

DOCKET NO. _____

APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
PUBLIC SERVICE COMPANY FOR §
AUTHORITY TO CHANGE RATES § OF TEXAS

DIRECT TESTIMONY
of
H. CRAIG ROMER

on behalf of

SOUTHWESTERN PUBLIC SERVICE COMPANY

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

<u>Acronym/Defined Term</u>	<u>Meaning</u>
Base Rate Coal Costs or coal acquisition and related costs	The coal costs included in base rates consisting of: <ul style="list-style-type: none">• costs incurred for furnishing railcars and for handling, unloading, storing, crushing, processing, weighing, and delivering coal to SPS's bunkers;• assessments and taxes (except federal and state income taxes);• the cost of financing coal inventories; and• the contractual margin payment.
Commission	Public Utility Commission of Texas
CPI	Consumer Price Index
CSA	Coal Supply Agreement
FOB	Free on Board
FSO	Fuel Supply Operations
NMPRC	New Mexico Public Regulation Commission
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
RFP	Rate Filing Package
Savage	Savage Industries
SPS	Southwestern Public Service Company, a New Mexico corporation
SPS/TUCO CSAs or CSAs	CSAs with TUCO for SPS's Harrington and Tolk coal-fueled generation stations.

<u>Acronym/Defined Term</u>	<u>Meaning</u>
Test Year	April 1, 2018 through March 31, 2019
Total Company or total company	Total SPS (before jurisdictional allocations)
TUCO	TUCO Inc.
Update Period	April 1, 2019 through June 30, 2019
Updated Test Year	July 1, 2018 through June 30, 2019
Wheelabrator Agreement	Restatement of Coal Processing Facility Agreement dated December 30, 1981 between Wheelabrator Coal Services Company (the predecessor to Savage Tolk Corporation), and SPS
Xcel Energy	Xcel Energy Inc.
XES	Xcel Energy Services Inc.

LIST OF ATTACHMENTS

<u>Attachment</u>	<u>Description</u>
HCR-RR-1(CONF)	2017 and 2018 TUCO Audits (<i>Non-native format</i>)
HCR-RR-2 (CONF)	Workpaper – Analysis of Cost/Savings for TUCO CSAs (<i>Non-native format</i>)
HCR-RR-3	Wheelabrator Agreement (<i>Non-native format</i>)
HCR-RR-4	Conveyance Request (<i>Non-native format</i>)
HCR-RR-5	Bill of Sale for Tolk Coal Handling System Assets (<i>Non-native format</i>)
HCR-RR-6	Special Warranty Deed for Tolk Coal Handling System Assets (<i>Non-native format</i>)

**DIRECT TESTIMONY
OF
H. CRAIG ROMER**

1 **I. WITNESS IDENTIFICATION AND QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 A. My name is H. Craig Romer. My business address is 1800 Larimer Street, Suite
4 1000, Denver, Colorado 80202.

5 **Q. On whose behalf are you testifying in this proceeding?**

6 A. I am filing testimony on behalf of Southwestern Public Service Company, a New
7 Mexico corporation (“SPS”), a wholly-owned electric utility subsidiary of Xcel
8 Energy Inc. (“Xcel Energy”).

9 **Q. By whom are you employed and in what position?**

10 A. I am employed by Xcel Energy Services Inc. (“XES”), the service company
11 subsidiary of Xcel Energy, as Director, Fuel Supply Operations (“FSO”).

12 **Q. Please briefly outline your responsibilities as Director, FSO.**

13 A. I am responsible for supervising, planning, coordinating, and directing the
14 activities of the FSO department personnel. As Director, FSO, I am responsible
15 for: (1) procuring the coal and solid fuel needs, including supply and
16 transportation, for the Xcel Energy Operating Companies’ coal-fueled generating
17 units; (2) administering SPS’s coal and coal-related contracts; and (3)
18 coordinating the FSO department’s activities with the trading, purchased power,
19 gas supply, and energy supply departments of Xcel Energy.

20 **Q. Please describe your educational background.**

21 A. I graduated from the Colorado School of Mines in Golden, Colorado, in 2001 with
22 a Bachelor of Science Degree in Mechanical Engineering.

1 **Q. Please describe your professional experience.**

2 A. I was hired as Director, FSO for XES in January 2011. Prior to that time, I held
3 the position of Manager, Transportation Portfolio, with XES from June of 2007 to
4 December of 2010. In this role, I was responsible for delivering fuel and
5 maintaining solid fuel inventories for all of the Operating Companies. These
6 assignments included, but were not limited to, negotiating transportation and rail
7 car agreements, communicating with logistic providers as well as power plant
8 personnel, and managing various daily coal yard operations activities.

9 Prior to working for XES, I worked for the Union Pacific Railroad and the
10 Southern Pacific Railroad before its merger with the Union Pacific Railroad,
11 holding various positions from December 1994 to June 2007 as noted below:

- 12 • Senior Manager Terminal Operations Denver;
- 13 • Manager Mechanical Maintenance II;
- 14 • Director Transportation Services Denver Service Unit;
- 15 • Manager Terminal Operations – DSLE certified; and
- 16 • Manager Train Operations – Moffat Tunnel, Colorado Springs, and
17 Limon Subdivisions.

18 These assignments included daily management of railroad operations, track and
19 rail car maintenance, customer service, hiring and training of trainmen, engineers,
20 and yardmen, and budgetary and financial planning in the region. Prior to these
21 assignments, I was employed as a brakeman and moved through union ranks of
22 conductor, foreman, and yardmaster before being promoted to managerial
23 assignments.

1 **Q. Have you attended or taken any special courses or seminars relating to**
2 **public utilities?**

3 A. Yes. Over my career, I have taken numerous courses and seminars related
4 specifically to the public utility industry and related issues, including:

- 5 • Escalation Consultants, Controlling Rail Expenses;
- 6 • Carlson School of Management at the University of Minnesota,
- 7 Negotiation Strategies for Executives;
- 8 • Financial Accounting Institute, Utility Finance and Accounting;
- 9 • American Management Association, Negotiating to Win; and
- 10 • Various National Coal Transportation Association, American Coal
- 11 Council, and Platts coal conferences.

12 **Q. Have you testified or filed testimony before any regulatory authorities?**

13 A. Yes. I filed testimony on SPS's behalf with the Public Utility Commission of
14 Texas ("Commission") in Docket Nos. 40824, 42004, 43695, 45524, 46025,
15 47527 and 48973—SPS base rate cases and/or fuel reconciliation cases—
16 addressing coal and coal-related costs. I also testified in support of Public Service
17 Company of Colorado's generation resource plan in Colorado Public Utilities
18 Commission Docket No. 11A-869E. In addition, I have testified before the New
19 Mexico Public Regulation Commission ("NMPRC") in Case No. 14-00348-UT
20 addressing coal and coal-related costs recovered through SPS's fuel and
21 purchased power cost adjustment clause, and have submitted pre-filed testimony
22 on coal and coal-related costs recovered through base fuel, as well as the
23 non-mine and non-freight coal costs recovered in base rates in SPS's recent base
24 rate cases before the NMPRC, Case Nos. 15-00139-UT, 15-00296-UT,
25 16-00269-UT, and 17-00255-UT.

1 **II. ASSIGNMENT AND SUMMARY OF TESTIMONY AND**
2 **RECOMMENDATIONS**

3 **Q. What is your assignment in this proceeding?**

4 A. I discuss the reasonableness of coal acquisition and related costs incurred during
5 the period of July 1, 2018 through June 30, 2019 (“Updated Test Year”) that are
6 not included in eligible fuel costs, and thus, are included in SPS’s proposed base
7 rates. I also present the costs incurred during the period of April 1, 2018 through
8 March 31, 2019 (“Test Year”).

9 I provide an overview of SPS’s coal procurements under its Coal Supply
10 Agreements with TUCO Inc. (“TUCO”) for SPS’s Harrington and Tolk
11 coal-fueled generation stations (collectively, “SPS/TUCO CSAs” or “CSAs”);
12 and discuss SPS’s activities regarding coal acquisition, as well as the activities of
13 TUCO Inc., and TUCO’s Coal Handling Processor, Savage Industries (“Savage”).

14 I also explain the reversion of ownership of the Tolk Coal Handling
15 System assets to provide background to a portion of the testimony of SPS witness
16 Mr. Jeffrey T. Kopp concerning dismantling.

17 Further, I sponsor or co-sponsor the following schedules of SPS’s Rate
18 Filing Package (“RFP”):

19 **Table HCR-RR-1**

E Schedules	2.1, 2.2, 2.3, 2.4, 2.5, and 3.3
I Schedules	1.1, 1.2, 1.3, 1.4, 2, 3, 4, 9, 10, 13, 14, 15, 17.1, 17.2, 17.3, 18, 19.1, 19.2, 19.3, 19.4, 19.5, 19.6, 19.7, 20, and 21

1 In addition, I sponsor or co-sponsor the portions of the Executive Summary that
2 contain information from these schedules.

3 **Q. Please describe the information in the schedules you sponsor or co-sponsor.**

4 A. The E schedules address various aspects of fossil fuel policy, inventory levels and
5 valuation, and coal supply interruptions. I sponsor the portion of these schedules
6 that address coal issues. Other SPS witnesses sponsor the discussion of natural
7 gas and fuel oil.

8 Schedules I-1.1 through I-1.3 present data on fuel expenses by account
9 number, fuel expenses and volumes burned by generating station, and fuel
10 purchased by generating station. I sponsor the coal-related portions of these
11 schedules. SPS witness Bryan R. Davis sponsors the accounting of the expenses
12 reflected on these schedules. SPS witness William A. Grant also co-sponsors
13 these schedules. Schedule I-1.4 addresses non-recurring fuel costs and purchased
14 power expenses. I sponsor the coal portion of this schedule, while SPS witness
15 Jeffrey C. Klein addresses the long-term purchased power costs portions.

16 Schedules I-2, I-3, and I-4 are non-financial schedules addressing
17 procurement practices, fuel and purchased power committees, and fuel purchase
18 contracts. I sponsor the coal-related portions of these schedules and Mr. Klein
19 sponsors the purchased power portions. Mr. Grant and SPS witness Bennie F.
20 Weeks also co-sponsor Schedule I-2.

21 Schedule I-9 presents organizational charts related to fuel and purchased
22 power. I sponsor the organizational chart and supporting information for the coal

1 supply organization I lead. Mr. Grant, Mr. Klein, Ms. Weeks sponsor the
2 remaining organizational charts and supporting information.

3 In Schedule I-10(V), which provides employee ethics documents, I
4 co-sponsor the Xcel Energy Code of Conduct. Mr. Grant, Mr. Klein, Ms. Weeks
5 and SPS witness Angelene Hennes-Ghelf co-sponsor this schedule.

6 In Schedule I-13, which provides information regarding relationships with
7 fuel suppliers, I sponsor the information as it pertains to SPS's coal suppliers.
8 Mr. Grant sponsors the remaining parts of the schedule.

9 In Schedule I-14, which provides information on fuel audits, I sponsor the
10 information regarding the audit of TUCO (SPS's coal supplier). Mr. Grant
11 sponsors the remaining parts of the schedule.

12 I sponsor the identification of coal supply contracts provided in Schedule
13 I-15. Mr. Klein sponsors the identification of purchased power agreements in the
14 same schedule.

15 The I-17 Schedules and Schedule I-18 address coal costs¹ and supplier
16 locations.

17 The I-19 Schedules address various aspects of using railcars to transport
18 coal to SPS's power plants.

19 Schedule I-20 addresses certain kinds of travel costs incurred by personnel
20 involved in acquiring fuels. I sponsor the costs incurred by coal supply personnel.
21 SPS witness Jeffrey Butler sponsors the remaining parts of the schedule.

¹ Please note that the costs in Schedule I-17 are reported on a production month basis, while the costs addressed in this testimony are provided based on the General Ledger, consistent with the cost of service presented by SPS witness Arthur P. Freitas.

1 I sponsor the coal-related portion of Schedule I-21, which provides a
2 narrative description of certain fuel management activities. Mr. Grant and Mr.
3 Klein also co-sponsor this schedule.

4 **Q. Will you update your testimony for actual costs incurred in the three months**
5 **following the Test Year, April 2019 through June 2019?**

6 A. Yes. In addition to presenting the information for the Test Year, this testimony
7 presents costs information and requests recovery for the costs incurred in the
8 Updated Test Year, which includes the period of April 2019 through June 2019,
9 referred to as the “Update Period.” SPS has used actual information to the extent
10 available, along with forecasted information for the Update Period. As discussed
11 by Mr. Grant, SPS will file an update 45 days after SPS files its application. The
12 update will include actual costs incurred to replace the estimates provided in the
13 application for the period of April 1, 2019 through June 30, 2019.

14 **Q. Please summarize your testimony and recommendations.**

15 A. My testimony and recommendations include the following:

- 16 • SPS’s coal acquisition and coal-related costs that were not included in
17 eligible fuel costs in the Updated Test Year totaled \$34,484,506, and in
18 the Test Year totaled \$36,790,937 (total SPS before jurisdictional
19 allocations, or “Total Company” or “total company”). SPS proposes one
20 pro forma adjustment to the Updated Test Year costs, resulting in a net
21 increase of \$31,160 Total Company (total company) to reflect a
22 contractual increase in SPS’s margin payment to TUCO. The pro-forma
23 adjustment results in an Updated Test Year cost of \$34,515,666 (total
24 company), for which SPS requests cost recovery.
- 25 • The costs incurred include those for: the furnishing of railcars; and the
26 handling, storing, crushing, processing, weighing, and delivering of coal to
27 SPS’s bunkers; the assessments and taxes (except federal and state
28 income taxes) associated with the coal; the cost of financing coal

- 1 inventories; and, the cost of the contractual margin payment.² These costs
2 are paid to TUCO, the company from which SPS procures coal for the
3 Harrington and Tolk Stations, for its costs, and TUCO pays its coal
4 handling contractor, Savage.
- 5 ○ TUCO's responsibilities include: purchasing coal; owning and
6 managing the inventory stockpiles; leasing railcars; arranging for the
7 transportation and handling of the coal; and negotiating and
8 administering contracts with coal suppliers, transportation, and
9 handling.
- 10 ○ Savage's responsibilities include: receiving and unloading the coal;
11 moving coal to the stockpile and managing the stockpile; and crushing,
12 weighing, and delivering of coal to the plant bunkers (i.e., coal
13 handling).
- 14 • I recommend the Commission find that SPS's Updated Test Year coal
15 acquisition and related costs were prudently incurred and were reasonable
16 and necessary for SPS to have usable coal to burn at its Tolk and
17 Harrington Stations, and should therefore be approved.
- 18
- 19 • I provide the background for Mr. Kopp's testimony concerning
20 dismantling costs related to Tolk coal handling, and explain that SPS now
21 owns the related assets.
- 22
- 23 • I also recommend that should the Commission not address two issues
24 raised in SPS's pending fuel reconciliation case, that the Commission
25 address the issues in this case: the prudence and reasonableness of the
26 TUCO CSAs that became effective January 1, 2018; and the cessation of
27 the requirement to file TUCO audits outside of fuel reconciliations and
28 base rate proceedings.
- 29

30 **Q. Were Attachments HCR-RR-1(CONF) and HCR-RR-2(CONF) prepared by**
31 **you or under your direct supervision and control?**

32 A. Yes. Attachment HCR-RR-1(CONF) was compiled under my direct supervision
33 and control from the Audit Report supplied by Audit Services. The attachment
34 contains a true and correct copy of that report. HCR-RR-2(CONF) was prepared
35 by me.

² Additionally, the coal-handling costs include several projects that were undertaken at the Tolk and Harrington Stations to improve safety and efficiency.

1 **Q.** Are Attachments HCR-RR-3 through HCR-RR-6 true and correct copies of
2 the documents you state them to be?

3 A. Yes.

4 **Q.** Were the portions of the RFP schedules you sponsor or co-sponsor prepared
5 by you or under your supervision and control?

6 A. Yes, except for Schedule I-10, which contains the Xcel Energy Code of Conduct.

7 **Q.** Do you incorporate the portions of the RFP schedules and the portions of the
8 Executive Summary sponsored or co-sponsored by you into your testimony?

9 A. Yes.

1 **III. COAL COSTS INCLUDED IN SPS'S COST OF SERVICE**

2 **Q. What cost did SPS incur for coal, other than mine cost, transportation cost,**
3 **and coal losses, during the Test Year and Updated Test Year?**

4 A. The total cost incurred for coal, other than mine cost, transportation cost, and coal
5 losses, in the Updated Test Year was \$34,484,506 (total company). Additionally,
6 the amount for the Test Year, as reflected in SPS's General Ledger, was
7 \$36,790,937 (total company).

8 **Q. How is SPS's cost of coal determined under the TUCO CSAs?**

9 A. SPS purchases coal from TUCO for a delivered price at the bunkers, based on the
10 sum of TUCO's costs. The costs categories included in the total costs are shown
11 in the table below, separated by whether the applicable costs are included in base
12 rates or fuel expense.

13 **Table HCR-RR-2**

Base Rate Coal Costs	Fuel Expense Coal Costs from TUCO
1. Costs incurred for furnishing railcars and for handling, unloading, storing, crushing, processing, weighing, and delivering coal to SPS's bunkers	5. Free on Board ("FOB") mine cost of coal
2. Assessments and taxes (except federal and state income taxes)	6. Cost of transportation from the mine to the unloading facilities
3. Cost of financing coal inventories	7. Cost of coal losses
4. The contractual margin payment	

14 **Q. How does SPS determine the category to which each cost is assigned?**

15 A. SPS includes in its base rates all components of the cost of coal paid to TUCO
16 that would traditionally be regarded as non-eligible fuel expenses under 16 Tex.
17 Admin. Code § 25.236(a)(1) if SPS took title to the coal at the mine, which are

1 items (1)-(4) in the prior answer. Costs incurred before delivery of coal to the
2 generation plant site, (i.e., TUCO's FOB mine cost of coal, the cost of
3 transportation from the mine to the unloading facility, and the cost of coal losses,
4 costs (5)-(7) above) are included in SPS's eligible fuel expenses. This is
5 consistent with the treatment of these costs since 2007, including SPS's most
6 recent litigated base rate case in Texas, Docket No. 43695.³

7 **Q. When you refer to margin, what are you referring to? Please explain the**
8 **TUCO Margin Payment.**

9 A. The margin is the payment for TUCO's services. Please refer to the TUCO
10 CSAs, provided in the workpapers to Schedule I-4, Section 7.1(F) and Exhibit C
11 for additional details.

12 **Q. As part of this proceeding, is SPS proposing to change the way it treats coal**
13 **costs in the future?**

14 A. No.

15 **Q. Do the base rate Updated Test Year costs include any non-recurring or**
16 **unusual items that are not representative of costs to be incurred in the future**
17 **for these activities?**

18 A. No.

³ Prior to April 1, 2007 (the date new rates from Docket No. 32766 went into effect), SPS included all cost categories in eligible fuel. As part of the Non-Unanimous Stipulation approved in the final order in Docket No. 29801 (SPS's fuel reconciliation for the 2002-2003 time period), SPS agreed to change the treatment of its coal costs as part of its next rate proceeding, which was Docket No. 32766. Therefore, as of April 1, 2007, SPS began including in its base rates all components of the cost of coal paid to TUCO that would traditionally be regarded as non-eligible fuel expenses under 16 Tex. Admin. Code § 25.236(a)(1) if SPS took title to the coal at the mine (items 1-4 above).

1 **Q. How have these recurring costs been included in this rate request?**

2 A. The recurring costs included in the Updated Test Year are included in the cost of
3 service study presented by Mr. Freitas.

4 **Q. Have you made any adjustments to these costs?**

5 A. Yes. I have made one adjustment, the annual increase in the TUCO margin
6 payment, the sum of which is also included in the cost of service.

7 **Q. How was the pro forma adjustment determined?**

8 A. SPS's margin payment to TUCO increases annually (effective January 1st) by the
9 *lesser* of 2.5% or the percentage increase in the Consumer Price Index ("CPI"),
10 applied to the operating expenses component.⁴ This pro forma adjustment was
11 determined by calculating 1.9% (the increase in the CPI) of the operating
12 expenses component of the margin payment in 2018, which reflects the amount of
13 the contractual increase. Notably, this is a smaller margin increase than would
14 have been incurred under the previous CSAs, which was the *greater* of 2.5% or
15 the percentage increase in the CPI.

16 The pro forma adjustment results in an annual net increase of \$31,160
17 total company), yielding a total base rate coal cost of \$34,515,666 (total
18 company) for the Updated Test Year.

⁴ Please refer to the CSAs in the workpapers to Schedule I-4, Exhibit C, page 4 of 5.

1 **IV. REASONABLENESS OF SPS'S BASE RATE COAL COSTS**

2 **Q. How does SPS assure the reasonableness and necessity of the costs incurred**
3 **by TUCO for coal handling services, assessments and taxes, financing coal**
4 **inventories, and the margin under the SPS/TUCO CSAs?**

5 A. SPS engages in several activities to ensure that all costs to be passed on to SPS
6 are reasonable and necessary. First, prior to the Test Year, SPS negotiated the
7 new CSAs with TUCO that resulted in lower costs than the previous CSAs.
8 These are the same types of costs that were approved as reasonable and necessary
9 in SPS's last contested rate case, Docket No. 43695.⁵ Second, SPS actively
10 monitors TUCO's contracting activities that could affect SPS's costs. SPS has
11 frequent discussions with TUCO before execution of any contracts that would
12 affect these costs. Through these discussions, SPS ensures that the overall bid
13 solicitation is conducted so that TUCO will receive the most competitive bids to
14 meet SPS's needs.

15 During any contract evaluation process, SPS reviews TUCO's
16 methodologies and conclusions to ensure that the lowest reasonable cost supplier
17 or suppliers are selected. Those supplier costs are reviewed within the context of
18 the current market conditions and with the best information available at the time.
19 SPS also reviews and provides comments to TUCO on draft agreements, thus
20 ensuring the most advantageous and flexible arrangements are made. SPS also
21 works with its generation plant engineers to ensure that any operational concerns
22 can be addressed in the agreements' terms.

⁵ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Order on Rehearing at 34, Finding of Fact 145 (Feb. 23, 2016).

1 Additionally, TUCO informs SPS of various discussions and negotiations
2 between itself and its contractors. As a result, SPS ensures that the terms and
3 conditions TUCO ultimately achieves are the result of arm's-length negotiations
4 and are in the best interests of SPS.

5 Finally, SPS engages in contract administration activities, which are
6 further described in the next answer, to ensure it is billed correctly under the
7 various contracts.

8 All of these efforts help ensure that SPS's base rate coal costs are
9 reasonable and necessary expenses.

10 **Q. Please elaborate on the contract administration activities you just mentioned.**

11 A. SPS ensures the accuracy and reasonableness of TUCO's charges for delivered
12 coal by checking invoices and conducting annual audits of TUCO. Please refer to
13 Attachment HCR-RR-1(CONF) for a copy of the latest audits. This activity
14 includes not only the coal acquisition and transportation agreements, but also the
15 other contracts that affect coal costs included in the cost of service. For example,
16 SPS performs calculations to ensure the accuracy of finance charges and TUCO's
17 margins. The other cost components in TUCO's invoices are also reviewed to
18 ensure both the contractual validity of each component and the accuracy of the
19 calculation of each cost category.

20 **Q. Are there specific activities that TUCO or SPS, or both, pursue to assure**
21 **themselves that the costs incurred for base rate coal costs are reasonable and**
22 **necessary?**

23 A. Yes. TUCO and its coal handling contractor, Savage, engage in monthly
24 operational meetings to discuss relevant coal handling issues and coal delivery

1 developments for Tolk and Harrington Stations. SPS's coal supply and FSO
2 personnel also attend these monthly meetings. TUCO's personnel monitor
3 Savage's costs relative to the amounts budgeted for coal-handling activities.
4 TUCO and SPS personnel review Savage's monthly coal handling invoices for
5 accuracy and conformance with approved activities and identified budget
6 expenditures through the annual audit of the TUCO contract. Also, TUCO
7 employs an independent accounting firm to examine Savage's performance under
8 its contract with TUCO, in accordance with the standards established by the
9 American Institute of Certified Public Accountants. Additionally, as discussed
10 herein, both the TUCO and Savage contracts are new for this Update Test Year
11 and reflect cost savings due to the respective negotiation processes undertaken for
12 those contracts.

13 **Q. Has TUCO recently pursued any actions to enhance safety or operational**
14 **efficiencies at the Tolk and Harrington Stations?**

15 A. Yes. Several projects have been authorized by TUCO for Savage to undertake at
16 Tolk and Harrington Stations to improve safety and efficiency, which, over time,
17 could lower costs or reduce the extent of unavoidable cost increases. The costs of
18 these projects are included in the coal handling costs included in SPS's base rates.
19 Following is a brief description of the projects:

20 **Tolk Station**

21 **2018:**

- 22 • Conveyor 7B Belt replacement
- 23 • Rotary Car Dumper rack gear replacement
- 24 • Conveyor 3B Backstop replacement
- 25 • Water Truck replacement
- 26 • Safety gate installation on all fixed ladders

- 1 **2019:**
2 • Replacement of plugged chute detectors

3 **Harrington Station**

- 4 **2018:**
5 • CO2 monitor upgrade-enhanced fire/heat detection
6 • Safety gate installation on all fixed ladders
7 • Unit 1 tripper deck crane rebuild
8 • Conveyor belts 400 and 410 purchase (critical component spare part)
9 • Conveyor belt 240 and 250 supporting framework replacement

- 10 **2019:**
11 • Caterpillar D10 Dozer replacement

12 **Q. Were SPS's coal costs incurred during the Updated Test Year and Test Year**
13 **prudently incurred, reasonable and necessary?**

14 A. Yes, for the reasons discussed above, I recommend the Commission find that
15 SPS's Test Year coal acquisition and related costs were prudently incurred and
16 were reasonable and necessary for SPS to have usable coal to burn at its Tolk and
17 Harrington Stations, and should therefore be approved.

1 **V. OVERVIEW OF AGREEMENTS FOR COAL**
2 **PROCUREMENTS: SPS'S AGREEMENTS WITH**
3 **TUCO; AND, TUCO'S AGREEMENTS WITH SAVAGE**

4 **Q. How does SPS procure its coal requirements?**

5 A. SPS procures coal from TUCO for SPS's two coal-fueled electric generating
6 facilities, Harrington and Tolk Stations, under a sole-supplier contract for each
7 station. SPS takes ownership of the coal when it physically enters the respective
8 power station's fuel bunkers.

9 The FSO Department's responsibilities on behalf of SPS include:
10 determining SPS's coal needs; administering the CSAs with TUCO; and
11 overseeing and reviewing TUCO's procurement of coal and transportation
12 services and TUCO's administration of its contracts. In 2017, the FSO
13 Department negotiated new CSAs with TUCO.

14 **A. SPS's Coal Supply Agreements with TUCO**

15 **Q. Please explain TUCO's role under the SPS/TUCO CSAs.**

16 A. TUCO's responsibilities include purchasing coal; owning and managing the
17 inventory stockpiles; leasing railcars; arranging for the transportation and
18 handling of the coal; and negotiating and administering contracts with coal
19 suppliers, transportation, and handling. The contracts that TUCO negotiates and
20 administers that result in base rate costs, are the coal handling contracts with
21 Savage for SPS's Tolk and Harrington Stations.

22 **Q. How does TUCO obtain coal to satisfy SPS's coal requirements?**

23 A. TUCO owns no coal reserves, but instead contracts with coal suppliers to satisfy
24 SPS's needs (recovered through fuel). TUCO provides coal transportation

1 services under long-term transportation agreements with the Burlington Northern
2 Santa Fe Railway Company to serve its coal transportation needs from the Powder
3 River Basin (also recovered through fuel).⁶ TUCO also procures the coal
4 handling services as discussed in this testimony (and recovered through base
5 rates) under long-term coal service agreements with Savage.

6 **Q. Have there been any changes to the TUCO contracts that have affected costs**
7 **during the Test Year and Updated Test Year?**

8 A. Yes. The CSAs in effect during the Test Year and Updated Test Year are new
9 CSAs that became effective on January 1, 2018, and are effective through
10 December 31, 2022. The new CSAs continue the service that TUCO has
11 provided to SPS under the previous CSAs in effect since 1979, providing coal to
12 Harrington and Tolk Stations. Consistent with the previous CSAs between TUCO
13 and SPS, TUCO is permitted to (and does) contract for the provision of certain
14 services and to bill SPS the charges from the contractors. The new CSAs allow
15 for early termination with one year's notice by either party. The new CSAs are
16 provided in the workpapers to Schedule I-4.

17 **Q. Why did SPS enter into new CSAs with TUCO?**

18 A. SPS's prior CSAs with TUCO for both Tolk Station and Harrington Station
19 expired on December 31, 2017.⁷

⁶ Tolk and Harrington are both designed to burn coal specifically from the Powder River Basin in Wyoming.

⁷ The contract for Harrington Station was for the period 4/30/1979 (as amended) through 12/31/2016 and was then extended to 12/31/2017. The contract for Tolk Station was for the period of 4/30/1979 (as amended) through 12/31/2017. An extension for both contracts was also reached so that they were effective until 1/15/2018; however, the new contracts were dated to be effective on 1/1/2018.

1 **Q. When the original CSAs were ending, what were SPS's options?**

2 A. SPS's options were either to negotiate new CSAs with TUCO, or bring TUCO's
3 roles and responsibilities in house. This is because TUCO offers a unique service
4 of procuring, supplying, and arranging for the transport of coal to SPS by entering
5 into contracts with coal companies, railways, and a coal-handling company, and it
6 owns and maintains the coal stockpiles at Tolk and Harrington. Each part of the
7 service TUCO provides is necessary to ensure the stations have a sufficient supply
8 of coal. SPS is not aware of other companies that provide such services to other
9 utilities.

10 **Q. Did SPS perform an analysis to determine whether customers would be**
11 **better off if TUCO continued its role?**

12 A. Yes. SPS's analysis demonstrated that executing new CSAs after the cessation of
13 its expiring CSAs would provide the lowest reasonable cost for customers. SPS's
14 analysis is shown in Attachment HCR-RR-2(CONF).

15 SPS compared the TUCO costs under the expiring CSAs to an estimate of
16 the costs SPS would incur if it performed all of the activities related to the CSAs
17 in-house with SPS employees and expenses. The estimated costs in the analysis
18 included, but were not limited to, the costs of procuring, transporting, and
19 handling the coal used in SPS's Tolk and Harrington Stations, as well as the
20 capital upgrades necessary to carry out those functions. SPS also considered the
21 carrying costs that would be incurred by customers if the inventory piles currently
22 owned by TUCO were instead owned by SPS. This is a significant cost as shown
23 on Attachment HCR-RR-2(CONF). The analysis showed an economic benefit to
24 SPS's customers by keeping a TUCO CSA in place for each station.

1 **Q. Was SPS able to secure additional benefits for customers under the new**
2 **CSAs compared to the original analysis?**

3 A. Yes. After its analysis, SPS then began negotiations with TUCO to develop new
4 CSAs for Tolk and Harrington. During the negotiations, SPS was able to reduce
5 the various management fees and operating expenses charged by TUCO, resulting
6 in even greater savings than the original analysis showed.

7 **Q. Do the new CSAs benefit SPS's customers?**

8 A. Yes. The new CSAs benefit customers by supporting the continuation of the
9 reliable supply of coal for the Tolk and Harrington Stations. Additionally, the
10 new CSAs include improvements to the terms and conditions of the agreements.
11 For example, the new CSAs are for a shorter term and allow for early termination
12 with one year's notice, allowing greater flexibility should circumstances arise that
13 would require an early retirement of the generating facilities. They also provide
14 annual overall cost savings. The calculated savings are in addition to the savings
15 due to the reduction of TUCO margin payments (recovered in base rates) as a
16 result of a previous extension of the Harrington Agreement, and the fact that SPS
17 does not have to purchase TUCO's inventory stockpile as long as TUCO is
18 providing its service.

19 **Q. Please explain the changes in the TUCO Margin Payments.**

20 A. The Margin Payment was renegotiated with an extension of the CSA with
21 Harrington in 2017. The changes result in a lower total margin payment, and
22 elimination of four of the components of the margin. First, the operating
23 expenses component of SPS's margin payment to TUCO increases annually

1 (effective January 1st) by the lesser of 2.5% or the percentage increase in the CPI
2 rather than the greater of the two numbers under the previous CSAs. Second, four
3 components of the margin payment were eliminated, resulting in base rate savings
4 for customers.

5 **Q. How did SPS ensure that it obtained the lowest reasonable cost for the CSAs**
6 **for its customers?**

7 A. The analysis and negotiations that SPS conducted, along with the experience of
8 the FSO staff, helped to ensure that the service is provided at the lowest
9 reasonable cost. Under the new CSAs, TUCO provides the same service to SPS
10 as it did under the prior contract, but at a lower cost. Additionally, TUCO's
11 expertise in negotiating with vendors has continued to result in savings and
12 reasonable costs for those costs flowed through to SPS, such as with the
13 renegotiations of contracts with Savage. For example, the coal acquisition and
14 related costs for 2018 under the new TUCO CSAs were approximately \$3.1
15 million less (Total Company) than 2017, including costs flowed through to SPS
16 from Savage.

17 **Q. Is SPS requesting that the Commission find that it was prudent for SPS to**
18 **enter into the TUCO CSAs in this case?**

19 A. Not at this time. SPS requested that the CSAs be approved in the Fuel
20 Reconciliation case that is currently pending, Docket No. 48973. However, if the
21 Commission does not address the approval of the CSAs in that proceeding, SPS
22 requests that the approval of the CSAs be addressed in this proceeding.

1 **Q. Are the charges resulting from the TUCO CSAs reasonable, necessary, and**
2 **prudent?**

3 A. Yes, for the reasons discussed above, the resulting costs are reasonable,
4 necessary, and prudent, and therefore should be approved.

5 **B. TUCO's Contracts with Savage for Coal Handling Services**

6 **Q. Please summarize the coal handling agreement(s) between TUCO and**
7 **Savage.**

8 A. TUCO contracts with Savage for unloading, handling, storing, crushing,
9 processing, weighing, and delivering coal to SPS's bunkers. In May of each year,
10 Savage provides one-year (for the upcoming calendar year) and five-year
11 preliminary budget estimates for its anticipated expenses to perform the
12 coal-handling duties for TUCO, with the final budgets due in October. The
13 budget items include, but are not limited to, labor and benefits, equipment and
14 facility maintenance, equipment leases, fuel, rail car leases and maintenance,
15 service fee, and administrative expenses. New Coal Service Agreements between
16 TUCO and Savage were entered into prior to the Test Year, and are effective,
17 January 1, 2018, through December 31, 2022. These agreements were entered
18 into to replace the agreements with Savage that ended on December 31, 2017.

19 **Q. What steps did TUCO and SPS take to ensure the new Savage contracts**
20 **resulted in reasonable costs?**

21 A. TUCO negotiated the new contracts with Savage to provide the same reliable
22 services that Savage has historically provided to TUCO, but at a lower cost. SPS

1 reviewed the transaction after the proposals were finalized to ensure that the costs
2 were reasonable.

3 **Q. Are the new agreements and resulting costs reasonable, necessary, and**
4 **prudent?**

5 A. Yes. These agreements are necessary because coal handling is required for the
6 coal to be unloaded from the trains and delivered to the Tolk and Harrington
7 Stations. The agreements are reasonable and prudent because they provide the
8 same reliable service at a lower cost than previous years. Accordingly, the
9 resulting costs are reasonable, necessary, and prudent.

1 **VI. REVERSION OF OWNERSHIP OF TOLK STATION COAL**
2 **HANDLING SYSTEM ASSETS TO SPS**

3 **Q. Were there any changes to the Coal Handling System Assets prior to the Test**
4 **Year?**

5 A. Yes, the ownership of the Coal Handling Assets for Tolk has reverted to SPS,
6 with a Bill of Sale and a Special Warranty Deed dated February 16, 2018. This
7 occurred due to a provision in the Restatement of Coal Processing Facility
8 Agreement dated December 30, 1981 between Wheelabrator Coal Services
9 Company (the predecessor to Savage Tolk Corporation) (“Wheelabrator
10 Agreement”), and SPS. Under Section 5(c) of that Agreement, upon the
11 occurrence of trigger events including January 1, 2018, SPS was to request
12 conveyance of the Facility and Conveyed Property as provided in the
13 Wheelabrator Agreement. SPS made that request and the appropriate documents
14 have been executed. Accordingly, Savage no longer has the ownership of the
15 Coal Handling Assets for Tolk. Because the assets are fully depreciated, the
16 reversion does not change the costs paid to Savage by TUCO that are flowed
17 through to SPS. While this does not affect the costs presented in my testimony, it
18 does impact the treatment of the dismantling of the Tolk units as addressed in the
19 direct testimony of Mr. Kopp. Please refer to Attachments HCR-RR-3
20 (Wheelabrator Agreement), HCR-RR-4 (Conveyance Request), HCR-RR-5 (Bill
21 of Sale for Tolk Handling Assets), and HCR-RR-6 (Special Warranty Deed for
22 Tolk Handling Assets).

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1 **VIII. RECOMMENDATION TO CEASE REQUIREMENT TO FILE**
2 **AUDITS CONCERNING TUCO OUTSIDE OF RATE CASES**
3 **AND FUEL RECONCILIATIONS**

4 **Q. Does SPS have an audit filing requirement concerning TUCO?**

5 A. Yes, in Docket No. 19512 in 2000, the Commission required that SPS file its
6 future audits of TUCO and TUCO's future audits of its contractors in Project No.
7 22645.⁸

8 **Q. Does SPS have a recommendation concerning the audit requirements?**

9 A. Yes. In SPS's latest Fuel Reconciliation, pending Docket No. 48973, SPS has
10 recommended that the Commission determine that the annual filing of the audits
11 is no longer necessary. Should the Commission not make a determination on the
12 audit requirement in Docket No. 48973, SPS requests that the Commission make
13 the determination in this docket.

14 **Q. Please state the reasoning for this recommendation.**

15 A. This requirement is a dated requirement. It does not appear that it continues to
16 serve a purpose. SPS provides copies of TUCO's audits with its fuel
17 reconciliations and/or rate cases, and parties can inquire about them during those
18 cases.⁹ There does not appear to be a need for SPS to spend the time to file these
19 documents, or to necessitate Commission Staff spending time and resources
20 receiving and maintaining the documents outside of SPS fuel reconciliation and/or
21 rate cases.

⁸ *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 (Jul. 13, 2000).

⁹ As required by the applicable rate filing package schedule directions for FR-14 (in fuel reconciliations) and I-14 (in base rate cases).

1 **Q.** **Does this conclude your pre-filed direct testimony?**

2 **A.** **Yes.**

AFFIDAVIT

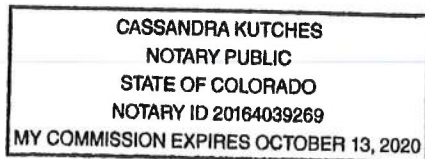
STATE OF COLORADO)
)
COUNTY OF DENVER)

H. CRAIG ROMER, first being sworn on his oath, states:

I am the witness identified in the preceding testimony. I have read the testimony and the accompanying attachment(s) and am familiar with the contents. Based upon my personal knowledge, the facts stated in the testimony are true. In addition, in my judgment and based upon my professional experience, the opinions and conclusions stated in the testimony are true, valid, and accurate.

H. Craig Romer
H. CRAIG ROMER

Subscribed and sworn to before me this 30th day of July, 2019 by H. CRAIG ROMER.



Cassandra Kutches
Notary Public, State of Colorado

My Commission Expires: 10/13/20

Attachment HCR-RR-1(CONF)

**Pages 1 through 4
of
Attachment HCR-RR-1(CONF)
2017 and 2018 TUCO Audit**

**Are
Confidential Protected Information**

**CONFIDENTIAL PROTECTED MATERIALS
PROVIDED PURSUANT TO PROTECTIVE ORDER**

Attachment HCR-RR-2(CONF)

**Pages 1 through 2
of
Attachment HCR-RR-2(CONF)
Analysis of Cost/Savings for
TUCO CSA's**

**Are
Confidential Protected Information**

**CONFIDENTIAL PROTECTED MATERIALS
PROVIDED PURSUANT TO PROTECTIVE ORDER**

THIS AGREEMENT IS SUBJECT TO ARBITRATION UNDER THE
PROVISIONS OF THE TEXAS GENERAL ARBITRATION ACT
(Tex. Rev. Civ. Stat. Ann. art. 224)

RESTATEMENT OF COAL PROCESSING
FACILITY AGREEMENT

THIS AGREEMENT, dated as of the 30th day of December, 1981, by and between WHEELABRATOR COAL SERVICES COMPANY ("Operator"), a Delaware corporation, and SOUTHWESTERN PUBLIC SERVICE COMPANY ("SPS"), a New Mexico corporation.

W I T N E S S E T H :

WHEREAS, SPS is a public utility engaged in the business of generating, transmitting and selling electric power; and

WHEREAS, pursuant to the provisions of a Coal Processing Facility Agreement, dated November 1, 1979 between Earth Fuel Corporation ("EFC") and SPS, SPS (i) caused or is now causing to be constructed for the account of EFC, or its assignee, a coal handling and processing facility ("Facility," as more fully defined herein) for use at SPS's generating station ("Tolk Station") near Muleshoe, Texas, and (ii) assembled all real property and air rights, permits and approvals of which it has knowledge needed to permit construction; and

16/1/82

WHEREAS, during the construction of the Facility, EFC transferred all its right, title and interest in and to the Facility to EAFIN Leasing Company, a Texas corporation ("EAFIN"); and

WHEREAS, Operator, SPS and Eafin desire for Operator to own and operate the Facility; and

WHEREAS, as of the date of this Agreement, EAFIN transferred all its right, title and interest in and to the Facility to Operator; and

WHEREAS, SPS and Operator desire that SPS convey to Operator the Conveyed Property (as hereinafter defined); and

WHEREAS, SPS and Operator desire to set forth in this Agreement the rights and obligations of Operator and SPS with respect to the ownership and operation of the Facility and the Conveyed Property and certain rail cars.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties hereto agree as follows:

Section 1. Definitions.

The following terms shall have the meanings ascribed to each for all purposes of this Agreement and shall be applicable to both the singular and plural number.

"Coal Service Agreement" shall mean the Coal Service Agreement dated the same date as this Agreement between TUCO Inc. ("TUCO") and Operator, as amended from time to time.

"Coal Supply Agreement" shall mean the Coal Supply Agreement dated April 30, 1979 between TUCO and SPS, as amended from time to time.

"Conditional Coal Service Agreement" shall mean the Conditional Coal Service Agreement dated the same date as this Agreement between SPS and Operator, a copy of which is attached to this Agreement as Exhibit 1.

"Conveyancing Documents" shall mean the documents described in Section 3 of the Agreement.

"Conveyed Property" shall mean the property interests conveyed by the Conveyancing Documents described in Section 3 of this Agreement.

"Facility" shall mean the improvements and equipment required to unload, handle, process, and convey coal to SPS's Tolk Station Units No. 1 and No. 2 (the trippers, connecting conveyor and other equipment to be constructed later to service Unit No. 2 will be a part of the Facility when installed) all spare parts, all required permits and approvals of which SPS has knowledge, utility connections and services, fencing, all as are necessary to enable Operator to own and operate the Facility and to meet its obligations to TUCO pursuant to the Coal Service Agreement and to SPS pursuant to the Conditional Coal Service Agreement and to enable TUCO to perform its obligations to SPS pursuant to the Coal Supply Agreement.

"Interim Financing" shall be the financing evidenced or to be evidenced by those certain notes issued to RepublicBank Dallas, N.A. and Amarillo National Bank to finance the purchase of the Facility.

"Operator" shall mean Wheelabrator Coal Services Company or any designee that is a wholly-owned subsidiary of Wheelabrator-Frye Inc.

"Permanent Financing" shall mean the long-term financing that is arranged by Operator with SPS's approval or by SPS with Operator's approval to replace the Interim Financing.

"Cars", "Operating and Maintenance Costs", "Managerial Service Fee", "Service Fee Payments" and "Suspension Period" shall have the same meanings as in the Conditional Coal Service Agreement.

Section 2. SPS Obligations.

SPS covenants with, and represents and warrants to, Operator as follows:

(a) The Coal Service Agreement has been approved by and is acceptable to SPS.

(b) SPS shall make available or cause to be made available to Operator, during the term of either the Coal Service Agreement or the Conditional Coal Service Agreement, whichever is applicable at the time, at commercially reasonable rates, all water, electricity, waste disposal and drainage facilities necessary to Operator's operations at the Facility.

(c) SPS shall make available or cause to be made available at a reasonable cost to Operator all land, air rights, easements, licenses, and rights of way as are necessary for Operator to own and operate the Facility in accordance with all requirements of federal, state and local laws, rules and regulations and to meet its obligations to TUCO pursuant to the Coal Service Agreement and to SPS pursuant to the Conditional Coal Service Agreement.

(d) Except for those items described in Exhibit 3 hereto, SPS has constructed the Facility substantially in accordance with SPS Specifications for a Coal Handling Facility (Revision No. 6), dated May 2, 1979, a copy of which has been delivered to Operator. Further, SPS has obtained all known governmental permits, licenses, and approvals required for the construction of the Facility.

(e) The Facility is or will be ready and able to be operated at the time needed by Operator to fulfill Operator's obligations under the Coal Service Agreement and SPS shall timely deliver all certificates described in the Coal Service Agreement that are to be delivered by SPS.

(f) Operator owns the interests being conveyed by the "Conveyancing Documents" free and clear of all liens and encumbrances, except those encumbrances

("Permitted Encumbrances") specifically set forth in the Conveyancing Documents, and none of the Permitted Encumbrances will restrict or impair in any manner the right and ability of Operator to perform its obligations under the Coal Service Agreement and Conditional Coal Service Agreement.

(g) SPS shall cooperate with Operator in concluding Permanent Financing satisfactory to SPS, including such additional undertakings as are reasonably necessary and appropriate to enable Operator to complete such financing.

(h) Substantially all of the Facility qualifies as "new Section 38 property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954, as amended. SPS shall not act, or fail to act, in any way which will be detrimental to Operator's obtaining the amount of credit applicable to the regular percentage allowed by Section 38 or in taking depreciation applicable to the Facility.

(i) SPS shall cause all coal that is to be burned at Tolk Station to be delivered to and handled by Operator through the Facility in accordance with either the Coal Service Agreement or the Conditional Coal Service Agreement, whichever is then applicable.

(j) (i) This Agreement, and the Conveyancing Documents have been duly and validly authorized by all necessary corporate action and when executed and delivered will constitute valid and binding instruments of SPS in accordance with their terms.

(ii) SPS is a corporation duly organized and validly existing under the laws of the State of New Mexico, is authorized to do business in the State of Texas, and has all requisite corporate power and authority to enter into this Agreement and to carry out its terms and to execute and deliver the Conveyancing Documents.

(iii) There is no action, proceeding or investigation pending, or, as far as SPS is aware, threatened, and there is no term of any charter, by-law, mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation, which in any way prevents or interferes with or adversely affects SPS entering into this Agreement, or the validity of this Agreement as to SPS or the carrying out by SPS of any of the terms of this Agreement or SPS executing and delivering the Conveyancing Documents.

(iv) SPS is not required to obtain any approval, action, waiver or consent of any governmental body for its execution, delivery or performance of this Agreement or its execution and delivery of the Conveyancing Documents.

(k) SPS shall cooperate with Operator in obtaining any governmental permits, approvals, and licenses that may be needed in connection with the ownership and operation of the Facility.

Section 3. Conditional Coal Service Agreement and Conveyances.

Contemporaneously with the execution of this Agreement, SPS has executed and delivered or caused to be executed and delivered to Operator the Conditional Coal Service Agreement, and the following documents ("Conveyancing Documents"):

- (a) General Warranty Deed,
- (b) Easement and License Agreement,
- (c) Bill of Sale and Assignment of Contract Rights, and
- (d) Acquittance and Assignment.

The rights and obligations of the parties to this Agreement shall survive the execution, delivery and operation of the Conditional Coal Service Agreement

and the Conveyancing Documents. The exercise of any rights granted under this Agreement; or the failure of either party to perform any of its obligations under this Agreement, shall not in any manner affect the validity or enforceability of the Conveyancing Documents or the Conditional Coal Service Agreement or constitute any waiver or limitation on the rights and interests granted therein.

Section 4. March-In Rights.

(a) Temporary March-In Rights. Upon the occurrence of any event which is within the reasonable control of Operator and which, in the reasonable opinion of SPS, will, without immediate corrective action, substantially jeopardize the continued generation of electricity at Tolk Station (each a "Temporary Event of Disruption"), SPS shall have the right to take over temporarily from Operator those management and operations functions necessary to correct the Temporary Event of Disruption; provided, however, the Temporary Event of Disruption shall be caused by reasons other than the failure of TUCO to make the Service Fee Payments or to perform its obligations to deliver coal under the Coal Service Agreement. If SPS exercises its right of temporary takeover it shall, as soon as practicable, but in no event later than three (3) days after such temporary takeover, notify Operator of such temporary takeover and cause curative action to be taken in order to cure such Temporary Event of Disruption.

During any such takeover period, Operator shall continue to receive all Service Fee Payments, except that Operator's right to receive from TUCO a Managerial Service Fee shall abate for each day of such takeover period prorated on the basis of a 365-day year.

Immediately following the completion of corrective action which eliminates any such Temporary Event of Disruption, SPS shall revert the Operator with the management and operational control which Operator had prior to such event and shall promptly account to Operator for SPS's management and operation thereof.

(b) Permanent March-in Rights. In the event that (i) there shall occur several Temporary Events of Disruption, all of which (A) shall be substantially similar to each other in nature, (B) shall demonstrate the inability of Operator to perform substantially its obligations under the Coal Service Agreement and the Conditional Coal Service Agreement, whichever is then applicable, and (C) shall be described in a written notice to Operator from SPS within ten (10) days of each such occurrence as a Temporary Event of Disruption or (ii) Operator fails for any reason to substantially perform its material obligations hereunder and under the Coal Service Agreement or the Conditional Coal Service Agreement, whichever is then applicable, and SPS can so perform, then subject to Section 4(c) hereof, SPS shall have the right to notify Operator by written notice ("Permanent March-In Intent Notice"), of SPS' desire to take over permanently the management and operations of the Facility, the Conveyed Property, and the Cars.

(c)(i) If the Permanent March-In Intent Notice relates to events described in Section 4(b)(i) hereof, Operator shall have no further right to cure any default and SPS shall have the right to immediately take over management and operation of the Facility, the Conveyed Property, and the Cars.

(c)(ii) If the Permanent March-In Intent Notice relates to a failure of performance under Section 4 (b)(ii) hereof, Operator shall have the right, as hereinafter provided, to cure the problem which gave rise to such Permanent March-In Intent Notice. If Operator fails to commence such curative actions

within twenty-four (24) hours after receipt of the Permanent March-In Notice or fails to prosecute such cure diligently and in good faith, SPS shall have the right to immediately take over the management and operation of the Facility, the Conveyed Property, and the Cars.

(d) Within fifteen (15) days following SPS's takeover of the management and operation of the Facility, the Conveyed Property, and the Cars pursuant to either Section 4(c)(i) or 4(c)(ii) hereof, Operator shall have the option to exercise its rights under Sections 5(a)(vii) and 5(b) hereof to require SPS to purchase the Facility, the Conveyed Property, and the Cars or to submit the matter to arbitration pursuant to Section 6 hereof. Should Operator elect to submit the matter to arbitration and should the arbitrator determine that SPS shall have established the basis prescribed in either Section 4(b)(i) or 4(b)(ii) hereof requisite to its permanent takeover, Operator shall have the right to require SPS to purchase the Facility, the Conveyed Property, and Cars pursuant to Sections 5(a)(vii) and 5(b) of this Agreement. Should Operator elect to submit the matter to arbitration and should the arbitrator determine that SPS did not establish the basis prescribed in either Section 4(b)(i) or 4(b)(ii) hereof requisite to its permanent takeover, SPS shall revert the Operator with the management and operational control which Operator had prior to SPS's takeover and shall promptly account to Operator for SPS's management and operation thereof.

(e) During any such takeover period or period of arbitration and continuing until acquisition of the Facility, the Conveyed Property, and the Cars by SPS, Operator shall continue to receive all Service Fee Payments, except that Operator's right to receive from TUCO a Managerial Service Fee shall abate for each day of such takeover period prorated on the basis of a 365-day year.

Operator shall reimburse SPS for all costs and expenses incurred by SPS during such takeover period.

(f) SPS's takeover of management and operations pursuant to Section 4(c) hereof shall be deemed to be a "Permanent March-In Event" if either (i) within fifteen (15) days after such takeover, Operator fails to submit the matter to arbitration in accordance herewith or (ii) an arbitration pursuant to Section 6 concludes that SPS has established the basis described in Section 4(b)(i) or 4(b)(ii) requisite to its permanent takeover.

Section 5. Facility, Conveyed Property, and Cars Purchase Obligation.

(a) Each of the following events shall be a "Trigger Event":

(i) The occurrence of an Event of Default by TUCO or its assignee under the Coal Service Agreement or an Event of Default by SPS or its assignee under the Conditional Coal Service Agreement;

(ii) The occurrence of a single Suspension Period totaling more than one hundred eighty (180) consecutive days or more than two hundred seventy (270) non-consecutive days in any one fifteen (15) consecutive month period;

(iii) Any default by TUCO under the Coal Supply Agreement which gives SPS the right to assume and perform TUCO's obligations to supply coal to the Tolk Station, but, for any reason whatsoever, SPS fails or refuses to assume and perform such obligations;

(iv) Any default by the borrower under the Interim Financing that would permit the lender providing the Interim Financing to institute foreclosure proceedings with respect to the Property and the Facility or failure of Operator to consummate the Permanent Financing or other financing satisfactory

to SPS and Operator in advance of a time reasonably necessary to avoid any default under the Interim Financing agreements;

(v) A determination by SPS to discontinue for any reason the use of coal as the fuel burned at the Tolk Station;

(vi) Failure of SPS to perform any of its obligations under this Agreement (other than the obligation set forth in Section 5(b) hereof) within forty-five (45) days after receipt by SPS of a written request to do so from Operator;

(vii) The occurrence of a Permanent March-In Event; or

(viii) Expiration of the Conditional Coal Service Agreement.

(b) Upon the occurrence of any Trigger Event described in Section 5(a)(i)-(vii), SPS shall within thirty (30) days after receipt of a written request (the "Notice") from Operator do the following:

(i) purchase for itself or its designee the Facility, the Conveyed Property, and the Cars at a purchase price equal to the product of (y) Operator's original cost for the Facility, the Conveyed Property, and the Cars, and (z) either the termination percentage in Exhibit 2(a) hereto which corresponds to the date immediately preceding the date of the Notice if the Trigger Event is a Permanent March-In Event or the termination percentage in Exhibit 2(b) hereto which corresponds to the date immediately preceding the date of the Notice if the Trigger Event is other than a Permanent March-In Event; and

(ii) pay, or cause TUCO to pay, to Operator any accrued and unpaid sums that may be due Operator under the Coal Service Agreement or the Conditional Coal Service Agreement.

Simultaneously with receipt of the foregoing payments in full, Operator shall convey to SPS the Facility, the Conveyed Property, and the Cars, by

special warranty conveyance in their "as is" condition on the date of such conveyance, free and clear of all liens and encumbrances except those existing on the date hereof and those liens and encumbrances hereafter created with the approval of SPS.

(c) Upon (x) the occurrence of a Trigger Event described in Sections 5(a)(vii) ~~(and)~~ (viii), or (y) the later to occur of January 1, 2018 or the date TUCO or its successor shall have delivered all coal required to be delivered by it pursuant to the Coal Supply Agreement as such may be amended from time to time, Operator shall within thirty (30) days after receipt of a written request ("SPS Notice") from SPS convey the Facility, the Conveyed Property, and the Cars to SPS by special warranty conveyance in their "as is" condition on the date of such conveyance, free and clear of all liens and encumbrances except those existing on the date hereof and those liens and encumbrances hereafter created with the approval of SPS. Simultaneously with such conveyance, SPS shall do the following:

(A) With respect to the events described in Section 5(c)(x) hereof, SPS shall pay to Operator an amount of money equal to the product of (y) Operator's original cost for the Facility, the Conveyed Property, and the Cars, and (z) the termination percentage in Exhibit 2(a) hereto which corresponds to the date immediately preceding the date of SPS Notice; and pay, or cause TUCO to pay, to Operator any accrued and unpaid sums that may be due Operator under the Coal Service Agreement or the Conditional Coal Service Agreement.

(B) With respect to the event described in Section 5(c)(y) hereof, Operator shall promptly upon request from SPS remove at Operator's cost and expense the Facility from the real property on which it is situated and reconvey for consideration equal to Operator's original cost such real property to SPS in its

"as is" condition, free and clear of all liens and encumbrances except the Permitted Encumbrances. Operator may at Operator's option employ SPS to, and in such event SPS shall, effect such removal. Operator shall offer for sale, and sell, all parts of the Facility and the Cars. For SPS' services Operator shall pay, and SPS shall accept as payment in full, an amount equal to whatever price Operator is able to obtain upon any resale of the Facility or any parts thereof and the Cars.

(d) SPS understands that in order to provide the Facility, the Conveyed Property, and the Cars, Operator intends to obtain Interim Financing and Permanent Financing, subject to SPS approval, from lenders ("Lenders") and that the rights and interests of Operator under this Agreement will be collaterally assigned to the Lenders to secure repayment of the Interim Financing and Permanent Financing. It is accordingly intended and agreed that SPS's obligations under this Agreement are specifically enforceable by Operator, the Lenders and their assignees. Moreover, SPS's obligations to purchase and make the payments set forth in this Section 5 shall be absolute and unconditional and shall not be subject to any abatement or diminution by setoff, deduction, counterclaim, recoupment, agreement, defense, suspension, deferment, interruption or otherwise, and until such time as all payments required to be paid have been paid, SPS shall have no right to terminate this Agreement or to be released, relieved or discharged from its obligation to make, and shall not suspend or discontinue, any payment for any reason whatsoever.

Section 6. Arbitration.

Any controversy arising out of or relating to this Agreement, except for any provision of Section 5 hereof, shall be submitted to arbitration under the

EXHIBIT 3
TO COAL SERVICE AGREEMENT BETWEEN
WHEELABRATOR COAL SERVICES COMPANY
AND UTILITY

PHASE I

The following is a description of material and equipment installed during construction of Phase I of the Coal Handling Facility of Tolk Station.

Dumper System Consisting of:

Dumper Building
Dumper Control Room
Equipment Room
Rotary Dumper
Car Positioner
8 Vibrating Feeders
Belt Conveyor 2A
Belt Conveyor 2B
Dust Suppression System
Fire Protection System

Stack-out System Consisting of:

Stackout Conveyor Gallery with Stackout Conveyor 3A
Stackout Conveyor Gallery with Stackout Conveyor 3B
Telescoping Stackout Chute from Stackout Conveyor 3A
Telescoping Stackout Chute from Stackout Conveyor 3B
Dust Suppression System
Fire Protection System

Reclaim System Consisting of:

- 14 Pile Dischargers
- 14 Vibrating Feeders
- Belt Conveyor 5A
- Belt Conveyor 5B
- Reclaim Tunnel
- Reclaim Conveyor Gallery Including Conveyors 6A and 6B
- Dust Suppression System
- Fire Protection System

Crusher System Consisting of:

- Crusher Building
- Crushers
- Coal Sampler
- Vibrating Feeders
- Fire Protection System
- Dust Suppression System

Conveyor Gallery System From Crusher to Transfer Tower Consisting of:

- Conveyor 7A
- Conveyor 7B
- Dust Suppression System
- Fire Protection System
- Transfer Chutes to Tripper and Phase II

Tripper System Consisting of:

Tripper 8A

Tripper 8B

Fire Protection System

Dust Collection System

Miscellaneous Buildings:

Office Building

Maintenance Building

Hazardous Material Storage Building

EXHIBIT 4
TO COAL SERVICE AGREEMENT BETWEEN
WHEELABRATOR COAL SERVICES COMPANY
AND UTILITY

PROPERTY DESCRIPTION

Parcel A Inside Loop Track

A parcel of land out of Labors 9, 10 and 24, League 236, Dallam County School Land Survey, Lamb County, Texas,

Beginning at a point 2899.35 feet north and 2492.64 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

Thence North 30° 00' east, 1070.00 feet;

Thence north 60° west, 275.00 feet;

Thence north 32° east, 180.00 feet;

Thence north 50° west, 950.00 feet;

Thence south 40° west, 972.25 feet;

Thence south 14° west, 775.00 feet;

Thence south 73° 56' east, 1194.67 feet to the beginning point.

Parcel B Outside Loop Track

A parcel of land out of Labors 9, 10, 23 and 24, League 236, Dallam County School Land Survey, Lamb County, Texas,

Beginning at a point 3090.00 feet north and 2622.36 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

Thence north 30° 00' east, 740.00 feet;

Thence south 60° 00' east, 100.00 feet;

Thence south 30° 00' west, 360.00 feet;

Thence south 60° 00' east, 435.00 feet;

Thence south, 300.00 feet;

Thence west, 150.00 feet;

Thence north, 60.00 feet;

Thence north, 70° 28' west, 534.00 feet to the beginning point.

Parcel C Coal Pile Runoff Area Inside Loop Track

A parcel of land out of Labor 9, League 236, Dallam County School Land Survey, Lamb County, Texas,

Beginning at a point 3981.99 feet north and 1532.17 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

Thence north 40° east, 1000.00 feet;
Thence north 50° west, 475.00 feet;
Thence south 40° west, 1000.00 feet;
Thence south 50° east, 475.00 feet to the beginning point.

Parcel D Vehicle Underpass

A parcel of land out of Labor 10, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 2970.00 feet east and 3715.00 feet north of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas. From the center point, such parcel of land extends 8.50 feet either side of a north 30° east line and 10.00 feet either side of a north 60° west line.

Parcel E Dumper Building Parcel

A parcel of land out of Labors 9 and 10, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 3360.58 feet north and 2768.75 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas. From the center point such parcel of land extends 8.50 feet either side of a centerline at north 30° east extending a distance of 125.00 feet.

Parcel F Reclaim Tunnel

A parcel of land out of Labor 9, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 2646.54 feet east and 3148.90 feet north of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas. From the center point point such parcel of land extends 8.50 feet either side of a north 30° east line and 10.00 feet either side of a north 60° west line.

Parcel G Overhead Property

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas, extending 10.00 feet either side of a center line, the beginning point of which is located 2851.59 feet north and 3230.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, and extending south a distance of 780.34 feet.

Parcel H Support Tower

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at

a point 2217.22 feet north and 3230.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, extending 35.33 feet either side of the northsouth center line and 8.00 feet either side of the eastwest center line.

Parcel I Support Tower

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 2344.49 feet north and 3230.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, extending 32.00 feet either side of the northsouth center line and 7.00 feet either side of the eastwest center line.

Parcel J Support Tower

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 2471.76 feet north and 3230.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, extending 28.00 feet either side of the northsouth center line and 7.00 feet either side of the eastwest center line.

Parcel K Support Tower

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 2599.03 feet north and 3230.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, extending 24.00 feet either side of the northsouth center line and 6.50 feet either side of the eastwest center line.

Parcel L Support Tower

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 2731.80 feet north and 3230.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Survey, Lamb County, Texas, extending 16.00 feet either side of the northsouth center line and 13.00 feet either side of the eastwest center line.

Parcel M Access Road

A parcel of land out of Section 7 out of Section 9, Block S-2, John H. Stephens Survey, Lamb County, Texas, and Labors 7, 10 and 23, League 236, Dallam County School Land Survey, Lamb County, Texas, the beginning point of which is located at a point 1481.00 feet north and 3970.00 feet

east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, extending 15.00 feet either side of the described center line;

Beginning at said point of beginning;

Thence east 98.00 feet to beginning of a curve;

Thence curvature extends 652.00 feet on a radius of 499.06 feet deflecting easterly 15° off a northsouth line 382.94 feet east of beginning of curve;

Thence north 15° east 1965.00 feet to the beginning of a curve;

Thence curvature proceeds 285.00 feet on a radius of 1091.73 feet deflecting westerly 15° off a north 15° east line 143.73 feet from beginning of a curve;

Thence north 5800.00 feet to the ending point of which is located at a point 9826.59 feet north and 4997.83 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, and connects to County Road FM 2910.

Parcel N Construction Road

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas, the beginning point of which is located at a point 1405.00 feet north and 3547.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas, extending 15.00 feet either side of the described center line;

Beginning at said point of beginning;

Thence east 430.00 feet to beginning of a curve;

Thence curvature extends 418.00 feet on a radius of 548.82 feet deflecting easterly 47.5° off a northsouth line 220.00 feet east of the beginning of a curve.

At end of curvature said parcel intersects the curvature of the access roadway described in Parcel M above.

Parcel O Parking Lot

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas,

Beginning at a point 900.00 feet north and 3297.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

Thence north 350.00 feet;

Thence east 220.00 feet;

Thence north 125.00 feet;

Thence east 30.00 feet;

Thence north 15.00 feet;

Thence east 220.00 feet;
Thence south 490.00 feet;
Thence west 470.00 feet to the beginning point.

Parcel P In Plant Access Road

A parcel of land out of Labor 23, League 236, Dallam County School Land Survey, Lamb County, Texas,

Beginning at a point 1375.00 feet north and 3487.00 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

Thence 60.00 feet east of a northsouth line, north 91.00 feet;
Thence 30.00 feet north of an eastwest line, east 160.00 feet;
Thence 323.00 feet east of a northsouth line, north 30.00 feet;
Thence 30.00 feet west of a northsouth line, north 240.00 feet;
Thence 30.00 feet north of an eastwest line, west 115.00 feet;
Thence 30.00 feet west of a northsouth line, north 1200.00 feet;
Thence 30.00 feet north of an eastwest line, west 256.36 feet,
connecting to the most easterly portion of Parcel B, above.

FIRST AMENDMENT TO RESTATEMENT OF
COAL PROCESSING FACILITY AGREEMENT

607

THIS FIRST AMENDMENT AGREEMENT, dated as of October 1, 1987, by and between Wheelabrator Energy Leasing Company, a Delaware corporation ("WELCO"), (as assignee of Wheelabrator Coal Services Company ("Operator"), a Delaware corporation) and Southwestern Public Service Company ("SPS"), a New Mexico corporation.

W I T N E S S E T H:

WHEREAS, Operator and SPS have heretofore entered into that certain Restatement of Coal Processing Facility Agreement dated as of December 30, 1981 (the "Original Agreement"), setting forth the rights and obligations of Operator and SPS with respect to the ownership and operation of certain property referred to therein as the "Facility," the "Conveyed Property" and the "Cars";

WHEREAS, in connection with its sale of the above-referenced Facility and Conveyed Property to WELCO, and by Assignment dated as of December 30, 1981, Operator assigned all of its right, title and interest in the Original Agreement to WELCO;

WHEREAS, in order to refinance certain indebtedness incurred by WELCO in connection with the acquisition by WELCO of the above-referenced Facility and Conveyed Property, WELCO has arranged to issue and sell to certain institutional investors \$24,500,000 aggregate principal amount of Secured Notes of WELCO;

Original to executive file 9-30-88.

WHEREAS, said institutional investors have required as a condition of their purchase of the above-referenced Secured 608 Notes that WELCO and SPS amend the Original Agreement in certain respects; and

WHEREAS, WELCO and SPS have determined that it is desirable to so amend the Original Agreement;

NOW, THEREFORE in consideration of the mutual covenants set forth in this First Amendment, the parties hereto agree as follows:

Section 1. Amendment of Section 1.

The following definitions are hereby added in their proper alphabetical order to Section 1 of the Original Agreement:

"'Trust Indenture' shall mean the Trust Indenture dated as of October 1, 1987 from WELCO to the trustee therein named, as amended from time to time."

"'WELCO' shall mean Wheelabrator Energy Leasing Company, a Delaware corporation."

Section 2. Amendment of Section 5(a)(iv).

Section 5(a)(iv) of the Original Agreement is hereby amended in its entirety so that the same shall henceforth read as follows:

"(iv) the occurrence of an Event of Default under the Trust Indenture;"

Section 3. Amendment of Section 5(b).

The final paragraph of Section (b) of the Original Agreement is hereby amended in its entirety so that the same shall henceforth read as follows:

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"Simultaneously with receipt of the foregoing payments in full, Operator shall convey to SPS the Facility, the Conveyed Property, and the Cars, by special warranty conveyance in their 'as is' condition on the date of such conveyance, free and clear of all liens and encumbrances except those existing on the date hereof and those liens and encumbrances hereafter created with the approval of SPS. If any other liens or encumbrances exist on the date of such conveyance, the conveyance shall be accompanied by (x) a bond or other security reasonably deemed by SPS to adequately protect it from any losses resulting from the existence of liens and encumbrances other than those existing on the date hereof and those hereafter created with the approval of SPS, or (y) at the option of Operator, a clean irrevocable letter of credit issued by a bank having a combined capital, surplus and undivided profits of at least \$100,000,000 and which is organized and doing business under the laws of the United States of America or under the laws of any State of the United States of America and is a member of the Federal Reserve System, which letter of credit shall be in an amount not less than the aggregate amount of all liens and encumbrances other than those existing on the date hereof and those hereafter created with the approval of SPS, plus an additional amount sufficient to cover reasonable attorney's fees, other costs reasonably anticipated as required to remove said liens and encumbrances, and interest thereon.

Section 4. Amendment to Section 5(c).

The first sentence of Section 5(c) of the Original Agreement is hereby amended by adding between the first and second sentences thereof the following:

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"If any other liens or encumbrances exist on the date of such conveyance, the conveyance shall be accompanied by the bond, other security or letter of credit described in Section 5(b) hereof."

Section 5. Amendment to Section 5(d).

Section 5(d) of the Original Agreement is hereby amended by adding at the end thereof the following:

"Without limiting the foregoing, SPS's obligations to purchase and make the payments set forth in this Section 5 shall not be excused by or subject to any abatement or diminution by reason of the failure of Operator to convey to SPS the Facility, the Conveyed Property, and the Cars free and clear of all liens and encumbrances, other than those described in Section 5(b) or Section 5(c) hereof, and irrespective of whether Operator shall have provided to SPS the bond, other security or letter of credit described in Sections 5(b) or 5(c) hereof."

Section 6. Amendment of Section 8(a).

Section 8(a) of the Original Agreement is hereby amended by adding at the end thereof the following:

"Copies of all notices, requests, consents, demands, reports or statements which are to be given by or made upon either party hereto under this Agreement and which relate to the occurrence or claimed occurrence of a Temporary Event of Disruption or Permanent March-In Event under Section 4 hereof, or the occurrence or claimed occurrence of a Trigger Event under Section 5 hereof, shall also be delivered to the Trustee under the Trust Indenture."

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Section 7. Amendment to Section 8(e).

The penultimate sentence of Section 8(e) of the Original Agreement is hereby amended in its entirety so that the same shall henceforth read as follows:

"This Agreement cannot be changed or terminated orally but only by an instrument in writing executed by the parties hereto and the provisions of Sections 4 and 5 hereof and this Section 8(e) (and the definitions contained in other Sections of this Agreement which are used in said Sections 4 and 5 or this Section 8(e)) may not be changed, nor may this Agreement be terminated (other than by its own operation), without the written consent of the Trustee under the Trust Indenture."

Section 8. Amendment of Section 8(j).

Section 8(j) of the Original Agreement is hereby amended in its entirety so that the same shall henceforth read as follows:

"(j) Assignment. Notwithstanding the provisions of Section 8(h) hereof, either party hereto may, without the consent of the other party hereto, assign its rights and interest hereunder to any financial institution in connection with any financing relating to the Facility, which assignment may include the assignment of all rights of either party hereto to exercise all options and other rights hereunder."

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Section 9. Miscellaneous.

(a) Execution. Two or more duplicate originals of this First Amendment may be signed by the parties hereto, each of which shall be an original but all of which together shall constitute one and the same instrument. This First Amendment may be executed in one or more counterparts and will be effective upon later to occur of (i) the execution of at least one counterpart hereof by each party hereto or (ii) the issuance and sale of the Secured Notes described in the preamble to this Amendment. Each set of counterparts of this Amendment which, collectively, show execution by each party shall constitute one duplicate original.

(b) No Other Changes. On execution of this First Amendment by each of the parties hereto, the Original Agreement shall be amended as set forth above, but all other terms and provisions of the Original Agreement shall remain unchanged and are in all respects ratified, confirmed and approved.

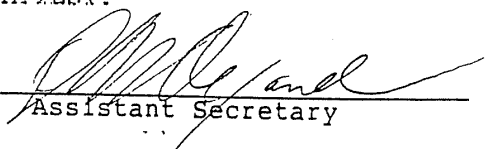
(c) Governing Law. This First Amendment shall be construed and governed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have executed this **611**
First Amendment in their respective corporate names.

WHEELABRATOR ENERGY LEASING
COMPANY

By 
Its _____


ATTEST:


Assistant Secretary

SOUTHWESTERN PUBLIC SERVICE
COMPANY

APPROVED AS TO FORM

by _____ ERF

By 
Its Senior Vice President

ATTEST:


Assistant Secretary



1800 Larimer Street
Denver, Colorado 80202-1414

February 15, 2018

Fred Busch
SVP Business Development
Savage Tolk Corporation
c/o Savage Services Corporation
901 West Legacy Center Way
Midvale, Utah 84047

Re: Request for Conveyance of the Facility and the Conveyed Property

Pursuant to Section 5(c) of the Restatement of Coal Processing Facility Agreement dated as of December 30, 1981 (the "Agreement") by and between Savage Tolk Corporation (as successor in interest to Wheelabrator Coal Services Company) and Southwestern Public Service Company ("SPS"), and having met the condition set forth in Section 5(c)(y) of the occurrence of January 1, 2018, SPS hereby requests that Savage Tolk Corporation, and/or any affiliate who may have an interest, convey to SPS, within 30 days of this request, the Facility and the Conveyed Property (as such terms are defined in the Agreement) as provided in the Agreement. The Agreement states that the Cars are also to be conveyed, but SPS's understanding is that the Cars were disposed of some time ago and are no longer covered by the Agreement. Please confirm SPS's understanding regarding the Cars.

Thanks in advance for your prompt attention to this matter.

Sincerely,

H. Craig Romer
Director, Fuel Supply Operation
Xcel Energy Services Inc., as
Authorized Signatory for
Southwestern Public Service
Company

BILL OF SALE

February 16, 2018

TEXAS COAL FACILITIES LTD., LLP, a Texas limited partnership ("Seller"), in consideration of the sum of \$10.00 and other good and valuable consideration to it paid, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, sell, assign, transfer, and set over to **SOUTHWESTERN PUBLIC SERVICE COMPANY**, a New Mexico corporation ("Buyer"), all right, title and interest of Seller in the property described on Exhibit A attached hereto and incorporated herein by reference for all purposes as if fully set forth herein (the "Property").

To have and to hold, all and singular, the Property to Buyer, its successors and assigns forever.

Seller hereby warrants to Buyer that Seller is the lawful owner of the Property with good right and full power to sell the Property and has full legal and beneficial title to the Property free and clear of all liens, charges and encumbrances.

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS BILL OF SALE SELLER SELLS THE PROPERTY TO BUYER, AND BUYER PURCHASES THE PROPERTY "AS IS," "WHERE IS," WITH ALL FAULTS, AND SELLER DOES NOT MAKE, HAS NOT MADE, AND WILL BE DEEMED TO HAVE NOT MADE, AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AS TO THE TITLE, MARKETABILITY, COMPLIANCE WITH SPECIFICATIONS, VALUE, CONDITION, DESIGN, QUALITY, DURABILITY, OPERATION OR MERCHANTABILITY OF THE PROPERTY OR THE FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE.

THIS BILL OF SALE SHALL BE GOVERNED BY AND CONSTRUED UNDER THE INTERNAL LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be signed by a fully authorized representative on the date first written above.

TEXAS COAL FACILITIES, LTD., LLP

By: Savage Services Corporation,
a Utah corporation,
its General Partner


By: 
Byron Lawrence, Vice President

EXHIBIT A

Description of Property

(attached)

EXHIBIT A

TOLK STATION COAL HANDLING SYSTEM

1. **TRACK.** Tolk Station plant system.
2. **DUMPER SYSTEM.**
 - A Dumper Building
 - B Dumper control Room
 - C Equipment Room
 - D Rotary Dumper
 - E Car Positioner
 - F 8 Belt Feeders
 - G Belt Conveyor 2A
 - H Belt Conveyor 2B
 - I Dust Suppression System
 - J Fire Protection System
3. **STACK OUT SYSTEM.**
 - A Stack out Conveyor Gallery with Stack out Conveyor 3A
 - B Stack out Conveyor Gallery with Stack 3B
 - C Telescoping Stack out Chute from Stack out Conveyor 3A
 - D Telescoping Stack out Chute from Stack our Conveyor 3B
 - E Dust Suppression System
 - F Fire Protection System
4. **RECLAIM SYSTEM.**
 - A 14 Pile Dischargers
 - B 14 Vibrating Feeders
 - C Belt Conveyor 5A
 - D Belt Conveyor 5B
 - E Reclaim Tunnel
 - F Reclaim Conveyor Gallery Including Conveyors 6A and 6B
 - G Dust Suppression System
 - H Fire Protection System – Including 6A/B Fire Valve building
 - I 6A Magnet
 - J 6B Magnet
5. **CRUSHER SYSTEM.**
 - A Crusher Building
 - B Crushers
 - C Vibrating Feeders
 - D Fire Protection System
 - E Dust Collection System

6. **CONVEYOR GALLERY SYSTEMS FROM CRUSHER TO TRANSFER TOWER.**

- A Conveyor 7A
- B Conveyor 7B
- C Conveyor 9A from Unit #1 Transfer Tower to Unit #2 Transfer Tower
- D Conveyor 9B from Unit #1 Transfer Tower to Unit #2 Transfer Tower
- E Transfer Chutes from Conveyor 9A and 9B to Trippers
- F Fire Protection System
- G Dust Collection System
- H Coal Sampling System – Including Sample System Building

7. **TRIPPER SYSTEM**

- A Tripper 8A
- B Tripper 8B
- C Fire Protection System – Unit 1
- D Dust Collection System – Unit 1
- E Tripper 10A
- F Tripper 10B
- G Fire Protection System – Unit 2
- H Dust Collection System – Unit 2

8. **MISCELLANEOUS ASSETS AND BUILDINGS**

- A Office Building
- B Maintenance Building
- C Hazardous Material Storage Building – Oil Room
- D Warehouse
- E Convault diesel storage Tank – 10,000 gallon
- F Convault gasoline storage Tank – 1,000 gallon

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: February 16, 2018

Grantor: Texas Coal Facilities, Ltd., LLP

Grantor's Mailing Address: 901 W. Legacy Center Way
Midvale, Utah 84047

Grantee: Southwestern Public Service Company,
a New Mexico corporation

Grantee's Mailing Address: 790 South Buchanan Street
Amarillo, Texas 79101

Consideration: Ten Dollars and other good and valuable consideration

Property (including any improvements): See Exhibit A.

Reservations from Conveyance: None.

Exceptions to Conveyance and Warranty: All matters of record.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, gives, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, by, through or under Grantor, but not otherwise.

[Signature on Following Page]

Executed as of February 16, 2018.

GRANTOR:

TEXAS COAL FACILITIES, LTD., LLP
a Texas limited partnership

By: Savage Services Corporation,
its General Partner

By: *Byron Lawrence*
Byron Lawrence, Vice President

STATE OF UTAH §
 §
COUNTY OF SALT LAKE §

The foregoing instrument was acknowledged before me this 16 day of February, 2018,
by Byron Lawrence the Vice President of Savage Services Corporation, a Utah corporation, which is the
General Partner of Texas Coal Facilities, Ltd., LLP, a Texas limited partnership.

Megan Wayman
Notary Public
Residing at Salt Lake

My Commission Expires:

05-02-2019



EXHIBIT A

Legal Description of the Property

TRACT I: A parcel of land out of Labors 9, 10 and 24, League No. 236, Dallam County School Land Survey, Lamb County, Texas;

BEGINNING at a point 2899.35 feet North and 2492.64 feet East of the Southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas:

THENCE North 30°00' East, 1070.00 feet;
THENCE North 60° West, 275.00 feet;
THENCE North 32° East, 180.00 feet; '
THENCE North 50° West, 950.00 feet;
THENCE South 40° West, 972.25 feet;
THENCE South 14° West, 775.00 feet; '
THENCE South 73°56' East, 1194.67 feet to the beginning point.

TRACT II: A parcel of land out of Labors 9, 10, 23 and 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

BEGINNING at a point 3090.00 feet North and 2622.36 feet East of the Southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas; •

THENCE North 30°00' East, 740.00 feet;
THENCE South 60°00" East, 100.00 feet;
THENCE South 30°00' West, 360.00 feet;
THENCE South 60°00' East, 435.00 feet;
' THENCE South, 300.00 feet;
THENCE West, 150.00 feet;
THENCE North, 60.00 feet;
THENCE North, 70°28' West, 534.00 feet to the beginning point.

TRACT III: A parcel of land out of Labor 9, League 236, Dallam County School Land Survey Lamb County, Texas; '

BEGINNING at a point 3981.99 feet North and 1532.17 feet East of the Southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

THENCE North 40° East, 1000.00 feet;
THENCE North 50° West, 475.00 feet;
THENCE South 40° West, 1000.00 feet;
THENCE South 50° East, 475.00 feet to the beginning point.

TRACT IV: A parcel of land out of Labors 9 and 10, League 236, Dallam County School Land Survey, Lamb County, Texas, said tract being described by metes and bounds as follows:

BEGINNING at a point which is located 3364.83 feet North and 2761.39 feet East of the Southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;
THENCE North 30 East at 125.0 feet;
THENCE South 60 East at 17.0 feet;
THENCE South 30 West at 125.0 feet;
THENCE North 60 West at 17.0 feet to the Point of Beginning.