-circumstances test contained in P.U.C. SUBST. R. 25.236(a)(6) for the Thunder Basin litigation judgment and expenses incurred during the reconciliation period.

PUC DOCKET NO. 19512
SOAH DOCKET NO. 473-98-1299

ORDER

8. DELETED

- 8A. To preclude double recovery of the Thunder Basin litigation expenses, in view of the \$3,556,221 currently recovered by Southwestern through base rates through FERC Account 923- Outside Services, the \$253,974 in litigation expenses allocable to its Texas retail jurisdiction shall not be recovered as eligible fuel expenses pursuant to the special circumstances exception.
9. Southwestern's delivered cost of coal qualifies as an eligible fuel expense under the Commission's P.U.C. SUBST. R 25.236(a)(1).
10. The fuel and fuel-related expenses Southwestern seeks to reconcile, as agreed in the Stipulation, are reasonable.
11. Southwestern's gas and coal contracts have been properly administered.
12. Southwestern's affiliate expenses comply with PURA § 36.058 and P.U.C. SUBST. R. 25.236(d)(1)(B). Southwestern's fuel and fuel-related affiliate transactions during the Reconciliation Period were reasonable and necessary, and the price paid by Southwestern was not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a non-affiliated person for the same item or class of items.
13. The Stipulation filed by Southwestern and the Office of Regulatory Affairs of the Commission is reasonable. Accordingly, it is reasonable and necessary to issue an order consistent with the Stipulation and to adopt requirements for future conduct based upon that Stipulation.

PUC DOCKET NO. 19512
SOAH DOCKET NO. 473-98-1299

ORDER

C. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Petition filed by Southwestern Public Service Company to reconcile fuel and fuel-related expenses for the period beginning January 1, 1995, and ending December 31, 1997, is approved as modified and explained in this Order.
- 1A. Southwestern shall file its 1998 audit of TUCO and TUCO's 1998 audit of Wheelabrator Coal Services Company and Swindell-Dressler Energy Supply Company in Project No. 22645, *Southwestern Public Service Company and TUCO Inc. Annual Audit Filings in Compliance with Docket No. 19512*. Southwestern shall also file its future audits of TUCO and TUCO's future audits of its contractors in Project No. 22645. The scope of and level of detail in such future audits shall be consistent with the scope of and level of detail in the Southwestern and TUCO 1998 audits filed in Project No. 22645. For each future audit, Southwestern shall file the engagement letter, a description of the scope of the audit, the audit program description, and the final audit report. The information filed in Project No. 22645 shall be made available to any party requesting a copy of the documents filed in the project. In addition, any party requesting additional audit documentation shall be provided a copy of the requested information. Certain audit information may be alleged as confidential; in that event, the protective order in force in this docket shall govern the production of that information.
2. The entry of an order consistent with the Stipulation does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement. Neither should the entry of an order consistent with the agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the agreement, except that this Order shall constitute a precedent for Southwestern to the extent that the Commission's Order determines: (1) the

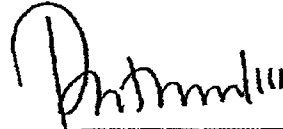
PUC DOCKET NO. 19512
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reasonableness and prudence of the original prices, terms, and conditions of contracts at issue in this proceeding, or (2) the reasonableness and prudence of Southwestern's action in certain litigation at issue in this proceeding.

3. All other motions, request for entry of specific findings of fact or conclusions of law, and any other request for general or specific relief, if not granted herein, are hereby denied for want of merit.

SIGNED AT AUSTIN, TEXAS on the 12th day of July, 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN



JUDY WALSH, COMMISSIONER



BRETT PERLMAN, COMMISSIONER

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Project No. 26345

**Southwestern Public Service Company
d.b.a. Xcel Energy
2002 Update Report for Electric Utilities
to the
Public Utility Commission of Texas**

August 30, 2002

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**PUBLIC UTILITY COMMISSION OF TEXAS
UPDATE 2002 REPORT**

TABLE 1: PEAK DEMAND

Southwestern Public Service company d.b.a. Xcel Energy

TO BE COMPLETED BY ALL UTILITIES**HISTORICAL COINCIDENT PEAK DEMAND BY SECTOR (MW) - TOTAL SYSTEM**

Year	Retail					Total Wholesale	Total Peak Demand	Interrupted on Peak
	Residential	Commercial	Industrial	Other	Total			
2001					3,158	1,505	4,663	(295)

PROJECTED COINCIDENT PEAK DEMAND BY SECTOR (MW) - TOTAL SYSTEM

Year	Retail					Total Wholesale	Total Peak Demand	Interruptible Load	Firm Demand
	Residential	Commercial	Industrial	Other	Total				
2002					2,922	1,438	4,360	(295)	4,065
2003					2,965	1,474	4,440	(295)	4,145
2004					3,032	1,290	4,322	(295)	4,027
2005					3,107	1,229	4,336	(295)	4,041
2006					3,186	968	4,154	(295)	3,859

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES**HISTORICAL COINCIDENT PEAK DEMAND BY SECTOR (MW) - TEXAS SYSTEM**

Year	Retail					Total Wholesale	Total Peak Demand	Interrupted on Peak
	Residential	Commercial	Industrial	Other	Total			
2001						1,180		(219)

PROJECTED COINCIDENT PEAK DEMAND BY SECTOR (MW) - TEXAS SYSTEM

Year	Retail					Total Wholesale	Total Peak Demand	Interruptible Load	Firm Demand
	Residential	Commercial	Industrial	Other	Total				
2002						1,085		(219)	
2003						1,108		(219)	
2004						907		(219)	
2005						832		(219)	
2006						762		(219)	

Notes

1. Interrupted on Peak refers to the amount of load, if any, that was interrupted at the time of the system peak in 2001.
2. Firm Demand = Total Peak Demand - Interruptible Load

Utility contact for the data in this table

Name: Jannell Marks

Phone: 303-294-2454

Email: jannell.marks@xcelenergy.com

**PUBLIC UTILITY COMMISSION OF TEXAS
UPDATE 2002 REPORT**

Exhibit No. OPC14-18

Page 3 of 12

TABLE 2: ENERGY DATA

Southwestern Public Service Company d.b.a. Xcel Energy

TO BE COMPLETED BY ALL UTILITIES

HISTORICAL ENERGY BY SECTOR (MWH)

	Retail					Total Wholesale	Total System
Year	Residential	Commercial	Industrial	Other	Total		
2001	3,283,810	6,608,980	5,321,908	553,204	15,767,701	8,531,392	24,299,093

PROJECTED ENERGY BY SECTOR (MWH)

	Retail					Total Wholesale	Total System
Year	Residential	Commercial	Industrial	Other	Total		
2002	3,333,831	7,116,424	5,009,813	563,321	16,023,189	8,570,537	24,593,726
2003	3,374,164	7,217,846	5,091,555	567,373	16,250,938	8,717,121	24,968,058
2004	3,441,456	7,371,394	5,243,814	580,292	16,636,956	7,785,142	24,422,098
2005	3,511,343	7,526,986	5,405,653	593,600	17,037,582	7,575,095	24,612,677
2006	3,576,602	7,684,439	5,574,509	607,093	17,444,643	6,137,943	23,582,587

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES

HISTORICAL ENERGY BY SECTOR (MWH)

	Retail					Total Wholesale	Total System
Year	Residential	Commercial	Industrial	Other	Total		
2001	2,341,723	5,143,559	4,149,005	396,990	12,031,277	5,094,428	17,125,705

PROJECTED ENERGY BY SECTOR (MWH)

	Retail					Total Wholesale	Total System
Year	Residential	Commercial	Industrial	Other	Total		
2002	2,378,398	5,586,973	3,929,241	403,998	12,298,609	5,321,660	17,620,269
2003	2,407,281	5,662,250	3,986,892	407,046	12,483,470	4,716,127	17,199,597
2004	2,455,069	5,810,523	4,103,727	416,473	12,785,791	3,693,877	16,479,668
2005	2,505,167	5,941,123	4,227,899	426,217	13,100,406	3,389,590	16,489,996
2006	2,553,186	6,073,898	4,357,399	436,085	13,420,568	3,032,338	16,452,905

Utility contact for the data in this table

Name: Jannell Marks

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**PUBLIC UTILITY COMMISSION OF TEXAS
UPDATE 2002 REPORT**

TABLE 3: CUSTOMER DATA

Southwestern Public Service Company d.b.a. Xcel Energy

TO BE COMPLETED BY ALL UTILITIES**HISTORICAL NUMBER OF CUSTOMERS BY SECTOR**

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2001	306,622	74,632	129	5,786	387,169	16	387,185

PROJECTED NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2002	307,063	75,984	121	5,876	389,045	16	389,061
2003	307,658	78,063	123	5,956	391,801	15	391,816
2004	308,465	79,898	127	6,019	394,509	13	394,522
2005	309,339	81,936	130	6,097	397,503	11	397,514
2006	310,373	83,961	134	6,174	400,642	7	400,649

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES**HISTORICAL NUMBER OF CUSTOMERS BY SECTOR**

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2001	214,059	53,281	90	4,105	271,535	11	271,546

PROJECTED NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2002	214,890	54,320	85	4,193	273,488	10	273,498
2003	215,308	55,806	87	4,250	275,449	10	275,459
2004	215,871	57,118	90	4,295	277,373	8	277,381
2005	216,483	58,575	92	4,350	279,499	8	279,507
2006	217,206	60,023	94	4,405	281,728	4	281,732

Utility Contact for the data in this table

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Project No. 26345

**Southwestern Public Service Company
d.b.a. Xcel Energy
2002 Update Report for Electric Utilities
to the
Public Utility Commission of Texas**

August 30, 2002

Revised

**PUBLIC UTILITY COMMISSION OF TEXAS
UPDATE 2002 REPORT**

Exhibit No. OPC14-18

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TABLE 1: PEAK DEMAND
Southwestern Public Service Company d.b.a. Xcel Energy

TO BE COMPLETED BY ALL UTILITIES

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PROJECTED COINCIDENT PEAK DEMAND BY SECTOR (MW) - TOTAL SYSTEM

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TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES

HISTORICAL COINCIDENT PEAK DEMAND BY SECTOR (MW) - TEXAS SYSTEM

Year	Retail					Total Wholesale	Total Peak Demand	Interrupted on Peak
	Residential	Commercial	Industrial	Other	Total			
2001						976		(219)

PROJECTED COINCIDENT PEAK DEMAND BY SECTOR (MW) - TEXAS SYSTEM

Year	Retail					Total Wholesale	Total Peak Demand	Interruptible Load	Firm Demand
	Residential	Commercial	Industrial	Other	Total				
2002					2,254	880	3,134	(219)	2,915
2003					2,290	904	3,194	(219)	2,974
2004					2,341	702	3,043	(219)	2,824
2005					2,400	627	3,027	(219)	2,808
2006					2,462	557	3,020	(219)	2,801

Notes

1. Interrupted on Peak refers to the amount of load, if any, that was interrupted at the time of the system peak in 2001.
2. Firm Demand = Total Peak Demand - Interruptible Load

Utility contact for the data in this table

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**PUBLIC UTILITY COMMISSION OF TEXAS
UPDATE 2002 REPORT**

Exhibit No. OPC14-18

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TABLE 2: ENERGY DATA

Southwestern Public Service Company d.b.a. Xcel Energy

TO BE COMPLETED BY ALL UTILITIES

HISTORICAL ENERGY BY SECTOR (MWH)

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	Residential	Commercial	Industrial	Other	Total		
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2005	3,511,343	7,526,986	5,405,653	593,600	17,037,582	7,575,095	24,612,677
2006	3,578,602	7,684,439	5,574,509	607,093	17,444,643	6,137,943	23,582,587

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES

HISTORICAL ENERGY BY SECTOR (MWH)

Year	Retail					Total Wholesale	Total System
	Residential	Commercial	Industrial	Other	Total		
2001	2,341,723	5,143,559	4,149,005	396,990	12,031,277	5,094,428	17,125,705

PROJECTED ENERGY BY SECTOR (MWH)

Year	Retail					Total Wholesale	Total System
	Residential	Commercial	Industrial	Other	Total		
2002	2,378,398	5,586,973	3,929,241	403,998	12,298,609	5,321,660	17,620,269
2003	2,407,281	5,682,250	3,986,892	407,046	12,483,470	4,716,127	17,199,597
2004	2,455,069	5,810,523	4,103,727	416,473	12,785,791	3,693,677	16,479,468
2005	2,505,167	5,941,123	4,227,899	426,217	13,100,406	3,389,590	16,489,996
2006	2,553,186	6,073,898	4,357,399	436,085	13,420,568	3,032,338	16,452,905

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**PUBLIC UTILITY COMMISSION OF TEXAS
UPDATE 2002 REPORT**

Exhibit No. OPC14-18

Page 8 of 12

TABLE 3: CUSTOMER DATA
Southwestern Public Service Company d.b.a. Xcel Energy

TO BE COMPLETED BY ALL UTILITIES

HISTORICAL NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2001	306,622	74,632	129	5,786	387,169	16	387,185

PROJECTED NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2002	307,063	75,984	121	5,876	389,045	16	389,061
2003	307,658	78,063	123	5,956	391,801	15	391,816
2004	308,465	79,898	127	6,019	394,509	13	394,522
2005	309,339	81,936	130	6,097	397,503	11	397,514
2006	310,373	83,961	134	6,174	400,642	7	400,649

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES

HISTORICAL NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2001	214,059	53,281	90	4,105	271,535	11	271,546

PROJECTED NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2002	214,890	54,320	85	4,193	273,488	10	273,498
2003	215,306	55,806	87	4,250	275,449	10	275,459
2004	215,871	57,118	90	4,295	277,373	8	277,381
2005	216,483	58,575	92	4,350	279,499	8	279,507
2006	217,206	60,023	94	4,405	281,728	4	281,732

Utility Contact for the data in this table

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Project No. 28266

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**Southwestern Public Service Company
d.b.a. Xcel Energy
2003 Update Report For Electric Utilities
to the
Public Utility Commission of Texas**

August 27, 2003

TABLE 1: PEAK DEMAND
Southwestern Public Service Company

TO BE COMPLETED BY ALL UTILITIES

HISTORICAL COINCIDENT PEAK DEMAND BY SECTOR (MW) - TOTAL SYSTEM

Year	Retail				Total Wholesale	Total Peak Demand	Interrupted on Peak
	Residential	Commercial	Industrial	Other			
2002					2,906	1,405	4,311
							0

PROJECTED COINCIDENT PEAK DEMAND BY SECTOR (MW) - TOTAL SYSTEM

Year	Retail				Total Wholesale	Total Peak Demand	Interruptible Load	Firm Demand
	Residential	Commercial	Industrial	Other				
2003					2,915	1,649	4,564	(326)
2004					2,944	1,398	4,342	(326)
2005					2,983	1,248	4,231	(326)
2006					3,024	1,009	4,033	(326)
2007					3,066	959	4,025	(326)

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES

HISTORICAL COINCIDENT PEAK DEMAND BY SECTOR (MW) - TEXAS SYSTEM

Year	Retail				Total Wholesale	Total Peak Demand	Interrupted on Peak
	Residential	Commercial	Industrial	Other			
2002					2,045	875	2,920
							0

PROJECTED COINCIDENT PEAK DEMAND BY SECTOR (MW) - TEXAS SYSTEM

Year	Retail				Total Wholesale	Total Peak Demand	Interruptible Load	Firm Demand
	Residential	Commercial	Industrial	Other				
2003					2,051	1,062	3,113	(255)
2004					2,071	797	2,868	(255)
2005					2,099	633	2,732	(255)
2006					2,128	564	2,692	(255)
2007					2,158	567	2,725	(255)

Notes

1. Interrupted on Peak refers to the amount of load, if any, that was interrupted at the time of the system peak in 2002.
2. Firm Demand = Total Peak Demand - Interruptible Load

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PUBLIC UTILITY COMMISSION OF TEXAS
Project No. 28266: 2003 Update Report for Electric Utilities

Exhibit No. OPC14-18

Page 11 of 12

TABLE 2: ENERGY DATA
Southwestern Public Service Company

TO BE COMPLETED BY ALL UTILITIES

HISTORICAL ENERGY BY SECTOR (MWH)

	Retail					Total	Total
Year	Residential	Commercial	Industrial	Other	Total	Wholesale	System
2002	3,281,121	7,023,871	4,758,546	544,508	15,608,046	8,038,545	23,646,591

PROJECTED ENERGY BY SECTOR (MWH)

	Retail					Total	Total
Year	Residential	Commercial	Industrial	Other	Total	Wholesale	System
2003	3,304,847	5,770,372	6,408,715	551,436	16,035,370	9,579,800	25,615,170
2004	3,363,784	5,775,398	6,578,654	558,534	16,276,369	8,621,064	24,897,433
2005	3,403,689	5,801,370	6,731,256	566,971	16,503,286	7,917,979	24,421,265
2006	3,456,514	5,871,011	6,900,812	575,815	16,804,151	6,616,537	23,420,688
2007	3,511,446	5,941,673	7,077,003	584,425	17,114,547	6,344,537	23,459,084

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES

HISTORICAL ENERGY BY SECTOR (MWH)

	Retail					Total	Total
Year	Residential	Commercial	Industrial	Other	Total	Wholesale	System
2002	2,327,763	5,519,175	3,645,158	389,138	11,881,234	4,945,055	16,826,289

PROJECTED ENERGY BY SECTOR (MWH)

	Retail					Total	Total
Year	Residential	Commercial	Industrial	Other	Total	Wholesale	System
2003	2,351,326	4,376,046	5,164,788	397,106	12,289,266	5,989,159	18,278,425
2004	2,403,321	4,388,320	5,304,266	402,163	12,498,070	4,931,046	17,429,116
2005	2,428,795	4,414,007	5,425,306	408,175	12,676,284	4,140,501	16,816,784
2006	2,466,582	4,470,707	5,581,191	414,551	12,913,031	3,803,948	16,716,979
2007	2,505,648	4,528,441	5,702,213	420,720	13,157,023	3,838,909	16,995,931

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TABLE 3: CUSTOMER DATA
Southwestern Public Service Company

TO BE COMPLETED BY ALL UTILITIES

HISTORICAL NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2002	304,971	75,514	162	5,615	386,262	15	386,277

PROJECTED NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2003	310,018	78,087	150	5,958	394,214	16	394,230
2004	310,509	78,304	154	5,970	394,937	15	394,952
2005	311,076	79,804	158	5,981	396,819	13	396,832
2006	311,827	80,830	162	6,002	398,820	8	398,828
2007	312,585	82,073	166	6,020	400,844	7	400,851

TO BE COMPLETED BY MULTIJURISDICTIONAL UTILITIES

HISTORICAL NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2002	212,051	53,836	117	4,010	270,014	10	270,024

PROJECTED NUMBER OF CUSTOMERS BY SECTOR

Year	Retail					Total Wholesale	Total Customers
	Residential	Commercial	Industrial	Other	Total		
2003	217,057	55,723	111	4,209	277,099	11	277,110
2004	217,399	55,878	113	4,217	277,607	10	277,617
2005	217,794	56,805	116	4,225	278,940	8	278,948
2006	218,317	57,680	119	4,240	280,356	4	280,360
2007	218,845	58,567	122	4,253	281,787	4	281,791

Utility Contact for the data in this table

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PUBLIC UTILITY COMMISSION
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APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY FOR §
CERTIFICATION OF QUALIFYING §
FACILITY PURCHASED POWER §
CONTRACT UNDER SECTION 2.209 §
OF PURA95 §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

On May 30, 1997, Southwestern Public Service Company (Southwestern or SPS) filed an application with the Public Utility Commission of Texas (Commission) requesting certification of a qualifying facility (QF) purchased-power contract under §§ 35.062-35.065 and 36.208 of the Public Utility Regulatory Act.¹

In this Order, the Commission finds that the proposed qualifying facility (QF) contract between Borger Energy Associates (BEA) and SPS meets the certification standards of PURA §35.064. Therefore, the Commission grants certification of the contract. However, as discussed in Section II of this Order, the Commission also finds that certification of the contract shall not serve as a basis for recovery of stranded costs, if any, associated with the QF contract, if and when such recovery becomes appropriate. The Commission also modifies and/or clarifies several findings and conclusions in the PFD relating to the applicability of PURA §36.058 (Consideration of Payment to an Affiliate) and PURA §34.153 (Exemption for Certain Facilities).

In granting certification of the QF contract, the Commission concludes that this resource acquisition is the last from the era of "old world" resource acquisitions. That is, the Commission expects that any future utility resource acquisitions will be governed by the integrated resource planning (IRP) requirements of Chapter 34 of PURA. Furthermore, SPS's exemption from those IRP requirements pursuant to PURA §34.153 is unique due to the timing associated with SPS's

¹ Public Utility Regulatory Act, 75th Leg., R.S. ch. 166, § 1, 1997 Tex. Sess. Law Serv. 713 (Vernon) (to be codified at TEX. UTIL. CODE ANN. §§11.001-63.063) (PURA). Note: Southwestern filed its application under the Public Utility Regulatory Act of 1995, TEX. REV. CIV. STAT. ANN. art. 1446c-0, §2.209 (PURA95)(repealed 1997).

resource acquisition requirements and the existence of its notice of intent,² which the Commission approved just prior to the legislative enactment of Chapter 34 of PURA.³ Therefore, the Commission concludes that its approval in this case involves unique circumstances applicable only to SPS and, as such, this decision should not be relied upon as precedent in future resource acquisition proceedings that are governed by Chapter 34 of PURA.

The Proposal for Decision (PFD) issued by the administrative law judge (ALJ), containing findings of fact and conclusions of law, is adopted and incorporated into this Order, except to the extent specified by this Order or inconsistent with this Order. Findings of fact and conclusions of law have been added, changed or deleted where appropriate to reflect the determinations of the Commission, followed by the Ordering Paragraphs of the Commission.

I. PURA §36.058: Consideration of Payment to an Affiliate

PURA §36.058 contains the statutory requirements regarding payments to affiliated interests. Specifically, PURA §§ 36.058(b) and (c) state:

- (b) The regulatory authority may allow a payment described by Subsection (a) only to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the commission.
- (c) A finding under Subsection (b) must include:
 - (1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and
 - (2) a finding that the price to the electric utility is not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

² *Application of Southwestern Public Service Company for Approval of Notices of Intent for a 203 MW Philips Cogeneration Project and a 103 MW Combustion Turbine Project*, Docket No. 13827, 20 P.U.C. BULL. 1880 (July 12, 1995)(mem.)(Docket No. 13827).

³ SPS received approval of its NOI on July 12, 1995. PURA Chapter 34 (formerly PURA95 §2.051) became effective September 1, 1995.

The PFD notes that “[a]ny QF [contract] that meets the statutory criteria under PURA §§ 35.061-35.064 would have its contract payments deemed reasonable.”⁴ The PFD concludes, therefore, that the finding of reasonableness satisfies PURA §36.058 as well, and that no additional findings are necessary under the statutory provision.

The Commission agrees that certification under PURA §§ 35.061-35.064 fulfills the “reasonable and necessary” finding required by PURA §36.058(c)(1); however, it does not agree that, as concluded in the PFD, no additional findings are necessary. The statute requires specific findings under both PURA §36.058(c)(1) and PURA §36.058(c)(2) if the Commission is to approve a QF contract which will result in payments to an affiliate. Therefore, in addition to a finding that the QF contract is reasonable and necessary under PURA §36.058(c)(1), the Commission must also determine whether the transaction meets the requirements of PURA §36.058(c)(2).

Because BEA⁵ is a single-purpose entity and, as such, will not provide electric power and energy to others,⁶ the Commission concludes that the price to SPS is not higher than the prices charged by Quixx to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items. Thus, the Commission finds that the QF contract meets the requirements of PURA §36.058(c)(2).

While certification of the QF contract precludes any future examination regarding the prudence of the terms and conditions of the contract, the Commission finds that there is an interest in protecting future SPS consumers by ensuring that SPS’s performance-based contract with its affiliate is prudently administered. Accordingly, the Commission concludes that the certification of this contract does not imply or assure blanket approval of future purchased power or fuel costs incurred under the contract. Such payments may be reviewed for their

⁴ PFD at 52.

⁵ BEA is a 50/50 joint venture involving Quixx Corporation, an SPS affiliate, and LS Power.

⁶ PFD at 50.

reasonableness and necessity, consistent with the terms and conditions of the QF contract, in a future rate, fuel or other appropriate proceeding.

II. Stranded Costs

In prior cases involving the certification of power contracts, the Commission has found that there exists a risk of regulatory change during the life of the proposed contracts. In light of this risk, the Commission has concluded that its certification of a contract shall not serve as a basis for stranded cost recovery.⁷ However, none of those prior certification cases in which the Commission has addressed the issue of stranded costs have involved contract certifications pursuant to PURA §§ 35.061-35.064 and 36.208.

Recognizing the Commission's concern regarding stranded cost implications, Southwestern states in its Reply to Exceptions that it "is willing to accept an order certifying the QF Contract with a limitation that the certification may not serve as a basis for recovery of stranded cost, if any, associated with the QF Contract, if and when such recovery becomes appropriate."⁸ The Commission commends SPS for stepping forward to accept the risk of future stranded cost recovery. In light of Southwestern's statement, the Commission finds that it is unnecessary to reach a determination as to whether certification of the QF pursuant to PURA §§ 35.061-35.064 and 36.208 confers any right to the future recovery of stranded costs as a matter of law.

⁷ See Docket No. 13575, *Application of Texas Utilities Electric Company For Relief Regarding Solicitation of Resources, Related Current Cost Recovery and Incentive Mechanisms, and Other Relief*, Second Order on Rehearing at 3 (Feb. 11, 1997); Docket No. 15100, *Request of Golden Spread Electric Cooperative, Inc., for Determinations Required by Section 32(k) of the Public Utility Holding Company Act and for Certification of Contract*, Order at 1 (Feb. 11, 1997); and Docket No. 16433, *Application of Southwestern Electric Service Company to Certify a Full Requirements Power Supply Agreement*, Order at 4 (June 6, 1997).

⁸ Southwestern Public Service Company's Reply to Exceptions to the Proposal for Decision at 47 (Oct. 16, 1997).

III. Applicability of PURA §34.153(b)

In its preliminary order, the Commission focused on the provisions of PURA §34.153(a) in its analysis of whether the proposed QF contract should be exempt from the broader integrated resource planning requirements of Chapter 34 of PURA.⁹ In its analysis of the applicability of PURA §34.153, the PFD found that the requirements of PURA §34.153(a),¹⁰ which the Commission stated in its preliminary order were applicable in this proceeding, were distinguishable from the requirements of PURA §34.153(b).¹¹ Accordingly, the PFD concludes that the requirements of PURA §34.153(b) are not applicable in this proceeding.

The Commission finds that PURA §34.153(b) is applicable to SPS in this proceeding. Therefore, it does not adopt the legal conclusion in the PFD regarding the inapplicability of this subsection.¹² In its preliminary order, the Commission found that “[w]hile PURA §2.051(dd) refers specifically to the approval of an application for a certificate of convenience and necessity (CCN), the Commission finds that a more economical alternative to the CCN, such as may be true for the QF contract proposed in this case, lies within the intent of [§]2.051(dd).”¹³ While the Commission did not focus specifically in its preliminary order on the requirements contained in PURA §34.153(b), it did find that PURA §34.153 (or PURA95 §2.051(dd)), as a whole, is applicable in this proceeding.

Nevertheless, the Commission agrees with the PFD’s conclusion that SPS has, through its all-source solicitation, met the requirements of PURA §34.153(b). Therefore, the Commission’s disagreement with the PFD’s conclusion regarding the applicability of PURA §34.153(b) is not germane to the resolution of this issue.

⁹ Preliminary Order at 3-7 (July 17, 1997).

¹⁰ PURA §34.153(a) sets forth the criteria that must be satisfied for the Commission to issue a certificate of convenience and necessity (CCN) for the construction of a generation facility without the utility having first completed the IRP process.

¹¹ PURA §34.153(b) contains additional criteria that must be satisfied prior to the Commission’s issuance of a CCN under Section 34.153.

¹² PFD at 48-49.

¹³ PURA §34.153(a) and (b) contain the provisions formerly found in PURA95 §2.051(dd).

IV. Modifications To The PFD's Proposed Findings of Fact And Conclusions of Law

The Commission adopts the findings of fact (FF) and conclusions of law (CL) recommended in the PFD, with the exceptions described in this section of the Order. The reasons for these changes are also described as required by §2003.047 of the Government Code.

1. Finding of Fact No. 62A and Ordering Paragraph No. 2A are added to reflect the position of Southwestern regarding future stranded cost recovery, as discussed in Section II of this Order.

FF62A. SPS is willing to accept an order certifying the QF contract with a limitation that the certification may not serve as a basis for recovery of stranded cost, if any, associated with the QF contract, if and when such recovery becomes appropriate.

OP2A. In consideration of the position of Southwestern, as stated in Finding of Fact No. 62A, certification of the QF contract shall not serve as a basis for recovery of future stranded costs, if any, associated with the QF contract, if and when such recovery becomes appropriate.

2. Finding of Fact No. 79A is added to complete the statutorily required findings of PURA §36.058(c), as discussed in Section I of this Order.

FF79A. BEA is a single-purpose entity and, as such, will not provide electric power and energy to others. Therefore, the price to SPS is not higher than the prices charged by Quixx to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

3. Proposed Conclusion of Law No. 2 is modified to include the Commission's jurisdiction under PURA §36.058.

CL2. The Commission has jurisdiction over this case pursuant to PURA §§ 14.001, 31.001, 36.007, 36.207, 35.062-35.066, 36.058, 36.208, 34.003-34.173, 36.008, and 36.204.

4. Proposed Conclusion of Law No. 8 is modified to reflect the Commission's conclusion in Section III of this Order that PURA §34.153 is applicable, in its entirety, and that SPS has satisfied the requirements of that section.

CL8. Southwestern has demonstrated that it has satisfied the criteria set forth in PURA §34.153, and that the QF contract is exempt from other IRP requirements found in PURA.

5. Proposed Conclusion of Law No. 10 is modified and Ordering Paragraph No. 2B is added to clarify that Southwestern's administration of payments made under the performance-based affiliate QF contract is subject to future review, as discussed in Section I of this Order.

CL10. Pursuant to PURA §36.208, a payment made to a QF under an agreement certified under PURA, Subchapter C, Chapter 35, is considered a reasonable and necessary operating expense of the electric utility during the period for which the certification is granted, to the extent such payment is consistent with the terms and conditions of the certified QF contract.

OP2B. Southwestern's administration of the performance-based affiliate QF contract may be reviewed, consistent with the terms and conditions of the QF contract, in a future rate, fuel or other appropriate proceeding to ensure the reasonableness and necessity of the future payments to be made under the contract; however, the terms and conditions of the QF contract shall not be subject to future review.

V. Findings of Fact and Conclusions of Law

A. Findings of Fact

Procedural History

1. On May 30, 1997, Southwestern Public Service Company (Southwestern or SPS) filed an application seeking certification of a qualifying facility (QF) purchase power contract

under Section 2.209 of the Public Utility Regulatory Act [now PURA §§ 35.062-35.065, 36.208].

2. Southwestern published notice of this proceeding for two consecutive weeks in newspapers of general circulation in its Texas retail service territory. It also provided notice of its application to (a) those persons who have indicated an interest in Southwestern's resource planning matters, as reflected on the most recent list maintained by the Public Utility Commission of Texas (Commission) in Project No. 16441 and (b) bidders in Southwestern's all-source resource solicitation conducted in connection with the notice of intent approvals granted in Docket No. 13827. *Application of Southwestern Public Service Company for Approval of Notices of Intent for a 203 MW Philips Cogeneration Project and a 103 MW Combustion Turbine Project*, Docket No. 13827, 20 P.U.C. BULL. 1880 (July 12, 1995)(mem.)(hereafter Docket No. 13827).
3. The City of Amarillo, the Office of Public Utility Counsel, the Environmental Defense Fund, the American Wind Energy Association, and Enron Power Marketing, Inc. (Enron) intervened.
4. On July 18, 1997, the Commission issued its Preliminary Order identifying the issues areas that must be addressed in this proceeding. Also, on that date, the Commission's General Counsel filed a request for hearing.
5. On July 21, 1997, the Commission referred this docket to the State Office of Administrative Hearings (SOAH).
6. The hearing on the merits began on August 28, 1997 and concluded September 2, 1997.
7. On July 24, 1997, Southwestern agreed to waive any objection to a two-week extension of the jurisdictional deadline. Subsequently, at the hearing on the merits, Southwestern agreed to an additional two-week extension.

8. Southwestern is an investor-owned electric utility, supplying service to approximately 363,000 customers in Texas, New Mexico, Oklahoma, and Kansas.

Background

9. On July 12, 1995, in Docket No. 13827, the Commission approved Southwestern's notices of intent (NOI) for two proposed electric generating facilities to meet Southwestern's long-term power needs: a 203 megawatt (MW) cogeneration project at the Phillips Petroleum Company (Phillips) refinery near Borger, Texas and a 103 MW combustion turbine project. Southwestern planned to build the facilities in 1998 and 1999, respectively.
10. On September 15, 1995, Southwestern issued an all-source solicitation in accordance with P.U.C. SUBST. R. 23.31(c)(5) to investigate alternatives to the proposed projects.
11. Southwestern received five supply-side bids (two for new generating facilities, two for off-system transactions, and one for renewable resource) and 11 demand-side bids (including one for interruptible loads) in response to its requests for proposals (RFP).
12. An independent evaluator, Hagler Bailly Consulting (Hagler Bailly), reviewed the bids, identifying those that satisfied the criteria for consideration in the detailed best and final offers evaluation that followed.
13. After Hagler Bailly selected a short list of bidders for the different resource categories, Southwestern notified the short-listed bidders that there would be a delay in the solicitation based on an ongoing Golden Spread Electric Cooperative, Inc. (Golden Spread) application at the Commission. *Request of Golden Spread Electric Cooperative, Inc. for Determinations Required by Section 32(k) of the Public Utility Holding Company Act and for Certification of Contract*, Docket No. 15100, __ P.U.C. BULL. __ (Feb. 11, 1997).
14. On or before January 10, 1997, in the best and final offers phase, Quixx Corporation (Quixx) and LS Power, L.L.C. (LS Power) acting in a partnership known as Borger