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July 24, 2023

Ms. Melanie Sandoval
Records Bureau Chief
New Mexico Public Regulation Commission
Prc.records@state.nm.us
PO Box 1269
Santa Fe, NM 87504

Subject: Application for Approval of Purchased Power Agreement and Energy Storage Agreement Pursuant to 17.9.551 NMAC

Dear Ms. Sandoval:

Enclosed herewith for filing please find Public Service Company of New Mexico's Application for Approval of Purchased Power Agreement ("PPA") and Energy Storage Agreement ("ESA") pursuant to 17.9.551 NMAC ("PPA Rule"). The additional documents submitted in support of the Application include the following:

- Proposed form of customer notice;
- Table showing where each PPA Rule requirement is addressed in testimony; and
- Direct Testimony and Exhibits of Stella Chan, R. Brent Heffington, Nicholas L. Phillips and Thomas P. Duane

PNM's Application requests the New Mexico Public Regulation Commission ("NMPRC" or "Commission") approve a PPA with NMRD Data Center IV, LLC ("NMRD IV") for 140 MW of capacity and associated solar energy from the TAG Solar Energy Center over a 20-year term; and an ESA with NMRD IV for 50 MW of capacity from the co-located TAG Energy Storage facility over a 20-year term. PNM will recover the costs of the PPA and ESA from Meta Platforms, Inc. (formerly Facebook, Inc.) subsidiary Greater Kudu LLC ("Customer") as provided in the Second Amended and Restated Special Service Contract ("SSC") approved originally by the Commission in Case No. 16-00191-UT and, as amended, in Case No. 18-00269-UT. The SSC requires PNM to procure sufficient renewable energy resources to meet Customer's load at the Data Center in Los Lunas, New Mexico, and provides that PNM shall recover from Customer the costs of these additional resources such that there will be No Net Adverse Impact (as defined in the SSC) on PNM's other retail customers. The PPA and ESA PNM seeks approval of are consistent with the SSC and Commission Final Orders in Case Nos. 16-00191-UT, 18-00009-UT and 18-00269-UT, and are therefore also in the public interest.

PNM will serve a copy of this Application and all attachments on the Attorney General, NMPRC Staff, and all counsel of record and parties pro se in PNM's last rate case (ongoing Case No. 22-00270-UT) and PNM's last PPA application for Customer (Case No. 21-00031-UT). All notices, pleadings, documents and other communications regarding this filing should be sent to the following individuals:

Stacey J. Goodwin
Associate General Counsel
PNM Resources, Inc.
Corporate Offices - Legal Dept.
Albuquerque, NM 87158-0805
Phone: 505-241-4927
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This application is being electronically filed, and a copy of the check for the filing fee is included. A check in the amount of \$25.00 for the filing fee for this application will be mailed to the NMPRC.

If you have any questions or require additional information regarding this Application, please call me at (505) 241-2881.

Respectfully submitted,

/s/Steve Schwebke
Steve Schwebke
Senior Project Manager, Regulatory Policy and Case Management

cc: Certificate of Service

GCG#531237

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,) **Case No. 23-00____-UT**
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
)

**PUBLIC SERVICE COMPANY OF NEW MEXICO’S APPLICATION FOR
APPROVAL OF A PURCHASED POWER AGREEMENT AND AN
ENERGY STORAGE AGREEMENT PURSUANT TO 17.9.551 NMAC**

Public Service Company of New Mexico (“PNM”) hereby applies to the New Mexico Public Regulation Commission (“Commission”) pursuant to 17.9.551 NMAC (“Rule 551”) for approval of the following:

- 1) one purchased power agreement (“PPA”) with NMRD Data Center IV, LLC (“NMRD IV”) for 140 MW of solar energy from the TAG Solar Energy Center (“TAG PPA”);
- 2) one energy storage agreement (“ESA”) with NMRD IV for 50 MW of four-hour battery storage capacity from the TAG Energy Storage Center (“TAG ESA”).

The energy and capacity provided by the proposed PPA and ESA are necessary to meet the expanding electric service requirements of Meta Platforms, Inc. (formerly Facebook, Inc.) subsidiary Greater Kudu LLC (“Customer”) at its data center in Los Lunas, New Mexico (“Data Center”). PNM proposes to recover the costs of the PPA and ESA directly from the Customer through Rider No. 47, the Green Energy Rider, as provided at Section 5.1 of the Second Amended and Restated Special Service Contract (“SSC”) between PNM and the Customer.

The Customer participates in a voluntary renewable program under the Renewable Energy Act (“REA”).¹ Through that program, and as described in the SSC, PNM is committed to matching one hundred percent of the Customer’s energy consumption on an annual basis with new renewable energy resources that will be paid for by the Customer. The Commission approved the initial special service contract between PNM and the Customer as well as Initial Solar Facilities PPAs to serve the Customer in Case No. 16-00191-UT. In its Final Order in Case No. 16-00191-UT, the Commission found that, viewing the transaction as a whole, PNM’s application provided a number of net benefits to PNM’s customers and the New Mexico economy, was in the public interest, and should be approved. The Commission’s approvals in that case were a key factor in the Customer’s decision to locate the Data Center in New Mexico. The Commission subsequently approved Additional Renewable Energy Procurements in Case Nos. 18-0009-UT, 18-00269-UT, and 21-00031-UT, and approved amendments to the original special service contract in Case No. 18-00269-UT.

The Customer recently notified PNM that additional renewable energy is required to serve the ongoing expansion of its Data Center, as anticipated in the SSC. PNM and the Customer worked together to identify and evaluate the proposed PPA and ESA as required by the SSC and have determined that the proposed resources will provide sufficient energy and capacity to meet the expanded load. It is important to receive all approvals requested in this Application by December 31, 2023, to help the Customer serve the expanding load of the Data Center buildings currently under construction.

¹ NMSA 1978, § 62-16-7(B) (2019).

In further support of its Application, PNM states the following:

I. BACKGROUND

1. PNM is an investor-owned New Mexico corporation that owns, operates and controls plant, property and facilities for the generation, transmission, distribution and sale of electric energy to the public in portions of New Mexico (*i.e.*, retail services), and to purchasers for resale (*i.e.*, wholesale services). A certified copy of PNM's articles of incorporation is on file with the Commission.

2. PNM is a public utility in New Mexico, as defined in NMSA 1978, Section 62-3-3(G), and is subject to the jurisdiction and authority of the Commission.

3. PNM's principal office is located at 414 Silver Ave. SW, Albuquerque, New Mexico 87102.

4. PNM's attorneys and corporate representatives who should receive all notices, pleadings, discovery requests and responses and other documents related to this case are:

Stacey Goodwin, Associate General Counsel
John Verheul, Corporate Counsel
PNMR Services Company
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II. THE PPA AND ESA

5. PNM seeks approval of one PPA and one ESA:

A. The TAG PPA. Under this PPA, NMRD IV will sell to PNM the energy output from the TAG Solar Energy Center Facility at the price of \$32.50/MWh over a twenty-year term. The twenty-year term begins on the facility's commercial operation date, which is expected to be March 31, 2025. The TAG Solar Energy Center Facility is a new 140 MW solar photovoltaic generating facility that will be located in Sandoval County, New Mexico. NMRD Data Center IV, LLC is a joint enterprise between AEP OnSite Partners, LLC, a wholly owned subsidiary of American Electric Power Company, Inc., and PNMR Development and Management Corporation, a wholly owned subsidiary of PNM Resources, Inc. and a PNM affiliate.

B. The TAG ESA. Under this ESA, NMRD IV will sell to PNM the energy storage capacity of the TAG Energy Storage facility at the price \$11.00/kw-month over a twenty-year term. The nameplate capacity of the TAG Energy Storage facility is approximately 50 MW for a 4-hour storage duration, providing up to 365 equivalent charge/discharge cycles per year. The facility will be co-located with the TAG Solar facility.

6. The TAG PPA and TAG ESA are Class I transactions pursuant to NMSA 1978, Section 62-3-3(K) (2009). PNM timely filed written notification of these Class I transactions as required by 17.6.450.11 NMAC on July 24, 2023.

7. Pursuant to the SSC, PNM and the Customer are required to work collaboratively, expeditiously, and in good faith to: (1) determine when PNM should bring new renewable resources into service to match the Data Center’s projected load; (2) identify and evaluate the costs and benefits of new renewable resources available to meet that load; and (3) determine the location(s) of those Additional Renewable Energy Procurements to avoid constraints on PNM’s transmission system.² As required, PNM and Customer have collaborated to identify the agreements and renewable energy and storage facilities described above to meet the Customer’s energy needs at pricing and terms acceptable to Customer and consistent with PNM’s operational requirements.

8. Construction of the facilities that will provide energy and capacity under the PPA and ESA will provide significant economic benefits to New Mexico, including approximately \$270 million in direct investment and over 350 construction and full-time jobs. The ten previously approved renewable projects serving the Data Center entailed \$834 million of construction and equipment expenditures and approximately 77 ongoing operational jobs and \$16 million in operating expenditures. These facilities are necessary to provide energy and capacity to meet the needs of the Data Center, which represents approximately \$2 billion in total construction and equipment investment including the current phase of construction. During the current buildout, hundreds of construction jobs will be created, and additional direct full-time positions will be created resulting in over 400 operational jobs at the Data Center.

III. RULE 551

9. Rule 551.8 provides that no electric utility may become irrevocably obligated as a purchaser under a long term purchased power agreement (“LTPPA”) without first obtaining the

² SSC at § 3.1.3.

Commission’s written approval. An LTPPA is a PPA or ESA with a term of five years or more, inclusive of the base term and any extensions, for which the utility intends to seek rate recovery from New Mexico retail customers, excluding agreements required to be approved under the REA and PPAs with Qualifying Facilities (“QFs”) pursuant to 17.9.570 NMAC. Because the PPA and ESA PNM proposed here are for terms of more than five years and are not subject to the REA or with a QF pursuant to 17.9.570 NMAC, PNM is obligated to obtain Commission approval before becoming irrevocably bound under them. The Commission may approve the Application without a hearing sixty days after notice is provided if no protest is filed. 17.9.551.10(A) NMAC. Under Rule 551, the Commission must issue a final order no later than six months from the date PNM files its Application. 17.9.551.10(B) NMAC. Both the PPA and ESA include provisions (Section 17.3) allowing termination of the agreements should the Commission not issue an order on this Application by December 31, 2023, the “Regulatory End Date.”

10. PNM is requesting that the Commission issue a final order approving the Application without a formal hearing provided no protest is filed within 60 days after the date notice is given, consistent with 17.9.551.10(A) NMAC. Expedient Commission review and approval of the Application is reasonable because the provisions of the SSC between PNM and the Customer under which the PPAs and ESA will be acquired and the rate and rate rider under which Customer will pay the PPA and ESA costs have been reviewed by the Commission and interested parties and were approved by the Commission in Case Nos. 16-00191-UT and 18-00269-UT. If a protest is filed and the Commission determines that the protest demonstrates a public hearing is necessary, PNM requests that the hearing be scheduled so a final order can be issued by no later than December 31, 2023, the Regulatory End Date as specified in the PPA and ESA.

11. Rule 17.9.551.8(D) NMAC imposes certain evidentiary requirements when a utility seeks approval of a LTPPA, including that the utility provide a copy of the LTPPA, explain its key terms, and describe the benefits of entering into the LTPPA. The testimony and exhibits submitted in support of this Application satisfy all requirements under Rule 551.

12. Rule 17.9.551.9 NMAC provides that the Commission may authorize ratemaking treatment for LTPPAs. The two PPAs and ESA proposed here are necessary for and will be utilized by PNM to provide service to Customer pursuant to the terms, conditions and cost recovery provisions of the SSC. PNM will recover the costs of the agreements directly from the Customer through Rider No. 47, as provided in the SSC.

13. In Case No. 15-00083-UT the Commission held that the review and approval procedure for a LTPPA is similar to the review and approval procedure for a Certificate of Public Convenience and Necessity, pursuant to NMSA 1978, Section 62-9-1, and that the utility must demonstrate by a preponderance of the evidence that its proposed LTPPA complies with Rule 551 and is in the public interest. *Recommended Decision*, pp. 18-25 (September 21, 2015), *adopted by Final Order* (October 7, 2015). The two PPAs and ESA PNM proposes here are in the public interest because they are consistent with the Final Order in Case Nos. 16-00191-UT, 18-00009-UT and 18-00269-UT, as well as with the No Net Adverse Impact requirement in the SSC.³ The agreements will provide additional economic and environmental benefits to the state.

³ No Net Adverse Impact, as defined in the SSC, “means that, on balance, this Contract and the PNM tariffs described herein result in a neutral or positive impact on rates and service for PNM’s other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs.” SSC at § 1.1.

IV. PNM'S WITNESSES

14. PNM's Application is supported by the direct testimonies of four witnesses:

A. Stella Chan, PNM's Director of Pricing, introduces PNM's other witnesses, summarizes the Application and the requested approvals, provides background information on service to the Customer, explains the purpose of the PPA and ESA and addresses certain requirements of Rule 551, including the potential impact on PNM's financial metrics. Ms. Chan also demonstrates that the PPA and ESA are in the public interest and should be approved as requested.

B. R. Brent Heffington, Managing Director of Generation for PNM, addresses most of the requirements of Rule 551. He describes the PPA and ESA, summarizes their key terms and conditions and supports the reasonableness of the agreements. He also describes the solar facilities and energy storage facility that are the subject of each agreement.

C. Nicholas L. Phillips, PNM's Director of Integrated Resource Planning, addresses resource planning-related matters associated with the Customer's expanded retail load and the proposed new solar and storage resources, including consistency with PNM's 2020 integrated resource plan. Mr. Phillips also explains the system benefits of the proposed 50 MW storage procurement.

D. Thomas P. Duane, Manager of Transmission Planning for PNM, discusses the interconnection and transmission matters related to the PPA and ESA.

15. PNM's witnesses address all requirements of Rule 551. Exhibit 1 to this Application is a table that shows where each of the Rule 551 requirements is addressed in the PNM direct testimonies.

V. OTHER MATTERS

16. Attached hereto as Exhibit 2 is a Proposed Form of Notice to Customers.

17. Pursuant to 17.9.551.8(C) NMAC, PNM is serving a copy of its Application on the Commission's Utility Division Staff, the New Mexico Attorney General, and the parties to PNM's most recent general rate case, Case No. 22-00270-UT, and the parties to the Commission's last proceeding involving the SSC, Case No. 21-00031-UT.

WHEREFORE, PNM requests that the Commission issue an order, on or before December 31, 2023, approving the PPA and ESA as requested in the Application.

Respectfully submitted this 24th day of July 2023.

PUBLIC SERVICE COMPANY OF NEW MEXICO

/s/ John Verheul

John Verheul, Corporate Counsel
Stacey Goodwin, Associate General Counsel
PNMR Services Company
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Stacey.Goodwin@pnmresources.com

Attorneys for Public Service Company of New Mexico

GCG #531224

Rule 551.8 General Requirements for Filing an Application for Approval of a PPA

		In Testimony Of
551.8(D)	An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:	
1	A copy of the LTPPA; and	Brent Heffington
2	An explanation of key terms and conditions of the LTPPA containing:	
a	the term of the LTPPA including any options to extend the agreement;	Brent Heffington
b	the size in MW of capacity and the amount of energy in MWh or kWh per month and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased;	Brent Heffington
c	the price or pricing formula under which the electric utility will pay for the power and energy contracted for, including identification of when charges begin to be incurred, any price reopeners and any price escalation provisions;	Brent Heffington
d	obligations by the electric utility to pay for any fixed or variable administrative, transactional or operation and maintenance costs incurred through the operation of the generation facility, including start-up costs, taxes, insurance, environmental or reclamation-related costs, fuel costs and any other costs that the electric utility may incur; and	Brent Heffington
e	provisions related to non-performance by the counter-party and the remedies provided.	Brent Heffington
3	a description of transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA or both;	Thomas Duane
4	an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers;	Stella Chan
5	A general description of:	
a	the generating facility or facilities that will generate the purchased power; or	Brent Heffington
b	if the power is to be generated from one or more specific generating units to be constructed outside New Mexico, a description of the anticipated siting of the generating unit, expected construction time the expected commercial operation date;	Not Applicable

Rule 551.8 General Requirements for Filing an Application for Approval of a PPA

		In Testimony Of
551.8(D)		An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide:
5	c	if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of:
	i	the approvals required to construct and operate the generating unit, including air quality and other environmental permits;
	ii	the expected construction time;
	iii	the expected commercial operation date;
	iv	the fuel type and supply sources; and
	v	other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement.
6		evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors;
7		evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics;
8		evidence that the LTPPA is consistent with the electric utility's most recent commission-accepted integrated resource plan unless, as described in Section 17.7.3.10 NMAC, material changes that would warrant a different course of action by the electric utility have occurred; in which case, the testimony shall include justification for deviation from the integrated resource plan;
9		evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers;
10		evidence addressing the methodology and criteria by which the purchased power agreement was selected; and
11		any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)	
COMPANY OF NEW MEXICO’S APPLICATION)	
FOR APPROVAL OF A PURCHASED POWER)	
AGREEMENT AND AN ENERGY STORAGE)	Case No. 23-00__-UT
AGREEMENT PURSUANT TO 17.9.551 NMAC,)	
)	
PUBLIC SERVICE COMPANY OF NEW MEXICO,)	
)	
Applicant.)	
)	

NOTICE TO CUSTOMERS

To customers of Public Service Company of New Mexico (“PNM” or “Company”): this document is required by the New Mexico Public Regulation Commission (PRC or “Commission”). The purpose of this document is to provide you with notice of PNM’s Application requesting PRC approval of a purchased power agreement and an energy storage agreement pursuant to 17.9.551 NMAC. This notice:

- Describes the PRC process for considering PNM’s Application; and
- Describes how you can participate in this process if you wish to do so.

If you would like to participate in this process, the information below details how you may participate. **IF YOU DO NOT WANT TO PARTICIPATE IN THIS PROCESS, NO ACTION IS REQUIRED ON YOUR PART.**

NOTICE is hereby given that on July 24, 2023, Public Service Company of New Mexico (“PNM” or “Company”) filed an Application with the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) for approval, pursuant to 17.9.551 NMAC, of the following long term purchased power agreement (“PPA”) and energy storage agreement (“ESA”):

1. The TAG PPA. This PPA provides that NMRD Data Center IV, LLC (“NMRD IV”), will sell PNM the capacity and associated energy from the TAG Solar

Energy Center at the price of \$32.50/MWh over a 20-year term. The 20-year term begins on the facility's commercial operation date, which is expected to be March 31, 2025. The TAG Solar Energy Center is a new 140 MW solar facility that will be located in Sandoval County, New Mexico.

2. The TAG ESA. This ESA provides that NMRD IV will sell PNM the energy storage capacity provided by the TAG Energy Storage facility at the price of \$11.00/kw-month over a 20-year term. The 20-year term begins on the TAG Energy Storage commercial operation date, which is expected to be March 31, 2023. The TAG Energy Storage facility is a new 50 MW 4-hour battery storage facility co-located with the TAG Solar Energy Center in Sandoval County.

PNM proposes to recover the costs of the PPA and ESA from Meta Platforms, Inc. (formerly Facebook, Inc.) subsidiary Greater Kudu LLC ("Customer"), as provided in the Second Amended and Restated Special Services Contract ("SSC") entered into by PNM and the Customer and approved originally by the Commission in Case No. 16-00191-UT and, as amended, in Case No. 18-00269-UT. The energy and capacity provided by the PPA and ESA are necessary to meet Customer's electric service requirements at its data center in Los Lunas, New Mexico ("Data Center").

PNM's Application states that the SSC requires PNM to procure sufficient renewable resources, such as the PPA and ESA, to meet Customer's load at its Data Center. PNM contends that the SSC also provides that PNM shall recover from Customer the cost of these renewable resources such that there will be No Net Adverse Impact on PNM's other retail customers. No Net Adverse Impact is defined in the SSC as meaning that the SSC "and the PNM tariffs described [in the SSC] result in a neutral or positive impact on

rates and service for PNM's other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs." PNM's Application states that the PPA and ESA for which PNM seeks approval are consistent with the SSC and the Commission's Final Orders in Case Nos. 16-00191-UT, 18-0009-UT, 18-00269-UT and 21-00031-UT.

PNM's Application states that, pursuant to the SSC, Customer has specific requirements for its electric service needs at its Data Center, including that the electric service for the Data Center be provided, to the greatest extent practicable, by new renewable energy resources, *i.e.*, in addition to whatever renewable energy resources that are used to serve PNM's other customers, such that the production of additional renewable energy over the course of a year will equal the Data Center's energy demand and consumption. PNM contends that to satisfy this service requirement, Customer is willing to bear the cost of procuring the renewable resources, which are necessary to serve its Data Center load.

PNM's Application also states that in order to meet Customer's electric service requirements, PNM and Customer have worked collaboratively, expeditiously and in good faith to: (i) determine when it makes the most sense to bring new renewable resources into service to match the data center's projected load; (ii) identify and evaluate the costs and benefits of new renewable energy resources available to satisfy that growth; and (iii) determine the site(s) of those Additional Renewable Energy Procurements at locations that will avoid constraints on PNM's transmission system. PNM contends it is important to Customer that these new renewable energy resources be above and beyond the state's

Renewable Portfolio Standard (“RPS”) requirements. This results in the PPA providing energy in PNM’s resource portfolio beyond what is required by the RPS.

PNM’s Application states that, in addition to meeting Customer’s need for renewable energy, completing construction of the TAG Solar Energy Center and TAG Energy Storage facility will provide economic benefits to New Mexico as a whole, including through direct investment, additional tax revenue, and job creation. Further, PNM’s Application also states that Customer’s expansion of its Data Center will create economic benefits for New Mexico, including through the creation of construction jobs and jobs at the data center, and through a multiplier spending effect that benefits other sectors of the local and regional economy.

Pursuant to 17.9.551 NMAC, PNM must receive Commission approval before becoming irrevocably bound under the PPA and ESA.

Any interested person may examine PNM’s filing in this case together with any exhibits and related papers which may be filed in this case at PNM Headquarters, Main Offices, Albuquerque, New Mexico 87158, telephone: (505) 241-2700, website www.pnm.com, or on the Commission’s website at www.nmprc.state.nm.us under “Case Lookup – eDocket.” This case has been docketed as Case No. 23-00___-UT and any inquiries or written comments should refer to that case number.

The procedural schedule for this case is as follows:

A. Any person desiring to protest the Application shall, instead of filing a protest, file a Motion for Leave to Intervene pursuant to the Commission Rules of Procedure, 1.1.2.23 NMAC. Such motion must state whether the intervenor opposes the Application and, if so, the reason(s) for such opposition. Any person desiring to intervene

in the proceeding must file a Motion for Leave to Intervene on or before _____, pursuant to Commission Rule of Procedure, 1.1.2.23 NMAC.

B. The Commission's Utility Division Staff shall, and any intervenor may, file direct testimony on or before _____.

C. Rebuttal testimony shall be filed on or before _____. Alternatively, oral rebuttal testimony may be permitted at the hearing.

D. A public hearing shall be held beginning on _____ and continue as necessary. Such hearing may be vacated if deemed not required at the discretion of the Commission.

E. Based on present conditions and logistical issues, should a hearing be required it will be necessary to conduct evidentiary hearing via the Zoom videoconference platform. Access to and participation in the evidentiary hearing shall be limited to party-participants (i.e., counsel and witnesses), the Commissioners, and other essential Commission personnel. The Zoom hearing will be livestreamed through YouTube and will be displayed on the Commission's website at <https://www.nm-prc.org>. Persons not participating in the evidentiary hearing as an attorney or witness may view the hearing on the Commission's website and shall not join the hearing via Zoom except to provide oral comment as allowed below.

F. Interested persons who are not affiliated with a party may make oral or written comment as allowed by Rule 1.2.2.23(F) NMAC. Oral comment shall be taken shortly after the beginning of the evidentiary hearing on _____ and commenters shall be limited to 3 minutes per comment. As part of the public hearing, public comment will be taken via the Zoom platform; therefore, persons wishing to make an oral public

comment must register in advance, not later than 8:30 a.m. MT on _____, by emailing Ana Kippenbrock at ana.kippenbrock@prc.nm.gov. Written public comments may be submitted before the Commission takes final action by sending the comment, which shall reference PRC Case No. 23-00____-UT, to prc.records@state.nm.us. Public comments, whether oral or written, shall not be considered as evidence in this proceeding.

G. PNM shall prepare and file in this docket a draft proposed Final Order no later than _____.

H. The procedural dates and requirements provided herein are subject to further order of the Commission or Hearing Examiner.

I. The Commission's Procedural Rules, 1.2.2 NMAC, shall apply to this case except as modified by Order of the Commission or Hearing Examiner. The rules of procedure and other PRC rules are available online at the New Mexico Compilation Commission at <https://nmonesource.com/nmos/en/nav.do>.

J. Anyone filing pleadings, documents, or testimony in this case shall comply with the Commission's electronic filing policy which is amended from time to time. This includes compliance with the following (not exhaustive) set of requirements. Filings must be in .pdf format. They must include an electronic signature and be sent to the Records Management Bureau's email address, PRC.Records@prc.nm.gov, or to another Records Bureau address as set out on the Commission's webpage. Any filing must be submitted within regular business hours of the due date to be considered timely filed. Documents received after regular business hours will be considered filed the next business day. Regular Commission business hours are from 8:00 a.m. to 5:00 p.m. MT. Parties shall serve a copy on all parties of record and Staff. Copies of all filings shall also be emailed

on the date of filing and service to the Hearing Examiner at _____ by no later than 5:00 p.m. MT. Any filing emailed to the Hearing Examiner shall include the Word or other native version of the filing (e.g., Excel or Power Point) if created in such format. Any filings not emailed to the Hearing Examiner in compliance with the requirements of this order and Commission rules are subject to being summarily rejected and stricken from the record at the Hearing Examiner's discretion.

K. Any person whose testimony has been pre-filed will attend the hearing, if such hearing is required, and submit to examination under oath.

L. The Commission or its designee(s) will conduct and preside over all necessary hearings, with the assistance of _____ pursuant to NMSA 1978, §§ 8-8-4 and 8-8-13 and 1.2.2.29(A) & (B)(1) NMAC, to take all such actions as are necessary and consistent with Commission procedure in this matter, including determination of any preliminary motions and the assisting or conducting the public hearing, and will issue a Final Order in this case without a Recommended Decision.

PERSONS WITH DISABILITIES

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COMMISSION AT (505) 467-9116 OR (505) 690-4191 TO REQUEST SUCH ASSISTANCE AS SOON AS POSSIBLE, PREFERABLY AS SOON AS THE PERSON RECEIVES NOTICE OF THIS PROCEEDING TO ALLOW CONSIDERATION OF THE REQUEST AND TO ARRANGE FOR A POTENTIAL REASONABLE ACCOMMODATION.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this ___ day of ___ **2023**.

GCG#531225

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
Applicant.)**

Case No. 23-00 ____-UT

**DIRECT TESTIMONY
OF
STELLA CHAN**

July 24, 2023

**NMPRC CASE NO. 23-00__-UT
INDEX TO THE DIRECT TESTIMONY OF STELLA CHAN**

**WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO**

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PNM EXHIBIT SC-1 Résumé of Stella Chan

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AFFIRMATION

**DIRECT TESTIMONY OF
STELLA CHAN
NMPRC CASE NO. 23-00___-UT**

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I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME, POSITION AND PROVIDE YOUR CONTACT INFORMATION AND QUALIFICATIONS.

A. My name is Stella Chan. I am the Director of Pricing for Public Service Company of New Mexico (“PNM”). For my contact information and more about my qualifications, please see PNM Exhibit SC-1.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY ADMINISTRATIVE PROCEEDINGS?

A. Yes, please see PNM Exhibit SC-1 for a list of proceedings in which I have provided testimony before the New Mexico Public Regulation Commission (“NMPRC” or “Commission”).

Q. ARE YOU PRESENTING ANY EXHIBITS BESIDE PNM EXHIBIT SC-1?

A. Yes. I am also presenting, as PNM Exhibit SC-2, a letter to PNM from Meta describing the economic benefits to the State of New Mexico of Facebook, Inc. (now Meta) locating their Data Center in the state, as well as the economic benefits expected from the Data Center’s current expansion and the approval of the proposed renewable energy and energy storage projects proposed in this case.

Q. WHAT APPROVALS IS PNM SEEKING IN THIS CASE?

**DIRECT TESTIMONY OF
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1 **A.** PNM is seeking approval of one purchased power agreement (“PPA”) and one
2 energy storage agreement (“ESA”). The PPA is with NMRD Data Center IV,¹ LLC
3 (“NMRD IV”) for 140 MW of solar energy from the TAG Solar Energy Center
4 facility over a twenty-year term at a price of \$32.50 per MWh. The ESA is with
5 NMRD IV for a twenty-year term for the capacity and energy storage services
6 provided by the TAG Energy Storage facility, a 50 MW four-hour battery storage
7 facility that will be co-located with the TAG solar facility at a price of \$11.00 per
8 kW per month.

9
10 These agreements are described in more detail in PNM witness R. Brent
11 Heffington’s testimony.

12
13 **Q. WHY ARE THE PPA AND ESA NECESSARY?**

14 **A.** The Customer participates in a voluntary renewable program as provided for in the
15 Renewable Energy Act (“REA”).² Through that voluntary renewable program, the
16 Customer commits to matching one hundred percent of its energy consumption on
17 an annual basis with new renewable energy. The PPA and ESA proposed here
18 match the increasing energy and capacity needs at the Customer’s Data Center in
19 Los Lunas. The Customer has notified PNM that it is expanding the Data Center
20 as anticipated in the Second Amended and Restated Special Service Contract

¹ NMRD Data Center IV, LLC is a joint enterprise between AEP OnSite Partners, LLC, a wholly-owned subsidiary of American Electric Power Company, Inc., and PNMR Development and Management Corporation, a wholly-owned subsidiary of PNM Resources, Inc. and a PNM affiliate.

² NMSA 1978, § 62-16-7(B) (2019).

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1 (“SSC”). As with any retail customer, PNM has an obligation to serve the increased
2 load under the Public Utility Act.³ Pursuant to the SSC, PNM is also required to
3 procure sufficient Additional Renewable Energy Procurements to match the
4 Customer's energy consumption on an annual basis. Additional Renewable Energy
5 Procurements is defined in the SSC as including new procurements of Renewable
6 Energy resources as well as Alternative Capacity Projects, such as energy storage.
7 PNM and the Customer worked together to identify and evaluate the proposed PPA
8 and ESA as required by the SSC. Also, as required by the SSC, PNM will recover
9 the costs of these new resources directly from the Customer through Rider No. 47,
10 the Green Energy Rider.⁴

11

12 **Q. HAS THE COMMISSION PREVIOUSLY CONSIDERED PNM’S SERVICE**
13 **TO THE DATA CENTER?**

14 **A.** Yes. The Commission approved the initial special service contract between PNM
15 and the Customer as well as Initial Solar Facilities PPAs to serve the Customer in
16 Case No. 16-00191-UT. The Commission’s approvals in that case were a key factor
17 in the Customer’s decision to locate the Data Center in New Mexico. The
18 Commission subsequently approved Additional Renewable Energy Procurements
19 in Case Nos. 18-00009-UT, 18-00269-UT, and 21-00031-UT. In Case No. 18-
20 00269-UT, the Commission also approved the SSC, which amended the initial
21 special service contract to remove a 110 MW cap on PNM’s obligation to procure

³ NMSA 1978, § 62-8-2 (1953).

⁴ Available at <https://www.pnm.com/rates>.

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1 Additional Renewable Energy Procurements and provided for limited changes to
2 the special service contract rates to ensure the procurement of Additional
3 Renewable Energy Procurements results in No Net Adverse Impact. In Case No.
4 21-00031-UT the Commission approved solar PPAs and an ESA for a 50 MW four-
5 hour battery storage facility, the first ESA PNM entered into to serve the Customer.

6

7 **Q. ARE THE APPROVALS REQUESTED IN THIS CASE CONSISTENT**
8 **WITH THE PRECEDENT SET IN PREVIOUS APPLICATIONS FOR THE**
9 **CUSTOMER?**

10 **A.** Yes. The provisions of the SSC between PNM and the Customer under which the
11 PPA and ESA will be entered into and the rate rider under which the Customer will
12 pay the PPA and ESA costs have been reviewed by the Commission and interested
13 parties and approved by the Commission in Case Nos. 16-00191-UT and 18-00269-
14 UT. PNM's Application in this case does not propose to change any of the
15 governing terms of service previously approved by the Commission. The PPA and
16 ESA are consistent with the SSC because they allow PNM to continue to meet the
17 Customer's service needs at the expanding Data Center with new renewable energy
18 and capacity resources while ensuring No Net Adverse Impact on PNM's other
19 retail electric service customers.

20

21 **Q. PLEASE DESCRIBE WHAT YOU MEAN BY "NO NET ADVERSE**
22 **IMPACT."**

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1 **A.** No Net Adverse Impact is defined in the SSC and “means that, on balance, this
2 Contract and the PNM tariffs described herein result in a neutral or positive impact
3 on rates and service for PNM’s other retail electric service customers considering
4 all relevant benefits generated and burdens created by this Contract and those PNM
5 tariffs.”⁵ Additional Renewable Energy Procurements shall result in No Net
6 Adverse Impact as the term is defined in the SSC.⁶

7

8 **Q. ARE THE APPROVALS REQUESTED IN THIS CASE CONSISTENT**
9 **WITH THE NO NET ADVERSE IMPACT REQUIREMENT OF THE SSC?**

10 **A.** Yes. PNM projects that it will need the Additional Renewable Energy
11 Procurements proposed in this case in order to accommodate the Data Center’s
12 increased energy consumption with renewable energy. Consistent with the terms
13 of the SSC, the cost of the proposed PPA and ESA will be recovered from the
14 Customer through Rider No. 47. PNM witness Heffington testifies that the terms
15 of the agreements are reasonable and similar to terms in other PPAs and ESAs PNM
16 has entered into. PNM witnesses Phillips and Duane explain that the proposed
17 procurements are consistent with PNM’s most recently filed integrated resource
18 plan and that the projected transmission costs are reasonable, respectively.

19

20 **Q. WHAT OTHER RATES APPLY TO THE SSC?**

⁵ SSC § 1.1.

⁶ SSC § 3.1.2.

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1 **A.** In addition to Rider Nos. 47 and 49, the Customer is subject to Rate No. 36B, the
2 Special Service Rate. As provided at Section 5 of the SSC, through the Special
3 Service Rate the Customer pays for all other system-related costs such as customer,
4 transmission, and contribution to production costs.

5

6 **Q.** **ARE THERE SPECIFIC BENEFITS TO OTHER RETAIL CUSTOMERS
7 FROM APPROVAL OF THE ESA?**

8 **A.** Yes. The ESA provides PNM operational control over the storage resource, so
9 PNM may dispatch the battery to meet system needs rather than solely to meet the
10 Customer’s individual needs. PNM witness Phillips discusses the need for, and
11 benefits of, the storage resource in his Direct Testimony.

12

13 **Q.** **ARE THERE ANY FINANCIAL BENEFITS TO THE STATE FROM THE
14 APPROVALS REQUESTED IN THE APPLICATION?**

15 **A.** PNM Exhibit SC-2 describes the direct economic impact of the Customer’s data
16 center to date as well as the expansion. Approval of PNM’s Application is an
17 essential part of that plan, which is expected to result in the following economic
18 development benefits:

- 19 • Approximately \$2 billion of total investment in construction and equipment of
20 Customer’s data center in Los Lunas, New Mexico, including the current phase
21 of construction;
- 22 • An average of 1,100 construction jobs during peak construction of the past and
23 on-going phases of buildout, and over 400 direct operational jobs following

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1 completion of the current phase that will result in nine buildings, with 1.5 times
2 the square footage of the Empire State Building;

- 3 • A job multiplier effect that is estimated to support 18 jobs elsewhere in the
4 economy for every \$1 million spent by Meta on data center operations;
- 5 • More than \$3.1 million in direct grant funding to 80 Valencia County area
6 schools and nonprofits since 2019;
- 7 • Over 2,200 construction phase jobs, \$834 million in construction expenditures,
8 approximately 77 ongoing operational jobs and \$16 million in operating
9 expenditures associated with the ten previously approved renewable energy
10 projects for the data center; and
- 11 • Approximately \$270 million in direct investment, an expected \$9.5 million in
12 payment in lieu of property tax during the 20 year term of the PPA and ESA as
13 well as \$7.0 million to the landowner, and approximately 350 construction and
14 two permanent jobs associated with the TAG Energy Center 140 MW solar and
15 50 MW battery storage facility in Sandoval County, as relayed by NMRD.

16 **II. APPLICABLE LEGAL STANDARDS AND OTHER WITNESSES**

17 **Q. WHAT LEGAL STANDARDS APPLY TO PNM'S APPLICATION?**

18 **A.** Because the proposed PPA and ESA are agreements with terms of at least five years
19 for the purchase of energy or capacity, they are “long term purchased power
20 agreements” under Commission Rule 551 (17.9.551 NMAC). Rule 551 sets forth
21 the information that PNM is required to provide in support of its Application.

22

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1 Although not required by Rule 551 itself or by any statute, in 2015 the Commission
2 held that the review and approval procedure for an agreement under Rule 551 is
3 similar to the review and approval procedure for a Certificate of Public
4 Convenience and Necessity pursuant to NMSA 1978, Section 62-9-1, and that the
5 utility must demonstrate by a preponderance of the evidence that its proposed PPA
6 not only complies with Rule 551, but is also in the public interest.⁷ The
7 Commission has equated "public convenience and necessity" with "public interest"
8 and "public interest" with "a net public benefit."⁸ The Commission has applied this
9 standard in approving prior PPAs and ESAs under the SSC in Case Nos. 16-00191-
10 UT, 18-00009-UT, 18-00269-UT, and 21-00031-UT, as well as in other PNM
11 cases, including Case Nos. 19-00158-UT and 19-00195-UT.

12
13 **Q. PLEASE IDENTIFY PNM'S OTHER WITNESSES WHO ARE**
14 **PROVIDING DIRECT TESTIMONY IN THIS CASE.**

15 **A.** The other witnesses who have filed testimony in support of this Application are:

16 • R. Brent Heffington, Managing Director of Generation for PNM, will address
17 certain requirements of Rule 551 not addressed in my testimony to provide
18 specific information regarding the PPA and ESA that are the subject of this
19 application, and support the reasonableness of the terms and conditions of
20 these agreements.

⁷ Case No. 15-00083-UT *Recommended Decision* at pp. 18-25 (September 21, 2015), adopted by *Final Order* (October 7, 2015).

⁸ Case No. 15-00083-UT *Recommended Decision* at pp. 18-25 (September 21, 2015), adopted by *Final Order* (October 7, 2015).

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1 • Nicholas L. Phillips, Director of Integrated Resource Planning for PNM, will
2 address resource planning-related matters associated with the Customer’s
3 expanded retail load and the additional renewable energy resources that will
4 be procured by PNM and paid for by the Customer.

5 • Thomas P. Duane, Manager of Transmission Planning for PNM, will address
6 interconnection and transmission matters related to the PPA and ESA.

7

8 **Q. ARE YOU ADDRESSING ANY OF THE RULE 551 REQUIREMENTS IN**
9 **YOUR TESTIMONY?**

10 **A.** Yes. I am addressing Rule 551.8(D)(4), which requires the utility provide “an
11 explanation of how the electric utility proposes to recover from ratepayers the costs
12 incurred and an estimate of the effect on rates to customers.” Rule 551.9(A)
13 provides that, unless otherwise authorized by the Commission, energy costs
14 incurred under a PPA are recoverable through a utility’s fuel and purchased power
15 cost adjustment clause and capacity costs are recoverable through base rates.
16 Pursuant to the SSC, PNM will recover the costs of the PPA and ESA directly from
17 the Customer through Rider No. 47, the Green Energy Rider. Section 5.1.1 of the
18 SSC provides that the “rate under the Green Energy Rider is comprised of a pass-
19 through to Customer of the cost of the Initial Solar Facilities PPAs and the cost of
20 any Additional Renewable Energy Procurement for Customer executed pursuant to
21 the [SSC].” The TAG PPA and TAG ESA are Additional Renewable Energy
22 Procurements, as defined in the SSC at Sections 1.1 and 3.1.2. There will be no

**DIRECT TESTIMONY OF
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1 impact on rates to PNM’s other customers from the PPA and ESA. Network
2 Upgrade costs for transmission from the generation and storage facilities, as
3 discussed by PNM witness Duane, are approximately \$2 million that will be
4 allocated to FERC transmission and PNM retail customers. Impact to PNM’s
5 annual revenue requirement from the Network Upgrade will be about \$252,000, of
6 which approximately 52% or \$131,000 will be allocated to retail customers. The
7 changes in revenue requirement would not be reflected in rates until PNM’s next
8 rate case following completion of the projects.

9

10 I am also addressing Rule 551.8(D)(7), which requires a utility to provide “evidence
11 of the [PPA or ESA’s] impact on the electric utility’s financial condition and
12 financial metrics.” Neither the PPA nor the ESA should impact PNM’s financial
13 condition because 100% of the contract costs are recovered from the Customer, and
14 the Customer is contractually obligated for the costs of the PPA and ESA in the
15 event the SSC is terminated.

16

17 **Q. IS PNM’S APPLICATION BEING FILED WITHIN THIRTY DAYS OF**
18 **THE EXECUTION OF THE PPA AND ESA [RULE 551.8(B)]?**

19 **A.** Yes. The TAG PPA and ESA were executed on July 21, 2023. PNM’s Application
20 is being filed July 24, 2023, therefore meeting the deadline established by Rule 551.

21

22 **Q. HAS PNM SATISFIED THE REQUIREMENTS OF RULE 551?**

**DIRECT TESTIMONY OF
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NMPRC CASE NO. 23-00___-UT**

1 **A.** Yes. PNM’s Application, testimony and exhibits satisfy all informational and filing
2 requirements of Rule 551.8. Please see PNM Exhibit 1 to the Application for a
3 table showing where each provision of Rule 551 is addressed in PNM’s testimonies.

4
5 **Q.** **ARE THE PROPOSED PPA AND ESA IN THE PUBLIC INTEREST?**

6 **A.** Yes. In previous cases involving PNM’s service to this Customer, the Commission
7 has equated the public interest standard required for PPA approval with the No Net
8 Adverse Impact requirement in the SSC. For example, in Case No. 16-00191-UT
9 the Commission relied on testimony from the Commission’s Utility Division Staff
10 that PNM’s application in that case, which included requests for approval of the
11 initial special service contract and Initial Solar Facilities PPAs, was in the public
12 interest based upon the totality of the transaction.⁹ As I explained above, the
13 proposed PPA and ESA are consistent with this No Net Adverse Impact
14 requirement, and are therefore in the public interest. The Customer will bear the
15 costs of the PPA and ESA, but the benefits will be shared by all of PNM’s retail
16 customers. Further, the addition of the proposed PPA and ESA, as well as the
17 expansion of the Data Center load that the procurements are needed to meet, will
18 result in significant financial benefits to the state. For all these reasons, the
19 proposed PPA and ESA are in the public interest and should be approved.

20

⁹ “[T]here are a number of very positive benefits the transaction offers, both quantitative as well as qualitative. And so I think we have to view the transaction as a whole.” Case No. 16-00191-UT *Final Order* at ¶ 98, fn. 50 (quoting Staff witness Gunter).

**DIRECT TESTIMONY OF
STELLA CHAN
NMPRC CASE NO. 23-00___-UT**

1 **Q. ARE THERE ANY SPECIAL REQUIREMENTS THAT APPLY TO THE**
2 **PPA WITH PNM AFFILIATE NMRD DATA CENTER IV, LLC?**

3 **A.** The Commission’s final order in Case No. 3137 requires PNM to obtain
4 Commission approval of purchases of energy or capacity from a non-utility
5 affiliate. Further, the PPA and ESA with NMRD Data Center IV, LLC are Class I
6 transactions under Commission Rule 17.6.450. Rule 17.6.450.11(A) NMAC
7 requires a “public utility which enters into any agreement or other arrangement or
8 any amendment thereto under which a Class I transaction would occur shall give
9 written notification to the Commission within five (5) days after the agreement,
10 arrangement, or amendment thereto is entered into.” The PPA and ESA with
11 NMRD Data Center IV, LLC were executed on July 21, 2023. PNM filed its Notice
12 of Class I Transaction on July 24, 2023, thus timely satisfying the notification
13 requirements of the rule. Although executed on July 21, 2023, as noted earlier in
14 my testimony, in accordance with their terms, the PPA and ESA are not effective
15 until approved by the Commission.

III. OTHER MATTERS

16
17 **Q. DOES RULE 551 PROVIDE A TIMEFRAME FOR COMMISSION**
18 **DECISION IN THIS CASE?**

19 **A.** Yes. Rule 551 requires electric utilities to obtain Commission approval of a long
20 term agreement for the purchase of energy and/or capacity before becoming

**DIRECT TESTIMONY OF
STELLA CHAN
NMPRC CASE NO. 23-00___-UT**

1 irrevocably obligated under the agreement.¹⁰ The rule provides that the
2 Commission may approve an application for such an agreement without a hearing
3 if no protest is filed within 60 days of the date notice is provided.¹¹ The Rule also
4 states that the Commission will issue an order on a request for PPA or ESA approval
5 within six months of the date the application is filed.¹² In accordance with Rule
6 551.8(C), PNM has served a copy of this filing on the NMPRC Staff, the New
7 Mexico Attorney General, and all parties to PNM’s last general rate case.

8
9 **Q. IS A SIX-MONTH APPROVAL PERIOD, AS PROVIDED IN 17.9.551.10(B)**
10 **NMAC, COMMENSURATE WITH THE TERMS OF THE PPA AND ESA?**

11 **A.** No. The PPA and ESA include a provision, in Section 17.3, that if the Commission
12 has not entered an order resolving PNM’s Application by December 31, 2023, the
13 “Regulatory End Date”, then the parties shall meet regarding a potential extension
14 of the Regulatory End Date. If no such agreement can be reached, the PPA and ESA
15 will be terminated. Therefore, PNM requests that the Commission approve the
16 Application without holding a hearing as provided in 17.9.551.10(A) NMAC, if no
17 protest is filed within 60 days of the date notice is provided. However, if a protest
18 is filed and the Commission determines that the protest demonstrates that a public
19 hearing is necessary, PNM requests that the hearing be scheduled so a final order
20 can be issued by December 31, 2023, which is approximately five and a half months
21 from the date PNM filed its application.

¹⁰ 17.9.551.8(A) NMAC.

¹¹ 17.9.551.10(A) NMAC.

¹² 17.9.551.10(B) NMAC.

**DIRECT TESTIMONY OF
STELLA CHAN
NMPRC CASE NO. 23-00____-UT**

1

2 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

3 **A.** Yes.

GCG#531226

Résumé of Stella Chan

PNM Exhibit SC-1

Is contained in the following 3 pages.

STELLA CHAN: EDUCATIONAL AND PROFESSIONAL SUMMARY

Name: Stella Chan

Address: Public Service Company of New Mexico
Main Offices
Albuquerque, New Mexico 87158-1105

Position: Director, Pricing and Strategic Customer Marketing

Education: University of Houston, Houston, Texas

- MBA with concentration in Finance
- BBA with major in Finance

Language Skills:

Fluent in English, Mandarin Chinese and Cantonese

Employment: Public Service Company of New Mexico, Albuquerque, New Mexico:
Director, Pricing & Strategic Customer Marketing: 2013 to present

Colorado Springs Utilities, Colorado Springs, Colorado
Manager, Pricing & Forecasting, Planning and Finance Division:
2003-2013

University of Houston, Houston, Texas, New Mexico:
Adjunct Faculty – Finance Department: 2003

Independent Consultant: 2002 to 2003

- Challenger Development, L.C.
- Boyce Power System

Energy Wholesale Operations, Houston, Texas
Director, Government and Regulatory Affairs: 2001

Enron Corporation, Houston, Texas
Director, Government Affairs: 2000-2001
General Manager, Operations, SK-Enron, Seoul, South Korea: 1999-2000
Director, Regulatory Affairs, Enron International: 1997-1999
Manager, Rates and Tariffs, Enron Energy Services: 1997

El Paso Energy, Houston, Texas
Staff Analyst, Research and Competitive Analysis: 1996-1997
Consultant, Business Development: 1995-1996

Employment (Continued):

Duke Energy (formerly Texas Eastern), Houston, Texas
Project Leader, Strategic Planning: 1994-1005
Project Leader, Market Planning and Analysis: 1992-1994

El Paso Energy (formerly Tenneco Gas), Houston, Texas
Senior Analyst, Cost Allocation and Rate Design: 1990-1992
Analyst, Special Projects: 1987-1989

Community Activities (Colorado Springs, Colorado):

Board Chair, Urban Peak Colorado Springs
Treasurer, Urban Peak Colorado Spring
Board Member, CASA (Court Appointed Special Advocate), Pikes Peak Region
Steering Committee, Community Focus Fund, Colorado Springs Utilities

Testimony Filed Before the New Mexico Public Regulation Commission:

<u>Case Number</u>	<u>Proceeding/Subject Matter</u>
Un-Docketed	Advice Notice No. 478, relating to the revision of PNM Rate No. 20- Integrated System Streetlighting and Floodlighting Service, September 27, 2013
Un-Docketed	Advice Notice Nos. 480 and 65, regarding consolidation of PNM's North and South Rules, updates to service rules, and changes to Rule 15 - Line Extension Policy, November 15, 2013
14-00118-UT	Matter of PNM's Advice Notice 493, relating to modification to the qualifying criteria for service under Rate No. 5B-Large Service to Customers, April 22, 2014
14-00150-UT	Matter of PNM's Application for Approval of the City of Rio Rancho Underground Project Rider Pursuant to Advice Notice No. 495, May 25, 2014
14-00158-UT	PNM's Renewable Energy Portfolio Procurement Plan for 2015 and Proposed 2015 Rider No. 36 Rate, June 2, 2014
14-00310-UT	PNM's Application for Approval of 2014 Electric Energy Efficiency and Load Management Program Plan and Revision to Tariff Rider No. 16, October 6, 2014
14-00332-UT	Application of PNM for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 507

14-00337-UT Application of PNM for Approval of the City of Albuquerque 2014 Underground Project Rider pursuant to Advice Notice No. 502

15-00166-UT In the Matter of Public Service Company of New Mexico's Renewable Energy Portfolio Procurement Plan for 2016 and Proposed 2016 Rider Rate Under Rate Rider No. 36

15-00261-UT In the Matter of the Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 513

16-00276-UT In the Matter of the Application of Public Service Company of New Mexico for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 533

19-00018-UT Abandonment of San Juan Generating Station Units 1 & 4

19-00158-UT In the Matter of Public Service Company of New Mexico's Application for Approval of PNM Solar Direct Voluntary Renewable Energy Program, Power Purchase Agreement, and Advice Notice Nos 560 and 561

20-00121-UT Petition for Rate Adjustment Mechanism to Remove Regulatory Disincentives

21-00031-UT Application for Approval of Two PPA's and ESA's and Addendum to Special Service Contract

22-00058-UT PNM's Application For Authorization to Implement Grid Modernization Components That Include Advanced Metering Infrastructure and Application to Recover the Associated Costs Through a Rider, Issuance of Related Accounting Orders, and Other Associated Relief

22-00270-UT In the Matter of the Application of Public Service Company of New Mexico for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 595

Meta Letter

PNM Exhibit SC-2

Is contained in the following 5 pages.



June 6, 2023

Henry Monroy
Public Service Company of New Mexico
414 Silver Ave SW
Albuquerque, NM 87102

Dear Henry,

The green tariff and special service contract ("SSC") provided by Public Service Company of New Mexico ("PNM") and approved by the New Mexico Public Regulation Commission ("Commission") to serve Meta's data center, which is owned by Meta's wholly owned subsidiary, Greater Kudu LLC, was a key factor in our original decision to pursue our substantial investments in New Mexico. Since initially breaking ground in 2016, we have completed six fully operational data center buildings, with three more buildings currently under construction. Along the way, we have remained committed to our corporate goal to support our operations with 100% renewable energy. It is this steadfast commitment, coupled with the three-building expansion, which led us to identify additional clean energy projects in New Mexico. The projects in PNM's filing are critical for us to continue to meet our sustainability commitments while bringing benefits to PNM's system and customers. The purpose of this letter is to demonstrate our full support for PNM's application, and to articulate the benefits to New Mexico of Meta's investments and presence in the State. The Commission's approval represents an important next step for Meta and the state of New Mexico.

Meta's Progress to Date in New Mexico

The Commission demonstrated a strong commitment to innovation, economic development, and environmental sustainability by approving the original green tariff and SSC, including subsequent revisions, and the additional renewable energy and storage resources to support our growing data center presence in New Mexico. These approvals have enabled economic development in New Mexico through our first six fully operational data center buildings. Approval of the current filing will support the three new buildings under construction. The impact of our data center presence in New Mexico is summarized below:

1. Meta has invested approximately \$2 billion in the Los Lunas data center, which began serving traffic in 2019. When the current expansion is complete, the nine-building campus will total over 4.2 million square feet – more than 1.5 times the square footage of the Empire State Building, while maintaining high levels of energy and water efficiency in its operation.
2. Construction has resulted in an average of 1,100 skilled trade workers on site daily during peak construction, which is continuing with the expansion of three more data

center buildings. Once these latest three buildings are completed, the site will support over 400 operational jobs.

3. Meta's data center operations generate multiplier spending effects, which benefit workers and business owners in other sectors of the local and state economies. It is estimated that for every \$1 million spent by Meta on data center operating expenditures, 18 jobs are supported elsewhere in the economy.¹
4. Since 2019, Meta has provided more than \$3.1million in direct grant funding to 80 Valencia County area schools and nonprofits through the Data Center Community Action Grants program and other funding. These grants support local projects that help put the power of technology to use for community benefit, connect people online or off, and improve STEM education – to support the long-term vitality of Valencia County.²
5. The ten previously approved renewable energy projects (635 MW) have supported more than 2,200 total construction phase jobs. The construction period includes an estimated \$834 million in construction expenditures with approximately \$238 million sourced within the state to produce one-time impacts. Ongoing operations of these projects will support approximately 77 jobs, including approximately 36 direct, on-site jobs. The operations phase includes an estimated \$16 million in operating expenditures that produce ongoing annual impacts, including \$5 million in total labor income and \$14 million in total state GDP.³ The renewable energy and storage projects presently before the commission are expected to deliver similar benefits relative to the level of investment in them which is described in more detail below.

Meta's Current Expansion in New Mexico

Commission approval of PNM's application is an important part of the data center expansion currently underway in Los Lunas. PNM's application includes a 140 MW solar project and a 50 MW battery storage facility, which will bring the total portfolio of clean energy resources integrated onto PNM's system via the SSC to 775 MW of renewable energy and 100 MW of energy storage. The capacity and energy provided by these resources can be integrated into PNM's system while also ensuring "No Net Adverse Impact" (as described in the SSC) on PNM's other customers. By also procuring energy storage, these resources will not only provide capacity to support the data center, but also benefit all customers, allowing PNM to better balance generation and demand on its system, including increased penetration of renewable energy. Ancillary services enabled by the energy storage will help the system respond to short-term and longer-term signals to ramp up or ramp down generation to meet real-time demand.

Construction of this next solar facility and battery storage facility in Sandoval County are expected to result in approximately \$270 million in direct investment and 350 construction jobs.⁴

¹ See, "The Impact of Facebook's U.S. Data Center Fleet, RTI International" at <https://www.rti.org/publication/impact-facebooks-us-data-center-fleet-2017-2019/fulltext.pdf>.

² See appendix for more detail on the work Meta is doing in the local community.

³ See, Facebook's U.S. Renewable Energy Impact Study, RTI International at <https://www.rti.org/publication/facebooks-us-renewable-energy/fulltext.pdf> - (*see especially*, pages 21-23 for specifics on Meta's Los Lunas Data Center).

⁴ Per NMRD

PNM's green tariff, the associated SSC, and the new renewable energy and energy storage projects enabled by them demonstrate New Mexico's continued leadership in advancing clean and renewable energy. The Commission's approval of PNM's application continues New Mexico's commitment to companies with sustainability goals who wish to support their operations with clean and renewable energy.

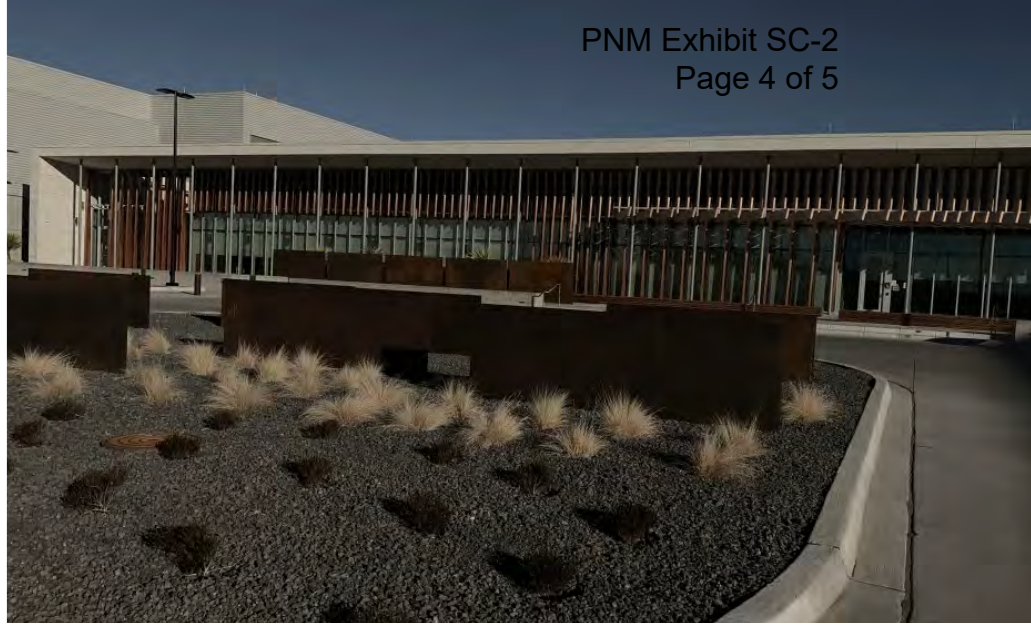
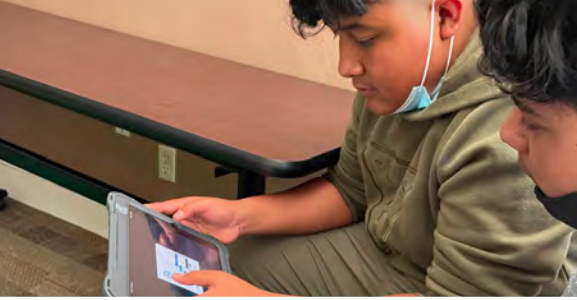
We are excited about this opportunity to spur further economic development in New Mexico, continue our growth in the state, and deepen our integration into our local community, and we greatly appreciate the Commission's and PNM's continued support to enable it.

Sincerely,

Owen Smith

Owen Smith
Energy Manager
Meta

Enclosure



Meta's Los Lunas Data Center

The Los Lunas Data Center is part of Meta's global infrastructure that brings our technologies and services to life, along with future immersive experiences like the metaverse — the next chapter of the internet.

~\$2B

Data center investment in New Mexico

2016

Broke ground on the Los Lunas Data Center

400+

Operational jobs supported once completed

1,100

Skilled trade workers on site at peak construction

\$3.1M+

Direct funding to Valencia County area schools and nonprofits

80

Grants awarded since 2019 through the Data Center Community Action Grants program and other funding

We prioritize sustainability



Meta will be water positive by 2030, where we restore more water than we consume.



Meta has added 635MW of new renewable energy in New Mexico.



Our data centers and offices have achieved net zero emissions and are supported by 100% renewable energy.



Meta's global fleet of data centers support our technologies that empower more than 3 billion people around the world to share ideas, offer support and make a difference.

datacenters.atmeta.com



Partnering with New Mexico

We are committed to supporting the community through hiring people to build and operate our data center, volunteering and supporting local schools, nonprofits and community projects.



Supporting local schools and nonprofits

One way we support the community thrive is through our annual Data Center Community Action Grants program and other direct funding for projects that put the power of technology to use for community benefit, connect people online or off and improve STEM education.



New renewable energy investments

Meta worked with the Public Service Company of New Mexico (PNM) to meet our 100% renewable energy goals. We support 10 new renewable energy projects in New Mexico, and helped create a renewable energy program for customers looking to meet their renewable energy goals.



Minimizing water use

We are proud to build some of the most sustainable data centers in the world and prioritize onsite water efficiency.

The Los Lunas Data Center:

- Uses cooling technology that is significantly more efficient than the industry standard.
- Reuses water numerous times before discharging it as wastewater.
- Is landscaped with native and drought resistant vegetation.
- Reuses reclaimed water for construction through a partnership with the Village of Los Lunas.



Water restoration

Our goal is to restore more water into local watersheds in New Mexico than we consume by supporting water restoration and conservation projects led by local community partners, including:

- Audubon Southwest.
- Forest Service Foundation.
- The Nature Conservancy.
- Trout Unlimited.



We're proud to support projects led by:

Belen Consolidated Schools
 Belen Public Library
 CASA Partners4NM Kids
 Explora Children's Science Center
 Friends of Whitfield Wildlife Conservation Area
 Los Lunas Library
 Los Lunas Schools
 New Mexico MESA
 New Mexico Museum of Natural History & Science
 Rio Communities Optimist Club
 Supercomputing Challenge
 Teeniors
 University of New Mexico - Valencia Campus
 United Way of Central New Mexico, Valencia County Business Incubator
 Valencia County
 Valencia County Literacy Council
 Valencia Shelter Services
 Village of Los Lunas



facebook.com/LosLunasDataCenter



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,) Case No. 23-00 ____ -UT
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
_____)**

SELF AFFIRMATION

STELLA CHAN, Director, Pricing, PNMR Services Company, upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing **Direct Testimony of Stella Chan** and it is true and correct based on my personal knowledge and belief.

DATED this 24th day of July, 2023.

/s/ Stella Chan
STELLA CHAN

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
Applicant.)**

Case No. 23-00____-UT

**DIRECT TESTIMONY
OF
R. BRENT HEFFINGTON**

July 24, 2023

**NMPRC CASE NO. 23-00 ___-UT
INDEX TO THE DIRECT TESTIMONY OF BRENT HEFFINGTON**

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PUBLIC SERVICE COMPANY OF NEW MEXICO**

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IV. OTHER KEY PROVISIONS OF THE PPA AND ESA 14

PNM EXHIBIT RBH-1	Résumé of Brent Heffington
PNM EXHIBIT RBH-2	TAG PPA
PNM EXHIBIT RBH-3	TAG ESA
AFFIRMATION	

**DIRECT TESTIMONY OF
BRENT HEFFINGTON
NMPRC CASE NO. 23-00___-UT**

1

I. INTRODUCTION AND PURPOSE

2 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

3 **A.** My name is R. Brent Heffington. I am the Managing Director of Generation for
4 Public Service Company of New Mexico (“PNM” or “Company”). My business
5 address is 2401 Aztec Road NE, Albuquerque, NM 87107.

6

7 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS MANAGING**
8 **DIRECTOR OF GENERATION.**

9 **A.** I am responsible for the strategic direction and operation of PNM's generating
10 resources to ensure that they continue to provide safe, reliable and cost-effective
11 electricity generation to customers within PNM's service territory. The functions I
12 oversee include generation operations, maintenance, engineering, construction, fuel
13 and power procurement, wholesale power marketing and other services related to
14 PNM's generation fleet. I have oversight responsibility with respect to PNM's
15 ownership interests in generation resources where PNM is not the operator,
16 specifically, the Four Corners Generating Station and Palo Verde Nuclear
17 Generating Station. Previously, I had direct oversight responsibility for the
18 operation of San Juan Generating Station.

19

20 **Q. HAVE YOU PREPARED A STATEMENT OF YOUR EXPERIENCE AND**
21 **QUALIFICATIONS?**

**DIRECT TESTIMONY OF
BRENT HEFFINGTON
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1 **A.** Yes. My educational background and professional experience are outlined in PNM
2 Exhibit RBH-1.

3

4 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY ADMINISTRATIVE**
5 **PROCEEDINGS?**

6 **A.** Yes, I have previously submitted testimony in PNM’s 2022 rate case, Case No. 22-00270-
7 UT.

8

9 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

10 **A.** PNM is seeking Commission approval of one power purchase agreement (“PPA”)
11 and one energy storage agreement (“ESA”) in accordance with terms of the Second
12 Amended and Restated Special Service Contract (“SSC”) between PNM and
13 Greater Kudu, LLC (“Customer”). I describe the two contracts and provide
14 information required by 17.9.551 NMAC (“Rule 551”), including:

- 15 1) copies of the PPA and the ESA [Rule 551.8(D)(1)];
- 16 2) an explanation of the key terms and conditions of the PPA and ESA [Rule
17 551.8(D)(2)];
- 18 3) a general description of the facilities that are the subjects of the PPA and
19 ESA [Rule 551.8(D)(5)];
- 20 4) evidence regarding whether a utility-owned generation resource could have
21 been constructed as an alternative to the PPA or ESA with greater benefit to
22 ratepayers [Rule 551.8(D)(9)];

**DIRECT TESTIMONY OF
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- 1 5) the methodology and criteria by which the PPA and ESA were selected [Rule
2 551.8(D)(10)]; and
3 6) any other information or evidence that PNM believes will assist the
4 Commission in its review of the PPA and ESA [Rule 551.8(D)(11)].
5

6 **Q. PLEASE IDENTIFY THE PPA AND ESA FOR WHICH PNM IS SEEKING**
7 **APPROVAL.**

8 **A.** PNM seeks Commission approval of the following:

- 9 1) an agreement between Public Service Company of New Mexico (“PNM”), as
10 buyer, and NMRD Data Center IV, LLC (“NMRD IV”)¹, as seller, for 140
11 MW of solar energy from the TAG Solar Energy Center facility (“TAG PPA”);
12 and
13 2) an agreement between PNM, as buyer, and NMRD IV, as seller, for 50 MW
14 of four-hour energy capacity from the TAG Energy Storage facility (“TAG
15 ESA”).
16

17 Copies of the agreements are attached to my testimony as PNM Exhibits RBH-2
18 and RBH-3, respectively.
19

¹ NMRD IV is a joint venture between PNMR Development and Management Corporation (a PNM affiliate) and American Electric Power.

**DIRECT TESTIMONY OF
BRENT HEFFINGTON
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1

II. TAG PPA

2 **Q. PLEASE DESCRIBE THE TERM OF THE TAG PPA INCLUDING ANY**
3 **OPTIONS TO EXTEND [RULE 551.8(D)(2)(A)].**

4 **A.** The TAG PPA provides that NMRD IV will sell the energy output from the TAG
5 Solar Energy Center facility to PNM over a twenty (20) year term. There are no
6 options to extend the term beyond twenty years. The twenty year term begins on
7 the Commercial Operation Date under the PPA, which is expected to be March 31,
8 2025. Commission approval of the PPA is a condition precedent to the PPA taking
9 effect. The PPA is subject to early termination for a number of specified reasons,
10 including: default under the PPA or termination of the SSC, as well as other Events
11 of Default set forth in Article 12 of the PPA and discussed in more detail below.

12

13 **Q. WHAT IS THE NAMEPLATE CAPACITY OF THE TAG SOLAR ENERGY**
14 **CENTER FACILITY AND THE AMOUNT OF ENERGY PNM WILL**
15 **PURCHASE UNDER THE TAG PPA [RULE 551.8(D)(2)(B)]?**

16 **A.** The nameplate capacity of the TAG Solar Energy Center facility is approximately
17 140 MW_{AC} and the project is expected to produce approximately 401,000 MWh of
18 energy per year. Under Section 8.1 of the TAG PPA, PNM is required to purchase
19 net energy generated by the facility and delivered to PNM beginning on the
20 Commercial Operation Date.

21

**DIRECT TESTIMONY OF
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1 **Q. PLEASE DESCRIBE THE PRICE PNM WILL PAY UNDER THE TAG PPA**
2 **INCLUDING WHEN CHARGES BEGIN, ANY PRICE REOPENERS AND**
3 **ANY PRICE ESCALATION PROVISIONS [RULE 551.8(D)(2)(C)].**

4 **A.** The Solar Energy Output Payment Rate over the twenty year term of the PPA is
5 \$32.50/MWh, which includes payment for metered energy, capacity,
6 Environmental Attributes, Ancillary Services, and renewable energy certificates
7 (“RECs”). This price will remain fixed over the term of the PPA with no escalations
8 and cannot be reopened. PNM will purchase Test Energy, as defined in the PPA,
9 at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. The
10 TAG PPA is pay-for-performance, meaning PNM only pays for the energy actually
11 generated at, and delivered from, the facility.

12
13 **Q. DOES THE PPA OBLIGATE PNM TO PAY ANY FIXED OR VARIABLE**
14 **ADMINISTRATIVE COSTS, TRANSACTIONAL OR OPERATION AND**
15 **MAINTENANCE COSTS, OR ANY COSTS OTHER THAN FOR**
16 **DELIVERED ENERGY [RULE 551.8(D)(2)(D)]?**

17 **A.** No. Under the TAG PPA, PNM only pays for the actual energy received.

18
19 **Q. PLEASE DESCRIBE THE PPA PROVISIONS RELATING TO NON-**
20 **PERFORMANCE BY NMRD IV [RULE 551.8(D)(2)(E)].**

21 **A.** Default by NMRD IV is addressed in Article 12 of the PPA, including the cure
22 period for each type of default and the remedies. A default becomes an Event of
23 Default if not cured within the applicable cure period, or immediately, if no cure

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1 period is specified. Potential Events of Default by NMRD IV under the PPA
2 include, but are not limited to: (1) the sale, dissolution, or abandonment of the
3 facility; (2) failure by NMRD IV to maintain required security; (3) an NMRD IV
4 bankruptcy; (4) failure by NMRD IV to maintain the interconnection to the PNM
5 system; (5) failure to deliver RECs according to the terms of the PPA on more than
6 three occasions; and (6) failure to make any payment when due. Upon the
7 occurrence of an Event of Default by NMRD IV, PNM may collect damages
8 incurred prior to the termination date as a result of the Event of Default, as well as
9 terminate the PPA and receive a termination payment. Such damages would include
10 the differential between the cost of replacement energy and the Contract Value of
11 the TAG PPA.

12
13 Article 12 also defines Events of Default related to non-performance of the TAG
14 Solar Energy Center facility. Performance-related Events of Default include: (1)
15 NMRD IV's failure to achieve the Commercial Operation Date on or prior to the
16 Guaranteed Start Date;² (2) the failure of the TAG Solar Energy Center facility to
17 maintain, after the third anniversary of the Commercial Operation Date, an
18 availability percentage of at least seventy-five percent (75%) over two consecutive
19 Commercial Operation Years; and (3) the failure of the TAG Solar Energy Center
20 facility to maintain an availability percentage of fifty percent (50%) over any
21 Commercial Operation Year.

² Guaranteed Start Date is defined as one hundred sixty days after the Expected Commercial Operation Date, TAG PPA, § 3.1.

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1

2

NMRD IV is liable for liquidated damages for non-performance. Article 3.7 provides that, if the Commercial Operation Date has not occurred by the Expected Commercial Operation Date, NMRD IV will pay PNM liquidated damages in an amount equal to two hundred dollars (\$200) per day for each MW of capacity that is delayed. These delay liquidated damages are capped at thirty-two thousand dollars (\$32,000) per MW of capacity that is delayed. NMRD IV also must pay liquidated damages if it has not caused all delayed capacity to achieve Commercial Operation by the Guaranteed Start Date. The amount of liquidated damages equals three hundred fifty thousand dollars (\$350,000) per MW of capacity shortfall. In accordance with the SSC, proceeds of liquidated damages received by PNM under the PPA will be used to offset the cost to supply the Customer's load and the equivalent amount of RECs from alternative sources in the event of a delay or failure by the facility to supply energy, capacity or RECs.

15

16

Q. ARE THERE ANY APPROVALS OR PERMITS REQUIRED TO CONSTRUCT AND OPERATE THE TAG SOLAR ENERGY CENTER FACILITY [RULE 551.8(D)(5)(C)(I)]?

17

18

19

A. Yes. The required permits, which NMRD IV is responsible for obtaining, are listed in Exhibit E to the TAG PPA, which is attached as PNM Exhibit RBH-2.

20

21

22

Q. PLEASE DESCRIBE THE TAG SOLAR ENERGY CENTER FACILITY [RULE 551.8(D)(5)(C)(II), (III), AND (IV)].

23

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1 **A.** The facility is a new 140 MW solar photovoltaic facility that will be located in
2 Sandoval County, west of Rio Rancho, New Mexico. A site map is included in
3 Exhibit A to the PPA and additional site descriptions are provided in Exhibit C to
4 the PPA (provided as PNM Exhibit RBH-2). Construction is anticipated to begin
5 upon Commission approval of the PPA and the Expected Commercial Operation
6 Date for the facility is March 31, 2025.

7

8 **Q.** **DOES THE PPA PROVIDE FOR PNM ACQUIRING OWNERSHIP OF**
9 **THE TAG SOLAR ENERGY CENTER FACILITY DURING OR AFTER**
10 **THE TERM OF THE AGREEMENT [RULE 551.8(D)(5)(C)(V)]?**

11 **A.** No. PNM does not have a purchase option under the TAG PPA.

12

13 **Q.** **HOW WILL THE ENERGY FROM THE TAG SOLAR ENERGY CENTER**
14 **FACILITY BE TRANSMITTED ON PNM'S SYSTEM?**

15 **A.** The TAG Solar Energy Center facility will interconnect to the existing PNM Rio
16 Puerco 115 kV Substation located in Sandoval County, New Mexico as more fully
17 described by PNM witness Thomas Duane.

18

III. TAG ESA

19 **Q.** **PLEASE DESCRIBE THE RELATIONSHIP BETWEEN THE TAG PPA**
20 **AND THE TAG ESA.**

21 **A.** The 140 MW TAG Solar Energy Center facility will be co-located with the 50 MW
22 TAG Energy Storage facility. As a paired storage project, the TAG Energy Storage

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1 facility may be charged either from the grid or the co-located solar facility after the
2 Commercial Operation Date.

3

4 **Q. DOES THE TAG ESA PROVIDE PNM OPERATIONAL CONTROL OVER**
5 **THE STORAGE FACILITY?**

6 **A.** Yes. I describe the operational aspects of the ESA in Section IV of my testimony.

7

8 **Q. PLEASE DESCRIBE THE TERM OF THE TAG ESA INCLUDING ANY**
9 **OPTIONS TO EXTEND (RULE 551.8(D)(2)(A)).**

10 **A.** The TAG ESA provides that NMRD IV will sell the energy storage capacity of the
11 TAG Energy Storage facility to PNM over a twenty year term. There are no options
12 to extend the term beyond twenty years. The twenty year term begins on the
13 Commercial Operation Date, which is expected to be March 31, 2025. Commission
14 approval is a condition precedent to the ESA taking effect. The ESA is subject to
15 early termination for specified reasons including: default under the ESA or
16 termination of the SSC, as well as other events of default set forth in Article 12 of
17 the ESA and discussed in more detail below.

18

19 **Q. WHAT IS THE NAMEPLATE CAPACITY OF THE TAG ENERGY**
20 **STORAGE FACILITY AND THE AMOUNT OF ENERGY PNM WILL**
21 **PURCHASE UNDER THE TAG ESA [RULE 551.8(D)(2)(B)]?**

22 **A.** The nameplate capacity of the TAG Energy Storage facility is approximately 50
23 MW for a 4-hour storage duration, providing up to 365 equivalent charge/discharge

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1 cycles per year. Under Section 8.1 of the TAG ESA, PNM is required to to pay a
2 monthly capacity payment beginning on the Commercial Operation Date.

3

4 **Q. PLEASE DESCRIBE THE PRICE PNM WILL PAY UNDER THE TAG ESA**
5 **INCLUDING WHEN CHARGES BEGIN, ANY PRICE REOPENERS AND**
6 **ANY PRICE ESCALATION PROVISIONS [RULE 551.8(D)(2)(C)].**

7 **A.** The Energy Storage System (“ESS”) Capacity Payment Rate over the twenty year
8 term of the TAG ESA is \$11.00/kW-month, which includes payment for Energy
9 Storage Services, Ancillary Services, and Future Environmental Attributes. This
10 price will remain fixed over the term of the TAG ESA with no escalations and
11 cannot be reopened once the ESA has been approved by the Commission and is in
12 effect. Charges will begin on the Commercial Operation Date.

13

14 **Q. DOES THE TAG ESA OBLIGATE PNM TO PAY ANY FIXED OR**
15 **VARIABLE ADMINISTRATIVE COSTS, TRANSACTIONAL OR**
16 **OPERATION AND MAINTENANCE COSTS, OR ANY COSTS OTHER**
17 **THAN FOR DELIVERED ENERGY [RULE 551.8(D)(2)(D)]?**

18 **A.** No. Under the TAG ESA, PNM only pays the one fixed charge for all Energy
19 Storage Services, Ancillary Services, and Future Environmental Attributes.

20

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1 **Q. PLEASE DESCRIBE THE ESA PROVISIONS RELATING TO NON-**
2 **PERFORMANCE BY NMRD IV [RULE 551.8(D)(2)(E)].**

3 **A.** Article 12 of the ESA addresses default by NMRD IV associated with the TAG
4 Energy Storage facility, along with the cure period for each type of default and the
5 remedies. A default becomes an Event of Default if not cured within the relevant
6 cure period, or immediately if no cure period is specified. Potential Events of
7 Default by NMRD IV under the ESA include, but are not limited to: (1) NMRD
8 IV's sale, dissolution, or abandonment of the TAG Energy Storage facility; (2)
9 NMRD IV's filing of a petition in voluntary bankruptcy; (3) failure by NMRD IV
10 to maintain required security; (4) failure to make any payment when due; (5) failure
11 to achieve the Commercial Operation Date per terms; and (5) ESS unit non-
12 performance. Upon the occurrence of an Event of Default by NMRD IV, PNM may
13 collect damages incurred prior to the termination date as a result of the Event of
14 Default, as well as terminate the ESA and receive a termination payment. Such
15 damages would include the differential between the Replacement ESS Cost and the
16 Contract Value of the TAG ESA..

17
18 Article 12 also addresses Events of Default related to non-performance of the
19 facility. Performance related Events of Default include: (1) the failure of the TAG
20 Energy Storage facility to achieve the Commercial Operation Date on or prior to
21 the Guaranteed Start Date³; (2) the failure of the TAG Energy Storage facility to

³ Guaranteed Start Date is defined as one hundred and sixty (160) days after the Expected Commercial Operation Date, TAG ESA, § 3.1.

**DIRECT TESTIMONY OF
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1 obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%)
2 over any twenty-four (24) consecutive months during the term, excepting a one-
3 time possible failure of a main generator step-up transformer; or (3) failure, after
4 the Commercial Operation Date, to achieve guaranteed ESS Unit Capabilities.

5

6 NMRD IV is also liable for liquidated damages for non-performance. Article 3.7
7 provides that, if the Commercial Operation Date has not occurred by the Expected
8 Commercial Operation Date, NMRD IV will pay PNM liquidated damages in an
9 amount equal to two hundred (\$200) per day per each MW of capacity that is
10 delayed. These liquidated damages are capped at thirty two thousand dollars
11 (\$32,000) per MW of capacity delayed. NMRD IV also must pay liquidated
12 damages if it has not caused all delayed capacity to achieve Commercial Operation
13 by the Guaranteed Start Date. The amount of liquidated damages will equal three
14 hundred fifty thousand dollars (\$350,000) per MW of capacity shortfall. In
15 accordance with the SSC, proceeds of liquidated damages received by PNM under
16 the ESA will be used to offset the cost to supply the Customer's load from
17 alternative sources in the event of a delay or failure by the facility to supply
18 capacity.

19

20 **Q. ARE THERE ANY APPROVALS OR PERMITS REQUIRED TO**
21 **CONSTRUCT AND OPERATE THE TAG ENERGY STORAGE FACILITY**
22 **[RULE 551.8(D)(5)(C)(I)]?**

**DIRECT TESTIMONY OF
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1 **A.** Yes. The required permits and approvals, which NMRD IV is responsible for
2 obtaining, are listed in Exhibit E to the TAG ESA which is attached as PNM Exhibit
3 RBH-3.

4
5 **Q.** **PLEASE DESCRIBE THE TAG ENERGY STORAGE FACILITY (RULE**
6 **551.8(D)(5)(C)(II), (III), AND (IV)).**

7 **A.** The facility is a new 50 MW 4-hour battery energy storage facility co-located with
8 the TAG Solar facility in Sandoval County west of Rio Rancho, New Mexico. A
9 site map is provided as part of Exhibit A to the ESA and additional site descriptions
10 are provided as a part of Exhibit C to the ESA (provided as PNM Exhibit RBH-3).
11 Construction is anticipated to begin upon Commission approval and the Expected
12 Commercial Operation Date for the facility is March 31, 2025.

13
14 **Q.** **DOES THE ESA PROVIDE FOR PNM ACQUIRING OWNERSHIP OF**
15 **THE TAG ENERGY STORAGE FACILITY DURING OR AFTER THE**
16 **TERM OF THE AGREEMENT [RULE 551.8(D)(5)(C)(V)]?**

17 **A.** No. PNM does not have a purchase option under the TAG ESA.

18
19 **Q.** **HOW WILL THE ENERGY FROM THE TAG ENERGY STORAGE**
20 **FACILITY BE TRANSMITTED ON PNM'S SYSTEM?**

21 **A.** The facility will utilize the same interconnection agreement and point of
22 interconnection as the TAG Solar Energy Center facility. PNM witness Thomas

**DIRECT TESTIMONY OF
BRENT HEFFINGTON
NMPRC CASE NO. 23-00___-UT**

1 Duane provides the details of interconnection and transmission facilities necessary
2 to connect the TAG Energy Storage facility to PNM’s existing system.

3 **IV. OTHER KEY PROVISIONS OF THE PPA AND ESA**

4 **Q. PLEASE DESCRIBE THE OTHER PROVISIONS IN THE PPA AND ESA**
5 **THAT PROVIDE OPERATIONAL OR OTHER BENEFITS [RULE**
6 **551.8(D)(11)].**

7 **A.** The TAG PPA includes a specific ramp rate of not greater than 10 MW per minute
8 and curtailment rights for the solar facility for reasons that include transmission and
9 system management.

10
11 In addition to the system benefits provided under the PPA and ESA, Article 19 of
12 each agreement requires the seller to post security, which increases the monetary
13 incentive for the seller to meet its capacity and schedule requirements.

14
15 For each of the TAG PPA and TAG ESA, NMRD IV is required to post and
16 maintain \$100,000 per MW multiplied by the Guaranteed Solar or Storage Capacity
17 within the earlier of: 1) ninety days after the Execution Date, provided, however, if
18 Seller provides the Procurement Evidence to Buyer prior to the expiration of such
19 ninety (90) day period, then such time period shall be extended until five (5)
20 Business Days after the date that Buyer obtains NMPRC Approval; and 2) the
21 commencement of construction of the project. Additionally, no later than the
22 Commercial Operation Date, NMRD IV will be required to post and maintain

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1 security for the entire term equal to \$150,000 per MW multiplied by the Guaranteed
2 Solar or Storage Capacity.

3
4 The TAG ESA includes Ancillary Services including frequency response of 50 MW
5 per 0.1 Hertz, load following, and 50 MW per second charge/discharge ramping
6 capability. Furthermore, PNM will have dispatch control of the ESA within a 365
7 cycle per year limitation.

8

9 **Q. UNDER THE TERMS OF THE PPA AND ESA, WOULD PNM BE**
10 **OBLIGATED TO CONTINUE TO PURCHASE FROM THESE**
11 **FACILITIES SHOULD THE SSC BE CANCELLED?**

12 **A.** No. Pursuant to both the PPA and the ESA, PNM has the right to terminate should
13 the SSC be cancelled for any reason other than a PNM event of default.

14

15 **Q. COULD PNM-OWNED RESOURCES HAVE BEEN CONSTRUCTED AS**
16 **AN ALTERNATIVE THAT WOULD HAVE PROVIDED GREATER**
17 **BENEFIT TO RATEPAYERS [RULE 551.8(D)(9)]?**

18 **A.** Not in this instance. As described below, the Customer was involved in the process
19 of choosing the Seller and approved the costs of renewable energy in the PPA, as
20 well as the cost of capacity in the ESA. The PPA and ESA proposed here better
21 meet the current needs of the Customer, as defined by the Customer. Therefore, the
22 resources provided a greater benefit to the Customer as a ratepayer. In addition, in
23 accordance with the terms of the SSC and rates approved by the Commission in

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1 Case Nos. 16-00191-UT and 18-00269-UT, the Customer is covering the costs of
2 the PPA and ESA. PNM witness Stella Chan addresses PNM’s recovery of the
3 costs of the agreements in more detail in her direct testimony.

4
5 **Q. WHAT METHODOLOGY AND CRITERIA WERE USED TO SELECT**
6 **THE PPA AND ESA [RULE 551.8(D)(10)]?**

7 **A.** The methodology and criteria used are those set forth in the SSC. As noted above,
8 Section 3 of the SSC provides that PNM and the Customer will collaborate on
9 determining when to bring on additional renewable resources, will identify and
10 evaluate the costs and benefits of proposed renewable resources, and determine
11 sites for resources to avoid constraints on PNM’s transmission system.⁴ The
12 Customer initiated its own Request for Proposals (“RFP”) on June 3, 2022, seeking
13 renewable resources to meet the needs of its plant expansion. The Customer also
14 provided for the final selection of the requested resources. The timing of the need
15 for these resources contributed to the choice of readily available project sites, such
16 as the one NMRD IV could provide to meet a projected gap between the Customer’s
17 load and the anticipated renewable energy production from all prior renewable
18 energy procurements pursuant to the SSC. PNM, for its part, participated following
19 the Customer’s selection of the resources to ensure that they could be added to
20 PNM’s system without affecting reliability or causing PNM to have to add other
21 generation. PNM and the Customer then negotiated with NMRD IV to reach

⁴ SSC §§ 3.1.2 through 3.1.4 as noted in Case No. 16-00191-UT, Final Order, ¶ 69.

**DIRECT TESTIMONY OF
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1 agreements that were acceptable to PNM and the Customer, who will be responsible
2 for paying the cost of the renewable energy and storage capacity provided. In this
3 manner, PNM has complied with the terms of the SSC to “work collaboratively,
4 expeditiously and in good faith to ensure that PNM engages in a timely way to
5 ‘complete [an] ... appropriate process for selecting the provider of the additional
6 Renewable Energy resource’.”⁵

7

8 **Q. ARE THE REQUESTED GENERATION RESOURCES CONSIDERED**
9 **NETWORK RESOURCES?**

10 **A.** Yes. PNM will integrate the resources associated with the PPA and ESA into its
11 portfolio of generation resources as PNM network resources. While the Customer
12 directly covers the cost of these generation resource additions, these generation
13 resources are used together to meet NMPRC jurisdictional load obligations of all
14 customers.

15

16 **Q. DO YOU HAVE ANY FINAL COMMENTS ABOUT THE PPA AND ESA?**

17 **A.** Yes. In general, the terms and conditions in the PPA and the ESA are typical. They
18 are market-based. Similar terms and conditions are generally found in any long-
19 term PPA or ESA entered into by PNM, including those approved in prior cases
20 involving resource procurements pursuant to the SSC, such as Case No. 18-00009-
21 UT, and those recently approved by the Commission in Case No. 20-00182-UT.

⁵ Case No. 16-00191-UT *Final Order*, ¶ 72.

**DIRECT TESTIMONY OF
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1 Given the fact that PNM is entering into the PPA and ESA pursuant to the terms of
2 the SSC with the Customer and that no other PNM retail customers will be
3 responsible for costs incurred by PNM under the PPA or ESA, the terms of the PPA
4 and ESA should be deemed reasonable, and approval should be granted.

5

6 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

7 **A. Yes.**

8

GCG#531219

Résumé of Brent Heffington

PNM Exhibit RBH-1

Is contained in the following 1 page.

BRENT HEFFINGTON
EDUCATIONAL AND PROFESSIONAL SUMMARY

Address: Public Service Company of New Mexico
Aztec Facility
2401 Aztec Road NE, Building A
Albuquerque, New Mexico 87107

Position: Managing Director of Generation – December 2020 to present

Previous Positions:

Xcel Energy, Public Service Company of Colorado
Director – Plant Manager Comanche Station – January 2018 to January 2021

Xcel Energy, Southwestern Public Services (SPS)
Senior Operations Manager – July 2015 to January 2018

Xcel Energy
Manager of Technical Resources and Compliance – April 2014 to June 2015

Xcel Energy, Southwestern Public Services (SPS) – April 1994 to April 2014
Maintenance Manager
Plant Supervisor of Technical Services/Engineer
Technical Specialist II
Journeyman Maintenance Mechanic

Education:

Texas Tech University, Bachelor of Mechanical Engineering
Lubbock Christian University, Bachelor of Business Administration
Washington State University, Executive MBA

TAG Purchased Power Agreement

PNM Exhibit RBH-2

Is contained in the following 116 page.

POWER PURCHASE AGREEMENT—SOLAR FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

NMRD DATA CENTER IV, LLC

Dated as of July 21, 2023

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- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
- Exhibit D Notice Addresses
- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning Tests
- Exhibit G Insurance Coverages
- Exhibit H Form of Attestation and Bill of Sale
- Exhibit I Availability Guarantee
- Exhibit J Form of Seller Guaranty
- Exhibit K Commercial Operation Form of Certification
- Exhibit L Form of Operations Report
- Exhibit M Annual Generation Forecast
- Exhibit N Annual Degradation
- Exhibit O Deemed Energy Calculation

POWER PURCHASE AGREEMENT—SOLAR FACILITY

This Power Purchase Agreement—Solar Facility, as may be amended from time to time, is entered into this ____ Day of _____, 2023 (“**Execution Date**”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**PNM**” or “**Buyer**”), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and NMRD Data Center IV, LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 1 Riverside Plaza, Columbus, Ohio 43215. Buyer and Seller may be referred to in this PPA individually as a “**Party**” and collectively as the “Parties.”

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately 140 MW_{AC} (“**Project**”), as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (“**Special Service Contract**”), between Buyer and Greater Kudu LLC (“**Retail Customer**”), as amended from time to time, Buyer has agreed, by entering into this PPA, to procure the Energy from the Project to serve Retail Customer’s load; and

WHEREAS, Seller desires to generate, sell and deliver to Buyer the Energy generated by the Project and any and all associated or correlative Renewable Energy Certificates and other Environmental Attributes, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this PPA; and

WHEREAS, Buyer and Seller intend to enter into a certain Energy Storage Agreement, pursuant to which some of the Energy shall be exclusively used in Seller’s Energy Storage System, and for which Buyer shall purchase the Energy Storage Product;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 Definitions and Rules of Interpretation

1.1 Definitions. The following terms shall have the meanings set forth herein.

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) Days by Seller or Seller’s contractors but only if such cessation is not caused by a Force Majeure Event or is not in accordance with Seller’s Project Schedule; or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this PPA.

“**AC**” means alternating electric current.

“**Accounting Standards**” has the meaning set forth in Section 22.18.

“**Actual Solar Availability Percentage**” has the meaning set forth in Exhibit I.

“**Additional Consents**” means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this PPA that are required from any Governmental Authority with respect to the Project.

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. For purposes of this definition, the term “control” (including the terms “controls,” “under the control of” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

“**After Tax Basis**” means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment (“**Base Payment**”) supplemented by a further payment (“**Additional Payment**”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

“**AGC**” stands for “Automatic Generation Control” and means energy management system equipment that automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer’s representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

“**Ancillary Services**” means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, and other products associated with electric generation and Energy, each to the extent that the Project is capable of providing such services.

“**Annual Performance Test**” has the meaning set forth in Section 10.8(B).

“**Annual Performance Test PVSYST Model**” has the meaning set forth in Section 10.8(F).

“**Anything of Value**” includes, but is not limited to, cash or a cash equivalent (including

“grease,” “expediting” or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

“**Applicable Law**” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this PPA and matters related to this PPA, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

“**Attestation and Bill of Sale**” has the meaning set forth in Section 9.1(C).

“**Back-Up Metering**” has the meaning set forth in Section 5.3(D).

“**Balancing Area**” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“**Balancing Area Authority**” or “**BAA**” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“**Bankruptcy Code**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

“**Business Day**” means any calendar day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

“**Buyer**” has the meaning set forth in the Preamble.

“**Buyer Costs**” means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and all reasonable attorneys’ fees and expenses incurred by Buyer in connection with the termination of this PPA, to the extent such costs are not already accounted for under Replacement Energy Costs.

“**Buyer Curtailment**” has the meaning set forth in Section 4.1(B).

“**Buyer Economic Curtailment**” means (a) any curtailment with the intended purpose of achieving economic savings by not purchasing Energy available from the Project, or (b) any curtailment resulting from Buyer’s economic bidding into a regional market.

“**Buyer-Requested Performance Tests**” has the meaning set forth in Section 10.9.

“**Buyer Settlement Amount**” means the present value of the Replacement Energy Costs and Buyer Costs, on the one hand, netted against the Contract Value, on the other. If the

Replacement Energy Costs, calculated using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of this PPA, and Buyer Costs exceed the Contract Value, then the Buyer Settlement Amount shall be an amount Seller owes to Buyer. If the Contract Value exceeds the Replacement Energy Costs and Buyer Costs, then the Buyer Settlement Amount shall be Zero Dollars (\$0). The Buyer Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

“Buyer Termination Payment” means the aggregate of the Buyer Settlement Amount (if any) plus any and all other amounts then owed from Seller to Buyer less any amounts owed from Buyer to Seller.

“Capacity Shortfall Damages” has the meaning set forth in Section 3.8.

“Change of Control” means any circumstance in which both Ultimate Parent entities cease to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

“Commercial Operation” means that (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis (in accordance with Prudent Utility Practices) without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all required consents and Governmental Approvals, (c) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement, (d) Seller has satisfactorily completed the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures and other testing in accordance with Interconnection Agreement requirements, (e) Seller has obtained required insurance coverage, and (f) Buyer has received an officer’s certificate from Seller that the Project has been completed in all material respects.

“Commercial Operation Date” means the date on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10, (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit K, and with all fees and costs associated with the Licensed Professional Engineer having been borne by

Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

“Commercial Operation Year” means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

“Commissioning Performance Test” has the meaning set forth in Section 10.8(A).

“Commissioning Tests” has the meaning set forth in Section 10.2.

“Confidential Information” has the meaning set forth in Section 22.14(C).

“Continuation Notice” has the meaning set forth in Section 2.3(A).

“Contract Value” means the sum of the present values of the Solar Energy Output, for each Commercial Operation Year (or portion thereof) in the then-remaining term, determined without reference to the early termination, of (a) the quantity of Energy and RECs expected to be produced during such Commercial Operation Year (or portion thereof) times (b) the Solar Energy Output Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of this PPA.

“Customer Event of Default” has the meaning set forth in the Special Service Contract.

“Data Breach” has the meaning set forth in Section 22.14(F)

“Day” means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

“DC” means direct current.

“Deemed Energy” has the meaning set forth in Section 4.1(B).

“Default Rate” has the meaning set forth in Section 9.4.

“Defaulting Party” means the Party with respect to which an Event of Default under Article 12 has occurred.

“Delay Damages” has the meaning set forth in Section 3.7.

“Delayed Capacity” has the meaning set forth in Section 3.7.

“Delivery Term” has the meaning set forth in Section 7.1.

“**Delivery Term Security**” has the meaning set forth in Section 19.1.

“**Development Security**” has the meaning set forth in Section 19.1.

“**Disclosing Party**” has the meaning set forth in Section 22.14(A).

“**Dispute Notice**” has the meaning set forth in Section 13.8.

“**Disputing Party**” has the meaning set forth in Section 9.5(A).

“**Dollars**” means the lawful currency of the United States of America.

“**Downgrade Event**” shall mean that the long-term credit rating of a Person’s long-term senior unsecured debt is not “Baa3” or higher by Moody’s or “BBB-” or higher by S&P.

“**Early Termination Date**” has the meaning set forth in Section 12.4.

“**Electric Interconnection Point**” means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

“**Electric Metering Device(s)**” means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Project. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“**Emergency Condition**” means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider.

“**Energy**” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Project and delivered to Buyer at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices, net of auxiliary loads, station electrical uses and appropriate line losses.

“**Energy Storage Agreement**” means that certain Energy Storage Agreement between Seller and Buyer dated as of the Execution Date.

“**Energy Storage Product**” has the meaning ascribed to the term “Product” in the Energy Storage Agreement.

“**Energy Storage System**” or “**ESS**” has the meaning ascribed to it in the Energy Storage Agreement. For the avoidance of doubt, the Energy Storage System is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities,

including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

“Environmental Attributes” means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances that are created or otherwise arise from the Project’s generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing sentence to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project’s generation of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (iii) any Energy, reliability or other power attributes from the Project.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this PPA.

“Event of Default” means an Event of Default of Seller as set forth in Section 12.1 or an Event of Default of Buyer as set forth in Section 12.2.

“Execution Date” has the meaning set forth in the Preamble.

“Expected Commercial Operation Date” has the meaning set forth in Section 3.1.

“Federal Power Act” means the Federal Power Act, as amended, 16 U.S.C. § 791a *et seq.*

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Force Majeure Event” has the meaning set forth in Section 14.1(A).

“**GAAP**” has the meaning set forth in Section 22.18.

“**Government Official**” means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

“**Governmental Approval**” means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by, any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any, Non-Governmental Compliance Obligations.

“**Governmental Authority**” or “**Governmental Authorities**” means any federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

“**Governmental Charges**” means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Solar Energy Output contemplated by this PPA, either directly or indirectly.

“**Guaranteed Solar Capacity**” has the meaning set forth in Section 3.1.

“**Guaranteed Start Date**” has the meaning set forth in Section 3.1.

“**Hazardous Materials**” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or is dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a “hazardous waste”

pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“**House Energy**” has the meaning set forth in Section 1.4.

“**Installed Solar Capacity**” means, as of a given point in time, the aggregate nameplate capacity of all Solar Units installed and commissioned at the Project.

“**Interconnection Agreement**” means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider’s Transmission System, as such agreement may be amended from time to time.

“**Interconnection Facilities**” means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“**Issuer Minimum Requirements**” has the meaning set forth in Section 19.2.

“**kW**” means one or more kilowatts AC of electricity, as the context requires.

“**kWh**” means kilowatt hour AC.

“**Lender(s)**” means any and all Persons: (a) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

“**Letter of Credit**” means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party, issued by an entity meeting the Issuer Minimum Requirements.

“**Licensed Professional Engineer**” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of New Mexico, and otherwise qualified to perform the work required hereunder.

“**Local Provider**” has the meaning set forth in Section 1.4.

“**Losses**” has the meaning set forth in Section 20.1(A).

“**Market Event**” has the meaning set forth in Section 7.4(B).

“**Metered Output**” means the Energy made available from the Project at the Point of Delivery, as measured by the Electric Metering Devices.

“**Model Rated Power**” has the meaning set forth in Section 10.8(E)(5).

“**Month**” means a calendar month.

“**Monthly Billing Period**” means the period during any particular Month in which Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

“**Monthly Operational Report**” has the meaning set forth in Section 10.11.

“**Moody’s**” means Moody’s Investor Services, Inc. and any successor thereto.

“**Mountain Prevailing Time**” or “**MPT**” means the time in effect in the Mountain Time Zone of the United States of America, whether Mountain Standard Time or Mountain Daylight Saving Time.

“**MW**” means megawatt or one thousand (1,000) kW AC.

“**MWh**” means megawatt hours AC.

“**NERC**” means the North American Electric Reliability Corporation or any successor organization.

“**NMPRC**” means the New Mexico Public Regulation Commission or any successor agency.

“**NMPRC Approval**” has the meaning set forth in Section 17.3(B).

“**Non-Defaulting Party**” means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

“**Non-Governmental Compliance Obligations**” means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with Non-Governmental Compliance Organizations.

“**Non-Governmental Compliance Organization(s)**” means WREGIS, WECC, and all other applicable agencies, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

“**OATT**” means Open Access Transmission Tariff.

“**Operating Parameters**” has the meaning set forth in Section 10.4(A).

“**Operating Procedures**” means those procedures, if any, developed pursuant to Section 10.5.

“**Operating Records**” means all agreements associated with the Project, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including but not limited to supply contracts and environmental permits, plans and studies, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

“**Outage Notice**” has the meaning set forth in Section 7.5.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

“**Performance Test Report**” has the meaning set forth in Section 10.8(J).

“**Performance Tests**” has the meaning set forth in Section 10.8.

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**PNM**” has the meaning set forth in the Preamble.

“**PNM Event of Default**” has the meaning set forth in the Special Service Contract.

“**Point of Delivery**” means the electric system point at which Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided by Seller to Buyer under this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this PPA. For the avoidance of doubt, Energy delivered directly to the Energy Storage System shall be deemed to have been delivered at the Point of Delivery.

“**PPA**” or “**Power Purchase Agreement**” means this Power Purchase Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“**Procurement Evidence**” means evidence reasonably acceptable to Buyer that Seller has (i) signed a limited notice to proceed with the EPC contractor; or (ii) made initial deposits to suppliers or the engineering, procurement, and construction contractor for the procurement of modules, transformers, and inverters for the Project in a total amount of at least Twenty Million Dollars (\$20,000,000), which evidence shall include (a) copies of all such purchase orders and agreements (redacted of sensitive commercial information) and (b) a certificate of an authorized officer of Seller certifying that (i) such purchase orders and agreements cover all of the modules, transformers, and/or inverters that Seller anticipates will be necessary for the Project and (ii) Seller has made such initial deposits.

“**Project**” means Seller’s solar energy generation facility with a nameplate capacity of One Hundred Forty (140) MW at the Point of Delivery located in Sandoval County, New Mexico which will produce the Solar Energy Output made available to Buyer under this PPA, including one or more of Seller’s Solar Units and Seller’s Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such

electricity to the Electric Interconnection Point: Seller's equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA.

“Project Schedule” has the meaning set forth in Section 3.2.

“Projected Schedule” has the meaning set forth in Section 7.4(A).

“Promotional Materials” has the meaning set forth in Section 22.15(A).

“Prudent Utility Practice(s)” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the solar power generation industry serving public utilities, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (“VAR”) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for solar power generation operations serving public utilities in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

“Qualified Operator” is (a) a Person that has at least three (3) years’ experience with operating at least one hundred fifty (150) MW of solar generation, or (b) any other Person reasonably acceptable to Buyer.

“RC” has the meaning set forth in Section 10.8(D)(1).

“Receiving Party” has the meaning set forth in Section 22.14(A).

“Receiving Party’s Representatives” has the meaning set forth in Section 22.14(B).

“Recording” has the meaning set forth in Section 22.19.

“Regional Transmission Organization” is an independent, membership-based organization operating a bulk electric power system to ensure reliability and optimize supply and demand bids for wholesale electric power.

“Regulatory End Date” has the meaning set forth in Section 17.3(B)(3).

“Reliability Coordinator” means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

“Reliability Curtailment” means any curtailment of the Project by the BAA or Transmission Provider due to any of the following reasons: (a) the Transmission Provider and/or BAA directs a general curtailment, reduction or redispatch of generation in the area for any reason other than any economic purpose or to accomplish least cost dispatch; (b) the BAA curtails or otherwise reduces the Metered Output in order to meet NERC/WECC standards criteria in regard to compliance obligations to the PNM Balancing Area and/or Transmission Provider’s Transmission System to operate within system limitations or other operating areas as directed by the Reliability Coordinator; or (c) for safety or equipment failure situations of the electric system, as determined by the Transmission Provider or BAA. For the avoidance of doubt, a Reliability Curtailment includes curtailments associated with an oversupply of generation on Buyer’s or the Transmission Provider’s Transmission System during a period of time when generating facilities connected to the Transmission Provider’s Transmission System are interrupted or reduced in an equitable and non-discriminatory manner, but shall not include any curtailment for any economic purpose or to accomplish least cost dispatch, which curtailment shall be deemed a Buyer Economic Curtailment. If any of the conditions set forth in this definition subparts (a) through (c) are applicable, Buyer shall be rebuttably presumed not to be curtailing for economic reasons. Buyer, upon reasonable notice, will provide reasonable documentation relating to any Reliability

Curtailments to confirm compliance with this definition.

“Renewable Energy Certificate” or **“REC”** means a document evidencing that the amount of renewable energy shown on the document has been generated from the Project and certified as such by WREGIS. For purposes of this PPA and registration with WREGIS, RECs are accumulated on a MWh basis with one (1) REC for each MWh of renewable energy generated. RECs include all Environmental Attributes associated with the generated energy and shall be compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended. “RECs” excludes (i) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit to Seller based on ownership of, or Energy production from, any portion of the Project, including the Tax Benefits, (ii) depreciation and other tax benefits arising from ownership or operation of the Project unrelated to its status as a generator of renewable or environmentally clean energy, and (iii) any Energy, reliability or other power attributes from the Project.

“Replacement Energy Costs” means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein) which Seller, in accordance with this PPA, would have generated at the Project and delivered to Buyer, but failed to so provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer’s system, as reasonably determined by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission or distribution of replacement Solar Energy Output and any associated transmission or distribution costs, (ii) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (iii) Buyer’s expenses, including reasonable attorneys’ fees, suffered as a result of Seller’s failure to perform under this PPA.

“Retail Customer” has the meaning set forth in the Recitals.

“Requested Actions” has the meaning set forth in Section 17.3.

“Sales Tax” means any New Mexico state and local sales taxes, use taxes, compensating taxes, and similar taxes and charges.

“S&P” means Standard & Poor’s Corporation and any successor thereto.

“Scheduled Maintenance Outage” means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

“SEC” has the meaning set forth in Section 22.18.

“Security” means Development Security or Delivery Term Security, as applicable.

“**Seller**” has the meaning set forth in the Preamble.

“**Seller Excused Hours**” means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Transmission Provider Curtailment, (c) a Reliability Curtailment, (d) a Buyer Curtailment, (e) a Force Majeure Event, or (f) any breach or failure by Buyer to perform a material obligation under this PPA (other than due to a breach by Seller of its obligations under this PPA).

“**Seller Forced Outage**” means an unplanned reduction, interruption or suspension not associated with Seller Excused Hours of all or a portion of Energy deliveries from the Project to the Point of Delivery not associated with Seller Excused Hours.

“**Seller Guarantor**” means Seller Guarantor – AEP and Seller Guarantor – PNMR, as applicable.

“**Seller Guarantor – AEP**” means American Electric Power Company, Inc.

“**Seller Guarantor – PNMR**” means PNM Resources, Inc.

“**Seller Guaranty**” means a guaranty in substantially the form attached as Exhibit J.

“**Seller Permitted Transfer**” means any of the following: (a) a direct or indirect sale of ownership interests in Seller’s Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (c) a transfer of: (i) all or substantially all of the assets of Seller’s Ultimate Parent in a single transaction; or (ii) all or substantially all of Seller’s Ultimate Parent’s renewable energy generation portfolio in a single transaction; *provided*, that in the case of each of (b) or (c), following such transfer (1) the assignee (A) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (B) delivers evidence reasonably satisfactory to Buyer that such assignee’s creditworthiness is equal to or better than that of Seller; and (C) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project); and (2) that such transfer does not have a material adverse effect on the Seller’s credit characteristics.

“**Seller Termination Payment**” means the aggregate of the Special Service Contract Settlement Amount (if any) plus any and all other amounts then owed from Buyer to Seller, less any amounts owed from Seller to Buyer.

“**Seller’s Financial Statements**” has the meaning set forth in Section 22.18(B).

“**Seller’s Interconnection Facilities**” means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider’s Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the

low side of the step-up transformer, “Seller’s Interconnection Facilities” includes Seller’s metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

“**Site**” means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. For the avoidance of doubt, this PPA is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller’s Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld, conditioned or delayed, and Buyer shall retain the right to review such proposed changes with Retail Customer in accordance with Section 3.3.

“**Solar Energy Output**” means Metered Output, Environmental Attributes (including RECs) and Ancillary Services generated by the Project.

“**Solar Energy Output Payment Rate**” means the price to be paid by Buyer to Seller for the Solar Energy Output, as set forth in Section 3.1.

“**Solar Unit(s)**” means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

“**Special Service Contract**” has the meaning set forth in the Recitals.

“**Special Service Contract Default Notice**” has the meaning set forth in Section 2.2(A).

“**Special Service Contract Settlement Amount**” means the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses, on the one hand, netted against Special Service Contract Termination Gains on the other. If the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses exceeds the Special Service Contract Gains, then the Special Service Contract Settlement Amount shall be an amount Buyer owes to Seller. If the Special Service Contract Termination Gains exceed the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses, then the Special Service Contract Settlement Amount shall be Zero Dollars (\$0). The Special Service Contract Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Special Service Contract Termination Costs**” means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and all reasonable attorneys’ fees and expenses incurred by Seller in connection with the termination of this PPA.

“**Special Service Contract Termination Date**” has the meaning set forth in Section 2.3(A).

“Special Service Contract Termination Gains” means an amount equal to the present value of the economic benefit to Seller, if any (exclusive of Special Service Contract Termination Costs), resulting from the termination of this PPA on and after the effective date of such termination and for the remainder of the Term, determined by Seller in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Solar Energy Output. Seller shall use commercially reasonable efforts to obtain third party information in order to determine Special Service Contract Termination Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

“Special Service Contract Termination Losses” means an amount equal to the present value of the economic loss to Seller, if any (exclusive of Special Service Contract Termination Costs), resulting from the termination of this PPA on and after the effective date of such termination and for the remainder of the Term (including any loss of Tax Benefits to the extent that Seller, using commercially reasonable efforts, is unable to mitigate the loss of such Tax Benefits, including by remarketing Energy made available from the Project as a result of such termination), determined by Seller in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Solar Energy Output. Seller shall use commercially reasonable efforts to obtain third party information in order to determine Special Service Contract Termination Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

“Special Service Contract Termination Notice” has the meaning set forth in Section 2.3(A).

“Special Service Contract Termination Payment” means the aggregate of the Special Service Contract Settlement Amount (if any) plus any and all other amounts then owed from Buyer to Seller less any amounts owed from Seller to Buyer.

“Special Service Contract Termination Payment Notice” has the meaning set forth in Section 2.3(B).

“Supplemental Tax Incentives” means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any.

“**System Control Center**” or “**SCC**” means Buyer’s representative(s) responsible for dispatch of generating units, including the Solar Units.

“**Tax Benefits**” means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money made by a Governmental Authority relating in any way to such tax credits or the Project.

“**Tax Equity Financing**” means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a “**Tax Equity Investor**”) in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the tax credits, depreciation and other Tax Benefits associated with the Project.

“**Tax Equity Investor**” has the meaning set forth in the definition of Tax Equity Financing.

“**Taxes**” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

“**Term**” means the period during which this PPA shall remain in full force and effect, and which is further defined in Section 2.1.

“**Termination Payment**” means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

“**Test Energy**” means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

“**Test Period**” means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider’s Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date; provided, however, in no event shall the Test Period be longer than ninety (90) Days or as agreed to by Buyer and Seller as permitted by the WREGIS Operating Rules.

“**Test Rated Power**” has the meaning set forth in Section 10.8(E)(4).

“**TP Forced Outage**” means an unplanned component failure or other condition that (a) requires all or a portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System to be removed from service immediately; and (b) impacts Seller’s operation of the Project.

“**TP Maintenance Outage**” means the removal of all or a substantial portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission

System from service to perform work on specific components that can be deferred, but that nevertheless requires all or a substantial portion of the Transmission Provider's Interconnection Facilities or Transmission Provider's Transmission System to be removed from service before the next TP Planned Outage. TP Maintenance Outages may occur anytime during the Commercial Operation Year, have flexible start dates, and may or may not have predetermined durations.

"TP Planned Outage" means the removal of the Transmission Provider's Interconnection Facilities or Transmission Provider's Transmission System from service to perform repairs that are scheduled in advance and have a predetermined duration.

"TP Reliability Curtailment" means any curtailment by the Transmission Provider in accordance with WECC operating policies and criteria and the OATT of Solar Energy Output deliveries for reliability reasons but does not include any Buyer Curtailment.

"Transmission Provider" means the Person, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"Transmission Provider Curtailment" means curtailments of Energy from the Project directed by the Transmission Provider resulting from (a) a TP Forced Outage that is not the result of a Force Majeure Event, (b) a TP Maintenance Outage, (c) a TP Planned Outage, (d) a TP Reliability Curtailment, or (e) an Emergency Condition.

"Transmission Provider's Interconnection Facilities" means the facilities necessary to connect the Transmission Provider's Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Transmission Provider's Interconnection Facilities shall be governed by the Interconnection Agreement.

"Transmission Provider's Transmission System" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"Ultimate Parent" means American Electric Power Company, Inc. and PNM Resources, Inc.

"Weather Stations" has the meaning set forth in Section 10.10(A).

"WECC" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"WREGIS" means the Western Renewable Energy Generation Information System or any successor system.

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“**WREGIS Operating Rules**” means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

“**WREGIS Qualified Reporting Entity**” as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to “Articles,” “Sections,” “Exhibits” or “Schedules” shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; provided, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

(G) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

(H) All uses of the word “shall” in this PPA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose ("**House Energy**"). Seller shall independently secure a contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement.

(A) Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least sixty (60) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such facility shall not be delivered by Seller to Buyer under this PPA. House Energy shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and House Energy or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2 Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year ("**Term**"),

subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

2.2 Default Under Special Service Contract.

(A) Buyer will notify Seller within five (5) Business Days of a Customer Event of Default or PNM Event of Default. The notice will include information describing the nature of the Customer Event of Default or PNM Event of Default and whether the default is subject to cure under the Special Service Contract (“**Special Service Contract Default Notice**”).

(B) Buyer will provide notice to Seller within five (5) Business Days of any notice of termination it provides to Retail Customer due to any Customer Event of Default, including a copy of the termination notice and effective date of the termination of the Special Service Contract, after which Section 2.3 will apply.

2.3 Termination of Special Service Contract. Notwithstanding anything to the contrary in this PPA, Buyer shall have the right, but not the obligation, to terminate this PPA in accordance with the requirements of this Section 2.3 upon the termination of the Special Service Contract for any reason other than a PNM Event of Default in accordance with the requirements of this Section 2.3.

(A) Within thirty (30) Days of the termination of the Special Service Contract for any reason other than a PNM Event of Default thereunder, Buyer shall deliver written notice to Seller of Buyer’s election to either terminate this PPA (the “**Special Service Contract Termination Notice**”) or continue this PPA for the remainder of the Term (“**Continuation Notice**”). If Buyer elects to terminate this PPA, Buyer will designate an effective date for such termination no earlier than the date of such notice and no later than twenty (20) Days after the date of the Special Service Contract Termination Payment Notice (the “**Special Service Contract Termination Date**”). Prior to the effective date, Buyer shall pursue its remedies under the Special Service Contract and take such actions to cause Retail Customer to pay the Special Service Contract Termination Payment on or before the Special Service Contract Termination Date and Buyer will remit the Special Service Contract Termination Payment to Seller within thirty (30) Days of receipt of such payment from Retail Customer. Seller shall be entitled to any Special Service Contract Termination Payment pursuant to this Section 2.3 that Buyer receives from Retail Customer and any such payment received by Buyer shall be held in trust for and promptly paid to Seller.

(B) No later than ten (10) Days after the delivery of the Special Service Contract Termination Notice, Seller shall deliver written notice to Buyer of the amount of the Special Service Contract Termination Payment. Seller shall calculate the Special Service Contract Termination Payment in a commercially reasonable manner as of the Special Service Contract Termination Date in accordance with this Section 2.3(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Buyer will deliver notice to Retail Customer of the Special Service Contract Termination Payment amount together with the written statement provided by Seller to Buyer (“**Special Service Contract Termination Payment Notice**”) within five (5) Days after Buyer receives such information

from Seller. In calculating Special Service Contract Termination Gains or Special Service Contract Termination Losses, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If Seller uses the market price for a comparable transaction to determine the Special Service Contract Termination Gains or Special Service Contract Termination Losses, such price shall be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be (i) for a like amount, (ii) of the same Solar Energy Output, (iii) at the same Point of Delivery (if available), and (iv) for the remainder of the Term, or in any other commercially reasonable manner. Seller shall not have to enter into a replacement contract to establish a Special Service Contract Termination Payment. The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Special Service Contract Termination Payment. Any disputes regarding the Special Service Contract Termination Payment which the Parties are unable to resolve through negotiation shall be determined in accordance with Section 13.8.

2.4 Amendment of Special Service Contract. Any amendment of the Special Service Contract by Buyer and Retail Customer after the Execution Date will not materially alter Seller or Buyer's rights and obligations under this Article 2, including Seller's right to a Special Service Contract Termination Payment, unless Seller, in its reasonable discretion, agrees to an amendment of this PPA to reflect the further amended Special Service Contract, such agreement not to be unreasonably withheld, delayed or conditioned.

ARTICLE 3 Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this PPA, each term as more fully set forth in this PPA:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: NMRD Data Center IV, LLC
Project: TAG Solar Energy Center	
Point of Delivery: The point of interconnection with PNM's transmission system at which point Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as specified in <u>Exhibit B</u> .	
Term: 20 Commercial Operation Years	Guaranteed Solar Capacity (MW_{AC}): 140 MW _{AC}

Product Type: Bundled Energy, Ancillary Services and RECs	Solar Energy Output Payment Rate: \$32.50 MWh
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: One hundred sixty (160) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: March 31, 2025	

3.2 Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project or the Project Schedule. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes. The Parties agree that Seller may make a one-time adjustment to the Guaranteed Solar Capacity based on final equipment selection for the Project, provided that such adjustment will not exceed plus or minus 1% in total. Seller will provide notice of adjustment of the Guaranteed Solar Capacity within ten (10) Business Days after the execution of the inverter supply contract for the Project.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units and Energy Storage System at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units, Interconnection Facilities, and Energy Storage System at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller’s contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practice(s), this PPA and the Interconnection Agreement. The Project shall at all times:

- (A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;
- (B) be equipped for and capable of AGC by Buyer;
- (C) use communication circuits from the Project to the System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required for AGC by Buyer;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) deliver Energy to Buyer, at the AC frequency specified by Buyer;

(F) be capable of being remotely started and stopped by the System Control Center;

(G) be capable of immediate disconnection remotely by the System Control Center; and

(H) be capable of both full load and idle operation over an ambient temperature range of -20°F to 110°F with the full range of relative humidity.

(I) Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA interface with Buyer shall be a DNP3 standards-based control protocol including Automatic Generation Control capability. Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

3.5 Guaranteed Start Date. The Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6 Expected Commercial Operation Date Extensions.

(A) The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a Day-for-Day basis for up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, for delays resulting from: (i) any Force Majeure Event that delays construction or commencement of operation of the Project, and the number of Days of such extension shall be calculated from the date on which the Force Majeure Event begins, with Seller giving written notice to Buyer describing any such Force Majeure Event within five (5) Business Days after such Force Majeure begins; or (ii) any delay in the Interconnection In-Service Date, as provided in Exhibit A, to the extent caused by a delay in the construction of the Transmission Provider's Interconnection Facilities (except to the extent such delay was a result of Seller's acts or omissions).

(B) If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party (except as to costs and balances incurred prior to the effective date of such termination).

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages (“**Delay Damages**”) to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed Capacity, until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. “**Delayed Capacity**” is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity. In no event shall the aggregate Delay Damages exceed Thirty-Two Thousand Dollars (\$32,000) per MW of Delayed Capacity.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) per MW of Delayed Capacity (“**Capacity Shortfall Damages**”), in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy. Not less than thirty (30) Days prior to the date upon which Seller expects to begin delivering Test Energy, Seller shall give written notice to Buyer of such expected deliveries. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the initial delivery of Test Energy to Buyer.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit K when Seller believes that all requirements to Commercial Operation have been satisfied. Buyer shall, within ten (10) Days, in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer’s rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller’s most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof supplied to Buyer under this PPA is not prohibited by Applicable Law. Any breach of this Section 3.11 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

ARTICLE 4 AGC; Buyer Curtailment

4.1 AGC; Buyer Curtailment.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term capable of controlling all inverters.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect its curtailment rights pursuant to this Section 4.1(B) ("**Buyer Curtailment**"). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. Buyer Curtailment shall be allowed for a Buyer Economic Curtailment or any other curtailment as required for the protection of the Buyer's systems that is effectuated in a non-discriminatory manner given the operational circumstances at the time. Such Buyer Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Buyer Economic Curtailment only, Buyer shall: (i) pay Seller an amount equal to the sum of the Solar Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Buyer Economic Curtailment MWh. For purposes of this Section 4.1(B), "**Deemed Energy**" shall mean the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Buyer Economic Curtailment as follows: Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s) and the actual output of the Project and its components during the Monthly Billing Period, per Exhibit O, at the Site for all or a portion of the Solar Units taken out of service due to the Buyer Economic Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations of Deemed Energy.

(C) Buyer or Seller shall reduce Solar Energy Output from the Project during and to the extent of any Reliability Curtailment, Transmission Provider Curtailment, or Buyer Curtailment. Buyer shall pay for Deemed Energy during a Buyer Economic Curtailment as specified above. With the exception of a Buyer Economic Curtailment, Buyer shall not be required to pay Seller for any curtailed Energy during any Reliability Curtailment, Buyer Curtailment, or Transmission Provider Curtailment.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy Output from the Project to Buyer at the Point of Delivery at the required voltage, including the costs agreed to in the Interconnection Agreement with the Transmission Provider. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery.

(B) Buyer shall be responsible for costs required to deliver the Solar Energy Output from and beyond the Point of Delivery.

(C) On a Day-ahead basis, and no later than 4:00 a.m. MPT, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall be responsible for all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MPT on the current availability of the Project to the SCC.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall coordinate with Buyer and Transmission Provider as necessary to ensure that Electric Metering Devices are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project.

(B) The following provisions of this Section shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) Either Buyer or Seller may elect to install and maintain, at its own expense, backup metering devices ("**Back-Up Metering**") in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the other Party to inspect or witness the testing of Back-Up Metering, *provided, however*, that the other Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) In the event multiple Electric Metering Devices are installed, Buyer shall designate which installed Electric Metering Devices will be considered the primary Electric Metering Devices under normal operation for the purposes of this Agreement and notify Seller of such designation.

(F) If any Electric Metering Devices, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to

a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, provided, however, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller's step-up transformer, the Back-Up Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

ARTICLE 6 Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) If required by law, receipt of FERC approval or acceptance of this PPA, including rate authorization and authorization for affiliate sales.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7

Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term (“**Delivery Term**”), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase any Solar Energy Output not produced to the extent due to (a) a Party’s performance is excused by a Force Majeure Event, (b) a Transmission Provider Curtailment is continuing, (c) a Reliability Curtailment is continuing, (d) a Seller Forced Outage is continuing, (e) a Buyer Curtailment is continuing, or (f) a Scheduled Maintenance Outage is continuing. Furthermore, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity as adjusted for losses to the Point of Delivery.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Solar Energy Output from the Project up to delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Solar Energy Output from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Solar Energy Output shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) additional Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such additional Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such additional Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this PPA. If, in order for Buyer to receive the benefit of any additional Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this PPA, such costs shall, if Seller incurs such costs at Buyer’s request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; provided that, if the additional costs exceed Seller’s good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such additional Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller’s receipt of Buyer’s notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such additional Environmental Attributes.

7.4 Scheduling.

(A) From the Point of Delivery and beyond, Buyer shall arrange all scheduling services necessary to ensure compliance with WECC operating policies and criteria, Transmission Provider OATT requirements, and any other applicable guidelines, as required. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Metered Output in accordance with WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines in a manner maximizing Metered Output from the Project based on the then-most-current forecast of energy provided by Seller, except for Transmission Provider Curtailments, Reliability Curtailments, Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, and Buyer Curtailments. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Commercial Operation Year (“**Projected Schedule**”). Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market, or (iii) Buyer joins a Regional Transmission Organization (each of (i), (ii) and (iii) is a “**Market Event**”) and such Market Event materially changes the interconnection and delivery requirements in this PPA, the Parties shall cooperate in good faith to facilitate the delivery of Solar Energy Output from the Point of Delivery to Buyer’s Retail Customer’s load, at the least possible cost to the Parties and Retail Customer, consistent with this PPA to the extent possible.

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MPT on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MPT on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages. Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailments, Seller Excused Hours or a Seller Forced Outage in an amount of at least ten percent (10%) of the Guaranteed Solar Capacity. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of a Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailment, Seller Excused Hours or a Seller Forced Outage in an amount of at least ten percent (10%) of the Guaranteed Solar Capacity. Seller shall provide such notice to the System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Solar Energy Output and shall pay Solar Availability Damages, if any, in accordance with Seller’s obligations under the provisions of Exhibit I.

ARTICLE 8 Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to the product of (a) the aggregate amount of Solar Energy Output (MWh) delivered to Buyer at the Point of Delivery from the Project plus the Deemed Energy resulting from any Buyer Economic Curtailment multiplied by (b) the Solar Energy Output Payment Rate. As used herein, the “**Solar Energy Output Payment Rate**” is the rate to be paid for the Solar Energy Output delivered for Buyer to the Point of Delivery from the Project. For the avoidance of doubt, the Solar Energy Output Payment Rate also compensates Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period.

(B) If Supplemental Tax Incentives become available in connection with the Solar Energy Output, (i) Seller shall provide an analysis to Buyer of the benefits available under this PPA and use commercially reasonable efforts to become eligible for and to obtain such Supplemental Tax Incentives and (ii) both Parties will jointly develop an approach to realize any benefits. At Buyer’s option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this PPA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives.

(C) In the event that Seller, Affiliate of Seller or Tax Equity Investor becomes eligible to receive any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such Supplemental Tax Incentives.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9 Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MPT on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit H (“**Attestation and Bill of Sale**”).

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller’s invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this PPA, all payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the thirty (30) Day highest grade commercial paper rate as published in The Wall Street Journal on the first Business Day of each Month (“**Default Rate**”), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party (“**Disputing Party**”) may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within forty-five (45) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an

underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Sales Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of a Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, the PPA, Applicable Law and other applicable requirements and standards. Seller will be solely responsible for, and the Solar Energy Output Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer quarterly development and construction updates. If applicable, during the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks. If Seller becomes aware of any critical

milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project.

(C) Seller may not materially modify, expand, alter or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning Tests. Seller shall propose Commissioning Test procedures to Buyer at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Buyer shall have thirty (30) Days after receipt to provide feedback. If Buyer does not provide feedback within thirty (30) Days, the Commissioning Test procedures will be deemed acceptable. If Buyer provides feedback, Parties will further cooperate to develop mutually agreed upon procedures. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer prior to the Commercial Operation Date. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment nor as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. No later than thirty (30) Days prior to the Commercial Operation Date, Buyer shall submit to Seller a list of the measurement parameters Buyer wishes to have made available to Buyer via a SCADA or equivalent interface. Seller and Buyer shall meet to discuss and mutually agree upon the actual measurement parameters, including, but not limited to availability data, that Seller will provide Buyer on a real time basis during the term of this Agreement via a SCADA or equivalent interface. Seller shall provide Buyer with all real time measurement parameters of the Project as agreed upon and shall not be responsible for the manipulation or analysis of such measurement parameters, which shall be the sole responsibility of Buyer.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PNM reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all Operating Procedures. Not later than thirty (30) Days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures once per calendar year if requested by Buyer. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity and Solar Energy Output reports; unit operations log; Seller Forced Outage in an amount of at least ten percent (10%) of the Guaranteed Solar Capacity and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties, to be provided substantially in the form of Exhibit L or such other form as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this PPA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. In the event that Seller does not maintain the availability of qualified personnel twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project, Seller accepts that Buyer may take necessary action to directly disconnect the Project under reliability or emergency conditions.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled Maintenance Outages for the following Commercial Operation Year and a non-binding notice of the estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years if available. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason during daytime hours during May 1st through September 30th, December, or January without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval. Seller must give Buyer no less than ninety (90) Days' advance notice of any proposed change in the annual maintenance schedule. Notwithstanding the foregoing, Seller may, in its sole discretion, perform

scheduled maintenance on any components of the Project, so long as such maintenance is performed during nighttime hours. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(B) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Solar Energy Output to a third Person.

10.8 Performance Tests. “**Performance Tests**” means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Section 10.9.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the “**Commissioning Performance Test**”). The Commissioning Performance Test shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date, in which Buyer requests such test to be performed (each, an “**Annual Performance Test**”). Any such request for an Annual Performance Test must be delivered to Seller no later than ninety (90) calendar days prior to the desired date of such Annual Performance Test. Each Annual Performance Test shall be performed no earlier than nine (9) months and no later than fifteen (15) months from the completion of the previous Annual Performance Test or Commissioning Performance Test as mutually agreed by the Parties. The Annual Performance Tests and Buyer-Requested Performance Tests shall be conducted in accordance with the applicable provisions of this Section 10.8.

(C) Annual degradation rates included in Exhibit N will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8. Annual degradation rates identified in Exhibit N shall be applied as incremental to the actual degradation experienced and measured through the prior year’s Annual Performance Test.

(D) The Commissioning Performance Test shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8 (D).

(1) The reporting conditions (“**RC**”) for the Commissioning Performance Test will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance and ambient temperature data collected during the Commissioning Performance Test.

(2) The Performance Test period will include at least five (5) Days of data and at least fifty (50) filtered data points.

(3) The PVSYST model utilized by Seller to predict the annual generation forecasts included in Exhibit M will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test.

(E) The Annual Performance Tests and Buyer-Requested Performance Tests shall be conducted in accordance with the following.

(1) The Performance Tests will utilize site measured irradiance and ambient temperature data collected during the Performance Test. Average conditions will be used for computing hourly Model Rated Power and for reporting hourly Test Rated Power.

(2) The Performance Test period will include at least five (5) Days of data collected within the same month and evaluated between 9 AM and 3 PM. At least fifty (50) filtered data points shall be available.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) “**Test Rated Power**” shall be the average hourly site measured power for the average hourly site measured weather data, adjusted by Seller for any unavailable equipment during the Performance Test.

(5) “**Model Rated Power**” shall be the hourly value produced by the Annual Performance Test PVSYST Model evaluated at the average hourly site measured weather conditions, adjusted by Seller for any unavailable equipment during the Performance Test.

(6) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of an Annual Performance Test.

(7) During the Annual Performance Tests and Buyer-Requested Tests, the Buyer shall use a data acquisition system to measure and record the data necessary to calculate the Test Rated Power. The following equipment located on-site at the Project shall be utilized to collect the data used to determine the Test Rated Power:

- a. The electric metering devices as described in Section 5.3 of the Agreement.
- b. The Weather Stations as described in Section 10.10 of the Agreement.
- c. The Performance Test Report shall include a comparison of the hourly Test Rated Power to the hourly Model Rated Power for the actual weather conditions observed during the test.

(F) Should any modifications to the PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the “**Annual Performance Test PVSYST Model.**”

(G) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual degradation added for the time period following the prior Performance Test. This Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests.

(H) Within thirty (30) Days of the completion of an Annual Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the Annual Performance Test.

(I) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(J) For all Performance Tests and re-tests, Seller shall provide a “**Performance Test Report**” within thirty (30) Days after the completion of the test that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review.

(K) Proposed terms associated with the irradiance conditions, degradation allowances, modeling software inputs, and the results evaluation methodology to be utilized for documenting the tested performance shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing, Seller shall perform additional tests as requested by Buyer (“**Buyer-Requested Performance Tests**”), limited to the conditions described in this Section 10.9. The Buyer will be responsible for all documented third-party costs associated

with any Buyer-Requested Performance Tests. For the avoidance of doubt and for the purposes of Sections 10.8 and 10.9, an Annual Performance Test shall not be considered to be a Buyer-Requested Performance Test.

(A) Only one (1) Buyer-Requested Performance Test may be requested per Commercial Operation Year.

(B) Buyer-Requested Performance Test may not be requested within three months of a previous Annual Performance Test.

(C) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.10 Weather Stations.

(A) Seller shall, at Seller's cost and no later than thirty (30) Days prior to the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations ("**Weather Stations**") at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility solar facility installations and include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, solar radiation, and relative humidity. Seller shall provide for information purposes, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to PNM and the data shall be available to PNM via a PI historian interface.

(B) Data collected from the Weather Stations shall be utilized for determination of the Daylight Interval for determination of system availability and lost output due to curtailment or outages.

10.11 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Solar Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller

concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11
RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Other than as specified in Section 11.1(D) below, and considering the prior actions that must be completed as specified in Section 11.1(E) below, effective from the date on which the Project first delivers Energy for sale to Buyer at the Point of Delivery, Seller shall transfer to Buyer (or to Retail Customer as may be designated by Buyer), free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy in an amount equal to the Solar Energy Output. Seller shall make the RECs available to Buyer within ten (10) Days of the RECs being created in WREGIS. Seller shall deliver RECs within one hundred forty (140) Days after the end of the month in which associated Energy is generated (two hundred (200) Days after the Commercial Operation Date in the case of Test Energy), provided that Seller will get a day-for-day extension to deliver RECs for any delay caused by a Buyer act or a failure to act, including but not limited to Buyer's performance as the WREGIS Qualified Reporting Entity for this Project. The RECs and Environmental Attributes transferred under this PPA shall be bundled with the associated Energy, and Buyer shall pay Seller for the bundled RECs and Environmental Attributes and Energy as set forth in this PPA.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this PPA or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of tracking all Renewable Energy Certificates corresponding to all Metered Output, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the

certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account. Buyer shall have the exclusive right to transfer RECs and Environmental Attributes to Retail Customer's WREGIS account, or retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(F) Seller shall register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, as that term is defined by WREGIS.

(H) Neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses by the responsible Party), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

ARTICLE 12 Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with any Lender;
- (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;
- (4) The sale by Seller to a third party, or diversion by Seller for any use, of Energy, RECs or Ancillary Services committed to Buyer by Seller;

(5) Seller's actual fraud, waste, tampering with Buyer-owned facilities or other material misrepresentation or misconduct in connection with this PPA or the operation of the Project;

(6) The failure of Seller to maintain Security in accordance with Article 19;

(7) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties;

(8) Seller's failure to deliver RECs monthly in accordance with the terms of this PPA on more than three occasions;

(9) Seller's Abandonment of construction or operation of the Project;

(10) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18;

(11) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Solar Availability Percentage of at least seventy-five percent (75%) over two (2) successive Commercial Operation Years; or

(12) The Project fails to obtain an Actual Solar Availability Percentage of at least fifty percent (50%) over any Commercial Operation Year.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure; or

(2) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Seller to cure within twenty (20) Days of written notice from Buyer to Seller.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or Retail Customer, Seller is not able to deliver Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements required to deliver Energy to the Point of Delivery;

(2) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(3) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(4) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Buyer; or

(5) Seller fails to register the Project within WREGIS in accordance with the terms of this PPA.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this PPA, except those representations and warranties made pursuant to Section 22.20, shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; *provided, however*, that Seller does not obtain a stay or dismissal of the filing within the cure period.

(E) Any representation or warranty in Section 22.20 is breached by Seller or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors; or

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or misconduct in connection with this PPA or the operation of the Project; or

(2) Buyer's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller.

(D) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Buyer's assignment of this PPA, except as permitted in accordance with Article 18; or

(3) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, and the duty to mitigate damages set forth in Section 12.9, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to an Event of Default of Seller, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, an amount of cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Solar Energy Output so replaced and (y) the Solar Energy Output Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Solar Energy Output notwithstanding the availability or prices of electric energy from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs and any Environmental Attributes pursuant to this PPA. Seller acknowledges that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment, and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment.

(A) In the event that Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) In the event that Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The amount will be determined by Seller using the methodology set forth in Section 2.3(B).

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this PPA,

and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13

Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as

applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) **Operating and Maintenance Records.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages in an amount of at least ten percent (10%) of the Guaranteed Solar Capacity.

(B) **Billing and Payment Records.** To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) **Project Development Records and Data Submissions.** Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals from any

Governmental Authority which address environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer shall not be construed as an endorsement by Buyer of the design of the Project, does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project, otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts or, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller that has not been cured under this PPA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Except as otherwise set forth in this PPA, Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute

within thirty (30) Days after the commencement of negotiations, written notice of the dispute (“**Dispute Notice**”), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties’ representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party’s right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days’ written notice, declare the mediation process unsuccessful and initiate legal and equitable remedies.

ARTICLE 14 Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A “**Force Majeure Event**” shall mean an event or circumstance that arises after the Execution Date that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of civil, tribal, military or Non-Governmental Compliance Organization authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). The Parties agree that a pandemic shall be considered a Force Majeure Event only if the affected Party’s ability to perform its obligations under this Agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or

other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller), unless such inability is caused by an event that otherwise qualifies as a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or serial defects, unless caused by a Force Majeure Event; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors; (viii) a Seller Forced Outage, except where such Forced Outage is caused by a Force Majeure Event; or (ix) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception (with respect to Force Majeure Events occurring prior to the Commercial Operation Date) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure Events occurring after the Commercial Operation Date), either Party (or Buyer as provided in Section 3.6(B)) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall

notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided that failure to provide notice within ten (10) Business Days only waives the Force Majeure Event as to periods prior to when the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section 14.2. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however,* that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, then any lost production (MWh) during the Force Majeure Event shall be excluded from the determination of the monthly Solar Energy Output payment as set forth in Section 8.1.

ARTICLE 15

Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has and/or will have upon the generation of Solar Energy Output good and marketable title to the RECs and Environmental Attributes.

(K) Seller has not sold, delivered or transferred the RECs or Environmental Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the RECs and Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) Each REC and Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10, and 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1, and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

ARTICLE 16

Insurance

16.1 Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained

by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17

Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws. Each Party shall promptly notify the other Party of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for

purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with the execution and performance of this PPA and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of a Party or Retail Customer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if none of the Parties nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether the Parties will elect to amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties and Retail Customer are unable

to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2023 (“**Regulatory End Date**”), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18

Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer’s consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this PPA by

Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations; and *further provided* that Buyer simultaneously assigns the Special Service Contract with Retail Customer to such assignee.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be

so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this PPA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this PPA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this PPA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement that has a material adverse effect on Buyer or Retail Customer during the term of the Special Services Contract, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this PPA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller does not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars (\$100,000) per MW multiplied by the Guaranteed Solar Capacity (“**Development Security**”) within the earlier of (a) ninety (90) Days after the Execution Date; provided, however, if Seller provides the Procurement Evidence to Buyer prior to the expiration of such ninety (90) Day period, then such time period shall be extended until (5) Business Days after the date that Buyer obtains NMPRC Approval; and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Fifty Thousand Dollars (\$150,000) per MW multiplied by the Guaranteed Solar Capacity (the “**Delivery Term Security**”). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller if Commercial Operation occurs on or before the Guaranteed Start Date, less any amounts Buyer has drawn or is entitled to draw, upon Seller’s request within thirty (30) days after Seller has provided the Delivery Term Security, less any amounts owed and unpaid by Seller to Buyer. In the event that no amounts are due and owing by Seller to Buyer under this PPA and provided no claims are then outstanding, Seller’s Delivery Term Security shall be released to Seller upon the earlier of (a) termination of this PPA in accordance with its terms; and (b) on the fifteenth (15th) Business Day after the expiration of the Term. Buyer acknowledges and agrees that Seller’s Security requirements will be posted one-half by Seller Guarantor – PNMR and one-half by Seller Guarantor – AEP. In the event Buyer elects to draw on the Security, Buyer shall seek one-half of such Security draw from Seller Guarantor – PNMR and one-half of such Security draw from Seller Guarantor – AEP.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody’s of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets (“**Issuer Minimum Requirements**”), (c) a Seller Guaranty from Seller Guarantor – PNMR and Seller Guarantor – AEP, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to a Seller Guarantor who has posted a Seller Guaranty, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller’s obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable

Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In the event Seller or its guarantor fails to make when a payment when due under this PPA, including payment and any damages arising out of an Event of Default and upon declaration of an Early Termination Date, Buyer in its sole discretion shall be entitled to draw upon the Security until such time as the Security is exhausted.

ARTICLE 20

Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses (as defined in Section 20.1(A)) to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for

which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

20.4 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22 Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its

employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.4 Disclaimer of Certain Third Party Beneficiary Rights.

(A) In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this PPA in Section 22.4(B), nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this PPA, Retail Customer is an express third party beneficiary to this PPA. The provisions of this PPA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as express third party beneficiary hereof as if it were a Party hereto. For the avoidance of doubt and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer notice of a change in the location of the Site;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project;

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the PPA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the PPA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the sale of Solar Energy Output from the Project. Subject to approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in the United States District Court for the District of New Mexico.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, “**Disclosing Party**” refers to the Party disclosing information to the other Party, and the term “**Receiving Party**” refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it

takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public. Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, “**Confidential Information**” means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party’s behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party’s stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as “confidential” (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information), other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;
- (2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and
- (3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party’s Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral

or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process relating to this PPA, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall take all reasonable steps to limit the scope of any disclosure of Confidential Information and shall use its best efforts to make such disclosure of Confidential Information subject to a protective order or other similar procedure; *provided, however*, Seller acknowledges and agrees that Buyer may disclose this PPA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction. In the event that Buyer intends to disclose additional requested or supporting documents that include any of Seller's Confidential Information in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction, Buyer shall provide notice to Seller of such intended disclosure and, if Seller responds within three (3) Business Days (or other shorter response time as may be required or directed by the NMPRC) of receiving Buyer's notice and requests that Buyer seek a protective order or similar procedure, Buyer shall seek a protective order or similar procedure to limit the disclosure. Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

(F) Receiving Party shall immediately notify Disclosing Party or Retail Customer, as applicable, of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Disclosing Party's or Retail Customer's Confidential Information ("**Data Breach**") that comes to Receiving Party's attention. Such notification shall be made to Disclosing Party or Retail Customer no more than twenty-four (24) hours after Receiving Party suspects or knows of the Data Breach. Receiving Party shall also take the following actions in the event of a Data Breach: (a) designate a single individual employed by Receiving Party who must be available to Disclosing Party or Retail Customer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Receiving Party's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Disclosing Party, Retail Customer or any of its Affiliates without first obtaining prior written approval from Disclosing Party or Retail Customer; (c) cooperate with Disclosing Party or Retail Customer in investigating, remedying, and taking any other action Disclosing Party or Retail Customer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Disclosing Party or Retail Customer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Disclosing Party or Retail Customer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Receiving Party may disclose information relating to a Data Breach as required by applicable law or by proper legal or governmental authority. Receiving Party shall give Disclosing Party or Retail

Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Disclosing Party or Retail Customer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this PPA and the RECs that are generated under this PPA and delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such RECs (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the “**Promotional Materials**”). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Upon sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this PPA:

- (1) Party names;
- (2) Renewable resource type;
- (3) Term;
- (4) Project location;
- (5) Guaranteed Solar Capacity;
- (6) Commercial Operation Date; and
- (7) Point of Delivery.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party’s obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Should Seller have a dedicated operations and maintenance or other building associated with the Project, signage will be included inside such building(s), the size and style of which will be reasonably and mutually agreed between Seller and Buyer after consultation with Retail Customer, displaying information about Retail Customer's affiliation with the Project and Retail Customer's logo. In addition, Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this PPA, the Parties acknowledge that this PPA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this PPA, that this PPA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (i) will be considered a lease under Accounting Standards Codification 842 - Leases, or (ii) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the “**Accounting Standards**”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the applicable Seller's Guarantor to the extent a Guaranty has been issued, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 22.18 in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in

accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information, based on the advice of its counsel that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section 22.18.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself, Ultimate Parent and any other direct or indirect upstream equity owners that, notwithstanding percentage of equity ownership interest, have the voting power or otherwise have the power to control the day-to-day management, operations and policies of Seller, and such Affiliates that Seller contractually or otherwise controls or directs in the management or operation of the Project, and in each case, including the officers, directors, employees and agents of such entities, represents and warrants that it has not engaged in, and that it shall refrain from, offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in his or her official capacity, (ii) induce a Government Official to act in violation of his or her lawful duty, (iii) induce a Government Official to use his or her influence with a government or instrumentality thereof, or (iv) otherwise secure any improper advantage, in each case to the extent prohibited by applicable anti-corruption laws; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption laws. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.1(E). In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for five (5) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any breach of this Section 22.20 by Seller or its representatives. Seller will ensure that the contractors and subcontractors it retains in connection with this Agreement expressly agree to anti-corruption undertakings, representations,

and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(E), Buyer shall have no obligation to make further payments hereunder.

[Signature page(s) follow]

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By 
8DE1D44E9B1C4ED...

Name Michael Mertz

Title Vice President, New Mexico Operations, and Chief Information Officer

NMRD DATA CENTER IV, LLC

By: 
DCDE85F0D0F6451...

Name: GARY BARNARD

Title VICE PRESIDENT

EXHIBIT A
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND
PROJECT SCHEDULE**

1. Name of Seller's Project: TAG Energy Center
2. Location: Sandoval County, NM
3. Owner (if different from Seller):
4. Operator: NMRD Data Center IV, LLC
5. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar
 - b. Total number of units at the Project: Approximately 40 x 3.6 MVA Inverters, or a comparable number of inverters at alternate ratings to support the total capacity at the point of delivery.
 - c. Total nameplate capacity (MWp): Approximately 167.1 MW_{DC}
 - d. Total capacity at point of delivery: 140 MW_{AC} at the Point of Delivery
 - e. Additional technology-specific information: Approximately 370,000 crystalline silicon 445 W photovoltaic modules or a comparable number of solar modules at alternate ratings totaling the facility nameplate capacity (MWp), with single axis tracking.

6. Project Schedule:

Key Milestone	Date
LGIA Execution	12/30/2019
Major Equipment Supply Agreements Executed	08/15/2023
Discretionary Permits	02/1/2024
Close Financing	N/A
Start of Project Construction	02/05/2024
First Major Equipment Delivered to Site	02/15/2024
Interconnection In-Service Date	02/01/2025
Commissioning Start Date	03/01/2025
Expected Commercial Operation	03/31/2025

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.



EXHIBIT B
(to Power Purchase Agreement)

ONE-LINE DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

1. See attached one-line diagram of the Project. The one-line diagram indicates the following:
 - Interconnection Facilities;
 - the network upgrades;
 - the Electric Interconnection Point;
 - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
 - The House Energy power source and associated dedicated electric meter; and
 - ownership and location of meters.
2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.
3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.
4. Point of Delivery is RIO PUERCO SUBSTATION

EXHIBIT C
(to Power Purchase Agreement)

DESCRIPTION OF SITE
TAG ENERGY CENTER

SURVEYOR'S DESCRIPTION of: TAG Energy Center, Sandoval County, State of New Mexico, and being more particularly described as follows:

Legal Description

TRACT NUMBERED ONE (1) OF THE PLAT OF TRACTS 1 AND 2, LANDS OF AMREP, A PORTION OF LAND LYING WITHIN THE TOWN OF ALAMEDA GRANT, PROJECTED SECTIONS 2, 8 AND 17, T.13N., R.1E., AND PROJECTED SECTION 32, T.13N., R.1E., SANDOVAL COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON AUGUST 5, 2010 IN VOL. 3, FOLIO 3317.

AND

TRACT NUMBERED TWO (2) OF THE CLAIM OF EXEMPTION PLAT FOR LOT LINE ADJUSTMENT, EASEMENT AND ROW VACATION OF TRACT 2A, BEING BLOCKS 1 THRU 9 AND TRACT "A" UNIT TAG AND BLOCKS 10 THRU 30 AND TRACT "B" UNIT TAG AND TRACT 2 OF THE PLAT OF TRACTS 1 AND 2, LANDS OF AMREP, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON AUGUST 31, 2010 IN VOL. 3, FOLIO 4278.

AND

LOTS NUMBERED FIVE (5), TWELVE (12) AND THIRTEEN (13) IN BLOCK NUMBERED EIGHTY-SIX (86) AND LOTS NUMBERED ELEVEN (11), TWELVE (12) AND EIGHTEEN (18) IN BLOCK NUMBERED EIGHTY-SEVEN (87), OF UNIT ONE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 24.

AND

LOTS NUMBERED ONE (1), SIXTY-SIX (66), SIXTY-SEVEN (67) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED ONE (1); LOTS NUMBERED ONE (1), TWO (2), THREE (3), FOUR (4), SIXTY-FIVE (65), SIXTY-SIX (66), SIXTY-SEVEN (67) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED TWO (2); LOTS NUMBERED ONE (1), TWO (2), THREE (3), FOUR (4) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED THREE (3); LOTS NUMBERED ONE (1), SIXTY-SIX (66), SIXTY-SEVEN (67) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED FIVE (5); AND LOT NUMBERED ONE (1) IN BLOCK NUMBERED SIX (6), OF UNIT ONE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 25.

AND

LOTS NUMBERED TEN (10), TWELVE (12) AND THIRTEEN (13) IN BLOCK NUMBERED THIRTY-ONE (31), AND LOTS NUMBERED FIVE (5), SEVEN (7), EIGHT (8), FOURTEEN (14) AND TWENTY-SEVEN (27) IN BLOCK NUMBERED THIRTY-TWO (32), OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 30.

AND

LOTS NUMBERED SIX (6), EIGHT (8) AND THIRTY (30) IN BLOCK NUMBERED SEVENTY-FIVE (75) AND LOTS NUMBERED TWO (2), THREE (3) AND SEVEN (7) IN BLOCK NUMBERED SEVENTY-SIX (76), OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 31.

AND

LOT NUMBERED ONE (1), SIX (6) AND EIGHT (8) IN BLOCK NUMBERED THIRTY-TWO (32) AND LOTS NUMBERED ONE (1), FOUR (4), EIGHT (8) AND THIRTY-EIGHT (38) IN BLOCK NUMBERED FORTY-SEVEN (47), OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON DECEMBER 7, 1981 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 6.

AND

TRACT DESIGNATED "PARK", BLOCK NUMBERED FORTY-EIGHT (48), OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID REPLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON OCTOBER 13, 1973 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 126.

The above described Tract of Land contains 1,136 acres more or less in area.

EXHIBIT D
(to Power Purchase Agreement)
NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

NMRD DATA CENTER IV, LLC

Notices:

Delivery Address:

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

Invoices:

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

Scheduling:

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Payments:

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer: To Be Provided by Buyer

Contract Manager:

Public Service Company of New Mexico
Attention: Jeremy Heslop
2401 Aztec Rd. NE
Albuquerque, NM 87107

All Notices/Invoices:

Delivery Address:

NMRD Data Center IV, LLC
1 Riverside Plaza
Columbus, OH 43215
Attn: Benjamin S. Himmel
Phone: (614) 583-6084
Email: bshimmel@aepes.com

With copy to:

Gary Barnard
2401 Aztec Rd. NE
Albuquerque, NM 87107
Phone: (505) 241-2854
Email: gary.barnard@pnmresources.com

Mailing Address (if different from above):

Wire Transfer: To Be Provided by Seller

Telephone: 505-241-2664

With additional Notice of an Event of Default, termination and other legal notices to:

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Avenue SW
Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: John Verheul, Corporate
Counsel
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
lawdept@pnmresources.com
Telephone: (505) 241-4864
Fax: (505) 241-4318

EXHIBIT E
(to Power Purchase Agreement)

**SELLER'S GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS,
LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

(if required)

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>US Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>New Mexico Environment Department (NMED) Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines), NWP #14 (access roads), NWP #51 (renewal energy facilities) (if required)</i>	<i>U.S. Army Corps of Engineers</i>
<i>National Environmental Policy Act, Finding of No Significant Impact for an Environmental Assessment</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>Right of Way Grant and Notice to Proceed</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>National Historic Preservation Act Section 106 Finding of Eligibility, Consultation, and Approval</i>	<i>New Mexico State Historic Preservation Office</i>
<i>State of New Mexico Business Site Lease (ROW Grant)</i>	<i>State of New Mexico – State Lands Office</i>
<i>Ground Disturbance Permit</i>	<i>New Mexico State Lands Office – Commercial Resources Division</i>
<i>Sandoval County New Commercial/Addition Structures Permit</i>	<i>Sandoval County, Building Division</i>
<i>Sandoval County Floodplain Permit</i>	<i>Sandoval County</i>
<i>Transmission Line Location and Right-of-Way Permit</i>	<i>New Mexico Public Regulatory Commission</i>
<i>No Hazard Determination</i>	<i>Federal Aviation Administration</i>

EXHIBIT F
(to Power Purchase Agreement)

COMMISSIONING TESTS

- String Insulation Resistance and Continuity Tests
- String V_{oc} measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Weather Station Data Feed Functionality Test (as part of SCADA testing)
- Owner Control and Data Link Functionality Tests (See Section 3.4)
- Curtailment Control (or equivalent, if applicable)
- Commissioning Performance Test (See Section 10.8)

EXHIBIT G
(to Power Purchase Agreement)
INSURANCE COVERAGES

Seller shall obtain and maintain the following insurance coverages, at a minimum:

A. Workers' Compensation Insurance, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000).

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars (\$20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

EXHIBIT H
(to Power Purchase Agreement)

FORM OF ATTESTATION AND BILL OF SALE

Pursuant to WREGIS, _____ (“Seller”) hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the “Agreement”). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Name of Renewable Energy Facility		
Fuel Type	Maximum Power Output (MW)	Operation Date
Dates	, 20__	MWh generated

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;
- iii) the Project identified above produced the number of MWh above during the period indicated above;
- iv) Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
- v) Seller owns the _____.
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to Buyer all of Seller’s right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____

Name: _____

Title: _____

Date: _____

EXHIBIT I

to Power Purchase Agreement AVAILABILITY GUARANTEE

Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in Article 1 of the PPA.

“**Actual Solar Availability Percentage**” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

“**Actual Solar Energy Output**” means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

“**Aggregate Solar Availability Damages Cap**” has the meaning set forth in Section 2(3) of this Exhibit.

“**Annual Solar Availability Damages Cap**” has the meaning set forth in Section 2(3) of this Exhibit.

“**Annual Report**” has the meaning set forth in Section 2(5) of this Exhibit.

“**Daylight Interval**” means each hour where plane of array irradiance conditions are 50 W/m² or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

“**Guaranteed Solar Availability Percentage**” has the meaning set forth in Section 2(1) of this Exhibit.

“**Solar Availability Damages**” has the meaning set forth in Section 2(2) of this Exhibit.

“**Solar Availability Guarantee**” means the guarantee set forth in Section 2(1) of this Exhibit.

“**Solar Available Hours**” means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year.

“**Solar Excused Hours**” means, in any Commercial Operation Year, the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year; provided that for

purposes of the Solar Availability Guarantee only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for the Project per Commercial Operation Year shall be treated as Solar Excused Hours. For the avoidance of doubt, the foregoing calculation shall include partial Seller Excused Hours, expressed as a decimal. Additionally, if during any Seller Excused Hour, only a portion of the installed capacity, of a Solar Unit is not available to operate for one of the reasons enumerated in the definition of “Seller Excused Hours,” then such Seller Excused Hour shall be included in this definition as the decimal equivalent to the ratio of (i) the installed capacity that was not available to operate during such Seller Excused Hour to (ii) the installed capacity.

“**Solar Period Hours**” means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“**Solar Unavailable Hours**” means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages; (d) incapable of being controlled via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery. For the avoidance of doubt, the foregoing calculation shall include partial Daylight Intervals during which a Solar Unit is unavailable, expressed as a decimal. Additionally, if during any Daylight Interval, only a portion of the installed capacity of a Solar Unit is not available to operate for one of the foregoing reasons, then such Daylight Interval shall be included in this definition as the decimal equivalent to the ratio of (i) the installed capacity that was not available to operate during such Daylight Interval to (ii) the installed capacity.

Section 2. Solar Availability Guarantee.

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Solar Availability Percentage (i) equal to or greater than eighty-five percent (85%) averaged through the second full Commercial Operation Year of the Term and (ii) equal to or greater than ninety percent (90%) in each subsequent Commercial Operation Year after the Commercial Operation Date (“**Guaranteed Solar Availability Percentage**”).

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the “**Solar Availability Damages**”), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit I.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Thirty

Thousand Dollars (\$30,000) per MW of Guaranteed Solar Capacity (“**Annual Solar Availability Damages Cap**”) and in the aggregate at a value equivalent to Two Hundred Thousand Dollars (\$200,000) per MW of Guaranteed Solar Capacity (“**Aggregate Solar Availability Damages Cap**”) over the Term of the PPA.

4. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed Solar Availability Percentage) shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(A)(11) and (A)(12) of the PPA, if and to the extent applicable, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(A)(11) and (A)(12) of the PPA, as and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the PPA and Seller’s material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practice or Seller’s failure to pay Solar Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA are an Event of Default of Seller for which Buyer may terminate the PPA and seek damages in accordance with Section 12.4 of the PPA.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller’s computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the “**Annual Report**”). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the PPA.

ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

I. Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

	Hours	Solar Units Affected	Solar Unit Hours
Solar Period Hours ("PH")	4,000	50	200,000
Solar Unavailable Hours ("UH")			5,000
Solar Excused Hours ("EH")			1,000

Given these assumed facts, the Solar Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of Solar Available Hours} = \text{PH} - \text{UH} + \text{EH}: 196,000 = 200,000 - 5,000 + 1,000$$

Actual Solar Energy Availability Percentage

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of Solar Available Hours: 196,000 hours
- (b) Sum of Solar Period Hours: 200,000 hours
- (c) Actual Solar Availability Percentage: $(\text{Sum of Solar Available Hours} / \text{Sum of Solar Period Hours}) \times 100 = (196,000 / 200,000) \times 100 = 98.0\%$

II. Example of Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

- (a) Seller's Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.
- (b) Seller's Actual Solar Availability in Commercial Operation Year 4 = 85%.
- (c) Solar Energy Output Payment Rate = \$32.50
- (d) Actual Solar Energy Output = 400,000 MWh

Given these assumed facts, Seller calculates the Solar Availability Damages due to Buyer as

follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$$\$32.50 \times (.90 - .85) \times (400,000 \div .85 * .90) = \$688,235$$

EXHIBIT J
(to Power Purchase Agreement)

FORM OF SELLER GUARANTY

GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, _____ (the “**Effective Date**”), is made by [●] (“**Guarantor**”), in favor of [INSERT COUNTERPARTY’S NAME IN ALL CAPS] (“**Counterparty**”).

RECITALS:

A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary [INSERT OBLIGOR’S NAME IN ALL CAPS] (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain _____ Agreement dated/made/entered into/effective as of _____, 20__ (the “**Agreement**”); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [spell out the dollar amount] U.S. Dollars (U.S. \$ _____) (the “**Maximum Recovery Amount**”), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys’ fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

- (a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor’s obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor’s obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [insert date [] years plus six (6) months after the expected Commercial Operation Date]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called “**Notice**”) by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

<u>TO GUARANTOR: *</u>	<u>TO COUNTERPARTY:</u>
[●] <i>Attn:</i> Treasurer	<i>Attn:</i> [●]
<i>[Tel: [●] -- for use in connection with</i>	<i>[Tel: [●]</i>

<i>courier deliveries]</i>	<i>-- for use in connection with courier deliveries]</i>
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* (NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. [●] and ATTN: Credit Department, Fax No. [●]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this *Section 9* will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising

out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

11. **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__,
but it is effective as of the Effective Date.

[●]

By: _____

Name: _____

Title: _____

EXHIBIT K
(to Power Purchase Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by _____ (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Solar Units with an aggregate capacity of at least [●] MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

[●]
 Signature: _____
 Name: _____
 Title: _____

[Licensed Professional Engineer]
 Signature: _____
 Name: _____
 Title: _____
 Date: _____
 License Number and LPE Stamp: _____

EXHIBIT L
(to Power Purchase Agreement)

FORM OF OPERATIONS REPORT

Summary of operational activities during the month, including a designation of the operating status of the units by hour; description of each outage; and any actions taken to resolve or prevent recurrence of the event. If an outage is categorized as a Seller Excused Hour, the description should list the applicable term(s) of the Agreement and sufficient information to demonstrate the qualification of the outage as a Seller Excused Hour.

Unavailability Categories

1. Scheduled Maintenance Outage
2. Transmission Provider Curtailment
3. Reliability Curtailment
4. Buyer Curtailment
5. Force Majeure Event
6. Seller Forced Outage in an amount of at least ten percent (10%) of the Guaranteed Solar Capacity
7. Other – please specify

Month	Day	MPT Hour Ending	# of units Available	# of units Unavailable	Unavailability Category	MW available	Description, if applicable	Actual Generation (MWh)
5	1	1						
5	1	2						
5	1	3						
5	1	4						
5	1	5						
5	1	6						
5	1	7						
5	1	8						
5	1	9						
5	1	10						
5	1	11						
5	1	12						
5	1	13						

Note: Sample Partial Operating Report. Extend for all hours related in relevant reporting period. Please provide table as a separate Excel sheet.

- Describe any significant maintenance events:
- Describe any unusual conditions found during routine inspections:
- Describe any other significant events related to the operation of the facility:

EXHIBIT M
(to Power Purchase Agreement)

ANNUAL GENERATION FORECAST

The following represents the annual forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	19,049	3,175
February	21,600	3,600
March	29,965	4,994
April	35,277	5,880
May	38,394	6,399
June	38,775	6,463
July	36,022	6,003
August	33,235	5,539
September	28,176	4,696
October	25,781	4,297
November	20,382	3,397
December	17,032	2,839
Total Annual	343,688	57,283
Total Combined Annual	400,971	
Annual Capacity Factor	32.7%	

EXHIBIT N
(to Power Purchase Agreement)

ANNUAL DEGRADATION

Test at Beginning of Commercial Operation Year	Degradation-Adjusted Annual Solar Generation (% of Annual Generation Forecast)	% Annual Degradation
1 - Commissioning Test	100.00%	0.00%
2	99.5%	0.50%
3	99.0%	0.50%
4	98.5%	0.50%
5	98.0%	0.50%
6	97.5%	0.50%
7	97.0%	0.50%
8	96.5%	0.50%
9	96.0%	0.50%
10	95.5%	0.50%
11	95.0%	0.50%
12	94.5%	0.50%
13	94.0%	0.50%
14	93.5%	0.50%
15	93.0%	0.50%
16	92.5%	0.50%
17	92.0%	0.50%
18	91.5%	0.50%
19	91.0%	0.50%
20	90.5%	0.50%

EXHIBIT O
(to Power Purchase Agreement)

DEEMED ENERGY CALCULATION

ARTICLE 1

DEFINITIONS AND USAGE

Section 1.01. Defined Terms. The terms used but not defined in this Exhibit O shall have the meanings set forth in the Agreement and the principles of interpretation set forth therein shall apply herein.

ARTICLE II

DEEMED ENERGY CALCULATION PROCEDURES

Section 2.01. Procedure for Calculating Monthly Deemed Energy. For each Monthly Billing Period, the procedure set forth in this Section 2.01 shall be performed by Seller to determine the Deemed Energy, if any, during such Monthly Billing Period:

If the energy output by one or more Solar Units is limited by a fixed percentage due to a Buyer Economic Curtailment, Deemed Energy shall be calculated at any time by (A) multiplying the actual energy output of the affected Solar Units, as recorded by the Electric Metering Device(s), by (B) the quotient of (i) the curtailment percentage divided by (ii) the curtailment percentage subtracted from one (1).

Example #1: If in a given month, there is a 20% Buyer Economic Curtailment on a given Solar Unit, and the Solar Unit's actual energy output = 900 MWh, then:

$$\begin{aligned} \text{Deemed Energy} &= 900 \times [20\% / (1 - 20\%)] \\ &= 225 \text{ MWh} \end{aligned}$$

If at least one (1) Solar Unit is on-line and not curtailed, but any other Solar Unit is removed from service due to a Buyer Economic Curtailment, then Deemed Energy shall be calculated at any time by (A) dividing (i) the total MWh produced by all Solar Units that are on-line and not curtailed at such time, as recorded by the Electric Metering Device(s), by (ii) the total Solar Units that are on-line and not curtailed as of such time and (B) multiplying such quotient by the number of Solar Units that are so removed from service at such time. The calculation of Deemed Energy shall cease at the time all Solar Units are on-line. Notwithstanding anything to the contrary herein, the calculation of Deemed Energy at any time shall be adjusted on a *pro rata* basis for the difference, if any, between the aggregate power ratio contribution of the Solar Units that are so removed from service at such time and the aggregate power ratio contribution of the Solar Units that are on-line at such time. For the avoidance of doubt, the aggregate power ratio contribution will account for the difference in energy output resulting from partial generation derates, outages, or curtailments from any Solar Unit during the Buyer Economic Curtailment.

Example #2: One Solar Unit is taken offline for a period due to a Buyer Economic Curtailment, while the three remaining Solar Units remain on-line and are not curtailed, together producing 600 MWh during the period, then:

$$\begin{aligned} \text{Deemed Energy} &= 1 \times 600 \text{ MWh} / 3 \\ &= 200 \text{ MWh} \end{aligned}$$

If all Solar Units are so removed from service, then Deemed Energy shall equal the sum, without duplication of (i) the current month's average MWh produced when all Solar Units were functioning under reasonably equivalent weather and solar irradiance conditions and not curtailed during the equivalent time of day for the period commencing at the time all such Solar Units are so removed from service and ending at the time that the first Solar Unit is put back on-line *plus* (ii) at any time immediately after such first Solar Unit is put back on-line, the result of the calculation set forth in the prior paragraph of this Section 2.01.

Example #3: The entire Project is taken offline one day from 0900 to 1300 for a Buyer Economic Curtailment. During the other days of that month, the Project's hourly average production is:

<i>Hour Beginning</i>	0900	1000	1100	1200
<i>Avg. Production</i>	28 MWh	36 MWh	44 MWh	48 MWh

$$\begin{aligned} \text{Then Deemed Energy} &= 28 \text{ MWh} + 36 \text{ MWh} + 44 \text{ MWh} + 48 \text{ MWh} \\ &= 156 \text{ MWh} \end{aligned}$$

For all purposes of this **Exhibit O**, any calculation of Deemed Energy shall exclude any (or any portion of any) MWh lost as a result of: (a) a Scheduled Maintenance Outage, (b) a Transmission Provider Curtailment, (c) a Reliability Curtailment, (d) a Buyer Curtailment (other than a Buyer Economic Curtailment), (e) a Force Majeure Event, (f) a Seller Forced Outage, or (g) any Solar Unit(s) taken out of service or operating at a reduced capacity for reasons other than a Buyer Economic Curtailment.

Any calculation of Deemed Energy shall not result in a calculated total energy output of the Project that exceeds the Guaranteed Solar Capacity for any increment of time. To avoid the possibility of a Deemed Energy calculation resulting in a total energy output exceeding the Guaranteed Solar Capacity, Seller shall equally limit the MW capacity of each Solar Unit such that with all Solar Units in operation, the total capacity of the Project shall not exceed the Guaranteed Solar Capacity. As an example, for a 140 MW_{AC} project consisting of 35 Solar Units, each Solar Unit shall be limited to a maximum output of 4 MW_{AC} as delivered to the Point of Delivery. Upon Buyer's request, Seller shall demonstrate this generation capacity limit.

All measured MWh values used for the determination of Deemed Energy shall be as adjusted for losses to the Point of Delivery.

TAG Energy Storage Agreement

PNM Exhibit RBH-3

Is contained in the following 116 page.

ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

NMRD DATA CENTER IV, LLC

Dated as of July 21, 2023

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EXHIBITS

- Exhibit A Description of Seller's Energy Storage System, Site Map and Project Schedule
- Exhibit B One-Line Diagram of Project and Interconnection Facilities
- Exhibit C Description of Site
- Exhibit D Notice Addresses
- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning and Annual Tests
- Exhibit G Insurance Coverages
- Exhibit H Availability Guarantees
- Exhibit I Form of Seller Guaranty
- Exhibit J Commercial Operation Form of Certification
- Exhibit K Roundtrip Efficiency Guarantee
- Exhibit L [RESERVED]
- Exhibit M Form of Attestation and Bill of Sale
- Exhibit N ESS Operating Restrictions

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into this _____ Day of _____, 2023 (“**Execution Date**”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**PNM**” or “**Buyer**”), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and NMRD Data Center IV, LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 1 Riverside Plaza, Columbus, Ohio 43215. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A;

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (“**Special Service Contract**”), between Buyer and Greater Kudu LLC (“**Retail Customer**”), as amended from time to time, Buyer has agreed, by entering into this ESA, to procure the Product from the Project to serve Retail Customer’s load;

WHEREAS, Seller desires to sell and deliver to Buyer the Product generated by the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA; and

WHEREAS, Buyer and Seller intend to enter into a certain Power Purchase Agreement, pursuant to which some of the energy generated by the Solar Facility will be used exclusively in Seller’s ESS;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1. DEFINITIONS AND RULES OF INTERPRETATION

1.1. Definitions. The following terms shall have the meanings set forth herein.

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) Days by Seller or Seller’s contractors but only if such cessation is not caused by a Force Majeure Event or is not in accordance with Seller’s Project Schedule, or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

“**AC**” means alternating electric current.

“**Accounting Standards**” has the meaning set forth in Section 22.18.

“**Actual Charge Ramp Rate Delay**” has the meaning set forth in Exhibit F.

“**Actual Discharge Ramp Rate Delay**” has the meaning set forth in Exhibit F.

“**Actual System Latency Delay**” has the meaning set forth in Exhibit F.

“**Additional Consents**” means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this ESA that are required from any Governmental Authority with respect to the Project.

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. For purposes of this definition, the term “control” (including the terms “controls,” “under the control of” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

“**After Tax Basis**” means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment (“**Base Payment**”) supplemented by a further payment (“**Additional Payment**”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

“**AGC**” stands for “Automatic Generation Control” and means energy management system equipment that automatically adjusts the quantity of Charging Energy and Discharge Energy of the Project, including communication circuits to communicate Project operating information to Buyer’s representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

“**Ancillary Services**” means operating reserves, regulation, reactive supply, voltage control, frequency response, spinning reserves, non-spinning reserves, and other products associated with the storage and delivery of Energy, each to the extent that the Project is capable of providing such services.

“**Anything of Value**” includes, but is not limited to, cash or a cash equivalent (including “grease,” “expediting” or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

“Applicable Law” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this ESA and matters related to this ESA, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

“Attestation and Bill of Sale” has the meaning set forth in Section 9.1(C).

“Back-Up Metering” has the meaning set forth in Section 5.3(C).

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

“Business Day” means any calendar day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

“Buyer” has the meaning set forth in the Preamble.

“Buyer Costs” means brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and all reasonable attorneys’ fees and expenses incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already accounted for under Replacement ESS Costs.

“Buyer-Requested Performance Tests” has the meaning set forth in Section 10.5(D).

“Buyer Settlement Amount” means the present value of the Replacement ESS Costs and Buyer Costs, on the one hand, netted against the Contract Value, on the other. If the Replacement ESS Costs, calculated using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of this ESA, and Buyer Costs exceed the Contract Value, then the Buyer Settlement Amount shall be an amount Seller owes to Buyer. If the Contract Value exceeds the Replacement ESS Costs and Buyer Costs, then the Buyer Settlement Amount shall be Zero Dollars (\$0). The Buyer Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

“Buyer Termination Payment” means the aggregate of the Buyer Settlement Amount (if any) plus any and all other amounts then owed from Seller to Buyer less any amounts owed from Buyer to Seller.

“Change of Control” means any circumstance in which both Ultimate Parent entities cease to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means the amount of Energy supplied by Buyer at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

“Commercial Operation” means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis (in accordance with Prudent Utility Practices) without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has completed three (3) successful start-ups of the ESS without experiencing any abnormal operating conditions and has been available to dispatch continuously for a period of twenty-four (24) hours with controls in auto and synchronized to the Buyer's system; (c) Seller has obtained all required consents and Governmental Approvals; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under the Interconnection Agreement for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; (f) Seller has satisfactorily completed the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures and other testing in accordance with Interconnection Agreement requirements; (g) Seller has obtained required insurance coverage as set forth in this ESA; and (h) Buyer has received an officer's certificate from Seller that the Project has been completed in all material respects.

“Commercial Operation Date” means the date on which all of the following have occurred (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, and with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller; (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19; and (d) Seller shall have achieved the Commercial Operation Date under the PPA.

“Commercial Operation Year” means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on

the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

“**Commissioning Tests**” has the meaning set forth in Section 10.2.

“**Confidential Information**” has the meaning set forth in Section 22.14(C).

“**Continuation Notice**” has the meaning set forth in Section 2.3(A).

“**Contract Value**” means the sum of the present values of the ESS Capacity Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term, determined without reference to the early termination, of (a) the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion thereof) times (b) the ESS Capacity Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of this ESA.

“**Customer Event of Default**” has the meaning set forth in the Special Service Contract.

“**Day**” means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

“**Data Breach**” has the meaning set forth in Section 22.14(F)

“**DC**” means direct current.

“**Debt**” means solely with respect to Seller after the Commercial Operation Date, without duplication, (a) all obligations of Seller for borrowed money, (b) all obligations of Seller evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Seller to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all deferred obligations of Seller to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (e) obligations of Seller in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms.

“**Default Rate**” has the meaning set forth in Section 9.4.

“**Defaulting Party**” means the Party with respect to which an Event of Default under Article 12 has occurred.

“**Delay Damages**” has the meaning set forth in Section 3.7.

“**Delayed ESS Capacity**” has the meaning set forth in Section 3.7.

“**Delivery Term**” has the meaning set forth in Section 7.1.

“**Delivery Term Security**” has the meaning set forth in Section 19.1.

“**Development Security**” has the meaning set forth in Section 19.1.

“**Discharge Energy**” means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

“**Disclosing Party**” has the meaning set forth in Section 22.14(A).

“**Dispute Notice**” has the meaning set forth in Section 13.8.

“**Disputing Party**” has the meaning set forth in Section 9.5(A).

“**Dollars**” means the lawful currency of the United States of America.

“**Downgrade Event**” shall mean that the long-term credit rating of a Person’s long-term senior unsecured debt is not “Baa3” or higher by Moody’s or “BBB-” or higher by S&P.

“**Early Termination Date**” has the meaning set forth in Section 12.4.

“**Electric Interconnection Point**” means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

“**Electric Metering Device(s)**” means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“**Emergency Condition**” means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider.

“**Energy**” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

“**Energy Storage Services**” means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer’s dispatch instructions and subject to the terms and conditions of this ESA.

“**Energy Storage System**” or “**ESS**” means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

“Environmental Attributes” means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances that are created or otherwise arise from the Project’s delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing sentence to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project’s delivery or storage of electricity. Environmental Attributes specifically exclude (x) Tax Benefits, (y) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (z) any Energy, reliability or other power attributes from the Project.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

“Equivalent Full Cycle” means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

“ESA” means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“ESS Capacity” means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

“**ESS Capacity Payment**” has the meaning set forth in Section 8.1(A).

“**ESS Capacity Payment Rate**” means the price to be paid by Buyer to Seller as set forth in this ESA.

“**ESS Capacity Shortfall Damages**” has the meaning set forth in Section 3.8.

“**ESS Capacity Test**” or “**ECT**” has the meaning set forth in Exhibit F.

“**ESS Meter Energy In**” has the meaning set forth in Exhibit F.

“**ESS Meter Energy Out**” has the meaning set forth in Exhibit F.

“**ESS Non-Performance Liquidated Damages**” has the meaning set forth in Section 3.13.

“**ESS Operating Restrictions**” means the operating restrictions of the ESS set forth in Exhibit N.

“**ESS Response Delay**” has the meaning set forth in Exhibit F.

“**ESS Response Delay Damages**” has the meaning set forth in Section 3.13(B).

“**ESS Roundtrip Efficiency**” means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

“**ESS Unit Capabilities**” has the meaning set forth in Section 3.12.

“**Event of Default**” means an Event of Default of Seller as set forth in Section 12.1 or an Event of Default of Buyer as set forth in Section 12.2.

“**Execution Date**” has the meaning set forth in the Preamble.

“**Expected Commercial Operation Date**” has the meaning set forth in Section 3.1.

“**FERC**” means the Federal Energy Regulatory Commission or any successor agency.

“**Force Majeure Event**” has the meaning set forth in Section 14.1(A).

“**Frequency Response Capability**” means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

“Future Environmental Attributes” means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy Storage Services provided therefrom are eligible to receive or generate, based on Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date. Future Environmental Attributes are further described in Section 7.3 and Article 11 herein.

“GAAP” has the meaning set forth in Section 22.18.

“Government Official” means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

“Governmental Approval” means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this ESA or the procurement pursuant to this ESA of Product and Environmental Attributes and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

“Governmental Authority” or **“Governmental Authorities”** means any federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

“Governmental Charges” means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

“Guaranteed Charge Ramp Rate” represents the maximum rate that the ESS can change its input power (in MW per second) as further set forth in Section 3.12.

“Guaranteed Discharge Ramp Rate” represents the maximum rate that the ESS can change its output power (in MW per second) as further set forth in Section 3.12.

“Guaranteed ESS Capacity” has the meaning set forth in Section 3.12 and represents the amount of energy that the ESS is guaranteed to discharge (in MWh), determined as the product of Guaranteed P_{MAX} and the amount of time the ESS is guaranteed to discharge from the Maximum State of Charge to the Minimum State of Charge at Guaranteed P_{MAX}. The Guaranteed ESS Capacity shall be valid for the full duration of the ESA with no allowance for degradation.

“Guaranteed ESS Roundtrip Efficiency” has the meaning set forth in Section 3.12 and is determined in accordance with Exhibit F as the ratio of ESS Meter Energy Out and the ESS Meter Energy In for a full battery discharge and charge cycle.

“Guaranteed Frequency Response Capability” represents the guaranteed quality of frequency response from the ESS measured as the MW of power output adjustment capability for every 0.1 Hz of grid frequency deviation as further set forth in Section 3.12.

“Guaranteed PMAX” has the meaning set forth in Section 3.12 and represents the amount of power (in MW) that the ESS is guaranteed to discharge for the duration identified in the Guaranteed ESS Capacity. Guaranteed PMAX shall be valid for the full duration of the ESA with no allowance for degradation.

“Guaranteed Start Date” has the meaning set forth in Section 3.1.

“Guaranteed System Latency” means the guaranteed time measured between when the control signal is received by the ESS battery management system and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or is dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“House Energy” has the meaning set forth in Section 1.4.

“Interconnection Agreement” means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider’s Transmission System, as such agreement may be amended from time to time.

“Interconnection Facilities” means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“Issuer Minimum Requirements” has the meaning set forth in Section 19.2.

“kW” means one or more kilowatts AC of electricity, as the context requires.

“**kWh**” means kilowatt hour AC.

“**Lender(s)**” means any and all Persons (a) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

“**Letter of Credit**” means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party, issued by an entity meeting the Issuer Minimum Requirements.

“**Licensed Professional Engineer**” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of New Mexico and otherwise qualified to perform the work required hereunder.

“**Local Provider**” has the meaning set forth in Section 1.4.

“**Losses**” has the meaning set forth in Section 20.1(A).

“**Market Event**” has the meaning set forth in Section 7.4(B).

“**Maximum State of Charge**” means the relative SOC above which the battery manufacturer recommends that the ESS not be charged, expressed in percent of Nameplate Energy Capacity.

“**Minimum State of Charge**” means the relative SOC below which the battery manufacturer recommends that the ESS not be drawn, expressed in percent of Nameplate Energy Capacity.

“**Month**” means a calendar month.

“**Monthly Billing Period**” means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

“**Monthly Electricity Cost**” means, for a month, the product of (a) the quantity of Charging Energy during such month times (b) the Solar Energy Output Payment Rate (as such term is defined in the PPA).

“**Monthly Operational Report**” has the meaning set forth in Section 10.8.

“**Moody’s**” means Moody’s Investor Services, Inc. and any successor thereto.

“Mountain Prevailing Time” or **“MPT”** means the time in effect in the Mountain Time Zone of the United States of America, whether Mountain Standard Time or Mountain Daylight Saving Time.

“MW” means megawatt or one thousand (1,000) kW AC.

“MWh” means megawatt hours AC.

“Nameplate Energy Capacity” is Two Hundred (200) MWh.

“NERC” means the North American Electric Reliability Corporation or any successor organization.

“NMPRC” means the New Mexico Public Regulation Commission or any successor agency.

“NMPRC Approval” has the meaning set forth in Section 17.3(B).

“Non-Defaulting Party” means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

“Non-Governmental Compliance Obligations” means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with Non-Governmental Compliance Organizations.

“Non-Governmental Compliance Organization(s)” means WREGIS, WECC, and all other applicable agencies, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

“OATT” means Open Access Transmission Tariff.

“Operating Parameters” has the meaning set forth in Section 10.4(A).

“Operating Procedures” means those procedures, if any, developed pursuant to Section 10.5.

“Operating Records” means all agreements associated with the Project, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including but not limited to supply contracts and environmental permits, plans and studies, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

“Outage Notice” has the meaning set forth in Section 7.5.

“Party” or **“Parties”** has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

“Person” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**PNM**” has the meaning set forth in the Preamble.

“**PNM Event of Default**” has the meaning set forth in the Special Service Contract.

“**Point of Delivery**” or “**POD**” means the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

“**Point of Delivery Energy In**” has the meaning set forth in Exhibit F.

“**Point of Delivery Energy Out**” has the meaning set forth in Exhibit F.

“**PPA**” means the Power Purchase Agreement dated as of the Execution Date between Seller and Buyer relating to the Solar Facility, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

“**Procurement Evidence**” means evidence reasonably acceptable to Buyer that Seller has made initial deposits to suppliers for the procurement of the battery for the ESS in a total amount of at least Five Million Dollars **\$5,000,000**, which evidence shall include (a) copies of all such purchase orders and agreements (redacted of sensitive commercial information) and (b) a certificate of an authorized officer of Seller certifying that (i) such purchase orders and agreements cover the battery that Seller intends to use for the Project and (ii) Seller has made such initial deposit.

“**Product**” means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, and all of which shall be delivered for Buyer’s exclusive use pursuant to the terms of this ESA.

“**Project**” means Seller’s energy storage facility, located in Sandoval County, with a designed maximum power discharge capability of 50 MW for Four (4) hours (200 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery and to serve as an Alternative Capacity Project under the Special Service Contract: Seller’s equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller’s Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

“**Project Schedule**” has the meaning set forth in Section 3.2.

“**Promotional Materials**” has the meaning set forth in Section 22.15.

“**Prudent Utility Practice(s)**” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the battery energy storage industry serving public utilities, WECC and/or NERC) for similar facilities that, at a

particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("VAR") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for battery energy storage systems of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"Qualified Operator" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"Receiving Party" has the meaning set forth in Section 22.14(A).

"Receiving Party's Representatives" has the meaning set forth in Section 22.14(B).

“Recording” has the meaning set forth in Section 22.19.

“Regional Transmission Organization” is an independent, membership-based organization operating a bulk electric power system to ensure reliability and optimize supply and demand bids for wholesale electric power.

“Regulatory End Date” has the meaning set forth in Section 17.3(B)(3).

“Reliability Coordinator” means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

“Replacement ESS Costs” means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace the Product which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable ESS Unit Capabilities, Future Environmental Attributes and Ancillary Services delivered to Buyer’s system, as reasonably determined by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, (ii) the reasonable amounts paid or incurred by Buyer for the purchase of Future Environmental Attributes, if any, associated with the replacement Discharge Energy, and (iii) Buyer’s expenses, including reasonable attorneys’ fees, suffered as a result of Seller’s failure to perform under this ESA.

“Requested Actions” has the meaning set forth in Section 17.3.

“Retail Customer” has the meaning set forth in the Recitals.

“Sales Taxes” means any New Mexico state and local sales taxes, use taxes, compensating taxes, and similar taxes and charges.

“S&P” means Standard & Poor’s Corporation and any successor thereto.

“Scheduled Maintenance Outage” means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

“SEC” has the meaning set forth in Section 22.18.

“Security” means Development Security or Delivery Term Security, as applicable.

“Seller” has the meaning set forth in the Preamble.

“Seller Excused Hours” means those hours during which Seller is unable to make available Product as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, or (c) any

breach or failure by Buyer to perform a material obligation under this ESA (other than due to a breach by Seller of its obligations under this ESA).

“Seller Forced Outage” means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

“Seller Guarantor” means Seller Guarantor – AEP and Seller Guarantor – PNMR, as applicable.

“Seller Guarantor – AEP” means American Electric Power Company, Inc.

“Seller Guarantor – PNMR” means PNM Resources, Inc.

“Seller Guaranty” means a guaranty in substantially the form attached as Exhibit I.

“Seller Permitted Transfer” means any of the following: (a) a direct or indirect sale of ownership interests in Seller’s Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (c) a transfer of: (i) all or substantially all of the assets of Seller’s Ultimate Parent in a single transaction; or (ii) all or substantially all of Seller’s Ultimate Parent’s renewable energy generation portfolio in a single transaction; *provided*, that in the case of each of (b) or (c), following such transfer (1) the assignee (A) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (B) delivers evidence reasonably satisfactory to Buyer that such assignee’s creditworthiness is equal to or better than that of Seller; and (C) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project); and (2) that such transfer does not have a material adverse effect on the Seller’s credit characteristics.

“Seller Termination Payment” means the aggregate of the Special Service Contract Settlement Amount (if any) plus any and all other amounts then owed from Buyer to Seller less any amounts owed from Seller to Buyer.

“Seller’s Financial Statements” has the meaning set forth in Section 22.18(B).

“Seller’s Interconnection Facilities” means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider’s Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, “Seller’s Interconnection Facilities” includes Seller’s metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

“**Site**” means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller’s Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld, conditioned or delayed, and Buyer shall retain the right to review such proposed changes with Retail Customer in accordance with Section 3.3.

“**Solar Facility**” means the co-located One Hundred Forty (140) MW_{AC} solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer’s dispatch elections. For the avoidance of doubt, the Solar Facility is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities, including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

“**Special Service Contract**” has the meaning set forth in the Recitals.

“**Special Service Contract Default Notice**” has the meaning set forth in Section 2.2(A).

“**Special Service Contract Settlement Amount**” means the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses, on the one hand, netted against Special Service Contract Termination Gains on the other. If the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses exceeds the Special Service Contract Gains, then the Special Service Contract Settlement Amount shall be an amount Buyer owes to Seller. If the Special Service Contract Termination Gains exceed the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses, then the Special Service Contract Settlement Amount shall be Zero Dollars (\$0). The Special Service Contract Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Special Service Contract Termination Costs**” means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and all reasonable attorneys’ fees and expenses incurred by Seller in connection with the termination of this ESA.

“**Special Service Contract Termination Date**” has the meaning set forth in Section 2.3(A).

“**Special Service Contract Termination Gains**” means an amount equal to the present value of the economic benefit to Seller, if any (exclusive of Special Service Contract Termination Costs), resulting from the termination of this ESA on and after the effective date of such termination and for the remainder of the Term, determined by Seller in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information supplied by

one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product. Seller shall use commercially reasonable efforts to obtain third party information in order to determine Special Service Contract Termination Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

“Special Service Contract Termination Losses” means an amount equal to the present value of the economic loss to Seller, if any (exclusive of Special Service Contract Termination Costs), resulting from the termination of this ESA on and after the effective date of such termination and for the remainder of the Term (including any loss of Tax Benefits to the extent that Seller, using commercially reasonable efforts, is unable to mitigate the loss of such Tax Benefits, including by remarketing Energy made available from the Project as a result of such termination), determined by Seller in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product. Seller shall use commercially reasonable efforts to obtain third party information in order to determine Special Service Contract Termination Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

“Special Service Contract Termination Notice” has the meaning set forth in Section 2.3(A).

“Special Service Contract Termination Payment” means the aggregate of the Special Service Contract Settlement Amount (if any) plus any and all other amounts then owed from Buyer to Seller less any amounts owed from Seller to Buyer.

“Special Service Contract Termination Payment Notice” has the meaning set forth in Section 2.3(B).

“State of Charge” or **“SOC”** means the level of charge as reported by the ESS, expressed in percent of Nameplate Energy Capacity.

“Supplemental Tax Incentives” means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any.

“Supplementary ESS Capacity Test Protocol” has the meaning set forth in Exhibit F.

“**System Control Center**” or “**SCC**” means Buyer’s representative(s) responsible for dispatch of the ESS.

“**Tax Benefits**” means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating in any way to such tax credits or the Project.

“**Tax Equity Financing**” means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a “**Tax Equity Investor**”) in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the tax credits, depreciation and other Tax Benefits associated with the Project.

“**Tax Equity Investor**” has the meaning set forth in the definition of Tax Equity Financing.

“**Taxes**” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

“**Term**” means the period during which this ESA shall remain in full force and effect, and which is further defined in Section 2.1.

“**Termination Payment**” means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

“**Test Period**” means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider’s Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date; provided, however, in no event shall the Test Period be longer than ninety (90) Days or as agreed to by Buyer and Seller as permitted by the WREGIS Operating Rules.

“**Transmission Provider**” means the Person, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

“**Transmission Provider’s Interconnection Facilities**” means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities.

Arrangements for the installation and operation of the Transmission Provider's Interconnection Facilities shall be governed by the Interconnection Agreement.

“Transmission Provider's Transmission System” means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

“Ultimate Parent” means American Electric Power Company, Inc. and PNM Resources, Inc.

“WECC” means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor system.

“WREGIS Operating Rules” means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

1.2. Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to “Articles,” “Sections,” “Exhibits” or “Schedules” shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

(G) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

(H) All uses of the word “shall” in this ESA are to be interpreted as imperative and not permissive.

1.3. Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.

1.4. Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose (“**House Energy**”). Seller shall independently secure a contract with the local utility in whose retail service territory the Project is located (“**Local Provider**”) for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement.

(A) Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least sixty (60) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller’s Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller’s arrangements for the supply of House Energy to the Project shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer’s capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such facility shall not be delivered by Seller to Buyer under this ESA; provided, further, that such consumption will not adversely impact Seller’s operations or other obligations under the PPA. House Energy shall not be delivered by Seller to Buyer under this ESA.

ARTICLE 2. TERM AND TERMINATION

2.1. Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the earlier of the date that is the last Day of the twentieth (20th) Commercial Operation Year and the date on which the PPA terminates or expires (“**Term**”), subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

2.2. Default Under Special Service Contract.

(A) Buyer will notify Seller within five (5) Business Days of a Customer Event of Default or PNM Event of Default. The notice will include information describing the nature of the Customer Event of Default or PNM Event of Default and whether the default is subject to cure under the Special Service Contract (“**Special Service Contract Default Notice**”).

(B) Buyer will provide notice to Seller within five (5) Business Days of any notice of termination it provides to Retail Customer due to any Customer Event of Default, including a copy of the termination notice and effective date of the termination of the Special Service Contract, after which Section 2.3 will apply.

2.3. Termination of Special Service Contract. Notwithstanding anything to the contrary in this ESA, Buyer shall have the right, but not the obligation, to terminate this ESA in accordance with the requirements of this Section 2.3 upon the termination of the Special Service Contract for any reason other than a PNM Event of Default in accordance with the requirements of this Section 2.3.

(A) Within thirty (30) Days of the termination of the Special Service Contract for any reason other than a PNM Event of Default thereunder, Buyer shall deliver written notice to Seller of Buyer’s election to either terminate this ESA (the “**Special Service Contract Termination Notice**”) or continue this ESA for the remainder of the Term (“**Continuation Notice**”). If Buyer elects to terminate this ESA, Buyer will designate an effective date for such termination no earlier than the date of such notice and no later than twenty (20) Days after the date of the Special Service Contract Termination Payment Notice (the “**Special Service Contract Termination Date**”). Prior to the Effective Date, Buyer shall pursue its remedies under the Special Service Contract and take such actions to cause Retail Customer to pay the Special Service Contract Termination Payment on or before the Special Service Contract Termination Date and Buyer will remit the Special Service Contract Termination Payment to Seller within thirty (30) Days of receipt of such payment from Retail Customer. Seller shall be entitled to any Special Service Contract Termination Payment pursuant to this Section 2.3 that Buyer receives from Retail Customer and any such payment received by Buyer shall be held in trust for and promptly paid to Seller.

(B) No later than ten (10) Days after the delivery of the Special Service Contract Termination Notice, Seller shall deliver written notice to Buyer of the amount of the Special Service Contract Termination Payment. Seller shall calculate the Special Service Contract Termination

Payment in a commercially reasonable manner as of the Special Service Contract Termination Date in accordance with this Section 2.3(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Buyer will deliver notice to Retail Customer of the Special Service Contract Termination Payment amount together with the written statement provided by Seller to Buyer (“**Special Service Contract Termination Payment Notice**”) within five (5) Days after Buyer receives such information from Seller. In calculating Special Service Contract Termination Gains or Special Service Contract Termination Losses, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If Seller uses the market price for a comparable transaction to determine the Special Service Contract Termination Gains or Special Service Contract Termination Losses, such price shall be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be (i) for a like amount, (ii) of the same Product, (iii) at the same Point of Delivery (if available), and (iv) for the remainder of the Term, or in any other commercially reasonable manner. Seller shall not have to enter into a replacement contract to establish a Special Service Contract Termination Payment. The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Special Service Contract Termination Payment. Any disputes regarding the Special Service Contract Termination Payment which the Parties are unable to resolve through negotiation shall be determined in accordance with Section 13.8.

2.4. Amendment of Special Service Contract. Any amendment of the Special Service Contract by Buyer and Retail Customer after the Execution Date will not materially alter Seller or Buyer’s rights and obligations under this Article 2, including Seller’s right to a Special Service Contract Termination Payment, unless Seller, in its reasonable discretion, agrees to an amendment of this ESA to reflect the further amended Special Service Contract, such agreement not to be unreasonably withheld, delayed or conditioned.

ARTICLE 3. PROJECT DESCRIPTION

3.1. Commercial Terms. The following commercial terms apply to the transaction contemplated by this ESA, each term as more fully set forth in this ESA:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: NMRD Data Center IV, LLC
Project: TAG Battery Storage	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of “Point of Delivery.”	

Term: Subject to Section 2.1, twenty (20) Commercial Operation Years	Product Type: Bundled Discharge Energy, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services
ESS Capacity Payment Rate: \$11.00 per kW per month	
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: One hundred sixty (160) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: March 31, 2025	

3.2. Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project or the Project Schedule. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3. Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS and Solar Facility at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS, Interconnection Facilities, and Solar Facility at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller’s contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4. General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practices, this ESA and the Interconnection Agreement. The Project shall at all times:

- (A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;
- (B) be equipped for and capable of AGC by Buyer;
- (C) use communication circuits from the Project to the System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of receiving Charging Energy from Buyer and delivering Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of immediate disconnection remotely by the System Control Center;

(G) meet voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery;

(H) meet the normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery, which shall be Category II minimum;

(I) be capable of both full load and idle operation over an ambient temperature range of -20°F to 110°F with the full range of relative humidity;

(J) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 at the Point of Delivery; and

(K) Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA interface with Buyer shall be a DNP3 standards-based control protocol for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

3.5. Guaranteed Start Date. The Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6. Extension Due to Force Majeure. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event that delays construction or commencement of operation of the Project. Seller will give written notice to Buyer describing any such Force Majeure Event within five (5) Business Days after the occurrence of the Force Majeure Event. The number of Days of such extension is calculated from the date on which the Force Majeure Event begins. If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party (except as to costs and balances incurred prior to the effective date of such termination).

3.7. Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages (“**Delay Damages**”) to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed ESS Capacity until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. “**Delayed ESS Capacity**” is an amount equal to the difference between the Guaranteed ESS Capacity and the ESS Capacity as of the determination date. In no event shall the aggregate Delay Damages exceed Thirty Two Thousand Dollars (\$32,000) per MW of Delayed Capacity.

3.8. ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) (“**ESS Capacity Shortfall Damages**”), in which case the Guaranteed P_{MAX} and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9. Test Period. Seller shall give written notice to Buyer of its intent to start testing the Energy Storage System not less than thirty (30) Days prior to the date upon which Seller expects to begin testing the Energy Storage System. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy delivered by Buyer from the Solar Facility or from the grid as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharge Energy. Seller shall notify Buyer seven (7) Days prior to the initiation of the delivery of Discharge Energy during the Test Period, subject to Buyer approval. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in Section 5.1.

3.10. Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written

notice to Buyer of such expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied. Buyer shall, within ten (10) Days, in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11. Grid Charging. Seller shall construct the ESS to accept Charging Energy from both the electrical grid and Solar Facility and shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from both the electrical grid and Solar Facility by the Commercial Operation Date.

3.12. ESS Unit Capabilities. "**ESS Unit Capabilities**" means all of the following for the ESS:

(A) Guaranteed P_{MAX} of 50 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) Guaranteed ESS Capacity: discharge ESS at Guaranteed P_{MAX} for four (4) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge;

(C) Guaranteed ESS Roundtrip Efficiency as shown in Exhibit K;

(D) Guaranteed Discharge Ramp Rate of Guaranteed P_{MAX} per second measured between 85% State of Charge and 15% State of Charge representing the maximum rate that the ESS can change its output power;

(E) Guaranteed Charge Ramp Rate of Guaranteed P_{MAX} per second measured between 15% State of Charge to 85% State of Charge representing the maximum rate that the ESS can change its input power;

(F) Guaranteed System Latency: <1 second;

(G) Guaranteed Frequency Response Capability of Guaranteed P_{MAX}/0.1Hz;

and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13. ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5(D). Seller will pay Buyer the following liquidated damages (“**ESS Non-Performance Liquidated Damages**”) as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) failure of Buyer to deliver Charging Energy) or to comply with the requirements of Section 7.4(A).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars (\$140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, or Guaranteed System Latency during Project operation or ESS Unit Capabilities Testing, Seller shall pay to Buyer “**ESS Response Delay Damages**” equal to Ten Thousand Dollars (\$10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. In the event that the ESS fails to meet the Guaranteed Frequency Response Capability, Seller shall pay to Buyer an amount equal to ten thousand dollars (\$10,000) per event of failure.

3.14. Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay Availability Damages, if any, in accordance with Seller’s obligations under the provisions of Exhibit H.

3.15. Guaranteed ESS Roundtrip Efficiency Payment. If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to the Monthly Electricity Cost multiplied by $(1 - \text{ESS Roundtrip Efficiency} / \text{Guaranteed ESS Roundtrip Efficiency})$.

3.16. Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof supplied to Buyer under this ESA is not prohibited by Applicable Law. Any breach of this Section 3.16 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer’s Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

ARTICLE 4.
AGC

4.1. AGC.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, PNM shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability. Total cycles shall not exceed Three Hundred Sixty Five (365) Equivalent Full Cycles in any Commercial Operation Year

ARTICLE 5.
DELIVERY AND METERING

5.1. Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA. Seller shall (i) deliver the Discharge Energy to the Point of Delivery and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Solar Facility, provided that delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs agreed to in the Interconnection Agreement with the Transmission Provider. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge

Energy from and beyond the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall be responsible for all necessary transmission service arrangements, including scheduling arrangements, if any, to take Discharge Energy at the Point of Delivery and deliver it to points beyond, and deliver Charging Energy to the Point of Delivery from the grid.

5.2. Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MPT on the current availability of the Project to the SCC.

5.3. Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility, including the Solar Facility, that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices and Back-Up Metering, each in an arrangement consistent with the configuration depicted in Exhibit B, or as otherwise agreed between the Parties.

(B) The following provisions of this Section shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive Energy and capacity, if supplied by either the grid, solar generation system or ESS system. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Back-Up Metering**"), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing

Party shall, at its own expense, inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Back-Up Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4. Adjustment for Inaccurate Meters. If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

ARTICLE 6. CONDITIONS PRECEDENT

6.1. Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following conditions precedent:

- (A) Subject to Section 17.3, receipt of NMPRC Approval; and
- (B) NMPRC Approval of the PPA.

6.2. Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7. SALE AND PURCHASE OF PRODUCT

7.1. Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term (“**Delivery Term**”), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party’s performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing; or (d) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this ESA.

7.2. Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including, receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be deemed to be in control of such Discharge Energy from and after Seller’s delivery and upon Buyer’s receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3. Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Capacity Payment Rate; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs

not otherwise provided for in this ESA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4. Scheduling.

(A) Buyer shall arrange all scheduling services necessary to receive Discharge Energy from and deliver Charging Energy to the Point of Delivery while ensuring compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines, as required. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market or (iii) Buyer joins a Regional Transmission Organization (each of (i), (ii) and (iii) is a "**Market Event**") and such Market Event materially changes the interconnection and delivery requirements in this ESA, the Parties shall cooperate in good faith to facilitate the delivery of Product from the Point of Delivery to Buyer's Retail Customer's load, at the least possible cost to the Parties and Retail Customer, consistent with this ESA to the extent possible.

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MPT on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MPT on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5. Forced Outages. Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of Seller Excused Hours or a Seller Forced Outage. Seller shall provide such notice to the System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

ARTICLE 8. PAYMENT CALCULATIONS

8.1. Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Capacity Payment. Subject to Section 14.4, Buyer shall pay Seller an amount equal to the ESS Capacity not to exceed Guaranteed ESS Capacity multiplied by the ESS Capacity Payment Rate (the “**ESS Capacity Payment**”).

(B) If Supplemental Tax Incentives become available in connection with the Product, (i) Seller shall provide an analysis to Buyer of the benefits available under this ESA and use commercially reasonable efforts to become eligible for and to obtain such Supplemental Tax Incentives and (ii) both Parties will jointly develop an approach to realize any benefits. At Buyer’s option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives.

(C) In the event that Seller, an Affiliate of Seller or a Tax Equity Investor becomes eligible to receive any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such Supplemental Tax Incentives.

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the monthly invoices in compliance with Section 9.7(A).

8.2. Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this ESA consistent with Applicable Law.

8.3. Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9. BILLING AND PAYMENT PROCEDURES

9.1. Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MPT on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS Capacity Payment, information and calculations, in reasonable detail, including, to the extent Future Environmental Attributes are being conveyed pursuant to Article 11, an Attestation and Bill of Sale verifying the associated Future Environmental Attributes, if applicable, in the form of Exhibit M (“**Attestation and Bill of Sale**”).

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller’s invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified to Buyer.

9.2. Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3. Currency and Method of Payment. Notwithstanding anything contained in this ESA, all payments to be made by either Seller or Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated by the receiving Party.

9.4. Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the thirty (30) Day highest grade commercial paper rate as published in The Wall Street Journal on the first Business Day of each Month (“**Default Rate**”), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5. Disputed Items.

(A) Either Party (“**Disputing Party**”) may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within forty-five (45) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6. Statement Errors. In the event that either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7. Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of any required Taxes on those transactions. Buyer shall reimburse Seller for any Sales Taxes, if any, imposed on Seller’s sale of and Buyer’s purchase of Product and on Buyer’s payment and Seller’s receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Sales Taxes in respect of Seller’s revenue, income, or gain arising from Seller’s sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8. Setoff and Payment Adjustments. Except as otherwise expressly provided for in this ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9. Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller

to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10. Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10. OPERATIONS AND MAINTENANCE

10.1. Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, the ESA, Applicable Law and other applicable requirements and standards. Seller will be solely responsible for, and the ESS Capacity Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer quarterly development and construction updates. If applicable, during the construction phase of the Project, Seller shall employ apprentices, as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project.

(C) Seller may not materially modify, expand, alter or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Other than the rights and obligations of Buyer specified in this ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted

to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2. Commissioning Tests. Seller shall propose Commissioning Test procedures to Buyer at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Buyer shall have thirty (30) Days after receipt to provide feedback. If Buyer does not provide feedback within thirty (30) Days, the Commissioning Test procedures will be deemed acceptable. If Buyer provides feedback, Parties will further cooperate to develop mutually agreed upon procedures. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("Commissioning Tests") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer prior to the Commercial Operation Date. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3. Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4. Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications

required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project as agreed upon and shall not be responsible for the manipulation or analysis of such measurement parameters, which shall be the sole responsibility of Buyer.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PNM reserves the right to observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5. Operating Procedures.

(A) Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all Operating Procedures. Not later than thirty (30) Days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures once per calendar year if requested by Buyer. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. In the event that Seller does not maintain the availability of qualified personnel twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project, Seller accepts that Buyer may take necessary action to directly disconnect the Project under reliability or emergency conditions.

(B) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required

within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and promptly provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the test.

(D) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in a manner consistent with the annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F.

(E) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(1) Only two (2) Buyer-Requested Performance Test may be requested per Commercial Operation Year.

(2) Buyer-Requested Performance Test may not be requested within three months of a previous Performance Test.

(3) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.6. Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled Maintenance Outages for the following Commercial Operation Year and a non-binding notice of the estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years if available. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th, December, or January without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance

Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval. Seller must give Buyer no less than ninety (90) Days' advance notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(B) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7. Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

10.8. Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Product reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11. FUTURE ENVIRONMENTAL ATTRIBUTES

11.1. Sale of Future Environmental Attributes. This Article 11 shall apply if and only if Future Environmental Attributes become available.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer (or to Retail Customer as may be designated by Buyer), free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer within ten (10) Days after creation. The value of the Future Environmental Attributes transferred under this ESA shall be included in the ESS Capacity Payment Rate.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Future Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Future Environmental Attributes shall include any Future Environmental Attributes that are reserved or “banked” throughout the Term of this ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law. Buyer shall have the exclusive right to transfer Future Environmental Attributes to Retail Customer, or retain the Future Environmental Attributes and retire the Future Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this ESA or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources or the storage of electrical energy shall be owned by Seller.

(E) Seller shall register the Project, as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

ARTICLE 12. DEFAULT AND REMEDIES

12.1. Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

- (1) Seller’s dissolution or liquidation;
- (2) Seller’s assignment of this ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with any Lender;
- (3) Seller’s filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;
- (4) The sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;
- (5) Seller’s actual fraud, waste, tampering with Buyer-owned facilities or other material misrepresentation or misconduct in connection with this ESA or the operation of the Project;

(6) The failure of Seller to maintain Security in accordance with Article 19;

(7) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties;

(8) Seller's Abandonment of construction or operation of the Project;

(9) Seller's assignment of this ESA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18;

(10) Seller fails to timely register the Project or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this ESA; or

(11) The Project fails, after the Commercial Operation Date, to achieve ESS Unit Capabilities referenced in Section 3.12.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure; or

(2) Seller's failure to make any payment due to Buyer under or in connection with this ESA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Seller to cure within twenty (20) Days of written notice from Buyer to Seller.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or Retail Customer, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements required to make Product available at the Point of Delivery;

(2) Seller's failure to maintain in effect any agreements required to make Product available at the Point of Delivery;

(3) Seller's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Buyer; or

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to the failure of a main generator step-up transformer (which exception may apply only once during the Term), provided that the 30-Day cure period indicated in Section 12.1(C) does not apply and Seller remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a main generator step-up transformer failure of the steps that Seller is taking to remediate the failure and thereafter keep Buyer apprised, on a monthly basis, of Seller's progress towards resolving such main generator step-up transformer failure.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this ESA, except those representations and warranties made pursuant to Section 22.20, shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

(E) Any representation or warranty in Section 22.20 is breached by Seller or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice.

12.2. Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment of this ESA (or any of its rights hereunder) for the benefit of creditors; or

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or misconduct in connection with this ESA or the operation of the Project; or

(2) Buyer's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Seller.

(D) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Buyer's assignment of this ESA, except as permitted in accordance with Article 18; or

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3. Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, and the duty to mitigate damages set forth in Section 12.9, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to an Event of Default of Seller, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this ESA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, an amount of cover damages equal to Replacement ESS Costs minus the product of (x) the quantity of Product so replaced, and (y) the ESS Capacity Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that may become available pursuant to this ESA. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which includes Future Environmental Attributes.

12.4. Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment, and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment.

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer

Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The amount will be determined by Seller using the methodology set forth in Section 2.3(B).

(C) Unless otherwise mutually agreed by the Parties, the conditions in this Section 12.4(C) shall apply. If the PPA is terminated due to an Event of Default (as defined in the PPA) of Seller under the PPA and Seller terminates this ESA, such termination shall be considered an Event of Default of Seller under this ESA and Buyer shall be entitled to pursue its remedies under this ESA. If the PPA is terminated due to an Event of Default of Buyer or due to an extended Force Majeure Event (all as defined in the PPA) and Seller terminates this ESA, such termination shall not be considered an Event of Default of Seller hereunder. If the PPA is terminated due to an Event of Default (as defined in the PPA) of Buyer under the PPA and Seller elects to terminate this ESA, such termination of the PPA shall be considered an Event of Default of Buyer under this ESA and Seller shall be entitled to pursue its remedies under this ESA.

12.5. Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6. Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7. Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8. Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10. Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13. CONTRACT ADMINISTRATION AND NOTICES

13.1. Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2. Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3. Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4. Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such

records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) **Operating and Maintenance Records.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages.

(B) **Billing and Payment Records.** To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) **Project Development Records and Data Submissions.** Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B); and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals from any Governmental Authority which address environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5. Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6. Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller that has not been cured under this ESA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7. Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Except as otherwise set forth in this ESA, Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8. Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties'

representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate legal and equitable remedies.

ARTICLE 14. FORCE MAJEURE

14.1. Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" shall mean an event or circumstance that arises after the Execution Date that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of civil, tribal, military or Non-Governmental Compliance Organization authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). The Parties agree that a pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this Agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller), unless such inability is caused by an event that otherwise qualifies as a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or serial defects, unless caused by a Force Majeure Event; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors; (viii) a Seller Forced Outage, except where such Forced Outage is caused by a Force Majeure Event; or (ix) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception, (with respect to Force Majeure Events occurring prior to the Commercial Operation Date) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure Events occurring after the Commercial Operation Date) either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2. Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided that failure to provide notice within ten (10) Business Days only waives the Force Majeure Event as to periods prior to when the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or

date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section 14.2. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3. Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4. Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise prevents the ability of the ESS to deliver Product, then the hours of the reduced delivery of Product shall be excluded from the determination of the ESS Capacity Payment as set forth in Section 8.1. In the case that Seller fails to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid and Buyer, nevertheless, has granted the Commercial Operation Date, upon the occurrence and during the continuance of (i) a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of the Solar Facility to supply Charging Energy to the Project, or (ii) an unscheduled outage of the Solar Facility to the extent that such outage prevents the ability of the Solar Facility to supply Charging Energy to the Project that lasts longer than forty-eight (48) hours, then in the case of (i) the hours during which the Force Majeure Event occurs, and in the case of (ii) the hours beyond the forty-eight (48) hour duration shall be excluded from the determination of the ESS Capacity Payment as set forth in Section 8.1.

ARTICLE 15. REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1. Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(J) Seller has not sold, delivered or transferred the Future Environmental Attributes to any other Person, in whole or in part.

(K) All right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) Each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10, and 17.9.572 NMAC.

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(N) After the Commercial Operation Date, Seller will not incur, assume or carry any Debt in connection with the Project.; and

(O) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

15.2. Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) This ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

ARTICLE 16. INSURANCE

16.1. Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

16.2. Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3. Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17. LEGAL AND REGULATORY COMPLIANCE AND GOVERNMENTAL APPROVAL

17.1. Applicable Laws. Each Party shall at all times comply with all Applicable Laws. Each Party shall promptly notify the other of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat

information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2. Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3. NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this ESA, including authorization to recover the costs of ESS Capacity Payments; (ii) the execution and performance of the PPA, and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated renewable energy certificates pursuant to the PPA and may recover the cost of such procurement; and (iii) any waivers as set forth in Buyer's request for approval of this ESA (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions; or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of a Party or Retail Customer concerning whether this ESA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This ESA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if none of the Parties nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this ESA should remain in effect. Upon automatic termination, this ESA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether the Parties will elect to amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no

further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2023 (“**Regulatory End Date**”), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4. Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5. Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18.

ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

18.1. No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer’s consent shall not be required for: (i) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this ESA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such

transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations; and further provided that Buyer simultaneously assigns the Special Service Contract with Retail Customer to such assignee.

18.2. Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3. Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4. Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5. Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6. Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this ESA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender,

Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this ESA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this ESA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this ESA or provide any consent or enter into any agreement that has a material adverse effect on Buyer or Retail Customer during the term of the Special Service Contract, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this ESA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller does not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19. CREDIT AND SECURITY REQUIREMENTS

19.1. Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars (\$100,000) per MW (50 MW) equaling Five Million Dollars (\$5,000,000) ("**Development Security**") within the earlier of (a) ninety (90) Days after the Execution Date; provided, however, if Seller provides the Procurement Evidence to Buyer prior to the expiration of such ninety (90) Day period, then such time period shall be extended until five (5) Business Days after the date that Buyer obtains NMPRC Approval; and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred

Fifty Thousand Dollars (\$150,000) per MW (50 MW) equaling Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Delivery Term Security**”). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller if Commercial Operation occurs on or before the Guaranteed Start Date, less any amounts Buyer has drawn or is entitled to draw, upon Seller’s request within thirty (30) days after Seller has provided the Delivery Term Security, less any amounts owed and unpaid by Seller to Buyer. In the event that no amounts are due and owing by Seller to Buyer under this ESA and provided no claims are then outstanding, Seller’s Delivery Term Security shall be released to Seller upon the earlier of (a) termination of this ESA in accordance with its terms; and (b) on the fifteenth (15th) Business Day after the expiration of the Term. Buyer acknowledges and agrees that Seller’s Security requirements will be posted one-half by Seller Guarantor – PNMR and one-half by Seller Guarantor – AEP. In the event Buyer elects to draw on the Security, Buyer shall seek one-half of such Security draw from Seller Guarantor – PNMR and one-half of such Security draw from Seller Guarantor – AEP.

19.2. Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody’s of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets (“**Issuer Minimum Requirements**”), (c) a Seller Guaranty from Seller Guarantor – PNMR and Seller Guarantor – AEP, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to a Seller Guarantor who has posted a Seller Guaranty, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller’s obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion

may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3. Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4. Use of Security. In the event Seller or its guarantor fails to make when a payment when due under this ESA, including payment and any damages arising out of an Event of Default and upon declaration of an Early Termination Date, Buyer in its sole discretion shall be entitled to draw upon the Security until such time as the Security is exhausted.

ARTICLE 20. INDEMNITY; INSURANCE PROCEEDS

20.1. Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses (as defined in Section 20.1(A)) to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2. Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3. Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

20.4. Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party

will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21. GOVERNMENTAL CHARGES

21.1. Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Future Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Future Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22. MISCELLANEOUS

22.1. Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2. Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3. Rate Changes. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review

set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.4. Disclaimer of Certain Third Party Beneficiary Rights.

(A) In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this ESA in Section 22.4(B), nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this ESA, Retail Customer is an express third party beneficiary to this ESA. The provisions of this ESA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as express third party beneficiary hereof as if it were a Party hereto. For the avoidance of doubt and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer notice of a change in the location of the Site;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project;

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the ESA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the ESA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5. Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6. Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7. Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8. Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9. Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the sale of Product from the Project. Subject to approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10. Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11. Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12. Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means,

but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13. Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico.

22.14. Confidentiality.

(A) For purposes of this Section 22.14, “**Disclosing Party**” refers to the Party disclosing information to the other Party, and the term “**Receiving Party**” refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public. Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, “**Confidential Information**” means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party’s behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party’s stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as “confidential” (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information), other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process relating to this ESA, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall take all reasonable steps to limit the scope of any disclosure of Confidential Information and shall use its best efforts to make such disclosure of Confidential Information subject to a protective order or other similar procedure; provided, however, Seller acknowledges and agrees that Buyer may disclose this ESA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction. In the event that Buyer intends to disclose additional requested or supporting documents that include any of Seller's Confidential Information in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction, Buyer shall provide notice to Seller of such intended disclosure and, if Seller responds within three (3) Business Days (or other shorter response time as may be required or directed by the NMPRC) of receiving Buyer's notice and requests that Buyer seek a protective order or similar procedure, Buyer shall seek a protective order or similar procedure to limit the disclosure. Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

(F) Receiving Party shall immediately notify Disclosing Party or Retail Customer, as applicable, of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Disclosing Party's or Retail Customer's Confidential Information ("**Data Breach**") that comes to Receiving Party's attention. Such notification shall be made to Disclosing Party or Retail Customer no more than twenty-four (24) hours after Receiving Party suspects or knows of the Data Breach. Receiving Party shall also take the following actions in the event of a Data Breach: (a) designate a single individual employed by Receiving Party who must be available to Disclosing Party or Retail Customer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Receiving Party's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Disclosing Party, Retail Customer or any of its Affiliates without first obtaining prior written approval from Disclosing Party or Retail Customer; (c) cooperate with Disclosing Party or Retail Customer in investigating, remedying, and taking any other action Disclosing Party or Retail Customer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Disclosing Party or Retail Customer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Disclosing Party or Retail Customer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Receiving Party may disclose information relating to a Data Breach as required by applicable law or by proper legal or governmental authority. Receiving Party shall give Disclosing Party or Retail Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Disclosing Party or Retail Customer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15. Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this ESA and the Future Environmental Attributes that are generated under this ESA and delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA and the creation, sale or retirement of such Future Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Upon sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this ESA:

- (1) Party names;
- (2) Renewable resource type;

- (3) Term;
- (4) Project location;
- (5) Guaranteed PMAX;
- (6) Commercial Operation Date; and
- (7) Point of Delivery.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this ESA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this ESA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Should Seller have a dedicated operations and maintenance or other building associated with the Project, signage will be included inside such building(s), the size and style of which will be reasonably and mutually agreed between Seller and Buyer after consultation with Retail Customer, displaying information about Retail Customer's affiliation with the Project and Retail Customer's logo. In addition, Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16. Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17. Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this ESA, the Parties acknowledge that this ESA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this ESA, that this ESA may

be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18. Accounting Matters. The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (i) will be considered a lease under Accounting Standards Codification 842 - Leases, or (ii) require consolidation of Seller’s financial information with Buyer’s financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer’s accounting treatment for the ESA, jointly the “**Accounting Standards**”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the applicable Seller’s Guarantor to the extent a Guaranty has been issued, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller’s parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer’s external auditors to complete an audit of Buyer’s consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) (“**Seller’s Financial Statements**”) shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller’s records and personnel,

so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 22.18 in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information, based on the advice of its counsel, that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section 22.18.

22.19. Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20. Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself, Ultimate Parent and any other direct or indirect upstream equity owners that, notwithstanding percentage of equity ownership interest, have the voting power or otherwise have

the power to control the day-to-day management, operations and policies of Seller, and such Affiliates that Seller contractually or otherwise controls or directs in the management or operation of the Project, and in each case, including the officers, directors, employees and agents of such entities, represents and warrants that it has not engaged in, and that it shall refrain from, offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in his or her official capacity, (ii) induce a Government Official to act in violation of his or her lawful duty, (iii) induce a Government Official to use his or her influence with a government or instrumentality thereof, or (iv) otherwise secure any improper advantage, in each case to the extent prohibited by applicable anti-corruption laws; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption laws. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.1(E). In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no “off the books” accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for five (5) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any breach of this Section 22.20 by Seller or its representatives. Seller will ensure that the contractors and subcontractors it retains in connection with this Agreement expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller’s books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(E), Buyer shall have no obligation to make further payments hereunder.

[Signature page(s) follow]

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written. This ESA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

DocuSigned by:
Michael Mertz
By: _____
8DE1D44E9B1C4ED...

Name: Michael Mertz

Title: Vice President, New Mexico Operations, and Chief Information Officer

NMRD DATA CENTER IV, LLC

DocuSigned by:
Gary Barnard
By: _____
DCDE83F6D0F0451...

Name: GARY BARNARD

Title: VICE PRESIDENT

EXHIBIT A

(To Energy Storage Agreement)

**DESCRIPTION OF SELLER'S ENERGY STORAGE SYSTEM,
SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: TAG Energy Center
2. Location: Sandoval County, NM
3. Owner (if different from Seller):
4. Operator: NMRD Data Center IV, LLC
5. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage
 - b. Total number of units at the Project: Approximately 87
 - c. Total nameplate capacity (AC): Approximately 50 MW
 - d. Total capacity at point of delivery: 50 MW
 - e. Additional technology-specific information:
6. Project Schedule:

Key Milestone	Date
LGIA Execution	12/30/2019
Major Equipment Supply Agreements Executed	8/15/2023
Discretionary Permits	2/1/2024
Close Financing	N/A
Start of Project Construction	2/5/2024
First Major Equipment Delivered to Site	2/15/2024
Interconnection In-Service Date	2/1/2025
Commissioning Start Date	3/1/2025
Expected Commercial Operation	3/31/2025

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the ESA.



EXHIBIT B

(To Energy Storage Agreement)

ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES

1. See attached one-line diagram of the Project. The one-line diagram indicates the following:
 - Interconnection Facilities;
 - the network upgrades;
 - the Electric Interconnection Point;
 - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
 - The House Energy power source and associated dedicated electric meter; and
 - ownership and location of meters.
2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.
3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.
4. Point of Delivery is 115 kV bus at the Rio Puerco Substation.

EXHIBIT C

(to Energy Storage Agreement)

DESCRIPTION OF SITE

PARCEL SURVEY FOR TAG ENERGY CENTER PROJECT

SURVEYOR'S DESCRIPTION of: TAG Energy Center, Sandoval County, New Mexico.

Legal Description

TRACT NUMBERED ONE (1) OF THE PLAT OF TRACTS 1 AND 2, LANDS OF AMREP, A PORTION OF LAND LYING WITHIN THE TOWN OF ALAMEDA GRANT, PROJECTED SECTIONS 2, 8 AND 17, T.13N., R.1E., AND PROJECTED SECTION 32, T.13N., R.1E., SANDOVAL COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON AUGUST 5, 2010 IN VOL. 3, FOLIO 3217.

AND

TRACT NUMBERED TWO (2) OF THE CLAIM OF EXEMPTION PLAT FOR LOT LINE ADJUSTMENT, EASEMENT AND ROW VACATION OF TRACT 2A, BEING BLOCKS 1 THRU 9 AND TRACT "A" UNIT TAG AND BLOCKS 10 THRU 30 AND TRACT "B" UNIT TAG AND TRACT 2 OF THE PLAT OF TRACTS 1 AND 2, LANDS OF AMREP, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON AUGUST 31, 2010 IN VOL. 3, FOLIO 4278.

AND

LOTS NUMBERED FIVE (5), TWELVE (12) AND THIRTEEN (13) IN BLOCK NUMBERED EIGHTY-FIVE (85) AND LOTS NUMBERED ELEVEN (11), TWELVE (12) AND EIGHTEEN (18) IN BLOCK NUMBERED EIGHTY-SEVEN (87) OF UNIT ONE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 24.

AND

LOTS NUMBERED ONE (1), SIXTY-SIX (66), SIXTY-SEVEN (67) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED ONE (1); LOTS NUMBERED ONE (1), TWO (2), THREE (3), FOUR (4), SIXTY-FIVE (65), SIXTY-SIX (66), SIXTY-SEVEN (67) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED TWO (2); LOTS NUMBERED ONE (1), TWO (2), THREE (3), FOUR (4) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED THREE (3); LOTS NUMBERED ONE (1), SIXTY-SIX (66), SIXTY-SEVEN (67) AND SIXTY-EIGHT (68) IN BLOCK NUMBERED FIVE (5); AND LOT NUMBERED ONE (1) IN BLOCK NUMBERED SIX (6), OF UNIT ONE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 25.

AND

LOTS NUMBERED TEN (10), TWELVE (12) AND THIRTEEN (13) IN BLOCK NUMBERED THIRTY-ONE (31), AND LOTS NUMBERED FIVE (5), SEVEN (7), EIGHT (8), FOURTEEN (14) AND TWENTY-SEVEN (27) IN BLOCK NUMBERED THIRTY-TWO (32), OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 30.

AND

LOTS NUMBERED SIX (6), EIGHT (8) AND THIRTY (30) IN BLOCK NUMBERED SEVENTY-FIVE (75) AND LOTS NUMBERED TWO (2), THREE (3) AND SEVEN (7) IN BLOCK NUMBERED SEVENTY-SIX (76), OF UNIT TWO, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON MAY 18, 1982 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 31.

AND

LOT NUMBERED ONE (1), SIX (6) AND EIGHT (8) IN BLOCK NUMBERED THIRTY-TWO (32) AND LOTS NUMBERED ONE (1), FOUR (4), EIGHT (8) AND THIRTY-EIGHT (38) IN BLOCK NUMBERED FORTY-SEVEN (47), OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON DECEMBER 7, 1981 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 6.

AND

TRACT DESIGNATED "PARK", BLOCK NUMBERED FORTY-EIGHT (48), OF UNIT THREE, RIO RANCHO ESTATES, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO, SAID REPLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF SANDOVAL COUNTY, NEW MEXICO ON OCTOBER 13, 1973 IN RIO RANCHO ESTATES PLAT BOOK NO. 1, PAGE 126.

EXHIBIT D

(to Energy Storage Agreement)

NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

NMRD DATA CENTER IV, LLC

Notices:

Delivery Address:

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

Invoices:

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

Scheduling:

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Payments:

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer: To be Provided by Buyer

Contract Manager:

Public Service Company of New Mexico
Attention: Jeremy Heslop
2401 Aztec Rd. NE
Albuquerque, NM 87107

All Notices/Invoices:

Delivery Address:

NMRD Data Center IV, LLC
1 Riverside Plaza
Columbus, OH 43215
Attn: Benjamin S. Himmel
Phone: (614) 583-6084
Email: bshimmel@aepes.com

With copy to:

Gary Barnard
2401 Aztec Rd. NE
Albuquerque, NM 87107
Phone: (505) 241-2854
Email: gary.barnard@pnmresources.com

Mailing Address (if different from above):

Wire Transfer: To Be Provided by Seller

Telephone: 505-241-2664

With additional Notice of an Event of Default, termination and other legal notices to:

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave SW
Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: John Verheul, Corporate
Counsel
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-4864
Fax: (505) 241-4318
lawdept@pnmresources.com

EXHIBIT E

(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

FEDERAL

CWA 404 Approved Jurisdictional Determination, US Army Corps of Engineers

STATE

CWA 402 NPDES, Surface Water Quality Bureau (SWQB) of New Mexico
Building Permit, Construction Industries Division on behalf of The State of New Mexico
Encroachment Permit, New Mexico Department of Transportation

Other

Site Permit, Sandoval County

EXHIBIT F

(to Energy Storage Agreement)

COMMISSIONING AND ANNUAL TESTS

Commissioning Tests

- A. Automatic Generation Control (AGC) Functionality Test (or equivalent)
- B. SCADA Functionality Test (or equivalent)
- C. Owner Control and Data Link Functionality Tests (See Section 3.4)
- D. ESS Solar Capacity Firming Test
- E. ESS Unit Capabilities Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A. Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the ESS to synch to AGC.

System starting state:

The ESS will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System (“EMS”) shall be configured to follow a predefined, agreed-upon active power profile.

Procedure:

1. Record the ESS active power level at the ESS Electric Metering Device.
2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.
3. Command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.
4. Record and store the ESS active power response (in seconds).

System end state:

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

B. SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 120 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

C. Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 120 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

D. ESS Solar Capacity Firming Test

Seller shall perform a test of the ESS control system to validate its capability to maintain a constant energy delivery from the combined PPA and ESA to the Point of Delivery. The test shall be performed over a three (3) hour test period given a fixed MW setpoint at the Point of Delivery from the integrated Solar Facility and ESS. The test shall validate the ability of the ESS control system to autonomously charge solar generation or discharge to maintain a constant POD output

within two (2) percent of the output setpoint and within the limits of the ESS Unit Capabilities and ESS Operating Restrictions. The constant POD setpoint shall be between the ESS P_{MAX} and the POD rating minus P_{MAX} or reasonably adjusted according to the solar generation forecast on the day of the test. The test shall be deemed successful if the ESS is able to regulate the POD to the output setpoint, within two (2) percent, at all times during the three (3) hour test when the charging or discharging of the ESS to maintain the output setpoint would not violate the ESS Unit Capabilities or ESS Operating Restrictions.

E. Commissioning and Annual Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

F. ESS Unit Capabilities Testing

F.1 ESS CAPACITY TEST

F.1.1 General

The ESS Capacity Test (“**ESS Capacity Test**” or “**ECT**”) is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

F.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

- (1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA; and
- (2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

- (1) discharge time (minutes);
- (2) ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh (“**ESS Meter Energy In**”);

- (3) ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh (“**ESS Meter Energy Out**”);
 - (4) ESS Discharge Energy measured at the ESS Electric Metering Device including the accounting of losses from the ESS Electric Metering Device to the Point of Delivery, in MWh (“**Point of Delivery Energy Out**”); and
 - (5) ESS Charging Energy measured at the ESS Electric Metering Device accounting for losses from the Point of Delivery to the ESS Electric Metering Device, in MWh (“**Point of Delivery Energy In**”);
- C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.
- D. Test Elements and Sequence. Each ECT shall include the following test elements:
- (1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);
 - (2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Metering Device, that is discharged from the ESS to the Point of Delivery until the first to occur of either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;
 - (3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;
 - (4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity; and
 - (5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is

required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

- (1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. The ECT shall commence within one (1) hour after sunset or other such time as mutually agreed by the Parties, and the Solar Facility shall be disconnected prior to commencement of such ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures.
- (3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.
- (4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

- F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section E.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:
- (1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for the ESS Electric Metering Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
 - (3) The ESS Capacity as determined by the ECT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section E.1.2.F of this ESS Capacity Test Procedure.

- H. Supplementary ESS Capacity Test Protocol. No later than one hundred twenty (120) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such

approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the “**Supplementary ESS Capacity Test Protocol**”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

- I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.
- J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$\text{Roundtrip Efficiency (\%)} = \frac{\text{ESS Meter Energy-Out (MWh-AC)}}{\text{ESS Meter Energy-In (MWh-AC)}} \times 100\%$$

F.2 ESS RESPONSE DELAY TEST

Purpose of Test:

1. Determine the Charge Ramp Rate of the ESS
2. Determine the Discharge Ramp Rate of the ESS

Test Conditions:

The ESS Facility will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid.

Test procedure:**Measured Charge Ramp Rate:**

1. Send an active power charge command of P_{MAX} to charge the batteries
2. The time measured from when the ESS receives the P_{MAX} charge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of charge P_{MAX} shall be the Charge Ramp Latency
3. The time measured to ramp from 1% to charge P_{MAX} with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

Measured Discharge Ramp Rate:

1. Send an active power discharge command of P_{MAX} to discharge the batteries
2. The time measured from when the ESS receives the P_{MAX} discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge P_{MAX} shall be the Discharge Ramp Latency
3. The time measured to ramp from 1% to discharge P_{MAX} with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

Determination of ESS Response Delay:

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- a) An “Actual System Latency” shall be calculated, which shall be equal to:

$$\text{Actual System Latency} = \text{Max}(\text{Charge Ramp Latency}, \text{Discharge Ramp Latency})$$

- b) An “Actual System Latency Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} \text{Actual System Latency Delay} \\ &= \text{Max}(\text{Guaranteed System Latency}, \text{Actual System Latency}) \\ &\quad - \text{Guaranteed System Latency} \end{aligned}$$

- c) An “Actual Discharge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} \text{Actual Discharge Ramp Rate Delay} \\ &= \text{Max}(\text{Guaranteed Discharge Ramp Rate}, \text{Actual Discharge Ramp Rate}) \\ &\quad - \text{Guaranteed Discharge Ramp Rate} \end{aligned}$$

- d) An “Actual Charge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \textit{Actual Charge Ramp Rate Delay} \\ & = \textit{Max(Guaranteed Charge Ramp Rate, Actual Charge Ramp Rate)} \\ & - \textit{Guaranteed Charge Ramp Rate} \end{aligned}$$

- e) The “Charging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \textit{Charging ESS Response Delay} \\ & = \textit{Actual Charge Ramp Rate Delay} \\ & + \textit{Actual System Latency Delay} \end{aligned}$$

- f) The “Discharging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \textit{Discharging ESS Response Delay} \\ & = \textit{Actual Discharge Ramp Rate Delay} \\ & + \textit{Actual System Latency Delay} \end{aligned}$$

- g) The “ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \textit{ESS Response Delay} \\ & = \textit{Max(Charging ESS Response Delay, Discharging ESS Response Delay)} \end{aligned}$$

For any instance in which the ESS Response Delay, as measured by the ESS Electric Metering Device is a positive value during an ESS Unit Capabilities Test or during operation of the Project, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

EXHIBIT G

(to Energy Storage Agreement)

INSURANCE COVERAGES

Seller shall obtain and maintain the following insurance coverages, at a minimum:

- A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000).
- B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence.
- C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.
- D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars (\$20,000,000) written on a per occurrence basis

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

- E. Property Insurance**. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

EXHIBIT H

(to Energy Storage Agreement)

AVAILABILITY GUARANTEES

Section 1. Definitions.

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the ESA.

“**Actual ESS Availability Percentage**” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

“**Aggregate ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C) of this Exhibit.

“**Annual ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C).

“**Annual Report**” has the meaning set forth in Section 2.3 of this Exhibit.

“**ESS Availability Damages**” has the meaning set forth in Section 2.1(B) of this Exhibit.

“**ESS Availability Damages Rate**” has the meaning set forth in Section 2.1(B) of this Exhibit.

“**ESS Available Hours**” means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Excused Hours**” means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for any portion of the Project per Commercial Operation Year shall be treated as ESS Excused Hours. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Period Hours**” means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“**ESS Unavailable Hours**” means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**Guaranteed ESS Availability Percentage**” has the meaning set forth in Section 2.1(A) of this Exhibit.

Section 2. Availability Guarantees.

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that the ESS shall achieve an Actual ESS Availability Percentage equal to or greater than ninety five percent (95%) in each Commercial Operation Year after the Commercial Operation Date (“**Guaranteed ESS Availability Percentage**”).

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to Nine Hundred Fifty Dollars (\$950) per MW of Guaranteed ESS Capacity (“**ESS Availability Damages Rate**”) per one percent (1%) shortfall in the Guaranteed ESS Availability Percentage, calculated annually and prorated for any portion of a Commercial Operation Year (“**ESS Availability Damages**”), but in no event in excess of the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

(C) ESS Availability Damages Cap, Termination and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Fifty Thousand Dollars (\$50,000) per MW of Guaranteed ESS Capacity (“**Annual ESS Availability Damages Cap**”) and in the aggregate at a value equivalent to One Hundred Thirty Thousand (\$130,000) per MW of Guaranteed ESS Capacity (“**Aggregate ESS Availability Damages Cap**”) over the Term of the ESA.

2. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including

any failure to meet the Guaranteed ESS Availability Percentage) shall be the payment of damages up to the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap, as applicable, and the right to declare an Event of Default pursuant to Section 12.1(C)(4) of the ESA, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(C)(4) of the ESA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the ESA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practices or Seller's failure to pay ESS Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Actual ESS Availability Percentage for the previous Commercial Operation Year and the ESS Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA and shall provide notice that the Aggregate ESS Availability Damages Cap has been reached, if applicable. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

4. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

ATTACHMENT 1 TO EXHIBIT H

EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

I. Example of Actual ESS Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
ESS Period Hours (“EPH”)	8,760
ESS Unavailable Hours (“EUH”)	700

Given these assumed facts, the ESS Available Hours for the ESS during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of ESS Available Hours} = \text{EPH} - \text{EUH}: 8,060 = 8,760 - 700$$

II. Actual ESS Availability Percentage

Given these assumed facts, the Actual ESS Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of ESS Available Hours: 8,060 hours
- (b) Sum of ESS Period Hours: 8,760 hours
- (c) Actual ESS Availability Percentage: $(\text{Sum of ESS Available Hours} / \text{Sum of ESS Period Hours}) \times 100 = (8,060 / 8,760) \times 100 = 92.0\%$

III. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed ESS Availability Percentage in Commercial Operation Year 4 = 95%.
- (b) Seller’s Actual ESS Availability Percentage in Commercial Operation Year 4 = 92%.
- (c) Seller’s Guaranteed ESS Capacity = 50 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages due to Buyer as follows:

(Seller's Guaranteed ESS Availability Percentage in Commercial Operation Year 4 – Seller's Actual ESS Availability Percentage in Commercial Operation Year 4) (the latter two expressed as a decimal) x (100) x ESS Availability Damages Rate x Seller's Guaranteed ESS Capacity = ESS Availability Damage

$$(0.95 - 0.92) \times 100 \times \$1,250 \times 50 = \$187,500$$

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 700 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

EXHIBIT I

(to Energy Storage Agreement)

FORM OF SELLER GUARANTY

GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, ____ (the “**Effective Date**”), is made by [●]. (“**Guarantor**”), in favor of [INSERT COUNTERPARTY’S NAME IN ALL CAPS] (“**Counterparty**”).

RECITALS:

A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary [INSERT OBLIGOR’S NAME IN ALL CAPS] (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the “**Agreement**”); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [spell out the dollar amount] U.S. Dollars (U.S. \$ _____) (the “**Maximum Recovery Amount**”), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys’ fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys’ fees) to the extent reasonably and actually incurred by Counterparty

(subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor’s obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Day**” shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

- (a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor’s obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor’s obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called “**Notice**”) by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

TO GUARANTOR:*	TO COUNTERPARTY:
[●] <i>Attn: Treasurer</i> <i>[Tel: [●] -- for use in connection with courier deliveries]</i>	[●] <i>Attn:</i> <i>[Tel: [●] -- for use in connection with courier deliveries]</i>

* (NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. [●] and ATTN: Credit Department, Fax No. [●]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this Section 9 will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
 - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the

suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

11. **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__ , but it is effective as of the Effective Date.

[●]

By: _____

Name: _____

Title: _____

EXHIBIT J

(to Energy Storage Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by [●] (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated [●] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) An Energy Storage System with a designed power output capability of [●] MW for [●] ([●]) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

[●]

[Licensed Professional Engineer]

Signature: _____
 Name: _____
 Title: _____

Signature: _____
 Name: _____
 Title: _____
 Date: _____

License Number and LPE Stamp: _____

EXHIBIT K

(to Energy Storage Agreement)

ROUNDTRIP EFFICIENCY GUARANTEE

Year	Annual R/T Eff
1	87.10%
2	86.66%
3	86.23%
4	85.80%
5	85.37%
6	84.94%
7	84.52%
8	84.10%
9	83.68%
10	83.26%
11	82.84%
12	82.43%
13	82.02%
14	81.61%
15	81.20%
16	80.79%
17	80.39%
18	79.99%
19	79.59%
20	79.19%

EXHIBIT L

[RESERVED]

EXHIBIT M

(to Energy Storage Agreement)

FORM OF ATTESTATION AND BILL OF SALE

Pursuant to WREGIS, _____ (“Seller”) hereby sells, transfers and delivers to Buyer the Future Environmental Attributes associated with the Product from the Project, as detailed in the Energy Storage Agreement between the Parties dated _____ (the “Agreement”). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Name of Facility		
Fuel Type	Maximum Power Output (MW)	Operation Date
Dates	MWh generated	
_____, 20__	_____	

Seller further attests, warrants and represents as follows:

1. to the best of its knowledge, the information provided herein is true and correct;
2. its sale to Buyer is its one and only sale of the Future Environmental Attributes with respect to the Product referenced herein and no third party has claimed nor can claim any interest in such Future Environmental Attributes;
3. the Project identified above produced the number of MWh above during the period indicated above;
4. Seller has title to and ownership of the Future Environmental Attributes sold hereunder; and
5. Seller owns the [Name of the Facility]

This serves as a bill of sale, transferring from Seller to Buyer all of Seller’s right, title and interest in and to the Future Environmental Attributes associated with the Product.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

EXHIBIT N

(to Energy Storage Agreement)

ESS OPERATING RESTRICTIONS

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

1. The number of ESS cycles in any Commercial Operation Year shall be limited to a maximum of Three Hundred and Sixty-Five (365).
2. The ESS will be operated to maintain a state of charge between Zero (0) MWh and Two Hundred (200) MWh, inclusive.

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,) Case No. 23-00 ____ -UT
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
_____)**

SELF AFFIRMATION

R. BRENT HEFFINGTON, Director of PNM Generation, Public Service Company of New Mexico upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing **Direct Testimony of R. Brent Heffington** and it is true and correct based on my personal knowledge and belief.

DATED this 24th day of July, 2023.

/s/ R. Brent Heffington
R. BRENT HEFFINGTON

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
_____)**

Case No. 23-00____-UT

**DIRECT TESTIMONY
OF
NICHOLAS L. PHILLIPS**

July 24, 2023

NMPRC CASE NO. 23-00___-UT
INDEX TO THE DIRECT TESTIMONY OF NICHOLAS L. PHILLIPS

WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

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PNM EXHIBIT NLP-2	Data Center Expansion Loads and Resources

AFFIDAVIT

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NICHOLAS L. PHILLIPS
NMPRC CASE NO. 23-00____-UT**

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Nicholas L. Phillips. I am the Director of Integrated Resource Planning for Public Service Company of New Mexico (“PNM”). My address is 414 Silver Avenue, SW, Albuquerque, New Mexico 87102.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A. My educational background and relevant employment experience, as well as a list of cases in which I have testified before the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) is summarized in PNM Exhibit NLP-1.

Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS DIRECTOR, PLANNING AND RESOURCES.

A. I direct PNM’s Integrated Resource Planning team. The Integrated Resource Planning team is responsible for developing PNM’s resource plans and the regulatory filings to support those resource plans, including the annual renewable energy portfolio procurement plan and the triennial Integrated Resource Plan (“IRP”). The Integrated Resource Planning team is also responsible for performing resource planning analyses to support abandonment and retirement decisions as well as resource additions and acquisitions such as those being requested in this docket.

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1

II. PURPOSE OF TESTIMONY

2 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

3 **A.** My testimony addresses resource planning-related matters associated with one
4 purchased power agreement (“PPA”) and one energy storage agreement (“ESA”) for
5 which PNM seeks Commission approval in this proceeding. As PNM witness R. Brent
6 Heffington explains in his testimony, those agreements are:

- 7 1. A PPA with NMRD Data Center IV, LLC (“NMRD IV”) for the output of a
8 140 MW solar facility located in Sandoval County, New Mexico; and
9 2. An ESA with NMRD IV for a 50 MW four-hour energy storage facility located
10 in Sandoval County, New Mexico.

11

12 These agreements will be used to meet the retail service requirements of Greater Kudu
13 LLC (“Customer”) in accordance with the terms of the Second Amended and Restated
14 Special Service Contract (“SSC”) between PNM and the Customer, and in order to
15 meet the growing load of the Customer’s data center in Los Lunas, New Mexico (“Data
16 Center”). If approved by the Commission, these agreements will be added to PNM’s
17 designated network resource portfolio to supplement the capacity and energy provided
18 by the initial three solar PPAs totaling 30 MW that the Commission approved in Case
19 No. 16-00191-UT, the additional 266 MW of wind and solar PPAs that the Commission
20 approved in Case No. 18-00009-UT, the additional 100 MW of solar PPAs approved
21 by the Commission in Case No. 18-00269-UT, and the additional 240 MW of solar
22 PPAs and 50 MW of battery storage ESA approved by the Commission in Case No.

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1 21-00031-UT in order to support the Data Center’s projected annual consumption of
2 electricity. My testimony shows that the proposed PPA and ESA are consistent with
3 the provision of safe and reliable electric service and PNM’s most recent IRP, as
4 required by Paragraphs 8(D)(6) and 8(D)(8) of 17.9.551 NMAC.

5

6 **Q. WILL THE RESOURCES PROPOSED IN THIS PROCEEDING TO SUPPORT**
7 **THE PROJECTED DATA CENTER LOAD GROWTH REQUIRE PNM TO**
8 **PROCURE ADDITIONAL RESOURCES IN ORDER TO MAINTAIN SYSTEM**
9 **RESERVES?**

10 **A.** No. The 140 MW of solar generation and 50 MW of battery storage that PNM is
11 proposing to procure in this case can be integrated into PNM’s generation fleet without
12 the need for additional resources in order to maintain adequate planning and operating
13 reserves on its system. As I discuss later in this testimony, the 50 MW four-hour battery
14 storage project is included in this suite of resources to maintain system resource
15 adequacy, including reserves.

16

17 **Q. IS PNM’S ADDITION OF THE PPA AND ESA REQUESTED IN THIS**
18 **APPLICATION DESIGNED TO COVER THE PROJECTED GROWTH IN**
19 **THE DATA CENTER’S LOAD?**

20 **A.** Yes. The 140 MW of solar generation and 50 MW of battery storage that PNM is
21 proposing to procure in this case is designed to cover the currently projected annual
22 load growth for the Data Center. PNM would need to procure additional resources to
23 support any potential future load growth for the Data Center.

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1

2 **Q. WILL THE PROPOSED SUITE OF RESOURCES IMPOSE COSTS ON**
3 **OTHER PNM RETAIL CUSTOMERS?**

4 **A.** No. As PNM witness Stella Chan explains, the costs of the PPA and ESA will be
5 recovered from the Customer and will not result in additional costs for other retail
6 customer classes.

7

8 **Q. ARE YOU SPONSORING ANY EXHIBITS IN ADDITION TO YOUR**
9 **RESUME?**

10 **A.** Yes, I am also sponsoring PNM Exhibit NLP-2, which compares the Customer's load
11 projections with renewable energy supplies acquired for Customer pursuant to the SSC.

12

13 **Q. PLEASE SUMMARIZE PNM EXHIBIT NLP-2.**

14 **A.** The exhibit contains two charts. These charts compare the expansion of the Data
15 Center to the resources proposed in this case. In particular, these charts show that the
16 resources proposed in this case will not only meet the energy needs of the Data Center
17 expansion, as required by the SSC, but will also meet its capacity needs.

18

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1

III. SAFE AND RELIABLE SERVICE

2 **Q. ARE THE RESOURCES FOR WHICH APPROVAL IS BEING SOUGHT IN**
3 **THIS APPLICATION NECESSARY TO MEET THE LOAD GROWTH FOR**
4 **THE DATA CENTER EXPANSION?**

5 **A.** Yes. PNM Exhibit NLP-2 shows the current projection of Data Center load and the
6 energy that will be provided by the existing 420 MW of solar generation, 216 MW of
7 wind energy generation, and 50 MW of battery storage, as well as the additional 140
8 MW of solar generation and 50 MW of battery storage requested in this Application
9 coming in service by 2025. The new renewable resources are necessary to meet the
10 Data Center's expanding load. As I discuss in more detail later in my testimony, these
11 projections are consistent with the assumptions used in PNM's most recent IRP, which
12 was filed on January 29, 2021 and accepted by the Commission on July 13, 2022.

13

14 **Q. WILL THE PROJECTED GROWTH OF THE DATA CENTER LOAD AND**
15 **THE ADDITION OF THE PROPOSED PPA AND ESA NEGATIVELY**
16 **IMPACT PNM'S ABILITY TO PROVIDE SAFE AND RELIABLE SERVICE**
17 **FOR ALL CUSTOMERS?**

18 **A.** No. The addition of the proposed PPA and ESA is consistent with assumptions used
19 in PNM's most recent IRP and with the provision of safe and reliable service to all
20 customers.

21

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1 **Q. HAVE THERE BEEN ANY CHANGES TO PNM’S SYSTEM SINCE THE**
2 **COMMISSION’S APPROVAL OF DATA CENTER PROCUREMENTS IN**
3 **CASE NO. 21-00031-UT IN JULY OF 2021?**

4 **A.** Yes. In making previous procurements to meet the Data Center’s load (prior to 2021),
5 PNM had excess generation capacity on its system that allowed the Data Center load
6 growth to be supported by renewable resources without the need for additional capacity
7 resources. This is no longer the case today. Since that time, PNM has shut down the
8 San Juan Generating Station as well as returned some of its leased capacity in the Palo
9 Verde Nuclear Generating Station. The replacement portfolios approved by the PRC
10 for both of these abandonment decisions were comprised of renewable and energy
11 storage resources which provide less firm capacity to PNM’s system than the resources
12 they were approved to replace. Consequently, adding a new load of meaningful size
13 (whether a single load or in aggregate) to the system will require procurement of
14 additional firm capacity.¹

15

16 **Q. DID PNM EXAMINE THE EFFECTS OF THE DATA CENTER’S LOAD**
17 **GROWTH AND ASSOCIATED RENEWABLE RESOURCES ON SYSTEM**
18 **RELIABILITY?**

19 **A.** Yes. PNM examined the Data Center’s projected load to assess the impact on system
20 reliability. This examination sought to identify the amount of incremental capacity in
21 the form of energy storage that would be required to maintain the system loss of load

¹ PNM’s 2020 IRP presents PNM’s current and forecasted loads and resource balance as well as information regarding resource adequacy and reserve requirements.

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1 expectation (“LOLE”) at a level prior to the expansion of the Data Center load and
2 procurement of the new renewable resources and still meet the annual energy
3 requirements of the load expansion. The results of this analysis demonstrated that the
4 addition of a 50 MW four-hour battery would maintain the system’s projected LOLE
5 prior to adding the projected load and the renewable resources proposed in this case.
6 Based on this examination, PNM recommended to the Customer that a 50 MW, four-
7 hour energy storage project would be needed to maintain sufficient resource adequacy
8 on PNM’s system given the size of the Data Center load expansion. In addition, PNM
9 filed its 2020 IRP on January 29, 2021 which includes an updated resource adequacy
10 study and considered the proposed Data Center load expansion and associated
11 resources based on information known at that time. Through PNM’s ongoing planning
12 efforts including the work currently underway as part of its 2023 IRP additional
13 analysis has been performed to further examine resource adequacy and resiliency as
14 well as updating large customer growth assumptions.

IV. CONSISTENCY WITH THE IRP

16 **Q. ARE THE RENEWABLE RESOURCE AND STORAGE ADDITIONS**
17 **PROPOSED IN THIS APPLICATION CONSISTENT WITH PNM’S MOST**
18 **RECENT IRP AS REQUIRED BY 17.9.551.8(D)(8) NMAC?**

19 **A.** Yes, the proposed additions are consistent with PNM’s 2020 IRP that was accepted by
20 the Commission in July 2022. Further, PNM’s 2017 IRP, which was accepted by the
21 Commission in Case No. 17-00174-UT, modeled high renewable penetration cases to

**DIRECT TESTIMONY OF
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1 meet general load growth as well as including renewable resources acquired in relation
2 to known Data Center loads.

3

4 **Q. WILL THE ADDITION OF THE PROPOSED PPA SATISFY THE**
5 **CUSTOMER’S GOAL OF PURCHASING AS MUCH RENEWABLE ENERGY**
6 **AS PROJECTED DATA CENTER ENERGY USE FOR THE EXPANSION?**

7 **A.** Yes, as PNM Exhibit NLP-2 shows, the energy to be supplied by the proposed
8 renewable energy resources in PNM’s Application is expected to fully supply the
9 annual energy projected to be used by the Data Center expansion. More importantly,
10 also shown in the figure, the aggregate energy output of all resources procured by PNM
11 on behalf of the Data Center is expected to fully supply the aggregate projected annual
12 energy consumption of the Data Center consistent with the provisions of the SSC.

13

14 **Q. IS THE ADDITION OF THE PROPOSED PPA AND ESA CONSISTENT WITH**
15 **PROVISION OF SAFE AND RELIABLE SERVICE AT THE LOWEST**
16 **REASONABLE COST AS REQUIRED BY 17.9.551.8(D)(6) NMAC?**

17 **A.** Yes. As I explained above, the PPA and ESA are operationally compatible with PNM’s
18 system reliability requirements and no additional resources are required to integrate the
19 energy from the facilities into PNM’s system. Thus, the addition of the PPA and ESA
20 is consistent with the provision of safe and reliable service. Further, the cost of the
21 resources is reasonable because the Customer has indicated that the cost is acceptable
22 to it, and the cost will not be borne by any other PNM customers. PNM witness

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1 Heffington addresses the cost of the resources in his direct testimony, and PNM witness

2 Chan explains how the cost will be recovered from the Customer.

3

4 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

5 **A. Yes.**

GCG#531220

Résumé of Nicholas Phillips

PNM Exhibit NLP-1

Is contained in the following 2 pages.

Nicholas L. Phillips
EDUCATIONAL AND PROFESSIONAL SUMMARY

Address: Public Service Company of New Mexico 414 Silver Avenue, SW, MS-0915, Albuquerque, New Mexico 87102

Position: Director, Integrated Resource Planning, June 2019 to present

Education: Bachelor of Science in Electrical Engineering, Washington University in St. Louis/University of Missouri - St. Louis Joint Engineering Program

Master of Engineering in Electrical Engineering, Electric Power and Energy Systems, Iowa State University of Science and Technology

Master of Science in Computational Finance and Risk Management, University of Washington Seattle

Employment: Employed by Public Service Company of New Mexico since 2019.

Principal with Brubaker & Associates, Inc. ("BAI"), a consulting firm specializing in public utility regulation, energy, and economics.

Professional Affiliations: Member of the Institute of Electrical and Electronic Engineers ("IEEE") Power Engineering Society

Testimony/Affidavits Presented Before:

Kansas Public Service Commission
Michigan Public Service Commission
Missouri Public Service Commission
Wisconsin Public Service Commission
Wyoming Public Service Commission
California Public Utilities Commission
Nevada Public Utilities Commission
Idaho Public Utilities Commission
Federal Energy Regulatory Commission
New Mexico Public Regulation Commission

NMPRC Testimony:

Case No. 13-00390-UT	PNM's SJGS Units 1 and 4 Abandonment
Case No. 15-00261-UT	PNM's 2015 General Rate Case
Case No. 15-00312-UT	PNM's AMI Application
Case No. 16-00276-UT	PNM's 2016 General Rate Case
Case No. 17-00044-UT	SPS Application for Wind CCN & PPA
Case No. 19-00018-UT	PNM's SJGS Units 2 and 3 Abandonment
Case No. 19-00195-UT	PNM's SJGS Replacement Resources Application
Case No. 20-00087-UT	PNM's Energy Efficiency 2021 Plan Application
Case No. 20-00124-UT	PNM's 2021 Renewable Energy Plan
Case No. 20-00182-UT	PNM's SJGS Replacement Resources Compliance Application

Case No. 20-00218-UT
Case No. 21-00031-UT
Case No. 21-00083-UT
Case No. 22-00143-UT
Case No. 23-00138-UT
Case No. 23-00196-UT

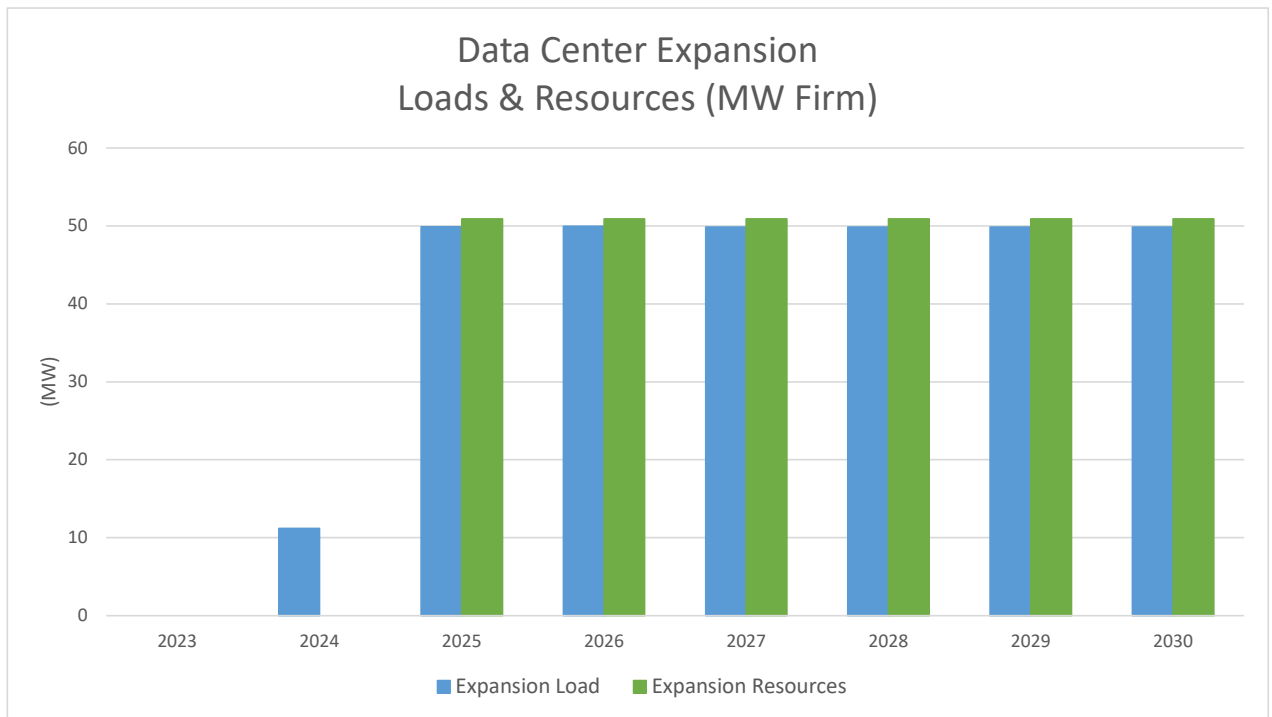
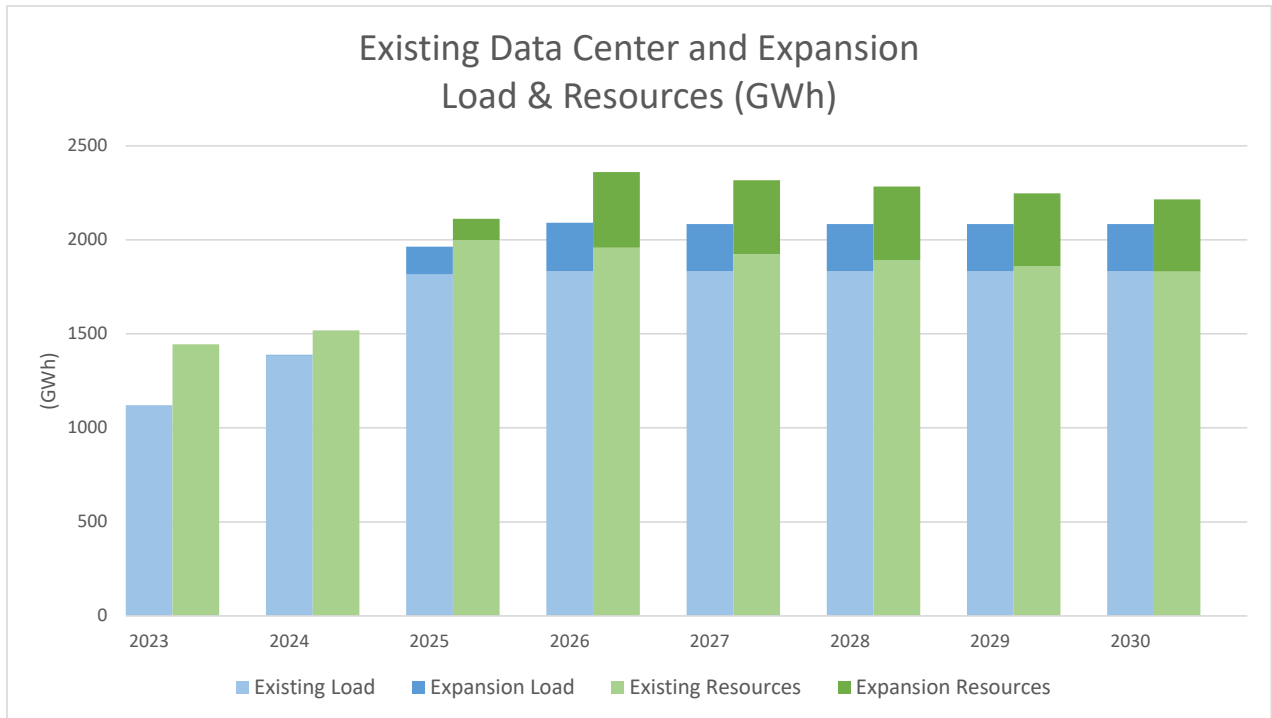
PNM's Demand Response Application
Application for Facebook PPA and ESA 3
Palo Verde Abandonment and Replacement
PNM's 2023 RPS Application
PNM's Energy Efficiency 2024 Plan Application
PNM's 2024 RPS Application

GCG#528279v4

Meta Loads and Resources

PNM Exhibit NLP-2

Is contained in the following 1 page



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,) Case No. 23-00____-UT
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
)

SELF AFFIRMATION

NICHOLAS L. PHILLIPS, Director, Integrated Resource Planning, at Public Service Company of New Mexico, upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing **Direct Testimony of Nicholas L. Phillips** and it is true and correct based on my personal knowledge and belief.

DATED this 24th day of July, 2023.

/s/ Nicholas L. Phillips
NICHOLAS L. PHILLIPS

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,) Case No. 23-00____-UT
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
_____)**

**DIRECT TESTIMONY
OF
THOMAS P. DUANE**

July 24, 2023

NMPRC CASE NO. 23-00__-UT
INDEX TO THE DIRECT TESTIMONY OF THOMAS P. DUANE
WITNESS FOR
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PNM EXHIBIT TPD-2	Interconnection Facilities
PNM EXHIBIT TPD-3	TAG-Solar Location

AFFIDAVIT

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THOMAS P. DUANE
NMPRC CASE NO. 23-00___-UT**

I. INTRODUCTION AND PURPOSE

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Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Thomas P. Duane. I am the Manager of Transmission Planning at Public Service Company of New Mexico (“PNM”). My business address is Public Service Company of New Mexico, 2401 Aztec Rd. NE, Albuquerque, NM 87107.

Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL QUALIFICATIONS AND DESCRIBE YOUR JOB DUTIES.

A. My education and professional qualifications are provided in PNM Exhibit TPD-1. As Manager, Transmission Planning, I am responsible for overseeing the evaluation of the existing transmission planning functions, analyzing transmission system deficiencies, and creating plans for the capital expansion of the transmission system.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS?

A. Yes. Cases in which I have testified are identified in PNM Exhibit TPD-1.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. The purpose of my testimony is to address 17.9.551.8(D)(3) NMAC, which requires a utility seeking approval of a long term purchased power agreement (“LTPPA”) to describe “transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA.” I also provide an overview of the Federal Energy Regulatory Commission (“FERC”) process that governs open-access

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1 transmission interconnections and how PNM used that process to identify the transmission
2 facilities and cost responsibilities required to interconnect the Large Generating Facilities
3 that are the subjects of the power purchase agreement (“PPA”) and energy storage
4 agreement (“ESA”) PNM seeks approval for in this case.

5
6 **Q. PLEASE SUMMARIZE THE PPA AND THE ESA THAT PNM IS SEEKING**
7 **APPROVAL OF IN THIS CASE.**

8 **A.** PNM seeks approval of:

- 9 • the TAG PPA, under which NMRD Data Center IV, LLC (“NMRD IV”)
10 will sell the energy output from the 140 megawatt (“MW”) TAG Solar
11 Energy Center facility (“TAG Solar”) to PNM over a 20-year term; and
- 12 • the TAG ESA, under which NMRD IV will sell the 50 MW energy storage
13 capacity of the TAG Energy Storage facility (“TAG Storage”) to PNM over
14 a 20-year term.

15
16 **Q. ARE THERE ANY TERMS YOU WILL USE IN YOUR TESTIMONY THAT YOU**
17 **WOULD LIKE TO DEFINE NOW?**

18 **A.** Yes. It is necessary to identify PNM’s Open Access Transmission Tariff (“OATT”) which
19 defines the terms established by FERC that govern the facilities necessary for
20 interconnection and transmission service associated with generation facilities
21 interconnected to PNM’s transmission system. All FERC regulated utilities that own,
22 control, or operate transmission are required to have an OATT. The OATT is approved by

**DIRECT TESTIMONY OF
THOMAS P. DUANE
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1 FERC and provides the rates and terms that determine how a utility runs its transmission
2 business.

3

4 **Q. IS PNM’S OATT PUBLICLY ACCESSIBLE?**

5 **A.**Yes. The complete OATT is available on PNM’s Open Access Same-Time Information
6 System website, at <http://www.oatioasis.com/pnm/index.html>. Attachment N to the
7 OATT, Large Generator Interconnection Procedures (“LGIP”) describes the procedures
8 PNM must follow to interconnect Large Generating Facilities to its transmission system.
9 Capitalized terms referenced in this testimony not defined herein are defined by the LGIP.
10 The LGIP includes the standard Large Generator Interconnection Agreement (“LGIA”),
11 which is the agreement that PNM enters into with Interconnection Customers (in this case
12 NMRD Data Center IV, LLC) that provides the terms, conditions, and costs applicable to
13 the interconnection.

14

15 **Q. WHICH OATT-DEFINED TERMS WILL YOU USE IN YOUR TESTIMONY?**

16 **A.**Large Generator Interconnection Agreement (LGIA): An LGIA is the agreement between
17 PNM and an Interconnection Customer for a generation or storage facility, with capacity
18 of greater than 20 MW, to interconnect with PNM’s transmission system which defines the
19 terms, conditions, and costs applicable to the interconnection.

20

21 Throughout my testimony I refer to two types of transmission facilities: Network Upgrades
22 and Interconnection Facilities. LGIAs, including the TAG Solar LGIA, include references
23 to the Interconnection Customer’s Interconnection Facilities (ICIF), the required

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1 Transmission Provider’s Interconnection Facilities (TPIF), and Station Network Upgrades
2 and Transmission System Network Upgrades.

3
4 Interconnection Facilities include all facilities and equipment between the generating
5 facility and the Point of Interconnection to the transmission system. Most of the
6 Interconnection Facilities are the Interconnection Customer’s facility needed to reach the
7 Point of Interconnection with PNM’s transmission system. These typically include
8 generator step-up transformers, generation tie lines, and a generation facility breaker.
9 These facilities represent the ICIF mentioned above and remain assets that are part of the
10 Interconnection Customer facility. All ICIF and associated costs are the responsibility of
11 the Interconnection Customer, and such costs are not defined by PNM. A portion of the
12 facilities just beyond the point of interconnection are TPIF and owned by PNM. TPIF
13 represent sole use facilities, which means their cost is recovered directly from the
14 Interconnection Customer. For this testimony, TPIF is referred to as Interconnection
15 Facilities.

16
17 Network Upgrades are modifications or additions to the PNM transmission system that are
18 integrated with and support PNM’s overall transmission system for the general benefit of
19 all users of the transmission system. Network Upgrades include any transmission system
20 facilities at or beyond the Point of Interconnection where a generator connects its
21 generation project to the PNM transmission system. Network Upgrade costs are shared by
22 all transmission customers because they enable increased energy delivery to PNM’s
23 customers and generally the system as a whole. Thus, under FERC policy, generators

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1 initially pay the cost to construct required Network Upgrades to interconnect their
2 generator but are eligible to have that cost reimbursed as a lump sum or receive
3 transmission service credits once the generation facility is in-service. The costs are
4 ultimately recovered from all users of the transmission system. Station Network
5 Upgrades are facilities needed at the Point of Interconnection to physically connect the
6 generation facility. Transmission System Network Upgrades are upgrades to the
7 transmission system to move power and energy beyond the Point of Interconnection to
8 PNM loads.

9
10 **Q. HAS PNM EXECUTED LGIAS FOR TAG SOLAR AND STORAGE FACILITY?**

11 **A.** Yes. PNM originally executed an LGIA with PNMR Development and Management
12 Corporation for the TAG Solar project. Since then, PNMR Development and Management
13 Corporation assigned the agreement to NM Renewable Development, LLC. As I explain
14 below, the LGIA will need to be reassigned to NMRD Data Center IV, LLC. The TAG
15 Storage facility will be co-located with TAG Solar and will require minimal additional
16 transmission facilities to accommodate its output.

17
18 **Q. DOES PNM'S CONSTRUCTION OF THE TRANSMISSION FACILITIES YOU
19 DESCRIBE BELOW DEPEND ON COMMISSION APPROVAL OF THE PPA
20 AND ESA?**

21 **A.** No. PNM has an obligation to construct the transmission facilities under the LGIA given
22 the obligations between PNM, as a FERC-regulated Transmission Provider and
23 Transmission Owner, and the Interconnection Customer, provided the Interconnection

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1 Customer has given Notice to Proceed and provided a proper form of financial security to
2 PNM. This process is governed by FERC and independent of whether the Commission
3 approves the PPA and ESA.

II. RULE 551 REQUIREMENTS

6 **Q. PLEASE DESCRIBE THE NETWORK UPGRADE COSTS PNM WILL INCUR
7 OR PAY TO RECEIVE THE PURCHASED POWER PURSUANT TO
8 17.9.551.8(D)(3) NMAC?**

9 **A.** PNM estimates Station Network Upgrade costs of \$2,016,000 to expand the existing Rio
10 Puerco 115 kV Switching Station for the termination of the TAG generation tie line. This
11 is lower than the costs identified in the LGIA as those were based on interconnecting all
12 proposed Cluster 8 projects. For reference, PNM's Cluster Study process is described in
13 more detail below.

14
15 Since only a portion of the Cluster 8 projects have proceeded to interconnect and deliver
16 power to the transmission system, many of the Cluster 8 costs associated with TAG solar
17 are not necessary at this time. This is discussed in more detail later in my testimony. A
18 diagram of the proposed system improvements to the Rio Puerco 115 kV Switchyard is
19 included as PNM Exhibit TPD-2.

20
21 **Q. IS IT APPROPRIATE TO CONSIDER THE ESTIMATED NETWORK
22 UPGRADES AS BEING EXCLUSIVELY ASSOCIATED WITH THE PPA AND
23 ESA?**

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1 Because TAG Solar and TAG Storage are Large Generating Facilities and NMRD Data
2 Center IV, LLC is an Interconnection Customer, the LGIP applies to PNM's
3 interconnection of the generators.

4
5 **Q. PLEASE DESCRIBE THE TYPES OF GENERATOR INTERCONNECTION**
6 **STUDIES PNM CONDUCTS.**

7 **A.** The first study in the analysis of a proposed interconnection is a Definitive Interconnection
8 System Impact Study ("DISIS"), which consists of engineering studies that evaluate the
9 impact of the proposed interconnection on the safety and reliability of PNM's transmission
10 system under a variety of potential operating conditions. An Interconnection Customer
11 proposing to interconnect a Large Generating Facility who has completed and submitted
12 to PNM the appropriate Interconnection Request application and the required deposit,
13 which varies in cost based on the size of the generator interconnection request, may enter
14 into a DISIS Agreement pursuant to which PNM will conduct a DISIS.

15
16 **Q. WHAT FOLLOWS COMPLETION OF THE DISIS REPORT?**

17 **A.** Simultaneous with the delivery of the DISIS report to the Interconnection Customer, PNM
18 provides the Interconnection Customer an Interconnection Facilities Study Agreement
19 which authorizes PNM to conduct an Interconnection Facilities Study ("Facilities Study")
20 to estimate the costs for the equipment and the engineering, procurement and construction
21 work (including Interconnection Facilities as well as Network Upgrades), as well as the
22 time required to complete the construction and installation to interconnect the proposed
23 Large Generating Facility to the transmission system physically and electrically.

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Q. WHAT FOLLOWS COMPLETION OF THE INTERCONNECTION FACILITIES STUDY?

A. PNM provides the Interconnection Customer an LGIA. The LGIA is an agreement based upon PNM’s FERC-approved OATT standard form that specifies the estimated cost, schedule, and specific parameters of interconnecting the proposed Large Generating Facility to the transmission system and sets out certain project milestones and responsibilities. The Interconnection Customer must execute and return the LGIA within thirty (30) calendar days or the Large Generating Facility Interconnection Request application will be considered withdrawn.

Q. IS PNM REQUIRED TO ENTER INTO AN LGIA WITH AN INTERCONNECTION CUSTOMER REGARDLESS OF WHETHER PNM PURCHASES THE POWER FROM THE GENERATOR?

A. Yes. One of the purposes of the OATT is to provide open, non-discriminatory access to the transmission system for Interconnection Customers that comply with the LGIA process, regardless of who they may eventually sell their power to. As a public utility owning, controlling, and operating its transmission system, PNM is required to comply with these regulatory requirements to provide such generation interconnection services. PNM is also therefore required to construct all necessary transmission facilities and interconnect all Large Generating Facilities provided the Interconnection Customer complies with the terms of the LGIP. FERC Order 2003 requires Transmission Providers to follow a formal, standardized process to study potential interconnectors. To ensure non-discriminatory

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1 access to the transmission system, this process must be independent from evaluations by
2 the Transmission Provider of its own potential generation resources.

3

4 **Q. HOW DOES THE INTERCONNECTION PROJECT PROCEED ONCE THE**
5 **LGIA IS EXECUTED?**

6 **A.** PNM will only proceed with the design, procurement, and construction of the required
7 transmission facilities after the Interconnection Customer has provided PNM written notice
8 to proceed and security has been provided, as required by the LGIA.

9

10 **Q. WHO IS RESPONSIBLE FOR THE COSTS OF THE TRANSMISSION**
11 **FACILITIES?**

12 **A.** The Interconnection Customer is responsible for up-front funding for the costs of all
13 transmission facilities required for the interconnection. Per the OATT, PNM is required to
14 refund to the Interconnection Customer the costs of the Network Upgrades either through
15 a cash payment or credits to the Interconnection Customer against the cost of transmission
16 delivery service when this service is provided (under separate agreement) by PNM. As I
17 mentioned above, Network Upgrades serve all users of the transmission system. Per the
18 OATT, the Interconnection Customer is solely responsible for the cost of the
19 Interconnection Facilities, and PNM is not required to refund those costs.

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1 **IV. DESCRIPTION OF THE INTERCONNECTION FACILITIES AND**
2 **NETWORK UPGRADES REQUIRED TO INTERCONNECT THE TAG**
3 **SOLAR AND TAG STORAGE LARGE GENERATING FACILITIES**

4 **A. TAG SOLAR**

5 **Q. PLEASE DESCRIBE TAG SOLAR.**

6 **A.** TAG is a solar photovoltaic (PV) generation facility that has a net output of 140 MW that
7 will be in Sandoval County, New Mexico. It will be interconnected to the existing PNM-
8 owned Rio Puerco 115 kV Switching Station located in Sandoval County, New Mexico.
9 A map showing the location of the TAG solar project is in PNM Exhibit TPD-3.

10
11 **Q. IS THERE A SIGNED LGIA FOR TAG SOLAR?**

12 **A.** Yes. As noted in the Q&A above, the LGIA will need to be reassigned to NMRD Data
13 Center IV, LLC.

14
15 **Q. DOES INTERCONNECTION OF TAG SOLAR REQUIRE CONSTRUCTION OF**
16 **NEW TRANSMISSION FACILITIES?**

17 **A.** Yes. The Interconnection Facilities required to interconnect TAG Solar to the PNM
18 transmission system include the following components: i) Transmission line conductor
19 from the point of interconnection just outside the Rio Puerco Switching Station to an A
20 frame structure inside the switching station; ii) the A-frame structure and iii) a portion of
21 costs for protection and metering equipment, for which costs are allocated to the
22 Interconnection Customer.

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1 **Q. ARE NETWORK UPGRADES REQUIRED FOR THE PROJECT?**

2 **A.** Yes. Additional transmission facilities are required beyond the Interconnection Facilities
3 to complete the termination of the generation tie in the switching station. These primarily
4 include: i) one new breaker in a 115 kV ring bus at the Rio Puerco Switching Station; ii)
5 disconnect switches; iii) buswork; and iv) protection and controls, and communications
6 equipment.

7

8 **Q. ARE THE NETWORK UPGRADES SOLELY FOR TAG SOLAR?**

9 **A.** No. Network Upgrades add capacity to PNM's transmission system and help enable
10 increased energy delivery to PNM's customers and system as a whole.

11

12 **Q. WHAT IS THE COST IDENTIFIED TO INTERCONNECT TAG SOLAR?**

13 **A.** As stated previously, the Network Upgrade costs are estimated to be \$2,016,000. This is
14 the incremental cost of facilities to interconnect the TAG Solar facility, that will be
15 recovered through PNM transmission rates if approved in a rate proceeding. There are no
16 additional transmission Network Upgrade costs expected from the TAG Solar facility.
17 Actual costs may vary slightly due to supply chain and inflation between now and the time
18 that the equipment is sourced. In addition to the Network upgrade cost, Interconnection
19 Facilities (TPIF) that will be owned by PNM are estimated to cost \$1,309,000. As stated
20 previously, the Interconnection Customer is responsible for covering the cost of the
21 Interconnection Facilities.

22

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1 **Q. DO THE COSTS DIFFER FROM WHAT IS IDENTIFIED IN THE LGIA TO**
2 **INTERCONNECT TAG SOLAR?**

3 **A.** Yes - The costs stated in response to the previous question identify the current expected
4 costs to physically interconnect the TAG Solar facility into the existing Rio Puerco 115 kV
5 bus and differ from what is identified in the LGIA. The TAG solar interconnection request
6 was submitted pursuant to PNM's OATT in PNM's Cluster 8 open window along with
7 multiple other requests. PNM typically studies interconnection requests as part of a Cluster
8 Study, which is a study approach provided for and described in the LGIP whereby PNM
9 studies multiple interconnection requests of Large Generating Facilities at the same time
10 based on their geographic location. Performing a Cluster Study allows for a timelier
11 response to Interconnection Customers' requests through study efficiencies as compared
12 to studying each interconnection individually, and by avoiding duplication and identifying
13 common upgrades that are necessary to interconnect multiple Large Generating Facilities.
14 The Interconnection Facilities and Network Upgrades for the TAG solar interconnection
15 request, as well as the other requests, were defined through the Cluster 8 Definitive
16 Interconnection System Impact Study (DISIS) and the Cluster 8 Facilities Study (FS). The
17 Cluster 8 project facilities and associated costs are developed on the basis that all projects
18 that entered the cluster and proceeded through the study process, will be interconnected to
19 the system. In addition, requests indicating Network Resources Interconnection Service
20 (NRIS) can incur costs to deliver power and energy to PNM retail load or to PNM network
21 transmission customer loads. The initial funding for construction of Network Upgrades
22 will be shared by the Interconnection Customers with projects in the Cluster 8 and are,

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1 typically, not representative of the cost if only a portion of the Cluster 8 projects move
2 forward to construction.

3
4 The Cluster 8 requests included four projects interconnecting into Rio Puerco. This
5 resulted in the need for a 115 kV satellite station to interconnect the projects and additional
6 transformation at Rio Puerco. The other projects in Cluster 8 that are proceeding to
7 construction ahead of TAG Solar include the Encino North Solar Facility and the Sky
8 Ranch Solar Facility. PNM filed for approval of the associated PPAs for these facilities in
9 Case No. 21-00031-UT. Since only part of the Cluster 8 projects, including TAG Solar,
10 are moving forward, the necessary scope of work is significantly reduced and TAG Solar
11 Network Upgrades in this testimony are based on directly connecting into the existing Rio
12 Puerco 115 kV station, without the need to establish a new satellite station. This resulted
13 in different interconnection costs than were contemplated in the LGIA originally.

14
15 The LGIA also identified Network Upgrades associated with delivery of the output of the
16 Cluster projects to load. The TAG Solar project is allocated a portion of the responsibility
17 for construction funding of these upgrades which is reimbursed upon commercial operation
18 of the solar facility. The identified Network Upgrades were required for the Sky Ranch
19 Solar project and previously addressed in Case No. 21-00031-UT. Absent any other
20 Cluster 8 projects proceeding, there are no additional Cluster 8 facilities needed for
21 delivery of power to load as a result of the TAG Solar project addition.

22

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1 **Q. WHY HAS PNM ELECTED TO RETURN THE COSTS OF THE NETWORK**
2 **UPGRADES IN A LUMP-SUM PAYMENT INSTEAD OF THROUGH**
3 **TRANSMISSION SERVICE CREDITS?**

4 **A.** Delaying repayment to the Interconnection Customer of the amounts paid for Network
5 Upgrades would add unnecessary additional project costs for PNM customers due to the
6 relatively high interest rate that FERC requires PNM to apply to the unreturned balance.
7 For this reason, it has been PNM's practice to make these repayments to Interconnection
8 Customers on the Commercial Operation Date.

9
10 **Q. WILL PNM NOTIFY THE COMMISSION PRIOR TO PROCEEDING WITH THE**
11 **TRANSMISSION FACILITIES FOR THE TAG SOLAR PROJECT?**

12 **A.** Yes. Notice of the construction of the transmission facilities is required under 17.5.440.9
13 NMAC. PNM will submit the required filing in a timely manner.

14 ***B. TAG STORAGE***

15 **Q. IS THERE A SIGNED LGIA FOR TAG STORAGE?**

16 **A.** No. It is expected that the TAG Storage facility will be accommodated under the TAG
17 Solar LGIA pursuant to modifications recognizing a Shared Facilities Agreement with
18 NMRD Data Center IV, LLC. The battery energy storage installations are not expected to
19 increase the resource size interconnected to PNM's system because the batteries are
20 expected to charge primarily from the co-located TAG Solar Large Generating Facility.
21 The total output of the solar and battery energy storage will be limited to the
22 interconnection capacity of the TAG Solar LGIA.

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Q. ARE NETWORK UPGRADES REQUIRED FOR THE TAG STORAGE PROJECT?

A. No. Additional transmission facilities are not required beyond the Interconnection Facilities and Network Upgrades identified for TAG Solar above to deliver the output of the project including the battery energy storage to serve PNM’s system.

V. OTHER MATTERS

Q. WHAT ARE THE ESTIMATED COSTS OF ON-GOING OPERATIONS AND MAINTENANCE OF THE TRANSMISSION FACILITIES OUTLINED HEREIN?

A. Annual operations and maintenance costs are roughly estimated to be \$2,000 when applying a 0.1% rule-of-thumb multiplier to the capital cost of the incremental facility additions.

Q. ARE THE COSTS OF THE TRANSMISSION FACILITIES REQUIRED TO INTERCONNECT THE LARGE GENERATING FACILITIES THAT ARE THE SUBJECT OF THE PPA AND ESA REASONABLE?

A. Yes. As I explained above, the costs were initially determined through the various Interconnection Studies in accordance with PNM’s FERC-approved OATT. PNM is obligated to incur the costs and construct the necessary transmission facilities independent of whether the PPA and ESA proposed in this Application are approved. Also, PNM has recently reviewed and updated the costs and greatly reduced the overall scope of work associated with the TAG Solar interconnection over what is identified in the LGIA based

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1 on needs at this time. As a result, the TAG Solar facility can be interconnected with a
2 minimal incremental impact to the transmission rate base.

3

4 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

5 **A. Yes**

GCG#531153

Résumé of Thomas Duane

PNM Exhibit TPD-1

Is contained in the following 1 page.

PNM EXHIBIT TPD-1

Name: Thomas P. Duane

Address: Public Service Company of New Mexico
414 Silver Ave SW
Albuquerque, New Mexico 87102

Position: Manager, Transmission Planning

Education: Bachelor of Science in Electrical Engineering,
University of Colorado, Boulder, Colorado 1980

Master of Science in Electrical Engineering,
Electric Utility Management Program,
New Mexico State University, Las Cruces, New Mexico 1998

Employment: Public Service Company of New Mexico, Albuquerque, New Mexico

Transmission Planning Engineer, Manager Transmission Planning (12 Years) 1984-1996,
2006-Present

Manager, Production Modeling 1996-2005

Operations Engineer, Wholesale Power Marketing Analyst
1981-1984, 2005

Licensure: Licensed Professional Engineer in the State of New Mexico

Professional Affiliations: Member of Institute of Electrical and Electronic Engineers
("IEEE") Power Engineering Society and Computer Society

Experience:

- Power System Analysis and Operations – Steady State, Dynamic Stability, Transient, Short Circuit, Power Operations, Production Costs, Generation Dispatch
- Committee Representation – over 25 years in inter-utility coordination groups, WECC and ERCOT reliability committees, RTO Tariff negotiations, stakeholder groups and industry organizations.

Previous Testimony:

New Mexico Public Regulation Commission (2021): Provided testimony on behalf of Public Service Company of New Mexico regarding transmission system impacts associated with replacement resources for 114 MW of Palo Verde Nuclear generation. Case No. 21-00215-UT.

New Mexico Public Regulation Commission (2020): Provided rebuttal testimony on behalf of Public Service Company of New Mexico regarding transmission system impacts associated with replacement resources for San Juan Generation Station Units 1 and 4. Case No. 19-00195-UT.

County of Torrance, Seventh Judicial District Court (2020) – Application for Order of Immediate Possession, State of New Mexico, Case D-722-CV-2020-00083, Provided affidavit regarding the need for immediate possession of right-of-way to maintain an existing transmission line.

Federal Energy Regulatory Commission (2010): Provide affidavit on the PNM Balancing Authority Area System Import Limit (SIL) calculations used in the Triennial Market Power Update. Docket Nos. ER96-1551, ER01-615 and ER09-746.

Interconnection Facilities

PNM Exhibit TPD-2

Is contained in the following 1 page.

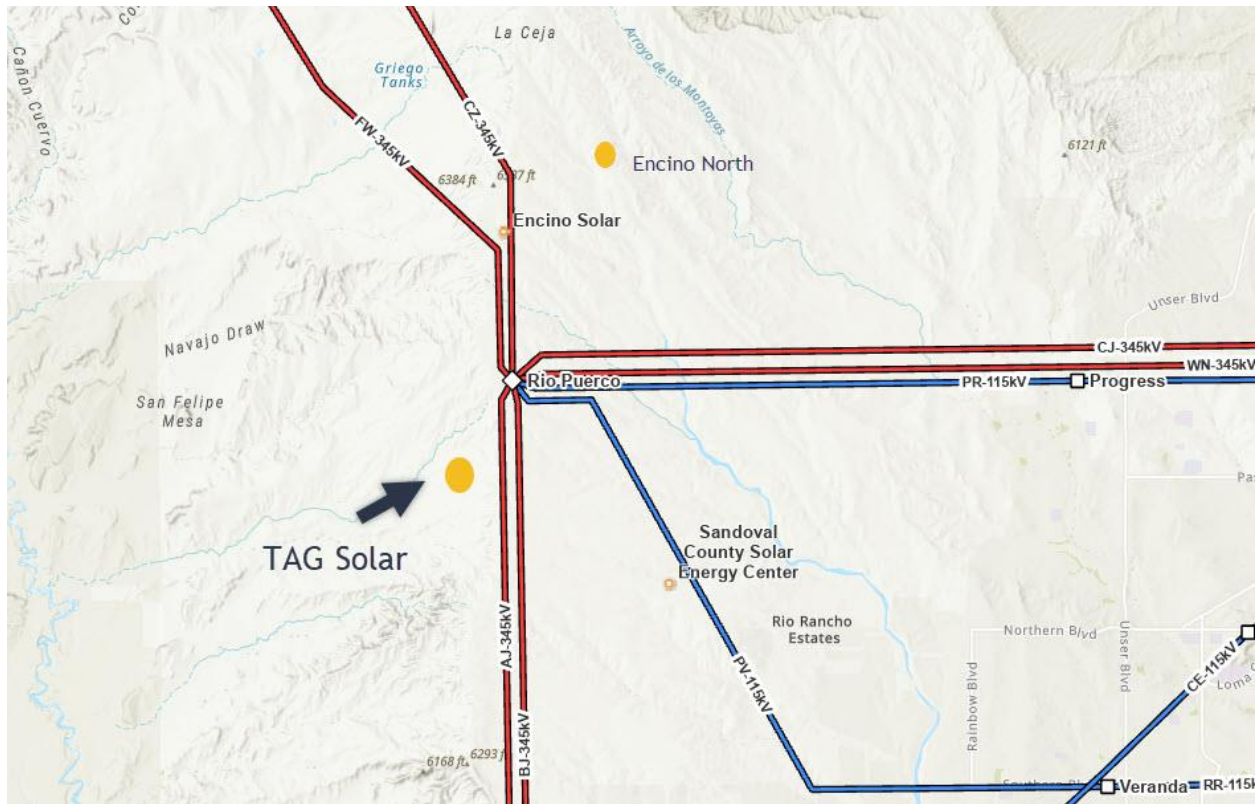
TAG Solar Location

PNM Exhibit TPD-3

Is contained in the following 1 page.

PNM EXHIBIT TPD-3

TAG Solar Location



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,) Case No. 23-00____-UT
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
)
)

SELF AFFIRMATION

THOMAS P. DUANE, Manager, Transmission Planning Engineering, Public Service Company of New Mexico upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing **Direct Testimony of Thomas P. Duane** and it is true and correct based on my personal knowledge and belief.

DATED this 24th day of July, 2023.

/s/ Thomas P. Duane
THOMAS P. DUANE

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR APPROVAL OF A PURCHASED POWER)
AGREEMENT AND AN ENERGY STORAGE)
AGREEMENT PURSUANT TO 17.9.551 NMAC,) Case No. 23-00____-UT
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
)
)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Public Service Company of New Mexico’s Application for Approval of a Purchased Power Agreement and An Energy Storage Agreement Pursuant to 17.9.551 NMAC** was emailed to parties listed below on July 24, 2023.

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Dated this 24th day of July 2023.

By: /s/ Steven Schwebke
Steven Schwebke, Senior Project Manager
PNM Regulatory Policy & Case Management
Public Service Company of New Mexico