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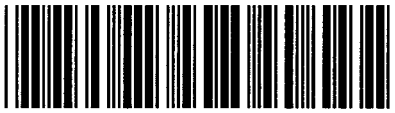

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SOAH DOCKET NO. 473-04-6558
PUC DOCKET NO. 29801

APPLICATION OF SOUTHWESTERN PUBLIC SERVICE COMPANY FOR: (1) RECONCILIATION OF ITS FUEL COSTS FOR 2002 AND 2003; (2) A FINDING OF SPECIAL CIRCUMSTANCES; AND (3) RELATED RELIEF	§	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

COMMISSION STAFF'S INITIAL POST-HEARING BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES Staff of the Public Utility Commission of Texas ("Commission Staff" or "Staff"), representing the public interest, in the above titled and numbered cause, to submit this Initial Post-Hearing Brief.

Respectfully submitted,

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[1] Staff has addressed those issues in boldface type. Staff's silence on other issues is due to a limitation of resources; it is not an editorial comment on the merits of the parties' positions on those issues.

I. Introduction

Southwestern Public Service Company ("SPS") has requested approval of its reconciliation of fuel expenses and revenues from January 1, 2002, through December 31, 2003.[2] SPS claims that it incurred $579,702,069.39 in eligible fuel expenses and that it collected $503,739,727.74 in revenues through its fuel factors.[3] Accounting for an existing over-recovery balance, its net surcharges and refunds for the reconciliation period, its margin credit transfers, and a one-time settlement of litigation, SPS claims a total under-recovery balance of $43,309,592,16.

In addition to its request for reconciliation approval, SPS has made several special requests. SPS requests that it be permitted to retain a portion of the margins of its off-system sales pursuant to Substantive Rule 25.236(a)(8); that it be permitted to include wheeling expenses for transactions because, it alleges, SPS meets the "special circumstances" test of Rule 25.236(a)(6); and that its coal inventory targets be increased by ten burn days.

Staff takes the following positions with respect to SPS's Application:

- the request for a special circumstances exception to include wheeling expenses should be denied;
- the property tax refund arising from its coal handling property tax dispute should be counted in the reconciliation period at issue in this case;
- adopting in part the position of Texas Industrial Energy Customers, the Commission should not permit SPS to include expenses for renewable energy credits ("REC") as eligible fuel and part of otherwise eligible purchased power costs;
- the request for 10% retention of margins should be denied; and
- the request that coal inventory targets be increased should be denied.

In total, Staff recommends an adjustment of $(1,488,273) to SPS's final fuel balance, resulting in an under-recovery of $41,821,319, excluding interest.[4] Staff recommends disallowing expenses used to buy RECs but does not take a position on TIEC's valuation methodology for its proposed adjustment.

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2 SPS Exh. 1 (the "Application") at 6-8.

3 *Id.*

4 Staff Exh. 5, Direct Testimony of Glenda Spence at 12, lines 7-8.

II. Jurisdiction

The Commission has jurisdiction over the Application pursuant to PURA[5] §§ 36.203 and 36.205. No party has contested the Commission's jurisdiction in this case.

III. Procedural History

SPS applied for fuel expense reconciliation on May 28, 2004. The Office of Public Utility Counsel ("OPC"), Texas Industrial Energy Consumers ("TIEC"), the City of Amarillo ("Amarillo"), West Texas Municipal Power Agency ("WTMPA"), and Canadian River Municipal Water Authority ("CRMWA") requested intervention.[6] In various orders, those motions to intervene, with the possible exception of CRMWA's, were granted.[7] The Commission referred this case to the State Office of Administrative Hearings ("SOAH") on June 17, 2004, for further proceedings[8] and later issued a Preliminary Order specifying the issues to be addressed.[9]

On June 23, 2004, OPC requested that the Commission consolidate the instant case with Docket No. 29670, a case in which SPS had requested authority to surcharge its fuel under-recoveries for January, February, and March 2004.[10] The presiding administrative law judge ("ALJ") denied OPC's Motion.[11]

SOAH conducted the hearing on the merits over the three-day period December 14 to 16, 2004.

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5 Public Utilities Regulatory Act ("PURA"), TEX. UTIL. CODE ANN. §§ 11.001-64.158 (West 1998 and West Supp. 2005).

6 Motions to Intervene filed June 10, June 14, June 22, July 19, and August 19, 2004, respectively.

7 *See* Order No. 3: Notice of Prehearing Conference (June 25, 2004) at 3; Trans. Prehearing Conference (July 13, 2004); Order No. 8: Granting Motion to Intervene (Aug. 9, 2004). Despite searching the record, Staff cannot confirm that CRMWA's Motion to Intervene was formally granted; however, no party contested the Motion. In any case, CRMWA neither filed testimony in this case nor appeared at hearing.

8 Order of Referral (June 22, 2004).

9 Preliminary Order (July 30, 2004).

10 Request to Supplement Filings and Consolidate with Docket No. 29670 (June 23, 2004).

11 Order No. 6: Denying Motion to Consolidate (July 8, 2004).

IV.B.1: Does SPS's request for a special-circumstances finding to permit it to recover wheeling expenses associated with the purchase of economy energy satisfy the requirements of P.U.C. SUBST. R. 25.236(a)(6)?

SPS has requested the Commission determine that the wheeling expenses SPS incurred as a result of economy energy transactions are recoverable as eligible fuel.[12] SPS contends that it has demonstrated "special circumstances"—as defined in Rule 25.236(a)(6)—exist which justify departure from Rule 25.263(a)(5)'s bar on a non-ERCOT utility[13] recovering wheeling expenses: specifically, that the transaction giving rise to the expenses resulted in increased reliability of supply or lower fuel expenses than would otherwise be the case and that the benefits to ratepayers exceed the costs the ratepayers otherwise would have borne.[14]

SPS's request should be denied. The Commission should not allow recovery of those wheeling expenses without a corresponding offset of SPS's wheeling revenues, as is the case for utilities within ERCOT.[15]

A utility incurs wheeling expenses when it purchases energy at a price that does not include the cost of transmitting the power onto its system.[16] Part of the cost of transmission for that purchased power is the wheeling cost. In this case, SPS has only requested recovery of wheeling expenses associated with "economy energy" transactions: purchases of power that were allegedly less expensive to meet demand than using SPS's own generation.[17] A transmission utility such as SPS collects wheeling revenues when other energy purchasers must use the SPS system to wheel purchased power.

Analysis of the Commission rules governing recovery of wheeling expenses begins with Rule 25.236(a)(5). That subsection allows an ERCOT electric utility to recover wheeling expenses only if they are related to ERCOT system fees or to unplanned transmission service

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12 SPS Exh. 12, Direct Testimony of Patricia Gambino at 23-25.

13 "Non-ERCOT utility" refers to a utility whose transmission system wholly or partially lies outside the transmission region governed by the Electric Reliability Council of Texas, Inc. ("ERCOT").

14 SPS Exh. 12, Direct Testimony of Patricia Gambino at 25, lines 21-28.

15 Staff Exh. 4, Direct Testimony of T. Brian Almon at 14, line 5, to 15, line 2.

16 SPS Exh. 12, Direct Testimony of Patricia Gambino at 23, lines 4-8.

17 SPS Exh. 12, Direct Testimony of Patricia Gambino at 23, lines 4-8. A bundled utility such as SPS may also incur wheeling expenses when it sells power but does not build transmission costs for that sale into the price; however, SPS has not claimed recovery for that species of wheeling expense.

costs such as losses and re-dispatch feels; a non-ERCOT electric utility such as SPS, on the other hand, may not recover wheeling expenses.[18] The Commission put a further condition on the ERCOT utilities' ability to recover certain wheeling transactions in Rule 25.236(a)(7): eligible fuel costs must be offset by revenues for wheeling transactions.[19]

The Commission's proposed revisions to the rule (then designated as Rule 23.23) had required that ERCOT utilities offset eligible fuel expenses with wheeling revenues, but the Commission exempted non-ERCOT utilities such as SPS from that requirement because their transmission services rates are set by the Federal Regulatory Energy Commission, not ERCOT.[20] However, in adopting Subsections 25.236(a)(5) and (a)(7), the Commission expressly stated that these provisions should be "symmetrical in their treatment of revenues and expenses"—including wheeling expenses and revenues—and that the Commission "believe[d] that the [adopted] language . . . is symmetrical."[21] The "symmetry" to which the Commission referred in its Order adopting the Rule is the simple principle that expenses and revenues must offset one another. To make the provisions symmetrical, the Commission specified in Rule 25.236(a)(5) that a non-ERCOT utility may not recover wheeling expenses but that an ERCOT utility may recover those expenses if they meet certain conditions.[22]

Permitting SPS to recover wheeling expenses without offsetting those expenses with wheeling revenue would violate the symmetry principle that guided the Commission in adopting Subsections 25.236(a)(5) and (a)(7). Therefore, SPS's request for a special circumstances

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18 SUBST. R. 25.236(a)(5). Since the implementation of customer choice and unbundling in 2002, electric utilities in ERCOT are no longer subject to fuel reconciliations for time periods after 2001.

19 SUBST. R. 25.236(a)(7)(B).

20 Project No. 19865, Proposed §§ 25.234-25.238 as Approved for Publication at the November 19, 1998 Open Meeting (Dec. 18, 1998) at 3.

21 Project No. 19865, *Review of SUBST. R. 23.23 as It Relates to Electric Service Providers Including Modifications and Movement to SUBST. R. Chapter 25*, Order Adopting New §§ 25.234-25.238 as Approved at the May 25, 1999 Open Meeting (June 15, 1999) at 17-18; *see also*, Project No. 19865, *Review of SUBST. R. 23.23 as It Relates to Electric Service Providers Including Modifications and Movement to SUBST. R. Chapter 25*, Reply Comments of Central Power and Light Company, Southwestern Electric Power Company and West Texas Utilities Company (Mar. 18, 1999) at 6-7.

22 *Id.*

exception and request to include wheeling expenses of $421,351 as eligible fuel expenses[23] should be denied.

IV.B.2.b: Property tax refund

Staff witness Glenda Spence recommends that SPS's eligible fuel costs be reduced by $346,247 to reflect that the entirety of a property tax refund that SPS received should be booked within the fuel reconciliation period.[24]

As Ms. Spence explains in her testimony, SPS purchases coal from TUCO, Inc. ("TUCO"), and TUCO is responsible for administering contracts with coal suppliers, transporters, and handlers.[25] Under the long-term supply contract between SPS and TUCO, TUCO may seek reimbursement from SPS for certain operations and maintenance expenses, one of which is property tax expense for subcontractors. During the reconciliation period, TUCO passed along higher property tax expenses charged to SPS but later challenged the property valuation and obtained a refund for the taxpayer in January 2004. Ultimately, TUCO credited that amount to SPS, reducing its invoices to SPS for February through April 2004.[26]

Staff contends that SPS must adhere to a fundamental principle of accounting: the revenues recorded in a given time period should be matched, to the extent practicable, to the expenses incurred to generate those revenues.[27] In this case, the litigation expenses used to generate the TUCO property tax refund were incurred during the reconciliation period, culminating in the ruling in TUCO's favor in October 2003.[28] Although the revenue that accrued to SPS was paid after the reconciliation period closed, that should not be a bar to applying the normal principles of accounting. The Commission should not burden the ratepayers with the expenses of challenging the property tax without also providing the benefit of that expense, when providing that benefit is as simple as it is in this case.

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23 Staff Exh. 4, Direct Testimony of T. Brian Almon at 15, lines 1-10 (The appropriate monthly adjustments, on a total company basis, are February 2003, ($88,507); March 2003, ($88,072); and April 2003 ($244,722)).

24 Staff Exh. 5, Direct Testimony of Glenda Spence at 9, line 12, to 10, line 18.

25 *Id.* at 9, line 17, to 10, line 1.

26 *Id.* at 10.

27 *Id.* at 11, lines 4-8.

28 *Id.* at 10, lines 8-9.

SPS has countered that not *all* of the expenses used to obtain the property tax refund were incurred during the reconciliation period: 25% of the expenses to obtain the refund were incurred after the reconciliation period ended.[29] Ms. Spence acknowledged on cross-examination that, to be absolutely consistent in applying the matching principle, one could credit only 75% of the refund to the reconciliation period to recognize the fact that the remaining 25% should be addressed in the next fuel reconciliation case.[30] However, applying a basic materiality threshold to her analysis, Ms. Spence reasonably concluded that, "because of the small amount of dollars," it would not be practical to hold that amount over for consideration in the next fuel reconciliation, the entire refund amount should be reflected in the current reconciliation.[31] In the interest of administrative economy, Staff would submit that the appropriate accounting process is to apply the entirety of the expenses and the refund amount to the fuel reconciliation period at issue in this case.

VII. Renewable Energy Credits

Staff did not file testimony on the issue of renewable energy credits ("REC"); however, further consideration of the testimony and the evidence compels Staff to comment on this issue and to support TIEC's position that the Commission should not approve recovery of purchased power costs to the extent those costs include payment for RECs, a valuable commodity for which there is an active trading market. RECs should not be treated as an eligible fuel expense.

During the reconciliation period, SPS entered into a 15-year contract with Llano Estacado Wind, LP ("Llano") to purchase power.[32] The contract states the sale price in terms of dollars per megawatt-hour (MWh), but the products sold pursuant to the contract include "the combination of RECs, the associated energy, and all Wind Generation Benefits," *i.e.*, both power and RECs.[33] SPS and Llano "bundled" the price of energy with RECs, thereby avoiding a

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29 SPS Exh. 18, Rebuttal Testimony of Barry Johnson at 17, line 22, to 18, line 2.

30 Trans. v. 2 at 341, line 19, to 342, line 3, Cross-examination of Glenda Spence.

31 *Id.*

32 TIEC Exh. 1, Direct Testimony of Ali Al-Jabir at 8, lines 19-20.

33 TIEC Exh. 1, Direct Testimony of Ali Al-Jabir at 8, line 15, to 9, line 17.

separately stated price for RECs in the contract. During the reconciliation period, Llano transferred about 500,000 RECs to SPS, and SPS sold them for $5.50 per REC.[34]

SPS's witness David Hudson testified that "when [SPS] acquired the energy, [SPS] considered it as energy that we were not having to pay a premium to get the RECs."[35] Mr. Hudson asserted, in other words, that SPS thought it was getting the RECs for free. Mr. Hudson's statement strains credulity well beyond the breaking point. RECs are a commodity, and PURA § 39.904 created a market for them in Texas.[36] A robust market for RECs exists in Texas,[37] a fact that Mr. Hudson conceded.[38] If Llano had not sold the RECs to SPS along with the power, Llano could have sold those RECs itself.[39]

The expense of RECs should not be recoverable as eligible fuel. As Mr. Al-Jabir succinctly testified,

> RECs are clearly distinct from the physical energy produced by a renewable resource. . . . Moreover, RECs are not fuel expense because SPS does not have to acquire RECs to generate electricity. By contrast, SPS must purchase and consume coal and natural gas to generate electricity. RECs are not consumed in the generation process. In fact, RECs can be sold in connection with renewable trading programs. All of these considerations make it clear that RECs are neither a component of purchased power energy costs nor fuel expense.

SPS's position is that the Commission should treat the entire Llano contract purchase price as eligible fuel and assign a value of $0 to the bundled RECs because "that purchase price is well below avoided energy costs."[40] Further, SPS contends that "[t]he only time a REC value should be imputed is when the purchase price is above the utility's avoided energy cost and a

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34 TIEC Exh. 1, Direct Testimony of Ali Al-Jabir at 8, line 15, and 14, line 7.

35 Trans. v. 2 at 362, lines 15-17, cross-examination of David Hudson.

36 PURA § 39.904; SUBST. R. 25.5(108).

37 TIEC Exh. 1, Direct Testimony of Ali Al-Jabir at 14, lines 1-21.

38 Trans. v. 2 at 360, line 21, to 361, line 22, cross-examination of David Hudson.

39 Trans. v. 2 at 361, lines 16-22, cross-examination of David Hudson.

40 SPS Exh. 15, Rebuttal Testimony of David Hudson at 25, lines 16-19.

premium is paid for the renewable energy."[41] In Mr. Hudson's view, the entire purchase price is eligible fuel because "it's a good deal for our customers."[42]

This position does not withstand scrutiny. There is no convincing reason why the Commission should draw a distinction, as Mr. Hudson does, between RECs and any other clearly "base rate" item when bundled with purchased power, even if the overall contract price is a "good deal."[43] The standard of review is not whether or the extent to which purchased power avoided higher fuel costs but whether the purchased power cost itself is eligible for recovery.[44] When pressed on the point in cross-examination, Mr. Hudson essentially conceded that SPS would not recover a base rate item—in one hypothetical, accounting services—through its fuel factor.

As Mr. Hudson notes, Rule 25.236 "does not require the crediting of net proceeds from the sale of RECs."[45] However, the rule's silence on RECs does not trump the statutory limitation on recovery of fuel costs and purchased power costs.[46] Although the Commission has not yet revised Rule 25.236 to provide for expenses associated with RECs, the Commission should not permit their subsidization through the fuel factor, because RECs are not fuel.

SPS, rather than crediting its revenue from the sale of the RECs to fuel, takes the position that the revenue from that sale should be treated as a base rate item.[47] By requesting recovery of its REC expenses through fuel and crediting the revenue from sales to base rates, SPS is again proposing violation of the Commission's basic principle of symmetrical treatment for expenses and revenues, established in the fuel rule.[48]

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41 *Id.* at 25, line 22, to 26, line 1.

42 Trans. v. 2 at 363, line 11.

43 *See* Trans. v. 2 at 364, lines 1-21, cross-examination of David Hudson (the proffered examples included "computers, accounting services, and Mercedes Benzes, . . . all still below $45 and . . . all on a per kWh basis.").

44 *See, generally,* SUBST. R. 25.236(a).

45 SPS Exh. 15, Rebuttal Testimony of David Hudson at 27, lines 18-19 (emphasis omitted).

46 *See, generally,* PURA Chapter 36, Subchapter E.

47 TIEC Ex. 1a, Ali Al-Jabir's Workpapers at Bates 7 (SPS's Response to TIEC 1-3).

48 Subst. R. 25.236(a)(5), (a)(7).

Staff does not take a position on TIEC's proposed quantification of the RECs. Staff does note that TIEC was the only party to propose, in earnest, a valuation methodology and disallowance amount. (SPS proposed valuation of $0[49] should be ignored because it is premised on Mr. Hudson's irrelevant point that the Llano contract price was below SPS's avoided cost.)

X. Is SPS entitled to retain 10 percent of the margins from off-system sales since January 2002 under P.U.C. SUBST. R. 25.236(a)(8)?

SPS contends that it qualifies under Rule 25.236(a)(8) to retain ten percent of the margins of its off-system sales because those transactions meet the rule's three conditions:

> (A) the electric utility participates in a transmission region governed by an independent system operator or a functionally equivalent independent organization;
> (B) a generally-applicable tariff for firm and non-firm transmission service is offered in the transmission region in which the electric utility operates; and
> (C) the transaction is not found to be to the detriment of its retail customers.

Staff, TIEC, and Amarillo contend that SPS does not meet the first condition; therefore, the Commission should deny SPS's request for retention of ten percent of the margins. SPS is a member of the Southwestern Power Pool ("SPP"), an organization with a regional open access transmission tariff ("OATT").[50] The issue presents a fairly straightforward question: is the SPP an ISO or a "functionally equivalent independent organization"?

The SPP is not an "independent system operator" ("ISO"). Under PURA, an ISO is "an entity supervising the collective transmission facilities of a power region that is charged with nondiscriminatory coordination of market transactions, systemwide transmission planning, and network reliability."[51] During the reconciliation period, the only ISO in Texas was ERCOT. SPP never applied to the Federal Energy Regulatory Commission for approval to be an ISO, but did apply to be a regional transmission organization ("RTO"), which have requirements sufficient to be considered an ISO. The FERC rejected SPP's RTO application in July 2001,[52]

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49 SPS Exh. 15, Rebuttal Testimony of David Hudson at 25, lines 16-19.

50 SPS Exh. 6, Direct Testimony of Michael Mally at 23, line 22, to 24, line 7.

51 PURA § 31.002(9).

52 TIEC Exh. 1A, Workpapers of Ali Al-Jabir, FERC Docket No. RT01-34-000, Order Rejecting RTO Filings (July 12, 2001).

conditionally granted it in February 2004 subject to compliance with additional conditions to meet the "independence" standard, and ultimately granted RTO status in October 2004.[53]

The SPP also was not a functionally equivalent independent organization during the reconciliation period. An independent organization is "an [ISO] or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller."[54] PURA directs the Commission to certify independent organizations within Texas,[55] but the Commission has not certified the SPP as such. In February 2002, the Commission, following the findings of FERC in its July 2001 Order rejecting RTO status for the SPP, specifically found that the SPP was not an independent operator of the transmission systems of SPP participants.[56] SPS concedes that, as of February 2002, the SPP did not function as an independent operator of the SPP OATT.[57] As mentioned above, the FERC has also considered the issue of SPP's independence in the context of SPP's application for RTO certification. In an order issued February 2004, after the reconciliation period, the FERC explained its concerns that the SPP was not sufficiently independent and specified additional measures for the SPP to implement in order to qualify.[58]

SPS takes the position that the only condition for the SPP to qualify as a "functionally equivalent independent organization" is that it has an OATT and that SPS is "a separate entity" from the SPP.[59] This interpretation of Rule 25.236(a)(8)(A) ignores the history of the rule. In adopting the provision, the Commission specifically solicited comments regarding the appropriate conditions for allowing margin sharing.[60] One of the commenters suggested that,

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53 Staff Exh. 3, Direct Testimony of Larry Reed at 3, lines 22-23.

54 PURA § 39.151(b).

55 PURA § 39.151(c).

56 TIEC Exh. 6, Docket No. 24468, *Public Utility Commission of Texas Staff Petition to Determine Readiness for Retail Competition in the Portions of Texas Within the Southwest Power Pool*, Order on Rehearing (Feb. 1, 2002) at 22, FOF ¶ 38.

57 Trans. v. 3 at 382, lines 1-9, Cross-examination of David Hudson.

58 Trans v. 3 at 383, line 14, to 385, line 17, Cross-examination of David Hudson.

59 Trans. v. 3 at 448, line21, to 449, line 6, Cross-examination of David Hudson.

60 Project No. 19865, *Review of SUBST. R. 23.23 as it Relates to Electric Service Providers Including Modifications and Movement to SUBST. R. Chapter 25*, Order Adopting New §§ 25.234-25.238 as Approved at the May 25, 1999 Open Meeting (June 15, 1999) at 7.

instead of the proposed language requiring participation in a transmission region with an "independent system operator or other regional transmission provider,"[61] the Commission should require only participation in a system with an OATT consistent with FERC Order No. 888.[62] The Commission did not adopt that suggestion, opting instead to retain language substantially similar to that in the proposed rule.[63] In addition, as discussed above, both the Commission and the FERC have taken the position that "independence" means something more robust than merely being a "separate entity."

SPS also contends that it is "inconsistent" for Staff to have supported SPS's joining the SPP OATT in Docket No. 21190 to mitigate SPS's vertical market power and yet to contend in this case that the SPP does not meet the independence standard in Rule 25.236(a)(8)(A).[64] SPS's inconsistency argument should be rejected for two reasons: (a) Docket No. 21190 was a settled merger case that has no precedential effect on this case, and (b) even though SPP's administration of SPS's OATT during the reconciliation period mitigated SPS's vertical market power, SPP nevertheless did not meet the standard under Rule 25.236(a)(8). Docket No. 21190 was a merger case in which SPS sought the Commission's approval for the merger under PURA § 14.101.[65] The case was resolved by stipulation and settlement of the parties.[66] As is typical in settled cases, the settlement agreement specifically provided that "[a] Signatory's support of this Stipulation may differ from its position or testimony in other dockets. To the extent there is a difference, a party is not waiving its positions in other dockets."[67] SPS's suggestion that Staff or

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61 Project No. 19865, *Review of SUBST. R. 23.23 as it Relates to Electric Service Providers Including Modifications and Movement to SUBST. R. Chapter 25*, Order Proposing New §§ 25.234-25.238 as Approved at the November 19, 1998 Open Meeting (Dec. 8, 1998) at 16.

62 Project No. 19865, *Review of SUBST. R. 23.23 as it Relates to Electric Service Providers Including Modifications and Movement to SUBST. R. Chapter 25*, Order Adopting New §§ 25.234-25.238 as Approved at the May 25, 1999 Open Meeting (June 15, 1999) at 8.

63 *Id.* at 9.

64 SPS Exh. 15, Rebuttal Testimony of David Hudson at 36, lines 10-19.

65 Docket No. 21190, *Application of Southwestern Public Service Company Regarding Proposed Merger Between New Century Energies, Inc., and Northern States Power Company*, Order (May 31, 2000) at 1.

66 *Id.* at 2-3.

67 Docket No. 21190, *Application of Southwestern Public Service Company Regarding Proposed Merger Between New Century Energies, Inc., and Northern States Power Company*, Stipulation (Apr. 19, 2000) at 21-22.

any other party's position in this case is weaker for inconsistency with the provisions of the Docket No. 21190 settlement agreement is in direct contravention of that agreement's provisions.

XI. Should the coal inventory targets adopted in Docket No. 19512 be increased by ten additional burn days?

SPS has requested that its 35-day coal inventory targets be increased by ten burn days.[68] SPS witness Barry Johnson asserts that "fundamental changes" in the utility industry, energy markets, and coal transportation system have conspired to limit the capacity of coal transporters, threatening SPS with the inability to run its coal-fired generators, instead requiring it to meet demand with more expensive gas-fueled generation or purchased power.[69] However, the evidence is not persuasive that such a change in inventory levels is necessary.

So far, SPS's dire prediction of curtailed output at its coal generators has not come to pass.[70] SPS's request is based entirely on projections of increased coal demand and rail transport needs, but these projections do not bear out SPS's concerns. Mr. Johnson is alarmed that Union Pacific "has indicated it cannot ship more volumes toward eastern destinations from Colorado or Utah than it has already contracted."[71] However, SPS "neither had, nor has, any plans to solicit bids for or purchase any Colorado or Utah coal during the Reconciliation Period or in the immediate years thereafter."[72] Mr. Johnson is concerned that BNSF and Union Pacific have announced that their joint line will require additional tracks to keep up with growing demand.[73] Why the news that BNSF and Union Pacific are expanding transport capacity is troubling to Mr. Johnson is unclear: Mr. Johnson's fears should be allayed in part by this announcement of expanded service. Indeed, as Staff witness Brian Almon explained, the evidence shows that rail services are expanding to meet the short-term and mid-term needs.[74]

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68 SPS Exh. 10, Direct Testimony of Barry Johnson at 29, lines 10-11.

69 *Id.* at 28, line 10, to 29, line 7.

70 Staff Exh. 4, Direct Testimony of T. Brian Almon at 7, lines 16-17.

71 SPS Exh. 10, Direct Testimony of Barry Johnson at 29, lines 1-3.

72 Staff Exh. 1, Response to Question No. 3-9.

73 SPS Exh. 10, Direct Testimony of Barry Johnson at 29, lines 3-5.

74 *Id.* at 8, lines 13-16; *see also* Staff Exh. 4 at attached Exhibit BA-7.

SPS has not conducted any sort of formal analysis to conclude that ten is the number of additional days necessary to meet these risks.[75] Rather, Mr. Johnson used a "qualitative risk analysis"[76] which, unfortunately, does not give the Commission any further information than SPS's conclusory assertion that ten more days is appropriate. SPS has not produced any evidence to show that ten, rather than five, or fifteen, additional days is appropriate.

SPS has failed to demonstrate persuasively that its coal inventory targets must be increased, and SPS has provided no reason why the Commission should increase its inventory levels by ten burn days rather than by some other amount. SPS has not shown sufficient reason why its customers should absorb the cost of increased coal inventory. Therefore, SPS's request for additional inventory should be denied.

XII. Interest

Ms. Spence testified that the interest should be calculated on a monthly basis pursuant to Rule 25.236(e)(1) and that the appropriate interest rates for the reconciliation period are:

- 2002: 4.39% (equivalent to an effective monthly interest factor of 0.003586725); and
- 2003: 1.79% (equivalent to an effective monthly interest factor of 0.001479567).[77]

As Ms. Spence explained in her testimony, the effective monthly interest factor is the rate or factor that produces a given annual compound rate, to satisfy the Rule 25.236(e)(1) requirement for annual compounding.[78] Applying Staff's adjustments, the accrued interest through December 2004 is $2,198,699.[79] If the Commission makes additional adjustments, Ms. Spence's effective monthly interest factors should be applied to calculate the adjusted interest amount.

CONCLUSION

Staff submits that SPS's request for a special circumstances exception to include wheeling expenses should be denied because those expenses would not be offset by wheeling revenue; the property tax refund arising from its coal handling property tax dispute should be

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75 Trans. v. 1 at 108, lines 17-24, Cross-examination of Barry Johnson.

76 *Id.*

77 Staff Exh. 5, Direct Testimony of Glenda Spence at 8, lines 8-11.

78 *Id.* at lines 15-21.

79 *Id.* at 12, lines 7-11.

counted in the reconciliation period at issue in this case because the benefits of the refund should match the burden of the litigation expenses in the same period; the Commission should not permit SPS to include REC expenses as eligible fuel and part of otherwise eligible purchased power costs because they are not fuel; SPS does not meet the regulatory conditions to retain 10% of its margins from off-system sales; and SPS's request that ten additional burn days on its coal inventory targets be increased should be denied because SPS failed to show that the increased cost is necessary.

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record by first class U.S. mail, postage pre-paid on this date, January 21, 2005, in accordance with P.U.C. Procedural Rule 22.74.

William L. Huie