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**SOAH DOCKET NO. 473-22-1801
PUC DOCKET NO. 53034**

APPLICATION OF SOUTHWESTERN	§	BEFORE THE STATE OFFICE
PUBLIC SERVICE COMPANY FOR	§	
AUTHORITY TO RECONCILE FUEL	§	
AND PURCHASED POWER COSTS	§	OF
FOR THE PERIOD JULY 1, 2018,	§	
THROUGH JUNE 30, 2021	§	ADMINISTRATIVE HEARINGS

**OFFICE OF PUBLIC UTILITY COUNSEL'S
POST-HEARING REPLY BRIEF**

Chris Ekoh
Interim Chief Executive and Public Counsel
State Bar No. 06507015

Justin Swearingen
Assistant Public Counsel
State Bar No. 24096794
Kourtnee Jinks
Assistant Public Counsel
State Bar No. 24097146
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500 (Telephone)
512/936-7525 (Facsimile)

**ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL**

September 30, 2022

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this post-hearing reply brief and shows the following:¹

I. INTRODUCTION

In its initial post-hearing brief, Southwestern Public Service Company (“SPS”), a wholly owned electric utility subsidiary of Xcel Energy Inc., states that SPS incurred \$736,175,441.88 (Texas retail) in total net fuel and purchased power expenses to serve its Texas retail customers and collected \$672,643,573.80 in revenues through its Texas retail fuel factors.² SPS contends that after accounting for the beginning balance, refunds, credits, surcharges, and other adjustments, as of June 30, 2021, its under-collected balance totaled (\$101,553,219.33),

¹ The fact that OPUC does not address an issue should not be interpreted as agreement with any particular position on the issue. All page number references are to the native page numbers unless indicated otherwise.

² Initial Post-Hearing Brief of Southwestern Public Service Company at 11. (Sept. 16. 2022). (SPS Brief).

excluding interest,³ and its cumulative over-recovery interest balance totaled \$51,079.88.⁴ SPS is requesting approval of these two amounts as part of its request to reconcile its eligible fuel and purchased power costs for the period of July 1, 2018, through June 30, 2021, (“Reconciliation Period”) pursuant to the Public Utility Regulatory Act (“PURA”) and the Public Utility Commission of Texas’ (“Commission”) substantive and procedural rules.

IV. CONTESTED ISSUES

OPUC continues to advocate for a \$13.5 million total disallowance, with roughly \$1.75 million of that disallowance resulting from an appropriate adjustment to SPS’s line loss factors and an \$11.75 million good cause exception disallowance to SPS’s off-system sales margin retention. OPUC also maintains its position that SPS has improperly allocated its electric commodity trading margin credits and proceeds obtained from sulfur dioxide emission allowances using Texas retail allocators developed based on energy kilowatt hour (“kWh”) sales at the *meter* because they should be allocated at the *source* using appropriately reformulated line loss factors.

A. Off-System Sales Margin Retention During Winter Storm Uri [PO Issue 16(c)]

Insofar as SPS proposes to retain \$11,961,147 in margins from off-system sales made in the Southwest Power Pool (“SPP”) integrated market during Winter Storm Uri,⁵ OPUC joins with Staff of the Public Utility Commission (“Staff”),⁶ Texas Industrial Energy Consumers

³ *Id.*

⁴ *Id.*

⁵ SPS Brief at X.

⁶ Commission Staff’s Initial Brief at 6-8 (Sept. 16, 2022). (Staff Brief).

(“TIEC”),⁷ and Alliance of Xcel Municipalities (“AXM”),⁸ in advocating for a good-cause modification to SPS’s retention of its proposed off-system sales margins arising from Winter Storm Uri. As AXM rightly notes, “SPS has not proven that the \$11.9 million portion of Off-System Sales Margins it seeks authority to retain for the Month of February 2021 are accurate and verifiable.”⁹ Looking to our neighboring regulatory commissions, TIEC pertinently recognizes, “SPS’s New Mexico ratepayers are not being asked to shoulder the same burden; 100% of the New Mexico jurisdictional share of SPS’s Winter Storm Uri off-system sales margins will go to offsetting fuel costs in that state.” Finally, from a public policy perspective, Staff aptly contends that “[t]o permit SPS the opportunity to profit substantially from the very weather event that has devastated the lives of so many of its fellow Texans runs counter to PURA’s stated purpose: to protect the public interest inherent in the rates and services of public utilities.”¹⁰ On these points, OPUC could not agree more.

Conversely, SPS suggests that a good cause exception in the instant case could “create a chilling effect with respect to all utility competitive incentives in the Commission’s rules, because it would set the precedent that such incentives can be arbitrarily disallowed in retrospect whenever a party disagrees with the financial outcome of such an incentive.”¹¹ OPUC contends that a decision by the Commission to grant a good cause exception in this docket could hardly be characterized as an “arbitrary” disallowance. After all, SPS’s Vice President Brook Trammell agrees with its witness Jeffrey Haskins that: “(1) the storm caused blackouts for over 9.9 million people in the U. S. and Mexico, (2) the blackouts were the largest in the U. S since the northeast

⁷ Texas Industrial Energy Consumers’ Initial Brief at 1- 2. (TIEC Brief).

⁸ Initial Post hearing Brief of the Alliance of Xcel Municipalities at 1-2. (AXM Brief).

⁹ AXM Brief at 1.

¹⁰ Staff Brief at 10.

¹¹ SPS Brief at 25.

blackout of 2003, and (3) the storm broke record low and high temperatures, some dating back to 1895 in the SPS service territory.”¹² A sensible review of the facts can only lead to the reasonable conclusion that the Commission should grant a good cause exception to the off-system sales margin retention rule found at 16 TAC § 25.236(a)(9) so as to adjust the total allowance for SPS’s off-system sales margins during Winter Storm Uri in order to offset the burden on Texas’ ratepayers.

E. Did SPS Properly Apply Reasonable Line-Loss Factors [PO Issues 20, 21]

On the issue of SPS’s line-loss factors, AXM and Staff offered no comment. SPS’s briefing on the issue commences with a swift explanation as to line loss, before citing to 16 TAC § 25.237(a)(1) for the proposition that its fuel factors are to “account for system losses and for the difference in line losses corresponding to the voltages at which the electric service is provided.”¹³ Thereafter, SPS cites to 16 TAC § 25.23(e)(3) (sic), for the proposition that the fuel reconciliations are to use “the same Commission-approved loss factors that were used in the electric utility’s applicable fixed or interim fuel factor,”¹⁴ making no mention of 16 TAC § 25.236(d)(2), a provision which clearly gives the Commission purview within a fuel reconciliation proceeding to address “any issue related to determining the reasonableness of the electric utility’s fuel expenses during the reconciliation period and whether the electric utility has over- or under-recovered its reasonable fuel expenses.” OPUC contends that “any” would necessarily include the propriety of utilizing those Commission-approved loss factors derived from SPS’s 2016 Loss Study, particularly given the disparity between SPS’s book and calculated losses.

¹² TIEC Brief at 7.

¹³ SPS Brief at 38.

¹⁴ *Id.*

SPS next attempts to uphold the propriety of its current loss factors by asserting that its 2021 System Loss Study's calculated losses and loss factors are consistent with its previous study.¹⁵ Once more, OPUC underscores that this 2021 Study has neither been approved by the Commission nor provided in this docket. Lastly, SPS argues OPUC's witness Ms. Laurie Tomczyk's recommendation is based on a "flawed analysis of SPS's accounting of book losses documented in Schedule FR-4.1."¹⁶ OPUC contends Ms. Tomczyk's analysis is derived from SPS's own RFI responses, which failed to properly indicate certain losses on retail load were actually excluded from Schedule FR 4.1.¹⁷

TIEC accurately notes that Ms. Tomczyk's proposal would decrease the allocation of fuel costs to primary and secondary distribution customers by \$1,770,621 and \$3,128,170, respectively, while increasing the allocation of fuel costs by \$1,222,789 and \$6,785,145 for sub-transmission and backbone transmission customers, respectively,¹⁸ before touching on Ms. Tomczyk's testimony that she is unaware of any regulatory commission having modified line loss factors based on something other than a line loss study.¹⁹ That this Commission, or perhaps any other commission, has never before modified line loss factors in a fuel reconciliation proceeding based on something other than a line loss study is not a bulwark to the Commission opting to do so now, especially when the prescribed course of action is grounded in sound public policy and supported by the evidence.

¹⁵ SPS Brief at 39.

¹⁶ *Id.*

¹⁷ See OPUC Ex. 6, 12, 17, and 18.

¹⁸ TIEC Brief at 13.

¹⁹ TIEC Brief at 14.

F. Allocation [PO Issue 23]

iii) Whether SPS should allocate electric commodity trading margin credits and proceeds from the sale of sulfur dioxide emission allowances using allocators developed based on energy kWh sales at the source rather than the meter

In its initial brief, OPUC sets out the recommendation of its witness, Ms. Tomczyk, that SPS's electric commodity trading margin credits and proceeds from sulfur dioxide emission allowances should be allocated to classes based on energy at the source, rather than at the meter. As noted by TIEC in its initial brief, "Ms. Tomczyk's recommendation on this point is sound."²⁰ Similarly, SPS found OPUC's proposal to allocate electric commodity trading credits and sulfur dioxide emission allowance credits using kWh billed sales at the source to be "acceptable," taking "no position on this issue."²¹ While TIEC also asserts that SPS's line-loss adjustments, not Ms. Tomczyk's, should be used for converting sales at the meter to sales at the generator, OPUC maintains its disagreement with TIEC's suggestion on this issue.


V. CONCLUSION

For the reasons stated herein, as well as those set out in its initial post-hearing brief and the Direct Testimony of Ms. Laurie Tomczyk, OPUC respectfully requests that the State Office of Administrative Hearings Administrative Law Judges adopt and incorporate OPUC's recommendations into the Proposal for Decision in this proceeding. OPUC further requests to be granted any other relief to which it may be entitled.

²⁰ TIEC Brief at 22.

²¹ SPS Brief at 42.

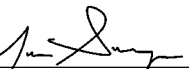
Respectfully submitted,
Chris Ekoh
Interim Chief Executive and Public Counsel
State Bar No. 06507015


Justin Swearingen
Assistant Public Counsel
State Bar No. 24096794
Kourtnee Jinks
Assistant Public Counsel
State Bar No. 24097146
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500 (Telephone)
512/936-7525 (Facsimile)
justin.swearingen@opuc.texas.gov (Service)
kourtnee.jinks@opuc.texas.gov (Service)
opuc_eservice@opuc.texas.gov (Service)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

CERTIFICATE OF SERVICE
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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 30th day of September 2022, by facsimile, electronic mail, and/or first class, U.S. Mail.


Justin Swearingen