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

APPLICATION OF SOUTHWESTERN PUBLIC SERVICE COMPANY FOR: (1) RECONCILIATION OF ITS FUEL AND PURCHASED POWER COSTS FOR 2002 AND 2003; (2) A SPECIAL CIRCUMSTANCES FINDING; AND (3) RELATED RELIEF	§ § § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER

This Order approves Southwestern Public Service Company's (SPS) application to reconcile its fuel and purchased-power costs for 2002 and 2003, as modified by the non-unanimous stipulation filed on April 25, 2005 (NUS). The NUS is attached to this Order and incorporated into this Order.

I. Introduction

On May 28, 2004, SPS submitted its application pursuant to Sections 36.203 and 36.205 of the Public Utility Regulatory Act (PURA)[1] seeking (1) to reconcile its fuel expenditures with the amounts it collected under its fixed fuel factors and fuel surcharges during the period from January 1, 2002, through December 31, 2003 (reconciliation period); (2) a finding of special circumstances pursuant to P.U.C. SUBST. R. 25.236(a)(6); and (3) related relief.

The Office of Public Utility Counsel (OPC), the Texas Industrial Energy Consumers (TIEC), the City of Amarillo (City), West Texas Municipal Power Agency (WTMPA), and the Canadian River Municipal Water Authority (CRMWA) intervened in this proceeding.

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[1] TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 1998 & Supp. 2005) (PURA).

On June 17, 2004, the Commission referred this docket to the State Office of Administrative Hearings (SOAH). The hearing on the merits before SOAH began on December 14, 2004, and ended on December 16, 2004.

On April 13, 2005, SPS, the Commission Staff, and the City notified SOAH that they had reached an agreement in principle to resolve all of the issues in this docket. On April 15, 2005, SOAH issued its proposal for decision (PFD) in this docket. On April 25, 2005, SPS, the Commission Staff, the City, WTMPA, and CRMWA (collectively, the stipulating parties) filed the NUS, which resolved all issues in this docket in accordance with the agreement in principle that pre-dated the PFD.

On May 12, 2005, the stipulating parties filed a position statement in which they indicated that they would file testimony in support of the NUS and, therefore, requested a hearing on the NUS. The stipulating parties also stated that, although they believed that the original notice of this proceeding was sufficient, to ensure that all parties were afforded a right to contest the NUS, additional notice should be given to allow additional interventions if desired. TIEC and OPC filed position statements indicating that they opposed the NUS.

On May 20, 2005, the Commission issued Order No. 15, in which it approved the form of additional notice suggested by the stipulating parties and established deadlines for the filing of testimony in support of the NUS, objections to that testimony, intervention, and requests for hearing. The deadlines for intervention and to request a hearing were later extended by Order No. 16.

On June 9, 2005, SPS and the City filed testimony in support of the NUS. The deadlines for objections to that testimony, intervention, and requests for a hearing passed without any filings. Therefore, this Order admits into evidence with some limitation the testimony in support of the NUS with the following designations: Direct Testimony of David T. Hudson in Support of the NUS on behalf of SPS – SPS Exhibit No. 24; Direct Testimony of Karen Roberts in Support of the NUS on behalf of SPS – SPS Exhibit No. 25; Direct Testimony of James M. Bagley in Support of the NUS on behalf of SPS – SPS Exhibit No. 26; Direct Testimony of James W. Daniel in Support of the NUS on

behalf of the City – City Exhibit No. 36; and First Errata to the Direct Testimony of James W. Daniel in Support of the NUS on behalf of the City – City Exhibit No. 37.

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

II. Findings of Fact and Conclusions of Law

Procedural History

1. On May 28, 2004, SPS submitted its application pursuant to the Public Utility Regulatory Act (TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 1998 & Supp. 2005)) (PURA) §§ 36.203 and 36.205 seeking (1) to reconcile its fuel expenditures with the amounts it collected under its fixed fuel factors during the reconciliation period; (2) a finding of special circumstances pursuant to P.U.C. SUBST R. 25.236(a)(6); and (3) related relief.

2. SPS 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, SPS provided direct notice to its Texas jurisdictional customers by bill insert.

3. OPC, TIEC, the City, WTMPA, and CRMWA intervened in this proceeding.

4. On June 17, 2004, the Commission referred this docket to the State Office of Administrative Hearings (SOAH). On June 20, 2004, the Commission issued a revised order of referral vacating its June 17, 2004, order of referral, and requested the parties file a proposed list of issues.

5. On June 23, 2004, OPC filed a motion to consolidate this docket with Docket No. 29670, Tex. Pub. Util. Comm'n, *Application of Southwestern Public Service Company for Authority to Surcharge its Fuel Under Recoveries*; Docket No. 29670 (Sept. 7, 2004). The administrative law judge (ALJ) denied OPC's request on July 8, 2004.

6. On July 30, 2004, pursuant to Section 2003.049(e) of the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000), the

Commission issued a preliminary order identifying the issues or areas that must be addressed in this proceeding.

7. The hearing on the merits before SOAH began on December 14, 2004, and ended on December 16, 2004.

8. On April 13, 2005, SPS, the Commission Staff, and the City notified SOAH that they had reached an agreement in principle to resolve all of the issues in this docket. On April 15, 2005, SOAH issued its PFD in this docket. On April 25, 2005, SPS, the Staff, the City, WTMPA, and CRMWA (collectively, the stipulating parties) filed the NUS, which resolved all issues in this docket in accordance with the agreement in principle that pre-dated the PFD.

9. On May 12, 2005, the stipulating parties filed a position statement in which they indicated that they would file testimony in support of the NUS and, therefore, requested a hearing on the NUS. The stipulating parties also stated that, although they believed that the original notice of this proceeding was sufficient, to ensure that all parties were afforded a right to contest the NUS, additional notice should be given to allow additional interventions if desired. TIEC and OPC filed position statements indicating that they opposed the NUS.

10. On May 20, 2005, the Commission issued Order No. 15, in which it approved the form of additional notice suggested by the stipulating parties and established deadlines for the filing of testimony in support of the NUS, objections to that testimony, intervention, and requests for hearing. The deadlines for intervention and to request a hearing were later extended by Order No. 16.

11. On June 9, 2005, SPS and the City filed testimony in support of the NUS. The deadlines for objections to that testimony, for intervention, and for requests for a hearing passed without any filings.

12. The testimony in support of the NUS was marked as follows: Direct Testimony of David T. Hudson in Support of the NUS on behalf of SPS – SPS Exhibit No. 24; Direct Testimony of Karen Roberts in Support of the NUS on behalf of SPS – SPS Exhibit No. 25; Direct Testimony of James M. Bagley in Support of the NUS

on behalf of SPS – SPS Exhibit No. 26; Direct Testimony of James W. Daniel in Support of the NUS on behalf of the City – City Exhibit No. 36; and First Errata to the Direct Testimony of James W. Daniel in Support of the NUS on behalf of the City – City Exhibit No. 37.

The NUS

Agreed Black-Box Resolution of Fuel-Reconciliation Issues

13. In Section 1 of the NUS, the stipulating parties agreed to a black-box settlement to reduce eligible fuel expense in the amount of $18 million for the reconciliation period, which would resolve all issues raised in this proceeding.

14. During the reconciliation period, SPS incurred $578,498,680.23 of total fuel and purchased-power expenses for Texas retail customers, and $503,739,727.74 in revenues were collected. After accounting for the beginning balance, refunds, credits, revenues from surcharges, and the $18 million reduction in eligible fuel expense agreed to in the NUS, SPS's under-collection as of December 31, 2003, was $23,984,210.33 (not including interest), as shown by the following table:

Description	Amount
December 31, 2001, Over-Recovery Balance	$4,242,954.07
Fuel and Purchased-Power Energy Cost: 1/02-12/03	($578,498,680.23)
Fuel Revenue Collected: 1/02-12/03	$503,739,727.74
Surcharge Collections: 1/02-12/03	$8,708,534.17
Margin Credit Transfers: 1/02-12/03	$1,229,542.78
ARCO Settlement – Texas Allocated Amount: 03/03	$18,593,711.14
Reduction in Eligible Fuel Expense from NUS	$18,000,000.00
Total Under-Recovery Balance	($23,984,210.33)

15. The black-box-settlement amount is fair, just, and reasonable. It is within the zone of reasonableness in that it is more than SPS believed it would have had to bear if its positions had been adopted and less than SPS would have had to bear if the other parties' positions had been adopted. The NUS accomplishes this result, which is a reasonable result given the benefits that will accrue to SPS and its customers from the remaining portions of the NUS. The black-box-settlement amount is supported by a preponderance of the evidence and should be approved.

Obligation to File a Base-Rate Case and Timing of Next Fuel Reconciliation

16. In Section 2 of the NUS, SPS agreed to file a base-rate case no later than May 31, 2006, using a test year ending September 30, 2005, and it further agreed to extend the 150 day deadline imposed by PURA § 36.108 to 180 days. SPS Ex. 24, Attachment DTH-S1. In Section 5 of the NUS, SPS agreed to simultaneously file its next fuel-reconciliation proceeding.

17. Until SPS files a rate case as contemplated in the NUS, the stipulating parties, other than the Commission Staff and the City, agreed that they will not make any filing or take any other action to encourage any regulatory authority to institute a base-rate case for SPS. Without waiving their obligation to ensure just and reasonable rates, the Commission Staff and City agreed that the timing for SPS to file a rate case agreed to in the settlement is appropriate.

18. In past fuel reconciliations, there have been disputes regarding which costs should be treated as fuel and which should be treated as base-rate items. By requiring SPS to file a base-rate proceeding no later than May 31, 2006, and coupling that obligation with a requirement that it also file a fuel reconciliation at the same time, the costs, whether they are base-rate items or fuel items, will be dealt with properly without the need to wait for a future proceeding. This means that the appropriate allocation of base-rate items and fuel costs can be made expeditiously and at a much lower cost than would otherwise be the case.

19. The agreements regarding the timing of SPS's next rate case, the test year to be used in that base-rate case, and the timing of its next fuel-reconciliation proceeding are fair, just, and reasonable. Those agreements are supported by a preponderance of the evidence and should be approved.

Treatment of TUCO Inc. Coal Costs in Future Proceedings

20. In Section 3 of the NUS, SPS agreed that in the base-rate case described in Section 2 of the NUS, SPS will treat its costs for purchases of coal from TUCO Inc. (TUCO) consistent with P.U.C. SUBST. R. 25.236(a)(1) by placing traditionally non-eligible fuel expenses in base rates.

21. This provision will align SPS's treatment of fuel expenses consistent with the fuel rule and in harmony with the manner in which the fuel rule is applied to other utilities in Texas. Further, this provision will avoid future disputes regarding the proper classification of the various components of the price of coal paid to TUCO as eligible fuel expense. The enhanced administrative consistency and uniformity in the application of the fuel rule will reduce the potential for controversy and thus benefit SPS's Texas retail customers.

22. The agreement to alter the regulatory treatment of SPS's coal costs is fair, just, and reasonable. That agreement is supported by a preponderance of the evidence and should be approved.

Wholesale Capacity and Interruptible Sales

23. In Section 6 of the NUS, the stipulating parties acknowledged that SPS has been making wholesale firm and interruptible sales to Golden Spread Electric Cooperative, Inc.; Lyntegar Electric Cooperative, Inc.; Farmers' Electric Cooperative, Inc.; Central Valley Electric Cooperative, Inc.; Lea County Electric Cooperative, Inc.; Roosevelt County Electric Cooperative, Inc.; Cap Rock Energy; and WTMPA (Lubbock Power & Light; City of Brownfield; City of Floydada; City of Tulia) since the 1940s, and Public Service Company of New Mexico (PNM) since 1991, all of which are allocated system-average fuel cost, and those sales were not challenged in this proceeding. The stipulating parties further acknowledged that SPS has been making sales priced at system-average fuel cost to El Paso Electric Company and Texas-New Mexico Power Company (now being acquired by PNM) through the Eddy County DC tie since the mid-1980s. SPS has represented that sales to these wholesale customers totaled 1,713 MW in 2004.

24. The stipulating parties agreed that, for the limited purposes of the settlement reflected in the NUS, SPS shall be entitled to continue allocating system-average fuel cost to a cap based on peak usage of 1,713 MW (base year 2004) of firm or interruptible wholesale load to the customers described above, which will be

adjusted annually for any increases in load growth which SPS is currently contractually obligated to serve for Golden Spread, the full-requirements customers, and WTMPA. SPS currently projects that load growth will increase this cap to 1,738 MW in 2005. During on-peak or off-peak periods, SPS may not sell available capacity to parties other than the customers described above at wholesale and assign system-average fuel cost to those sales. When the contracts described above expire, SPS may replace the contracts serving such customers with cost-based contracts, with fuel priced at system-average fuel cost. All other wholesale-capacity sales and wholesale interruptible sales over this cap would be allocated incremental fuel cost. SPS will not enter into new market-based wholesale arrangements using a system-average wholesale-fuel clause until this issue is addressed and such treatment is approved by the Commission in the upcoming base-rate case.

25. The stipulating parties further agreed that to resolve this issue for the period from January 1, 2004, through December 31, 2004, Texas retail-fuel expense for this period shall be reduced by $6.9 million. This amount is in addition to the $18 million black-box-settlement amount described in finding of fact 12, above. Moreover, the parties agreed that from January 1, 2005, through the end of the next reconciliation period, the method recommended by Scott Norwood, the City's witness in this proceeding, shall be used for calculating the incremental fuel costs for any firm wholesale sales to parties other than the customers described above or that otherwise do not conform to the cap and principles agreed to herein regarding this issue. SPS will continue to calculate incremental costs and coordination-sales margins in the manner that it has historically used. The parties have the right in the next base-rate case to raise issues with wholesale-service cost allocation and cost assignment for prospective application beginning with the effective date of new retail base rates.

26. The agreements reflected in Section 6 of the NUS will remain in effect up to the effective date of rates resulting from the base-rate case discussed in findings of fact 15-18, above.

27. The NUS is a reasonable compromise that is in the public interest. It also provides guidance regarding SPS's future business practices so that SPS is not constantly attacked on an after-the-fact basis, which means that both SPS and its customers can have a degree of certainty in the future that has not heretofore been present. The agreements related to SPS's wholesale interruptible and wholesale-capacity sales are supported by a preponderance of the evidence and should be approved.

Electric Commodity Trading Margins

28. Electric-commodity-trading activities are those in which SPS and its affiliates, Public Service Company of Colorado (PSCo) and Northern States Power Company (NSP), buy and sell energy in the wholesale electric market. Margins received from this commodity-trading activity are allocated among the three Xcel Energy operating companies. These are made under the Federal Energy Regulatory Commission (FERC) Market Based Tariffs at each operating utility and are governed by the Xcel Energy Joint Operating Agreement (JOA) approved by the FERC. Several parties advocated that SPS should share its portion of the net margins with ratepayers.

29. The compromise position contained in Section 7 of the NUS requires that SPS's portion of the net monthly margins from electric-commodity-trading activities conducted by SPS, PSCo, and NSP be treated in the same manner as electric-commodity-trading margins are treated in Colorado, with SPS retaining the first $400,000 (Texas jurisdictional basis) annually to reimburse it for the administrative costs associated with such sales, with the remaining being split with 40 percent being given to customers, and SPS retaining 60 percent of SPS's share of the margins. This agreement will remain in effect until the end of the base-rate case discussed in findings of fact 15-18, above. The NUS provides that in SPS's next base-rate case, SPS will propose its prospective treatment for margins from electric-commodity-trading activities, and all parties will be free to advocate different crediting mechanisms.

30. This issue was addressed by the Colorado Public Utilities Commission (CPUC) in a case involving the treatment of PSCo's margins from commodity trading. In Colorado, the CPUC held that the first $1,000,000 in margins are to be retained by PSCo for administrative costs (this number is proportionate to the $400,000 in the NUS) with all additional margins split 40 percent to ratepayers and 60 percent to PSCo. The NUS adopts this same sharing formula.

31. The agreement regarding the sharing of margins from electric-commodity-trading activities conducted by SPS, PSCo, and NSP is fair, just, and reasonable. That agreement is supported by a preponderance of the evidence and should be approved.

Recovery of Profits Paid on Future Economic-Energy Purchases from PSCo and NSP

32. The stipulating parties agreed that SPS's purchases of economic energy from PSCo and NSP will be eligible fuel expense, as long as the total purchase cost over a projected transaction period is below SPS's forecasted avoided cost for such period and meets other requirements of this agreement. The stipulating parties agreed that purchases made on this basis will be deemed to have satisfied the requirements of PURA § 36.058 and the Commission's substantive rules. Sales of coordination energy by SPS to affiliates will be made under a similar pricing arrangement (total purchase cost over a transaction period will be above SPS's forecasted incremental cost for such period), with all amounts realized above SPS's incremental cost being credited to ratepayers in the same manner as wholesale non-firm sales. SPS will not purchase from PSCo over the Lamar DC tie if, at the time of the proposed purchase, PSCo was planning on selling day-ahead to others at the Lamar DC tie, or into SPS's region, at a price lower than it is willing to sell to SPS. Likewise, SPS will not purchase from NSP if, at the time of the proposed purchase, NSP was planning on selling day-ahead to others in SPS's region, at a price lower than it is willing to sell to SPS.

33. To further clarify the agreement on this aspect of the settlement, SPS provided the following assurances:

a. Consistent with its agreement in Docket No. 14980, in deciding to make sales to PSCo or NSP, SPS will look at its other sales opportunities and if the sale at market price produces a higher margin than a sale to PSCo or NSP priced as set forth above, SPS will make the market-price sale in preference to the sale to PSCo or NSP;

b. Similarly, in deciding to make purchases from PSCo or NSP, SPS will look at its other purchase opportunities and if the purchase from another provider at market price produces a lower price than the purchase from PSCo or NSP priced as set forth above, SPS will make the purchase at market price in preference to the purchase from PSCo or NSP; and

c. The parties may challenge the reasonableness of SPS's forecasted avoided cost calculation.

34. In recognition of the fact that the Commission's Substantive Rules may apply to purchases from PSCo and NSP, the stipulating parties provided that "to the extent P.U.C. SUBST. R. 25.236(a)(1) applies to purchased power and that SPS has shown that such transactions meet the requirements described above, the stipulating parties are requesting that the Commission grant a good cause waiver of the fuel rule that prohibits such profits from affiliate purchased-power transactions from being passed through the fuel clause since these economic energy transactions are reasonably expected to result in lower fuel expenses than would otherwise be the case and will have been shown to constitute the best available market alternative available to SPS." NUS at 6, § 8c.

35. The high-voltage, DC intertie (Lamar DC Tie) between SPS and PSCo was recently energized. This will permit SPS and PSCo to begin making sales of economic energy to each other. These sales will be made under the Xcel Energy JOA approved by the FERC, which specifies the pricing mechanism under which such sales will be made. That pricing mechanism contemplates that each sale will involve a profit, but that the total price paid for the economic energy will be lower than the price at which the purchasing entity could otherwise obtain the energy.

Under the Commission's Substantive Rules, however, a utility may not recover through fuel a profit paid to an affiliate for fuel. If that provision were applied to purchased power and was strictly enforced, then SPS would be forced to choose between making a purchase of economic energy and being foreclosed from recouping a portion of the purchase price or foregoing purchases of economic energy from PSCo or NSP that are more economic than those otherwise available to it. Such a result would not be beneficial to either SPS or its ratepayers.

36. Both PSCo and NSP are regulated utilities. This means that their respective regulatory authorities expect them to maximize the price from the products that they sell. If SPS were to ask that PSCo or NSP sell it economic energy at cost so that SPS could comply with P.U.C. SUBST. R. 25 236(a)(1), PSCo and NSP would face justifiable criticism from their respective regulatory authorities much as SPS would face in Texas if it were to attempt to sell economic energy to either PSCo or NSP at cost. Further complicating the issue is the regulatory requirement in Colorado that PSCo return a portion of the profits it receives on such sales to ratepayers in Colorado. With this requirement in place, and if SPS were barred from recovering a profit on purchases from PSCo, the parent company of SPS and PSCo could actually lose money on every sale made by PSCo to SPS. Such a result is neither fair nor reasonable.

37. The provisions of the NUS regarding the recovery of profits paid by SPS for purchases of economic energy from PSCo and NSP are fair, just, and reasonable. To the extent that P.U.C. SUBST. R. 25.236(a)(1) applies to purchased power, the stipulating parties have shown good cause to waive the requirements of that rule as to purchases that are consistent with the NUS. The agreements regarding purchases of economic energy from PSCo and NSP are supported by a preponderance of the evidence and should be approved.

Value to be Imputed to Renewable-Energy Credits

38. The stipulating parties agreed that the value of renewable-energy credits (RECs) should be removed from eligible fuel expense. They stated that they recognize that both RECs and the wind energy that creates the RECs have value. To achieve a fair and reasonable balance of the two commodities, the stipulating parties agreed to use the market price of RECs and the market price of generic energy, which would be the avoided-energy cost. The determination of the amount of the contract price allocated to each commodity under this approach is explained below. The stipulating parties stated that they believe that this approach, which again compares market to market, uses readily available information that is readily verifiable. Under this approach, assuming that the contract price of wind energy and associated RECs is $22 per MWh (2.2 cents per kWh), the market price of RECs is $14.50, and if the avoided cost of energy were $40, the determination of the amount allocated to each commodity would be accomplished as follows:

$$\text{Percentage Attributable to RECS} = \frac{\text{RECs Market Price}}{\text{RECs Market Price} + \text{Avoided Energy Cost}}$$

$$\text{Percentage Attributable to Energy} = \frac{\text{Avoided Energy Cost}}{\text{RECs Market Price} + \text{Avoided Energy Cost}}$$

39. Using the estimated numbers assumed above would result in RECs having a percentage value of 26.61 percent and energy having a percentage value of 73.39 percent. This would result in RECs having an assigned value of $5.85 and energy having an assigned value of $16.15. To recognize the direct relationship and balance between the valuation of RECs and the valuation of energy used to serve customers, the stipulating parties agreed that the value imputed to RECs will be the higher of the amount derived from the formula set forth above or $6.50 per REC, escalated at the rate specified in the contract that created the RECs.

40. The imputed value of RECs during the reconciliation period is included in the black-box-settlement amount discussed in findings of fact 15-18, above. In all

future fuel reconciliations and base-rate cases, SPS will impute the value of RECs (calculated as described above) to each REC it obtains in a situation where the energy cost and the REC cost are bundled, and will remove the imputed value of all RECs it obtains during the reconciliation period from eligible fuel expense. Proceeds from the sale of excess RECs will be dealt with in the base-ratemaking process. In addition, the parties acknowledge that the value of RECs retired to meet SPS's obligations under PURA § 39.904 will be directly assigned to the Texas retail jurisdiction in all future base-rate proceedings.

41. The agreed methodology for determining the value to be imputed to RECs is fair, just and reasonable. The agreement to treat the proceeds from the sale of RECs as a base-ratemaking issue is consistent with the symmetry principle that drove this result. The agreement that the value of RECs retired to meet SPS's obligations under PUA § 39.904 will be directly assigned to SPS's Texas retail jurisdiction carries that symmetry to its logical conclusion: if RECs are retired to meet a Texas statutory obligation, then that value should be assigned solely to Texas. Both of these agreements are likewise fair, just, and reasonable. The agreements concerning RECs are supported by a preponderance of the evidence and should be approved.

Request to Increase Coal-Inventory Levels

42. SPS agreed to withdraw its request (without prejudice) to raise the target coal-inventory levels established in Docket No. 19512. The stipulating parties agreed that if SPS finds that it is necessary to go above those levels, then it may recover the additional carrying cost in future fuel-reconciliation proceedings after demonstrating that such action was financially beneficial to customers or was prudent to protect customers.

43. The agreed resolution of the coal-inventory issue is fair, just, and reasonable. It is supported by a preponderance of the evidence and should be approved.

Withdrawal of Special-Circumstances Request

44. SPS withdrew, without prejudice, its special-circumstances request to recover wheeling expenses associated with the purchase of economy energy.

Withdrawal of Request to Share in Margins from Wholesale Non-firm Sales

45. SPS withdrew, without prejudice, its request to share in the margins from wholesale non-firm sales.

Property-Tax Refund

46. After the reconciliation period, $346,247 ($162,512 on a Texas jurisdictional basis) was refunded to SPS that it had indirectly paid in property taxes during the reconciliation period. This refund was obtained due to efforts that SPS paid for during the reconciliation period, which payments are included in SPS's undisputed fuel costs, to reduce the property taxes that Savage Industries had paid on railcars used to transport coal to SPS. To ensure that costs and benefits are properly matched, the Staff contended that the $346,247 tax refund should be credited against those related reconciliation-period expenses.

47. Staff proposed this treatment of the post-reconciliation-period tax refund based on the testimony of Commission Staff's expert witness, Glenda Spence. In its post-hearing brief, Staff agreed that it would also be sensible and reasonable to include in this reconciliation the remaining $43,416.96 (total company) that SPS incurred after the reconciliation period to obtain the property-tax refund. That would have the benefit of finally resolving the accounting for the benefits and burdens associated with this property-tax refund. In its post-hearing reply brief, SPS agreed to that treatment. No other party opposed it.

48. The NUS adopted the agreed resolution proposed by Staff in its post-hearing brief and agreed to by SPS in its post-hearing reply brief. The resolution is reflected in the black-box settlement discussed in finding of fact 12, above.

49. This symmetrical regulatory treatment will result in a "matching" of the costs and the benefits relating to TUCO's successful challenge of the property-tax

valuations imposed by the taxing entities on the Harrington Station coal-handling facilities. This regulatory treatment will ensure that the same customers who receive the benefit of the property-tax refund will bear the cost incurred to obtain the refund. The regulatory treatment agreed to in the NUS is fair, just, and reasonable, is supported by a preponderance of the evidence, and should be approved.

Purchases of Natural Gas from SPS's Affiliate, e prime Inc.

50. During the reconciliation period, SPS engaged in several fuel and purchased-power transactions with its affiliates. Of those, only SPS's purchases of natural gas from e prime, Inc. (e prime) were disputed. OPC contended that those e-prime purchases did not meet the strict tests for cost recovery.

51. SPS agreed to credit (without prejudice) to eligible fuel expense 100 percent of the margins and operation-and-maintenance expenses included in the purchase price of natural gas purchased from its affiliate, e prime. The reduction in eligible fuel expenses attributable to this issue is included in the black-box settlement amount discussed in finding of fact 12, above. Except for the profit and operation-and-maintenance expenses dealt with above, all expenditures made by SPS for fuel purchased from e prime were agreed to be eligible fuel expenses.

52. The agreed resolution of the issues relating to purchases from e prime is fair, just, and reasonable. It is supported by a preponderance of the evidence and should be approved.

Sulfur Dioxide Emission Allowance Credits

53. When coal fuel is burned to generate electricity, the sulfur in it combines with oxygen in the atmosphere to produce sulfur dioxide (SO_2), which is emitted into the air. SO_2 is an air pollutant, and its emission is regulated and limited by the federal Clean Air Act. Based on the quantities of SO_2 it emitted in the past, SPS has been granted allowances to emit a certain quantity of SO_2 per year. If it emits less than it is allowed, SPS can sell its surplus allowances to other entities who emit more than they are allowed.

54. During the reconciliation period, SPS sold SO_2 allowances to an affiliate in a private transaction and to unrelated entities in a public auction. SPS received $922,209, on a total-company basis, from those sales. OPC contended that cost of coal during the reconciliation period should be reduced by that amount. OPC contended that SPS's burning of low-sulfur coal resulted in the generation of that revenue and that costs and benefits should be matched. Alternatively, OPC contended that costs of coal should be reduced by $3,534,700 (total system). That was the additional amount that SPS paid for coal that had less sulfur than a designated benchmark.

55. In the NUS, SPS agreed to treat the purchase and sale of SO_2 emission credits as a fuel item rather than as a base-rate item. Under that agreement, SPS will credit to eligible fuel expense the Texas-jurisdictional portion of proceeds from the sale of SO_2 credits, and the reduction in eligible fuel expenses during the reconciliation period attributable to this issue is included in the black-box settlement amount discussed in finding of fact 12, above. In addition, the stipulating parties agreed that in the future SPS may recover as eligible fuel expense the cost of purchasing in the open market any SO_2 credits necessary for SPS's compliance with SO_2 obligations. The stipulating parties agreed that parties will have the right to contest whether the SO_2 credit purchases were reasonable and necessary in future fuel reconciliations.

56. The treatment of SO_2 emission credits as set forth in the NUS will benefit SPS's ratepayers by providing for a timelier accounting for sales and purchases of SO_2 emission credits. The agreed treatment of SO_2 emission credits is fair, just, and reasonable. It is supported by a preponderance of the evidence and should be approved.

Due Process for NUS

57. As discussed in finding of fact 10, above, SPS gave notice of the terms of the NUS in the same manner as it gave notice of this proceeding originally and a new intervention deadline was established to permit those who had not earlier become

parties the opportunity to become parties and contest the NUS. No person intervened.

58. A deadline to request a hearing was established and passed without the non-stipulating parties filing a request for hearing.

59. The non-stipulating parties' due-process rights were protected by this process.

Interest

60. SPS calculated interest as required by P.U.C. SUBST. R. 25.236(e)(1), and applied 4.39 and 1.79 percent rate to the under-collected balance for 2002 and 2003, respectively.

61. The cumulative interest amount on the fuel under-collection for the reconciliation period was $1,717,070.31.

Rate-Case Expenses

62. SPS has agreed to pay the City's reasonable and necessary rate-case expenses incurred in this proceeding.

III. Conclusions of Law

1. SPS is a public utility as defined in PURA§§ 11.004(a) and 31.002(1).

2. The Commission has jurisdiction and authority over SPS and this matter under PURA §§ 14.001, 36.001, 36.203 and 36.205.

3. SPS provided adequate notice of this proceeding to affected persons. SPS also provided adequate notice of the NUS to affected persons.

4. The terms of the NUS are supported by the record, comply with PURA, and are fair, equitable, reasonable, and consistent with the public interest. Non-stipulating parties had an opportunity to be heard on their reasons for opposing the NUS. Therefore, in accordance with *City of El Paso v. Public Utility Commission,* 839 S.W.2d 895 (Tex. App. – 1992), *rev'd on other grounds,* 883 S.W.2d 179, 183-184 (Tex. 1994), the Commission may adopt the terms of the NUS as part of its order in this case.

5. The NUS is fair, just, and reasonable. It is supported by a preponderance of the evidence and should be approved.

6. Other than resolving this docket and obligating SPS to take or abstain from taking certain actions, the NUS only obligates the stipulating parties to support the positions set forth in the NUS.

7. The direct testimony of SPS' witness David Hudson (SPS Exhibit No. 24) is irrelevant to the extent it discusses issues other than whether the NUS is in the public interest

IV. Ordering Paragraphs

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

1. The application of SPS for authority to reconcile its fuel and purchased-power expenses for January 1, 2002, through December 31, 2003, is approved as modified by the NUS and this Order.

2. The Commission finds that the NUS as a whole is in the public interest, and the NUS is approved. The stipulating parties are ordered to comply with the obligations that each has assumed in entering into the NUS.

3. SPS's is ordered to file a base-rate case by May 31, 2006, using a test year ending September 30, 2005.

4. SPS is ordered to file its next fuel reconciliation by May 31, 2006.

5. SPS Exhibit Nos. 25 and 26, and City Exhibit Nos. 36 and 37 are admitted into evidence.

6. SPS Exhibit No. 24, to the extent it discusses the public interest of the NUS, is admitted into evidence.

7. The entry of an order consistent with the NUS does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the NUS. Neither should the entry of an order consistent with the NUS

be regarded as binding precedent as to the appropriateness of any principle that may underlie the NUS.

8. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 19th day of December 2005

PUBLIC UTILITY COMMISSION OF TEXAS

PAUL HUDSON, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

BARRY T. SMITHERMAN, COMMISSIONER

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