Control Number: 48973

Item Number: 1

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Southwestern Public Service Company (“SPS”) requests authority to reconcile its fuel and purchased power costs incurred for the period from January 1, 2016 through June 30, 2018 (“Reconciliation Period”). In support of this application, SPS states:

I. Jurisdiction and Affected Parties

SPS is a public utility as defined in § 11.004(1) of the Public Utility Regulatory Act (“PURA”)\(^1\) and an electric utility as that term is defined in PURA § 31.002(6). The Commission has jurisdiction over this application under PURA §§ 14.001 and 36.203(e) and 16 Tex. Admin. Code (“TAC”) §§ 25.235, 25.236, and 25.237.

SPS, a New Mexico corporation, is a wholly-owned electric utility subsidiary of Xcel Energy Inc. (“Xcel Energy”).\(^2\) SPS’s business address is 790 South Buchanan Street, Amarillo,

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\(^2\) Xcel Energy is the parent company of four utility operating companies: Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado, a Colorado corporation; and SPS. Xcel Energy’s natural gas pipeline company is WestGas InterState, Inc. Through a subsidiary, Xcel Energy Transmission Holding Company, LLC, Xcel Energy also owns three transmission-only operating companies: Xcel Energy Southwest Transmission Company, LLC; Xcel Energy Transmission Development Company, LLC; and Xcel Energy West Transmission Company, LLC, all of which are regulated by the Federal Energy Regulatory Commission (“FERC”).
Texas 79101. SPS serves retail electric customers in Texas and New Mexico, and also serves wholesale electric customers. SPS is a member of the Southwest Power Pool, Inc. ("SPP"), which is a regional transmission organization. The Commission regulates SPS’s Texas retail operations. The New Mexico Public Regulation Commission regulates SPS’s New Mexico retail operations. The FERC regulates SPS’s wholesale power sales and SPS’s transmission of electricity in interstate commerce.

SPS and all of its Texas retail customers are affected by this application.

II. Authorized Representatives and Service of Documents

SPS’s authorized representatives for this case are:

William A. Grant
Regional Vice President, Regulatory and Strategic Planning
Jeremiah W. Cunningham
Manager, Rate Cases
SOUTHWESTERN PUBLIC SERVICE COMPANY
790 S. Buchanan St.
Amarillo, Texas 79101
(806) 378-2430
(806) 378-2820 (Fax)
william.a.grant@xcelenergy.com
jeremiah.w.cunningham@xcelenergy.com

Mark A. Walker
Assistant General Counsel
XCEL ENERGY SERVICES INC.
816 Congress Ave., Suite 1650
Austin, Texas 78701-2471
(512) 236-6926
(512) 236-6935 (Fax)
mark.a.walker@xcelenergy.com

Kristina F. Rollins
WINSTEAD PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 370-2828
(512) 370-2850 (Fax)
krollins@winstead.com

SPS requests that all documents (e.g., motions, orders, discovery requests and discovery responses) be served on its authorized representatives.
III. Summary of SPS’s Reconciliation Request

In accordance with 16 TAC § 25.236(b), SPS requests authority to reconcile its fuel and purchased power costs for the Reconciliation Period, which is the period from January 1, 2016 through June 30, 2018. SPS most recently reconciled its fuel and purchased power costs in Docket No. 46025 for the period from July 1, 2013 through December 31, 2015.

During the Reconciliation Period, SPS incurred $858,818,653 (Texas retail) in total fuel and purchased power expenses to serve its Texas retail customers. SPS collected $849,244,156 in revenues through its Texas retail fuel factors. After accounting for the beginning balance, refunds, credits, surcharges, and other adjustments, SPS’s over-collected balance as of June 30, 2018 was $24,547,707, excluding interest. SPS had a cumulative under-recovery interest balance of ($73,246) as of June 30, 2018. SPS is requesting approval of these two amounts.

A summary of SPS’s eligible fuel and purchased power expenses and the over-collected balance is shown in the table below.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2016, Over-Recovery Balance</td>
<td>$5,641,107</td>
</tr>
<tr>
<td>Fuel and Purchased Power Energy Cost: 1/16-6/18</td>
<td>($858,818,653)</td>
</tr>
<tr>
<td>Fuel Factor Revenue Collected: 1/16-6/18</td>
<td>$849,244,156</td>
</tr>
<tr>
<td>Fuel Costs Net Refunded: 1/16-6/18</td>
<td>$6,055,897</td>
</tr>
<tr>
<td>Off-System Net Sales Margins: 1/16-6/18</td>
<td>$22,543,281</td>
</tr>
<tr>
<td>Docket Nos. 45560, 46075, and 47035 Adjustments; Electric Commodity</td>
<td>($118,080)</td>
</tr>
<tr>
<td>Trading Margins; SO₂ Emission Allowance Credits</td>
<td></td>
</tr>
<tr>
<td>June 30, 2018, Over-Collected Balance</td>
<td>$24,547,707</td>
</tr>
</tbody>
</table>

SPS’s June 30, 2018 over-collected fuel balance is above the 4.0% materiality threshold set forth in 16 TAC § 25.237(a)(3)(B). As of that date, SPS’s materiality threshold was

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Docket No.
Southwestern Public Service Company’s
Application for Authority to Reconcile Fuel and Purchased Power Costs
for the Period January 1, 2016 through June 30, 2018
Page 4
approximately $13.3 million. SPS has filed an application with the Commission in Docket No. 48718 to refund its over-collected fuel balance as of May 2018, including interest through December 2018.\textsuperscript{3} Once the refund is issued, SPS will be below the materiality threshold.

SPS seeks recovery for certain costs incurred under its Purchased Power Agreements ("PPA") during the Reconciliation Period. Approximately 97\% of these costs are associated with PPAs that were previously approved.\textsuperscript{4} Some of the costs associated with PPAs during the Reconciliation Period, however, are associated with two Solar PPAs that were entered into prior to the Reconciliation Period, but produced eligible fuel costs for the first time during the Reconciliation Period. SPS requests approval of the two Solar PPAs.

SPS seeks approval of new coal supply agreements with TUCO, and to be relieved of its requirement, imposed by the final order in Docket No. 19512, to annually file audits associated with TUCO.\textsuperscript{5}

SPS also seeks approval of its optimized operations of its coal-fired Tolk generation station, which began during the Reconciliation Period. Due to the water limitations facing Tolk, SPS commenced optimized operations at Tolk during the last three months of the Reconciliation Period to maximize the economic value of the remaining lives of its units by limiting generation

\textsuperscript{3} Application of Southwestern Public Service Company for Authority to Implement a Net Refund for Overcollected Fuel Costs, Docket No. 48718 (pending).

\textsuperscript{4} Application of Southwestern Public Service Company for Authority to Reconcile Fuel and Purchased Power Costs, Docket No. 46025, Final Order at 9, Ordering Paragraph 2 (Mar. 30, 2017) ("The PPAs under which SPS incurred eligible fuel costs during the Reconciliation Period are approved.") Additionally, Borger was certificated in Application of Southwestern Public Service Company for Certification of Qualifying Facility Purchased Power Contract Under Section 2.209 of PURA 1995, Order, Docket No. 17525 (Oct. 30, 1997).

\textsuperscript{5} 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, Docket No. 19512, Order at 19, Ordering Paragraph 1A (Jul. 13, 2000).
production. Optimizing Tolk operations in this manner helps ensure the economic availability of Tolk’s water supply while maintaining the overall capacity available from the plant.

IV. Supporting Documentation

In support of this application, SPS has filed: (i) Schedules FR-1 through FR-22 with related work papers, as required by the Commission’s Electric Utility Fuel Reconciliation Filing Package for Generating Utilities; (ii) pre-filed written testimony of ten witnesses with attachments and work papers; and (iii) an Executive Summary of its filing.

SPS witness William A. Grant provides an overview of SPS’s fuel reconciliation request. Mr. Grant’s testimony also provides a table identifying the SPS witnesses who provide testimony in support of SPS’s requests in this proceeding and the topics each witness addresses.

V. Recovery of Rate Case Expenses

SPS asks the Commission to authorize SPS to accrue its rate case expenses associated with this docket (including requests for reimbursement from municipalities participating in this docket) for review and recovery in a separate, future proceeding.

VI. Notice

SPS will provide notice in accordance 16 TAC § 25.235(b)(1)(B). The proposed notice is provided as Attachment A to this application. To comply with 16 TAC § 25.235(b)(1)(B), SPS intends to publish notice of this application once each week for two consecutive weeks in newspapers having general circulation in each county of SPS’s Texas retail service area, beginning as soon as practicable after this filing. Additionally, SPS will provide individual
notice to each of its customers and to all parties that participated in SPS’s last fuel reconciliation proceeding, Docket No. 46025.⁶

SPS requests that the Commission approve this method of notice and SPS’s proposed wording of the notice.

VII. Confidentiality and Protective Order

Some of the testimony, attachments, schedules, and workpapers filed supporting this application contain confidential or highly sensitive information. In accordance with the filing package and to protect this information, the documents containing confidential information include a statement to that effect. Additionally, in accordance with the filing package, the confidential or highly sensitive information has been deleted, redacted, or summarized as necessary to preserve confidentiality.

Copies of all confidential and highly sensitive information will be available, during normal business hours, at the offices of Winstead PC, 401 Congress Avenue, Suite 2100, Austin, Texas, for parties who have executed the Protective Order issued in this proceeding.

In addition to the confidential and highly sensitive material in SPS’s initial filing, SPS may need to furnish in responses to requests for information, highly sensitive or confidential information, the disclosure of which to third parties would either place it at a severe competitive disadvantage or cause it to violate contractual confidentiality obligations.

The confidentiality agreement included as Schedule FR-22 to the filing package was developed many years ago when competitive pressures were not as intense as those that currently

exist. The Commission has recognized the existence of these increased competitive pressures for many years and, as a consequence, has engaged in a practice of entering protective orders that provide two levels of protected materials—confidential materials and materials that are entitled to an even higher level of protection, highly sensitive protected materials. To conform to the Commission’s established practice, SPS proposes to use the Commission’s Standard Protective Order as the basis for the protective order in this docket. Thus, SPS requests that the Commission enter a protective order in the form attached to this application as Attachment B that accompanies this application and that, pending entry of the protective order, the parties treat the proposed protective order as a confidentiality agreement.

VIII. Conclusion and Prayer for Relief

For the reasons set out in this application and the accompanying testimony and filing package schedules and workpapers, SPS requests that the Commission:

1. find that all of the fuel and purchased power expenses SPS incurred during the Reconciliation Period were eligible fuel and purchased power costs under 16 TAC § 25.236(a), and that it was reasonable and necessary for SPS to incur those expenses to provide reliable electric service for its customers;

2. find that SPS properly accounted for its fuel-related revenues collected through the fuel factor during the Reconciliation Period;

3. approve SPS’s fuel expense over-recovery balance as of June 30, 2018, which was $24,547,707, excluding interest;

4. approve SPS’s cumulative under-recovered interest balance as of June 30, 2018, which was ($73,246);

5. find that short-term, economy, or emergency wholesale sales made from SPS’s generating resources (i.e., generation book) into the SPP IM when such resources are unnecessary to serve SPS’s obligation-load customers are off-system sales eligible for margin sharing under 16 TAC § 25.236(a)(8) and (9);
6. approve: (a) the Solar PPAs; and (b) the reasonableness of the energy and energy-related costs SPS incurred under the Solar PPAs;

7. approve SPS’s optimized operations of its Tolk units to conserve the plant’s limited groundwater in order to extend the lives of the units;

8. approve the coal supply agreements executed with TUCO during the Reconciliation Period and end SPS’s requirement to file audits related to TUCO on an annual basis;

9. authorize SPS to accrue its rate case expenses associated with this docket (including requests for reimbursement from municipalities participating in this docket) for review and recovery in a separate, future proceeding;

10. approve SPS’s proposed method and form of notice provided as Attachment A to this application;

11. approve the proposed protective order provided as Attachment B to this application; and

12. grant SPS such other relief to which SPS may be entitled.

Respectfully submitted,

XCEL ENERGY SERVICES INC.

Mark A. Walker
State Bar No. 20717318
816 Congress Avenue, Suite 1650
Austin, Texas 78701-2471
Office: (512) 236-6926
Facsimile: (512) 236-6935
e-mail: mark.a.walker@xcelenergy.com

WINESTAD PC

Kristina F. Rollins
State Bar No. 24033012
Ron H. Moss
State Bar No. 14591025
Lauren D. Damen
State Bar No. 24078394
Leila Melhem
State Bar No. 24083492
401 Congress Avenue, Suite 2200
Austin, Texas 78701
Office: (512) 370-2828
Facsimile: (512) 370-2850
e-mail: krollins@winstead.com
e-mail: rhmoss@winstead.com
e-mail: ldamen@winstead.com
e-mail: lmelhem@winstead.com
BY: 

AMY M. SHELHAMER

STATE BAR NO. 24010392

600 S. TYLER, SUITE 1700

AMARILLO, TEXAS 79101

OFFICE: (806) 372-5569

FACSIMILE: (806) 372-9761

E-MAIL: ASHELHAMER@COURTEYNALAWFIRM.COM

BY: 

ATTORNEYS FOR

SOUTHWESTERN PUBLIC SERVICE COMPANY
Southwestern Public Service Company (SPS), doing business as Xcel Energy Inc., gives notice that, in accordance with the Public Utility Regulatory Act and Public Utility Commission of Texas (Commission) Rule 16 Texas Administrative Code § 25.236, SPS has filed an application with the Commission for authority to reconcile its fuel and purchased power costs incurred for the period from January 1, 2016 through June 30, 2018 (Reconciliation Period). SPS filed this application with the Commission on December 11, 2018. The Commission has assigned Docket No. _____ to this application. All of SPS’s Texas retail customers and retail rate classes within its Texas service territory who pay fixed fuel factors are affected by this application. This application has no effect on SPS’s non-fuel base rates.

During the Reconciliation Period, SPS incurred $858,818,653 (Texas retail) in total fuel and purchased power expense to serve its Texas retail customers. At the end of the Reconciliation Period, SPS had a balance of over-recovered fuel and purchased power costs, excluding interest, of $24,547,707, and a cumulative under-recovered interest balance of ($73,246). SPS requests the Commission approve these two balances. SPS also requests authorization to treat its fuel over-recovery balance and cumulative under-recovery interest balance as its beginning balance for its next reconciliation period beginning July 1, 2018.

In addition, SPS requests approval of two solar energy power purchase agreements that SPS entered into before the start of the Reconciliation Period, under which SPS incurred eligible fuel costs for the first time during the Reconciliation Period. SPS also requests approval of the coal supply agreements entered into during the Reconciliation Period and other approvals regarding optimization of coal generation operations.

Finally, SPS has asked the Commission to authorize SPS to accrue its rate case expenses associated with this docket (including requests for reimbursement from municipalities participating in this docket) for review and recovery in a separate, future proceeding.

Persons with questions or who want more information on this application may contact SPS at 790 S. Buchanan St., Amarillo, Texas 79101, or call 1-800-895-4999 (toll free) during normal business hours. A complete copy of this application is available for inspection at the address listed in the previous sentence.

Persons who wish to formally participate in this proceeding, or who wish to express their comments concerning this application, should contact the Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, or call (512)
936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. A request to intervene or for further information should refer to Docket No. _____.

The deadline for intervention in the proceeding is 45 days after the date the application was filed with the Commission, or January 25, 2018.
Attachment B – Proposed Protective Order

DOCKET NO. _____

APPLICATION OF SOUTHWESTERN § PUBLIC SERVICE COMPANY FOR § PUBLIC UTILITY COMMISSION
AUTHORITY TO RECONCILE FUEL § AND PURCHASED POWER COSTS §
FOR THE PERIOD JANUARY 1, 2016 § THROUGH JUNE 30, 2018 § OF TEXAS

PROTECTIVE ORDER

This Protective Order governs the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face “PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _______ ” (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.

2. **Materials Excluded from Protected Materials Designation.** Protected Materials must not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the
Public Information Act. Protected Materials also must not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.

4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party is required to file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.

5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The

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Commissioners and their staff must be informed of the existence and coverage of this Protective Order and will observe the restrictions of the Protective Order.

6. **Highly Sensitive Protected Material Described.** The term "Highly Sensitive Protected Materials" is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;\(^2\) (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party must bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. ________ (or words to this effect) and must be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party's designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**
Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party is required to maintain a record of all copies made of Highly Sensitive Protected Material and must send a duplicate of the record to the producing party when the copy or copies are made. The record must specify the location and the person possessing the copy. Highly Sensitive Protected Material must be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes must themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**
With the exception of Commission Staff, the Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party’s counsel, or (c) employees of the Reviewing Party working with and under the direction of Reviewing Party’s counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party must limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff,
OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, must consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party is required to provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party’s representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is a representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs control.

11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party is required to also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC (if
OPC is a party), and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC (if OPC is a party) and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.

12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.

13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the
Docket No. _______ Protective Order

Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.

15. **Required Certification.** Each person who inspects the Protected Materials must, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials must not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC will be used only for the purpose of the proceeding in Docket No. _______. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein must not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order must, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party is required to provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.
16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification must be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person must be terminated and all notes, memoranda, or other information derived from the protected material must either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification is required to continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which must be provided to the Reviewing Parties under Paragraph 9, and voluminous Protected Materials, the producing party is required to provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding according to this Protective Order, but a record must be maintained as to the
documents reproduced and the number of copies made, and upon request the Reviewing Party is required to provide the party asserting confidentiality with a copy of that record.

18. **Procedures Regarding Voluminous Protected Materials.** 16 Texas Administrative Code (TAC) § 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party’s voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.

19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which will commence upon entry of this Protective Order and continue until the expiration of the Commission’s plenary jurisdiction. The Reviewing Period will reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.

20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials must be made available to the Reviewing Parties and their Reviewing
Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.

22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party’s notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and must not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials must be maintained in a secure place and must not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission must be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents...
must be marked “PROTECTED MATERIAL” and must be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) must notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) must otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.

24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials will nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer’s order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer’s order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials must be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission’s denial of any appeal.

25. **Notice of Intent to Use Protected Materials or Change Materials Designation.** Parties intending to use Protected Materials must notify the other parties prior to offering
them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. ______ at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party must first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party will at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality must file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period will be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party challenging confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response must include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it must do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer’s own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure must not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer’s ruling.

28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation will have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation will have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation will have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials must be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state
district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.

29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order precludes any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence must be made in a manner which protects Protected Materials from unauthorized disclosure.

31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, “conclusion of these proceedings” refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand
proceeding, then the "conclusion of these proceedings" is extended by the remand to the
exhaustion of available appeals of the remand, or the running of the time for making such
appeals of the remand, as provided by applicable law. Promptly following the conclusion
of these proceedings, counsel for the party asserting confidentiality will send a written
notice to all other parties, reminding them of their obligations under this Paragraph.
Nothing in this Paragraph prohibits counsel for each Reviewing Party from retaining two
(2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other
pleading which refers to Protected Materials provided that any such Protected Materials
retained by counsel will remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the
Public Information Act, the Open Meetings Act, the Texas Securities Act and any other
applicable law, provided that parties subject to those acts will notify the party asserting
confidentiality, if possible under those acts, prior to disclosure pursuant to those acts.
Such notice is not required where the Protected Materials are sought by governmental
officials authorized to conduct a criminal or civil investigation that relates to or involves
the Protected Materials, and those governmental officials aver in writing that such notice
could compromise the investigation and that the governmental entity involved will
maintain the confidentiality of the Protected Materials.

33. **Procedures for Release of Information under Order.** If required by order of a
governmental or judicial body, the Reviewing Party may release to such body the
confidential information required by such order; provided, however, that: (a) the
Reviewing Party must notify the producing party of the order requiring the release of
such information within five (5) calendar days of the date the Reviewing Party has notice
of the order; (b) the Reviewing Party must notify the producing party at least five (5)
calendar days in advance of the release of the information to allow the producing party to

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contest any release of the confidential information; and (c) the Reviewing Party must use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section is not required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
35. **Notify Defined.** "Notify" for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.

36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party must tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party is required to file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party must serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party’s argument for non-disclosure must do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer will stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to
Paragraph 36, the presiding officer may sanction the producing party pursuant to 16 TAC § 22.161.

38. **Modification of Protective Order.** Each party will have the right to seek changes in this Protective Order as appropriate from the presiding officer.

39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, will be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party will not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party will be entitled to pursue any other form of relief to which it is entitled.
ATTACHMENT A

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials must not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC will be used only for the purpose of the proceeding in Docket No. ______. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here will not apply.

__________________________________________  __________________________________________
Signature                      Party Represented

__________________________________________  __________________________________________
Printed Name                   Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

__________________________________________  __________________________________________
Signature                      Party Represented

__________________________________________  __________________________________________
Printed Name                   Date
ATTACHMENT B

I request to view/copy the following documents:

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<th>Non-Confidential</th>
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Signature

Party Represented

Printed Name

Date

Docket No. ________

Southwestern Public Service Company's
Application for Authority to Reconcile Fuel and Purchased Power Costs
for the Period January 1, 2016 through June 30, 2018
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Certificate of Service

I certify that on the date this document was filed with the Public Utility Commission of Texas a true and correct copy of it was served on the Staff of the Public Utility Commission of Texas and on all other parties to Docket No. 46025, Southwestern Public Service Company's prior fuel reconciliation proceeding, by hand delivery, courier service for next day delivery, or United States Postal Service first-class mail, postage prepaid.

[Signature]

Docket No. ___
Southwestern Public Service Company's
Application for Authority to Reconcile Fuel and Purchased Power Costs
for the Period January 1, 2016 through June 30, 2018
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