

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN	)	
PUBLIC SERVICE COMPANY'S	)	
APPLICATION FOR: (1) REVISION OF	)	
ITS RETAIL RATES UNDER ADVICE	)	
NOTICE NO. 282; (2) AUTHORIZATION	)	
AND APPROVAL TO SHORTEN THE	)	CASE NO. 19-00170-UT
SERVICE LIFE OF AND ABANDON ITS	)	
TOLK GENERATING STATION UNITS;	)	
AND (3) OTHER RELATED RELIEF,	)	
	)	
SOUTHWESTERN PUBLIC SERVICE	)	
COMPANY,	)	
	)	
APPLICANT.	)	
	)	

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 Period	April 1, 2018 through March 31, 2019
CSA	Coal Supply Agreement
Commission	New Mexico Public Regulation Commission
CPI	Consumer Price Index
FPPCAC	Fuel and Purchased Power Cost Adjustment Clause
FSO	Fuel Supply Operations
Non-mine and non-freight coal costs	The coal costs included in base rates, consisting of: • 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); • cost of financing coal inventories; and • the contractual margin payment.
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
PUCT	Public Utility Commission of Texas
Savage	Savage Industries

<u>Acronym/Defined Term</u>	<u>Meaning</u>
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
Test Year	Historical Test Year Period consisting of the Base Period and further incorporating all proper adjustments and capital additions
Total Company or total company	SPS total company costs before jurisdictional allocation
TUCO	TUCO Inc.
UPRR	Union Pacific Railroad
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-1	2018 SPS – TUCO Coal Supply Agreement for Tolk (<i>Non-native format</i>)
HCR-2	2018 SPS – TUCO Coal Supply Agreement for Harrington (<i>Non-native format</i>)
HCR-3	Wheelabrator Agreement (<i>Non-native format</i>)
HCR-4	Conveyance Request (<i>Non-native format</i>)
HCR-5	Bill of Sale for Tolk Coal Handling System Assets (<i>Non-native format</i>)
HCR-6	Special Warranty Deed for Tolk Coal Handling System Assets (<i>Non-native format</i>)

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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”), which is a wholly-owned electric utility subsidiary
8 of Xcel 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

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1 (3) coordinating the FSO department's activities with the trading, purchased
2 power, gas supply, and energy supply departments of Xcel Energy.

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

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

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

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

14 Prior to working for XES, I worked for the Union Pacific Railroad
15 ("UPRR") and the Southern Pacific Railroad (before its merger with the UPRR),
16 holding various positions from December 1994 to June 2007 as noted below:

- 17 • Senior Manager Terminal Operations Denver;
- 18 • Manager Mechanical Maintenance II;

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- 1 • Director Transportation Services Denver Service Unit;
- 2 • Manager Terminal Operations – DSLE certified; and
- 3 • Manager Train Operations – Moffat Tunnel, Colorado Springs, and Limon
- 4 Subdivisions.

5 These assignments included daily management of railroad operations, track and

6 rail car maintenance, customer service, hiring and training of trainmen, engineers

7 and yardmen, and budgetary and financial planning in the region. Prior to these

8 assignments, I was employed as a brakeman and moved through union ranks of

9 conductor, foreman, and yardmaster before being promoted to managerial

10 assignments.

11 **Q. Have you attended or taken any special courses or seminars relating to**

12 **public utilities?**

13 A. Yes. Over my career, I have taken numerous courses and seminars related

14 specifically to the public utility industry and related issues, including:

- 15 • Escalation Consultants, Controlling Rail Expenses;
- 16 • Carlson School of Management at the University of Minnesota,
- 17 Negotiation Strategies for Executives;
- 18 • Financial Accounting Institute, Utility Finance and Accounting;
- 19 • American Management Association, Negotiating to Win; and

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- 1 • Various National Coal Transportation Association, American Coal
2 Council, and Platts coal conferences.

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

4 A. Yes. I testified before the New Mexico Public Regulation Commission
5 (“Commission”) in Case No. 14-00348-UT¹ regarding coal and coal-related costs
6 recovered through SPS’s Fuel and Purchased Power Cost Adjustment Clause
7 (“FPPCAC”). I have also submitted pre-filed testimony on coal and coal-related
8 costs recovered through base fuel, as well as the non-mine and non-freight coal
9 costs recovered in base rates, in SPS’s recent base rate cases before the
10 Commission, including Case No. 17-00255-UT².

11 In addition, I have testified before the Colorado Public Utilities
12 Commission regarding coal and coal-related costs and have filed testimony on
13 SPS’s behalf before the Public Utility Commission of Texas (“PUCT”).

¹ *In the Matter of Southwestern Public Service Company’s Application for Approval of: (1) Continued Use of its Fuel and Purchased Power Cost Adjustment Clause (“FPPCAC”) Using a Monthly Adjustment Factor Pursuant to NMPRC Rule 550; and (2) the Report of Expenses Recognized and Revenues Collected or Refunded Under the FPPCAC for the Period of October 2012 Through September 2014*, Case No. 14-00348-UT, Final Order (Oct. 21, 2015).

² *In the Matter of Southwestern Public Service Company’s Application for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 272*, Case No. 17-00255-UT, New Final Order on Partial Mandate from the New Mexico Supreme Court (Mar. 6, 2019).

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

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

2 A. I discuss the reasonableness of the non-mine and non-freight coal costs that SPS
3 seeks to recover in base rates in this proceeding. I will not discuss other
4 coal-related costs, which are recovered through SPS's FPPCAC rather than base
5 rates.

6 I provide an overview of SPS's coal procurements under its Coal Supply
7 Agreements ("CSAs") with TUCO Inc. ("TUCO") for SPS's Harrington and Tolk
8 coal-fueled generation stations (collectively, "SPS/TUCO CSAs" or "CSAs"), and
9 discuss SPS's activities regarding coal acquisition, as well as the activities of
10 TUCO, and TUCO's Coal Handling Processor, Savage Industries ("Savage").

11 I also explain the reversion of ownership of the Tolk Coal Handling
12 System assets to provide background to a portion of the testimony of SPS witness
13 Jeffrey (Jeff) T. Kopp concerning dismantling.

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

15 A. My testimony and recommendations include the following:

- 16 • SPS's non-mine and non-freight coal costs that were not recovered
17 through SPS's FPPCAC during the Base Period³ totaled \$10,554,576 for

³ The "Base Period" is April 1, 2018 through March 31, 2019.

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1 the New Mexico retail jurisdiction.⁴ SPS proposes one pro forma
2 adjustment to the Base Period costs, resulting in total company increase of
3 \$31,160 or \$8,939 for the New Mexico retail jurisdiction to reflect a
4 contractual increase in SPS's margin payment to TUCO. The pro-forma
5 adjustment results in a Test Year⁵ cost of \$10,563,515 on a New Mexico
6 retail basis.⁶ These costs are included in SPS's cost of service presented
7 by SPS witness Arthur P. Freitas.

- 8 • The costs incurred include those for: the furnishing of railcars; the
9 handling, storing, crushing, processing, weighing, and delivering of coal to
10 SPS's bunkers; the assessments and taxes (except federal and state
11 income taxes) associated with the coal; the cost of financing coal
12 inventories; and the cost of the contractual margin payment.⁷ These costs
13 are paid to TUCO, the company from which SPS procures coal for the
14 Harrington and Tolk Stations, for its costs, and TUCO pays its coal
15 handling contractor, Savage.
- 16 o TUCO's responsibilities include: purchasing coal; owning and
17 managing the inventory stockpiles; leasing railcars; arranging for
18 the transportation and handling of the coal; and negotiating and
19 administering contracts with coal suppliers, transportation, and
20 handling.
21 o Savage's responsibilities include: receiving and unloading the coal;
22 moving coal to the stockpile and managing the stockpile; and

⁴ \$36,790,918 SPS total company before jurisdictional allocation ("Total Company"). Coal and coal-related costs are allocated to the New Mexico retail jurisdiction using an energy allocator. Please refer to Attachment APF-4.

⁵ The Test Year is the Historical Test Year Period consisting of the Base Period and further incorporating all proper adjustments and capital additions.

⁶ \$36,822,078 Total Company. The Test Year is the Historical Test Year Period consisting of the Base Period and further incorporating all proper adjustments and capital additions.

⁷ Additionally, the coal-handling costs include several projects that were undertaken at the Tolk and Harrington Stations to improve safety and efficiency.

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1 crushing, weighing, and delivering of coal to the plant bunkers
2 (i.e., coal handling).

- 3 • I recommend the Commission find that SPS's Test Year non-mine and
4 non-freight coal costs were prudently incurred and were reasonable and
5 necessary for SPS to have usable coal to burn at its Tolk and Harrington
6 Stations, and should therefore be approved.
- 7 • I also provide the background for Mr. Kopp's testimony concerning
8 dismantling costs related to Tolk coal handling, and I explain that SPS
9 now owns the related assets.

10 **Q. How were New Mexico retail jurisdictional amounts in your testimony**
11 **calculated?**

12 A. Throughout this testimony, I quantify the expense amounts on a New Mexico
13 retail basis based upon the jurisdictional allocation percentages that Mr. Freitas
14 uses to develop the New Mexico retail revenue requirement in his Attachment
15 APF-6. Mr. Freitas is responsible for calculating jurisdictional allocation
16 percentages that apply to the various cost components in the cost of service. My
17 staff and I conferred with Mr. Freitas and his staff to determine the New Mexico
18 retail jurisdictional amounts presented in my testimony. If the percentages used
19 to allocate amounts to the New Mexico retail jurisdiction change, those new
20 allocation percentages will need to be applied to the total company numbers to
21 derive updated New Mexico retail amounts.

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

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1 **III. COAL COSTS INCLUDED IN SPS'S BASE RATES, AND**
2 **THE REASONABLENESS OF THOSE COSTS**

3 **Q. What is the amount of SPS's coal and coal-related base rate costs that SPS is**
4 **including in the cost of service in this case?**

5 A. SPS is requesting that \$10,563,515 (New Mexico retail) be included in base rates,
6 consisting of \$10,554,576 (New Mexico retail) in costs incurred in the Base
7 Period, adjusted by \$8,939 (New Mexico retail), as discussed below.

8 **Q. Please explain the components of SPS's delivered cost of coal that are**
9 **currently recovered through base rates and included in this amount.**

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

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Base Rate Coal Costs from TUCO aka Non-Mine and Non-Freight Costs	Fuel Expense Coal Costs from TUCO (Recovered through FPPCAC)
Costs incurred for furnishing railcars and for handling, unloading, storing, crushing, processing, weighing, and delivering coal to SPS's bunkers	Free on Board mine cost of coal
Assessments and taxes (except federal and state income taxes)	Cost of transportation from the mine to the unloading facilities
Cost of financing coal inventories	Cost of coal losses
The contractual margin payment	

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

3 A. The margin is the payment for TUCO's services. Please refer to Attachments
4 HCR-1 and HCR-2, Section 7.1(F) and Exhibit C for additional details.

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

7 A. No.

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

4 A. No.

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

6 A. The recurring costs included in the Test Year are included in the cost of service
7 study presented by Mr. Freitas.

8 **Q. Have you made any adjustments to the Base Period costs to determine the**
9 **Test Year costs?**

10 A. Yes. I have made one adjustment, the sum of which is also included in the cost of
11 service. The operating expenses component of SPS's margin payment to TUCO
12 increases annually (effective January 1st) by the lesser of 2.5% or the percentage
13 increase in the Consumer Price Index ("CPI").⁸ Thus, SPS has made a pro forma
14 adjustment to reflect the higher margin payment that is being made in 2019. This
15 pro forma adjustment was determined by calculating 1.9% (the increase in the
16 CPI) of the operating expenses component of the margin payment in 2018, which

⁸ Please refer to the CSAs at Exhibit 1 to Exhibit C Page 4 of 5.

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1 reflects the amount of the contractual increase. Notably, this is a smaller margin
2 increase than would have been incurred under the previous CSAs, which was the
3 *greater* of 2.5% or the percentage increase in the CPI.

4 This pro forma adjustment results in an annual net increase of \$8,939 for
5 the New Mexico retail jurisdiction (\$31,160 Total Company), yielding a total Test
6 Year base rate coal cost of \$10,563,515 for the New Mexico retail jurisdiction.

7 **Q. Have the SPS/TUCO CSAs been reviewed by the Commission in previous**
8 **regulatory proceedings?**

9 A. No. Prior to the start of the Base Period, the previously approved CSAs with
10 TUCO expired. The new CSAs, which were effective on January 1, 2018, are
11 similar in many respects to the previously-approved CSAs that had been reviewed
12 and approved by both this Commission and the PUCT.

13 **Q. Are the costs associated with the new SPS/TUCO CSAs the same types of**
14 **costs that have been reviewed by the Commission in previous base rate**
15 **cases?**

16 A. Yes. The costs as described above are the same types of coal costs that have been
17 included in base rate cases since 2007 as part of SPS's revenue requirement

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1 analysis (i.e., Case Nos. 08-00354-UT⁹, 10-00395-UT¹⁰, 12-00350-UT¹¹,
2 15-00296-UT¹², and 17-00255-UT).

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

6 A. SPS engages in several activities to ensure that all costs to be passed on to SPS
7 are reasonable and necessary. First, prior to the Base Period, SPS negotiated the
8 new CSAs with TUCO that resulted in lower costs than the previous CSAs.
9 Second, SPS actively monitors TUCO's contracting activities that could affect
10 SPS's costs. SPS has frequent discussions with TUCO before execution of any
11 contracts that would affect these costs. Through these discussions, SPS ensures

⁹ *In the Matter of the Application of Southwestern Public Service Company for Revision of its Retail Electric Rates Pursuant to Advice Notice Nos. 217, 218 and 219 and Request for Expedited Interim Relief Authorizing Recovery of Capacity Related Costs Associated With the New Hobbs Generating Station*, Case No. 08-00354-UT, Final Order Conditionally Approving Stipulation (Jul. 14, 2009).

¹⁰ *In the Matter of Southwestern Public Service Company's Application for Revision of its Retail Rates Under Advice Notice No. 234*, Case No. 10-00395-UT, Final Order Adopting Amended Certification of Stipulation (Dec. 28, 2011).

¹¹ *In the Matter of Southwestern Public Service Company's Application for Revision of its Retail Rates Under Advice Notice No. 245*, Case No. 12-00350-UT, Final Order Partially Adopting Recommended Decision (Mar. 26, 2014).

¹² *In the Matter of Southwestern Public Service Company's Application for Revision of its Retail Rates Under Advice Notice No. 256*, Case No. 15-00296-UT, Final Order Adopting Certification of Stipulation with Modifications (Aug. 10, 2016).

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1 that the overall bid solicitation is conducted so that TUCO will receive the most
2 competitive bids to meet SPS's needs.

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

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

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

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1 All of these efforts help ensure that SPS's non-mine and non-freight costs
2 recovered through base rates are reasonable and necessary expenses.

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

4 A. SPS ensures the accuracy and reasonableness of TUCO's charges for delivered
5 coal by checking invoices and conducting annual audits of TUCO. This activity
6 includes not only the coal acquisition and transportation agreements, but also the
7 other contracts that affect coal costs included in the cost of service. For example,
8 SPS performs calculations to ensure the accuracy of finance charges and TUCO's
9 margins. The other cost components in TUCO's invoices are also reviewed to
10 ensure both the contractual validity of each component and the accuracy of the
11 calculation of each cost category.

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

15 A. Yes. TUCO and its coal handling contractor, Savage, engage in monthly
16 operational meetings to discuss relevant coal handling issues and coal delivery
17 developments for Tolk and Harrington Stations. SPS's coal supply and FSO
18 personnel also attend these monthly meetings. TUCO's personnel monitor

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

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

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

17 **Tolk Station**

18 **2018:**

- 19 • Conveyor 7B Belt replacement
20 • Rotary Car Dumper rack gear replacement

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- Conveyor 3B Backstop replacement
- Water Truck replacement
- Safety gate installation on all fixed ladders

2019:

- Replacement of plugged chute detectors

Harrington Station

2018:

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

2019:

- Caterpillar D10 Dozer replacement

Q. Are the non-mine, non-freight coal costs that SPS seeks to recover in this case reasonable and necessary?

A. Yes. As explained above, the non-mine, non-freight coal costs that SPS seeks to recover in this case are reasonable and necessary for SPS to provide safe and reliable electric service to its customers.

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1 **IV. 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, Tolk and Harrington 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

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1 administers that result in base rate costs, are the coal handling contracts with
2 Savage.

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

4 A. TUCO owns no coal reserves, but instead contracts with coal suppliers to satisfy
5 SPS's needs (recovered through the FPPCAC). TUCO provides coal
6 transportation services under long-term transportation agreements with the
7 Burlington Northern Santa Fe Railway Company to serve its coal transportation
8 needs from the Powder River Basin (also recovered through the FPPCAC).¹³
9 TUCO also procures the coal handling services as discussed in this testimony (and
10 recovered through base rates) under long-term coal service agreements with
11 Savage.

12 **Q. Have there been any changes to the TUCO contracts that have affected costs**
13 **during the Test Year?**

14 A. Yes. The CSAs in effect during the Base Period are new CSAs that became
15 effective on January 1, 2018 and are effective through December 31, 2022. The
16 new CSAs continue the service that TUCO has provided to SPS under the
17 previous CSAs in effect since 1979, providing coal to Tolk and Harrington

¹³ Tolk and Harrington are both designed to burn coal specifically from the Powder River Basin in Wyoming.

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1 Stations. Consistent with the previous CSAs between TUCO and SPS, TUCO is
2 permitted to (and does) contract for the provision of certain services and to bill
3 SPS the charges from the contractors. The new CSAs allow for early termination
4 with one year's notice by either party. The CSAs are provided as Attachments
5 HCR-1 and HCR-2 to this testimony.

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

7 A. SPS's prior CSAs with TUCO for both Tolk Station and Harrington Station
8 expired on December 31, 2017.¹⁴

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

10 A. SPS's options were either to negotiate new CSAs with TUCO, or bring TUCO's
11 roles and responsibilities in house. This is because TUCO offers a unique service
12 of procuring, supplying, and arranging for the transport of coal to SPS by entering
13 into contracts with coal companies, railways, and a coal-handling company, and it
14 owns and maintains the coal stockpiles at Tolk and Harrington. Each part of the
15 service TUCO provides is necessary to ensure the stations have a sufficient supply

¹⁴ 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.

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1 of coal. SPS is not aware of other companies that provide such services to other
2 utilities.

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

5 A. Yes. SPS's analysis demonstrated that executing new CSAs after the cessation of
6 its expiring CSAs would provide the lowest reasonable cost for customers.

7 SPS compared the TUCO costs under the expiring CSAs to an estimate of
8 the costs SPS would incur if it performed all of the activities related to the CSAs
9 in-house with SPS employees and expenses. The estimated costs in the analysis
10 included, but were not limited to, the costs of procuring, transporting, and
11 handling the coal used in SPS's Tolk and Harrington stations, as well as the
12 capital upgrades necessary to carry out those functions. SPS also considered the
13 carrying costs that would be incurred by customers if the inventory piles currently
14 owned by TUCO were instead owned by SPS. The analysis showed an economic
15 benefit to SPS's customers by keeping a TUCO CSA in place for each station.

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

18 A. Yes. After its analysis, SPS then began negotiations with TUCO to develop new
19 CSAs for Tolk and Harrington. During the negotiations, SPS was able to reduce

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1 the various management fees and operating expenses charged by TUCO, resulting
2 in even greater savings than the original analysis showed.

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

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

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

16 A. The Margin Payment was renegotiated with an extension of the CSA for
17 Harrington in 2017. The changes result in a lower total margin payment, and
18 elimination of four of the components of the margin. First, the operating

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

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

8 A. The analysis and negotiations that SPS conducted, along with the experience of
9 the FSO staff, helped to ensure that the service is provided at the lowest
10 reasonable cost. Under the new CSAs, TUCO provides the same service to SPS
11 as it did under the prior contract, but at a lower cost. Additionally, TUCO's
12 expertise in negotiating with vendors has continued to result in savings and
13 reasonable costs for those costs flowed through to SPS, such as with the
14 renegotiations of contracts with Savage. For example, the base rate costs for
15 TUCO service during the Base Period are \$5.95 million lower than they were
16 during the Base Period used in Case No. 17-00255-UT on a Total Company basis,
17 and \$3.2 million lower on a Total Company basis for 2018 compared to 2017,
18 including cost flowed through to SPS from Savage.

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1 **Q. Are the new CSAs and their resulting costs 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 coal-
12 handling duties for TUCO, with the final budgets due in October. The budget
13 items include, but are not limited to, labor and benefits, equipment and facility
14 maintenance, equipment leases, fuel, rail car leases and maintenance, service fee,
15 and administrative expenses. New Coal Service Agreements between TUCO and
16 Savage were entered into prior to the Base Period, and are effective January 1,
17 2018, through December 31, 2022. These agreements were entered into to
18 replace the agreements with Savage that ended on December 31, 2017.

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

3 A. TUCO negotiated the new contracts with Savage to provide the same reliable
4 services that Savage has historically provided to TUCO, but at a lower cost. SPS
5 reviewed the transaction after the proposals were finalized to ensure that the costs
6 were reasonable.

7 **Q. Are the new agreements and resulting costs reasonable, necessary, and**
8 **prudent?**

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

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1 **IV. 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**
4 **Base Period?**

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-3 (Wheelabrator

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1 Agreement), HCR-4 (Conveyance Request), HCR-5 (Bill of Sale for Tolk
2 Handling System Assets), and HCR-6 (Special Warranty Deed for Tolk Handling
3 System Assets).

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

5 A. Yes.

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

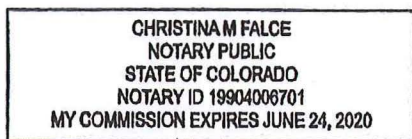
H. CRAIG ROMER, first being sworn on his oath, states:

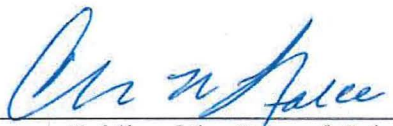
I am the witness identified in the preceding direct testimony. I have read the direct testimony and the accompanying attachment(s) and am familiar with their contents. Based upon my personal knowledge, the facts stated in the testimony are true. In addition, in my judgment and based upon my professional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



H. CRAIG ROMER

SUBSCRIBED AND SWORN TO before me this 21st day of June, 2019 by H. CRAIG ROMER.





Notary Public of the State of Colorado
My Commission Expires: 6/24/2020

COAL SUPPLY AGREEMENT – TOLK STATION

by and between

TUCO INC.,
a Delaware corporation,
Seller

and

SOUTHWESTERN PUBLIC SERVICE COMPANY,
a New Mexico corporation and electric utility subsidiary of Xcel Energy, Inc., a Minnesota corporation,
Buyer

Effective January 1, 2018

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COAL SUPPLY AGREEMENT – TOLK STATION

THIS COAL SUPPLY AGREEMENT – TOLK STATION is made and entered into this 12th day of January, 2018, with an effective date of commencement of January 1, 2018 (**Effective Date**) by and between TUCO INC., a Delaware corporation, (**Seller**) and Southwestern Public Service Company, a New Mexico corporation (**Buyer**) (collectively, **Parties**) (**Agreement**).

RECITALS

WHEREAS Buyer is a public utility engaged in the generation, transmission and sale of electric power and energy and requires a long-term supply of crushed, ready-to-burn coal for use as boiler fuel at its Roy Tolk Station power plant near Muleshoe, Texas (**Tolk Station**); and

WHEREAS Seller has access through the marketplace to the quantity and quality of uncommitted commercial coal desired by Buyer as set forth in this Agreement and can deliver such coal to Buyer for the operation of Buyer's Tolk Station; and

WHEREAS Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all coal required by Buyer for the Tolk Station;

NOW, THEREFORE, in consideration of the payments, premises, and mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

1. **TERM OF AGREEMENT.** This Agreement shall be effective on the Effective Date and ending at the later of (i) midnight December 31, 2022, or (ii) until complete performance, including any makeup of deficiencies in delivery of coal to Buyer for which payment has been made under the terms of this Agreement which Seller may take under the terms of its appropriate coal purchase contracts (**Initial Term**). The Parties further agree this Agreement may, upon mutual written agreement, be extended for one five (5) year period, or such longer period which Buyer and Seller may agree, on the same terms, covenants, and conditions of this Agreement or as the Parties may otherwise agree (**Extended Term**). The word "Term" as used this Agreement shall refer to the Initial Term as extended by an Extended Term. Any request for extension of the Initial Term shall be made in writing at least 180 calendar days prior to the expiration of the Term.
2. **SALE AND PURCHASE.**
 - 2.1 **Volume.** During the Term of this Agreement, Seller will sell, and Buyer will purchase, subject to the terms of this Agreement, all coal necessary to meet Buyer's coal requirements for use at the Tolk Station for generation of electricity and stockpiling as inventory.
 - 2.2 **Estimate of Annual Quantity.** On or before October 1, 2017, and by each subsequent October 1 during the Term of this Agreement, Buyer shall notify Seller of Buyer's reasonable estimate of the annual coal requirements to meet the Tolk Station's projected burn for the following year (**Annual Quantity**) (**Annual Notice**). In addition to Annual Quantity, the Annual Notice shall also include Buyer's reasonable estimates of the Annual Quantity for the one year and two years subsequent to the Annual Quantity

year (**Three Year Notice**). The Annual Quantity and the estimate for the Three Year Notice shall be stated each year on Exhibit A, which is incorporated by reference.

- 2.3 **Suppliers and Exhibit D.** The Parties acknowledge Seller has or will contract with certain suppliers under the agreements listed on Exhibit D for purchasing coal, coal handling and processing, coal transportation, railcars, railcar maintenance services, and related services enabling Seller to perform under this Agreement (**Supplier Agreements**). All current agreements listed on, and all subsequent agreements added to, Exhibit D during the Term of this Agreement are subject to Buyer's prior approval, which approval shall not be unreasonably withheld, delayed, or conditioned.

Seller shall acquire by separate agreement coal sufficient to satisfy Buyer's Annual Quantity requirements and such additional coal as may be necessary to provide a continuous supply of coal to meet the Tolk Station annual burn and for inventory for the Tolk Station. Seller's coal purchases under this Section 2.3 shall generally comply with Buyer's approved coal purchasing practices and procedures at unrelated facilities as they may change from time to time. Procedures as of the Effective date call for contracting for coal on a three year plan, typically contracting for seventy-five percent (75%) of coal needs for year one, fifty percent (50%) for year two, and twenty-five percent (25%) for year three. Each of Seller's coal supply agreements with third party vendors shall be approved by Buyer and listed on Exhibit D to this Agreement.

The Parties acknowledge that Seller has negotiated with Savage Tolk Corporation (**Savage Tolk**) a coal handling service agreement (**Tolk CHSA**) under which Savage Tolk agrees to perform coal handling, crushing, processing, facilities and equipment maintenance and repair, railcar maintenance, storage, and transportation leasing, and final delivery of processed coal at the Tolk Station bunkers, all as provided in the Tolk CHSA, which Tolk CHSA will be effective contemporaneously with this Agreement and listed on Exhibit D.

In addition to the foregoing Supplier Agreements, Seller may enter into additional agreements for inclusion in Exhibit D as reasonable and necessary to enable Seller to provide for the continuous delivery of processed coal to the Tolk Station. Buyer also acknowledges Seller will incur interest and loan expenses incident to a revolving line of working capital credit (**RLOC**) that will be obtained by Seller to fund current obligations under each Exhibit D agreement, the costs of which shall be reimbursable to Seller as provided in the Margin Agreement and Calculation Example (**Margin Agreement**) attached as Exhibit C.

3. **CHANGES IN ANNUAL DELIVERY RATE.**

- 3.1 **Insufficient Annual Quantity.** Should (a) Seller determine at any time, for any reason other than Seller's default, it will be unable to make delivery of the Annual Quantity for a calendar year under the existing Supplier Agreements, as same may be increased or decreased under Section 2.2 above; or (b) should Buyer determine the Annual Quantity will be insufficient to meet Buyer's coal requirements for the Tolk Station, then, as soon as possible after such determination, Seller or Buyer, respectively, shall so notify each other of same and Seller shall use its best efforts to arrange for the purchase, receiving, transportation, unloading, handling, crushing, weighing and/or delivery of coal sufficient

to make such deliveries or to meet such requirements. Should Seller be unable to negotiate such contracts or should they not be approved by Buyer, Buyer shall be free to pursue for its own account the purchase of sufficient coal to meet such deliveries or to meet such requirements, and Seller shall be excused from and shall not be liable for damages to Buyer on account of the inability to make delivery of such Annual Quantity or increased need of coal by Buyer so long as same is not due to the default, gross negligence or willful act of Seller. Should additional coal purchase contracts be added to Exhibit D and should Buyer be unable to accept delivery of all coal Seller is obligated to purchase under all such purchase contracts during a calendar year, other than such failure resulting from one or more events of force majeure as defined in Section 10.1, or resulting from Seller's failure to perform, then Seller may, but is not obligated to, sell such coal as Buyer is unable to accept delivery of to third parties and credit the cost of same to Buyer under Section 7 but, subject to any such credit, Buyer shall bear all costs of such coal to Seller, including cost of disposal and transportation, and payment therefore shall be made in accordance with the provisions of Section 7; provided Seller has used reasonable efforts to mitigate any damages or uncredited costs to Buyer.

- 3.2 **Third Party Liability.** If Seller incurs a payment liability to a third party supplying coal or performing services in connection with coal under a contract listed on Exhibit D during any monthly billing period or periods when no coal is purchased under this Agreement other than as a result of default, gross negligence or willful act of Seller, Buyer shall reimburse Seller for any such payment in full on a current monthly basis.
- 3.3 **Inventory.** The term "Inventory" as used in this Agreement shall mean all coal stockpiled at Seller's facilities adjacent to the Tolk Station and in transit to the Tolk Station from and after the time the title to the purchased coal passes to Seller from suppliers. During the Term of this Agreement, subject to any constraints that Buyer may place on Seller under Sections 2.2 and 3.1 of this Agreement that impairs Seller's ability to maintain Inventory, Seller will employ commercially reasonable efforts to maintain Inventory between forty (40) to sixty (60) days of burn. Days of burn shall be calculated using a maximum daily burn rate of 13,919 tons per day, or such other maximum daily burn rate as Buyer may designate from time to time.

If the Inventory for the Tolk Station falls below fifty percent (50%) of the target inventory level, as may be adjusted from time to time, senior level managers of the Parties will meet and confer within five (5) business days of notice from either Party to determine whether there is a course of action to eliminate the deficient Inventory level. If the Parties (i) are unable to determine a course of action or are unable to agree on a course of action within five (5) business days; or (ii) determine there is a course of action, but such deficient Inventory level is not eliminated within thirty (30) calendar days or within such other mutually agreed upon time period, Buyer may exercise all march-in and associated rights under Section 10.6 below. The rights and remedies in this Section 3.3 shall be in addition to, and shall not be in lieu of or act as a limitation on, any other rights and remedies Buyer may have under this Agreement or otherwise.

- 3.4 **Equal Increments of Coal.** To the extent commercially practicable, Seller shall deliver the coal it is obligated to sell, and Buyer shall accept delivery of the coal it is obligated to purchase, each year in approximately equal increments or such other delivery schedules to which the Parties may agree, in writing, from time to time.

4. **POINTS OF DELIVERY AND TITLE.** Delivery of coal to Buyer under this Agreement shall be in Buyer's coal bunkers at the Tolk Station or any other mutually agreeable location (**Point of Delivery**). Title to the coal shall pass from Seller to Buyer at the Point of Delivery, and Buyer shall thereafter be deemed to be in exclusive control and possession of the coal and fully responsible for it. Seller warrants it has the right to sell the coal sold and delivered to Buyer under this Agreement and will defend and hold Buyer harmless from any claims, liens, or encumbrances arising from a failure of Seller's right to sell the delivered coal.

5. **QUALITY, QUANTITY, SAMPLING, AND ANALYSIS OF COAL.**

- 5.1 **Quality.** The quality of coal delivered by Seller to Buyer shall be determined by analysis of samples taken as provided in Section 5.4 below.

All analyses performed on the coal samples shall utilize current versions of procedures approved by the American Society for Testing and Materials (**ASTM**). Unless specifically stated and mutually agreed to otherwise, procedures utilized to determine the quality of coal delivered by Seller to Buyer shall be as follows:

ASTM TEST	DESCRIPTION OF TESTING PARAMETER
D1857/ D1857M-16	Standard Test Method for Fusibility of Coal
D2013/ D2013M-12	Practice for Preparing Coal Samples for Analysis
D5865-13	Standard Test Method for Gross Calorific Value of Coal and Coke
D2234/ D2234M-16	Standard Practice for Collection of a Gross Sample
D3172-13	Practice for Proximate Analysis of Coal and Coke
D3302/ D3302M-15	Standard Test Method for Total Moisture in Coal
D3174-12	Standard Test Method for Ash in the Analysis Sample of Coal and Coke from Coal
D5016-16	Standard Test Method for Total Sulfur in Coal and Coke Combustion Residues Using a High Temperature Tube Furnace Combustion Method with Infrared Absorption
D3173	Standard Test for Moisture in the Analysis of Coal and Coke

- 5.2 **Material Impurities and Size.** The coal shall be substantially free of magnetic materials and other (non-coal) material impurities. Coal shall be sized to nominal three-quarters of an inch by zero ($\frac{3}{4}$ " x 0).
- 5.3 **Sampling.** Each sample taken by Seller or Seller's representative shall be delivered to Buyer and Buyer shall divide such sample into three parts, one for use by Buyer and two to be retained by Buyer for not less than forty-five (45) calendar days under proper storage conditions. During such forty-five (45) calendar day period, upon Seller's request, Buyer shall send to Seller one such retained part and thereupon shall retain the third part for ninety (90) calendar days or until notified by Seller to release the same. Buyer shall have the right to have a representative present at any and all times to observe such sampling.

- 5.4 **Coal Bunker Sampling.** As coal is delivered from Seller's coal piles or coal trains to the coal bunkers at the Tolk Station, it shall be sampled by Seller or Seller's representative using automatic mechanical samplers located on CV400 and CV410 conveyor belts utilized to transport coal from Seller's stockpile or Seller's trains to the Point of Delivery. All coal samples collected shall be sealed in air-tight sample bags, weighed, and properly labeled. Coal sample labels shall, at a minimum, provide the station name, station unit(s), the belt/sampler used to collect the sample, the date and time the sample was collected, and the weight of the sample. All such coal samples shall be forwarded to the Nichols Station laboratory for analysis to determine the quality of coal delivered to Buyer's coal bunkers. A copy of the procedures used to collect bunker coal samples and transfer these same samples to the Nichols Station laboratory can be provided to Buyer upon request.

In the event there is a dispute over the accuracy of any analysis by Buyer, the reserve or referee sample split shall be sent to an independent commercial testing laboratory mutually selected by Buyer and Seller and said commercial testing laboratory shall use methods approved by ASTM or other mutually acceptable procedures. The cost the analysis by the commercial testing laboratory shall be borne equally by Buyer and Seller. Seller shall have the right to have a representative present at any and all times to observe such sampling and analysis.

- 5.5 **Results of Analysis.** The results of the sampling and analysis by Buyer shall be accepted as the quality and characteristics of the coal delivered to the Tolk Station bunkers, and the same shall be used to verify the coal quality for coal delivered during each month from Seller's coal pile or coal trains; provided, however, that if either Party shall at any time question the correctness of any analysis made by Buyer, it shall have the right to have the referee or reserve split analyzed by an independent commercial testing laboratory mutually selected by Buyer and Seller and said laboratory shall use methods approved by ASTM or other mutually acceptable procedures. The analysis obtained by such laboratory shall be accepted as the quality and characteristics of the coal represented by the sample. The Party questioning the correctness of the original analysis shall pay the cost of such analysis if no adjustment to the price of coal is required as a result of such analysis. If the analysis causes a price adjustment, Buyer shall pay the cost of such analysis. If the coal quality of the coal delivered to the Tolk Station bunkers varies from the coal quality for such coal as determined pursuant to the Supplier Agreements, at Buyer's request, the Parties shall determine and resolve the cause of the discrepancy, and make necessary adjustments, if any, to Buyer's satisfaction.

- 5.6 **Coal Characteristics.** Seller represents the characteristics of the coal sold under this Agreement shall be within the ranges for typical coal as set forth in Exhibit B.

6. **WEIGHTS.**

- 6.1 **Scales.** The weights of coal sold by Seller and purchased hereunder by Buyer shall be determined on coal mill integrators at the Tolk Station. Such integrators shall be properly inspected and calibrated by Buyer at regular intervals not more than six (6) months in duration. The weights determined on the mill integrators and reported monthly to Seller by Buyer shall be accepted as the quantity of coal delivered by Seller

to Buyer at the Point of Delivery. The reported quantity of coal shall be used by Seller to prepare its invoices to Buyer and Buyer shall pay such invoices in accordance with Sections 7 and 8.

- 6.2 **Seller's Representative.** Seller shall have the right to have a representative present at any and all times to observe the weighing of the coal. If either Party should at any time question the accuracy of the scales, such Party may request a prompt test and adjustment of the scales. If the scales are determined to be accurate, the requesting Party shall pay all expenses of testing. If the scales are determined to be in error, Buyer shall pay all expenses of testing and adjusting of the scales and an appropriate adjustment shall be made in weight and related invoices and payments. Such adjustment shall be retroactive to the time of the error if such time can be factually ascertained. If the time of the error cannot be so ascertained, it will be deemed to be one-half the time between the last testing of such scales and the time the error in weighing was corrected.

7. **PRICE OF COAL.**

- 7.1 **Price Components.** Seller will bill Buyer monthly for the coal delivered to Buyer at the bunkers at Tolk Station during the period covered by such billing. For each billing period, billing will be at a rate stated in dollars per ton of coal delivered equal to the sum of cost elements in Sections 7.1(A), (B), (C), (D), and (E) below, without duplication to its respective and individual components, divided by the quantity of tons of coal delivered to the Tolk Station bunkers during the billing period, plus the Tolk Monthly Margin Amount provided for in Section 7.1(F) below and as calculated as provided in Exhibit C:

- A. **Coal Cost.** The cost of coal, including the base prices F.O.B. mine with any quality or other adjustments pursuant to the applicable Supplier Agreements.
- B. **Third Party Costs.** The cost charged to Seller by third parties to transport coal from the mine point of receipt to Seller's unloading facilities adjoining Buyer's Tolk Station.
- C. **Tolk CHSA Costs.** All amounts payable by Seller under the Tolk CHSA, or any successor or assignee of Savage Tolk permitted by the terms of the Tolk CHSA, including financial costs to Seller of carrying any such payments so made during any period when current monthly billing in full to Buyer is not authorized by the terms of this Agreement, or any amendment to this Agreement, such financial costs to be determined at an interest rate at the lesser of the Prime Rate, as such term is defined in Section 8.3 below, plus two percent (2%) or such interest rate to be agreed upon between Savage Harrington and Seller and approved by Buyer, calculated and compounded monthly from the due date to date of payment (Interest);_provided, however, there shall be excluded from the foregoing any late charges in the nature of interest incurred by Seller to Savage Tolk attributable to Seller's failure to apply payments actually made by Buyer on a timely basis.

Amounts payable by Seller under the Tolk CHSA include, without limitation, the cost incurred by or charged to Seller, for owning, leasing, storing, maintaining, or furnishing rail cars and coal processing equipment and for handling, storing, crushing, processing, weighing and delivering such coal.

- D. **Operator Bonus/Penalty Costs.** Notwithstanding the foregoing in Section 7.1(C) above, Buyer and Seller agree, with respect to the Operator Bonus/Penalty under the Tolk CHSA, since Buyer is ultimately responsible for paying the full amount of any such Bonus payable to Savage Tolk, Buyer shall be entitled to receive the full amount of any such Penalty paid to Seller, with no amount of any such Penalty allocable to Seller. The calculation under Section 7.1(C) above shall credit Buyer accordingly.
- E. **Costs of Coal Loss.** One-half percent (½%) of the sum of components under Sections 7.1(A) and (B) above to provide reimbursement to Seller for coal losses and in lieu of any other charge to Buyer for Inventory adjustments, such percentage to be reviewed every two (2) years, commencing two (2) years from the end of Seller's 2018 Fiscal Year and in the last year of the Term, and adjusted, if necessary, to reflect actual coal losses incurred during the prior two (2) year period and to be used in computing coal losses and the percentage to be set under this Section 7.1(E) for the subsequent two (2) year period. Such coal losses shall be trued-up through Seller's Inventory account as provided in Section 7.4 below.
- F. **Tolk Monthly Margin Amount.** In addition to any amounts due Seller under Sections 7.1(A) through 7.1(E) above, the Tolk Monthly Margin Amount provided for in the Margin Agreement attached as Exhibit C and incorporated by reference. The Tolk Monthly Margin Amount requires the calculation of the Total Monthly Margin Amount utilizing costs incurred by Seller with respect to this Agreement and the Coal Supply Agreement – Harrington Station between Seller and Buyer effective January 1, 2018 (**Harrington Agreement**), but the Tolk Monthly Margin Amount shall not be duplicative to any amount calculated and owed under the Harrington Agreement for coal delivered to the Harrington Station. Any reference to the Total Monthly Margin Amount in the Harrington Agreement is a reference to this same amount and calculation, but will be allocated under the Harrington Agreement based on the Harrington Percentage Share.

- 7.2 **Proration.** If any single payment or credit arises under Sections 7.1(A), (B), or (C), but does not relate solely to coal delivered to Buyer during the month the same arises, and such single payment or credit meets or exceeds Five Hundred Thousand Dollars (U.S. \$500,000), irrespective of whether such payments are made voluntarily or by agreed settlement of a disputed claim, or by determination or judgment of a regulatory body or court, the payment or credit will be prorated over twelve (12) months and paid in monthly installments which will include all costs of financing and Interest calculated as provided in Section 7.1(C).

- 7.3 **Accounting Procedure.** Seller shall use generally accepted accounting principles and per ton weight averaging determined at the close of each calendar month in determining

the amount of the applicable cost components prescribed above for the determination of the price of coal sold under this Agreement. Any accounting procedure employed by Seller, however, may be changed by it so long as such changed accounting procedure is a generally accepted accounting practice.

- 7.4 **Accounting Adjustments.** During the Term of this Agreement, in consultation with Buyer's accounting professionals, Seller will make monthly accounting adjustments for Seller's fiscal year as necessary to reconcile, at Seller's fiscal year end, book inventories to the physical inventories of coal at the Tolk Station determined in accordance with the physical inventory survey at the Tolk Station. This reconciliation of Seller's book inventories to physical inventories will include Seller's book inventory per ton weighted average cost basis and tonnage and will be completed by a credit or payment adjustment to Buyer by Seller to be submitted on or about December 15 of each of Seller's fiscal years during the Term of this Agreement.

Commencing with Seller's 2019 fiscal year pursuant to the March 28, 2006 Lost Coal Letter Agreement between Seller and Buyer, a copy of which is attached as Exhibit E and incorporated by reference, the lost coal adjustment factors under this Agreement may be adjusted with agreement of the Parties as a positive percentage as provided in Section 7.1(E), to be adjusted on an as needed basis by agreement between the Parties, to minimize the payments or credits necessary to annually reconcile Seller's book inventories to the physical coal inventory at the Tolk Station at the end of each of Seller's fiscal years during the Term.

Commencing with Seller's 2019 fiscal year, an annual inventory true up for the Tolk Station will be conducted, to provide for a reconciliation, taking into consideration the lost coal factors set in accordance with the preceding paragraph, at Seller's fiscal year end, of Seller's book inventories to physical inventories determined by survey conducted at Seller's request by qualified third parties and certified to Buyer and Seller. This reconciliation will include Seller's cost basis and tonnage and will be completed by a credit or payment invoice to Buyer by Seller to be submitted on or before forty-five (45) calendar days after the end of each of the Seller's fiscal years during the Term of this Agreement.

In consultation with Buyer, Seller will conduct any additional surveys or GPS volumetric surveys each year as the Parties agree are appropriate to maintain an accurate account of the physical inventory for coal at the Tolk Station. The costs associated with the annual survey and any additional surveys as provided in this Agreement will be reimbursed to Seller through the cost reimbursement provisions of this Agreement.

It is the intent of the Parties, upon the expiration or earlier termination of this Agreement, to the extent there is a disparity between Seller's book inventory and the physical inventory for coal at the Tolk Station, Buyer will purchase and pay for coal in inventory at the Tolk Station in a quantity equal to Seller's book inventory, regardless of the physical inventory, such that Seller will be able to pay in full all debt which financed Seller's coal inventory in accordance with the terms of Seller's approved coal inventory financing agreements. On the payment for Seller's book inventory as provided herein, Buyer will own any coal in inventory without further compensation or obligation to Seller.

8. **BILLINGS AND PAYMENTS.**

8.1 **Billings.** Seller will bill Buyer by the eighth (8th) day of the calendar month following the close of the billing month, and Buyer will pay Seller in full by wire transfer of funds by the first business day after the fifteenth day of that calendar month. Buyer shall furnish Seller with the quantity of coal sold to Buyer under Section 7.1(A) in sufficient time to enable Seller to bill Buyer. All statements, billings, and payments shall be subject to correction of any errors until the expiration of two (2) years after the date of invoice of Seller.

8.2 **Examination.** Both Seller and Buyer shall have the right to examine, at reasonable times, books, records, laboratory tests, audits, and charts of the other to the extent necessary to verify the accuracy of any statement, test, chart, or computation made under or pursuant to any of the provisions of this Agreement. Buyer shall also have the right to examine books of Seller, but not more than once per calendar year. Any information or material obtained as a result of such examination shall not be disclosed by the Party receiving the information or material without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Copies of audit information received or generated by Seller relating to the Tolk CHSA shall be provided to Buyer.

8.3 **Interest.** If either Buyer or Seller fails to pay the other an amount that is due and owing, interest shall accrue on the unpaid amount at the rate of one percent over the Prime Rate until paid. For the purposes of this Agreement, "Prime Rate" is defined as the annual rate of interest published and in effect according to The Wall Street Journal on the date the obligation to pay interest on such amount commences. If the Wall Street Journal ceases to publish a Prime Rate, the Parties shall meet in good faith to designate a substitute source of a Prime Rate.

9. **REGULATORY BODIES.** This Agreement shall be subject to all applicable orders, directives, rules and regulations of any governmental agency having jurisdiction over this Agreement, one or more of the Parties, or the matters covered by this Agreement.

10. **FORCE MAJEURE.**

10.1 **Definition.** The term "force majeure" as used herein shall mean acts of God, acts of the public enemy, blockades, insurrections, strikes, or differences with workmen, riots, disorders, civil disturbances, fires, explosions, storms, floods, landslides, washouts, labor and material shortages, boycotts, breakdowns of or damage to plants, equipment or facilities, interruptions or breakdowns of the power system serving either Buyer's or Seller's facilities, interruptions to transportation, default or inability or failure to supply by Seller's coal suppliers for reasons other than Seller's default in its contracts with such suppliers so long as such default is not due to any action or inaction of Buyer, embargoes, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, arrests and restraints, the failure, inability, or default of Savage Tolk to unload, handle; crush and/or deliver into Buyer's bunkers the quantities of conforming coal required by the terms of the Coal Handling Service Agreement for reasons other than Seller's default thereunder or Seller's failure to furnish sufficient

quantities of conforming coal to permit Savage Tolk's performance, and, without limitation by enumeration, any other cause or causes not reasonably within the control and without the fault or negligence of the Party in default, whether of the kind above enumerated or not, which wholly or partly prevent (i) the supply of coal to Seller or (ii) the receiving, transporting, unloading, handling, crushing, weighing or delivering of the coal by Seller or (iii) the acceptance or the utilizing of the coal by Buyer.

In addition, if either Party is delayed, restricted or prohibited from installing, constructing or operating the equipment or facilities necessary for it to perform its part of this Agreement or is otherwise impaired from operating its property as a result of restrictions upon, delays, in receiving, or failures to receive, any permits, approvals, licenses or other governmental entitlements, such restrictions, delays or failures, regardless of the reason therefore, shall be deemed to be force majeure.

- 10.2 **Obligations Under Force Majeure.** If because of force majeure, either Party is unable to carry out any of its obligations under this Agreement, and if such Party shall promptly give to the other Party written notice of such force majeure, then the obligations of the Party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance; provided, however, the Party giving such notice shall use its best efforts to eliminate such force majeure insofar as possible with a minimum of delay. Nothing herein contained shall cause the Party affected by the force majeure to submit to what it considers to be unreasonable conditions or restrictions or to submit to an unfavorable labor agreement, and it is agreed any settlement of labor strikes or differences with workmen shall be entirely within the sole discretion of the affected Party. Buyer shall pay for all coal to which Buyer has obtained title prior to the date of Buyer's notice of force majeure to Seller. Any deficiencies in deliveries or acceptance of coal under this Agreement, caused by force majeure, shall not be made up except by mutual consent. Force majeure shall not relieve any Party of the obligation to make any payments due under this Agreement.
- 10.3 **Suspension.** Either Party shall have the right to elect to suspend the sale or purchase of coal, as the case may be, for the period of time during which such force majeure may exist. Buyer, if it so elects, shall have the right during such period to purchase coal from other sources and Seller, if it so elects, shall have the right during such period to sell coal to others.
- 10.4 **Effect of Prohibition.** It is expressly understood any prohibition to take deliveries of, or to utilize the coal subject to this Agreement, which is imposed upon the Buyer by means of laws, regulations or orders of a court or administrative body, whether or not such event is beyond the control of Buyer, shall not for the purposes of this Agreement negate the agreement set forth in Sections 10.5 and 10.6(C) below.
- 10.5 **Steps to Avoid Restriction.** The Parties recognize, during the term of this Agreement, any treaty, legislative or regulatory bodies or the courts having competent jurisdiction over the subject matter of this Agreement and/or the Parties may change, enact, promulgate, issue, revise, and/or interpret treaties, laws or regulations, rules, orders, enforcement procedures or permits such as, but not limited to, those relating to air quality, global climate change, emissions or other environmental concerns (**Change in Law**), the effect of which may preclude, prevent, materially impede or materially restrict

the utilization of the coal subject to this Agreement in conformance with the Change in Law without material modification or substantially changing or altering the equipment in which it will be utilized, or Buyer's operations, or otherwise result in a material increase in the cost of operation of the Tolk Station, including, but not limited to, costs associated with controlling the amount of carbon, mercury, or other elements and/or substances emitted or discharged from the Tolk Station.

If any such laws, regulations or orders are imposed, Buyer shall immediately notify Seller. Buyer and Seller shall promptly meet to consider what steps can be taken in the handling and combustion of coal at Tolk Station to avoid such restriction; and, if such steps are available and feasible and will not result in unreasonable expense to Buyer, Buyer shall promptly take such steps. Such steps shall include the installation of equipment which is commercially available and which can be reasonably expected to avoid the effect of such restriction or which will result in compliance therewith. If no such steps are available, or if such steps are not feasible or will result in unreasonable expense to Buyer, Buyer shall so advise Seller.

Thereupon, Seller shall promptly consider with its suppliers what steps can be taken in the mining and preparation of coal at its suppliers' mines to avoid such restriction, and if such steps are available at a reasonable expense, such steps will be taken. If the price of coal to Seller is increased to compensate Seller's supplier for any additional reasonable capital and expense incurred by it in taking such steps, upon the approval of Buyer, the price of such coal sold to Buyer under this Agreement will be similarly increased so long as such price increase is reasonable. No expense or price increase contemplated by this Section 10.5 shall be deemed reasonable if it would result in a total cost to Buyer, in using Seller's coal, in excess of One Million Dollars (U.S. \$1,000,000) of capital costs in the aggregate, or in excess of Five Hundred Thousand Dollars (U.S. \$500,000) of annual operation and maintenance costs in the aggregate. If no remedial steps are available for Seller's suppliers, Buyer shall have the right upon one year's notice to Seller, to terminate this Agreement, subject to the obligation to pay amounts due, but unpaid on the date of termination, under Section 7.1 and Exhibit C.

Additionally, and notwithstanding the foregoing, to the extent Supplier Agreements listed on Exhibit D (as Exhibit D may be amended from time to time by the addition of new or modified agreements) contain rights or remedies for Seller to terminate or otherwise modify the obligations of Seller under the Supplier Agreements, including, without limitation, rights and remedies under Section 15 of Seller's coal purchase Supplier Agreements to terminate such agreements in the event of a Change in Law or otherwise, Buyer shall have the right to direct Seller, and if so directed, Seller agrees to exercise such rights and remedies under the Supplier Agreements if the conditions for such exercise are met, and Buyer shall have the right to terminate this Agreement or modify its obligations under this Agreement consistent with the rights and remedies exercised by Seller under the Supplier Agreements.

10.6 Delivery Failure or Preclusion.

- A. In the event Seller fails to continue or is unable or precluded from continuing deliveries of coal to Buyer as provided in this Agreement, whether or not such failure is due to force majeure, and the reason therefore would not preclude

Buyer from the operation of Seller's facilities or performance of the contracts required to continue deliveries to Buyer, in addition to any other rights and remedies Buyer may have under this Agreement, at law or in equity, Buyer shall have the right to act in behalf of and in the place and stead of Seller to take whatever steps or actions are necessary to perform that portion of the agreements listed on Exhibit D (including, if deemed necessary by Buyer, to demand and receive from Seller an assignment of such agreements), and the facilities operated under this Agreement, which Seller is not performing until such time as Seller is ready and able to resume the deliveries of coal.

- B. When Seller is ready and able to resume deliveries of coal, Buyer will reinstate Seller to possession of whatever facilities it had taken, will reassign any agreements which had been assigned to it and will account for its operation of Seller's facilities and its performance of Seller's contracts. Buyer will indemnify and hold Seller harmless against any and all claims and causes of action, of whatsoever nature and description, for damage to property, normal wear and tear excepted, or injury to or death of any person directly caused by Buyer or by a third party acting on Buyer's behalf occurring during or as a consequence of Buyer's takeover of said facilities or performance of said contracts.
- C. Except as otherwise provided in Section 10.6(D) below, in the event Buyer takes over the operation of any facilities or contracts pursuant to Section 10.6(A), it will pay Seller for coal delivered to Buyer in accordance with Sections 7 and 8, except for the Monthly Administrative/Capital Fee under the Exhibit C Margin Agreement, but Seller shall reimburse Buyer for the reasonable costs incurred by Buyer in taking over and operating Seller's facilities or performing Seller's contracts and Seller shall include such reimbursement in the price of coal provided for in Section 7.1(A).
- D. In the event (i) Buyer permanently takes over any facilities or contracts as a consequence of Seller's insolvency, bankruptcy, or abandonment of its obligations to Buyer or to its third party suppliers; or (ii) the inability of Seller to deliver coal to Buyer for six (6) consecutive months for any reason, this Agreement shall automatically terminate and Buyer shall permanently take over all agreements listed in Exhibit D, will purchase and pay for Seller's entire Inventory, as defined in Section 3.3 above, at Seller's cost as calculated in Section 7.1 as of the date of permanent takeover and will reimburse Seller in full for any charges incurred by Seller under Section 7.1 prior to the date of termination, but not yet paid by Buyer as of the date of termination, including, without limitation, all then-outstanding amounts due under the RLOC for payments made on Exhibit D agreements.
- E. In the event Buyer fails to accept deliveries of coal under this Agreement for a period of sixty (60) consecutive calendar days for any reason, including force majeure, and Seller is unwilling to accept the financial risk involved in Buyer's extended failure to accept deliveries of coal under this Agreement, then Seller shall have the right, and without prejudice to any other right of Seller, to demand Buyer assume, and thereupon this Agreement shall terminate and Buyer will (i) assume Seller's obligations under the agreements listed in

Exhibit D; and (ii) purchase and pay for Seller's entire Inventory, as defined in Section 3.3 above, at Seller's cost as calculated in Section 7.1 as of the date of permanent takeover; (iii) reimburse Seller in full for any charges incurred by Seller under Section 7.1 prior to the date of termination, but not yet paid by Buyer as of the date of termination, including, without limitation, all then-outstanding amounts due under the RLOC; and (iv) reimburse Seller for reasonable out of pocket costs, including reasonable attorney fees, incurred in implementing this Section 10.6(E), subject to the terms and conditions provided in the Margin Amendment Agreements attached as Exhibits 1 and 3 to Exhibit C.

- 10.7 **Early Termination.** In addition to the early termination provisions of Sections 10.6(D) and (E), Buyer and Seller reserve the right to terminate this Agreement on at least one (1) year's written notice to the other. On the date that is one (1) year from the date of such notice, or if a date is set forth in the notice for termination that is more than one (1) year from the date of such notice, then on the date set forth in such notice, this Agreement shall terminate and Buyer will (i) assume Seller's obligations under the agreements listed in Exhibit D; (ii) purchase and pay for Seller's entire Inventory, as defined in Section 3.3 above, at Seller's cost as calculated in Section 7.1 as of the date of permanent takeover; (iii) reimburse Seller in full for any charges incurred by Seller under Section 7.1 prior to the date of termination, but not yet paid by Buyer as of the date of termination, including, without limitation, all then-outstanding amounts due under the RLOC for payments made on Exhibit D agreements; (iv) if Seller is not the party giving notice of early termination, reimburse Seller for reasonable out of pocket costs, including reasonable attorney fees incurred in implementing this Section 10.7, subject to the terms and conditions provided in the Margin Amendment Agreements attached as Exhibits 1 and 3 to Exhibit C; and (v) if Seller is not the party giving notice of early termination, pay to Seller an amount equal to the sum of one month of Seller's then current monthly Administrative/Capital Fees and Operating Expenses multiplied by two (2). After notice by either Party, during the period leading up to and on the date of termination, if Buyer instructs Seller in writing on how it wishes Seller to manage the contracts in Exhibit D in accordance with their terms during such period, including, without limitation, exercising any rights under such contracts to provide notice of termination, to terminate, to reduce coal deliveries and inventory, and to reduce rail transportation, Seller shall follow such instructions from Buyer.

11. **DEFAULT AND WAIVER.**

- 11.1 **Notice.** It is covenanted and agreed if either Party deems the other Party (**Defaulting Party**) has failed to perform any of the covenants or obligations imposed upon it under this Agreement, the Party asserting default shall deliver to the Defaulting Party written notice stating specifically the claimed default. The Defaulting Party shall have thirty (30) calendar days after receipt of the aforesaid notice in which to remedy or remove the claimed default, and if it fails to do so in such time, the other Party may pursue such remedies as may be available to it.
- 11.2 **March-In Rights.** As noted in Section 2.3 of this Agreement, Seller has entered into the Tolk CHSA under which Savage Tolk agrees to perform coal handling, crushing, processing, facilities and equipment maintenance and repair, railcar maintenance, storage, and transportation leasing, and final delivery of processed coal at the Tolk

Station bunkers, all as provided in the Tolk CHSA. To enable Seller to enter into the Tolk CHSA and in consideration of Seller's obligations assumed in the Tolk CHSA, Buyer and Seller agree as follows:

Under conditions precedent as set forth under Section 10.6 of this Agreement and the Tolk CHSA and Access Agreement attached as Exhibit N to the Tolk CHSA, SPS may during the Term come into possession of the Property, Facilities, and Railcars, as defined in the Tolk CHSA (**March-In**). In the event of a force majeure or other event giving rise to a March-In circumstance, Seller and Savage Tolk agree to provide immediate access to, and the use of, the Facilities and Railcars to SPS or SPS' designated contractor or cause the Railcars and Facilities, respectively, to be restored or leased to SPS or SPS' designated contractor for SPS to perform under the Tolk CSA and the Tolk CHSA. In the event of a default by Savage Tolk or Seller under the Tolk CHSA, or Seller under the Tolk CSA, SPS may, instead of Seller and in satisfaction of its March-In obligations to Seller and Savage Tolk, provide its own employees to perform all Coal handling functions including Operation and Maintenance of Railcars at any and all times Savage Tolk and/or Seller fails, to keep SPS' coal bunkers sufficiently filled to permit continuous operation of SPS' Tolk Station units. While SPS is providing its own employees to perform Coal handling and Railcar Operation and Maintenance services, SPS and Seller are released from Seller's obligation to make the Operating and Maintenance Costs payments to the extent of, but not in excess of, Operating and Maintenance Costs actually paid out by Seller which would otherwise have been payable to Savage Tolk under the Tolk CHSA. SPS shall withdraw its employees and Seller will resume the payment procedures under the Tolk CHSA at such time as Savage Tolk and/or Seller have the capability to meet the requirements of Section 3 of the Tolk CHSA.

- 11.3 **No Waiver.** No waiver by either Party of any one or more default by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.
- 11.4 **General Rights.** In the event of an uncured default by either Party, in addition to all remedies provided under this Agreement, the non-defaulting Party shall have all rights and remedies at law or in equity in any litigation or arbitration initiated under this Agreement.

12. **DISPUTE RESOLUTION THROUGH BINDING ARBITRATION.**

- 12.1 **Informal Dispute Resolution.** If any dispute arises between Buyer and Seller under this Agreement, the aggrieved Party will promptly notify the other Party, in writing, of its intent to invoke this dispute resolution procedure. The Parties will meet as soon as practicable in good faith to attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) business days after the delivery of such written notice, then within five (5) business days thereafter, Seller will nominate two (2) senior level managers and Buyer will nominate two (2) senior level managers to meet at a mutually agreed upon location in the Denver metropolitan area, or a location as otherwise agreed, to attempt, in good faith, to resolve the dispute. If the Parties are unable to resolve the dispute to their mutual satisfaction within ten (10) business days after such nomination, the Parties are free to pursue relief under Section 12.2 of this Agreement.

Notice and cure periods provided in Section 11.1 shall run concurrently with the time periods set forth in this Section 12.1, unless the Parties otherwise agree.

- 12.2 **Arbitration.** Any and all disputes, claims, or controversies between the Parties, including any assignees of the Parties, arising out of or relating to this Agreement that are not resolved by their mutual agreement shall be submitted to binding arbitration in the State of Texas before the American Arbitration Association (AAA) under the AAA's commercial arbitration rules then in effect, subject to the provisions of this Section 12.2, except and excluding matters involving a dispute claim or controversy by Buyer or Seller for specific performance, in which case all claims at law or in equity may be filed in a Texas state or federal court having jurisdiction over the dispute, in the Buyer's or Seller's sole discretion as the case may be. The Party calling for arbitration (**Initiating Party**) shall give written notice to the other Party setting forth: (a) a statement of the issue(s) to be arbitrated; (b) a statement of the claim showing that the Initiating Party is entitled to relief; and (c) a statement of the relief to which the Initiating Party claims to be entitled. Within thirty (30) calendar days from the receipt of such notice, the other Party (**Receiving Party**) may submit its written response and give notice in the same manner required above of additional issues to be arbitrated. The Initiating Party shall have twenty (20) calendar days from receipt of said response to respond to any issues submitted for arbitration by the Receiving Party.

Within sixty (60) calendar days of the date of the Initiating Party's written notice requesting arbitration, the Parties shall agree upon a competent and impartial person to act as the arbitrator. In the event the Parties cannot agree on the arbitrator, the arbitrator shall be selected pursuant to the rules of the American Arbitration Association (AAA) and the selection shall be binding and non-appealable.

The Parties will participate in the arbitration in good faith and shall share in its costs in accordance with this Agreement. The Parties shall share equally in the costs of the arbitrator and pay their own attorneys' fees and costs, subject to any attorneys' fees and costs awarded by the arbitrator. The provisions of this Section 12.2 may be enforced by any court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the Party against whom enforcement is ordered. The arbitrator shall not award any special, indirect, incidental, consequential, punitive or exemplary damages against either Party. Judgment upon the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Upon the conclusion of any arbitration proceedings under this Agreement, the arbitrator shall render findings of fact and conclusions of law and a final written arbitration award setting forth the basis and reasons for any decision reached (**Final Award**) within thirty (30) calendar days of the conclusion of the arbitration and shall deliver such documents to the Parties, together with a signed copy of the Final Award. Subject to the provisions of this Agreement, the Final Award shall constitute a conclusive determination of all issues in question, binding upon the Parties, and shall include an affirmative statement to such effect. The arbitrator chosen in accordance with these provisions shall not have the power to alter, amend, or otherwise affect the terms of these arbitration provisions or any of the other provisions of this Agreement. Except as specifically otherwise provided in this Agreement, arbitration conducted in accordance with this Agreement shall be the sole and exclusive means of seeking redress of the Parties.

13. **NOTICES.** All notices, statements, demands, requirements, or other communications and documents (**Communications**) required or permitted to be given, served, or delivered by or to either Party or any intended recipient under this Agreement shall be in writing and shall be either delivered by hand, sent by a nationally recognized overnight courier service, or to such other address as either Party may from time to time have notified the other Party as being its address for purposes of this Agreement to the exclusion of all previously applicable addresses. Communications shall be deemed to have been given, served, or delivered upon delivery or, if delivery is refused, upon first attempted delivery, between 9 a.m. and 5 p.m. in the recipient's time zone. The addresses of the Parties are as follows:

If intended for Seller: TUCO INC.

Attention: Vice President
6900 I-40 West, Suite 240
Amarillo, Texas 79106

and

TUCO INC.

Attention: Vice President
5251 DTC Parkway, Suite 800
Greenwood Village, Colorado 80111-2737

With a copy, which copy does not constitute notice, to:

John J. Coates, Esq.
DILL DILL CARR STONBRAKER & HUTCHINGS, P.C.
455 Sherman Street, Suite 300
Denver, Colorado 80203

or such other persons or such other address as Seller shall have designated by due notice to Buyer.

If intended for Buyer: Xcel Energy

Director, Fuel Supply Operations
1800 Larimer Street, Suite 1000
Denver, Colorado 80202

With a copy, which copy does not constitute notice, to:

Xcel Energy
Assistant General Counsel Energy Supply
1800 Larimer Street, Suite 1100
Denver, Colorado 80202

or such other persons or such other address as Buyer shall have designated by due notice to Seller.

Rejection or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice as of the date such notice was deposited in the mail or delivered to the courier. In the event of a change of address by

Buyer or Seller, Buyer and Seller shall also give notice of such change in address to the other Party.

14. **MISCELLANEOUS.**

14.1 **Limitation on Damages.** Under no circumstances shall either Party be liable to the other Party for consequential, indirect, or exemplary damages.

14.2 **Assignment.** Each Party shall have the right to assign its rights and delegate its obligations under this Agreement, in whole or in part, to any third party at any time during the Term upon receiving the prior written consent of the other Party, such consent not to be unreasonably conditioned, withheld, or delayed; provided, however, any such assignment shall be expressly made subject to all the terms, conditions, and covenants of this Agreement. For avoidance of doubt, a Party's consent to a proposed assignment shall not be deemed to have been unreasonably withheld if the proposed assignee is not technically and financially capable of performing the assigning Party's obligations under this Agreement, including, without limitation, indemnification obligations. Notwithstanding the foregoing, Buyer consents to Seller's execution of a collateral assignment of Seller's rights under this Agreement to Seller's RLOC lenders, which assignment shall be subordinate in all respects to all rights and obligations of Buyer under this Agreement.

14.3 **Taxes and Assessments.** Subject to the terms of this Agreement, the Seller shall pay or cause to be paid all taxes and assessments imposed on Seller with respect to the coal sold under this Agreement prior to its delivery to Buyer, and Buyer shall pay or cause to be paid all taxes and assessments imposed upon Buyer with respect to the coal received by it under this Agreement after its receipt by Buyer. Neither Party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other Party used for the purpose of carrying out the provisions of this Agreement.

14.4 **Controlling Law.** The terms and conditions of this Agreement and subsequent performance of this Agreement shall be construed and controlled by the laws of the State of Texas. The Parties agree any claim or suit arising out of this Agreement and not subject to arbitration under Section 12.2, shall be brought in a state or federal court in Texas having jurisdiction over the claims at issue.

14.5 **Waiver of Jury Trial.** The Parties hereby knowingly, voluntarily, and intentionally waive the right either may have to a trial by jury in respect of any litigation that is not subject to arbitration under Section 12.2, or arising out of, under, or in connection with this Agreement and any document executed in connection with this Agreement, or any course of conduct, course of dealing, statements, whether oral or written, or actions of either Party. This provision is a material inducement for the Parties to enter into this transaction.

14.6 **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and no amendment or modification of this Agreement shall be valid or binding unless reduced to writing and executed by the Parties or their permitted assigns.

- 14.7 **Headings.** The topical headings used herein are inserted for convenience and reference only and shall not be construed as having any substantive significance or meaning whatsoever or as indicating all of the provisions of this Agreement relating to any particular topic are to be found in any particular section. The headings or captions of this Agreement in no way define, describe, extend or limit the scope, meaning or intent of this Agreement.
- 14.8 **Attorneys' Fees; Litigation.** Notwithstanding any provisions in this Agreement to the contrary, in the event of litigation regarding this Agreement, the prevailing Party will be entitled to recover their reasonable attorneys' fees and costs.
- 14.9 **Successors and Assigns.** This Agreement will bind and inure to the benefit of the respective successors and permitted assigns of the Parties.
- 14.10 **Survival.** The Parties' representations and warranties and provisions of this Agreement that contemplate performance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.
- 14.11 **Counterparts.** This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose. This Agreement may be executed and delivered by facsimile, portable document format (.pdf), or other electronic delivery, each of which will be as binding and effective as an original signature.
- 14.12 **Not Binding Until Execution.** The submission of this Agreement for examination does not constitute an offer by or to either Party. This Agreement will be effective and binding only after execution and delivery by the Parties.
- 14.13 **Modifications; Waivers.** No amendments or other modifications or changes to this Agreement shall be effective or binding on either Party unless the same shall be in a writing executed by both Parties. No waiver by either Party of any one or more defaults by the other in the performance of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or different nature.
- 14.14 **Time Periods.** Time is of the essence under this Agreement. In the event the last day permitted for the performance of any act required or permitted under this Agreement falls on a day other than a Business Day, the time for such performance will be extended to the next succeeding Business Day. Each time period under this Agreement will exclude the first day and include the last day of such time period.
- 14.15 **Schedules.** All recitals, schedules, and exhibits referred to in this Agreement are incorporated in this Agreement by reference and will be deemed part of this Agreement for all purposes as if set forth at length in the body of the Agreement.
- 14.16 **Severability.** The invalidation or unenforceability in any particular circumstances of any of the provisions of this Agreement will in no way affect any of the other provisions of this Agreement, which will remain in full force and effect.

- 14.17 **No Joint Venture, Partnership, Agency, Etc.** This Agreement will not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer employee relationship between Buyer and Seller.
- 14.18 **No Third-Party Beneficiaries.** This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a Party, or a successor or assign of a Party, to this Agreement.
- 14.19 **Further Assurances.** After this Agreement is fully signed, Seller and Buyer each will execute and deliver such additional documents, instruments, and assurances, and take such further actions as may be necessary to carry out the provisions of this Agreement or give effect, confirm, assure, or validate any of the transactions contemplated by this Agreement, whenever reasonably requested by the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

SELLER:

TUCO INC.,
a Delaware corporation

By: Charles S. McNeil

Charles S. McNeil
Its President

BUYER:

SOUTHWESTERN PUBLIC SERVICE COMPANY
a New Mexico corporation

By: Thomas A. Imbler

Thomas A. Imbler
Vice President, Commercial Operations
Xcel Energy Services Inc., a Delaware corporation,
as Authorized Signatory for
Southwestern Public Service Company

EXHIBIT A

ANNUAL COAL QUANTITIES AND THREE YEAR ESTIMATE NOTICE

2018 BURN FORECAST (TONS)													
	January	February	March	April	May	June	July	August	September	October	November	December	Totals
Harrington 1	93,819	100,660	97,465	72,335	90,445	95,344	96,389	117,939	89,469	102,087	77,502	100,074	1,133,528
Harrington 2	109,660	81,881	97,291	99,177	83,136	95,689	106,339	105,168	78,358	112,665	83,501	95,035	1,147,900
Harrington 3	107,746	100,791	98,511	81,323	107,827	89,062	101,040	96,521	71,704	0	89,044	89,204	1,032,773
Tolk 1	78,840	21,439	19,018	78,263	80,108	143,166	161,111	161,937	154,570	75,382	82,989	78,840	1,135,663
Tolk 2	84,346	76,184	73,349	54,303	84,346	154,226	148,730	153,192	149,757	80,832	73,349	84,346	1,216,960
H & T Totals	474,411	380,955	385,634	385,401	445,862	577,487	613,609	634,757	543,858	370,966	406,385	447,499	5,666,824
Harr Totals	311,225	283,332	293,267	252,835	281,408	280,095	303,768	319,628	239,531	214,752	250,047	284,313	3,314,201
Tolk Totals	163,186	97,623	92,367	132,566	164,454	297,392	309,841	315,129	304,327	156,214	156,338	163,186	2,352,623
THREE YEAR ESTIMATE													
	2019 January	2019 February	2019 March	2019 April	2019 May	2019 June	2019 July	2019 August	2019 September	2019 October	2019 November	2019 December	Totals
Harrington 1	28,085	5,502	76,249	14,589	17,969	66,949	80,598	94,181	18,196	10,867	0	76,459	489,743
Harrington 2	87,496	97,827	73,131	38,617	53,000	79,840	78,460	85,960	46,851	50,116	51,207	79,359	821,864
Harrington 3	104,728	86,296	79,325	93,591	73,115	82,309	91,982	82,942	77,652	87,251	77,562	82,976	1,019,728
Tolk 1	128,975	118,970	127,758	98,307	115,839	114,501	126,984	129,454	107,307	117,900	100,409	101,006	1,387,411
Tolk 2	124,391	118,866	111,385	107,073	123,920	104,407	124,292	127,182	102,661	124,189	98,941	108,739	1,376,045
H & T Totals	473,674	427,460	467,949	352,177	383,843	448,007	502,316	519,718	352,667	390,322	378,118	448,540	5,094,791
	2020 January	2020 February	2020 March	2020 April	2020 May	2020 June	2020 July	2020 August	2020 September	2020 October	2020 November	2020 December	Totals
Harrington 1	82,546	87,075	80,412	21,767	28,102	78,447	96,400	92,881	45,169	42,983	22,268	80,212	758,262
Harrington 2	82,585	0	0	35,905	80,238	79,740	77,127	101,879	54,169	74,203	37,490	76,497	699,831
Harrington 3	76,857	76,574	84,124	88,173	57,119	92,848	90,739	93,946	91,115	86,316	84,953	80,815	1,003,577
Tolk 1	113,062	106,637	86,606	98,401	106,880	123,101	120,985	141,350	116,376	126,974	109,372	108,913	1,358,656
Tolk 2	113,708	103,457	102,522	51,830	8,432	114,464	115,811	130,771	110,587	125,020	104,103	110,557	1,191,264
H & T Totals	468,756	373,743	353,664	296,076	280,770	488,600	501,862	560,827	417,416	455,495	358,187	456,994	5,011,590
	2021 January	2021 February	2021 March	2021 April	2021 May	2021 June	2021 July	2021 August	2021 September	2021 October	2021 November	2021 December	Totals
Harrington 1	81,075	68,575	81,485	18,653	28,375	86,971	99,111	107,893	58,905	92,215	34,746	82,227	840,230
Harrington 2	79,554	76,703	72,422	56,115	48,137	81,017	98,520	88,671	72,340	93,863	46,861	89,382	903,584
Harrington 3	74,978	75,884	69,107	85,930	81,509	85,402	87,519	77,066	53,015	6,972	73,503	76,103	846,987
Tolk 1	109,380	85,607	0	77,918	107,360	126,720	125,609	137,119	113,414	131,551	107,225	113,861	1,235,762
Tolk 2	106,006	96,056	99,985	82,874	102,664	130,399	125,872	143,339	114,726	129,552	109,186	113,496	1,354,155
H & T Totals	450,992	402,825	322,998	321,490	368,045	510,507	536,630	554,087	412,400	454,154	371,520	475,070	5,180,719

EXHIBIT B

**TYPICAL COAL QUALITY AND CHARACTERISTICS
OF SOUTHERN POWDER RIVER BASIN "8800 BTU" COAL**

PROXIMATE ANALYSIS-CALCULATED AS-RECEIVED BASIS	TYPICAL	MIN-MAX
Moisture, %	26.70	24.1-27.9
Ash, %	4.90	3.6-6.8
Volatile Matter, %	31.10	28.4-34.7
Fixed Carbon, %	37.00	33.8-40.8
Btu/Lb.	8877	8500-9100
Sulfur, %	0.25	0.12-0.36
SO ₂ Lb/MM Btu	0.55	0.29-0.81
ULTIMATE ANALYSIS-CALCULATED AS-RECEIVED BASIS	TYPICAL	MIN-MAX
Moisture, %	26.70	24.1-27.9
Ash, %	4.90	3.6-6.8
Hydrogen, %	3.50	3.1-4.0
Carbon, %	51.70	51-56
Nitrogen, %	0.70	0.5-1.0
Sulfur, %	0.25	0.12-0.36
Oxygen, % (By Difference)	12.20	10.6-14.3
DRY, WHOLE COAL BASIS	TYPICAL	MIN-MAX
Chlorine (ppm)	8.70	7-14
Mercury (ppm)	0.065	0.050-0.102
MINERAL ANALYSIS OF ASH % IGNITED BASIS	TYPICAL	MIN-MAX
Silicon Dioxide	34.70	36.1-45.2
Aluminum Oxide	17.60	16.1-19.5
Titanium Oxide	1.40	0.90-1.7
Ferric Oxide	6.10	3.3-9.2
Calcium Oxide	21.90	18.1-33.2
Magnesium Oxide	4.90	3.8-7.5
Potassium Oxide	0.50	0.3-0.6
Sodium Oxide	1.50	0.8-2.2
Sulfur Trioxide	9.40	4.2-13.6
Phosphorus Pentoxide	1.10	0.3-3.0
Manganese Oxide	0.04	0.6-1.3
Strontium Oxide	0.30	0.2-0.6
Barium Oxide	0.60	0.4-1.2
Undetermined		
FUSION TEMPERATURE, DEGREES F - REDUCING	TYPICAL	MIN-MAX
Initial Deformation	2153	1998-2362
H = W	2173	2011-2379
H = ½ W	2189	2020-2396
Fluid	2207	2033-2437
FUSION TEMPERATURE, DEGREES F - OXIDIZING	TYPICAL	MIN-MAX
Initial Deformation	2216	2076-2404
H = W	2233	2089-2417
H = ½ W	2246	2094-2442
Fluid	2267	2105-2497

EXHIBIT B

HARDGROVE GRINDABILITY INDEX	TYPICAL	MIN-MAX
	58	51-74
WATER SOLUBLE ALKALIES - % AS DETERMINED	TYPICAL	MIN-MAX
Potassium Oxide	0.004	0.003-0.010
Sodium Oxide	0.060	0.010-0.110
EQUILIBRIUM MOISTURE - %	TYPICAL	MIN-MAX
	25.73	23.6-26.8
BASE: ACID RATIO	TYPICAL	MIN-MAX
	0.66	0.3-1.2
T250 - DEGREES F	TYPICAL	MIN-MAX
	2245	2067-2459

EXHIBIT C

MARGIN AGREEMENT AND EXAMPLE CALCULATION

The Tolk Monthly Margin Amount referenced in Section 7.1(F) of this Agreement is calculated as follows:
(Tolk Percentage Share x Total Monthly Margin Amount).

"Tolk Percentage Share" means a percentage equal to the quantity of tons of coal delivered to the Tolk Station bunkers during the month divided by the total quantity of tons of coal delivered to the Tolk Station bunkers and to the Harrington Station bunkers during the month.

"Total Monthly Margin Amount" means the sum of (i) the Working Capital Cost incurred by Seller in connection with this Agreement and the Harrington Agreement for that month (Margin Item A); (ii) Inventory interest charges to Seller with respect to this Agreement and the Harrington Agreement for that month (Margin Item B); (iii) the fixed monthly Administrative/Capital Fee of \$72,500 (Margin Item C); (iv) the Tax Adjustment, if any, for that month (Margin Item E); and (v) Operating Expenses of Seller; plus extraordinary expenses, if any, incurred from time to time under the December 14, 2010 Margin Amendment Agreement (**Margin Amendment Agreement**) attached as Exhibit 1 to this Exhibit C (Margin Item F). Margin Items D, G, H and I are no longer applicable. The methods for calculation and determination of Margin Items A, B, C, E, and F are set forth in Exhibits 1 and 3 of this Exhibit C. Each of the 2010, 1996, and 2001 Margin Amendment Agreements attached as Exhibits 1, 2, and 3 to this Exhibit C, respectively, are provided only as a demonstration of the approach and methodology the Parties intend to use in connection with the determination and calculation of the Tolk Monthly Margin Amount under this Agreement. Each of Exhibits 1, 2, and 3 to this Exhibit C and the April 30, 1979 Coal Supply Agreement or related agreements to which the Exhibits apply, are not incorporated into the terms of this Agreement, nor shall any such terms and conditions be a part of this Agreement. It is the intent of the Parties by the attachment of Exhibits 1, 2, and 3 to this Exhibit C to provide historical context for the method to be used for determining and calculating various items of the Tolk Monthly Margin Amount in this Exhibit C, to the extent each Margin Item is still applicable.

An example Margin Agreement calculation is set forth on the following pages:

[REMAINDER OF PAGE INTENTIONALLY BLANK.]

EXHIBIT C

SAMPLE CALCULATION

	INVENTORY VALUATION	HARRINGTON	TOLK
	First of month Inventory Valuation	\$16,341,875.15	\$30,071,036.31
	End of month Inventory Valuation	20,341,875.15	34,071,036.31
	Average Inventory Valuation	\$18,341,875.15	\$32,071,036.31
	Combined Plant Total Average Inventory Valuation	\$50,412,911.46	

	HARRINGTON	TOLK
Monthly Delivered Tons	148,585	132,613

MARGIN COMPONENTS		
	Daily Operating Loan Financing Rate	Harrington / Tolk
1	Operating Loan Facility Cap - effective 01.01.18 <i>[This operating loan facility cap is for informational purposes only. The margin is not calculated on these numbers.]</i>	\$85,000,000.00
	Total Operating Loan Interest for Billing Month	\$132,274.86
	Total Operating Loan Fees and Expenses for Billing Month	\$4,622.03
	Seller's Intangible at Closing <i>[intentionally left blank - N/A]</i>	
	Remaining Billing Months <i>[intentionally left blank - N/A]</i>	
A	Incurred Working Capital Costs	
	Operating Loan Interest, Fees, and Expenses	\$136,896.89
	Less Inventory Interest Charge	\$108,907.55
	Equals Incurred Working Capital Costs	\$27,989.34
B	Inventory Interest Charge	\$ 108,907.55
C	Monthly Administrative/Capital Fee	\$ 72,500.00
D	Return on Unamortized Seller's Intangible for Billing Month <i>[intentionally left blank - N/A]</i>	
E	Tax Adjustment <i>[if any, from time to time]</i>	
F	Operating Expenses	
	Operating Expenses as of 01.01.18	\$ 1,640,000.00
	Increase per Margin Amendment Agreement <i>[to be determined]</i> eff. 01.01.19	
	Operating Expenses for Monthly Margin Calculation <i>[Operating Expenses for 2018/12]-Monthly Installment</i>	136,666.67
G	Seller's Actual Federal Corporate Income Tax Rate <i>[intentionally left blank - N/A]</i>	
H	Amortization of Seller's Intangible <i>[intentionally left blank - N/A]</i>	
I	Income Tax on Return on Unamortized Seller's Intangible <i>[intentionally left blank - N/A]</i>	
MARGIN CALCULATION		
A	Incurred Working Capital Costs	\$ 27,989.34
B	Inventory Interest Charge	108,907.55
C	Administrative/Capital Fee	72,500.00
E	Tax Adjustment <i>[if any, from time to time]</i>	
F	Operating Expenses	136,666.67
	Extraordinary Expenses <i>[if any, from time to time]</i>	
	Total Monthly Margin Amount	\$ 346,063.56

EXHIBIT C

SAMPLE CALCULATION

Tolk Monthly Margin Amount Calculation

Tolk Percentage Share equals Tolk Monthly Tons/(Tolk Monthly Tons + Harrington Monthly Tons) =
 $132,613/(132,613+148,585) = 47.16\%$

Total Monthly Margin Amount = \$346,063.56

Tolk Monthly Margin Amount = (Total Percentage Share x Total Monthly Margin Amount) = (.4716 x
\$346,063.56) = \$163,203.57

	MONTHLY MARGIN CALCULATION	HARRINGTON	TOLK
	Percentage Share of Monthly Margin Amount	\$ 182,859.99	\$ 163,203.57

EXHIBIT 1 TO EXHIBIT C

2010 MARGIN AMENDMENT AGREEMENT



1800 Larimer St., Suite 1000
Denver, CO. 80202

December 14, 2010

TUCO INC.
Charles S. McNeil, President
3300 S. Parker Road, Suite 310
Aurora, Colorado 80014

TUCO INC.
Attention: Vice President
6900 I-40 West, Suite 240
Amarillo, Texas 79106

Re: Acceptance of TUCO Proposal with respect to Renegotiation of Margin

Dear Charlie:

Southwestern Public Service Company ("SPS") and TUCO Inc. ("TUCO") entered into discussions in an attempt to renegotiate the Margin, as such term is defined in each of the following (collectively the "Margin Amendments"):

1. Margin Amendment to Coal Supply Agreement – Harrington between TUCO Inc. and Southwestern Public Service Company dated as of September 30, 1996, as amended by the 2001 Margin Amendment to Coal Supply Agreement (Harrington Station) dated as of September 18, 2001; and
2. Margin Amendment to Coal Supply Agreement – Tolk between TUCO Inc. and Southwestern Public Service Company dated as of September 30, 1996, as amended by the 2001 Margin Amendment to Coal Supply Agreement (Tolk Station) dated as of September 18, 2001.

Pursuant to a meeting on December 13, 2010 and subsequent discussions, the proposal with respect to the Margin Amendments is as follows (to be effective as of January 1, 2011):

EXHIBIT 1 TO EXHIBIT C

1. Set Margin Item F at a total of \$1,480,000.
2. Margin Item F shall increase each year, beginning on January 1, 2012, by an amount equal to the greater of: (a) two and one half percent (2.5%), or (b) the percentage increase in the Consumer Price Index for the year immediately preceding the increase.
3. Set Margin Item C at a total of \$135,000 per year.
4. The following one-time out-of-pocket costs actually incurred by TUCO shall be outside of Margin Item F and shall be reimbursed through an approved activity letter;
and expert CAM
 - a. Legal costs of negotiating and documenting a new rail contract
 - b. Cost of the proposed computer software upgrade
 - c. Costs of changing from LIFO to Average Cost coal inventory accounting
 - d. Legal costs of restating the SPS/TUCO agreements
5. TUCO shall follow SPS's coal procurement strategy.

SPS accepts TUCO's proposal. The terms above shall become effective as of January 1, 2011, and the Margin Amendments shall be amended accordingly. All other terms and conditions of the Margin Amendments will remain unchanged and will remain in full force and effect.

SPS appreciates TUCO's efforts to address the concerns raised by SPS and its willingness to renegotiate the Margin at this time.

If you are in agreement with the above, please so indicate by executing this letter in the place provided below.

Sincerely,



Susan Arigoni
Vice President – Fuels
Xcel Energy Services Inc., as agent for
Southwestern Public Service Company

Acknowledged and Agreed:

TUCO INC.

By: 
Name: Charles S. McNeil
Title: President
Date: 12-15-10

EXHIBIT 1 TO EXHIBIT C

cc: John J. Coates
DILL DILL CARR STONEBRAKER & HUTCHINGS, P.C.
455 Sherman Street, Ste. 300
Denver, Colorado 80203

EXHIBIT 1 to EXHIBIT C

In addition to the terms of the foregoing December 14, 2010 Margin Amendment Agreement, the following provisions apply to the calculation of the Tolk Monthly Margin Amount under Section 7.1.

Margin Items A and B: Incurred Working Capital Costs and Inventory Interest Charge. In order to determine the Incurred Working Capital Costs (Margin Item A) Seller will provide Buyer the actual cost to Seller during each month of financing its investment in the Coal Inventory under this Agreement, which includes the interest amount and fees Seller is charged for its RLOC, including, without limitation, interest hedging (subject to the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed) referred to as the Operating Loan Interest, Fees, Expenses. The Inventory Interest Charge (determined below) is subtracted from the Operating Loan, Fees and Expenses resulting in the Incurred Working Capital Costs for that month.

The Inventory Interest Charge (Margin Item B) included as part of the monthly total Operating Loan Interest, Fees and Expenses is the monthly interest amount on the Coal Inventory. The Parties acknowledge the RLOC will be used to finance the Inventory and payments due under the Exhibit D agreements. As to any month in which no coal is delivered to Buyer, such month's cost of financing under the RLOC shall be accrued and included in the price of Coal next delivered to Buyer or paid in association with remedies exercised under Section 10.6 of this Agreement.

Margin Item C: Administrative/Capital Fee. The Administrative/Capital Fee is a single fixed payment of \$72,500 per month covering both the Tolk and Harrington Stations. The Administrative/Capital Fee shall not be adjusted during the Initial Term or decreased during any Extended Term. In the event of an Extended Term, Seller reserves the right to seek an increase in the Administrative/Capital Fee to reflect increases in inflation or changes in economic circumstances. Closure of one but not both of the Tolk or Harrington Stations during the Term or Extended Term shall not reduce the amount of the Administrative/Capital Fee due under the surviving Coal Supply Agreement.

Margin Item E: Costs of Assessments and Taxes. All assessments and taxes, except federal and state income taxes, levied on Seller for any activity of Seller under this Agreement.

Margin Item F: Operating Expenses. The Operating Expense item has an annual base rate of \$1,480,000 as of January 1, 2011 and is adjusted annually as provided in the foregoing December 14, 2010 Margin Amendment Agreement.

The following terms originating from the September 30, 1996 Margin Amendment to the Coal Supply Agreement – Tolk Station, as amended effective January 1, 2002, which amendments are attached as Exhibits 2 and 3 to this Exhibit C, apply for calculation of periodic adjustment to payments due under Item F, Operating Expenses:

Operating Expenses shall be calculated based on the Margin Amendment Agreement providing for a base rate of \$1,640,000 as of January 1, 2018 and escalated at the beginning of each year thereafter commencing January 1, 2019 through the Term of this Agreement by the lesser of 2.5% or the percentage increase in the Consumer Price Index for All Items - Urban Consumers as published by the Bureau of Labor Statistics for the year immediately preceding the increase. The annual Operating Expenses shall be paid in equal monthly installments. These Operating Expenses include, but are not limited to, all in-house and outside legal fees, consulting, or other services reasonably required to

EXHIBIT 1 to EXHIBIT C

administer this Agreement and the Harrington Agreement, to the extent not duplicated elsewhere. However, these Operating Expenses will not include extraordinary expenses which Buyer may agree to pay, which agreement shall not be unreasonably withheld, conditioned, or delayed, in connection with renegotiation or replacement of mine, freight, or handling agreements approved by Buyer as Approved Activities (**Approved Activity**). In addition to Operating Expenses, Buyer will pay to or reimburse Seller for awards of damages against Seller and costs and attorneys' fees incurred by Seller in (1) prosecuting any Approved Activity and (2) defending any non-tortious litigation, administrative proceeding, arbitration, rail rate review, or other activity arising out of Seller's reasonably prudent and good faith performance of its duties in connection with contracts with third parties required by this Agreement and the Harrington Agreement. The expenses paid or reimbursed to Seller in accordance with the preceding two sentences will be accounted for and paid under the category specified in Margin Item F unless otherwise agreed by Seller and Buyer. If Seller receives payment from any settlement or award in any activity specified in the immediately preceding provisions (1) and (2) of this paragraph, such payment will be paid over to Buyer after deduction of unreimbursed fees, costs, and expenses, and Buyer will accept such payment without adjustment of the Margin with respect to such activity. Seller will notify Buyer of any claim with respect to any such activity and Buyer will have the right to participate therein with counsel of Buyer's choosing. Seller will not settle or compromise any such claim as to which Buyer is obligated to pay or reimburse Seller without the prior written consent of Buyer.

EXHIBIT 2 TO EXHIBIT C

1996 MARGIN AMENDMENT AGREEMENT

**MARGIN AMENDMENT
TO
COAL SUPPLY AGREEMENT – TOLK STATION
BETWEEN TUCO INC., as "Seller" AND SOUTHWESTERN
PUBLIC SERVICE COMPANY as "Buyer"**

This Margin Amendment to the above referenced Coal Supply Agreement is entered into between TUCO INC. and Southwestern Public Service Company as of this 30th day of September, 1996.

Whereas, TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") have agreed to the following terms and conditions in order to fulfill the contractual rights and obligations of each party under the Coal Supply Agreement dated April 30, 1979, for the Tolk Station ("this Agreement").

Now, Therefore, Seller and Buyer agree to amend this Agreement to define the margin amounts due to Seller for coal supplied to Buyer for its native system requirements. In consideration of the benefits to be realized and of their mutual promises, Buyer and Seller agree as follows:

1. Price of Coal. Effective October 1, 1996, Article VIII.1.G of this Agreement shall be deleted in its entirety and replaced by the following for Buyer's native system requirements:

G. Margin:

1. Either Seller or Buyer, in its sole discretion, may provide written notice of its desire to renegotiate the margin set forth herein ("Margin") on or before July 1st of each year, commencing July 1, 2001, for a Margin to become effective on January 1st of the following year. The parties shall have 30 days from the date written notice of a desire to redetermine the Margin is delivered to negotiate any changes or replacements for the Margin. If the parties are unable to agree upon a new or revised Margin within thirty days of the notice, then the dispute shall be resolved by arbitration as provided in Article XII of this Agreement. Provided, however, that in all events (a) any renegotiated Margin or Margin Rate will include amounts sufficient to pay the Margin components specified in Article VIII.1.G.3. A, B, D, E, G, H, and I of this Agreement (b) any adjustments in Seller's costs included in any such Margin component may result in a corresponding adjustment to such Margin components (c) if any refinancing of Seller's debt results in a lower interest rate the benefit thereof will correspondingly reduce the Margin, (d) the percentage specified in Article VIII.1.G.3. C may not increase and (e) the Monthly Seller's Amortization payment specified in Exhibit VIII.1.G.1. used to compute the Margin component

EXHIBIT 2 TO EXHIBIT C

specified in Article VIII.1.G.3. H may not increase. Seller will use its best efforts to minimize Seller's costs covered by the Margin calculations.

2. Definitions: As used in this Agreement, the following terms shall have the following meanings:

"Operating Loan Facility" is the loan facility, together with all amendments and extensions thereto, entered into by Seller as borrower to provide working capital for mine, freight, handling costs, increases or decreases in deferred tax payments related to inventory, deferral of payments by Buyer in accordance with Article VIII.1.H of this Agreement and financing of inventory (including debt service reserve), and providing for a maximum loan principal limit of \$65,000,000, and all replacement facilities prudently entered into by Seller for the same purpose. Seller agrees to use its best efforts to minimize the costs incurred under the Operating Loan Facility and agrees not to increase the maximum principal amount of the Operating Loan Facility without Buyer's prior written consent.

"Harrington Average Inventory Valuation" is the average of the first and end of the billing month book value of the mine and transportation cost remaining in Seller's inventory at Harrington Station for the billing month net of accrued inventory losses.

"Tolk Average Inventory Valuation" is the average of the first and end of the billing month book value of the mine and transportation cost remaining in Seller's inventory at Tolk station for the billing month net of accrued inventory losses.

"Seller's Investment," "Seller's Intangible," and "Seller's Intangible Interest Rate" as related to this Agreement and the Coal Supply Agreement dated April 30, 1979 between TUCO and SPS ("Harrington Agreement") are set out in Exhibit "VIII.1.G.1" attached to and made a part of this Agreement.

"Approved Activities" are activities receiving prior approval from Buyer relating to litigation, regulatory proceedings, arbitration, and rail rate reviews. Such prior approval will not be unreasonably withheld.

3. Components: The components comprising the margin rate ("MR") are:

EXHIBIT 2 TO EXHIBIT C

- A. **Incurred Working Capital Costs** - The actual interest costs plus the fees and expenses (including yield-maintenance amounts and reimbursement of debt service reserve advances) incurred on the Operating Loan Facility for the billing month minus the amount of the actual Inventory Interest Charge in Section VIII.1.G.3.B of this Agreement. Such Incurred Working Capital costs shall be documented by Seller, showing daily balances and interest charges for verification.
- B. **Inventory Interest Charge** - The sum of the values resulting from multiplying the daily financing rate under the Operating Loan Facility by the sum of the Harrington Average Inventory Valuation and the Tolk Average Inventory Valuation.
- C. **Administrative Fee** - 0.5% times the sum of the Harrington Average Inventory Valuation and the Tolk Average Inventory Valuation, the product of which is divided by twelve.
- D. **Return on the unpaid, Unamortized Seller's Intangible** - This value shall be calculated by multiplying Seller's Intangible Interest Rate by the unpaid, unamortized balance of Seller's Intangible for the billing month as shown on Exhibit "VIII.1.G.1".
- E. **Tax Adjustment** - The Tax Adjustment shall be calculated monthly by multiplying the unpaid, unamortized balance of Seller's Intangible for the billing month (as shown in "Exhibit VIII.1.G.1") by the Tax Factor divided by the number of months remaining to pay the Seller's Intangible all as shown in Exhibit VIII.1.G.1. Notwithstanding any other provision hereof appearing to the contrary, the Tax Factor and Effective Tax Rate shall be revised to reflect changes in Tax rates or charges, provided, that should changes in the tax laws or regulations cause the use of this formula to fail to reflect Seller's actual effective tax rates, then the parties will cooperate in revising this factor.

Tax Factor = [Effective Tax Rate/(1-Effective Tax Rate)] and,
Effective Tax Rate = [Texas Franchise Tax multiplied by (1-G)] + G
Where Texas Franchise Tax is set by Texas Tax Code § 171.001 *et seq.*, or its replacement, such as a Texas income tax or other tax on revenue or net income.

An example of the calculation of the initial Effective Tax Rate and the Tax Factor (which contains assumptions which may not reflect actual amounts) is as follows:

EXHIBIT 2 TO EXHIBIT C

Effective Tax Rate Calculation:

$$(4.5\% \times (1-34\%)) + 34\% = 36.97\%$$

Tax Factor calculation

$$36.97\% / (1-36.97\%) = 58.655\%$$

Tax Adjustment

$$(\$41,000,000 \times 58.655\%) / 240 = \$100,202.92$$

- F. Operating Expenses - Operating Expenses are set at \$676,828.70 for the balance of calendar year 1996 and thereafter set at \$1,000,000.00 per calendar year and escalated in each year commencing for the year 1997 by the change in the CPI for all items -Urban Consumers, according to the latest index for the previous year as published by the Bureau of Labor Statistics by January 31st of the current year, as compared to the most recent index published by January 31, 1996. All such payments shall be divided equally for each month of the current year of this Agreement. These Operating Expenses include, but are not limited to, all in-house and outside legal fees, consulting or other services reasonably required to administer this Agreement and the Harrington Agreement. However, these Operating Expenses will not include extraordinary expenses which Buyer may agree to pay (such agreement not to be unreasonably withheld) in connection with renegotiation or replacement of mine, freight, or handling agreements approved by Buyer as Approved Activities. In addition to the Operating Expenses, Buyer will pay to or reimburse Seller for awards of damages against Seller and costs and attorneys' fees incurred by Seller in (1) prosecuting any Approved Activity and (2) defending any non-tortious litigation, administrative proceeding, arbitration, rail rate review, or other activity arising out of Seller's reasonably prudent and good faith performance of its duties in connection with contracts with third-parties required by this Agreement and the Harrington Agreement. The expenses paid or reimbursed to Seller in accordance with the preceding two sentences will be included in the category specified in Article VIII.1.D, unless otherwise agreed by Seller and Buyer. If Seller receives payment from any settlement or award in any activity specified in Subsections (1) and (2) of this Section, such payment will be paid over to Buyer after deduction of unreimbursed fees, costs, and expenses, and Buyer will accept such payment without adjustment of the Margin with respect to such activity. Seller will notify Buyer of any claim with respect to any such activity and Buyer will have the right to participate therein with counsel of Buyer's choosing. Seller will not settle or compromise any such claim, as to which Buyer is obligated to pay or reimburse Seller, without the prior written consent of Buyer. Provided that nothing contained in this paragraph is intended or

EXHIBIT 2 TO EXHIBIT C

will be construed as entitling Buyer to recover costs or attorneys' fees incurred in the defense of any action involving a claim between Buyer and Seller not otherwise recoverable as a matter of applicable law.

- G. Seller's actual federal corporate income tax rate (26 U.S.C. § 11 (b)(1) or its replacement) for the current year, subject to certification by a nationally recognized accounting firm and appropriate adjustment of the tax rate, if required as a result of such certification.
- H. Amortization of the Seller's Intangible - This value shall be the amortization schedule monthly amount as specified in Exhibit "VIII.1.G.1."
- I. Income Tax on Return on unpaid, Unamortized Seller's Intangible - This value shall be the result of Factor D times the Tax Factor, thus:

$I = D \text{ multiplied by the Tax Factor}$

- 4. The components shall be applied to the following formula to determine the appropriate monthly margin for all years prior to calendar year 2017:

$$MR = (A + B + C + D + E + F + H + I) / (98,790,000/12)$$

For calendar year 2017, the components shall be applied to the following formula to determine the appropriate monthly margin:

$$MR = (A + B + C + D + E + F + H + I) / (46,590,000/12)$$

Margin = MR multiplied by 46,590,000/12, minus (1) any amounts incurred under Article VIII.1.E., and (2) actual interest earned by Seller on deferral of payments to Buyer by Seller in accordance with Article VIII.1.H.

For any period in which there are no coal deliveries, the accumulation of the unpaid portions of the Margin payment(s), which would otherwise have been paid if coal were being delivered during such period, plus actual interest on components Article VIII.1.G.3.A and B and interest at the Seller's Intangible Interest Rate on components Article VIII.1.G.3.D, F, and H, will be paid in the first month in which coal deliveries commence or, if sooner, the time at which Buyer is obligated to purchase Seller's entire inventory of coal.

- 5. Setoff - Buyer agrees not to setoff against the Margin any claim which Buyer may have against Seller which does not arise out of calculation of the Margin,

EXHIBIT 2 TO EXHIBIT C

Margin Rate, Margin Payment, or any component thereof, or Margin payments paid or payable to Seller. Nothing in this Agreement is intended or may be construed as a waiver of any right of Buyer to dispute Buyer's obligation for or the proper calculation of the Margin, Margin Rate, Margin Payment, or any component thereof, or to exercise any right which Buyer has to withhold the disputed amount of any payment with respect to Buyer's obligation for or the proper calculation of the Margin, or any component thereof. Nothing in this Amendment is intended or may be construed to create any limitation on Buyer's right to collect any judgment which may be entered against Seller in favor of Buyer; however, Buyer may not setoff the amount of such judgment against the Margin other than Seller's net profit included in the components specified in Article VIII.1.G.3. C and D.

EXHIBIT 2 TO EXHIBIT C

EXECUTED as of the date first appearing above.

TUCO INC.

By: Charles D. McNeil
Title: PRESIDENT

SOUTHWESTERN PUBLIC SERVICE
COMPANY

By: Kenneth T. Ladd
Title: Senior Vice President

EXHIBIT 2 TO EXHIBIT C

EXHIBIT VIII.1.G.1

CALCULATION OF SELLER'S INVESTMENT, ETC.

Seller's Intangible, on September 30, 1996, is \$41,618,937. Seller's Intangible will amortize with the Buyer's payment of the Monthly Intangible Amortization Payment, and Buyer will pay to Seller a Monthly Return on the unpaid, Unamortized Seller's Intangible at a rate of 8.692% per annum on the unpaid, Unamortized Seller's Intangible per the schedule below. The unpaid, Unamortized Seller's Intangible will accrue interest at Seller's Intangible Interest Rate until Seller's Investment is paid in full. The Seller's Investment which is related to this Agreement for purposes of this Agreement will be the unpaid, Unamortized Seller's Intangible plus an amount equal to (a) the "Yield Maintenance Amount" determined in accordance with the Yield Maintenance Amount definition attached hereto plus (b) any accrued and unpaid return on the unpaid, Unamortized Seller's Intangible, plus (c) an amount necessary to fully pay Seller's federal and state taxes, if any, on a grossed up basis which results from payment of Seller's investment, (*i.e.*, unpaid, Unamortized Seller's Intangible multiplied by the Tax Factor), plus (d) any third party costs incurred in connection with prepayment of Seller's Intangible, plus (e) any damages to Seller as a result of prepayment of Seller's Intangible [not recovered under item (a) above].

Seller's Intangible
Interest Rate

8.692% / year

For sake of clarification, Seller's Investment will be allocated 47% to Tolk Station and 53% to Harrington Station through December 31, 2016. Seller's Investment will be allocated 100% to Tolk after December 31, 2016.

EXHIBIT 2 TO EXHIBIT C

Date	Beginning of the Month Unamortized Seller's Intangible	Monthly Seller's Intangible Amortization Payment	Monthly Return on the Unamortized Seller's Intangible	End of the Month Unamortized Seller's Intangible
Sep-96	41,618,937	0	0	41,618,937
Oct-96	41,618,937	173,412	452,190	41,445,525
Nov-96	41,445,525	173,412	300,204	41,272,113
Dec-96	41,272,113	173,412	298,948	41,098,700
Jan-97	41,098,700	173,412	297,692	40,925,288
Feb-97	40,925,288	173,412	296,436	40,751,876
Mar-97	40,751,876	173,412	295,179	40,578,464
Apr-97	40,578,464	173,412	293,923	40,405,051
May-97	40,405,051	173,412	292,667	40,231,639
Jun-97	40,231,639	173,412	291,411	40,058,227
Jul-97	40,058,227	173,412	290,155	39,884,815
Aug-97	39,884,815	173,412	288,899	39,711,402
Sep-97	39,711,402	173,412	287,643	39,537,990
Oct-97	39,537,990	173,412	286,387	39,364,578
Nov-97	39,364,578	173,412	285,131	39,191,166
Dec-97	39,191,166	173,412	283,875	39,017,753
Jan-98	39,017,753	173,412	282,619	38,844,341
Feb-98	38,844,341	173,412	281,363	38,670,929
Mar-98	38,670,929	173,412	280,106	38,497,517
Apr-98	38,497,517	173,412	278,850	38,324,104
May-98	38,324,104	173,412	277,594	38,150,692
Jun-98	38,150,692	173,412	276,338	37,977,280
Jul-98	37,977,280	173,412	275,082	37,803,868
Aug-98	37,803,868	173,412	273,826	37,630,456
Sep-98	37,630,456	173,412	272,570	37,457,043
Oct-98	37,457,043	173,412	271,314	37,283,631
Nov-98	37,283,631	173,412	270,058	37,110,219
Dec-98	37,110,219	173,412	268,802	36,936,807
Jan-99	36,936,807	173,412	267,546	36,763,394
Feb-99	36,763,394	173,412	266,290	36,589,982
Mar-99	36,589,982	173,412	265,033	36,416,570
Apr-99	36,416,570	173,412	263,777	36,243,158
May-99	36,243,158	173,412	262,521	36,069,745
Jun-99	36,069,745	173,412	261,265	35,896,333
Jul-99	35,896,333	173,412	260,009	35,722,921
Aug-99	35,722,921	173,412	258,753	35,549,509
Sep-99	35,549,509	173,412	257,497	35,376,096
Oct-99	35,376,096	173,412	256,241	35,202,684
Nov-99	35,202,684	173,412	254,985	35,029,272
Dec-99	35,029,272	173,412	253,729	34,855,860
Jan-00	34,855,860	173,412	252,473	34,682,448
Feb-00	34,682,448	173,412	251,217	34,509,035
Mar-00	34,509,035	173,412	249,960	34,335,623
Apr-00	34,335,623	173,412	248,704	34,162,211
May-00	34,162,211	173,412	247,448	33,988,799
Jun-00	33,988,799	173,412	246,192	33,815,386
Jul-00	33,815,386	173,412	244,936	33,641,974
Aug-00	33,641,974	173,412	243,680	33,468,562
Sep-00	33,468,562	173,412	242,424	33,295,150
Oct-00	33,295,150	173,412	241,168	33,121,737
Nov-00	33,121,737	173,412	239,912	32,948,325
Dec-00	32,948,325	173,412	238,656	32,774,913
Jan-01	32,774,913	173,412	237,400	32,601,501

EXHIBIT 2 TO EXHIBIT C

Feb-01	32,801,501	173,412	238,144	32,428,088
Mar-01	32,428,088	173,412	234,887	32,254,878
Apr-01	32,254,878	173,412	233,631	32,081,284
May-01	32,081,284	173,412	232,375	31,907,852
Jun-01	31,907,852	173,412	231,119	31,734,439
Jul-01	31,734,439	173,412	229,863	31,561,027
Aug-01	31,561,027	173,412	228,607	31,387,615
Sep-01	31,387,615	173,412	227,351	31,214,203
Oct-01	31,214,203	173,412	226,095	31,040,791
Nov-01	31,040,791	173,412	224,839	30,867,378
Dec-01	30,867,378	173,412	223,583	30,693,966
Jan-02	30,693,966	173,412	222,327	30,520,554
Feb-02	30,520,554	173,412	221,071	30,347,142
Mar-02	30,347,142	173,412	219,814	30,173,729
Apr-02	30,173,729	173,412	218,558	30,000,317
May-02	30,000,317	173,412	217,302	29,826,905
Jun-02	29,826,905	173,412	216,046	29,653,493
Jul-02	29,653,493	173,412	214,790	29,480,080
Aug-02	29,480,080	173,412	213,534	29,306,668
Sep-02	29,306,668	173,412	212,278	29,133,256
Oct-02	29,133,256	173,412	211,022	28,959,844
Nov-02	28,959,844	173,412	209,766	28,786,431
Dec-02	28,786,431	173,412	208,510	28,613,019
Jan-03	28,613,019	173,412	207,254	28,439,607
Feb-03	28,439,607	173,412	206,998	28,266,195
Mar-03	28,266,195	173,412	204,741	28,092,782
Apr-03	28,092,782	173,412	203,485	27,919,370
May-03	27,919,370	173,412	202,229	27,745,958
Jun-03	27,745,958	173,412	200,973	27,572,546
Jul-03	27,572,546	173,412	199,717	27,399,134
Aug-03	27,399,134	173,412	198,461	27,225,721
Sep-03	27,225,721	173,412	197,205	27,052,309
Oct-03	27,052,309	173,412	195,949	26,878,897
Nov-03	26,878,897	173,412	194,693	26,705,485
Dec-03	26,705,485	173,412	193,437	26,532,072
Jan-04	26,532,072	173,412	192,181	26,358,660
Feb-04	26,358,660	173,412	190,925	26,185,248
Mar-04	26,185,248	173,412	189,668	26,011,836
Apr-04	26,011,836	173,412	188,412	25,838,423
May-04	25,838,423	173,412	187,156	25,665,011
Jun-04	25,665,011	173,412	185,900	25,491,599
Jul-04	25,491,599	173,412	184,644	25,318,187
Aug-04	25,318,187	173,412	183,388	25,144,774
Sep-04	25,144,774	173,412	182,132	24,971,362
Oct-04	24,971,362	173,412	180,876	24,797,950
Nov-04	24,797,950	173,412	179,620	24,624,538
Dec-04	24,624,538	173,412	178,364	24,451,125
Jan-05	24,451,125	173,412	177,108	24,277,713
Feb-05	24,277,713	173,412	175,852	24,104,301
Mar-05	24,104,301	173,412	174,595	23,930,889
Apr-05	23,930,889	173,412	173,339	23,757,477
May-05	23,757,477	173,412	172,083	23,584,064
Jun-05	23,584,064	173,412	170,827	23,410,652
Jul-05	23,410,652	173,412	169,571	23,237,240
Aug-05	23,237,240	173,412	168,315	23,063,828
Sep-05	23,063,828	173,412	167,059	22,890,415
Oct-05	22,890,415	173,412	165,803	22,717,003

Exhibit 2 to Exhibit C to January 1, 2018 Coal Supply Agreement - Talk Station
between TUCO INC. (Seller) and Southwestern Public Service Company (Buyer)

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Nov-05	22,717,003	173,412	164,547	22,543,591
Dec-05	22,543,591	173,412	163,291	22,370,179
Jan-06	22,370,179	173,412	162,036	22,196,766
Feb-06	22,196,766	173,412	160,779	22,023,354
Mar-06	22,023,354	173,412	159,522	21,849,942
Apr-06	21,849,942	173,412	158,266	21,676,530
May-06	21,676,530	173,412	157,010	21,503,117
Jun-06	21,503,117	173,412	155,754	21,329,705
Jul-06	21,329,705	173,412	154,498	21,156,293
Aug-06	21,156,293	173,412	153,242	20,982,881
Sep-06	20,982,881	173,412	151,986	20,809,469
Oct-06	20,809,469	173,412	150,730	20,636,056
Nov-06	20,636,056	173,412	149,474	20,462,644
Dec-06	20,462,644	173,412	148,218	20,289,232
Jan-07	20,289,232	173,412	146,962	20,115,820
Feb-07	20,115,820	173,412	145,706	19,942,407
Mar-07	19,942,407	173,412	144,450	19,768,995
Apr-07	19,768,995	173,412	143,193	19,595,583
May-07	19,595,583	173,412	141,937	19,422,171
Jun-07	19,422,171	173,412	140,681	19,248,758
Jul-07	19,248,758	173,412	139,425	19,075,346
Aug-07	19,075,346	173,412	138,169	18,901,934
Sep-07	18,901,934	173,412	136,913	18,728,522
Oct-07	18,728,522	173,412	135,657	18,555,109
Nov-07	18,555,109	173,412	134,401	18,381,697
Dec-07	18,381,697	173,412	133,145	18,208,285
Jan-08	18,208,285	173,412	131,889	18,034,873
Feb-08	18,034,873	173,412	130,633	17,861,460
Mar-08	17,861,460	173,412	129,377	17,688,048
Apr-08	17,688,048	173,412	128,120	17,514,636
May-08	17,514,636	173,412	126,864	17,341,224
Jun-08	17,341,224	173,412	125,608	17,167,812
Jul-08	17,167,812	173,412	124,352	16,994,399
Aug-08	16,994,399	173,412	123,096	16,820,987
Sep-08	16,820,987	173,412	121,840	16,647,575
Oct-08	16,647,575	173,412	120,584	16,474,163
Nov-08	16,474,163	173,412	119,328	16,300,750
Dec-08	16,300,750	173,412	118,072	16,127,338
Jan-09	16,127,338	173,412	116,816	15,953,926
Feb-09	15,953,926	173,412	115,560	15,780,514
Mar-09	15,780,514	173,412	114,304	15,607,101
Apr-09	15,607,101	173,412	113,047	15,433,689
May-09	15,433,689	173,412	111,791	15,260,277
Jun-09	15,260,277	173,412	110,535	15,086,865
Jul-09	15,086,865	173,412	109,279	14,913,452
Aug-09	14,913,452	173,412	108,023	14,740,040
Sep-09	14,740,040	173,412	106,767	14,566,628
Oct-09	14,566,628	173,412	105,511	14,393,216
Nov-09	14,393,216	173,412	104,255	14,219,803
Dec-09	14,219,803	173,412	102,999	14,046,391
Jan-10	14,046,391	173,412	101,743	13,872,979
Feb-10	13,872,979	173,412	100,487	13,699,567
Mar-10	13,699,567	173,412	99,231	13,526,155
Apr-10	13,526,155	173,412	97,974	13,352,742
May-10	13,352,742	173,412	96,718	13,179,330
Jun-10	13,179,330	173,412	95,462	13,005,918
Jul-10	13,005,918	173,412	94,206	12,832,506

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Aug-10	12,832,508	173,412		12,659,093
Sep-10	12,659,093	173,412	92,950	12,485,881
Oct-10	12,485,881	173,412	91,894	12,312,269
Nov-10	12,312,269	173,412	90,438	12,138,857
Dec-10	12,138,857	173,412	89,182	11,965,444
Jan-11	11,965,444	173,412	87,926	11,792,032
Feb-11	11,792,032	173,412	86,670	11,618,820
Mar-11	11,618,820	173,412	85,414	11,445,208
Apr-11	11,445,208	173,412	84,158	11,271,795
May-11	11,271,795	173,412	82,901	11,098,383
Jun-11	11,098,383	173,412	81,645	10,924,971
Jul-11	10,924,971	173,412	80,389	10,751,559
Aug-11	10,751,559	173,412	79,133	10,578,146
Sep-11	10,578,146	173,412	77,877	10,404,734
Oct-11	10,404,734	173,412	76,621	10,231,322
Nov-11	10,231,322	173,412	75,365	10,057,910
Dec-11	10,057,910	173,412	74,109	9,884,498
Jan-12	9,884,498	173,412	72,853	9,711,085
Feb-12	9,711,085	173,412	71,597	9,537,673
Mar-12	9,537,673	173,412	70,341	9,364,261
Apr-12	9,364,261	173,412	69,085	9,190,849
May-12	9,190,849	173,412	67,828	9,017,438
Jun-12	9,017,438	173,412	66,572	8,844,024
Jul-12	8,844,024	173,412	65,316	8,670,612
Aug-12	8,670,612	173,412	64,060	8,497,200
Sep-12	8,497,200	173,412	62,804	8,323,787
Oct-12	8,323,787	173,412	61,548	8,150,375
Nov-12	8,150,375	173,412	60,292	7,976,963
Dec-12	7,976,963	173,412	59,036	7,803,551
Jan-13	7,803,551	173,412	57,780	7,630,138
Feb-13	7,630,138	173,412	56,524	7,456,726
Mar-13	7,456,726	173,412	55,268	7,283,314
Apr-13	7,283,314	173,412	54,012	7,109,902
May-13	7,109,902	173,412	52,755	6,936,490
Jun-13	6,936,490	173,412	51,499	6,763,077
Jul-13	6,763,077	173,412	50,243	6,589,665
Aug-13	6,589,665	173,412	48,987	6,416,253
Sep-13	6,416,253	173,412	47,731	6,242,841
Oct-13	6,242,841	173,412	46,475	6,069,428
Nov-13	6,069,428	173,412	45,219	5,896,016
Dec-13	5,896,016	173,412	43,963	5,722,604
Jan-14	5,722,604	173,412	42,707	5,549,192
Feb-14	5,549,192	173,412	41,451	5,375,779
Mar-14	5,375,779	173,412	40,195	5,202,367
Apr-14	5,202,367	173,412	38,939	5,028,955
May-14	5,028,955	173,412	37,682	4,855,543
Jun-14	4,855,543	173,412	36,426	4,682,130
Jul-14	4,682,130	173,412	35,170	4,508,718
Aug-14	4,508,718	173,412	33,914	4,335,306
Sep-14	4,335,306	173,412	32,658	4,161,894
Oct-14	4,161,894	173,412	31,402	3,988,481
Nov-14	3,988,481	173,412	30,146	3,815,069
Dec-14	3,815,069	173,412	28,890	3,641,657
Jan-15	3,641,657	173,412	27,634	3,468,245
Feb-15	3,468,245	173,412	26,378	3,294,833
Mar-15	3,294,833	173,412	25,122	3,121,420
Apr-15	3,121,420	173,412	23,866	2,948,008
			22,609	

EXHIBIT 2 TO EXHIBIT C

May-15	2,948,008	173,412	21,363	2,774,596
Jun-15	2,774,596	173,412	20,097	2,601,184
Jul-15	2,601,184	173,412	18,841	2,427,771
Aug-15	2,427,771	173,412	17,585	2,254,359
Sep-15	2,254,359	173,412	16,329	2,080,947
Oct-15	2,080,947	173,412	15,073	1,907,535
Nov-15	1,907,535	173,412	13,817	1,734,122
Dec-15	1,734,122	173,412	12,561	1,560,710
Jan-16	1,560,710	173,412	11,305	1,387,298
Feb-16	1,387,298	173,412	10,049	1,213,886
Mar-16	1,213,886	173,412	8,793	1,040,473
Apr-16	1,040,473	173,412	7,536	867,061
May-16	867,061	173,412	6,280	693,649
Jun-16	693,649	173,412	5,024	520,237
Jul-16	520,237	173,412	3,768	346,824
Aug-16	346,824	173,412	2,512	173,412
Sep-16	173,412	173,412	1,256	0
Total		41,618,937	36,476,840	

Note:

The Monthly Seller's Intangible Amortization Payment and the Monthly Return on the Unamortized Seller's Intangible each month are billed on the 8th of the following month.

Example: Oct-96 will be billed on November 8, 1996

EXHIBIT 2 TO EXHIBIT C

DEFINITION OF "YIELD MAINTENANCE AMOUNT"

"Yield-Maintenance Amount" shall mean an amount equal to the excess, if any, of the Discounted Value of the Unamortized Seller's Intangible over the Unamortized Seller's Intangible. The Yield-Maintenance Amount shall in no event be less than zero.

"Discounted Value" shall mean the amount obtained by discounting all Remaining Scheduled Payments with respect to such Unamortized Seller's Intangible from their respective scheduled due dates to the Settlement Date in accordance with accepted financial practice and at a discount factor (as converted to reflect the periodic basis on which the Monthly Return on the unpaid Unamortized Seller's Intangible is payable if payable other than on a semi-annual basis) equal to the Reinvestment Yield with respect to the Unamortized Seller's Intangible.

"Reinvestment Yield" shall mean the yield to maturity implied by (i) the yields reported, as of 10:00 am (New York City local time) on the Business Day next preceding the Settlement Date, on the display designated as "Page 678" on the Telerate Service (or such other display designated as "Page 678" on the Telerate Service) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of the Unamortized Seller's Intangible as of such Settlement Date, or if such yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, (ii) the Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the Business Day next preceding the Settlement Date, in Federal Reserve Statistical Release H.15(519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of the Unamortized Seller's Intangible as of such Settlement Date. Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities.

"Business Day" shall mean any day other than a Saturday or a Sunday or a day on which commercial banks in New York City are required or authorized to be closed.

"Remaining Average Life" shall mean the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) the Unamortized Seller's Intangible into (ii) the products obtained by multiplying (a) each Remaining Scheduled Payment of Unamortized Seller's Intangible (but not of Seller's Monthly Return) by (b) the number of years (calculated to the nearest one-twelfth year) which will elapse between the Settlement Date and the scheduled due date of such Remaining Scheduled Payment and adding the results.

"Remaining Scheduled Payments" shall mean all payments of the Unamortized Seller's Intangible together with the Monthly Return thereon that would be due on or after the Settlement Date (assuming that all payments of Seller's Intangible and the Monthly Return thereon were paid in accordance with the table attached to Exhibit VIII.1.G.1) as if no payment of the

EXHIBIT 2 TO EXHIBIT C

Unamortized Seller's Intangible or Monthly Return thereon were made prior to its scheduled due date.

"Settlement Date" shall mean the date upon which Unamortized Seller's Intangible is to be paid.

EXHIBIT 3 TO EXHIBIT C

**2001 MARGIN AMENDMENT
TO
COAL SUPPLY AGREEMENT
(TOLK STATION)
BETWEEN TUCO INC., and SOUTHWESTERN PUBLIC SERVICE COMPANY**

This **2001 Margin Amendment** to the above referenced Coal Supply Agreement dated April 30, 1979, as amended, is made and entered into between TUCO INC. and Southwestern Public Service Company as of the 18th day of September 2001.

WITNESSETH:

Whereas, TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") are parties to that certain Coal Supply Agreement made and entered into as of April 30, 1979, as restated to incorporate all amendments through December 31, 1994 (the "Agreement") and as further amended by the Margin Amendment dated September 30, 1996 ("1996 Margin Amendment"); and

Whereas, Buyer and Seller have agreed to a renegotiated Margin as of September 18, 2001 and wish to amend the Agreement and the 1996 Margin Amendment to memorialize the renegotiated Margin.

Now Therefore, Seller and Buyer agree to amend the Agreement and the 1996 Margin Amendment effective January 1, 2002, to modify the Margin payable to Seller for coal supplied to Buyer for its native system requirements as follows:

1. Article VIII.1.G.1 shall be deleted in its entirety and replaced by the following:
 1. Either Seller or Buyer, in its sole discretion, may provide written notice of its desire to renegotiate the margin set forth herein ("Margin") on or before July 1st of each year, commencing July 1, 2006, for a Margin to become effective on January 1st of the following year. The parties shall have thirty (30) days from the date written notice of a desire to renegotiate the Margin is delivered to negotiate any changes or replacements for the Margin. If the parties are unable to agree upon a new or revised Margin within thirty (30) days of the notice, then the dispute shall be resolved by arbitration as provided in Article XII of this Agreement. Provided, however, that in all events: (a) any negotiated Margin or Margin Rate will include amounts sufficient to pay the Margin components specified in Article VIII.1.G.3.A, B, D, E, G, H, and I of this Agreement, (b) any adjustments in Seller's costs included in any such Margin component may result in a corresponding adjustment to such Margin components, (c) if any refinancing of Seller's debt results in a lower interest rate the benefit thereof will correspondingly reduce the Margin, (d) the amount specified in Article VIII.1.G.3 C. may not increase and (e) the Monthly Seller's Amortization payment specified in Exhibit VIII.1.G.1. used to compute the Margin component specified in Article

EXHIBIT 3 TO EXHIBIT C

VIII.1.G.3.H. may not increase. Seller will use its best efforts to minimize Seller's costs covered by the Margin calculations.

2. Article VIII.1.G.3.C shall be deleted in its entirety and replace by the following:
C. Administrative Fee – A fixed payment of \$120,000.00 per calendar year divided equally into twelve (12) monthly installments.

3. Article VIII.1.G.3.F shall be deleted in its entirety and replaced by the following:
F. Operating Expenses – Operating Expenses shall be set at \$1,050,000.00 per calendar year and this amount shall be escalated at the beginning of each year commencing with the year 2003 by the greater of 5% or the change in the CPI for all items – Urban Consumers, according to the latest index for the previous year as published by the Bureau of Labor Statistics prior to January 31st of the current year, as compared to the most recent index published by January 31, 2002. The annual Operating Expenses shall be paid in equal monthly installments. These Operating Expenses include, but are not limited to, all in-house and outside legal fees, consulting or other services reasonably required to administer this Agreement and the Harrington Agreement. However, these Operating Expenses will not include extraordinary expenses, which Buyer may agree to pay (such agreement not to be unreasonably withheld) in connection with renegotiation or replacement of mine, freight, or handling agreements approved by Buyer as Approved Activities. In addition to Operating Expenses, Buyer will pay to or reimburse Seller for awards of damages against Seller and costs and attorney's fees incurred by Seller in (1) prosecuting any Approved Activity and (2) defending any non-tortious litigation, administrative proceeding, arbitration, rail rate review, or other activity arising out of Seller's reasonably prudent and good faith performance of its duties in connection with contracts with third-parties required by this Agreement and the Harrington Agreement. The expenses paid or reimbursed to Seller in accordance with the preceding two sentences will be included in the category specified in Article VIII.1.D. unless otherwise agreed by Seller and Buyer. If Seller receives payment from any settlement or award in any activity specified in Subsections (1) and (2) of this Section, such payment will be paid over to Buyer after deduction of unreimbursed fees, costs, and expenses, and Buyer will accept such payment without adjustment of the Margin with respect to such activity. Seller will notify Buyer of any claim with respect to any such activity and Buyer will have the right to participate therein with counsel of Buyer's choosing. Seller will not settle or compromise any such claim, as to which Buyer is obligated to pay or reimburse Seller, without the prior written consent of Buyer. Provided that nothing contained in this paragraph is intended to or will be construed as entitling Buyer to recover costs or attorney's fees incurred in the defense of any action involving a claim between Buyer and Seller not otherwise recoverable as a matter of applicable law.

All other terms and conditions of the Agreement and the 1996 Margin Amendment not modified hereby shall remain in full force and effect.

EXHIBIT 3 TO EXHIBIT C

In Witness Whereof, the parties have caused this 2001 Margin Amendment to be executed by their duly authorized representatives as of the date first written above.

TUCO INC.

By: Charles D. Muel

Title: PRESIDENT

Date: 12-27-01

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: Kelly Krattenmaker

Title: V.P. TRADING, MARKETING & SUPPLY

Date: 1/29/02

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EXHIBIT D

SELLER'S CONTRACTS CONCERNING COAL SUPPLIED TO THE TOLK STATION

1. November 1, 2010 Coal Purchase and Sale Agreement between TUCO INC. (TUCO) and Cloud Peak Energy Resources LLC (Cloud Peak) (Cloud Peak Contract).
2. January 1, 2017 Second Amended and Restated Confirmation Notice 2304 between TUCO and Cloud Peak, and January 2, 2018 Letter Agreement between TUCO and Cloud Peak confirming carryover of 2017 contract tons into 2018, all in accordance with and supplementing the Cloud Peak Contract.
3. October 30, 2017 Confirmation Notice 2521 between TUCO and Cloud Peak, in accordance with and supplementing the Cloud Peak Contract.
4. December 15, 2010 Master Coal Supply Agreement between TUCO and Peabody COALSALES, LLC (Peabody) (Peabody Coal Contract).
5. January 1, 2018 Confirmation Notice 2018-1 between TUCO and Peabody in accordance with and supplementing the Peabody Coal Contract. *[pending]*
6. December 31, 2010 Coal Purchase and Sale Agreement between TUCO and Arch Coal Sales Company, Inc. (Arch) (Arch Coal Contract).
7. December 31, 2010 Guaranty by Arch Coal Inc. in favor of TUCO.
8. October 30, 2017 Confirmation Notice MO 5513 between TUCO and Arch in accordance with and supplementing the Arch Coal Contract.
9. June 28, 2016 Letter Agreement between TUCO and Southwestern Public Service Company (SPS) re Carryover of Coal Supply Agreement Vendors into 2018.
10. January 1, 2018 Coal Handling Service Agreement between TUCO and Savage Tolk Corporation concerning coal handling at the Tolk Station.
11. January 1, 2018 Access Agreement for the Tolk Station.
12. October 15, 2017 BNSF Railway Company's Coal Unit Train Commitment Certificate Numbers BNSF 90068-0081 and 90068-0082.
13. February 28, 2003 Railroad Car Net Lease Agreement between TUCO INC., as Lessee, and Trinity Industries Leasing Company, as Lessor, including Exhibits A, B, and C, and Schedule 1, as amended effective January 1, 2018.
 - a. Riders 1 dated January 17, 2003 and January 29, 2003, as amended April 1, 2003 and January 1, 2018;

EXHIBIT D

- b. Rider 2 dated January 29, 2003, as amended April 4, 2003, March 23, 2007, and January 1, 2018;
 - c. Rider 3 dated May 22, 2003, as amended March 23, 2007 and January 1, 2018;
 - d. Rider 4 dated June 19, 2003, as amended effective January 1, 2018;
 - e. Rider 7 dated July 10, 2003, as amended March 23, 2007 and January 1, 2018;
 - f. Rider 8 dated July 10, 2003, as amended effective January 1, 2018;
 - g. Rider 10 dated January 10, 2008, as amended June 12, 2013 and January 1, 2018; and
 - h. Rider 11 dated October 31, 2008, as amended May 5, 2014 and January 1, 2018.
- 14. March 17, 2003 Train Set Sublease between TUCO and Savage Tolk Corporation and Savage Harrington Corporation relating to Railcars and its First Amendment, as amended January 1, 2018.
 - 15. May 1, 2013 Railroad Car Maintenance Agreement and its Riders 1.1 and 2.0, as amended effective January 1, 2017, between Trinity Rail Management, Inc., Savage-Tolk Energy Services, and Savage-Harrington Energy Services, as amended from time to time.
 - 16. January 1, 2018 Rail Operation Services, Switching, and Handling Agreement between TUCO and BNSF Railway Company.
 - 17. January 1, 2018 Services Agreement between TUCO and Midland Railway Services, Inc.
 - 18. November 8, 2016 Railcar Storage Track Lease Agreement between TUCO and Texas Northwestern Railroad, as amended from time to time.
 - 19. October 24, 2017 Railcar Storage Agreement between TUCO and Thunder Basin Coal Company, L.L.C.
 - 20. November 3, 2017 Railcar Storage Agreement between TUCO and Nebraska Northwestern Railroad, Inc.
 - 21. TUCO's contractual retention of FIS Energy Systems Inc. (FIS), including, without limitation, FIS Order No. 0347940 L01196224 as provided in the August 15, 2017 Letter Agreement between TUCO and SPS.
 - 22. January 1, 2018 Rail Services Agreement between TUCO and Savage Tolk Corporation.

EXHIBIT E

LOST COAL LETTER AGREEMENT

TUCO INC.

TUCO INC.
500 S. Taylor St., Suite 1050
Amarillo, Texas 79103-2436
Telephone: 806-371-7341
Fax: 806-371-7528

March 28, 2006

Patrick Panzarino
Director of Coal Supply
Xcel Energy
1099 18th Street
Denver, CO 80202

Re: April 30, 1979 Coal Supply Agreement between TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") relating to the Harrington Station, as amended ("Harrington Agreement"); and April 30, 1979 Coal Supply Agreement between TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") relating to the Tolk Station, as amended ("Tolk Agreement") (collectively, the "Coal Supply Agreements")

Dear Mr. Panzarino:

This letter is submitted by TUCO INC. ("TUCO") to confirm its agreement with Southwestern Public Service Company ("SPS") concerning amendments to the lost coal factor provisions under Article VIII, Section F of the Coal Supply Agreements.

Effective for TUCO's 2005 fiscal year ending September 30, 2006, TUCO and SPS agree that the provisions of Article VIII, Section F in each of the Harrington and Tolk Agreements will no longer be the mechanisms for accounting for lost coal under the Coal Supply Agreements.

For TUCO's 2005 fiscal year, in consultation with SPS's accounting professionals and commencing March 2006, TUCO will make monthly accounting adjustments for TUCO's 2005 fiscal year as necessary to reconcile, at TUCO's fiscal year end, TUCO's LIFO book inventories to the physical inventories of coal at the Tolk and Harrington Stations determined in accordance with the July 2005 physical inventory surveys at the Tolk and Harrington Stations performed in accordance with the American Society for Testing and Materials standards ("ASTM Surveys"). This reconciliation of TUCO's LIFO book inventories to physical inventories will include TUCO's book inventory cost basis, tonnage, and Btu quality, and will be completed by a credit or payment invoice to SPS by TUCO to be submitted on or before November 15, 2006. TUCO's obligation to continue the monthly adjustments

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Patrick Pabzarino
March 28, 2006
2 of 3

provided for in this paragraph after April 2006 is contingent upon TUCO successfully increasing its credit facility effective May 2006 by Twenty Five Million Dollars (U.S. \$25,000,000)

Commencing with TUCO's 2006 fiscal year, the lost coal adjustment factors under each of the Coal Supply Agreements will be set as a positive percentage, to be adjusted on an as needed basis by agreement between the parties, to minimize the payments or credits necessary to annually reconcile TUCO's LIFO book inventories to the physical coal inventories at the Tolk and Harrington Stations at the end of each of TUCO's fiscal years during the term of each Coal Supply Agreement.

Commencing with TUCO's 2006 fiscal year, an annual inventory true up for each of the Tolk Station and the Harrington Station will be conducted, to provide for a reconciliation, taking into consideration the lost coal factors set in accordance with the preceding paragraph; at TUCO's fiscal year end, of TUCO's LIFO book inventories to physical inventories determined by ASTM Survey, conducted at TUCO's request by qualified third parties and certified to TUCO and SPS. This reconciliation will include TUCO's cost basis, tonnage, and Btu quality and will be completed by a credit or payment invoice to SPS by TUCO to be submitted on or before forty five (45) days after the end of each of TUCO's fiscal years during the term of this agreement.

In consultation with SPS, TUCO will conduct any additional ASTM Surveys or GPS volumetric surveys each year as the parties agree are appropriate to maintain an accurate account of the physical inventories for coal at the Tolk and Harrington Stations. The costs associated with the annual ASTM Survey and any additional surveys as provided herein will be reimbursed to TUCO through the cost reimbursement provisions of the Coal Supply Agreements.

TUCO also will cause its LIFO book inventory computer software to be modified as necessary to accomplish the annual true up of LIFO book inventory to physical inventory contemplated herein and that the costs of such modifications will be reimbursed to TUCO through the cost reimbursement provisions of the Coal Supply Agreements.

It is the intent of the parties that upon the expiration or earlier termination of each of the Coal Supply Agreements, to the extent there is a disparity between TUCO's LIFO book inventory and the physical inventory for coal at the Tolk or Harrington Station, SPS will purchase and pay for coal in inventory at the applicable Station in a quantity equal to TUCO's LIFO book inventory, regardless of the physical inventory, such that TUCO will be able to pay in full all debt which financed TUCO's coal inventories in accordance with the terms of TUCO's approved coal inventory financing agreements. Upon the payment for TUCO's LIFO book inventory as provided herein, SPS will own any coal in inventory without further compensation or obligation to TUCO.

(0077021 / 1)

Patrick Panzarino
March 28, 2006
3 of 3

Except as amended herein, all other provisions of the Agreements remain in full force and effect.

If the foregoing meets with your approval, please sign a duplicate original of this letter and return it to me as soon as practicable.

Sincerely,

TUCO INC.

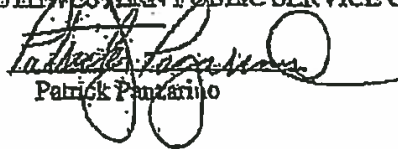

Jon E. Kelly, P.E.
Vice President

cc: Charles McNeil
George Davies, Esq.
Ray Gardner, Esq.

ACCEPTED AND AGREED TO:

SOUTHWESTERN PUBLIC SERVICE COMPANY

By:


Patrick Panzarino

(0327762) / 1)

COAL SUPPLY AGREEMENT – HARRINGTON STATION

by and between

TUCO INC.,

a Delaware corporation,

Seller

and

SOUTHWESTERN PUBLIC SERVICE COMPANY,

a New Mexico corporation and electric utility subsidiary of Xcel Energy, Inc., a Minnesota corporation,

Buyer

Effective January 1, 2018

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COAL SUPPLY AGREEMENT – HARRINGTON STATION

THIS COAL SUPPLY AGREEMENT – HARRINGTON STATION is made and entered into this 12th day of January, 2018, with an effective date of commencement of January 1, 2018 (**Effective Date**) by and between TUCO INC., a Delaware corporation, (**Seller**) and Southwestern Public Service Company, a New Mexico corporation (**Buyer**) (collectively, **Parties**) (**Agreement**).

RECITALS

WHEREAS Buyer is a public utility engaged in the generation, transmission and sale of electric power and energy and requires a long-term supply of crushed, ready-to-burn coal for use as boiler fuel at its Harrington Station power plant near Amarillo, Texas (**Harrington Station**); and

WHEREAS Seller has access through the marketplace to the quantity and quality of uncommitted commercial coal desired by Buyer as set forth in this Agreement and can deliver such coal to Buyer for the operation of Buyer's Harrington Station; and

WHEREAS Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all coal required by Buyer for the Harrington Station;

NOW, THEREFORE, in consideration of the payments, premises, and mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

1. **TERM OF AGREEMENT.** This Agreement shall be effective on the Effective Date and ending at the later of (i) midnight December 31, 2022, or (ii) until complete performance, including any makeup of deficiencies in delivery of coal to Buyer for which payment has been made under the terms of this Agreement which Seller may take under the terms of its appropriate coal purchase contracts (**Initial Term**). The Parties further agree this Agreement may, upon mutual written agreement, be extended for one five (5) year period, or such longer period which Buyer and Seller may agree, on the same terms, covenants, and conditions of this Agreement or as the Parties may otherwise agree (**Extended Term**). The word "**Term**" as used this Agreement shall refer to the Initial Term as extended by an Extended Term. Any request for extension of the Initial Term shall be made in writing at least 180 calendar days prior to the expiration of the Term.
2. **SALE AND PURCHASE.**
 - 2.1 **Volume.** During the Term of this Agreement, Seller will sell, and Buyer will purchase, subject to the terms of this Agreement, all coal necessary to meet Buyer's coal requirements for use at the Harrington Station for generation of electricity and stockpiling as Inventory.
 - 2.2 **Estimate of Annual Quantity.** On or before October 1, 2017, and by each subsequent October 1 during the Term of this Agreement, Buyer shall notify Seller of Buyer's reasonable estimate of the annual coal requirements to meet the Harrington Station's projected burn for the following year (**Annual Quantity**) (**Annual Notice**). In addition to Annual Quantity, the Annual Notice shall also include Buyer's reasonable estimates of the Annual Quantity for the one year and two years subsequent to the Annual Quantity

year (**Three Year Notice**). The Annual Quantity and the estimate for the Three Year Notice shall be stated each year on Exhibit A, which is incorporated by reference.

- 2.3 **Suppliers and Exhibit D.** The Parties acknowledge Seller has or will contract with certain suppliers under the agreements listed on Exhibit D for purchasing coal, coal handling and processing, coal transportation, railcars, railcar maintenance services, and related services enabling Seller to perform under this Agreement (**Supplier Agreements**). All current agreements listed on, and all subsequent agreements added to, Exhibit D during the Term of this Agreement are subject to Buyer's prior approval, which approval shall not be unreasonably withheld, delayed, or conditioned.

Seller shall acquire by separate agreement coal sufficient to satisfy Buyer's Annual Quantity requirements and such additional coal as may be necessary to provide a continuous supply of coal to meet the Harrington Station annual burn and for inventory for the Harrington Station. Seller's coal purchases under this Section 2.3 shall generally comply with Buyer's approved coal purchasing practices and procedures at unrelated facilities as they may change from time to time. Procedures as of the Effective date call for contracting for coal on a three year plan, typically contracting for seventy-five percent (75%) of coal needs for year one, fifty percent (50%) for year two, and twenty-five percent (25%) for year three. Each of Seller's coal supply agreements with third party vendors shall be approved by Buyer and listed on Exhibit D to this Agreement.

The Parties acknowledge that Seller has negotiated with Savage Harrington Corporation (**Savage Harrington**) a coal handling service agreement (**Harrington CHSA**) under which Savage Harrington agrees to perform coal handling, crushing, processing, facilities and equipment maintenance and repair, railcar maintenance, storage, and transportation leasing, and final delivery of processed coal at the Harrington Station bunkers, all as provided in the Harrington CHSA, which Harrington CHSA will be effective contemporaneously with this Agreement and listed on Exhibit D.

In addition to the foregoing Supplier Agreements, Seller may enter into additional agreements for inclusion in Exhibit D as reasonable and necessary to enable Seller to provide for the continuous delivery of processed coal to the Harrington Station. Buyer also acknowledges Seller will incur interest and loan expenses incident to a revolving line of working capital credit (**RLOC**) that will be obtained by Seller to fund current obligations under each Exhibit D agreement, the costs of which shall be reimbursable to Seller as provided in the Margin Agreement and Calculation Example (**Margin Agreement**) attached as Exhibit C.

3. **CHANGES IN ANNUAL DELIVERY RATE.**

- 3.1 **Insufficient Annual Quantity.** Should (a) Seller determine at any time, for any reason other than Seller's default, it will be unable to make delivery of the Annual Quantity for a calendar year under the existing Supplier Agreements, as same may be increased or decreased under Section 2.2 above; or (b) should Buyer determine the Annual Quantity will be insufficient to meet Buyer's coal requirements for the Harrington Station, then, as soon as possible after such determination, Seller or Buyer, respectively, shall so notify each other of same and Seller shall use its best efforts to arrange for the purchase, receiving, transportation, unloading, handling, crushing, weighing and/or delivery of

coal sufficient to make such deliveries or to meet such requirements. Should Seller be unable to negotiate such contracts or should they not be approved by Buyer, Buyer shall be free to pursue for its own account the purchase of sufficient coal to meet such deliveries or to meet such requirements, and Seller shall be excused from and shall not be liable for damages to Buyer on account of the inability to make delivery of such Annual Quantity or increased need of coal by Buyer so long as same is not due to the default, gross negligence or willful act of Seller. Should additional coal purchase contracts be added to Exhibit D and should Buyer be unable to accept delivery of all coal Seller is obligated to purchase under all such purchase contracts during a calendar year, other than such failure resulting from one or more events of force majeure as defined in Section 10.1, or resulting from Seller's failure to perform, then Seller may, but is not obligated to, sell such coal as Buyer is unable to accept delivery of to third parties and credit the cost of same to Buyer under Section 7 but, subject to any such credit, Buyer shall bear all costs of such coal to Seller, including cost of disposal and transportation, and payment therefore shall be made in accordance with the provisions of Section 7; provided Seller has used reasonable efforts to mitigate any damages or uncredited costs to Buyer.

- 3.2 **Third Party Liability.** If Seller incurs a payment liability to a third party supplying coal or performing services in connection with coal under a contract listed on Exhibit D during any monthly billing period or periods when no coal is purchased under this Agreement other than as a result of default, gross negligence or willful act of Seller, Buyer shall reimburse Seller for any such payment in full on a current monthly basis.

- 3.3 **Inventory.** The term "Inventory" as used in this Agreement shall mean all coal stockpiled at Seller's facilities adjacent to the Harrington Station and in transit to the Harrington Station from and after the time the title to the purchased coal passes to Seller from suppliers. During the Term of this Agreement, subject to any constraints that Buyer may place on Seller under Sections 2.2 and 3.1 of this Agreement that impairs Seller's ability to maintain Inventory, Seller will employ commercially reasonable efforts to maintain Inventory between forty (40) to sixty (60) days of burn. Days of burn shall be calculated using a maximum daily burn rate of 13,919 tons per day, or such other maximum daily burn rate as Buyer may designate from time to time.

If the Inventory for the Harrington Station falls below fifty percent (50%) of the target inventory level, as may be adjusted from time to time, senior level managers of the Parties will meet and confer within five (5) business days of notice from either Party to determine whether there is a course of action to eliminate the deficient Inventory level. If the Parties (i) are unable to determine a course of action or are unable to agree on a course of action within five (5) business days; or (ii) determine there is a course of action, but such deficient Inventory level is not eliminated within thirty (30) calendar days or within such other mutually agreed upon time period, Buyer may exercise all march-in and associated rights under Section 10.6 below. The rights and remedies in this Section 3.3 shall be in addition to, and shall not be in lieu of or act as a limitation on, any other rights and remedies Buyer may have under this Agreement or otherwise.

- 3.4 **Equal Increments of Coal.** To the extent commercially practicable, Seller shall deliver the coal it is obligated to sell, and Buyer shall accept delivery of the coal it is obligated to

purchase, each year in approximately equal increments or such other delivery schedules to which the Parties may agree, in writing, from time to time.

4. **POINTS OF DELIVERY AND TITLE.** Delivery of coal to Buyer under this Agreement shall be in Buyer's coal bunkers at the Harrington Station or any other mutually agreeable location (**Point of Delivery**). Title to the coal shall pass from Seller to Buyer at the Point of Delivery, and Buyer shall thereafter be deemed to be in exclusive control and possession of the coal and fully responsible for it. Seller warrants it has the right to sell the coal sold and delivered to Buyer under this Agreement and will defend and hold Buyer harmless from any claims, liens, or encumbrances arising from a failure of Seller's right to sell the delivered coal.
5. **QUALITY, QUANTITY, SAMPLING, AND ANALYSIS OF COAL.**

- 5.1 **Quality.** The quality of coal delivered by Seller to Buyer shall be determined by analysis of samples taken as provided in Section 5.4 below.

All analyses performed on the coal samples shall utilize current versions of procedures approved by the American Society for Testing and Materials (**ASTM**). Unless specifically stated and mutually agreed to otherwise, procedures utilized to determine the quality of coal delivered by Seller to Buyer shall be as follows:

ASTM TEST	DESCRIPTION OF TESTING PARAMETER
D1857/ D1857M-16	Standard Test Method for Fusibility of Coal
D2013/ D2013M-12	Practice for Preparing Coal Samples for Analysis
D5865-13	Standard Test Method for Gross Calorific Value of Coal and Coke
D2234/ D2234M-16	Standard Practice for Collection of a Gross Sample
D3172-13	Practice for Proximate Analysis of Coal and Coke
D3302/ D3302M-15	Standard Test Method for Total Moisture in Coal
D3174-12	Standard Test Method for Ash in the Analysis Sample of Coal and Coke from Coal
D5016-16	Standard Test Method for Total Sulfur in Coal and Coke Combustion Residues Using a High Temperature Tube Furnace Combustion Method with Infrared Absorption
D3173	Standard Test for Moisture in the Analysis of Coal and Coke

- 5.2 **Material Impurities and Size.** The coal shall be substantially free of magnetic materials and other (non-coal) material impurities. Coal shall be sized to nominal three-quarters of an inch by zero ($\frac{3}{4}$ " x 0).
- 5.3 **Sampling.** Each sample taken by Seller or Seller's representative shall be delivered to Buyer and Buyer shall divide such sample into three parts, one for use by Buyer and two to be retained by Buyer for not less than forty-five (45) calendar days under proper storage conditions. During such forty-five (45) calendar day period, upon Seller's request, Buyer shall send to Seller one such retained part and thereupon shall retain the third part for ninety (90) calendar days or until notified by Seller to release the same.

Buyer shall have the right to have a representative present at any and all times to observe such sampling.

- 5.4 **Coal Bunker Sampling.** As coal is delivered from Seller's coal piles or coal trains to the coal bunkers at the Harrington Station, it shall be sampled by Seller or Seller's representative using automatic mechanical samplers located on CV400 and CV410 conveyor belts utilized to transport coal from Seller's stockpile or Seller's trains to the Point of Delivery. All coal samples collected shall be sealed in air-tight sample bags, weighed, and properly labeled. Coal sample labels shall, at a minimum, provide the station name, station unit(s), the belt/sampler used to collect the sample, the date and time the sample was collected, and the weight of the sample. All such coal samples shall be forwarded to the Nichols Station laboratory for analysis to determine the quality of coal delivered to Buyer's coal bunkers. A copy of the procedures used to collect bunker coal samples and transfer these same samples to the Nichols Station laboratory can be provided to Buyer upon request.

In the event there is a dispute over the accuracy of any analysis by Buyer, the reserve or referee sample split shall be sent to an independent commercial testing laboratory mutually selected by Buyer and Seller and said commercial testing laboratory shall use methods approved by ASTM or other mutually acceptable procedures. The cost the analysis by the commercial testing laboratory shall be borne equally by Buyer and Seller. Seller shall have the right to have a representative present at any and all times to observe such sampling and analysis.

- 5.5 **Results of Analysis.** The results of the sampling and analysis by Buyer shall be accepted as the quality and characteristics of the coal delivered to the Harrington Station bunkers, and the same shall be used to verify the coal quality for coal delivered during each month from Seller's coal pile or coal trains; provided, however, that if either Party shall at any time question the correctness of any analysis made by Buyer, it shall have the right to have the referee or reserve split analyzed by an independent commercial testing laboratory mutually selected by Buyer and Seller and said laboratory shall use methods approved by ASTM or other mutually acceptable procedures. The analysis obtained by such laboratory shall be accepted as the quality and characteristics of the coal represented by the sample. The Party questioning the correctness of the original analysis shall pay the cost of such analysis if no adjustment to the price of coal is required as a result of such analysis. If the analysis causes a price adjustment, Buyer shall pay the cost of such analysis. If the coal quality of the coal delivered to the Harrington Station bunkers varies from the coal quality for such coal as determined pursuant to the Supplier Agreements, at Buyer's request, the Parties shall determine and resolve the cause of the discrepancy, and make necessary adjustments, if any, to Buyer's satisfaction.

- 5.6 **Coal Characteristics.** Seller represents the characteristics of the coal sold under this Agreement shall be within the ranges for typical coal as set forth in Exhibit B.

6. **WEIGHTS.**

- 6.1 **Scales.** The weights of coal sold by Seller and purchased hereunder by Buyer shall be determined on coal mill integrators at the Harrington Station. Such integrators shall be

properly inspected and calibrated by Buyer at regular intervals not more than six (6) months in duration. The weights determined on the mill integrators and reported monthly to Seller by Buyer shall be accepted as the quantity of coal delivered by Seller to Buyer at the Point of Delivery. The reported quantity of coal shall be used by Seller to prepare its invoices to Buyer and Buyer shall pay such invoices in accordance with Sections 7 and 8.

- 6.2 **Seller's Representative.** Seller shall have the right to have a representative present at any and all times to observe the weighing of the coal. If either Party should at any time question the accuracy of the scales, such Party may request a prompt test and adjustment of the scales. If the scales are determined to be accurate, the requesting Party shall pay all expenses of testing. If the scales are determined to be in error, Buyer shall pay all expenses of testing and adjusting of the scales and an appropriate adjustment shall be made in weight and related invoices and payments. Such adjustment shall be retroactive to the time of the error if such time can be factually ascertained. If the time of the error cannot be so ascertained, it will be deemed to be one-half the time between the last testing of such scales and the time the error in weighing was corrected.

7. **PRICE OF COAL.**

- 7.1 **Price Components.** Seller will bill Buyer monthly for the coal delivered to Buyer at the bunkers at Harrington Station during the period covered by such billing. For each billing period, billing will be at a rate stated in dollars per ton of coal delivered equal to the sum of cost elements in Sections 7.1(A), (B), (C), (D), and (E) below, without duplication to its respective and individual components, divided by the quantity of tons of coal delivered to the Harrington Station bunkers during the billing period, plus the Harrington Monthly Margin Amount provided for in Section 7.1(F) below and as calculated as provided in Exhibit C:

- A. **Coal Cost.** The cost of coal, including the base prices F.O.B. mine with any quality or other adjustments pursuant to the applicable Supplier Agreements.
- B. **Third Party Costs.** The cost charged to Seller by third parties to transport coal from the mine point of receipt to Seller's unloading facilities adjoining Buyer's Harrington Station.
- C. **Harrington CHSA Costs.** All amounts payable by Seller under the Harrington CHSA, or any successor or assignee of Savage Harrington permitted by the terms of the Harrington CHSA, including financial costs to Seller of carrying any such payments so made during any period when current monthly billing in full to Buyer is not authorized by the terms of this Agreement, or any amendment to this Agreement, such financial costs to be determined at an interest rate at the lesser of the Prime Rate, as such term is defined in Section 8.3 below, plus two percent (2%) or such interest rate to be agreed upon between Savage Harrington and Seller and approved by Buyer, calculated and compounded monthly from the due date to date of payment (Interest); provided, however, there shall be excluded from the foregoing any late charges in the nature of

interest incurred by Seller to Savage Harrington attributable to Seller's failure to apply payments actually made by Buyer on a timely basis.

Amounts payable by Seller under the Harrington CHSA include, without limitation, the cost incurred by or charged to Seller, for owning, leasing, storing, maintaining, or furnishing rail cars and coal processing equipment and for handling, storing, crushing, processing, weighing and delivering such coal.

D. Section Intentionally Omitted.

E. Costs of Coal Loss. One percent (1%) of the sum of components under Sections 7.1(A) and (B) above to provide reimbursement to Seller for coal losses and in lieu of any other charge to Buyer for Inventory adjustments, such percentage to be reviewed every two (2) years, commencing two (2) years from the end of Seller's 2018 Fiscal Year and in the last year of the Term, and adjusted, if necessary, to reflect actual coal losses incurred during the prior two (2) year period and to be used in computing coal losses and the percentage to be set under this Section 7.1(E) for the subsequent two (2) year period. Such coal losses shall be trued-up through Seller's Inventory account as provided in Section 7.4 below.

F. Harrington Monthly Margin Amount. In addition to any amounts due Seller under Sections 7.1(A) through 7.1(E) above, the Harrington Monthly Margin Amount provided for in the Margin Agreement attached as Exhibit C and incorporated by reference. The Harrington Monthly Margin Amount requires the calculation of the Total Monthly Margin Amount utilizing costs incurred by Seller with respect to this Agreement and the Coal Supply Agreement – Tolk Station between Seller and Buyer effective January 1, 2018 (Tolk Agreement), but the Harrington Monthly Margin Amount shall not be duplicative to any amount calculated and owed under the Tolk Agreement for coal delivered to the Tolk Station. Any reference to the Total Monthly Margin Amount in the Tolk Agreement is a reference to this same amount and calculation, but will be allocated under the Tolk Agreement based on the Tolk Percentage Share.

7.2 Proration. If any single payment or credit arises under Sections 7.1(A), (B), or (C), but does not relate solely to coal delivered to Buyer during the month the same arises, and such single payment or credit meets or exceeds Five Hundred Thousand Dollars (U.S. \$500,000), irrespective of whether such payments are made voluntarily or by agreed settlement of a disputed claim, or by determination or judgment of a regulatory body or court, the payment or credit will be prorated over twelve (12) months and paid in monthly installments which will include all costs of financing and Interest calculated as provided in Section 7.1(C).

7.3 Accounting Procedure. Seller shall use generally accepted accounting principles and per ton weight averaging determined at the close of each calendar month in determining the amount of the applicable cost components prescribed above for the determination of the price of coal sold under this Agreement. Any accounting procedure employed by Seller, however, may be changed by it so long as such changed accounting procedure is a generally accepted accounting practice.

- 7.4 **Accounting Adjustments.** During the Term of this Agreement, in consultation with Buyer's accounting professionals, Seller will make monthly accounting adjustments for Seller's fiscal year as necessary to reconcile, at Seller's fiscal year end, book inventories to the physical inventories of coal at the Harrington Station determined in accordance with the physical inventory survey at the Harrington Station. This reconciliation of Seller's book inventories to physical inventories will include Seller's book inventory per ton weighted average cost basis and tonnage and will be completed by a credit or payment adjustment to Buyer by Seller to be submitted on or about December 15 of each of Seller's fiscal years during the Term of this Agreement.

Commencing with Seller's 2019 fiscal year pursuant to the March 28, 2006 Lost Coal Letter Agreement between Seller and Buyer, a copy of which is attached as Exhibit E and incorporated by reference, the lost coal adjustment factors under this Agreement may be adjusted with agreement of the Parties as a positive percentage as provided in Section 7.1(E), to be adjusted on an as needed basis by agreement between the Parties, to minimize the payments or credits necessary to annually reconcile Seller's book inventories to the physical coal inventory at the Harrington Station at the end of each of Seller's fiscal years during the Term.

Commencing with Seller's 2019 fiscal year, an annual inventory true up for the Harrington Station will be conducted, to provide for a reconciliation, taking into consideration the lost coal factors set in accordance with the preceding paragraph, at Seller's fiscal year end, of Seller's book inventories to physical inventories determined by survey conducted at Seller's request by qualified third parties and certified to Buyer and Seller. This reconciliation will include Seller's cost basis and tonnage and will be completed by a credit or payment invoice to Buyer by Seller to be submitted on or before forty-five (45) calendar days after the end of each of the Seller's fiscal years during the Term of this Agreement.

In consultation with Buyer, Seller will conduct any additional surveys or GPS volumetric surveys each year as the Parties agree are appropriate to maintain an accurate account of the physical inventory for coal at the Harrington Station. The costs associated with the annual survey and any additional surveys as provided in this Agreement will be reimbursed to Seller through the cost reimbursement provisions of this Agreement.

It is the intent of the Parties, upon the expiration or earlier termination of this Agreement, to the extent there is a disparity between Seller's book inventory and the physical inventory for coal at the Harrington Station, Buyer will purchase and pay for coal in inventory at the Harrington Station in a quantity equal to Seller's book inventory, regardless of the physical inventory, such that Seller will be able to pay in full all debt which financed Seller's coal inventory in accordance with the terms of Seller's approved coal inventory financing agreements. On the payment for Seller's book inventory as provided herein, Buyer will own any coal in inventory without further compensation or obligation to Seller.

8. **BILLINGS AND PAYMENTS.**

8.1 **Billings.** Seller will bill Buyer by the eighth (8th) day of the calendar month following the close of the billing month, and Buyer will pay Seller in full by wire transfer of funds by the first business day after the fifteenth day of that calendar month. Buyer shall furnish Seller with the quantity of coal sold to Buyer under Section 7.1(A) in sufficient time to enable Seller to bill Buyer. All statements, billings, and payments shall be subject to correction of any errors until the expiration of two (2) years after the date of invoice of Seller.

8.2 **Examination.** Both Seller and Buyer shall have the right to examine, at reasonable times, books, records, laboratory tests, audits, and charts of the other to the extent necessary to verify the accuracy of any statement, test, chart, or computation made under or pursuant to any of the provisions of this Agreement. Buyer shall also have the right to examine books of Seller, but not more than once per calendar year. Any information or material obtained as a result of such examination shall not be disclosed by the Party receiving the information or material without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Copies of audit information received or generated by Seller relating to the Harrington CHSA shall be provided to Buyer.

8.3 **Interest.** If either Buyer or Seller fails to pay the other an amount that is due and owing, interest shall accrue on the unpaid amount at the rate of one percent over the Prime Rate until paid. For the purposes of this Agreement, "Prime Rate" is defined as the annual rate of interest published and in effect according to The Wall Street Journal on the date the obligation to pay interest on such amount commences. If the Wall Street Journal ceases to publish a Prime Rate, the Parties shall meet in good faith to designate a substitute source of a Prime Rate.

9. **REGULATORY BODIES.** This Agreement shall be subject to all applicable orders, directives, rules and regulations of any governmental agency having jurisdiction over this Agreement, one or more of the Parties, or the matters covered by this Agreement.

10. **FORCE MAJEURE.**

10.1 **Definition.** The term "force majeure" as used herein shall mean acts of God, acts of the public enemy, blockades, insurrections, strikes, or differences with workmen, riots, disorders, civil disturbances, fires, explosions, storms, floods, landslides, washouts, labor and material shortages, boycotts, breakdowns of or damage to plants, equipment or facilities, interruptions or breakdowns of the power system serving either Buyer's or Seller's facilities, interruptions to transportation, default or inability or failure to supply by Seller's coal suppliers for reasons other than Seller's default in its contracts with such suppliers so long as such default is not due to any action or inaction of Buyer, embargoes, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, arrests and restraints, the failure, inability, or default of Savage Harrington to unload, handle; crush and/or deliver into Buyer's bunkers the quantities of conforming coal required by the terms of the Coal Handling Service Agreement for reasons other than Seller's default thereunder or Seller's failure to furnish sufficient quantities of conforming coal to permit Savage Harrington's

performance, and, without limitation by enumeration, any other cause or causes not reasonably within the control and without the fault or negligence of the Party in default, whether of the kind above enumerated or not, which wholly or partly prevent (i) the supply of coal to Seller or (ii) the receiving, transporting, unloading, handling, crushing, weighing or delivering of the coal by Seller or (iii) the acceptance or the utilizing of the coal by Buyer.

In addition, if either Party is delayed, restricted or prohibited from installing, constructing or operating the equipment or facilities necessary for it to perform its part of this Agreement or is otherwise impaired from operating its property as a result of restrictions upon, delays, in receiving, or failures to receive, any permits, approvals, licenses or other governmental entitlements, such restrictions, delays or failures, regardless of the reason therefore, shall be deemed to be force majeure.

- 10.2 **Obligations Under Force Majeure.** If because of force majeure, either Party is unable to carry out any of its obligations under this Agreement, and if such Party shall promptly give to the other Party written notice of such force majeure, then the obligations of the Party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance; provided, however, the Party giving such notice shall use its best efforts to eliminate such force majeure insofar as possible with a minimum of delay. Nothing herein contained shall cause the Party affected by the force majeure to submit to what it considers to be unreasonable conditions or restrictions or to submit to an unfavorable labor agreement, and it is agreed any settlement of labor strikes or differences with workmen shall be entirely within the sole discretion of the affected Party. Buyer shall pay for all coal to which Buyer has obtained title prior to the date of Buyer's notice of force majeure to Seller. Any deficiencies in deliveries or acceptance of coal under this Agreement, caused by force majeure, shall not be made up except by mutual consent. Force majeure shall not relieve any Party of the obligation to make any payments due under this Agreement.
- 10.3 **Suspension.** Either Party shall have the right to elect to suspend the sale or purchase of coal, as the case may be, for the period of time during which such force majeure may exist. Buyer, if it so elects, shall have the right during such period to purchase coal from other sources and Seller, if it so elects, shall have the right during such period to sell coal to others.
- 10.4 **Effect of Prohibition.** It is expressly understood any prohibition to take deliveries of, or to utilize the coal subject to this Agreement, which is imposed upon the Buyer by means of laws, regulations or orders of a court or administrative body, whether or not such event is beyond the control of Buyer, shall not for the purposes of this Agreement negate the agreement set forth in Sections 10.5 and 10.6(C) below.
- 10.5 **Steps to Avoid Restriction.** The Parties recognize, during the term of this Agreement, any treaty, legislative or regulatory bodies or the courts having competent jurisdiction over the subject matter of this Agreement and/or the Parties may change, enact, promulgate, issue, revise, and/or interpret treaties, laws or regulations, rules, orders, enforcement procedures or permits such as, but not limited to, those relating to air quality, global climate change, emissions or other environmental concerns (**Change in Law**), the effect of which may preclude, prevent, materially impede or materially restrict

the utilization of the coal subject to this Agreement in conformance with the Change in Law without material modification or substantially changing or altering the equipment in which it will be utilized, or Buyer's operations, or otherwise result in a material increase in the cost of operation of the Harrington Station, including, but not limited to, costs associated with controlling the amount of carbon, mercury, or other elements and/or substances emitted or discharged from the Harrington Station.

If any such laws, regulations or orders are imposed, Buyer shall immediately notify Seller. Buyer and Seller shall promptly meet to consider what steps can be taken in the handling and combustion of coal at Harrington Station to avoid such restriction; and, if such steps are available and feasible and will not result in unreasonable expense to Buyer, Buyer shall promptly take such steps. Such steps shall include the installation of equipment which is commercially available and which can be reasonably expected to avoid the effect of such restriction or which will result in compliance therewith. If no such steps are available, or if such steps are not feasible or will result in unreasonable expense to Buyer, Buyer shall so advise Seller.

Thereupon, Seller shall promptly consider with its suppliers what steps can be taken in the mining and preparation of coal at its suppliers' mines to avoid such restriction, and if such steps are available at a reasonable expense, such steps will be taken. If the price of coal to Seller is increased to compensate Seller's supplier for any additional reasonable capital and expense incurred by it in taking such steps, upon the approval of Buyer, the price of such coal sold to Buyer under this Agreement will be similarly increased so long as such price increase is reasonable. No expense or price increase contemplated by this Section 10.5 shall be deemed reasonable if it would result in a total cost to Buyer, in using Seller's coal, in excess of One Million Dollars (U.S. \$1,000,000) of capital costs in the aggregate, or in excess of Five Hundred Thousand Dollars (U.S. \$500,000) of annual operation and maintenance costs in the aggregate. If no remedial steps are available for Seller's suppliers, Buyer shall have the right upon one year's notice to Seller, to terminate this Agreement, subject to the obligation to pay amounts due, but unpaid on the date of termination, under Section 7.1 and Exhibit C.

Additionally, and notwithstanding the foregoing, to the extent Supplier Agreements listed on Exhibit D (as Exhibit D may be amended from time to time by the addition of new or modified agreements) contain rights or remedies for Seller to terminate or otherwise modify the obligations of Seller under the Supplier Agreements, including, without limitation, rights and remedies under Section 15 of Seller's coal purchase Supplier Agreements to terminate such agreements in the event of a Change in Law or otherwise, Buyer shall have the right to direct Seller, and if so directed, Seller agrees to exercise such rights and remedies under the Supplier Agreements if the conditions for such exercise are met, and Buyer shall have the right to terminate this Agreement or modify its obligations under this Agreement consistent with the rights and remedies exercised by Seller under the Supplier Agreements.

10.6 Delivery Failure or Preclusion.

- A. In the event Seller fails to continue or is unable or precluded from continuing deliveries of coal to Buyer as provided in this Agreement, whether or not such failure is due to force majeure, and the reason therefore would not preclude

Buyer from the operation of Seller's facilities or performance of the contracts required to continue deliveries to Buyer, in addition to any other rights and remedies Buyer may have under this Agreement, at law or in equity, Buyer shall have the right to act in behalf of and in the place and stead of Seller to take whatever steps or actions are necessary to perform that portion of the agreements listed on Exhibit D (including, if deemed necessary by Buyer, to demand and receive from Seller an assignment of such agreements), and the facilities operated under this Agreement, which Seller is not performing until such time as Seller is ready and able to resume the deliveries of coal.

- B. When Seller is ready and able to resume deliveries of coal, Buyer will reinstate Seller to possession of whatever facilities it had taken, will reassign any agreements which had been assigned to it and will account for its operation of Seller's facilities and its performance of Seller's contracts. Buyer will indemnify and hold Seller harmless against any and all claims and causes of action, of whatsoever nature and description, for damage to property, normal wear and tear excepted, or injury to or death of any person directly caused by Buyer or by a third party acting on Buyer's behalf occurring during or as a consequence of Buyer's takeover of said facilities or performance of said contracts.
- C. Except as otherwise provided in Section 10.6(D) below, in the event Buyer takes over the operation of any facilities or contracts pursuant to Section 10.6(A), it will pay Seller for coal delivered to Buyer in accordance with Sections 7 and 8, except for the Monthly Administrative/Capital Fee under the Exhibit C Margin Agreement, but Seller shall reimburse Buyer for the reasonable costs incurred by Buyer in taking over and operating Seller's facilities or performing Seller's contracts and Seller shall include such reimbursement in the price of coal provided for in Section 7.1(A).
- D. In the event (i) Buyer permanently takes over any facilities or contracts as a consequence of Seller's insolvency, bankruptcy, or abandonment of its obligations to Buyer or to its third party suppliers; or (ii) the inability of Seller to deliver coal to Buyer for six (6) consecutive months for any reason, this Agreement shall automatically terminate and Buyer shall permanently take over all agreements listed in Exhibit D, will purchase and pay for Seller's entire Inventory, as defined in Section 3.3 above, at Seller's cost as calculated in Section 7.1 as of the date of permanent takeover and will reimburse Seller in full for any charges incurred by Seller under Section 7.1 prior to the date of termination, but not yet paid by Buyer as of the date of termination, including, without limitation, all then-outstanding amounts due under the RLOC for payments made on Exhibit D agreements.
- E. In the event Buyer fails to accept deliveries of coal under this Agreement for a period of sixty (60) consecutive calendar days for any reason, including force majeure, and Seller is unwilling to accept the financial risk involved in Buyer's extended failure to accept deliveries of coal under this Agreement, then Seller shall have the right, and without prejudice to any other right of Seller, to demand Buyer assume, and thereupon this Agreement shall terminate and Buyer will (i) assume Seller's obligations under the agreements listed in

Exhibit D; and (ii) purchase and pay for Seller's entire Inventory, as defined in Section 3.3 above, at Seller's cost as calculated in Section 7.1 as of the date of permanent takeover; (iii) reimburse Seller in full for any charges incurred by Seller under Section 7.1 prior to the date of termination, but not yet paid by Buyer as of the date of termination, including, without limitation, all then-outstanding amounts due under the RLOC; and (iv) reimburse Seller for reasonable out of pocket costs, including reasonable attorney fees, incurred in implementing this Section 10.6(E), subject to the terms and conditions provided in the Margin Amendment Agreements attached as Exhibits 1 and 3 to Exhibit C.

- 10.7 **Early Termination.** In addition to the early termination provisions of Sections 10.6(D) and (E), Buyer and Seller reserve the right to terminate this Agreement on at least one (1) year's written notice to the other. On the date that is one (1) year from the date of such notice, or if a date is set forth in the notice for termination that is more than one (1) year from the date of such notice, then on the date set forth in such notice, this Agreement shall terminate and Buyer will (i) assume Seller's obligations under the agreements listed in Exhibit D; (ii) purchase and pay for Seller's entire Inventory, as defined in Section 3.3 above, at Seller's cost as calculated in Section 7.1 as of the date of permanent takeover; (iii) reimburse Seller in full for any charges incurred by Seller under Section 7.1 prior to the date of termination, but not yet paid by Buyer as of the date of termination, including, without limitation, all then-outstanding amounts due under the RLOC for payments made on Exhibit D agreements; (iv) if Seller is not the party giving notice of early termination, reimburse Seller for reasonable out of pocket costs, including reasonable attorney fees incurred in implementing this Section 10.7, subject to the terms and conditions provided in the Margin Amendment Agreements attached as Exhibits 1 and 3 to Exhibit C; and (v) if Seller is not the party giving notice of early termination, pay to Seller an amount equal to the sum of one month of Seller's then current monthly Administrative/Capital Fees and Operating Expenses multiplied by two (2). After notice by either Party, during the period leading up to and on the date of termination, if Buyer instructs Seller in writing on how it wishes Seller to manage the contracts in Exhibit D in accordance with their terms during such period, including, without limitation, exercising any rights under such contracts to provide notice of termination, to terminate, to reduce coal deliveries and inventory, and to reduce rail transportation, Seller shall follow such instructions from Buyer.

11. **DEFAULT AND WAIVER.**

- 11.1 **Notice.** It is covenanted and agreed if either Party deems the other Party (**Defaulting Party**) has failed to perform any of the covenants or obligations imposed upon it under this Agreement, the Party asserting default shall deliver to the Defaulting Party written notice stating specifically the claimed default. The Defaulting Party shall have thirty (30) calendar days after receipt of the aforesaid notice in which to remedy or remove the claimed default, and if it fails to do so in such time, the other Party may pursue such remedies as may be available to it.
- 11.2 **March-In Rights.** As noted in Section 2.3 of this Agreement, Seller has entered into the Harrington CHSA under which Savage Harrington agrees to perform coal handling, crushing, processing, facilities and equipment maintenance and repair, railcar maintenance, storage, and transportation leasing, and final delivery of processed coal at

the Harrington Station bunkers, all as provided in the Harrington CHSA. To enable Seller to enter into the Harrington CHSA and in consideration of Seller's obligations assumed in the Harrington CHSA, Buyer and Seller agree as follows:

Under conditions precedent as set forth under Section 10.6 of this Agreement and the Harrington CHSA and Access Agreement attached as Exhibit N to the Harrington CHSA, SPS may during the Term come into possession of the Property, Facilities, and Railcars, as defined in the Harrington CHSA (**March-In**). In the event of a force majeure or other event giving rise to a March-In circumstance, Seller and Savage Harrington agree to provide immediate access to, and the use of, the Facilities and Railcars to SPS or SPS' designated contractor or cause the Railcars and Facilities, respectively, to be restored or leased to SPS or SPS' designated contractor for SPS to perform under the Harrington CSA and the Harrington CHSA. In the event of a default by Savage Harrington or Seller under the Harrington CHSA, or Seller under the Harrington CSA, SPS may, instead of Seller and in satisfaction of its March-In obligations to Seller and Savage Harrington, provide its own employees to perform all Coal handling functions including Operation and Maintenance of Railcars at any and all times Savage Harrington and/or Seller fails, to keep SPS' coal bunkers sufficiently filled to permit continuous operation of SPS' Harrington Station units. While SPS is providing its own employees to perform Coal handling and Railcar Operation and Maintenance services, SPS and Seller are released from Seller's obligation to make the Operating and Maintenance Costs payments to the extent of, but not in excess of, Operating and Maintenance Costs actually paid out by Seller which would otherwise have been payable to Savage Harrington under the Harrington CHSA. SPS shall withdraw its employees and Seller will resume the payment procedures under the Harrington CHSA at such time as Savage Harrington and/or Seller have the capability to meet the requirements of Section 3 of the Harrington CHSA.

- 11.3 **No Waiver.** No waiver by either Party of any one or more default by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.
- 11.4 **General Rights.** In the event of an uncured default by either Party, in addition to all remedies provided under this Agreement, the non-defaulting Party shall have all rights and remedies at law or in equity in any litigation or arbitration initiated under this Agreement.

12. **DISPUTE RESOLUTION THROUGH BINDING ARBITRATION.**

- 12.1 **Informal Dispute Resolution.** If any dispute arises between Buyer and Seller under this Agreement, the aggrieved Party will promptly notify the other Party, in writing, of its intent to invoke this dispute resolution procedure. The Parties will meet as soon as practicable in good faith to attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) business days after the delivery of such written notice, then within five (5) business days thereafter, Seller will nominate two (2) senior level managers and Buyer will nominate two (2) senior level managers to meet at a mutually agreed upon location in the Denver metropolitan area, or a location as otherwise agreed, to attempt, in good faith, to resolve the dispute. If the Parties are unable to resolve the dispute to their mutual satisfaction within ten (10) business days after such nomination, the Parties are free to pursue relief under Section 12.2 of this Agreement.

Notice and cure periods provided in Section 11.1 shall run concurrently with the time periods set forth in this Section 12.1, unless the Parties otherwise agree.

- 12.2 **Arbitration.** Any and all disputes, claims, or controversies between the Parties, including any assignees of the Parties, arising out of or relating to this Agreement that are not resolved by their mutual agreement shall be submitted to binding arbitration in the State of Texas before the American Arbitration Association (AAA) under the AAA's commercial arbitration rules then in effect, subject to the provisions of this Section 12.2, except and excluding matters involving a dispute claim or controversy by Buyer or Seller for specific performance, in which case all claims at law or in equity may be filed in a Texas state or federal court having jurisdiction over the dispute, in the Buyer's or Seller's sole discretion as the case may be. The Party calling for arbitration (**Initiating Party**) shall give written notice to the other Party setting forth: (a) a statement of the issue(s) to be arbitrated; (b) a statement of the claim showing that the Initiating Party is entitled to relief; and (c) a statement of the relief to which the Initiating Party claims to be entitled. Within thirty (30) calendar days from the receipt of such notice, the other Party (**Receiving Party**) may submit its written response and give notice in the same manner required above of additional issues to be arbitrated. The Initiating Party shall have twenty (20) calendar days from receipt of said response to respond to any issues submitted for arbitration by the Receiving Party.

Within sixty (60) calendar days of the date of the Initiating Party's written notice requesting arbitration, the Parties shall agree upon a competent and impartial person to act as the arbitrator. In the event the Parties cannot agree on the arbitrator, the arbitrator shall be selected pursuant to the rules of the American Arbitration Association (AAA) and the selection shall be binding and non-appealable.

The Parties will participate in the arbitration in good faith and shall share in its costs in accordance with this Agreement. The Parties shall share equally in the costs of the arbitrator and pay their own attorneys' fees and costs, subject to any attorneys' fees and costs awarded by the arbitrator. The provisions of this Section 12.2 may be enforced by any court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the Party against whom enforcement is ordered. The arbitrator shall not award any special, indirect, incidental, consequential, punitive or exemplary damages against either Party. Judgment upon the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Upon the conclusion of any arbitration proceedings under this Agreement, the arbitrator shall render findings of fact and conclusions of law and a final written arbitration award setting forth the basis and reasons for any decision reached (**Final Award**) within thirty (30) calendar days of the conclusion of the arbitration and shall deliver such documents to the Parties, together with a signed copy of the Final Award. Subject to the provisions of this Agreement, the Final Award shall constitute a conclusive determination of all issues in question, binding upon the Parties, and shall include an affirmative statement to such effect. The arbitrator chosen in accordance with these provisions shall not have the power to alter, amend, or otherwise affect the terms of these arbitration provisions or any of the other provisions of this Agreement. Except as specifically otherwise provided in this Agreement, arbitration conducted in accordance with this Agreement shall be the sole and exclusive means of seeking redress of the Parties.

13. **NOTICES.** All notices, statements, demands, requirements, or other communications and documents (**Communications**) required or permitted to be given, served, or delivered by or to either Party or any intended recipient under this Agreement shall be in writing and shall be either delivered by hand, sent by a nationally recognized overnight courier service, or to such other address as either Party may from time to time have notified the other Party as being its address for purposes of this Agreement to the exclusion of all previously applicable addresses. Communications shall be deemed to have been given, served, or delivered upon delivery or, if delivery is refused, upon first attempted delivery, between 9 a.m. and 5 p.m. in the recipient's time zone. The addresses of the Parties are as follows:

If intended for Seller: TUCO INC.

Attention: Vice President
6900 I-40 West, Suite 240
Amarillo, Texas 79106

and

TUCO INC.

Attention: Vice President
5251 DTC Parkway, Suite 800
Greenwood Village, Colorado 80111-2737

With a copy, which copy does not constitute notice, to:

John J. Coates, Esq.
DILL DILL CARR STONBRAKER & HUTCHINGS, P.C.
455 Sherman Street, Suite 300
Denver, Colorado 80203

or such other persons or such other address as Seller shall have designated by due notice to Buyer.

If intended for Buyer: Xcel Energy
Director, Fuel Supply Operations
1800 Larimer Street, Suite 1000
Denver, Colorado 80202

With a copy, which copy does not constitute notice, to:

Xcel Energy
Assistant General Counsel Energy Supply
1800 Larimer Street, Suite 1100
Denver, Colorado 80202

or such other persons or such other address as Buyer shall have designated by due notice to Seller.

Rejection or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice as of the date such notice was deposited in the mail or delivered to the courier. In the event of a change of address by

Buyer or Seller, Buyer and Seller shall also give notice of such change in address to the other Party.

14. **MISCELLANEOUS.**

14.1 **Limitation on Damages.** Under no circumstances shall either Party be liable to the other Party for consequential, indirect, or exemplary damages.

14.2 **Assignment.** Each Party shall have the right to assign its rights and delegate its obligations under this Agreement, in whole or in part, to any third party at any time during the Term upon receiving the prior written consent of the other Party, such consent not to be unreasonably conditioned, withheld, or delayed; provided, however, any such assignment shall be expressly made subject to all the terms, conditions, and covenants of this Agreement. For avoidance of doubt, a Party's consent to a proposed assignment shall not be deemed to have been unreasonably withheld if the proposed assignee is not technically and financially capable of performing the assigning Party's obligations under this Agreement, including, without limitation, indemnification obligations. Notwithstanding the foregoing, Buyer consents to Seller's execution of a collateral assignment of Seller's rights under this Agreement to Seller's RLOC lenders, which assignment shall be subordinate in all respects to all rights and obligations of Buyer under this Agreement.

14.3 **Taxes and Assessments.** Subject to the terms of this Agreement, the Seller shall pay or cause to be paid all taxes and assessments imposed on Seller with respect to the coal sold under this Agreement prior to its delivery to Buyer, and Buyer shall pay or cause to be paid all taxes and assessments imposed upon Buyer with respect to the coal received by it under this Agreement after its receipt by Buyer. Neither Party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other Party used for the purpose of carrying out the provisions of this Agreement.

14.4 **Controlling Law.** The terms and conditions of this Agreement and subsequent performance of this Agreement shall be construed and controlled by the laws of the State of Texas. The Parties agree any claim or suit arising out of this Agreement and not subject to arbitration under Section 12.2, shall be brought in a state or federal court in Texas having jurisdiction over the claims at issue.

14.5 **Waiver of Jury Trial.** The Parties hereby knowingly, voluntarily, and intentionally waive the right either may have to a trial by jury in respect of any litigation that is not subject to arbitration under Section 12.2, or arising out of, under, or in connection with this Agreement and any document executed in connection with this Agreement, or any course of conduct, course of dealing, statements, whether oral or written, or actions of either Party. This provision is a material inducement for the Parties to enter into this transaction.

14.6 **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and no amendment or modification of this Agreement shall be valid or binding unless reduced to writing and executed by the Parties or their permitted assigns.

- 14.7 **Headings.** The topical headings used herein are inserted for convenience and reference only and shall not be construed as having any substantive significance or meaning whatsoever or as indicating all of the provisions of this Agreement relating to any particular topic are to be found in any particular section. The headings or captions of this Agreement in no way define, describe, extend or limit the scope, meaning or intent of this Agreement.
- 14.8 **Attorneys' Fees; Litigation.** Notwithstanding any provisions in this Agreement to the contrary, in the event of litigation regarding this Agreement, the prevailing Party will be entitled to recover their reasonable attorneys' fees and costs.
- 14.9 **Successors and Assigns.** This Agreement will bind and inure to the benefit of the respective successors and permitted assigns of the Parties.
- 14.10 **Survival.** The Parties' representations and warranties and provisions of this Agreement that contemplate performance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.
- 14.11 **Counterparts.** This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose. This Agreement may be executed and delivered by facsimile, portable document format (.pdf), or other electronic delivery, each of which will be as binding and effective as an original signature.
- 14.12 **Not Binding Until Execution.** The submission of this Agreement for examination does not constitute an offer by or to either Party. This Agreement will be effective and binding only after execution and delivery by the Parties.
- 14.13 **Modifications; Waivers.** No or other modifications or changes to this Agreement shall be effective or binding on either Party unless the same shall be in a writing executed by both Parties. No waiver by either Party of any one or more defaults by the other in the performance of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or different nature.
- 14.14 **Time Periods.** Time is of the essence under this Agreement. In the event the last day permitted for the performance of any act required or permitted under this Agreement falls on a day other than a Business Day, the time for such performance will be extended to the next succeeding Business Day. Each time period under this Agreement will exclude the first day and include the last day of such time period.
- 14.15 **Schedules.** All recitals, schedules, and exhibits referred to in this Agreement are incorporated in this Agreement by reference and will be deemed part of this Agreement for all purposes as if set forth at length in the body of the Agreement.
- 14.16 **Severability.** The invalidation or unenforceability in any particular circumstances of any of the provisions of this Agreement will in no way affect any of the other provisions of this Agreement, which will remain in full force and effect.

- 14.17 **No Joint Venture, Partnership, Agency, Etc.** This Agreement will not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer employee relationship between Buyer and Seller.
- 14.18 **No Third-Party Beneficiaries.** This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a Party, or a successor or assign of a Party, to this Agreement.
- 14.19 **Further Assurances.** After this Agreement is fully signed, Seller and Buyer each will execute and deliver such additional documents, instruments, and assurances, and take such further actions as may be necessary to carry out the provisions of this Agreement or give effect, confirm, assure, or validate any of the transactions contemplated by this Agreement, whenever reasonably requested by the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

SELLER:

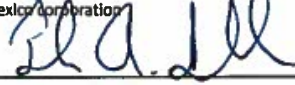
TUCO INC.,
a Delaware corporation

By: 

Charles S. McNeil
Its President

BUYER:

SOUTHWESTERN PUBLIC SERVICE COMPANY,
a New Mexico corporation

By: 

Thomas A. Imbler
Vice President, Commercial Operations
Xcel Energy Services Inc., a Delaware corporation,
as Authorized Signatory for
Southwestern Public Service Company

EXHIBIT A

ANNUAL COAL QUANTITIES AND THREE YEAR ESTIMATE NOTICE

2018 BURN FORECAST (TONS)												
	January	February	March	April	May	June	July	August	September	October	November	December
Harrington 1	93,819	100,660	97,465	72,335	90,445	95,344	96,389	117,939	89,469	102,087	77,502	100,074
Harrington 2	109,660	81,881	97,291	99,177	83,136	95,689	106,339	105,168	78,358	112,665	83,501	95,035
Harrington 3	107,746	100,791	98,511	81,323	107,827	89,062	101,040	96,521	71,704	0	89,044	89,204
Tolk 1	78,840	21,439	19,018	78,263	80,108	143,166	161,111	161,937	154,570	75,382	82,989	78,840
Tolk 2	84,346	76,184	73,349	54,303	84,346	154,226	148,730	153,192	149,757	80,832	73,349	84,346
H & T Totals	474,411	380,955	385,634	385,401	445,862	577,487	613,609	634,757	543,858	370,966	406,385	447,499
Harrington Totals	311,225	283,332	293,267	252,835	281,408	280,095	303,768	319,628	239,531	214,752	250,047	284,313
Tolk Totals	163,186	97,623	92,367	132,566	164,454	297,392	309,841	315,129	304,327	156,214	156,338	163,186
THREE YEAR ESTIMATE												
	2019 January	2019 February	2019 March	2019 April	2019 May	2019 June	2019 July	2019 August	2019 September	2019 October	2019 November	2019 December
Harrington 1	28,085	5,502	76,349	14,589	17,969	66,949	80,598	94,181	18,196	10,867	0	76,459
Harrington 2	87,496	97,827	73,131	38,617	53,000	79,840	78,460	85,960	46,851	50,116	51,207	79,359
Harrington 3	104,728	86,296	79,325	93,591	73,115	82,309	91,982	82,942	77,652	87,251	77,562	82,976
Tolk 1	128,975	118,970	127,758	98,307	115,839	114,501	126,984	129,454	107,307	117,900	100,409	101,006
Tolk 2	124,391	118,866	111,385	107,073	123,920	104,407	124,292	127,182	102,661	124,189	98,941	108,739
H & T Totals	473,574	427,460	467,949	352,177	383,843	448,007	502,316	519,718	352,667	390,322	328,118	448,540
2020												
Harrington 1	82,546	87,075	80,412	21,767	28,102	78,447	96,400	92,881	45,169	43,983	22,268	80,212
Harrington 2	82,585	0	0	35,905	80,238	79,740	77,127	101,879	54,169	74,203	37,490	76,497
Harrington 3	76,857	76,574	84,124	88,173	57,119	92,848	90,739	93,946	91,115	86,316	84,953	80,815
Tolk 1	113,062	106,637	86,606	98,401	106,880	123,101	120,985	141,350	116,376	126,974	109,372	108,913
Tolk 2	113,708	103,457	102,522	51,830	8,432	114,464	115,811	130,771	110,587	125,020	104,103	110,557
H & T Totals	468,756	373,743	353,664	296,076	280,770	488,600	501,062	560,827	417,416	455,495	358,187	456,994
2021												
Harrington 1	81,075	68,575	81,485	18,653	28,375	86,971	99,111	107,893	58,905	92,215	34,746	82,227
Harrington 2	79,554	76,703	72,422	56,115	81,017	81,017	98,520	88,671	72,340	93,863	46,861	89,382
Harrington 3	74,978	75,884	69,107	85,930	81,509	85,402	87,519	77,066	53,015	6,972	73,503	76,103
Tolk 1	109,380	85,607	0	77,918	107,360	126,720	125,609	137,119	113,414	131,551	107,225	113,861
Tolk 2	106,006	96,056	99,985	82,874	102,664	130,399	125,872	143,339	114,726	129,552	109,186	113,496
H & T Totals	450,992	402,825	322,998	321,490	368,045	510,507	536,630	554,087	412,400	454,154	371,520	475,070
2022												
Harrington 1												
Harrington 2												
Harrington 3												
Tolk 1												
Tolk 2												
H & T Totals												

Page 1 of 1

Exhibit A to January 1, 2018 Coal Supply Agreement - Harrington Station
between TUCO INC. (Seller) and Southwestern Public Service Company (Buyer)

EXHIBIT B

**TYPICAL COAL QUALITY AND CHARACTERISTICS
OF SOUTHERN POWDER RIVER BASIN "8800 BTU" COAL**

PROXIMATE ANALYSIS-CALCULATED AS-RECEIVED BASIS	TYPICAL	MIN-MAX
Moisture, %	26.70	24.1-27.9
Ash, %	4.90	3.6-6.8
Volatile Matter, %	31.10	28.4-34.7
Fixed Carbon, %	37.00	33.8-40.8
Btu/Lb.	8877	8500-9100
Sulfur, %	0.25	0.12-0.36
SO ₂ Lb/MM Btu	0.55	0.29-0.81
ULTIMATE ANALYSIS-CALCULATED AS-RECEIVED BASIS	TYPICAL	MIN-MAX
Moisture, %	26.70	24.1-27.9
Ash, %	4.90	3.6-6.8
Hydrogen, %	3.50	3.1-4.0
Carbon, %	51.70	51-56
Nitrogen, %	0.70	0.5-1.0
Sulfur, %	0.25	0.12-0.36
Oxygen, % (By Difference)	12.20	10.6-14.3
DRY, WHOLE COAL BASIS	TYPICAL	MIN-MAX
Chlorine (ppm)	8.70	7-14
Mercury (ppm)	0.065	0.050-0.102
MINERAL ANALYSIS OF ASH % IGNITED BASIS	TYPICAL	MIN-MAX
Silicon Dioxide	34.70	36.1-45.2
Aluminum Oxide	17.60	16.1-19.5
Titanium Oxide	1.40	0.90-1.7
Ferric Oxide	6.10	3.3-9.2
Calcium Oxide	21.90	18.1-33.2
Magnesium Oxide	4.90	3.8-7.5
Potassium Oxide	0.50	0.3-0.6
Sodium Oxide	1.50	0.8-2.2
Sulfur Trioxide	9.40	4.2-13.6
Phosphorus Pentoxide	1.10	0.3-3.0
Manganese Oxide	0.04	0.6-1.3
Strontium Oxide	0.30	0.2-0.6
Barium Oxide	0.60	0.4-1.2
Undetermined		
FUSION TEMPERATURE, DEGREES F - REDUCING	TYPICAL	MIN-MAX
Initial Deformation	2153	1998-2362
H = W	2173	2011-2379
H = ½ W	2189	2020-2396
Fluid	2207	2033-2437
FUSION TEMPERATURE, DEGREES F - OXIDIZING	TYPICAL	MIN-MAX
Initial Deformation	2216	2076-2404
H = W	2233	2089-2417
H = ½ W	2246	2094-2442
Fluid	2267	2105-2497

EXHIBIT B

HARDGROVE GRINDABILITY INDEX	TYPICAL	MIN-MAX
	58	51-74
WATER SOLUBLE ALKALIES - % AS DETERMINED	TYPICAL	MIN-MAX
Potassium Oxide	0.004	0.003-0.010
Sodium Oxide	0.060	0.010-0.110
EQUILIBRIUM MOISTURE - %	TYPICAL	MIN-MAX
	25.73	23.6-26.8
BASE: ACID RATIO	TYPICAL	MIN-MAX
	0.66	0.3-1.2
T250 - DEGREES F	TYPICAL	MIN-MAX
	2245	2067-2459

EXHIBIT C

MARGIN AGREEMENT AND EXAMPLE CALCULATION

The Harrington Monthly Margin Amount referenced in Section 7.1(F) of this Agreement is calculated as follows: (Harrington Percentage Share x Total Monthly Margin Amount).

“Harrington Percentage Share” means a percentage equal to the quantity of tons of coal delivered to the Harrington Station bunkers during the month divided by the total quantity of tons of coal delivered to the Harrington Station bunkers and to the Tolk Station bunkers during the month.

“Total Monthly Margin Amount” means the sum of (i) the Working Capital Cost incurred by Seller in connection with this Agreement and the Tolk Agreement for that month (Margin Item A); (ii) Inventory interest charges to Seller with respect to this Agreement and the Tolk Agreement for that month (Margin Item B); (iii) the fixed monthly Administrative/Capital Fee of \$72,500 (Margin Item C); (iv) the Tax Adjustment, if any, for that month (Margin Item E); and (v) Operating Expenses of Seller; plus extraordinary expenses, if any, incurred from time to time under the December 14, 2010 Margin Amendment Agreement (Margin Amendment Agreement) attached as Exhibit 1 to this Exhibit C (Margin Item F). Margin Items D, G, H and I are no longer applicable. The methods for calculation and determination of Margin Items A, B, C, E, and F are set forth in Exhibits 1 and 3 of this Exhibit C. Each of the 2010, 1996, and 2001 Margin Amendment Agreements attached as Exhibits 1, 2, and 3 to this Exhibit C, respectively, are provided only as a demonstration of the approach and methodology the Parties intend to use in connection with the determination and calculation of the Harrington Monthly Margin Amount under this Agreement. Each of Exhibits 1, 2, and 3 to this Exhibit C and the April 30, 1979 Coal Supply Agreement or related agreements to which the Exhibits apply, are not incorporated into the terms of this Agreement, nor shall any such terms and conditions be a part of this Agreement. It is the intent of the Parties by the attachment of Exhibits 1, 2, and 3 to this Exhibit C to provide historical context for the method to be used for determining and calculating various items of the Harrington Monthly Margin Amount in this Exhibit C, to the extent each Margin Item is still applicable.

An example Margin Agreement calculation is set forth on the following pages:

[REMAINDER OF PAGE INTENTIONALLY BLANK.]

EXHIBIT C

SAMPLE CALCULATION

	INVENTORY VALUATION	HARRINGTON	TOLK
	First of month Inventory Valuation	\$16,341,875.15	\$30,071,036.31
	End of month Inventory Valuation	\$20,341,875.15	\$34,071,036.31
	Average Inventory Valuation	\$18,341,875.15	\$32,071,036.31
	Combined Plant Total Average Inventory Valuation	\$50,412,911.46	

	HARRINGTON	TOLK
Monthly Delivered Tons	148,585	132,613

MARGIN COMPONENTS		
	Daily Operating Loan Financing Rate	Harrington / Tolk
1	Operating Loan Facility Cap - effective 01.01.18 <i>[This operating loan facility cap is for informational purposes only. The margin is not calculated on these numbers.]</i>	\$85,000,000.00
	Total Operating Loan Interest for Billing Month	\$132,274.86
	Total Operating Loan Fees and Expenses for Billing Month	\$4,622.03
	Seller's Intangible at Closing <i>[intentionally left blank - N/A]</i>	
	Remaining Billing Months <i>[intentionally left blank - N/A]</i>	
A	Incurred Working Capital Costs	
	Operating Loan Interest, Fees, and Expenses	\$136,896.89
	Less Inventory Interest Charge	\$108,907.55
	Equals Incurred Working Capital Costs	\$27,989.34
B	Inventory Interest Charge	\$108,907.55
C	Monthly Administrative/Capital Fee	\$72,500.00
D	Return on Unamortized Seller's Intangible for Billing Month <i>[intentionally left blank - N/A]</i>	
E	Tax Adjustment <i>[if any, from time to time]</i>	
F	Operating Expenses	
	Operating Expenses as of 01.01.18	\$1,640,000.00
	Increase per Margin Amendment Agreement <i>[to be determined]</i> eff. 01.01.19	
	Operating Expenses for Monthly Margin Calculation <i>[Operating Expenses for 2018/12]-Monthly Installment</i>	\$136,666.67
G	Seller's Actual Federal Corporate Income Tax Rate <i>[intentionally left blank - N/A]</i>	
H	Amortization of Seller's Intangible <i>[intentionally left blank - N/A]</i>	
I	Income Tax on Return on Unamortized Seller's Intangible <i>[intentionally left blank - N/A]</i>	
MARGIN CALCULATION		
A	Incurred Working Capital Costs	\$27,989.34
B	Inventory Interest Charge	\$108,907.55
C	Administrative/Capital Fee	\$72,500.00
E	Tax Adjustment <i>[if any, from time to time]</i>	
F	Operating Expenses	\$136,666.67
	Extraordinary Expenses <i>[if any, from time to time]</i>	
	Total Monthly Margin Amount	\$346,063.56

EXHIBIT C

SAMPLE CALCULATION

Harrington Monthly Margin Amount Calculation

Harrington Percentage Share equals Harrington Monthly Tons/(Tolk Monthly Tons + Harrington Monthly Tons) = $148,585 / (148,585 + 132,613) = 52.84\%$

Total Monthly Margin Amount = \$346,063.56

Harrington Monthly Margin Amount = (Total Percentage Share x Total Monthly Margin Amount) = $(.5284 \times \$346,063.56) = \$182,859.99$

	MONTHLY MARGIN CALCULATION	HARRINGTON	TOLK
	Percentage Share of Monthly Margin Amount	\$182,859.99	\$163,203.57

EXHIBIT 1 TO EXHIBIT C

2010 MARGIN AMENDMENT AGREEMENT



1800 Larimer St., Suite 1000
Denver, CO. 80202

December 14, 2010

TUCO INC.
Charles S. McNeil, President
3300 S. Parker Road, Suite 310
Aurora, Colorado 80014

TUCO INC.
Attention: Vice President
6900 I-40 West, Suite 240
Amarillo, Texas 79106

Re: Acceptance of TUCO Proposal with respect to Renegotiation of Margin

Dear Charlie:

Southwestern Public Service Company ("SPS") and TUCO Inc. ("TUCO") entered into discussions in an attempt to renegotiate the Margin, as such term is defined in each of the following (collectively the "Margin Amendments"):

1. Margin Amendment to Coal Supply Agreement – Harrington between TUCO Inc. and Southwestern Public Service Company dated as of September 30, 1996, as amended by the 2001 Margin Amendment to Coal Supply Agreement (Harrington Station) dated as of September 18, 2001; and
2. Margin Amendment to Coal Supply Agreement – Tolk between TUCO Inc. and Southwestern Public Service Company dated as of September 30, 1996, as amended by the 2001 Margin Amendment to Coal Supply Agreement (Tolk Station) dated as of September 18, 2001.

Pursuant to a meeting on December 13, 2010 and subsequent discussions, the proposal with respect to the Margin Amendments is as follows (to be effective as of January 1, 2011):

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1. Set Margin Item F at a total of \$1,480,000.
2. Margin Item F shall increase each year, beginning on January 1, 2012, by an amount equal to the greater of: (a) two and one half percent (2.5%), or (b) the percentage increase in the Consumer Price Index for the year immediately preceding the increase.
3. Set Margin Item C at a total of \$135,000 per year.
4. The following one-time out-of-pocket costs actually incurred by TUCO shall be outside of Margin Item F and shall be reimbursed through an approved activity letter:
 - a. Legal ^{and expert} costs of negotiating and documenting a new rail contract *CLM*
 - b. Cost of the proposed computer software upgrade
 - c. Costs of changing from LIFO to Average Cost coal inventory accounting
 - d. Legal costs of restating the SPS/TUCO agreements
5. TUCO shall follow SPS's coal procurement strategy.

SPS accepts TUCO's proposal. The terms above shall become effective as of January 1, 2011, and the Margin Amendments shall be amended accordingly. All other terms and conditions of the Margin Amendments will remain unchanged and will remain in full force and effect.

SPS appreciates TUCO's efforts to address the concerns raised by SPS and its willingness to renegotiate the Margin at this time.

If you are in agreement with the above, please so indicate by executing this letter in the place provided below.

Sincerely,



Susan Arigoni
Vice President – Fuels
Xcel Energy Services Inc., as agent for
Southwestern Public Service Company

Acknowledged and Agreed:

TUCO INC.

By: 
Name: Charles S. McNeil
Title: President
Date: 12-15-10

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cc: John J. Coates
DILL DILL CARR STONEBRAKER & HUTCHINGS, P.C.
455 Sherman Street, Ste. 300
Denver, Colorado 80203

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In addition to the terms of the foregoing December 14, 2010 Margin Amendment Agreement, the following provisions apply to the calculation of the Harrington Monthly Margin Amount under Section 7.1.

Margin Items A and B: Incurred Working Capital Costs and Inventory Interest Charge. In order to determine the Incurred Working Capital Costs (Margin Item A) Seller will provide Buyer the actual cost to Seller during each month of financing its investment in the Coal Inventory under this Agreement, which includes the interest amount and fees Seller is charged for its RLOC, including, without limitation, interest hedging (subject to the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed) referred to as the Operating Loan Interest, Fees, Expenses. The Inventory Interest Charge (determined below) is subtracted from the Operating Loan, Fees and Expenses resulting in the Incurred Working Capital Costs for that month.

The Inventory Interest Charge (Margin Item B) included as part of the monthly total Operating Loan Interest, Fees and Expenses is the monthly interest amount on the Coal Inventory. The Parties acknowledge the RLOC will be used to finance the Inventory and payments due under the Exhibit D agreements. As to any month in which no coal is delivered to Buyer, such month's cost of financing under the RLOC shall be accrued and included in the price of Coal next delivered to Buyer or paid in association with remedies exercised under Section 10.6 of this Agreement.

Margin Item C: Administrative/Capital Fee. The Administrative/Capital Fee is a single fixed payment of \$72,500 per month covering both the Tolk and Harrington Stations. The Administrative/Capital Fee shall not be adjusted during the Initial Term or decreased during any Extended Term. In the event of an Extended Term, Seller reserves the right to seek an increase in the Administrative/Capital Fee to reflect increases in inflation or changes in economic circumstances. Closure of one but not both of the Tolk or Harrington Stations during the Term or Extended Term shall not reduce the amount of the Administrative/Capital Fee due under the surviving Coal Supply Agreement.

Margin Item E: Costs of Assessments and Taxes. All assessments and taxes, except federal and state income taxes, levied on Seller for any activity of Seller under this Agreement.

Margin Item F: Operating Expenses. The Operating Expense item has an annual base rate of \$1,480,000 as of January 1, 2011 and is adjusted annually as provided in the foregoing December 14, 2010 Margin Amendment Agreement.

The following terms originating from the September 30, 1996 Margin Amendment to the Coal Supply Agreement – Harrington Station, as amended effective January 1, 2002, which amendments are attached as Exhibits 2 and 3 to this Exhibit C, apply for calculation of periodic adjustment to payments due under Item F, Operating Expenses:

Operating Expenses shall be calculated based on the Margin Amendment Agreement providing for a base rate of \$1,640,000 as of January 1, 2018 and escalated at the beginning of each year thereafter commencing January 1, 2019 through the Term of this Agreement by the lesser of 2.5% or the percentage increase in the Consumer Price Index for All Items - Urban Consumers as published by the Bureau of Labor Statistics for the year immediately preceding the increase. The annual Operating Expenses shall be paid in equal monthly installments. These Operating Expenses include, but are not

EXHIBIT 1 to EXHIBIT C

limited to, all in-house and outside legal fees, consulting, or other services reasonably required to administer this Agreement and the Harrington Agreement, to the extent not duplicated elsewhere. However, these Operating Expenses will not include extraordinary expenses which Buyer may agree to pay, which agreement shall not be unreasonably withheld, conditioned, or delayed, in connection with renegotiation or replacement of mine, freight, or handling agreements approved by Buyer as Approved Activities (**Approved Activity**). In addition to Operating Expenses, Buyer will pay to or reimburse Seller for awards of damages against Seller and costs and attorneys' fees incurred by Seller in (1) prosecuting any Approved Activity and (2) defending any non-tortious litigation, administrative proceeding, arbitration, rail rate review, or other activity arising out of Seller's reasonably prudent and good faith performance of its duties in connection with contracts with third parties required by this Agreement and the Harrington Agreement. The expenses paid or reimbursed to Seller in accordance with the preceding two sentences will be accounted for and paid under the category specified in Margin Item F unless otherwise agreed by Seller and Buyer. If Seller receives payment from any settlement or award in any activity specified in the immediately preceding provisions (1) and (2) of this paragraph, such payment will be paid over to Buyer after deduction of unreimbursed fees, costs, and expenses, and Buyer will accept such payment without adjustment of the Margin with respect to such activity. Seller will notify Buyer of any claim with respect to any such activity and Buyer will have the right to participate therein with counsel of Buyer's choosing. Seller will not settle or compromise any such claim as to which Buyer is obligated to pay or reimburse Seller without the prior written consent of Buyer.

EXHIBIT 2 TO EXHIBIT C

1996 MARGIN AMENDMENT AGREEMENT

**MARGIN AMENDMENT
TO
COAL SUPPLY AGREEMENT -- HARRINGTON STATION
BETWEEN TUCO INC., as "Seller" AND SOUTHWESTERN
PUBLIC SERVICE COMPANY as "Buyer"**

This Margin Amendment to the above referenced Coal Supply Agreement is entered into between TUCO INC. and Southwestern Public Service Company as of this 30th day of September, 1996.

Whereas, TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") have agreed to the following terms and conditions in order to fulfill the contractual rights and obligations of each party under the Coal Supply Agreement dated April 30, 1979, for the Harrington Station ("this Agreement").

Now, Therefore, Seller and Buyer agree to amend this Agreement to define the margin amounts due to Seller for coal supplied to Buyer for its native system requirements. In consideration of the benefits to be realized and of their mutual promises, Buyer and Seller agree as follows:

1. Price of Coal. Effective October 1, 1996, Article VIII.1.G of this Agreement shall be deleted in its entirety and replaced by the following for Buyer's native system requirements:

G. Margin:

1. Either Seller or Buyer, in its sole discretion, may provide written notice of its desire to renegotiate the margin set forth herein ("Margin") on or before July 1st of each year, commencing July 1, 2001, for a Margin to become effective on January 1st of the following year. The parties shall have 30 days from the date written notice of a desire to redetermine the Margin is delivered to negotiate any changes or replacements for the Margin. If the parties are unable to agree upon a new or revised Margin within thirty days of the notice, then the dispute shall be resolved by arbitration as provided in Article XII of this Agreement. Provided, however, that in all events (a) any renegotiated Margin or Margin Rate will include amounts sufficient to pay the Margin components specified in Article VIII.1.G.3. A, B, D, E, G, H, and I of this Agreement (b) any adjustments in Seller's costs included in any such Margin component may result in a corresponding adjustment to such Margin components (c) if any refinancing of Seller's debt results in a lower interest rate the benefit thereof will correspondingly reduce the Margin, (d) the percentage specified in Article VIII.1.G.3. C may not increase and (e) the Monthly Seller's Amortization payment specified in Exhibit VIII.1.G.1. used to compute the Margin component

EXHIBIT 2 TO EXHIBIT C

specified in Article VIII.1.G.3. H may not increase. Seller will use its best efforts to minimize Seller's costs covered by the Margin calculations.

2. Definitions: As used in this Agreement, the following terms shall have the following meanings:

"Operating Loan Facility" is the loan facility, together with all amendments and extensions thereto, entered into by Seller as borrower to provide working capital for mine, freight, handling costs, increases or decreases in deferred tax payments related to inventory, deferral of payments by Buyer in accordance with Article VIII.1.H of this Agreement and financing of inventory (including debt service reserve), and providing for a maximum loan principal limit of \$65,000,000, and all replacement facilities prudently entered into by Seller for the same purpose. Seller agrees to use its best efforts to minimize the costs incurred under the Operating Loan Facility and agrees not to increase the maximum principal amount of the Operating Loan Facility without Buyer's prior written consent.

"Harrington Average Inventory Valuation" is the average of the first and end of the billing month book value of the mine and transportation cost remaining in Seller's inventory at Harrington station for the billing month net of accrued inventory losses.

"Tolk Average Inventory Valuation" is the average of the first and end of the billing month book value of the mine and transportation cost remaining in Seller's inventory at Tolk station for the billing month net of accrued inventory losses.

"Seller's Investment," "Seller's Intangible," and "Seller's Intangible Interest Rate" as related to this Agreement and the Coal Supply Agreement dated April 30, 1979 for the Tolk Station are set out in Exhibit "VIII.1.G.1" attached to and made a part of this Agreement.

"Approved Activities" are activities receiving prior approval from Buyer relating to litigation, regulatory proceedings, arbitration, and rail rate reviews. Such prior approval will not be unreasonably withheld.

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3. Components: The components comprising the margin rate ("MR") are:

- A. Incurred Working Capital Costs - The actual interest costs plus the fees and expenses (including yield-maintenance amounts and reimbursement of debt service reserve advances) incurred on the Operating Loan Facility for the billing month minus the amount of the actual Inventory Interest Charge in Section VIII.1.G.3.B of this Agreement. Such Incurred Working Capital costs shall be documented by Seller, showing daily balances and interest charges for verification.
- B. Inventory Interest Charge - The sum of the values resulting from multiplying the daily financing rate under the Operating Loan Facility by the sum of the Harrington Average Inventory Valuation and the Tolk Average Inventory Valuation.
- C. Administrative Fee - 0.5% times the sum of the Harrington Average Inventory Valuation and the Tolk Average Inventory Valuation, the product of which is divided by twelve.
- D. Return on the unpaid, Unamortized Seller's Intangible - This value shall be calculated by multiplying Seller's Intangible Interest Rate by the unpaid, unamortized balance of Seller's Intangible for the billing month as shown on Exhibit "VIII.1.G.1".
- E. Tax Adjustment - The Tax Adjustment shall be calculated monthly by multiplying the unpaid, unamortized balance of Seller's Intangible for the billing month (as shown in "Exhibit VIII 1.G.1") by the Tax Factor divided by the number of months remaining to pay the Seller's Intangible all as shown in Exhibit VIII.1.G.1. Notwithstanding any other provision hereof appearing to the contrary, the Tax Factor and Effective Tax Rate shall be revised to reflect changes in Tax rates or charges, provided, that should changes in the tax laws or regulations cause the use of this formula to fail to reflect Seller's actual effective tax rates, then the parties will cooperate in revising this factor.

Tax Factor = [Effective Tax Rate/(1-Effective Tax Rate)] and,
Effective Tax Rate = [Texas Franchise Tax multiplied by (1-G)] + G
Where Texas Franchise Tax is set by Texas Tax
Code § 171.001 *et seq.*, or its replacement, such as
a Texas income tax or other tax on revenue or net
income.

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An example of the calculation of the initial Effective Tax Rate and the Tax Factor (which contains assumptions which may not reflect actual amounts) is as follows:

Effective Tax Rate Calculation:

$$(4.5\% \times (1-34\%)) + 34\% = 36.97\%$$

Tax Factor calculation

$$36.97\% / (1-36.97\%) = 58.655\%$$

Tax Adjustment

$$(\$41,000,000 \times 58.655\%) / 240 = \$100,202.92$$

- F. Operating Expenses - Operating Expenses are set at \$676,828.70 for the balance of calendar year 1996 and thereafter set at \$1,000,000.00 per calendar year and escalated in each year commencing for the year 1997 by the change in the CPI for all items -Urban Consumers, according to the latest index for the previous year as published by the Bureau of Labor Statistics by January 31st of the current year, as compared to the most recent index published by January 31, 1996. All such payments shall be divided equally for each month of the current year of this Agreement. These Operating Expenses include, but are not limited to, all in-house and outside legal fees, consulting or other services reasonably required to administer this Agreement and the Harrington Agreement. However, these Operating Expenses will not include extraordinary expenses which Buyer may agree to pay (such agreement not to be unreasonably withheld) in connection with renegotiation or replacement of mine, freight, or handling agreements approved by Buyer as Approved Activities. In addition to the Operating Expenses, Buyer will pay to or reimburse Seller for awards of damages against Seller and costs and attorneys' fees incurred by Seller in (1) prosecuting any Approved Activity and (2) defending any non-tortious litigation, administrative proceeding, arbitration, rail rate review, or other activity arising out of Seller's reasonably prudent and good faith performance of its duties in connection with contracts with third-parties required by this Agreement and the Harrington Agreement. The expenses paid or reimbursed to Seller in accordance with the preceding two sentences will be included in the category specified in Article VIII.1.D, unless otherwise agreed by Seller and Buyer. If Seller receives payment from any settlement or award in any activity specified in Subsections (1) and (2) of this Section, such payment will be paid over to Buyer after deduction of unreimbursed fees, costs, and expenses, and Buyer will accept such payment without adjustment of the Margin with respect to such activity. Seller will notify

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Buyer of any claim with respect to any such activity and Buyer will have the right to participate therein with counsel of Buyer's choosing. Seller will not settle or compromise any such claim, as to which Buyer is obligated to pay or reimburse Seller, without the prior written consent of Buyer. Provided that nothing contained in this paragraph is intended or will be construed as entitling Buyer to recover costs or attorneys' fees incurred in the defense of any action involving a claim between Buyer and Seller not otherwise recoverable as a matter of applicable law.

- G. Seller's actual federal corporate income tax rate (26 U.S.C. § 11 (b)(1) or its replacement) for the current year, subject to certification by a nationally recognized accounting firm and appropriate adjustment of the tax rate, if required as a result of such certification.
- H. Amortization of the Seller's Intangible - This value shall be the amortization schedule monthly amount as specified in Exhibit "VIII.1.G.1."
- I. Income Tax on Return on unpaid, Unamortized Seller's Intangible - This value shall be the result of Factor D times the Tax Factor, thus:

$$I = D \text{ multiplied by the Tax Factor}$$

- 4. The components shall be applied to the following formula to determine the appropriate monthly margin for all years prior to calendar year 2017:

$$MR = (A + B + C + D + E + F + H + I) / (98,790,000/12)$$

Margin = MR multiplied by 52,200,000/12, minus (1) any amounts incurred under Article VIII.1.E., and (2) actual interest earned by Seller on deferral of payments to Buyer by Seller in accordance with Article VIII.1.H.

For any period in which there are no coal deliveries, the accumulation of the unpaid portions of the Margin payment(s), which would otherwise have been paid if coal were being delivered during such period, plus actual interest on components Article VIII.1.G.3.A and B and interest at the Seller's Intangible Interest Rate on components Article VIII.1.G.3.D, F, and H, will be paid in the first month in which coal deliveries commence or, if sooner, the time at which Buyer is obligated to purchase Seller's entire inventory of coal.

- 5. Setoff - Buyer agrees not to setoff against the Margin any claim which Buyer may have against Seller which does not arise out of calculation of the Margin,

EXHIBIT 2 TO EXHIBIT C

Margin Rate, Margin Payment, or any component thereof, or Margin payments paid or payable to Seller. Nothing in this Agreement is intended or may be construed as a waiver of any right of Buyer to dispute Buyer's obligation for or the proper calculation of the Margin, Margin Rate, Margin Payment, or any component thereof, or to exercise any right which Buyer has to withhold the disputed amount of any payment with respect to Buyer's obligation for or the proper calculation of the Margin, or any component thereof. Nothing in this Amendment is intended or may be construed to create any limitation on Buyer's right to collect any judgment which may be entered against Seller in favor of Buyer; however, Buyer may not setoff the amount of such judgment against the Margin other than Seller's net profit included in the components specified in Article VIII.1.G.3. C and D.

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EXECUTED as of the date first appearing above.

TUCO INC.

By: Charles S. McNeil
Title: PRESIDENT

SOUTHWESTERN PUBLIC SERVICE
COMPANY

By: Kenneth L. Hall
Title: Senior Vice President

EXHIBIT 2 TO EXHIBIT C

EXHIBIT VIII. I.G. 1

CALCULATION OF SELLER'S INVESTMENT, ETC.

Seller's Intangible, on September 30, 1996, is \$41,618,937. Seller's Intangible will amortize with the Buyer's payment of the Monthly Intangible Amortization Payment, and Buyer will pay to Seller a Monthly Return on the unpaid, Unamortized Seller's Intangible at a rate of 8.692% per annum on the unpaid, Unamortized Seller's Intangible per the schedule below. The unpaid, Unamortized Seller's Intangible will accrue interest at Seller's Intangible Interest Rate until Seller's Investment is paid in full. The Seller's Investment which is related to this Agreement for purposes of this Agreement will be the unpaid, Unamortized Seller's Intangible plus an amount equal to (a) the "Yield Maintenance Amount" determined in accordance with the Yield Maintenance Amount definition attached hereto plus (b) any accrued and unpaid return on the unpaid, Unamortized Seller's Intangible, plus (c) an amount necessary to fully pay Seller's federal and state taxes, if any, on a grossed up basis which results from payment of Seller's investment, (*i.e.*, unpaid, Unamortized Seller's Intangible multiplied by the Tax Factor), plus (d) any third party costs incurred in connection with prepayment of Seller's Intangible, plus (e) any damages to Seller as a result of prepayment of Seller's Intangible [not recovered under item (a) above].

Seller's Intangible
Interest Rate

8.692% / year

For sake of clarification, Seller's Investment will be allocated 47% to Tolk Station and 53% to Harrington Station through December 31, 2016. Seller's Investment will be allocated 100% to Tolk after December 31, 2016.

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<u>Date</u>	<u>Beginning of the Month Unamortized Seller's Intangible</u>	<u>Monthly Seller's Intangible Amortization Payment</u>	<u>Monthly Return on the Unamortized Seller's Intangible</u>	<u>End of the Month Unamortized Seller's Intangible</u>
Sep-96	41,618,937	0	0	41,618,937
Oct-96	41,618,937	173,412	452,190	41,445,525
Nov-96	41,445,525	173,412	300,204	41,272,113
Dec-96	41,272,113	173,412	298,948	41,098,700
Jan-97	41,098,700	173,412	297,692	40,925,288
Feb-97	40,925,288	173,412	296,436	40,751,876
Mar-97	40,751,876	173,412	295,179	40,578,464
Apr-97	40,578,464	173,412	293,923	40,405,051
May-97	40,405,051	173,412	292,667	40,231,639
Jun-97	40,231,639	173,412	291,411	40,058,227
Jul-97	40,058,227	173,412	290,155	39,884,815
Aug-97	39,884,815	173,412	288,899	39,711,402
Sep-97	39,711,402	173,412	287,643	39,537,990
Oct-97	39,537,990	173,412	286,387	39,364,578
Nov-97	39,364,578	173,412	285,131	39,191,166
Dec-97	39,191,166	173,412	283,875	39,017,753
Jan-98	39,017,753	173,412	282,619	38,844,341
Feb-98	38,844,341	173,412	281,363	38,670,929
Mar-98	38,670,929	173,412	280,106	38,497,517
Apr-98	38,497,517	173,412	278,850	38,324,104
May-98	38,324,104	173,412	277,594	38,150,692
Jun-98	38,150,692	173,412	276,338	37,977,280
Jul-98	37,977,280	173,412	275,082	37,803,868
Aug-98	37,803,868	173,412	273,826	37,630,456
Sep-98	37,630,456	173,412	272,570	37,457,043
Oct-98	37,457,043	173,412	271,314	37,283,631
Nov-98	37,283,631	173,412	270,058	37,110,219
Dec-98	37,110,219	173,412	268,802	36,936,807
Jan-99	36,936,807	173,412	267,546	36,763,394
Feb-99	36,763,394	173,412	266,290	36,589,982
Mar-99	36,589,982	173,412	265,033	36,416,570
Apr-99	36,416,570	173,412	263,777	36,243,158
May-99	36,243,158	173,412	262,521	36,069,745
Jun-99	36,069,745	173,412	261,265	35,896,333
Jul-99	35,896,333	173,412	260,009	35,722,921
Aug-99	35,722,921	173,412	258,753	35,549,509
Sep-99	35,549,509	173,412	257,497	35,376,096
Oct-99	35,376,096	173,412	256,241	35,202,684
Nov-99	35,202,684	173,412	254,985	35,029,272
Dec-99	35,029,272	173,412	253,729	34,855,860
Jan-00	34,855,860	173,412	252,473	34,682,448
Feb-00	34,682,448	173,412	251,217	34,509,035
Mar-00	34,509,035	173,412	249,960	34,335,623
Apr-00	34,335,623	173,412	248,704	34,162,211
May-00	34,162,211	173,412	247,448	33,988,799
Jun-00	33,988,799	173,412	246,192	33,815,386
Jul-00	33,815,386	173,412	244,936	33,641,974
Aug-00	33,641,974	173,412	243,680	33,468,562
Sep-00	33,468,562	173,412	242,424	33,295,150
Oct-00	33,295,150	173,412	241,168	33,121,737
Nov-00	33,121,737	173,412	239,912	32,948,325
Dec-00	32,948,325	173,412	238,656	32,774,913
Jan-01	32,774,913	173,412	237,400	32,601,501

EXHIBIT 2 TO EXHIBIT C

Feb-01	32,801,501	173,412	238,144	32,428,088
Mar-01	32,428,088	173,412	234,887	32,254,678
Apr-01	32,254,678	173,412	233,831	32,081,264
May-01	32,081,264	173,412	232,375	31,907,852
Jun-01	31,907,852	173,412	231,119	31,734,439
Jul-01	31,734,439	173,412	229,883	31,561,027
Aug-01	31,561,027	173,412	228,607	31,387,615
Sep-01	31,387,615	173,412	227,351	31,214,203
Oct-01	31,214,203	173,412	226,095	31,040,791
Nov-01	31,040,791	173,412	224,839	30,867,378
Dec-01	30,867,378	173,412	223,583	30,693,966
Jan-02	30,693,966	173,412	222,327	30,520,554
Feb-02	30,520,554	173,412	221,071	30,347,142
Mar-02	30,347,142	173,412	219,814	30,173,729
Apr-02	30,173,729	173,412	218,558	30,000,317
May-02	30,000,317	173,412	217,302	29,826,905
Jun-02	29,826,905	173,412	216,046	29,653,493
Jul-02	29,653,493	173,412	214,790	29,480,080
Aug-02	29,480,080	173,412	213,534	29,306,668
Sep-02	29,306,668	173,412	212,278	29,133,256
Oct-02	29,133,256	173,412	211,022	28,959,844
Nov-02	28,959,844	173,412	209,766	28,786,431
Dec-02	28,786,431	173,412	208,510	28,613,019
Jan-03	28,613,019	173,412	207,254	28,439,607
Feb-03	28,439,607	173,412	206,998	28,266,195
Mar-03	28,266,195	173,412	204,741	28,092,782
Apr-03	28,092,782	173,412	203,485	27,919,370
May-03	27,919,370	173,412	202,229	27,745,958
Jun-03	27,745,958	173,412	200,973	27,572,546
Jul-03	27,572,546	173,412	199,717	27,399,134
Aug-03	27,399,134	173,412	198,461	27,225,721
Sep-03	27,225,721	173,412	197,205	27,052,309
Oct-03	27,052,309	173,412	195,949	26,878,897
Nov-03	26,878,897	173,412	194,693	26,705,485
Dec-03	26,705,485	173,412	193,437	26,532,072
Jan-04	26,532,072	173,412	192,181	26,358,660
Feb-04	26,358,660	173,412	190,925	26,185,248
Mar-04	26,185,248	173,412	189,668	26,011,836
Apr-04	26,011,836	173,412	188,412	25,838,423
May-04	25,838,423	173,412	187,156	25,665,011
Jun-04	25,665,011	173,412	185,900	25,491,599
Jul-04	25,491,599	173,412	184,644	25,318,187
Aug-04	25,318,187	173,412	183,388	25,144,774
Sep-04	25,144,774	173,412	182,132	24,971,362
Oct-04	24,971,362	173,412	180,876	24,797,950
Nov-04	24,797,950	173,412	179,620	24,624,538
Dec-04	24,624,538	173,412	178,364	24,451,125
Jan-05	24,451,125	173,412	177,108	24,277,713
Feb-05	24,277,713	173,412	175,852	24,104,301
Mar-05	24,104,301	173,412	174,595	23,930,889
Apr-05	23,930,889	173,412	173,339	23,757,477
May-05	23,757,477	173,412	172,083	23,584,064
Jun-05	23,584,064	173,412	170,827	23,410,652
Jul-05	23,410,652	173,412	169,571	23,237,240
Aug-05	23,237,240	173,412	168,315	23,063,828
Sep-05	23,063,828	173,412	167,059	22,890,415
Oct-05	22,890,415	173,412	165,803	22,717,003

Exhibit 2 to Exhibit C to January 1, 2018 Coal Supply Agreement - Harrington Station
between TUCO INC. (Seller) and Southwestern Public Service Company (Buyer)

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EXHIBIT 2 TO EXHIBIT C

Nov-05	22,717,003	173,412	164,547	22,543,591
Dec-05	22,543,591	173,412	163,291	22,370,179
Jan-06	22,370,179	173,412	162,035	22,196,766
Feb-06	22,196,766	173,412	160,779	22,023,354
Mar-06	22,023,354	173,412	159,522	21,849,942
Apr-06	21,849,942	173,412	158,266	21,676,530
May-06	21,676,530	173,412	157,010	21,503,117
Jun-06	21,503,117	173,412	155,754	21,329,705
Jul-06	21,329,705	173,412	154,498	21,156,293
Aug-06	21,156,293	173,412	153,242	20,982,881
Sep-06	20,982,881	173,412	151,986	20,809,469
Oct-06	20,809,469	173,412	150,730	20,636,056
Nov-06	20,636,056	173,412	149,474	20,462,644
Dec-06	20,462,644	173,412	148,218	20,289,232
Jan-07	20,289,232	173,412	146,962	20,115,820
Feb-07	20,115,820	173,412	145,706	19,942,407
Mar-07	19,942,407	173,412	144,450	19,768,995
Apr-07	19,768,995	173,412	143,193	19,595,583
May-07	19,595,583	173,412	141,937	19,422,171
Jun-07	19,422,171	173,412	140,681	19,248,758
Jul-07	19,248,758	173,412	139,425	19,075,346
Aug-07	19,075,346	173,412	138,169	18,901,934
Sep-07	18,901,934	173,412	136,913	18,728,522
Oct-07	18,728,522	173,412	135,657	18,555,109
Nov-07	18,555,109	173,412	134,401	18,381,697
Dec-07	18,381,697	173,412	133,145	18,208,285
Jan-08	18,208,285	173,412	131,889	18,034,873
Feb-08	18,034,873	173,412	130,633	17,861,460
Mar-08	17,861,460	173,412	129,377	17,688,048
Apr-08	17,688,048	173,412	128,120	17,514,636
May-08	17,514,636	173,412	126,864	17,341,224
Jun-08	17,341,224	173,412	125,608	17,167,812
Jul-08	17,167,812	173,412	124,352	16,994,399
Aug-08	16,994,399	173,412	123,096	16,820,987
Sep-08	16,820,987	173,412	121,840	16,647,575
Oct-08	16,647,575	173,412	120,584	16,474,163
Nov-08	16,474,163	173,412	119,328	16,300,750
Dec-08	16,300,750	173,412	118,072	16,127,338
Jan-09	16,127,338	173,412	116,816	15,953,926
Feb-09	15,953,926	173,412	115,560	15,780,514
Mar-09	15,780,514	173,412	114,304	15,607,101
Apr-09	15,607,101	173,412	113,047	15,433,689
May-09	15,433,689	173,412	111,791	15,260,277
Jun-09	15,260,277	173,412	110,535	15,086,865
Jul-09	15,086,865	173,412	109,279	14,913,452
Aug-09	14,913,452	173,412	108,023	14,740,040
Sep-09	14,740,040	173,412	106,767	14,566,628
Oct-09	14,566,628	173,412	105,511	14,393,216
Nov-09	14,393,216	173,412	104,255	14,219,803
Dec-09	14,219,803	173,412	102,999	14,046,391
Jan-10	14,046,391	173,412	101,743	13,872,979
Feb-10	13,872,979	173,412	100,487	13,699,567
Mar-10	13,699,567	173,412	99,231	13,526,155
Apr-10	13,526,155	173,412	97,974	13,352,742
May-10	13,352,742	173,412	96,718	13,179,330
Jun-10	13,179,330	173,412	95,462	13,005,918
Jul-10	13,005,918	173,412	94,206	12,832,506

Exhibit 2 to Exhibit C to January 1, 2018 Coal Supply Agreement - Harrington Station
between TUCO INC. (Seller) and Southwestern Public Service Company (Buyer)

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EXHIBIT 2 TO EXHIBIT C

Aug-10	12,832,508	173,412	92,950	12,659,093
Sep-10	12,859,093	173,412	91,894	12,485,681
Oct-10	12,485,681	173,412	90,438	12,312,269
Nov-10	12,312,269	173,412	89,182	12,138,857
Dec-10	12,138,857	173,412	87,928	11,965,444
Jan-11	11,965,444	173,412	86,670	11,792,032
Feb-11	11,792,032	173,412	85,414	11,618,620
Mar-11	11,618,620	173,412	84,158	11,445,208
Apr-11	11,445,208	173,412	82,901	11,271,795
May-11	11,271,795	173,412	81,645	11,098,383
Jun-11	11,098,383	173,412	80,389	10,924,971
Jul-11	10,924,971	173,412	79,133	10,751,559
Aug-11	10,751,559	173,412	77,877	10,578,146
Sep-11	10,578,146	173,412	76,621	10,404,734
Oct-11	10,404,734	173,412	75,365	10,231,322
Nov-11	10,231,322	173,412	74,109	10,057,910
Dec-11	10,057,910	173,412	72,853	9,884,498
Jan-12	9,884,498	173,412	71,597	9,711,085
Feb-12	9,711,085	173,412	70,341	9,537,673
Mar-12	9,537,673	173,412	69,085	9,364,261
Apr-12	9,364,261	173,412	67,828	9,190,849
May-12	9,190,849	173,412	66,572	9,017,436
Jun-12	9,017,436	173,412	65,316	8,844,024
Jul-12	8,844,024	173,412	64,060	8,670,612
Aug-12	8,670,612	173,412	62,804	8,497,200
Sep-12	8,497,200	173,412	61,548	8,323,787
Oct-12	8,323,787	173,412	60,292	8,150,375
Nov-12	8,150,375	173,412	59,036	7,976,963
Dec-12	7,976,963	173,412	57,780	7,803,551
Jan-13	7,803,551	173,412	56,524	7,630,138
Feb-13	7,630,138	173,412	55,268	7,456,726
Mar-13	7,456,726	173,412	54,012	7,283,314
Apr-13	7,283,314	173,412	52,755	7,109,902
May-13	7,109,902	173,412	51,499	6,936,490
Jun-13	6,936,490	173,412	50,243	6,763,077
Jul-13	6,763,077	173,412	48,987	6,589,665
Aug-13	6,589,665	173,412	47,731	6,416,253
Sep-13	6,416,253	173,412	46,475	6,242,841
Oct-13	6,242,841	173,412	45,219	6,069,428
Nov-13	6,069,428	173,412	43,963	5,896,016
Dec-13	5,896,016	173,412	42,707	5,722,604
Jan-14	5,722,604	173,412	41,451	5,549,192
Feb-14	5,549,192	173,412	40,195	5,375,779
Mar-14	5,375,779	173,412	38,939	5,202,367
Apr-14	5,202,367	173,412	37,682	5,028,955
May-14	5,028,955	173,412	36,426	4,855,543
Jun-14	4,855,543	173,412	35,170	4,682,130
Jul-14	4,682,130	173,412	33,914	4,508,718
Aug-14	4,508,718	173,412	32,658	4,335,306
Sep-14	4,335,306	173,412	31,402	4,161,894
Oct-14	4,161,894	173,412	30,146	3,988,481
Nov-14	3,988,481	173,412	28,890	3,815,069
Dec-14	3,815,069	173,412	27,634	3,641,657
Jan-15	3,641,657	173,412	26,378	3,468,245
Feb-15	3,468,245	173,412	25,122	3,294,833
Mar-15	3,294,833	173,412	23,866	3,121,420
Apr-15	3,121,420	173,412	22,609	2,948,008

EXHIBIT 2 TO EXHIBIT C

May-15	2,948,008	173,412	21,353	2,774,596
Jun-15	2,774,596	173,412	20,097	2,601,184
Jul-15	2,601,184	173,412	18,841	2,427,771
Aug-15	2,427,771	173,412	17,585	2,254,359
Sep-15	2,254,359	173,412	16,329	2,080,947
Oct-15	2,080,947	173,412	15,073	1,907,535
Nov-15	1,907,535	173,412	13,817	1,734,122
Dec-15	1,734,122	173,412	12,561	1,560,710
Jan-16	1,560,710	173,412	11,305	1,387,298
Feb-16	1,387,298	173,412	10,049	1,213,886
Mar-16	1,213,886	173,412	8,793	1,040,473
Apr-16	1,040,473	173,412	7,536	867,061
May-16	867,061	173,412	6,280	693,649
Jun-16	693,649	173,412	5,024	520,237
Jul-16	520,237	173,412	3,768	346,824
Aug-16	346,824	173,412	2,512	173,412
Sep-16	173,412	173,412	1,256	0
Total		41,618,937	36,476,840	

Note:

The Monthly Seller's Intangible Amortization Payment and the Monthly Return on the Unamortized Seller's Intangible each month are billed on the 8th of the following month.

Example: Oct-96 will be billed on November 8, 1996

EXHIBIT 2 TO EXHIBIT C

DEFINITION OF "YIELD MAINTENANCE AMOUNT"

"Yield-Maintenance Amount" shall mean an amount equal to the excess, if any, of the Discounted Value of the Unamortized Seller's Intangible over the Unamortized Seller's Intangible. The Yield-Maintenance Amount shall in no event be less than zero.

"Discounted Value" shall mean the amount obtained by discounting all Remaining Scheduled Payments with respect to such Unamortized Seller's Intangible from their respective scheduled due dates to the Settlement Date in accordance with accepted financial practice and at a discount factor (as converted to reflect the periodic basis on which the Monthly Return on the unpaid Unamortized Seller's Intangible is payable if payable other than on a semi-annual basis) equal to the Reinvestment Yield with respect to the Unamortized Seller's Intangible.

"Reinvestment Yield" shall mean the yield to maturity implied by (i) the yields reported, as of 10:00 am (New York City local time) on the Business Day next preceding the Settlement Date, on the display designated as "Page 678" on the Telerate Service (or such other display designated as "Page 678" on the Telerate Service) for actively traded U.S. Treasury securities having a maturity equal to the Remaining Average Life of the Unamortized Seller's Intangible as of such Settlement Date, or if such yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, (ii) the Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the Business Day next preceding the Settlement Date, in Federal Reserve Statistical Release H.15(519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of the Unamortized Seller's Intangible as of such Settlement Date. Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities.

"Business Day" shall mean any day other than a Saturday or a Sunday or a day on which commercial banks in New York City are required or authorized to be closed.

"Remaining Average Life" shall mean the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) the Unamortized Seller's Intangible into (ii) the products obtained by multiplying (a) each Remaining Scheduled Payment of Unamortized Seller's Intangible (but not of Seller's Monthly Return) by (b) the number of years (calculated to the nearest one-twelfth year) which will elapse between the Settlement Date and the scheduled due date of such Remaining Scheduled Payment and adding the results.

"Remaining Scheduled Payments" shall mean all payments of the Unamortized Seller's Intangible together with the Monthly Return thereon that would be due on or after the Settlement Date (assuming that all payments of Seller's Intangible and the Monthly Return thereon were paid in accordance with the table attached to Exhibit VIII.1.G.1) as if no payment of the

EXHIBIT 2 TO EXHIBIT C

Unamortized Seller's Intangible or Monthly Return thereon were made prior to its scheduled due date.

"Settlement Date" shall mean the date upon which Unamortized Seller's Intangible is to be paid.

EXHIBIT 3 TO EXHIBIT C

**2001 MARGIN AMENDMENT
TO
COAL SUPPLY AGREEMENT
(HARRINGTON STATION)
BETWEEN TUCO INC., and SOUTHWESTERN PUBLIC SERVICE COMPANY**

This **2001 Margin Amendment** to the above referenced Coal Supply Agreement dated April 30, 1979, as amended, is made and entered into between TUCO INC. and Southwestern Public Service Company as of the 18th day of September 2001.

WITNESSETH:

Whereas, TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") are parties to that certain Coal Supply Agreement made and entered into as of April 30, 1979, as restated to incorporate all amendments through December 31, 1994 (the "Agreement") and as further amended by the Margin Amendment dated September 30, 1996 ("1996 Margin Amendment"); and

Whereas, Buyer and Seller have agreed to a renegotiated Margin as of September 18, 2001 and wish to amend the Agreement and the 1996 Margin Amendment to memorialize the renegotiated Margin.

Now Therefore, Seller and Buyer agree to amend the Agreement and the 1996 Margin Amendment effective January 1, 2002, to modify the Margin payable to Seller for coal supplied to Buyer for its native system requirements as follows:

1. Article VIII.1.G.1 shall be deleted in its entirety and replaced by the following:
 1. Either Seller or Buyer, in its sole discretion, may provide written notice of its desire to renegotiate the margin set forth herein ("Margin") on or before July 1st of each year, commencing July 1, 2006, for a Margin to become effective on January 1st of the following year. The parties shall have thirty (30) days from the date written notice of a desire to renegotiate the Margin is delivered to negotiate any changes or replacements for the Margin. If the parties are unable to agree upon a new or revised Margin within thirty (30) days of the notice, then the dispute shall be resolved by arbitration as provided in Article XII of this Agreement. Provided, however, that in all events: (a) any negotiated Margin or Margin Rate will include amounts sufficient to pay the Margin components specified in Article VIII.1.G.3.A, B, D, E, G, H, and I of this Agreement. (b) any adjustments in Seller's costs included in any such Margin component may result in a corresponding adjustment to such Margin components, (c) if any refinancing of Seller's debt results in a lower interest rate the benefit thereof will correspondingly reduce the Margin, (d) the amount specified in Article VIII.1.G.3 C. may not increase and (e) the Monthly Seller's Amortization payment specified in Exhibit VIII.1.G.1. used to compute the Margin component specified in Article

EXHIBIT 3 TO EXHIBIT C

VIII.1.G.3.H. may not increase. Seller will use its best efforts to minimize Seller's costs covered by the Margin calculations.

2. Article VIII.1.G.3.C shall be deleted in its entirety and replaced by the following:
C. Administrative Fee – A fixed payment of \$120,000.00 per calendar year divided equally into twelve (12) monthly installments.

3. Article VIII.1.G.3.F shall be deleted in its entirety and replaced by the following:
F. Operating Expenses – Operating Expenses shall be set at \$1,050,000.00 per calendar year and this amount shall be escalated at the beginning of each year commencing with the year 2003 by the greater of 5% or the change in the CPI for all items – Urban Consumers, according to the latest index for the previous year as published by the Bureau of Labor Statistics prior to January 31st of the current year, as compared to the most recent index published by January 31, 2002. The annual Operating Expenses shall be paid in equal monthly installments. These Operating Expenses include, but are not limited to, all in-house and outside legal fees, consulting or other services reasonably required to administer this Agreement and the Tolk Agreement. However, these Operating Expenses will not include extraordinary expenses, which Buyer may agree to pay (such agreement not to be unreasonably withheld) in connection with renegotiation or replacement of mine, freight, or handling agreements approved by Buyer as Approved Activities. In addition to Operating Expenses, Buyer will pay to or reimburse Seller for awards of damages against Seller and costs and attorney's fees incurred by Seller in (1) prosecuting any Approved Activity and (2) defending any non-tortious litigation, administrative proceeding, arbitration, rail rate review, or other activity arising out of Seller's reasonably prudent and good faith performance of its duties in connection with contracts with third-parties required by this Agreement and the Tolk Agreement. The expenses paid or reimbursed to Seller in accordance with the preceding two sentences will be included in the category specified in Article VIII.1.D, unless otherwise agreed by Seller and Buyer. If Seller receives payment from any settlement or award in any activity specified in Subsections (1) and (2) of this Section, such payment will be paid over to Buyer after deduction of unreimbursed fees, costs, and expenses, and Buyer will accept such payment without adjustment of the Margin with respect to such activity. Seller will notify Buyer of any claim with respect to any such activity and Buyer will have the right to participate therein with counsel of Buyer's choosing. Seller will not settle or compromise any such claim, as to which Buyer is obligated to pay or reimburse Seller, without the prior written consent of Buyer. Provided that nothing contained in this paragraph is intended to or will be construed as entitling Buyer to recover costs or attorney's fees incurred in the defense of any action involving a claim between Buyer and Seller not otherwise recoverable as a matter of applicable law.

All other terms and conditions of the Agreement and the 1996 Margin Amendment not modified hereby shall remain in full force and effect.

EXHIBIT 3 TO EXHIBIT C

In Witness Whereof, the parties have caused this 2001 Margin Amendment to be executed by their duly authorized representatives as of the date first written above.

TUCO INC.

By: Charles D. Meier

Title: PRESIDENT

Date: 12-27-01

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: Kelly Krittenmaker

Title: VP, TRADING, MARKETING & Supply

Date: 1/29/03

EXHIBIT D

SELLER'S CONTRACTS CONCERNING COAL SUPPLIED TO THE HARRINGTON STATION

1. November 1, 2010 Coal Purchase and Sale Agreement between TUCO INC. (TUCO) and Cloud Peak Energy Resources LLC (Cloud Peak) (Cloud Peak Contract).
2. January 1, 2017 Second Amended and Restated Confirmation Notice 2304 between TUCO and Cloud Peak, and January 2, 2018 Letter Agreement between TUCO and Cloud Peak confirming carryover of 2017 contract tons into 2018, all in accordance with and supplementing the Cloud Peak Contract.
3. October 30, 2017 Confirmation Notice 2521 between TUCO and Cloud Peak, in accordance with and supplementing the Cloud Peak Contract.
4. December 15, 2010 Master Coal Supply Agreement between TUCO and Peabody COALSALES, LLC (Peabody) (Peabody Coal Contract).
5. January 1, 2018 Confirmation Notice 2018-1 between TUCO and Peabody in accordance with and supplementing the Peabody Coal Contract *[pending]*.
6. December 31, 2010 Coal Purchase and Sale Agreement between TUCO and Arch Coal Sales Company, Inc. (Arch) (Arch Coal Contract).
7. December 31, 2010 Guaranty by Arch Coal Inc. in favor of TUCO.
8. October 30, 2017 Confirmation Notice MO 5513 between TUCO and Arch in accordance with and supplementing the Arch Coal Contract.
9. June 28, 2016 Letter Agreement between TUCO and Southwestern Public Service Company (SPS) re Carryover of Coal Supply Agreement Vendors into 2018.
10. January 1, 2018 Coal Handling Service Agreement between TUCO and Savage Harrington Corporation concerning coal handling at the Harrington Station.
11. January 1, 2018 Access Agreement for the Harrington Station.
12. October 15, 2017 BNSF Railway Company's Coal Unit Train Commitment Certificate Numbers BNSF 90068-0081 and 90068-0082.
13. February 28, 2003 Railroad Car Net Lease Agreement between TUCO INC., as Lessee, and Trinity Industries Leasing Company, as Lessor, including Exhibits A, B, and C, and Schedule 1, as amended effective January 1, 2018.
 - a. Riders 1 dated January 17, 2003 and January 29, 2003, as amended April 1, 2003 and January 1, 2018;

EXHIBIT D

- b. Rider 2 dated January 29, 2003, as amended April 4, 2003, March 23, 2007, and January 1, 2018;
 - c. Rider 3 dated May 22, 2003, as amended March 23, 2007 and January 1, 2018;
 - d. Rider 4 dated June 19, 2003, as amended effective January 1, 2018;
 - e. Rider 7 dated July 10, 2003, as amended March 23, 2007 and January 1, 2018;
 - f. Rider 8 dated July 10, 2003, as amended effective January 1, 2018;
 - g. Rider 10 dated January 10, 2008, as amended June 12, 2013 and January 1, 2018; and
 - h. Rider 11 dated October 31, 2008, as amended May 5, 2014 and January 1, 2018.
- 14. March 17, 2003 Train Set Sublease between TUCO and Savage Tolk Corporation and Savage Harrington Corporation relating to Railcars and its First Amendment, as amended January 1, 2018.
 - 15. May 1, 2013 Railroad Car Maintenance Agreement and its Riders 1.1 and 2.0, as amended effective January 1, 2017, between Trinity Rail Management, Inc., Savage-Tolk Energy Services, and Savage-Harrington Energy Services, as amended from time to time.
 - 16. January 1, 2018 Rail Operation Services, Switching, and Handling Agreement between TUCO and BNSF Railway Company.
 - 17. January 1, 2018 Services Agreement between TUCO and Midland Railway Services, Inc.
 - 18. November 8, 2016 Railcar Storage Track Lease Agreement between TUCO and Texas Northwestern Railroad, as amended from time to time.
 - 19. October 24, 2017 Railcar Storage Agreement between TUCO and Thunder Basin Coal Company, L.L.C.
 - 20. November 3, 2017 Railcar Storage Agreement between TUCO and Nebraska Northwestern Railroad, Inc.
 - 21. TUCO's contractual retention of FIS Energy Systems Inc. (FIS), including, without limitation, FIS Order No. 0347940 L01196224 as provided in the August 15, 2017 Letter Agreement between TUCO and SPS.
 - 22. January 1, 2018 Rail Services Agreement between TUCO and Savage Harrington Corporation.

EXHIBIT E

LOST COAL LETTER AGREEMENT

TUCO INC.

TUCO INC.
500 S. Taylor St., Suite 1050
Amarillo, Texas 79101-2445
Telephone: 806-371-7347
Fax: 806-371-7528

March 28, 2006

Patrick Panzarino
Director of Coal Supply
Xcel Energy
1099 18th Street
Denver, CO 80202

Re: April 30, 1979 Coal Supply Agreement between TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") relating to the Harrington Station, as amended ("Harrington Agreement"); and April 30, 1979 Coal Supply Agreement between TUCO INC. ("Seller") and Southwestern Public Service Company ("Buyer") relating to the Tolk Station, as amended ("Tolk Agreement") (collectively, the "Coal Supply Agreements")

Dear Mr. Panzarino:

This letter is submitted by TUCO INC. ("TUCO") to confirm its agreement with Southwestern Public Service Company ("SPS") concerning amendments to the lost coal factor provisions under Article VIII, Section F of the Coal Supply Agreements.

Effective for TUCO's 2005 fiscal year ending September 30, 2006, TUCO and SPS agree that the provisions of Article VIII, Section F in each of the Harrington and Tolk Agreements will no longer be the mechanisms for accounting for lost coal under the Coal Supply Agreements.

For TUCO's 2005 fiscal year, in consultation with SPS's accounting professionals and commencing March 2006, TUCO will make monthly accounting adjustments for TUCO's 2005 fiscal year as necessary to reconcile, at TUCO's fiscal year end, TUCO's LIFO book inventories to the physical inventories of coal at the Tolk and Harrington Stations determined in accordance with the July 2005 physical inventory surveys at the Tolk and Harrington Stations performed in accordance with the American Society for Testing and Materials standards ("ASTM Surveys"). This reconciliation of TUCO's LIFO book inventories to physical inventories will include TUCO's book inventory cost basis, tonnage, and Btu quality, and will be completed by a credit or payment invoice to SPS by TUCO to be submitted on or before November 15, 2006. TUCO's obligation to continue the monthly adjustments

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Patrick Pabzarino
March 28, 2006
2 of 3

provided for in this paragraph after April 2006 is contingent upon TUCO successfully increasing its credit facility effective May 2006 by Twenty Five Million Dollars (U.S. \$25,000,000)

Commencing with TUCO's 2006 fiscal year, the lost coal adjustment factors under each of the Coal Supply Agreements will be set as a positive percentage, to be adjusted on an as needed basis by agreement between the parties, to minimize the payments or credits necessary to annually reconcile TUCO's LIFO book inventories to the physical coal inventories at the Tolk and Harrington Stations at the end of each of TUCO's fiscal years during the term of each Coal Supply Agreement.

Commencing with TUCO's 2006 fiscal year, an annual inventory true up for each of the Tolk Station and the Harrington Station will be conducted, to provide for a reconciliation, taking into consideration the lost coal factors set in accordance with the preceding paragraph; at TUCO's fiscal year end, of TUCO's LIFO book inventories to physical inventories determined by ASTM Survey, conducted at TUCO's request by qualified third parties and certified to TUCO and SPS. This reconciliation will include TUCO's cost basis, tonnage, and Btu quality and will be completed by a credit or payment invoice to SPS by TUCO to be submitted on or before forty five (45) days after the end of each of TUCO's fiscal years during the term of this agreement.

In consultation with SPS, TUCO will conduct any additional ASTM Surveys or GPS volumetric surveys each year as the parties agree are appropriate to maintain an accurate account of the physical inventories for coal at the Tolk and Harrington Stations. The costs associated with the annual ASTM Survey and any additional surveys as provided herein will be reimbursed to TUCO through the cost reimbursement provisions of the Coal Supply Agreements.

TUCO also will cause its LIFO book inventory computer software to be modified as necessary to accomplish the annual true up of LIFO book inventory to physical inventory contemplated herein and that the costs of such modifications will be reimbursed to TUCO through the cost reimbursement provisions of the Coal Supply Agreements.

It is the intent of the parties that upon the expiration or earlier termination of each of the Coal Supply Agreements, to the extent there is a disparity between TUCO's LIFO book inventory and the physical inventory for coal at the Tolk or Harrington Station, SPS will purchase and pay for coal in inventory at the applicable Station in a quantity equal to TUCO's LIFO book inventory, regardless of the physical inventory, such that TUCO will be able to pay in full all debt which financed TUCO's coal inventories in accordance with the terms of TUCO's approved coal inventory financing agreements. Upon the payment for TUCO's LIFO book inventory as provided herein, SPS will own any coal in inventory without further compensation or obligation to TUCO.

(00271621 / 1)

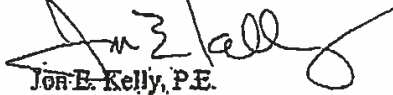
Patrick Panzerino
March 28, 2006
3 of 3

Except as amended herein, all other provisions of the Agreements remain in full force and effect.

If the foregoing meets with your approval, please sign a duplicate original of this letter and return it to me as soon as practicable.

Sincerely,

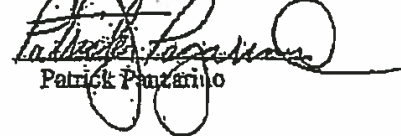
TUCO INC.


Jon E. Kelly, P.E.
Vice President

cc: Charles McNeil
George Davies, Esq.
Ray Gardner, Esq.

ACCEPTED AND AGREED TO:

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: 
Patrick Panzerino

(032762) / 1)

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 re-vest 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:

"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."

612

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.

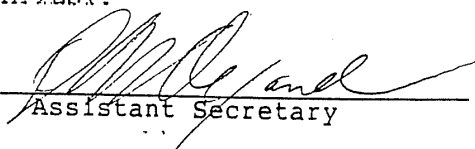
(c) Governing Law. This First Amendment shall be construed and governed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have executed this **612**
First Amendment in their respective corporate names.

WHEELABRATOR ENERGY LEASING
COMPANY

By 
Its _____

ATTEST:


Assistant Secretary

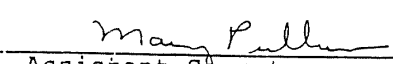
SOUTHWESTERN PUBLIC SERVICE
COMPANY

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,

A handwritten signature in black ink, appearing to read 'H. Craig Romer'.

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

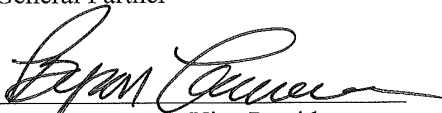
By: 
Byron Lawrence, Vice President

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

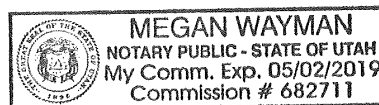


EXHIBIT A

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.