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February 9, 2024

Ms. Melanie Sandoval
Records Bureau Chief
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New Mexico Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504

Subject: *PNM's Application for Authorizations Pertaining to the Proposed Amendment of its \$400 Million Revolving Credit Facility and for Authorization to Issue up to \$250 Million of Senior Unsecured Notes*

Dear Ms. Sandoval:

Please find attached Public Service Company of New Mexico's Application for Authorizations Pertaining to the Proposed Amendment of its \$400 Million Revolving Credit Facility and for Authorization to Issue up to \$250 Million of Senior Unsecured Notes ("SUNs"), which includes the supporting testimony of Kyndra A. Apodaca.

This application, along with the supporting testimony, was filed electronically. A check in the amount of \$25 was separately mailed to the New Mexico Public Regulation Commission. If you have any questions regarding this filing, please contact me at justin.rivord@pnm.com.

Respectfully,

/s/ Justin Rivord
Justin Rivord
Project Manager
Regulatory Policy and Case Management

Cc: Certificate of Service

GCG#532073

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY)
OF NEW MEXICO’S APPLICATION FOR)
AUTHORIZATIONS PERTAINING TO THE)
PROPOSED AMENDMENT OF ITS \$400 MILLION)
REVOLVING CREDIT FACILITY AND TO)
ISSUE UP TO \$250 MILLION OF SENIOR)
UNSECURED NOTES)
)
)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant)
_____)**

Case No. 24-00__-UT

APPLICATION

Public Service Company of New Mexico (“PNM”) hereby applies to the New Mexico Public Regulation Commission (“PRC” or “Commission”) for the following approvals and authorizations: (1) amend and restate PNM’s current \$400 million unsecured revolving credit facility (the “Current \$400M Revolver”) set to expire on October 30, 2026, to extend the maturity of the facility up to April 2029 and to include two one-year extension options that, if exercised, would extend the maturity of the facility up to April 2031 (“Proposed \$400M Revolver Amendment”); and (2) issue senior unsecured notes (“SUNs”) in an amount up to \$250 million (the “Proposed SUNs”) to fund and support PNM’s utility construction program to provide service to PNM’s customers and to repay existing short-term debt. This includes a request for authorization to issue the Proposed SUNs in one or more issuances of one or more series, with maturities of up to thirty (30) years, at interest rates fixed to respective maturity of each series, and to issue such notes in one or more private placement transaction(s) or in registered public offering(s) (the “Proposed Transaction”). These actions were anticipated and included in PNM’s Annual Informational Finance Filing.

PNM requests that the Commission issue all approvals and authorizations as may be required for PNM to effectuate the execution, delivery, and performance of the proposed amendments and issuance of long-term debt.

PNM respectfully requests that the Commission designate a hearing examiner and set this matter at the head of its docket so that the approvals and authorizations may be decided within thirty (30) days of filing this Application as provided in NMSA 1978, Section 62-6-9 (1941). PNM also respectfully requests that, pursuant to Rule 17.1.2.8(C)(3) NMAC, and to conserve limited Commission and Utility Division Staff resources, the Commission waive an evidentiary hearing; and this Application instead be set for final consideration and approval at a Commission open meeting.

In support of this Application, PNM states the following:

1. PNM is a New Mexico corporation doing business within the State of New Mexico as a public utility, as defined in NMSA 1978, Section 62-3-3(G) (2009), and is subject to the Commission's jurisdiction and authority pursuant to the Public Utility Act ("PUA").

2. PNM provides electric utility service. As a public utility, PNM must "furnish adequate, efficient, and reasonable service" pursuant to NMSA 1978, Section 62-8-2 (1941).

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

4. Pursuant to NMSA 1978, Section 62-6-6(B) (2003), PNM must obtain authorization from the Commission to issue, assume, or guarantee securities payable at periods of more than eighteen (18) months after the date thereof, for the following purposes only:

- (a) making loans or grants from the proceeds of federal loans for economic development projects benefitting its service area;
- (b) the acquisition of additional property;

- (c) the construction, completion, or extension or improvements of its facilities;
- (d) the improvement or maintenance of its service;
- (e) the discharge or the lawful refunding of its obligations; or
- (f) the reimbursement of money actually expended for purposes set forth in [Section 62-6-6(B)] from income or from any other money in the treasury [of PNM] not secured by or obtained from the issue, assumption, or guarantee of securities, within five years next prior to the filing of an application with the commission for the required authorization [i.e. this Application].

5. Pursuant to NMSA 1978, Section 62-6-7 (1941), the Commission must approve the transactions described in this Application unless it finds that they “are inconsistent with the public interest; or that the purpose or purposes thereof are not permitted by [the PUA]; or that the aggregate amount of the securities outstanding and proposed to be outstanding will exceed the fair value of the properties and business of the public utility.”

THE PROPOSED \$400M REVOLVER AMENDMENT

6. PNM proposes to amend and restate the Current \$400M Revolver that expires on October 30, 2026, to extend the maturity up to April 2029, and to include two one-year extension options that, if exercised, would extend the maturity of the facility up to April 2031. PNM uses the Current \$400M Revolver to provide cash for PNM’s ongoing working capital and capital expenditure requirements; and it provides a facility from which PNM can issue letters of credit to support its operations, as authorized most recently by the Commission in Case No. 22-00075-UT. It ensures sufficient liquidity for financing PNM’s operations and allows PNM to build and maintain infrastructure that supports the provision of safe and reliable electric service to PNM customers.

7. PNM also requests that to the extent that the borrowings under the Current \$400M Revolver, as amended by the Proposed \$400M Revolver Amendment, are required to be included

in PNM's short-term financing statement filed with its annual report filed pursuant to 17.1.2.8(E) NMAC, PNM only be required to include a cross-reference to the Commission's orders approving the Current \$400M Revolver and the Proposed \$400M Revolver Amendment.

8. PNM expects to incur legal fees in conjunction with the Proposed \$400M Revolver Amendment, as well as bank lender and arrangement fees.

9. The Proposed \$400M Revolver Amendment, and PNM's exercise of the two one-year extension options under it, would allow PNM to maintain liquidity under the Current \$400M Revolver through the maturity of the Proposed \$400M Revolver Amendment.

10. The Proposed \$400M Revolver Amendment is in the public interest. It allows PNM to maintain liquidity. It does not affect the present or future rates PNM charges to its customers.

11. The aggregate amount of all securities that will be outstanding upon the consummation of the Proposed \$400M Revolver Amendment will not exceed the fair value of the property and business of PNM.

12. The Proposed \$400M Revolver Amendment is necessary for the continued provision of adequate and efficient utility service. PNM's obligation to provide electric services as a public utility requires that it enter such transactions.

THE PROPOSED SUNS

13. Additionally, PNM proposes to issue up to \$250 million of the Proposed SUNs to support PNM's utility construction program to provide service to PNM's customers, including repayment of existing short-term debt.

14. PNM proposes to issue the Proposed SUNs in one or more issuances of one or more series, with maturities of up to thirty (30) years, at interest rates fixed through the respective maturity of each series. PNM seeks approval to issue the Proposed SUNs in one or more private

placement transactions or in public market offerings. Prior to marketing the Proposed SUNs, PNM will work with its banks to evaluate the circumstances to determine whether a public or private offering would be most advantageous based on market conditions.

15. The final composition of the placement agents for private placement market transactions or underwriters for public market offerings will be drawn from banks participating in PNM's revolving credit facility and will depend on PNM's assessment of each placement agent's or underwriter's ability to successfully complete the transaction at the best price, and other factors.

16. PNM will notify the Commission of the final rates for each series of the Proposed SUNs within ninety (90) days of their issuance.

17. PNM expects issuance costs, whether the Proposed SUNs are issued in the public or private market, to be approximately 1.0% of the principal amount to be issued, or approximately \$2.5 million.

18. The Proposed Transaction is necessary for the continued provision of adequate, efficient, and reasonable utility service. PNM's obligation to provide electric services as a public utility requires that it enter such transactions.

19. The aggregate amount of all securities that will be outstanding upon the consummation of the Proposed Transaction will not exceed the fair value of the property and business of PNM.

20. PNM proposes to notify the Commission within ninety (90) days after the issuance of each series of the Proposed SUNs. Such notice will include the amount, maturity, and interest rate for each series of Proposed SUNs, as well as the relevant final form of transaction documents governing each such issuance.

CONCLUSION

21. PNM supports this Application with the direct testimony and exhibits of Kyndra A. Apodaca, Senior Manager, Treasury for PNMR Services Company (“PNMR Services”), attached. PNMR Services provides corporate services through shared services agreements to PNM. Ms. Apodaca’s testimony and exhibits further explain and support PNM’s requests in this Application.

22. PNM requests that all pleadings, correspondence, and other documents that are served to PNM be mailed to its attorneys and representatives at the following addresses:

Stacey J. Goodwin, Associate General Counsel
Leonard D. Sanchez, Associate General Counsel
Christopher Atencio, Corporate Counsel
PNMR Services Company
Corporate Headquarters – Legal Department
414 Silver Ave. SW
Albuquerque, NM 87102-3289
Phone: (505) 241-4929
stacey.goodwin@pnmresources.com
leondard.sanchez@pnmresources.com
christopher.atencio@pnmrservices.com

Justin Rivord, Project Manager – Regulatory
Public Service Company of New Mexico
Corporate Headquarters – Regulatory Department
414 Silver Ave. SW
Albuquerque, NM 87102-3289
Phone: (505) 241-0675
justin.rivord@pnm.com

26. Pursuant to Rule 17.1.2.8(D)(3) NMAC, PNM’s proposed form of Notice is attached to this Application as Exhibit A.

WHEREFORE, PNM respectfully requests that the Commission issue an order approving this Application and granting the following relief:

A. Set this matter at the head of its docket so that the transactions may be approved within the thirty (30)-day statutory timeframe;

B. Authorize PNM to enter in to the Proposed \$400M Revolver Amendment;

C. Authorize PNM to consummate the Proposed Transaction to issue the Proposed SUNs.

D. Issue such further orders, approvals, and authorizations as may be necessary or appropriate in connection with the proposed amendments described in this Application and the testimony and exhibits filed herewith.

Respectfully submitted this 9th day of February 2024.

PUBLIC SERVICE COMPANY OF NEW MEXICO

/s/ Christopher Atencio

Christopher Atencio, Corporate Counsel
Leonard D. Sanchez, Associate General Counsel
PNMR Services Company
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414 Silver Ave. SW
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Attorneys for Public Service Company of New Mexico

GCG#532085

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY)
OF NEW MEXICO’S APPLICATION FOR)
AUTHORIZATIONS PERTAINING TO THE)
PROPOSED AMENDMENT OF ITS \$400 MILLION)
REVOLVING CREDIT FACILITY AND TO)
ISSUE UP TO \$250 MILLION OF SENIOR UNSECURED)
NOTES)

PUBLIC SERVICE COMPANY OF NEW MEXICO,)
Applicant)

)

Case No. 24-00___-UT

NOTICE OF PROCEEDING

NOTICE is hereby given of the filing of an Application by the Public Service Company of New Mexico (“PNM”) with the New Mexico Public Regulation Commission (“Commission”) on February 9, 2024, requesting authorization to (1) amend and restate PNM’s current \$400 million unsecured revolving credit facility set to expire on October 30, 2026, to extend the maturity of the facility up to April 2029, and to include two one-year extension options that, if exercised, would extend the maturity of the facility up to April 2031; and (2) issue senior unsecured notes (“SUNs”) in an amount up to \$250 million (“Proposed SUNs”) to fund and support PNM’s utility construction program to provide service to PNM’s customers and to repay existing short-term debt. This includes a request for authorization to issue the Proposed SUNs in one or more issuances of one or more series, with maturities of up to 30 years, at interest rates fixed to respective maturity of each series, and to issue such notes in one or more private placement transactions or in registered public offerings. PNM further requests that the Commission set this matter at the head of its docket so that the approvals and authorizations may be made within 30 days of filing its Application as provided in NMSA 1978, Section 62-6-9 (1941).

1. The Commission is required by law to act promptly on PNM’s Application.
2. A Zoom evidentiary hearing is scheduled for _____, 2024. The hearing may be vacated pursuant to 17.1.2.8(C)(3) NMAC. Interested persons desiring to comment on the Application at an Open Meeting or to intervene in the proceedings should contact the Commission for

EXHIBIT A

confirmation of the date, time, and place for the hearing or, if the hearing is vacated, for consideration during an Open Meeting, since hearing and Open Meetings are on occasion rescheduled for vacated.

3. Interested persons desiring to intervene in the proceeding must file a Motion to Intervene pursuant to Subsections A and B of 1.2.2.23 NMAC before _____, 2024.
4. Interested persons may appear and give a written or oral comment, pursuant to the Commission's Rule for Utility Applications, 17.1.2 NMAC, and related Commission orders, without becoming an intervener. The comments will not be considered as evidence in this case.
5. Interested persons may inspect PNM's Application filed in this case, together with any exhibits and related papers, at PNM's office, 414 Silver Avenue SW, Albuquerque, New Mexico 87102, telephone (505) 241-2700, as electronically posted on the Commission's E-Docket website, and as posted at <http://www.pnm.com/regulatory>. This case has been docketed as Case No. 24-_____-UT, and any inquiries should refer to that number.
6. The Commission's Rule for Utility Applications, 17.1.2 NMAC, applies to this case except as modified by Order of the Commission or the Hearing Examiner. A copy of such Rule may be obtained from the Commission.
7. Interested persons may obtain further information by contacting either PNM or the Commission at the offices or telephone numbers noted herein.
8. On or before _____, 2024, the Commission's utility Division Staff shall file direct testimony regarding this case. Any rebuttal testimony shall be filed by _____, 2024. Staff shall indicate in its direct testimony whether it supports the waiver of an evidentiary hearing.
9. Anyone filing pleadings, documents, or testimony in this case will serve copies on all parties of record and the Commission's Utility Division Staff.
10. Interested persons should contact the Commission for confirmation of the hearing date, time, and place since hearings are occasionally rescheduled or cancelled if deemed not required at the discretion of the Hearing Examiner or the Commission.

EXHIBIT A

11. Interested persons with a disability requiring special assistance in order to participate in this proceeding should contact the Commission offices at least 24 hours prior to the commencement of the hearing.

ISSUED at Santa Fe, New Mexico this _____ day of _____ 2024.

NEW MEXICO PUBLIC REGULATION COMMISSION

Hearing Examiner

GCG#532086

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR AUTHORIZATIONS)
PERTAINING TO THE PROPOSED)
AMENDMENT OF ITS \$400 MILLION)
REVOLVING CREDIT FACILITY AND TO)
ISSUE UP TO \$250 MILLION OF SENIOR)
UNSECURED NOTES)**

Case No. 24-____-UT

**PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)**

Applicant)

DIRECT TESTIMONY

OF

KYNDRA A. APODACA

February 9, 2024

**NMPRC CASE NO. 24-____-UT
INDEX TO THE DIRECT TESTIMONY OF
KYNDRA A. APODACA**

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

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PNM EXHIBIT KAA-1	Curriculum Vitae of Kyndra A. Apodaca
PNM EXHIBIT KAA-2	Current \$400M Revolver
PNM EXHIBIT KAA-3	A draft form of the Note Purchase Agreement
PNM EXHIBIT KAA-4	A draft form of the Sixth Supplemental Indenture
PNM EXHIBIT KAA-5	PNM’s Registration Statement on Form S-3, SEC File No. 333-271969

SELF AFFIRMATION

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1

I. INTRODUCTION AND PURPOSE

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

3 **A.** My name is Kyndra A. Apodaca. I am Senior Manager, Treasury for PNMR
4 Services Company (“PNMR Services”). PNMR Services provides corporate
5 services through shared services agreements to its parent company, PNM Resources,
6 Inc. (“PNMR”), and all of PNMR’s subsidiaries, including Public Service Company
7 of New Mexico (“PNM” or “Company”). My address is 414 Silver Avenue, SW,
8 Albuquerque, New Mexico 87102.

9

10 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS SENIOR**
11 **MANAGER, TREASURY.**

12 **A.** As Senior Manager, Treasury I am responsible for supporting the Executive
13 Director of Treasury and the Treasurer, who have overall responsibility for
14 providing financial support for PNMR and its subsidiaries, including PNM. My
15 responsibilities include assisting and coordinating the formulation of strategies and
16 plans to accomplish finance objectives, including the implementation of specific
17 financing strategies, such as completing securities issuances and financings. My
18 educational background and experience are summarized in PNM Exhibit KAA-1.

19

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 **A.** The purpose of my testimony is to support PNM’s Application, which seeks
22 authorization from the Commission to:

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1 (i.) amend and restate PNM’s current \$400 million unsecured revolving
2 credit facility (the “Current \$400M Revolver”) that currently expires on
3 October 30, 2026, to extend the maturity to up to April 2029 and to include
4 two one-year extension options that, if exercised, would extend the maturity
5 of the facility to up to April 2031, and amend certain provisions as discussed
6 below (the “Proposed \$400M Revolver Amendment”) (the Proposed
7 \$400M Revolver Amendment will be an amendment to and restatement of
8 the Current \$400M Revolver to incorporate the original agreement and all
9 amendments, in one document); and,

10 (ii.) issue senior unsecured notes (“SUNs”) in an amount up to \$250 million
11 (the “Proposed SUNs”) to fund and support PNM’s utility construction
12 program to provide service to PNM’s customers, and to repay existing
13 short-term debt. PNM is seeking approval to issue the Proposed SUNs in
14 one or more issuances of one or more series, with maturities of up to thirty
15 (30) years, at interest rates fixed to the respective maturity of each series,
16 and to issue such notes in private placement transaction(s) or in registered
17 public offering(s) (the “Proposed Transaction”).
18

19 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

20 **A.** My testimony is organized into the following sections:

21 I. Introduction and Purpose

22 II. PNM’s Proposed \$400 Million Revolver Amendment

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

- 1 III. PNM’s Proposed SUNs
2 IV. Regulatory Considerations
3 V. Conclusion
4

5 **Q. ARE YOU SPONSORING ADDITIONAL EXHIBITS?**

6 **A. Yes, I am also sponsoring:**

- 7 • PNM Exhibit KAA-2, the Current \$400M Revolver. A draft of the
8 Proposed \$400M Revolver Amendment is not yet available but is expected
9 to be substantially similar to the Current \$400M Revolver. PNM will file
10 with the Commission the final agreement reflecting the Proposed \$400M
11 Revolver Amendment within ninety (90) days of executing it and will
12 provide a blackline showing all changes made from the Current \$400M
13 Revolver.
14 • PNM Exhibit KAA-3, a draft form of the Note Purchase Agreement
15 (“NPA”)
16 • PNM Exhibit KAA-4, a draft form of the Sixth Supplemental Indenture
17 • PNM Exhibit KAA-5, PNM’s Registration Statement on Form S-3, File No.
18 333-271969
19

20 **Q. WHAT APPROVAL IS PNM SEEKING FROM THE COMMISSION?**

21 **A. PNM is seeking approval to:**

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1 (1) enter into the Proposed \$400M Revolver Amendment and for all other
2 approvals, authorizations, and actions that may be required for PNM to
3 effectuate the Proposed \$400M Revolver Amendment and exercise the two one-
4 year extension options; and

5 (2) issue the Proposed SUNs in one or more issuances of one or more series,
6 with maturities of up to thirty (30) years, to support PNM’s utility construction
7 program to provide service to PNM’s customers; repay existing short-term debt;
8 and for all other approvals, authorizations, and actions that may be required for
9 PNM to effectuate the Proposed Transaction.

10
11 **Q. WHY IS IT NECESSARY THAT PNM SEEK COMMISSION APPROVAL**
12 **TO ENTER INTO THE PROPOSED \$400 MILLION REVOLVER**
13 **AMENDMENT AND ISSUE THE PROPOSED SUNS?**

14 **A.** As a public utility, PNM is subject to the New Mexico Public Utility Act (“the
15 Act”). Section 62-6-6 of the Act requires public utilities to obtain prior
16 Commission approval to issue, assume, or guarantee securities payable at periods
17 of more than eighteen months.

18
19 **Q. WHEN IS PNM REQUESTING THE COMMISSION ISSUE A FINAL**
20 **ORDER IN THIS CASE?**

21 **A.** PNM requests that the Commission issue a final order in this case within the thirty
22 (30) day statutory timeframe outlined in Section 62-6-9 of the Act.

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

II. PNM'S PROPOSED \$400 MILLION REVOLVER AMENDMENT

**Q. WHEN WAS THE CURRENT \$400M REVOLVER ENTERED INTO
AND WHEN WAS IT LAST AMENDED?**

A. PNM entered into the Current \$400M Revolver in October 2011 to replace PNM's previous unsecured revolving credit facility that was scheduled to mature in August 2012. The Current \$400M Revolver was authorized by the Commission in Case No. 10-00269-UT. PNM entered into the most recent amendment and restatement on May 20, 2022, to include two additional one-year extension options authorized by the Commission in Case No. 22-00075-UT. Pursuant to the terms of the most recent amendment and restatement, the Current Revolver will expire on October 30, 2026, following exercise by PNM of the two one-year extension options. PNM is requesting authorization to amend and restate the Current \$400M Revolver to extend the maturity to up to April 2029 and include two one-year extension options to allow for extension of maturity to up to April 2031.

**Q. WHY IS PNM ASKING TO AMEND AND RESTATE THE CURRENT
\$400M REVOLVER WHEN IT DOES NOT EXPIRE UNTIL OCTOBER
2026?**

A. Due to a bank exiting the PNM bank group, the Current \$400M Revolver will have a reduced capacity of \$380 million beginning November 1, 2024, and only has approximately two and a half years of remaining maturity. It is standard practice for investor-owned utilities to maintain at least four to five years of remaining

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1 maturity on their core revolving credit facilities. Since 2012, PNM has regularly
2 extended the maturity of its \$400M Revolver by exercising one-year extension
3 options and adding new extension options as necessary. These extension options
4 were authorized by the Commission in Case Nos. 12-00096-UT, 14-00370-UT, 16-
5 00207-UT, 18-00256-UT, and 22-00075-UT. In order to achieve four to five years
6 of remaining maturity, PNM is seeking authorization to extend the maturity of the
7 Current \$400M Revolver to up to April 2029 along with the inclusion of two one-
8 year extension options that, if exercised, would extend the maturity of the facility
9 to up to April 2031.

10
11 **Q. WHAT ADVANTAGES ARE THERE TO PNM ENTERING INTO THE**
12 **PROPOSED \$400M REVOLVER AMENDMENT?**

13 **A.** With the exit of one of PNM's banks from its bank group, entering into the
14 Proposed \$400M Revolver Amendment will allow PNM to restore the facility's full
15 capacity of \$400 million, which is critical to ensuring that PNM has the necessary
16 liquidity to support its ongoing working capital and capital expenditure
17 requirements, while providing a facility from which PNM can issue letters of credit
18 to support its operations. The Proposed \$400M Revolver Amendment will also
19 restore the revolver to up to a full five years of maturity with the ability to extend
20 the term of the revolver for up to two additional years.

21

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1 **Q. WILL THE FINAL MATURITY DATE FOR THE PROPOSED \$400M**
2 **REVOLVER AMENDMENT BE INCLUDED IN THE FINAL**
3 **TRANSACTION DOCUMENTS FILED WITH THE COMMISSION?**

4 **A.** Yes. PNM will review with its bank group the appropriate maturity to be
5 consistent with standard practice for investor-owned utilities as outlined above and
6 consistent with the authorizations requested in the Application. The actual
7 maturity date for the Proposed \$400M Revolver Amendment will be reviewed
8 and negotiated with PNM's bank group, consistent with standard practices for
9 consummating these types of transactions, and the actual maturity chosen may
10 be for a shorter period than the estimated dates requested in the Application.

11

12 **Q. PLEASE SUMMARIZE THE ANTICIPATED DIFFERENCES BETWEEN**
13 **THE CURRENT \$400M REVOLVER AND THE PROPOSED \$400M**
14 **REVOLVER AMENDMENT.**

15 **A.** The Proposed \$400M Revolver Amendment would have a maturity up to April
16 2029 and would include two one-year extension options that, if exercised, would
17 extend the maturity up to April 2031. The Proposed \$400M Revolver Amendment
18 also would include customary administrative changes and market updates to the
19 Current \$400M Revolver, which may include the following:

- 20 • updating certain representations and definitions relating to the requirements
21 that PNM comply with anti-corruption laws and sanctions and maintain
22 employee benefit plans in accordance with applicable federal law, and to

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1 address the effect of certain Financial Accounting Standards Board
2 Accounting Standards; and

- 3 • updating the bank lenders and bank lender commitments, while restoring the
4 original total capacity of \$400 million.

5
6 The relevant pricing provisions under the Proposed \$400M Revolver Amendment
7 are expected to contain the same pricing levels for borrowings (with interest rates
8 increasing if PNM’s debt rating is lowered by S&P Global Ratings and Moody’s
9 Investors Services, Inc.) as the Current \$400M Revolver.

10
11 **Q. HOW WILL PNM USE THE PROPOSED \$400M REVOLVER**
12 **AMENDMENT?**

13 **A.** Similar to the Current \$400M Revolver, the Proposed \$400M Revolver
14 Amendment will provide cash for PNM’s ongoing working capital and capital
15 expenditure requirements and provides a facility from which PNM can issue letters
16 of credit to support its operations. The Proposed \$400M Revolver Amendment will
17 continue to provide a cost-effective means of accessing liquidity for PNM. Having
18 sufficient liquidity is central to how PNM finances its operations and allows PNM
19 to build and maintain the infrastructure that supports safe and reliable electric
20 service to its New Mexico customers.

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1 **Q. WHAT SPECIFIC AUTHORIZATIONS IS PNM REQUESTING?**

2 **A.** PNM is seeking approval: (1) to enter into the Proposed \$400M Revolver
3 Amendment; and (2) for all other approvals, authorizations, and actions that may
4 be required for PNM to effectuate the Proposed \$400M Revolver Amendment and
5 exercise the two one-year extension options.

6

7 Additionally, to the extent PNM's borrowings under the Proposed \$400M Revolver
8 Amendment are required to be included in PNM's short-term financing statement
9 filed with its annual report pursuant to 17.1.2.8(E) NMAC, PNM requests that,
10 because of the specific approvals requested for the Proposed \$400M Revolver
11 Amendment, PNM only be required to include, for informational purposes, a cross-
12 reference to the Commission's orders approving the Proposed \$400M Revolver
13 Amendment in future short-term financing statements. The Commission has
14 approved similar requests in prior cases in which it has authorized previous
15 revolvers, including the Current \$400M Revolver.

16

17 **Q. WILL THE PROPOSED \$400M REVOLVER AMENDMENT AFFECT**
18 **PNM'S PRESENT OR FUTURE RATES CHARGED TO CUSTOMERS?**

19 **A.** No. The cost of the short-term borrowings under the Proposed \$400M Revolver
20 Amendment is not part of PNM's long-term debt cost and, therefore, does not affect
21 the cost of capital or capital structure PNM and the Commission uses to set rates.

22

**DIRECT TESTIMONY
OF KYNDRA A. APODACA
NMPRC CASE NO. 24-____-UT**

1 **Q. HOW DOES THE PROPOSED \$400M REVOLVER AMENDMENT**
2 **IMPACT PNM'S CREDIT RATINGS?**

3 **A.** PNM expects that the rating agencies would view the Proposed \$400M Revolver
4 Amendment and related exercise of the two one-year extension options as having a
5 positive impact on PNM's liquidity, since it would maintain PNM's ability to
6 access funding to support PNM's ongoing working capital and capital expenditure
7 requirements through the maturity of the Proposed \$400M Revolver Amendment.

8

9 **Q. WHAT ARE THE EXPENSES ASSOCIATED WITH THE PROPOSED**
10 **\$400M REVOLVER AMENDMENT?**

11 **A.** PNM anticipates it will incur upfront fees and arrangement fees paid to the lenders
12 for a total between \$3,300,000 and \$3,600,000, which will be dependent on the
13 number of bank lenders and their commitment level. Additionally, there will be
14 legal expenses of approximately \$50,000. These fees and expenses will be
15 amortized over the term of the Proposed \$400M Revolver Amendment.

16

17 **Q. WHAT TRANSACTION DOCUMENTS ARE REQUIRED FOR THE**
18 **PROPOSED \$400M REVOLVER AMENDMENT?**

19 **A.** The Proposed \$400M Revolver Amendment will be executed by PNM, the bank
20 lenders that are parties to the Proposed \$400M Revolver Amendment, and Wells
21 Fargo Bank N.A., as administrative agent. A draft of the Proposed \$400M Revolver
22 Amendment is not yet available but is expected to be substantially similar to the

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1 Current \$400M Revolver that was filed with the Commission in Case No. 22-
2 00075-UT. PNM will file with the Commission the final agreement reflecting the
3 Proposed \$400M Revolver Amendment within ninety (90) days of executing it and
4 will provide a blackline showing all changes made from the Current \$400M
5 Revolver.

6
7 **III. PNM'S PROPOSED SUNS**

8 **Q. WHY IS PNM PROPOSING TO ISSUE UP TO \$250 MILLION OF SENIOR**
9 **UNSECURED NOTES?**

10 **A.** PNM proposes to issue up to \$250 million of the Proposed SUNs to support PNM's
11 utility construction program to provide service to PNM's customers, and to repay
12 existing short-term debt.

13
14 **Q. WHAT ARE SENIOR UNSECURED NOTES OR SUNS?**

15 **A.** Senior Unsecured Notes, or SUNs, are debt obligations that are not secured by any
16 property or assets of PNM. These can be issued in either public market offerings
17 or through the private placement markets. Prior to 2017, all of PNM's SUNs were
18 issued in public market offerings registered by the Securities and Exchange
19 Commission (the "SEC") under an indenture dated August 1, 1998, between PNM
20 and U.S. Bank Trust Company, National Association ("U.S. Bank"), ultimate
21 successor to The Chase Manhattan Bank, as trustee for all the holders of PNM's
22 SUNs. PNM's last public issuance of SUNs was the August 11, 2015 issuance of

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1 \$250 million of 3.85% SUNs due 2025, authorized by the Commission in Case No.
2 15-00203-UT. PNM also issues collateral SUNs to secure its obligations to pay the
3 principal and interest on pollution control revenue refunding bonds where the
4 interest income is generally not taxable to investors. These collateral SUNs are
5 issued under an indenture dated March 11, 1998. Both indentures generally provide
6 that PNM will not issue any secured debt unless all of PNM’s outstanding SUNs
7 are equally and ratably secured with all such debt.

8

9 As discussed below, PNM has more recently utilized the private placement market
10 for the 2018 issuance of \$450 million of SUNs authorized in Case No. 17-00126-
11 UT; for the 2020 issuance of \$200 million of SUNs authorized in Case No. 20-
12 00071-UT; for the 2021 issuance of \$310 million of SUNs in two separate
13 transactions authorized in Case No. 21-00101-UT; and for the 2023 issuance of
14 \$200 million of SUNs authorized in Case No. 23-00065-UT.

15

16 **Q. WHAT ARE THE PRIMARY DIFFERENCES BETWEEN THE PRIVATE**
17 **PLACEMENT MARKET AND THE PUBLIC MARKET?**

18 **A.** While the overall process of issuing SUNs is similar in both the private and public
19 markets, issuing SUNs in the private placement market affords issuers like PNM a
20 number of advantages. Public market offerings must be at least \$300 million or
21 more in size in order to be “Index-Eligible” and included in the Bloomberg Barclays
22 U.S. Aggregate Bond Index, the primary index benchmark for U.S. investors in

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1 corporate debt. Public market offerings that are Index-Eligible normally obtain
2 more favorable pricing than smaller public market offerings because there is
3 generally less investor demand for smaller issuances. Additionally, available
4 maturities, or tenors, are more limited in the public market.

5

6 In contrast, the private placement market is generally made up of investors who buy
7 and hold notes, and therefore the related ease of trading after issuance does not
8 factor into the pricing. The private placement market also does not prescribe any
9 transaction size minimums, giving PNM the flexibility to issue SUNs in smaller
10 amounts to strategically access the market when PNM needs the cash flow. In
11 addition, the private placement market generally has a greater range of tenors
12 available, allowing PNM to stagger its debt maturities.

13

14 The private placement market also offers an extended transaction settlement period,
15 or a “delayed draw” feature. Unlike public market offerings, which are typically
16 priced shortly before issuance, the delayed draw allows PNM the option to price
17 several months prior to the actual issuance and funding of the SUNs. The benefits
18 of this feature are described below.

19 **Q. PLEASE DESCRIBE THE BENEFITS OF THE DELAYED DRAW**
20 **FEATURE IN THE PRIVATE PLACEMENT MARKET IN MORE**
21 **DETAIL.**

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1 **A.** The delayed draw feature in the private placement market allows PNM to price
2 SUNs, fixing the annual coupon rate, in advance of the actual issuance and funding.
3 Bond pricing is based on the prevailing U.S. Treasury rate at the time of pricing
4 plus a credit spread agreed upon by investors at the time of this pricing. Investors
5 in the private placement market are long-term investors who, consequently, are
6 willing to accept the risk of credit spread and interest rate movements for the
7 delayed draw period between pricing and issuance of the SUNs. The delayed draw
8 feature is beneficial for issuers because it can help mitigate the risk of market
9 volatility and rising interest rates.

10

11 **Q. ARE THERE COSTS ASSOCIATED WITH THE DELAYED DRAW**
12 **FEATURE?**

13 **A.** Investors in debt securities issued in the private placement market generally allow
14 securities, such as the Proposed SUNs, to be priced up to three months prior to
15 issuance with no adjustment to the coupon rate. However, the coupon rate for any
16 securities priced more than three months prior to issuance and funding will include
17 an adjustment as part of the credit spread. This adjustment generally represents the
18 investors' estimate of the expected rise in interest rates between the pricing and the
19 issuance of the securities. Based on recent indicative pricing received from PNM's
20 bank group, the adjustment to the coupon rate for utilizing the delayed draw feature
21 may be approximately one to three basis points for each month that the Proposed

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1 SUNs are priced prior to the actual funding date, net of the first no-cost initial three-
2 month period discussed above.

3

4 **Q. ARE THE COUPON RATES FOR SUNS ISSUED IN THE PRIVATE**
5 **MARKET COMPARABLE TO THOSE FOR SUNS ISSUED IN THE**
6 **PUBLIC MARKET?**

7 **A.** Yes. PNM's bankers have advised that due to the change in the Index-Eligibility
8 minimum, the market for private placement offerings has grown substantially and
9 become more competitive with public registered offerings so that the pricing for
10 more flexible private placement transactions is now comparable to what PNM could
11 obtain for public offerings. Prior to 2017, when the minimum size of an Index-
12 Eligible issuance increased to \$300 million, PNM issued SUNs in registered public
13 offerings because the pricing was more favorable than for SUNs issued in private
14 placements. However, the increase in the minimum transaction size from \$250
15 million to \$300 million to be Index-Eligible in the public market makes it more
16 difficult for smaller utilities like PNM that issue securities less frequently to obtain
17 favorable Index-Eligible pricing while maintaining a prudent diversification of
18 maturity dates for long-term debt. Prior to marketing the Proposed SUNs, PNM
19 will work with its banks to determine whether a public or private offering would be
20 most advantageous based on current market conditions.

21

22

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1 **Q. HAS PNM ISSUED SUNS IN THE PRIVATE PLACEMENT MARKET?**

2 **A.** Yes. Most recently, as authorized in Case No. 23-00065-UT, PNM issued \$200
3 million of SUNs in 2023. PNM also issued \$310 million of SUNs in 2021 in two
4 separate transactions in the private placement market: (i) \$160 million of SUNs on
5 July 14, 2021 and (ii) \$150 million of SUNs on December 2, 2021 as authorized in
6 Case No. 21-00101-UT, \$200 million of SUNs in the private placement market in
7 2020, as authorized in Case No. 20-00071-UT, and \$450 million of SUNs in the
8 private placement market in 2018, as authorized in Case No. 17-00126-UT.

9

10 **Q. PLEASE DESCRIBE THE PROPOSED SUNS.**

11 **A.** PNM is requesting authorization to issue up to \$250 million of Proposed SUNs, in
12 one or more issuances of one or more series with maturities of up to thirty (30)
13 years, at interest rates fixed through the respective maturities of each series.
14 Depending on market conditions at the time of issuance, the Proposed SUNs will
15 be issued in one or more private placement transactions or public market offerings.
16 One or more banks would participate as placement agents for the private placement
17 of the Proposed SUNs, or as underwriters for a public market offering.

18

19 **Q. WHICH PLACEMENT AGENTS OR UNDERWRITERS WILL PNM
20 UTILIZE TO ISSUE THE PROPOSED SUNS?**

21 **A.** The final composition of the placement agents for private placement market
22 transactions or underwriters for public market offerings will be drawn from banks

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1 participating in PNM’s revolving credit facility and will depend on the Company’s
2 assessment of each placement agent’s or underwriter’s ability to successfully
3 complete the transaction at the best price and other factors.

4

5 **Q. WHO ARE THE TYPICAL INVESTORS IN SUNS?**

6 **A.** If the Proposed SUNs are issued in the private placement market, it is anticipated
7 that they would be purchased by institutional investors, which typically are
8 insurance companies and similar entities. If the Proposed SUNs are issued in the
9 public market, typical investors include asset managers, pension funds, insurance
10 companies and corporate investors.

11

12 **Q. PLEASE IDENTIFY AND DESCRIBE THE TRANSACTION**
13 **DOCUMENTS FOR THE PROPOSED SUNS.**

14 **A.** The primary document for a private placement transaction is a Note Purchase
15 Agreement (“NPA”) between PNM and all initial purchasers of a series of Proposed
16 SUNs. The NPA contains the terms and conditions of the Proposed SUNs and the
17 covenants with which PNM is required to comply while the Proposed SUNs are
18 outstanding. PNM expects that the representations, warranties, and covenants
19 made by PNM in the NPA will be substantially similar to those made in the NPA
20 approved by, and filed, with the Commission in Case No. 23-00065-UT (the “2023
21 NPA”). The NPA and form of note will contain customary optional and mandatory
22 redemption provisions. Generally, prior to maturity, PNM can only elect to redeem

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1 or “call” the SUNs by paying the outstanding principal, interest accrued to date,
2 and a make-whole premium to compensate the noteholders for the early
3 redemption. In addition, upon certain change in control events, the holders may
4 have the right to “put” the SUNs back to PNM by tendering the SUNs to the
5 Company and requiring PNM to pay the outstanding principal and interest accrued
6 to date. An initial draft of the NPA based on the 2023 NPA is attached as PNM
7 Exhibit KAA-3.

8 The primary transaction document for a public offering of SUNs is the indenture
9 dated as of August 1, 1998 (“Indenture”) between PNM and U.S. Bank, successor
10 to MUFG Bank, N.A., as trustee for all outstanding series of taxable SUNs, as
11 supplemented by a supplemental indenture or indentures, depending on how many
12 series are issued, containing the form and terms of each series of Proposed SUNs,
13 including customary optional and mandatory redemption provisions, but generally
14 not containing any change in control “put” features or the scope of representations,
15 warranties, and covenants that are contained in an NPA, including the 2023 NPA.

16 The Indenture was filed in Case No. 10-00269-UT. A draft form of supplemental
17 indenture(s) for any registered public offering of the Proposed SUNs is attached as
18 PNM Exhibit KAA-4. PNM would also enter into an underwriting agreement with
19 the underwriters of any public offering of the Proposed SUNs (similar to the
20 underwriting agreement filed as PNM Exhibit LLG-2 in Case No. 15-00203-UT.)

21 Because the Proposed SUNs are senior unsecured note obligations of PNM, the
22 Indenture and all NPAs will contain a restriction on liens (often called a “negative

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1 pledge”) that prevents PNM from placing liens on its assets, with some exceptions,
2 unless the holders of the Proposed SUNs are secured on an equal basis to such other
3 secured debt.

4

5 **Q. PLEASE DESCRIBE THE DISCLOSURE DOCUMENTS FOR THE**
6 **PROPOSED SUNS.**

7 **A.** The disclosure documents for a private placement of the Proposed SUNs would be
8 a private placement memorandum, offering letter, or investor presentation that
9 would be prepared in coordination with the placement agent(s). In contrast, the
10 disclosure document for a public offering of the Proposed SUNs would be similar
11 to the base prospectus contained in PNM’s 2023 Form S-3 filed with my testimony
12 as Exhibit KAA-5, and a prospectus supplement that would be prepared in
13 coordination with the underwriters and filed with the SEC. The 2023 Form S-3,
14 filed with the SEC on May 16, 2023, became effective on May 25, 2023 to register
15 up to \$650 million of SUNs, and expires three years from the effective date.

16

17 **Q. WILL THE PROPOSED SUNS BE RATED BY THE RATING AGENCIES?**

18 **A.** Ratings are not required if the Proposed SUNs are issued in private placement
19 transactions. If the Proposed SUNs are issued in public offerings, investors
20 typically require ratings from at least two rating agencies.

21

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1 **Q. WHAT ARE RECENT INDICATIVE INTEREST RATES FOR THE**
2 **ISSUANCE OF THE PROPOSED SUNS?**

3 **A.** PNM's bank group has provided estimates of current indicative interest rates for
4 the issuance of the Proposed SUNs. Indicative market interest rates are estimated
5 by taking the current U.S. Treasury bond interest rate, and then adding a credit
6 spread associated with the credit risk attributed to PNM's Proposed SUNs. If issued
7 in the private market and a delayed draw feature is utilized, then the credit spread
8 may also include an additional adjustment to the coupon rate as described above.
9 PNM has received indicative pricing averaging 5.80% for a ten (10) year term; and
10 averaging 6.24% for a thirty (30) year term. However, because U.S. Treasury rates
11 and credit spreads are subject to change and can be volatile, the final rates for the
12 Proposed SUNs may deviate from these indicative rates. PNM's bank group will
13 periodically provide indicative pricing that reflects prevailing market rates. PNM
14 will notify the Commission of the final rates for each series of the Proposed SUNs
15 within ninety (90) days of their issuance.

16

17 **Q. WHAT IS THE PROPOSED INTEREST RATE STRUCTURE FOR THE**
18 **PROPOSED SUNS?**

19 **A.** PNM plans to issue the Proposed SUNs using an interest rate structure which fixes
20 rates through the respective maturities of each series. As discussed above, the
21 interest rate for notes issued in the private placement market may be set in advance

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1 of funding. In contrast, the interest rate for notes issued in a registered public
2 offering would be determined shortly before issuance.

3

4 **Q. WOULD THE ISSUANCE OF THE PROPOSED SUNS IMPACT PNM'S**
5 **CAPITAL STRUCTURE?**

6 **A.** Yes. The issuance of up to \$250 million of Proposed SUNs would result in an
7 increase of long-term debt in PNM's capital structure. PNM receives periodic
8 capital contributions from its parent company to maintain PNM's targeted capital
9 structure.

10

11 **Q. HOW DOES PNM PROPOSE TO NOTIFY THE COMMISSION THAT THE**
12 **PROPOSED SUNS HAVE BEEN ISSUED?**

13 **A.** PNM will notify the Commission through a compliance filing within ninety (90)
14 days after the issuance of each series of the Proposed SUNs. Such notice will
15 include the amount, maturity, and interest rate for each series of Proposed SUNs,
16 as well as the relevant final form of transaction documents governing each such
17 issuance.

18

19 **Q. IS THE PROPOSED SUNS ISSUANCE INCLUDED IN PNM'S ANNUAL**
20 **INFORMATIONAL FINANCING FILING?**

21 **A.** Yes. In accordance with Rule 17.1.2.8(A)(6) NMAC, PNM's Annual
22 Informational Financing Filing ("AIFF") for the period May 1, 2023 to April 30,

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1 2024 anticipated that PNM may seek Commission approval to issue up to \$250
2 million of long-term capital taxable debt to meet its capital needs, including
3 refinancing debt and funding capital expenditures to support PNM’s utility
4 construction program to provide service to PNM’s customers. Based on current
5 projections, PNM is now requesting approval to issue up to \$250 million of SUNs
6 for such purposes. The SUNs issuance(s) will occur either during the 12-month
7 period covered by the AIFF that PNM filed on April 28, 2023, or during the 12-
8 month period covered by the AIFF that PNM will file on April 30, 2024, for the
9 period May 1, 2024, to April 30, 2025, which will reflect the proposed issuance(s).

10

11 **Q. PLEASE DESCRIBE THE TRANSACTION EXPENSES ASSOCIATED**
12 **WITH THE PROPOSED SUNS.**

13 **A.** The expected transaction expenses to issue the Proposed SUNs include underwriting
14 or placement agent fees as well as other expenses for legal, trustee, and printing. If
15 the Proposed SUNs are issued in the public market, SEC registration, rating agency,
16 and audit fees will be applicable. PNM expects issuance costs, whether issued in the
17 public or private market, to be approximately 1% of the principal amount to be issued,
18 or approximately \$2.5 million. This fee estimate is similar to fees PNM has paid on
19 recent transactions.

20

21 **Q. ARE THERE OTHER REVIEWS OR REGULATORY APPROVALS**
22 **NEEDED WITH REGARD TO THE PROPOSED NOTES?**

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1 **A.** There are no other regulatory approvals needed; however, PNM’s rating agencies will
2 need to review the transaction documents and provide a credit rating for any public
3 offering of the Proposed SUNs.

4
5 **Q. WHAT CREDIT RATING DO YOU EXPECT FOR ANY PUBLIC**
6 **OFFERING OF THE PROPOSED SUNS?**

7 **A.** The ratings for the Proposed SUNs will not be known until the ratings are assigned by
8 the rating agencies. The current ratings for PNM’s senior unsecured debt are as
9 follows:

- 10 • Moody’s Investor Service, Inc.: Baa2 / Stable outlook
- 11 • S&P Global Ratings: BBB / Stable outlook

IV. REGULATORY CONSIDERATIONS

12
13
14 **Q. DO THE PROPOSED TRANSACTIONS HAVE ANY UNUSUAL**
15 **FEATURES WHICH MAY HAVE AN ADVERSE IMPACT ON CUSTOMERS**
16 **OR ON THE COMMISSION'S ABILITY TO REGULATE PNM?**

17 **A.** No.

18
19 **Q. IF THE COMMISSION AUTHORIZES THE PROPOSED**
20 **TRANSACTIONS AS REQUESTED, AND THE PROPOSED**
21 **TRANSACTIONS ARE CONSUMMATED, WILL THE AGGREGATE**

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1 **AMOUNT OF PNM SECURITIES OUTSTANDING EXCEED THE FAIR**
2 **VALUE OF PNM'S PROPERTY AND BUSINESS?**

3 **A.** No. As shown on PNM's consolidated balance sheet included in PNM's quarterly
4 report on Form 10-Q dated September 30, 2023, the book value of the properties
5 and businesses of PNM as demonstrated by the total assets of approximately \$6.7
6 billion, exceeds PNM's aggregate amount of securities outstanding or proposed
7 to be outstanding.

8

9 **Q. WHAT ARE THE CONSEQUENCES OF THE COMMISSION NOT**
10 **APPROVING THIS CASE?**

11 **A.** Not approving this case would impact the company's ability to fund its capital
12 expenditures and operations and maintenance projects, which could result in certain
13 projects being delayed or canceled.

14 The Proposed \$400M Revolver Amendment is the primary facility of short-term
15 debt, which provides interim financing for PNM's infrastructure and operational
16 requirements to serve customers. Once the balance accumulates on short-term
17 facilities, PNM relieves the balances with long-term debt issuances. The Proposed
18 SUNs would relieve the balance on short-term financing facilities, in turn allowing
19 PNM to have adequate liquidity on the Proposed \$400M Revolver Amendment.
20 Approving this case allows PNM to fund its operations through a reasonable mix
21 of short-term debt, long-term debt, investor equity and cashflow from revenues.

22

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1 **Q. WILL PNM INCLUDE AN EXPLANATION ADDRESSING THE USE OF**
2 **PROCEEDS IN ITS 90-DAY REPORT FOLLOWING THE**
3 **CONSUMMATION OF THE SUNS TRANSACTION?**

4 **A.** Yes, consistent with Case No. 22-00075-UT, PNM will provide the requested
5 information in the 90-day report for both the Proposed \$400M Revolver
6 Amendment and the Proposed SUNs.

7
8 **Q. IS THE COMPANY REQUESTING ANY RATEMAKING TREATMENT**
9 **IN THIS APPLICATION?**

10 **A.** No.

11

12 **Q. ARE THE PROPOSED TRANSACTIONS IN THIS CASE CONSISTENT**
13 **WITH THE PUBLIC INTEREST?**

14 **A.** Yes. In regard to the Proposed \$400M Revolver Amendment, the extended
15 maturity of the revolver will allow PNM to maintain access to a cost-effective
16 means of funding to support its ongoing working capital and capital expenditure
17 requirements to provide service to PNM's customers. In regard to the Proposed
18 SUNs, PNM will finance up to \$250 million to support PNM's construction
19 program to provide service to PNM's customers. PNM will issue long-term fixed-
20 rate debt that better matches the useful lives of the assets being financed and
21 maintains liquidity on PNM's revolving credit facilities for working capital needs,
22 consistent with the purpose of the revolving credit facilities.

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1

V. CONCLUSION

2 **Q. PLEASE SUMMARIZE THE REQUESTED APPROVALS IN THIS CASE.**

3 **A.** PNM requests that the Commission issue a Final Order within thirty (30) days, but
4 in any event no later than forty-five (45) days from the date of the application
5 (March 25, 2024), that approves PNM to (i) enter into the Proposed \$400M
6 Revolver Amendment and for all other approvals, authorizations, and actions that
7 may be required for PNM to effectuate the Proposed \$400M Revolver Amendment;
8 and (2) issue up to \$250 million of Proposed SUNs, in one or more issuances of one
9 or more series, with maturities of up to thirty (30) years, at interest rates fixed to
10 the respective maturity of each series, and to issue such notes in private placement
11 transaction(s) or registered public offering(s).

12

13 **Q. PLEASE SUMMARIZE THE BENEFITS OF APPROVING THIS**
14 **APPLICATION.**

15 **A.** This application meets the requirements for approval of securities transactions by
16 the Public Utility Act. Approval of this application provides assurance that PNM
17 will have adequate liquidity to meet its capital needs in the near-term and over the
18 longer term.

19

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

21 **A.** Yes.

22

GCG#532087

Curriculum Vitae of Kyndra A. Apodaca

PNM Exhibit KAA- 1

Is contained in the following 1 page.

Kyndra A. Apodaca
Education and Professional Resume

Name: Kyndra A. Apodaca

Address: PNM Resources, Inc.
MS 0915
414 Silver Ave. SW
Albuquerque, NM 87102

Telephone: 505-241-2231

Position: Senior Manager, Treasury

Education: Bachelor of Science – Accounting, University of Phoenix, 2011
Certified Public Accountant (CPA), State of New Mexico, 2015
Project Management Professional (PMP), Project Management Institute, 2021

Employment: 2022 – Present – Senior Manager, Treasury, PNM Resources, Inc.

2021 – 2022 – Treasury Manager, PNM Resources, Inc.

2019 – 2021 – Project Manager, GAAP Analysis, PNM Resources, Inc.

2018 – 2019 – Accounting Manager, Meow Wolf, Inc.

2015 – 2018 – Project Manager, Corporate Budget, PNM Resources, Inc.

2014 – 2015 – Senior Accountant, Ernest Health, Inc.

2012 – 2013 – Accountant, Kubiak & Melton, LLC

2003 – 2012 – Accountant & Admin Assistant, Pojoaque Pueblo Service Corp.

Prior Testimony:

22-00075-UT – Direct Testimony in the matter of Public Service Company of New Mexico’s application for the authorization pertaining to the proposed amendment of its \$400 million revolving credit facility and proposed amendment of its \$40 million local bank revolving credit facility.

23-00065-UT – Direct Testimony in the matter of Public Service Company of New Mexico’s application for the authorization to issue up to \$250 million of Senior Unsecured Notes.

Current \$400M Revolver

PNM Exhibit KAA- 2

Is contained in the following 143 pages.

Published CUSIP Number: 74454EAC9

FIFTH AMENDMENT TO AND RESTATEMENT OF CREDIT AGREEMENT

among

**PUBLIC SERVICE COMPANY OF NEW MEXICO,
as Borrower,**

THE LENDERS IDENTIFIED HEREIN,

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent**

**MUFG UNION BANK, N.A.,
as Syndication Agent**

AND

**CITIBANK, N.A.
and
BANK OF AMERICA, N.A.,
as Co-Documentation Agents**

DATED AS OF MAY 20, 2022

**WELLS FARGO SECURITIES, LLC,
MUFG UNION BANK, N.A.,
CITIBANK, N.A.
and
BOFA SECURITIES, INC.,
as Joint Lead Arrangers and Co-Bookrunners**

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FIFTH AMENDMENT TO AND RESTATEMENT OF CREDIT AGREEMENT

THIS FIFTH AMENDMENT TO AND RESTATEMENT OF CREDIT AGREEMENT (this “Credit Agreement”) is entered into as of May 20, 2022 among **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation, as Borrower, the Lenders and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Administrative Agent, and is made with reference to that certain Credit Agreement dated as of October 31, 2011 (as amended by that certain First Amendment to Credit Agreement, dated as of January 18, 2012, that certain Second Amendment to Credit Agreement, dated as of December 17, 2014, that certain Third Amendment to Credit Agreement, dated as of November 2, 2016, that certain Fourth Amendment to Credit Agreement, dated as of October 9, 2018, the “Existing Credit Agreement”), by and among the Borrower, the Lenders and the Administrative Agent.

RECITALS

A. WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to the Existing Credit Agreement.

B. WHEREAS, the Borrower, the Lenders party hereto, the Departing Lenders (as defined below) and the Administrative Agent have (a) entered into this Credit Agreement in order to amend and restate the Existing Credit Agreement in its entirety and (b) agreed that each Departing Lender shall cease to be a party to the Existing Credit Agreement as evidenced by its execution and delivery of its Departing Lender Signature Page.

C. WHEREAS, the Borrower has requested the Lenders and the Administrative Agent make certain modifications to, and amend and restate in its entirety, the Existing Credit Agreement, which the Lenders and the Administrative Agent have agreed to do on the terms and conditions set forth in this Credit Agreement as of the Restatement Date.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1

DEFINITIONS AND ACCOUNTING TERMS

1.1 Definitions.

The following terms shall have the meanings specified herein unless the context otherwise requires. Defined terms herein shall include in the singular number the plural and in the plural the singular:

“Account Designation Letter” means the Notice of Account Designation Letter dated the Restatement Date from the Borrower to the Administrative Agent in substantially the form of Exhibit 4.1(k).

“Adjusted Base Rate” means the Base Rate plus the Applicable Percentage.

“Adjusted Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, a “SOFR Determination Day”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government

Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided that if by 5:00 p.m. on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided further that SOFR as determined pursuant to this proviso shall be utilized for purposes of calculation of Adjusted Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days and (ii) the SOFR Adjustment and (b) the Floor. Any change in Adjusted Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"Administrative Agent" means Wells Fargo Bank, National Association (including its branches and Affiliates as may be required to administer the duties), as administrative agent under this Credit Agreement, or any successor administrative agent appointed pursuant to Section 10.6.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.1 or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Administrative Fees" has the meaning set forth in Section 3.4(d).

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power (a) to vote 10% or more of the securities having ordinary voting power for the election of directors of such other Person or (b) to direct or cause direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

"Agent-Related Persons" means the Administrative Agent, together with its Affiliates and the officers, directors, employees, agents and attorneys-in-fact of the Administrative Agent and its Affiliates.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery, corruption or anti-money laundering laws.

“Applicable Percentage” means, for SOFR Loans, L/C Fees, SOFR Swing Line Loans, Base Rate Loans and Commitment Fees, the appropriate applicable percentages, in each case (subject to the exception indicated below), corresponding to the Debt Rating of the Borrower in effect as of the most recent Calculation Date as shown below:

Pricing Level	Debt Rating	Applicable Percentage for SOFR Loans, SOFR Swing Line Loans and L/C Fees	Applicable Percentage for Base Rate Loans	Applicable Percentage for Commitment Fees
I	≥ A-/A3	1.000%	0.000%	0.125%
II	BBB+/Baa1	1.125%	0.125%	0.175%
III	BBB/Baa2	1.250%	0.250%	0.200%
IV	BBB-/Baa3	1.500%	0.500%	0.250%
V	BB+/Ba1	1.750%	0.750%	0.300%
VI	≤ BB or unrated / Ba2 or unrated	2.000%	1.000%	0.350%

The Applicable Percentage shall be determined and adjusted on the date (each a “Calculation Date”) one Business Day after the date on which the Borrower’s Debt Rating is upgraded or downgraded in a manner which requires a change in the then applicable Pricing Level set forth above. If at any time there is a split in the Borrower’s Debt Ratings between S&P and Moody’s, the Applicable Percentage shall be determined by the higher of the two Debt Ratings (i.e. the lower pricing), provided that if the two Debt Ratings are more than one level apart, the Applicable Percentage shall be based on the Debt Rating which is one level lower than the higher rating. If the Borrower does not have a Debt Rating from either S&P or Moody’s, then, Pricing Level VI shall apply. Each Applicable Percentage shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Applicable Percentage shall be applicable to all existing SOFR Loans as well as any new SOFR Loans made. The applicable Pricing Level for Applicable Percentage, as of the Restatement Date, is Pricing Level III.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means Wells Fargo Securities, LLC, MUFG Union Bank, N.A., Citibank, N.A. and BofA Securities, Inc., together with their successors and/or assigns.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit 11.3(b).

“Authorized Officer” means any of the president, vice president, chief executive officer, chief financial officer or treasurer of the Borrower.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Credit Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not

including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 3.10(c)(iv).

“Avangrid” means Avangrid, Inc.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

“Base Rate” means, for any day, a fluctuating rate per annum equal to, the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% and (c) Adjusted Term SOFR for a one-month tenor in effect on such day plus 1.00%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR, as applicable (provided that clause (c) shall not be applicable during any period in which Adjusted Term SOFR is unavailable or unascertainable). Notwithstanding the foregoing, in no event shall the Base Rate be less than 1.0%.

“Base Rate Loan” means any Loan bearing interest at a rate determined by reference to the Base Rate.

“Base Rate Term SOFR Determination Day” has the meaning assigned thereto in the definition of “Term SOFR”.

“Benchmark” means, initially, (a) with respect to any Revolving Loan, the Term SOFR Reference Rate and (b) with respect to any Swingline Loan, Adjusted Daily Simple SOFR; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or Daily Adjusted Simple SOFR, as applicable, or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.10(c)(i).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Credit Agreement and the other Credit Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar

insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 3.10(c)(i) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 3.10(c)(i).

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” means Public Service Company of New Mexico, a New Mexico corporation, together with its successors and permitted assigns.

“Borrower Obligations” means, without duplication, all of the obligations of the Borrower to the Lenders and the Administrative Agent, whenever arising, under this Credit Agreement, the Notes, or any of the other Credit Documents.

“Borrowing” means (a) a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of SOFR Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.1 or (b) a borrowing consisting of Swing Line Loans made by the Swing Line Lender pursuant to Section 2.7, as the context may require.

“Business Day” means any day that (a) is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed and (b) is not a day on which commercial banks in Charlotte, North Carolina are closed.

“Capital Stock” means (a) in the case of a corporation, all classes of capital stock of such corporation, (b) in the case of a partnership, partnership interests (whether general or limited), (c) in the case of a limited liability company, membership interests and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person; including, in each case, all warrants, rights or options to purchase any of the foregoing.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the applicable L/C Issuer and the Lenders, as collateral for the L/C Obligations, obligations in respect of Swing Line Loans, or obligations to fund participations in respect of either thereof (as the context may require), cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the applicable L/C Issuer or Swing Line Lender. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Change in Law” means the occurrence, after the date of this Credit Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, promulgation, implementation or application thereof by any Governmental Authority, (c) the adoption or taking effect of any request, rule, guideline or directive, policy or directive (whether or not having the force of law) by any Governmental Authority or (d) any change in any request, rule, guideline, policy or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in implementation thereof shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted, implemented or issued and (ii) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, implemented or issued.

“Change of Control” means the failure of PNM Resources to own and control 100% of the Voting Stock of the Borrower.

“Closing Date” means October 31, 2011.

“Code” means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder, as amended, modified, succeeded or replaced from time to time.

“Commitment” means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.1 and (b) fund or purchase Participation Interests in L/C Obligations pursuant to Section 2.2 or Swing Line Loans pursuant to Section 2.7, in an aggregate principal amount at any one time outstanding not to exceed such Lender’s Pro Rata Share of the Revolving Committed Amount

as set forth opposite such Lender's name on Schedule 1.1(a) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Credit Agreement.

"Compensation Period" has the meaning set forth in Section 3.2(c)(ii).

"Compliance Certificate" means a fully completed and duly executed officer's certificate in the form of Exhibit 7.1(c), together with a Covenant Compliance Worksheet.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or Adjusted Daily Simple SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.14 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Credit Agreement and the other Credit Documents).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Capitalization" means the sum of (a) all of the shareholders' equity or net worth of the Borrower and its Subsidiaries, as determined in accordance with GAAP plus (b) Consolidated Indebtedness minus (c) Securitization Equity.

"Consolidated Indebtedness" means, as of any date of determination, with respect to the Borrower and its Subsidiaries on a consolidated basis, the difference of (a) an amount equal to all Indebtedness of the Borrower and its Subsidiaries as of such date (other than reimbursement obligations of the Borrower and its Subsidiaries with respect to surety bonds in an aggregate amount not to exceed \$500,000) minus (b) Non-Recourse Securitization Indebtedness.

"Contingent Obligation" means, with respect to any Person, any direct or indirect liability of such Person with respect to any Indebtedness, liability or other obligation (the "primary obligation") of another Person (the "primary obligor"), whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor in respect thereof to make payment of such primary obligation or (d) otherwise to assure or hold harmless the owner of any such primary obligation against loss or failure or inability to perform in respect thereof; provided, however, that, with respect to the Borrower and its Subsidiaries, the term Contingent Obligation shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation of any Person shall be deemed to be an amount

equal to the maximum amount of such Person's liability with respect to the stated or determinable amount of the primary obligation for which such Contingent Obligation is incurred or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder).

“Covenant Compliance Worksheet” means a fully completed worksheet in the form of Schedule I to Exhibit 7.1(c).

“Covered Party” has the meaning assigned thereto in Section 11.24(a).

“Credit Agreement” has the meaning set forth in the Preamble hereof.

“Credit Documents” means this Credit Agreement, the Notes, any Notice of Borrowing, any Notice of Continuation/Conversion, and any other document, agreement or instrument entered into or executed in connection with the foregoing.

“Credit Exposure” has the meaning set forth in the definition of “Required Lenders”.

“Credit Extension” means each of the following: (a) a Borrowing and (b) a L/C Credit Extension.

“Daily Simple SOFR Adjustment” a percentage equal to 0.10% per annum.

“Daily Simple SOFR Determination Day” has the meaning specified in the definition of “Adjusted Daily Simple SOFR”.

“Debt Rating” means the long term unsecured senior non-credit enhanced debt rating of the Borrower by S&P and/or Moody's.

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

“Default Rate” means an interest rate equal to two percent (2%) plus the rate that otherwise would be applicable (or if no rate is applicable, the Base Rate plus two percent (2%) per annum).

“Defaulting Lender” means any Lender that (a) has failed to fund any portion of the Revolving Loans, Participation Interests in L/C Obligations or Participation Interests in Swing Line Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more of the conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with any of its funding obligations hereunder or has made a public statement to that effect with respect to its funding obligations hereunder (unless such writing or public statement states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable Default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has notified the Borrower, the Administrative Agent

or any other Lender in writing that it does not intend to comply with any of its funding obligations hereunder or has made a public statement to the effect that it does not intend to comply or has failed to comply with its funding obligations hereunder, or (d) has become or is insolvent or has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, or has become the subject of a Bail-In Action.

“Departing Lender” means each lender under the Existing Credit Agreement that executes and delivers to the Administrative Agent a Departing Lender Signature Page.

“Departing Lender Signature Page” means the signature page to this Credit Agreement on which it is indicated that the Departing Lender executing the same shall cease to be a party to the Existing Credit Agreement on the Restatement Date on the conditions set forth on such signature page.

“Dollars” and “\$” means dollars in lawful currency of the United States of America.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any credit institution or investment firm established in any EEA Member Country.

“Electronic Record” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Electronic Signature” has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person)) approved by the Administrative Agent, each L/C Issuer and the Borrower (such approval not to be unreasonably withheld or delayed); provided that (i) the Borrower’s consent is not required during the existence and continuation of a Default or an Event of Default, (ii) approval by the Borrower shall be deemed given if no objection is received by the assigning Lender and the Administrative Agent from the Borrower within five Business Days after notice of such proposed assignment has been delivered to the Borrower and (iii) no Ineligible Institution shall be an Eligible Assignee.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of its business and not in response to any third party action or request of any kind) or proceedings relating in any way to any

actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law (collectively, “Claims”), including, without limitation, (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to human health or the environment.

“Environmental Laws” means any and all federal, state and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, rules of common law and orders of courts or Governmental Authorities, relating to the protection of human health or occupational safety or the environment, now or hereafter in effect and in each case as amended from time to time, including, without limitation, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Substances.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute, and all rules and regulations from time to time promulgated thereunder.

“ERISA Affiliate” means any Person who together with the Borrower or any of its Subsidiaries is treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“ERISA Event” means the occurrence of any of the following which, individually or in the aggregate, has resulted or could reasonably be expected to result, within a reasonable period of time, in liability of the Borrower in an aggregate amount in excess of the Threshold Amount: (a) a Reportable Event with respect to a Single Employer Plan or a Multiemployer Plan, (b) a complete or partial withdrawal by the Borrower, any of its Subsidiaries or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or the receipt by the Borrower, any of its Subsidiaries or any ERISA Affiliate of notice from a Multiemployer Plan that it is insolvent pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA, (c) the distribution by the Borrower, any of its Subsidiaries or any ERISA Affiliate under Section 4041 or 4041A of ERISA of a notice of intent to terminate any Single Employer Plan or Multiemployer Plan or the taking of any action to terminate any Single Employer Plan or Multiemployer Plan if the plan assets are not sufficient to pay all plan liabilities, (d) the commencement of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Plan, or the receipt by the Borrower, any of its Subsidiaries or any ERISA Affiliate of a notice from any Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan, (e) the determination that any Single Employer Plan or Multiemployer Plan is considered an at-risk plan or plan in endangered or critical status within the meaning of Sections 430, 431 or 432 of the Code or Sections 303, 304 or 305 of ERISA; (f) the imposition upon the Borrower, any of its Subsidiaries or any ERISA Affiliate of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, or the imposition or threatened imposition of any Lien upon any assets of the Borrower, any of its Subsidiaries or any ERISA Affiliate as a result of any alleged failure to comply with the Code or ERISA in respect of any Single Employer Plan or Multiemployer Plan, or (g) the withdrawal of the Borrower, any of its Subsidiaries or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or a cessation of operations that is treated as such a withdrawal or the termination of a Multiple Employer Plan, where the Borrower, a Subsidiary or an ERISA Affiliate has liability under Section 4062 or 4063 of ERISA.

“Erroneous Payment” has the meaning assigned thereto in Section 10.11(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned thereto in Section 10.11(d).

“Erroneous Payment Impacted Class” has the meaning assigned thereto in Section 10.11(d).

“Erroneous Payment Return Deficiency” has the meaning assigned thereto in Section 10.11(d).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereto), as in effect from time to time.

“Event of Default” has the meaning set forth in Section 9.1.

“Exchange Act” means the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, as amended, modified, succeeded or replaced from time to time.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.20) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.13, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.13(g) and (d) any United States federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning set forth in the introductory paragraph.

“Existing Letters of Credit” means the letters of credit set forth on Schedule 1.1(b).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date hereof, (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements entered into by the United States that implement the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Credit Agreement.

“Fee Letter” means those certain letter agreements, each dated as of September 27, 2011, among (a) the Borrower, Wells Fargo Bank, National Association, Wells Fargo Securities, LLC and Union Bank,

N.A. and (b) the Borrower, Wells Fargo Bank, National Association and Wells Fargo Securities, LLC, in each case as amended, modified, supplemented or restated from time to time.

“Financial Officer” means the chief financial officer, principal accounting officer or treasurer of the Borrower.

“Fiscal Quarter” means each of the calendar quarters ending as of the last day of each March, June, September and December.

“Fiscal Year” means the calendar year ending December 31.

“Floor” means a rate of interest equal to 0.00%.

“Foreign Lender” means any Lender that is not a U.S. Person.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the applicable L/C Issuer, such Defaulting Lender’s Pro Rata Share of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s Participation Interest has been funded by such Defaulting Lender or reallocated to other Lenders or Cash Collateral or other credit support acceptable to the applicable L/C Issuer has been provided in accordance with the terms hereof and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Pro Rata Share of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s Participation Interest has been funded by such Defaulting Lender or reallocated to other Lenders, repaid by the Borrower or for which Cash Collateral or other credit support acceptable to the Swing Line Lender has been provided in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession) or that are promulgated by any Governmental Authority having appropriate jurisdiction.

“Government Acts” has the meaning set forth in Section 2.2(k).

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Granting Lender” has the meaning specified in Section 11.3(h).

“Hazardous Substances” means any substances or materials (a) that are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants or toxic substances under any Environmental Law, (b) that are defined by any Environmental Law as toxic, explosive, corrosive, ignitable, infectious, radioactive, mutagenic or otherwise hazardous, (c) the presence of which require investigation

or response under any Environmental Law, (d) that constitute a nuisance, trespass or health or safety hazard to Persons or neighboring properties, (e) that consist of underground or aboveground storage tanks, whether empty, filled or partially filled with any substance, or (f) that contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or wastes, crude oil, nuclear fuel, natural gas or synthetic gas.

“Hedging Agreements” means, collectively, interest rate protection agreements, equity index agreements, foreign currency exchange agreements, option agreements or other interest or exchange rate or commodity price hedging agreements (other than forward contracts for the delivery of power or gas written by the Borrower to its jurisdictional and wholesale customers in the ordinary course of business).

“Indebtedness” means with respect to any Person (without duplication), (a) all indebtedness and obligations of such Person for borrowed money or in respect of loans or advances of any kind, (b) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments, (c) all reimbursement obligations of such Person with respect to surety bonds, letters of credit and bankers’ acceptances (in each case, whether or not drawn or matured and in the stated amount thereof), (d) all obligations of such Person to pay the deferred purchase price of property or services, (e) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (f) all obligations of such Person as lessee under leases that are or are required to be, in accordance with GAAP, recorded as capital leases, to the extent such obligations are required to be so recorded, (g) the net termination obligations of such Person under any Hedging Agreements, calculated as of any date as if such agreement or arrangement were terminated as of such date in accordance with the applicable rules under GAAP, (h) all Contingent Obligations of such Person, (i) all obligations and liabilities of such Person incurred in connection with any transaction or series of transactions providing for the financing of assets through one or more securitizations or in connection with, or pursuant to, any synthetic lease or similar off-balance sheet financing, (j) the aggregate amount of uncollected accounts receivable of such Person subject at the time of determination to a sale of receivables (or similar transaction) to the extent such transaction is effected with recourse to such Person (whether or not such transaction would be reflected on the balance sheet of such Person in accordance with GAAP) and (k) all indebtedness referred to in clauses (a) through (j) above secured by any Lien on any property or asset owned or held by such Person regardless of whether the indebtedness secured thereby shall have been assumed by such Person or is nonrecourse to the credit of such Person.

“Indemnified Liabilities” has the meaning set forth in Section 11.5(b).

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Credit Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning set forth in Section 11.5(b).

“Ineligible Institution” means (a) a natural person, (b) a Defaulting Lender or any of its Subsidiaries, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

“Initial L/C Issuers” means Wells Fargo Bank, National Association and MUFG Union Bank, N.A. in their capacity as L/C Issuers.

“Interest Payment Date” means, (a) as to any SOFR Loan, the last day of each Interest Period applicable to such Loan, the date of any prepayment of such Loan pursuant to Section 3.3 and the Maturity Date; provided, however, that if any Interest Period for a SOFR Loan exceeds three months, the respective

dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates, (b) as to any Base Rate Loan, the third Business Day after the end of each Fiscal Quarter, the date of any prepayment of such Loans pursuant to Section 3.3 and the Maturity Date and (c) as to any SOFR Swing Line Loan, on the third Business Day after the end of each calendar month, the date of any prepayment of such Loans pursuant to Section 3.3 and the Maturity Date.

“Interest Period” means, (a) as to any SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending on the date one (1), three (3) or six (6) months thereafter, in each case as selected by the Borrower in its Notice of Revolving Borrowing or Notice of Continuation/Conversion and (b) with respect to SOFR Swing Line Loans, a period beginning on the date the Swing Line Loan is made and ending on the date specified for repayment of such SOFR Swing Line Loan, which repayment date shall not be more than 14 days after the date such SOFR Swing Line Loan is made, and in each case subject to availability; provided that:

(a) the Interest Period shall commence on the date of advance of or conversion to any SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires;

(b) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(c) any Interest Period (other than for a SOFR Swing Line Loan) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period;

(d) no Interest Period shall extend beyond the Maturity Date;

(e) there shall be no more than seven (7) Interest Periods in effect at any time; and

(f) no tenor that has been removed from this definition pursuant to Section 3.10(c)(iv) shall be available for specification in any Notice of Revolving Borrowing or Notice of Continuation/Conversion.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made.

“L/C Commitment” means, (a) with respect to Wells Fargo Bank, National Association, in its capacity as an Initial L/C Issuer, its obligation to issue Letters of Credit to the Borrower pursuant to Section 2.2 in an aggregate principal amount at any one time outstanding not to exceed \$30,000,000 and (b) with respect to MUFG Union Bank, N.A., in its capacity as an Initial L/C Issuer, its obligation to issue Letters of Credit to the Borrower pursuant to Section 2.2 in an aggregate principal amount at any one time outstanding not to exceed \$30,000,000, in each case, as such amount may be adjusted from time to time in accordance with this Credit Agreement.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof, the extension of the expiry date thereof, the renewal or increase of the amount thereof or any extension of credit resulting from a drawing thereunder that has not been reimbursed.

“L/C Fees” has the meaning set forth in Section 3.4(c).

“L/C Fronting Fee” has the meaning set forth in Section 2.2(i).

“L/C Issuer” means with respect to a particular Letter of Credit, (a) the applicable Initial L/C Issuer in its capacity as issuer of such Letter of Credit and (b) any other Lender that agrees to issue Letters of Credit hereunder, in each case, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as of any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.7. For all purposes of this Credit Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” means any of the Persons identified as a “Lender” on the signature pages hereto, any Eligible Assignee which may become a Lender by way of assignment in accordance with the terms hereof, and any other Lender which becomes a Lender pursuant to Section 2.1(f), together with their successors and permitted assigns and shall include the Swing Line Lender, as the context requires. For the avoidance of doubt, the term “Lenders” excludes any Departing Lenders.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means any letter of credit issued hereunder and shall include the Existing Letters of Credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“Letter of Credit Expiration Date” means the day that is ten days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Sublimit” means an amount equal to ONE HUNDRED TWENTY MILLION DOLLARS (\$120,000,000). The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Committed Amount.

“Lien” means any mortgage, pledge, hypothecation, assignment, security interest, lien (statutory or otherwise), preference, priority, charge or other encumbrance of any nature, whether voluntary or involuntary, including, without limitation, the interest of any vendor or lessor under any conditional sale agreement, title retention agreement, capital lease or any other lease or arrangement having substantially the same effect as any of the foregoing.

“Loan” means the collective reference to the Revolving Loans and the Swing Line Loans, and “Loan” means any of such Loans.

“Mandatory Borrowing” has the meaning set forth in Section 2.2(d).

“Margin Stock” has the meaning ascribed to such term in Regulation U.

“Material Adverse Change” means a material adverse change in the condition (financial or otherwise), operations, business, performance, properties or assets of the Borrower and its Subsidiaries, taken as a whole.

“Material Adverse Effect” means a material adverse effect upon (a) the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Borrower to perform its obligations under this Credit Agreement or any of the other Credit Documents or (c) the legality, validity or enforceability of this Credit Agreement or any of the other Credit Documents or the rights and remedies of the Administrative Agent and the Lenders hereunder and thereunder, provided, however, that a Material Adverse Effect shall not include the effect of (i) a shutdown or closure of the San Juan Generating Station or the Four Corners Power Plant, provided that the Borrower remains in compliance with Section 7.2 of this Credit Agreement or (ii) failure of the Merger Transactions to be consummated.

“Maturity Date” means October 31, 2024, or, (a) with respect to some or all of the Lenders if such date is otherwise extended pursuant to the initial extension under Section 2.5, October 31, 2025 (or, if such date is not a Business Day, the immediately preceding Business Day) and (b) with respect to some or all of the Lenders if such date is otherwise further extended pursuant to the second extension under Section 2.5, October 31, 2026 (or, if such date is not a Business Day, the immediately preceding Business Day), in each case subject to the limitations set forth in Section 2.5.

“Merger Transactions” means (i) the entering into of that certain Agreement and Plan of Merger, dated as of October 20, 2020, as amended by that certain Amendment to Merger Agreement, dated as of January 3, 2022 (together with the exhibits and disclosure schedules thereto, but without giving effect to any further amendment, waiver or consent that is materially adverse to the interests of the Lenders in their respective capacities as such without the consent of the Administrative Agent, the “Merger Agreement”), among Avangrid, NM Green Holdings, Inc. (“Merger Sub”) and PNM Resources, pursuant to which Merger Sub will be merged with and into PNM Resources, PNM Resources will be the surviving entity in the merger and PNM Resources will become a subsidiary of Avangrid, and (ii) the consummation of the transactions set forth in the Merger Agreement.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Multiemployer Plan” means any “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA to which the Borrower, any of its Subsidiaries or any ERISA Affiliate makes, is making or is accruing an obligation to make contributions or has made or been obligated to make contributions within the preceding seven (7) years.

“Multiple Employer Plan” means a Single Employer Plan to which the Borrower, any of its Subsidiaries or any ERISA Affiliate and at least one employer other than the Borrower, any of its Subsidiaries or any ERISA Affiliate are contributing sponsors.

“Non-Recourse Securitization Indebtedness” means, as of any date of determination, all Indebtedness related to State Approved Securitizations up to a maximum amount of \$750,000,000 at any one time; provided that such Indebtedness is non-recourse to the Borrower, other than with respect to Standard Securitization Undertakings.

“Nonrenewal Notice Date” has the meaning set forth in Section 2.2(b)(iii).

“Notes” means (a) the promissory notes of the Borrower in favor of each of the Lenders evidencing the Revolving Loans provided pursuant to Section 2.1, individually or collectively, as appropriate, as such promissory notes may be amended, modified, supplemented, extended, renewed or replaced from time to time and as evidenced in the form of Exhibit 2.1(e) and (b) the promissory note of the Borrower in favor of the Swing Line Lender evidencing the Swing Line Loans provided pursuant to Section 2.7, as such promissory note may be amended, modified, supplemented, extended, renewed or replaced from time to time and as evidenced in the form of Exhibit 2.7.

“Notice of Borrowing” means a Notice of Revolving Borrowing and/or a Notice of Swing Line Borrowing, as applicable.

“Notice of Revolving Borrowing” means a request by the Borrower for a Revolving Loan in the form of Exhibit 2.1(b).

“Notice of Swing Line Borrowing” means a request by the Borrower for a Swing Line Loan in the form of Exhibit 2.7(d).

“Notice of Continuation/Conversion” means a request by the Borrower to continue an existing SOFR Loan to a new Interest Period or to convert a SOFR Loan to a Base Rate Loan or a Base Rate Loan to a SOFR Loan, in the form of Exhibit 2.3.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document).

“Other Taxes” means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 11.20).

“Overnight Rate” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

“PBGC” means the Pension Benefit Guaranty Corporation and any successor thereto.

“Participant” has the meaning set forth in Section 11.3(d).

“Participation Interest” means (a) the purchase by a Lender of a participation in Letters of Credit or L/C Obligations as provided in Section 2.2, (b) the purchase by a Lender of a participation in Swing Line Loans as provided in Section 2.7 or (c) the purchase by a Lender of a participation in any Revolving Loan as provided in Section 3.8.

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended.

“Payment Recipient” has the meaning assigned thereto in Section 10.11(a).

“Periodic Term SOFR Determination Day” has the meaning assigned thereto in the definition of “Term SOFR”.

“Person” means any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise (whether or not incorporated), or any Governmental Authority.

“PNM Resources” means PNM Resources, Inc., a New Mexico corporation.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Pro Rata Share” means, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitment of such Lender at such time and the denominator of which is the amount of the Revolving Committed Amount at such time; provided that if the Commitment of each Lender to make Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 9.2 or otherwise, then the Pro Rata Share of each Lender shall be determined based on such Lender’s percentage ownership of the sum of the aggregate amount of outstanding Loans plus the aggregate amount of outstanding L/C Obligations. The initial Pro Rata Share of each Lender is set forth opposite the name of such Lender on Schedule 1.1(a) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Prohibited Transaction” means any transaction described in (a) Section 406 of ERISA that is not exempt by reason of Section 408 of ERISA or by reason of a Department of Labor prohibited transaction individual or class exemption or (b) Section 4975(c) of the Code that is not exempt by reason of Section 4975(c)(2) or 4975(d) of the Code.

“Property” means any right, title or interest in or to any property or asset of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Recipient” means (a) the Administrative Agent, (b) any Lender or (c) any L/C Issuer, as applicable.

“Register” has the meaning set forth in Section 11.3(c).

“Regulations T, U and X” means Regulations T, U and X, respectively, of the FRB, and any successor regulations.

“Relevant Governmental Body” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“Reportable Event” means (a) any “reportable event” within the meaning of Section 4043(c) of ERISA for which the notice under Section 4043(a) of ERISA has not been waived by the PBGC (including any failure to meet the minimum funding standard of, or timely make any required installment under, Section 412 of the Code or Section 302 of ERISA, regardless of the issuance of any waivers in accordance with Section 412(d) of the Code), (b) any such “reportable event” subject to advance notice to the PBGC under Section 4043(b)(3) of ERISA, (c) any application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code, and (d) a cessation of operations described in Section 4062(e) of ERISA.

“Required Lenders” means, at any time, Lenders whose aggregate Credit Exposure (as hereinafter defined) constitutes more than 50% of the Credit Exposure of all Lenders at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Lenders the aggregate principal amount of Credit Exposure of such Lender at such time. For purposes of the preceding sentence, the term “Credit Exposure” as applied to each Lender shall mean (a) at any time prior to the termination of the Commitments, the Pro Rata Share of such Lender of the Revolving Committed Amount multiplied by the Revolving Committed Amount and (b) at any time after the termination of the Commitments, the sum of (i) the principal balance of the outstanding Loans of such Lender plus (ii) such Lender’s Participation Interests in the face amount of the outstanding Letters of Credit. Notwithstanding the foregoing, the Credit Exposure held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Requirement of Law” means, with respect to any Person, the organizational documents of such Person and any Law applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject or otherwise pertaining to any or all of the transactions contemplated by this Credit Agreement and the other Credit Documents.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the president, the chief executive officer, the co-chief executive officer, the chief financial officer, any executive officer, vice president-finance, principal accounting officer or treasurer of the Borrower, and any other officer or similar official thereof responsible for the administration of the obligations of the Borrower in respect of this Credit Agreement and the other Credit Documents.

“Restatement Date” means May 20, 2022.

“Revolving Committed Amount” means FOUR HUNDRED MILLION DOLLARS (\$400,000,000) or such other amount, as it may be reduced from time to time in accordance with Section 2.1(d) or increased pursuant to Section 2.1(f).

“Revolving Loans” has the meaning set forth in Section 2.1(a).

“S&P” means Standard & Poor’s Ratings Service, a division of S&P Global Inc. and any successor thereto.

“Sanctioned Country” means, at any time, a region, a country or territory which is itself (or whose government is) the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, any target of Sanctions, including; (a) any Person on any list of targets identified or designated pursuant to any Sanctions, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“Sanctions” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future statute or executive order), the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction in which (a) the Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Extensions of Credit will be used, or (c) from which repayment of the Extensions of Credit will be derived.

“SEC Reports” ” means (i) the Annual Report on Form 10-K of the Borrower for the Fiscal Year ended December 31, 2021, and (ii) the Quarterly Report on Form 10-Q of the Borrower for the Fiscal Quarters ended March 31, 2022.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Securitization Equity” means, as of any date of determination, with respect to a Subsidiary of the Borrower formed for the purpose of entering into a State Approved Securitization, all of the equity of such Subsidiary, as determined in accordance with GAAP.

“Single Employer Plan” means any “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA) which is covered by Title IV of ERISA, but which is not a Multiemployer Plan and which the Borrower, any Subsidiary or any ERISA Affiliate has maintained, funded or administered for employees at any time within the preceding seven (7) years.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Loan” means any Revolving Loan bearing interest at a rate based on Adjusted Term SOFR as provided in Section 3.1(a)(ii).

“SOFR Rate Day” has the meaning specified in the definition of “Adjusted Daily Simple SOFR”.

“SOFR Swing Line Loan” means any Swing Line Loan that bears interest at a rate equal to Adjusted Daily Simple SOFR in effect on each day (or if such day is not a Business Day, then the immediately preceding Business Day).

“Solvent” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, Contingent Obligations and other commitments as they mature in the normal course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the assets of such Person is greater than the total amount of liabilities, including, without limitation, Contingent Obligations, of such Person and (e) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured.

“SPC” has the meaning set forth in Section 11.3(h).

“Standard Securitization Undertakings” means representations, warranties, covenants and indemnities entered into by the Borrower or a Subsidiary thereof that are reasonably customary in non-recourse securitization transactions.

“State Approved Securitization” means a securitization financing entered into by the Borrower pursuant to existing or future New Mexico statutory authority and regulatory approval by the New Mexico Public Regulation Commission (or any successor commission) (the “NMPRC”) authorizing the imposition on electric customers of a charge to permit the recovery over time of costs identified by a financing order issued by the NMPRC pursuant to statutory authority.

“Subsidiary” means, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, and (b) any partnership, association, joint venture or other entity in which such person directly or indirectly through Subsidiaries has more than a 50% equity interest at any time. Any reference to Subsidiary herein, unless otherwise identified, shall mean a Subsidiary, direct or indirect, of the Borrower. Any reference to a Subsidiary of the Borrower herein shall not include any Subsidiary that is inactive, has minimal or no assets and does not generate revenues.

“Swing Line Lender” means Wells Fargo Bank, National Association in its capacity as Swing Line lender hereunder or any successor thereto.

“Swing Line Loan” means any Swing Line Loan made by the Swing Line Lender to the Borrower pursuant to Section 2.7, and all such Swing Line Loans collectively as the context requires.

“Swing Line Sublimit” means an amount equal to FORTY MILLION DOLLARS (\$40,000,000). The Swing Line Sublimit is part of, and not in addition to, the Revolving Committed Amount.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day.

“Term SOFR Adjustment” means a percentage equal to 0.10% per annum.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Threshold Amount” means \$20,000,000.

“Total Assets” means all assets of the Borrower and its Subsidiaries as shown on its most recent quarterly consolidated balance sheet, as determined in accordance with GAAP.

“Type” means, with respect to a Revolving Loan, its character as a Base Rate Loan or a SOFR Loan.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unreimbursed Amount” has the meaning specified in Section 2.2(d)(i).

“Unused Revolving Commitment” means, for any date of determination, the amount by which (a) the aggregate Revolving Committed Amount on such date exceeds (b) the sum of the aggregate principal amount of outstanding Revolving Loans plus the aggregate principal amount of outstanding L/C Obligations on such date.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.1(b), 2.1(d), 2.3 and 3.3(a), in each case, such day is also a Business Day.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned thereto in Section 3.13(g).

“VIE” has the meaning set forth in Section 1.3(c).

“Voting Stock” means the Capital Stock of a Person that is then outstanding and normally entitled to vote in the election of directors and other securities of such Person convertible into or exercisable for such Capital Stock (whether or not such securities are then currently convertible or exercisable).

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other

person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Computation of Time Periods and Other Definitional Provisions.

For purposes of computation of periods of time hereunder, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.” References in this Credit Agreement to “Articles”, “Sections”, “Schedules” or “Exhibits” shall be to Articles, Sections, Schedules or Exhibits of or to this Credit Agreement unless otherwise specifically provided.

1.3 Accounting Terms/Calculation of Financial Covenant.

(a) Except as otherwise expressly provided herein, all accounting terms used herein or incorporated herein by reference shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Administrative Agent or the Lenders hereunder shall be prepared, in accordance with GAAP applied on a consistent basis. Notwithstanding anything to the contrary in this Credit Agreement, for purposes of calculation of the financial covenant set forth in Section 7.2, all accounting determinations and computations thereunder shall be made in accordance with GAAP as in effect as of the date of this Credit Agreement applied on a basis consistent with the application used in preparing the most recent financial statements of the Borrower referred to in Section 4.1(d). In the event that any changes in GAAP after such date are required to be applied to the Borrower and would affect the computation of the financial covenant contained in Section 7.2, such changes shall be followed only from and after the date this Credit Agreement shall have been amended to take into account any such changes.

(b) Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value”, as defined therein, (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and, except as specifically provided in the definitions of “Consolidated Capitalization” and “Consolidated Indebtedness”, such Indebtedness shall at all times be valued at the full stated principal amount thereof and (iii) in a manner such that any obligations relating to a lease that was accounted for by a Person as an operating lease before January 1, 2019 and any similar lease entered into after January 1, 2019 by such Person shall be accounted for as obligations relating to an operating lease and not as a financing lease.

(c) All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity (“VIE”) that the Borrower is required to consolidate pursuant to FASB Accounting Standards Codification Topic 810 – Consolidation – Variable Interest Entities as if such variable interest entity were a Subsidiary as defined herein; provided that the financial covenant in Section 7.2 shall be calculated without consolidation of any VIE to the extent the Borrower or its consolidated Subsidiaries have entered into power purchase agreements with such VIE to serve

retail customers as a result of the shutdown or closure of the San Juan Generating Station or the Four Corners Power Plant.

1.4 Time.

All references to time herein shall be references to Eastern Standard Time or Eastern Daylight Time, as the case may be, unless specified otherwise.

1.5 Rounding of Financial Covenant.

Any financial ratios required to be maintained by the Borrower pursuant to this Credit Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.6 References to Agreements and Requirement of Laws.

Unless otherwise expressly provided herein: (a) references to organization documents, agreements (including the Credit Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Credit Document and (b) references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law.

1.7 Letter of Credit Amounts.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.8 Rates.

The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 3.10(c), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its

reasonable discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Credit Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. In connection with the use or administration of Term SOFR or Adjusted Daily Simple SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Credit Agreement or any other Credit Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR or Adjusted Daily Simple SOFR.

1.9 Divisions.

For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 2

CREDIT FACILITY

2.1 Revolving Loans.

(a) Revolving Loan Commitment. Subject to the terms and conditions set forth herein, each Lender severally agrees to make revolving loans (each a "Revolving Loan" and collectively the "Revolving Loans") in Dollars to the Borrower, at any time and from time to time, during the period from and including the Closing Date to but not including the Maturity Date (or such earlier date if the Commitments have been terminated as provided herein); provided, however, that after giving effect to any Borrowing (i) the sum of the aggregate principal amount of outstanding Revolving Loans plus the aggregate principal amount of outstanding L/C Obligations plus the aggregate principal amount of outstanding Swing Line Loans shall not exceed the Revolving Committed Amount and (ii) with respect to each individual Lender, the sum of the aggregate principal amount of outstanding Revolving Loans of such Lender plus such Lender's Pro Rata Share of the aggregate principal amount of outstanding L/C Obligations and Swing Line Loans shall not exceed such Lender's Commitment. Subject to the terms of this Credit Agreement (including Section 3.3), the Borrower may borrow, repay and reborrow Revolving Loans.

(b) Method of Borrowing for Revolving Loans. By no later than (i) 12:00 noon on the date of the requested Borrowing of Revolving Loans that will be Base Rate Loans and (ii) 12:00 noon three U.S. Government Securities Business Days prior to the date of the requested Borrowing of Revolving Loans that will be SOFR Loans (or such shorter period as mutually agreed between the Administrative Agent and the Borrower with respect to any Borrowing on the Restatement Date), the Borrower shall submit a written Notice of Revolving Borrowing in the form of Exhibit 2.1(b) to the Administrative Agent setting forth (A) the amount requested, (B) the date of the

requested Borrowing, (C) the Type of Revolving Loan, (D) with respect to Revolving Loans that will be SOFR Loans, the Interest Period applicable thereto, and (E) certification that the Borrower has complied in all respects with Section 5. If the Borrower shall fail to specify (1) an Interest Period in the case of a SOFR Loan, then such SOFR Loan shall be deemed to have an Interest Period of one month or (2) the Type of Revolving Loan requested, then such Revolving Loan shall be deemed to be a Base Rate Loan. All Revolving Loans made on the Closing Date shall be Base Rate Loans. Thereafter, all or any portion of the Revolving Loans (other than Swing Line Loans) may be converted into SOFR Loans in accordance with the terms of Section 2.3.

(c) Funding of Revolving Loans. Upon receipt of a Notice of Revolving Borrowing, the Administrative Agent shall promptly inform the Lenders as to the terms thereof. Each such Lender shall make its Pro Rata Share of the requested Revolving Loans available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Notice of Revolving Borrowing. Upon satisfaction of the conditions set forth in Section 5, the amount of the requested Revolving Loans will then be made available to the Borrower by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower or such other means agreed to by the Administrative Agent and the Borrower.

(d) Reductions of Revolving Committed Amount. Upon at least three U.S. Government Securities Business Days' notice, the Borrower shall have the right to permanently terminate or reduce the aggregate unused amount of the Revolving Committed Amount at any time or from time to time; provided that (i) each partial reduction shall be in an aggregate amount at least equal to \$5,000,000 and in integral multiples of \$1,000,000 above such amount and (ii) no reduction shall be made which would reduce the Revolving Committed Amount to an amount less than the sum of the aggregate principal amount of outstanding Loans plus the aggregate principal amount of outstanding L/C Obligations. Any reduction in (or termination of) the Revolving Committed Amount shall be permanent and may not be reinstated.

(e) Revolving Notes. At the request of any Lender, the Revolving Loans made by such Lender shall be evidenced by a duly executed promissory note of the Borrower to such Lender in substantially the form of Exhibit 2.1(e).

(f) Increases of the Revolving Committed Amount. The Borrower shall have the right, upon at least fifteen (15) Business Days' prior written notice to the Administrative Agent, to increase the Revolving Committed Amount, in one or more increases, at any time and from time to time after the Restatement Date, subject, however, in any such case, to satisfaction of the following conditions precedent:

(i) no Default or Event of Default shall have occurred and be continuing on the date on which such increase is to become effective;

(ii) after giving effect to such increase, the Revolving Committed Amount shall not exceed \$600,000,000;

(iii) the representations and warranties set forth in Section 6 shall be true and correct in all material respects (except to the extent that any representation and warranty that is qualified by materiality, Material Adverse Effect or Material Adverse Change shall be true and correct in all respects) on and as of the date on which such increase is to become effective;

(iv) such increase shall be in a minimum amount of \$10,000,000 and in integral multiples of \$1,000,000 in excess thereof;

(v) such requested increase shall only be effective upon receipt by the Administrative Agent of (A) additional commitments in a corresponding amount of such requested increase from either existing Lenders and/or one or more other institutions that qualify as an Eligible Assignee (it being understood and agreed that no existing Lender shall be required to provide an additional commitment) and (B) documentation from each institution providing an additional commitment evidencing its commitment and its obligations under this Credit Agreement in form and substance acceptable to the Administrative Agent;

(vi) the Administrative Agent shall have received all documents (including resolutions of the board of directors of the Borrower and applicable opinions) it may reasonably request relating to the corporate or other necessary authority for and the validity of such increase in the Revolving Committed Amount, and any other matters relevant thereto, all in form and substance reasonably satisfactory to the Administrative Agent;

(vii) if any Revolving Loans are outstanding at the time of the increase in the Revolving Committed Amount, the Borrower shall, if applicable, prepay one or more existing Revolving Loans (such prepayment to be subject to Section 3.14) in an amount necessary such that after giving effect to the increase in the Revolving Committed Amount, each Lender will hold its pro rata share (based on its Pro Rata Share of the increased Revolving Committed Amount) of outstanding Revolving Loans; and

(viii) the Borrower shall pay such fees to the Administrative Agent, for the benefit of the Lenders providing such additional commitments, as determined at the time of such increase.

2.2 Letter of Credit Subfacility.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein and other terms and conditions that the applicable L/C Issuer may reasonably require, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.2, from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue standby Letters of Credit in Dollars for the account of the Borrower and to amend Letters of Credit previously issued by it, in each case in accordance with subsection (b) below and (B) the Lenders severally agree to participate in such Letters of Credit issued for the account of the Borrower; provided, however, that after giving effect to the issuance of any Letter of Credit (1) the sum of the aggregate principal amount of outstanding Revolving Loans plus the aggregate principal amount of outstanding L/C Obligations plus the aggregate principal amount of Swing Line Loans shall not exceed the Revolving Committed Amount, (2) with respect to each individual Lender, the sum of the aggregate principal amount of outstanding Revolving Loans of such Lender plus such Lender's Pro Rata Share of the aggregate principal amount of outstanding L/C Obligations and Swing Line Loans shall not exceed such Lender's Commitment, (3) the aggregate amount of L/C Obligations shall not at any time exceed the Letter of Credit Sublimit and (4) the aggregate principal amount of outstanding L/C Obligations of any Initial L/C Issuer shall not exceed such Initial L/C Issuer's L/C

Commitment. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) An L/C Issuer shall not issue or amend any Letter of Credit if:

(A) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date; provided that, subject to the agreement of the Borrower set forth below in this clause (A), an L/C Issuer may issue Letters of Credit with an expiry date of up to one year after the Letter of Credit Expiration Date (but no L/C Issuer shall have an obligation to issue such Letter of Credit). The Borrower hereby agrees that on or before 90 days prior to the Letter of Credit Expiration Date it shall Cash Collateralize any Letter of Credit existing on such date with an expiry date after the Letter of Credit Expiration Date in an amount equal to at least 110% of the face amount of such Letter of Credit; or

(B) such Letter of Credit is to be used for a purpose other than as permitted by Section 7.9, or is denominated in a currency other than Dollars.

(iii) An L/C Issuer shall be under no obligation to issue or amend any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Requirement of Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance, unless the Required Lenders have approved such expiry date;

(C) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer, or the proceeds of which would be made available to any Person (x) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country or (y) in any manner that would result in a violation of any Sanctions by any party to this Credit Agreement;

(D) such Letter of Credit is in an initial amount less than \$100,000 (unless otherwise agreed to by such L/C Issuer); or

(E) a default of any Lender's obligations to fund under Section 2.2(d) exists or any Lender is at such time a Defaulting Lender hereunder, unless the

applicable L/C Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate such L/C Issuer's risk with respect to such Lender.

(iv) An L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(v) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Section 2.2, no L/C Issuer shall be obligated to issue any Letter of Credit at a time when any other Lender is a Defaulting Lender, unless the applicable L/C Issuer has entered into arrangements (which may include the delivery of Cash Collateral) with the Borrower or such Defaulting Lender which are satisfactory to such L/C Issuer to eliminate such L/C Issuer's Fronting Exposure (after giving effect to Section 3.16(c)) with respect to any such Defaulting Lender.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to a L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. The Letter of Credit Application must be received by the applicable L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as such L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as applicable. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day), (B) the amount thereof, (C) the expiry date thereof, (D) the name and address of the beneficiary thereof, (E) the documents to be presented by such beneficiary in case of any drawing thereunder, (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder and (G) such other matters as such L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the applicable L/C Issuer (1) the Letter of Credit to be amended, (2) the proposed date of amendment thereof (which shall be a Business Day), (3) the nature of the proposed amendment and (4) such other matters as such L/C Issuer may require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the applicable L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of

Credit that has automatic renewal provisions (each, an “Auto-Renewal Letter of Credit”); provided that any such Auto-Renewal Letter of Credit must permit such L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Nonrenewal Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that such L/C Issuer shall not permit any such renewal if (A) such L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.2(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Nonrenewal Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such renewal or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 5 is not then satisfied.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Participations.

(i) On the Closing Date, each Lender shall be deemed to have purchased without recourse a risk participation from the applicable L/C Issuer in each Existing Letter of Credit and the obligations arising thereunder and any collateral relating thereto, in each case in an amount equal to its Pro Rata Share of the obligations under such Existing Letter of Credit, and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to such L/C Issuer therefor and discharge when due, its Pro Rata Share of the obligations arising under such Existing Letter of Credit.

(ii) Each Lender, upon issuance of a Letter of Credit, shall be deemed to have purchased without recourse a risk participation from the applicable L/C Issuer in such Letter of Credit and the obligations arising thereunder and any collateral relating thereto, in each case in an amount equal to its Pro Rata Share of the obligations under such Letter of Credit, and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to such L/C Issuer therefor and discharge when due, its Pro Rata Share of the obligations arising under such Letter of Credit.

(d) Reimbursement.

(i) In the event of any drawing under any Letter of Credit, the applicable L/C Issuer will promptly notify the Borrower. The Borrower shall reimburse the applicable L/C Issuer on the day of drawing under any Letter of Credit either with the proceeds of a Revolving Loan obtained hereunder or otherwise in immediately available funds. If the Borrower shall fail to reimburse the applicable L/C Issuer as provided hereinabove (the

“Unreimbursed Amount”), the unreimbursed amount of such drawing shall bear interest at a per annum rate equal to the Base Rate plus two percent (2%).

(ii) Subsequent to a drawing under any Letter of Credit, unless the Borrower shall immediately notify the applicable L/C Issuer of its intent to otherwise reimburse such L/C Issuer, the Borrower shall be deemed to have requested a Base Rate Loan in the amount of the drawing as described herein, the proceeds of which will be used to satisfy the reimbursement obligations. On any day on which the Borrower shall be deemed to have requested a Revolving Loan borrowing to reimburse a drawing under a Letter of Credit, the Administrative Agent shall give notice to the Lenders that a Revolving Loan has been deemed requested in connection with a drawing under a Letter of Credit, in which case a Revolving Loan borrowing comprised solely of Base Rate Loans (each such borrowing, a “Mandatory Borrowing”) shall be immediately made from all Lenders (without giving effect to any termination of the Commitments pursuant to Section 9.2 or otherwise) pro rata based on each Lender’s respective Pro Rata Share and the proceeds thereof shall be paid directly to the applicable L/C Issuer for application to the respective L/C Obligations. Each Lender hereby irrevocably agrees to make such Revolving Loans immediately upon any such request or deemed request on account of each such Mandatory Borrowing in the amount and in the manner specified in the preceding sentence and on the same such date notwithstanding (A) the amount of Mandatory Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (B) the failure of any conditions specified in Section 5.1 to have been satisfied, (C) the existence of a Default or an Event of Default, (D) the failure of any such request or deemed request for Revolving Loans to be made by the time otherwise required hereunder, (E) the date of such Mandatory Borrowing, or (F) any reduction in the Revolving Committed Amount or any termination of the Commitments.

(iii) In the event that any Mandatory Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to the Borrower), then each such Lender hereby agrees that it shall forthwith fund (as of the date the Mandatory Borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) its Pro Rata Share in the outstanding L/C Obligations; provided, that in the event any Lender shall fail to fund its Pro Rata Share on the day the Mandatory Borrowing would otherwise have occurred, then the amount of such Lender’s unfunded participation interest therein shall bear interest payable to the applicable L/C Issuer upon demand, at the rate equal to, if paid within two Business Days of such date, the Overnight Rate, and thereafter at a rate equal to the Base Rate. Simultaneously with the making of each such payment by a Lender to such L/C Issuer, such Lender shall, automatically and without any further action on the part of such L/C Issuer or such Lender, acquire a participation in an amount equal to such payment (excluding the portion of such payment constituting interest owing to such L/C Issuer) in the related unreimbursed drawing portion of the L/C Obligation and in the interest thereon and shall have a claim against the Borrower with respect thereto. Any payment by the Lenders pursuant to this clause (iii) shall not relieve or otherwise impair the obligations of the Borrower to reimburse the applicable L/C Issuer under a Letter of Credit.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit shall be absolute, unconditional and

irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), such L/C Issuer or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by such L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by such L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuers. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the L/C Issuers shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable, (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined by a final, non-appealable judgment by a court of competent jurisdiction or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing

such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of the L/C Issuers, shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.2(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against a L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, a L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Cash Collateral. If, as of the Letter of Credit Expiration Date, any Letter of Credit for any reason remains outstanding and partially or wholly undrawn, the Borrower shall immediately Cash Collateralize the then aggregate principal amount of all L/C Obligations (in an amount equal to such aggregate principal amount determined as of the Letter of Credit Expiration Date). The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at the Administrative Agent.

(h) Applicability of ISP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. The Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee with respect to each Letter of Credit at the rate per annum agreed to by the Borrower and the applicable L/C Issuer in writing, computed on the daily maximum amount available to be drawn under such Letter of Credit (the "L/C Fronting Fee"). The L/C Fronting Fee shall be computed on a quarterly basis in arrears and shall be due and payable on the third Business Day after the end of each Fiscal Quarter (as well as on the Letter of Credit Expiration Date) for the Fiscal Quarter (or portion thereof) then ending, beginning with the first of such dates to occur after the issuance of such Letter of Credit. In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Letter of Credit Application. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(k) Indemnification of L/C Issuers.

(i) In addition to its other obligations under this Credit Agreement, the Borrower hereby agrees to protect, indemnify, pay and hold each L/C Issuer harmless from

and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that such L/C Issuer may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit or (B) the failure of such L/C Issuer to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority (all such acts or omissions, herein called "Government Acts").

(ii) As between the Borrower and the L/C Issuers, the Borrower shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. In the absence of gross negligence or willful misconduct, no L/C Issuer shall be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of a Letter of Credit to comply fully with conditions required in order to draw upon a Letter of Credit; (D) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (G) any consequences arising from causes beyond the control of such L/C Issuer, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of a L/C Issuer's rights or powers hereunder.

(iii) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by a L/C Issuer, under or in connection with any Letter of Credit or the related certificates, if taken or omitted in good faith, shall not put such L/C Issuer under any resulting liability to the Borrower. It is the intention of the parties that this Credit Agreement shall be construed and applied to protect and indemnify the L/C Issuers against any and all risks involved in the issuance of the Letters of Credit, all of which risks are hereby assumed by the Borrower, including, without limitation, any and all risks of the acts or omissions, whether rightful or wrongful, of any present or future Government Acts. No L/C Issuer shall, in any way, be liable for any failure by such L/C Issuer or anyone else to pay any drawing under any Letter of Credit as a result of any Government Acts or any other cause beyond the control of such L/C Issuer.

(iv) Nothing in this subsection (k) is intended to limit the reimbursement obligation of the Borrower contained in this Section 2.2. The obligations of the Borrower under this subsection (k) shall survive the termination of this Credit Agreement. No act or omission of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of the applicable L/C Issuer to enforce any right, power or benefit under this Credit Agreement.

(v) Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor, whether or not such maximum face amount is in effect at such time.

2.3 Continuations and Conversions.

Subject to the terms below, the Borrower shall have the option, on any U.S. Government Securities Business Day prior to the Maturity Date, to continue existing SOFR Loans in whole or in part for a subsequent Interest Period, to convert Base Rate Loans (other than Swing Line Loans) in whole or in part into SOFR Loans or to convert SOFR Loans in whole or in part into Base Rate Loans. By no later than 12:00 noon (a) two U.S. Government Securities Business Days prior to the date of the requested conversion of a SOFR Loan to a Base Rate Loan and (b) three U.S. Government Securities Business Days prior to the date of the requested continuation of a SOFR Loan or conversion of a Base Rate Loan to a SOFR Loan, the Borrower shall provide a written Notice of Continuation/Conversion in the form of Exhibit 2.3, setting forth whether the Borrower wishes to continue or convert such Revolving Loans. Notwithstanding anything herein to the contrary, (A) except as provided in Section 3.10(b), SOFR Loans may only be continued or converted into Base Rate Loans on the last day of the Interest Period applicable thereto, (B) SOFR Loans may not be continued nor may Base Rate Loans be converted into SOFR Loans during the existence and continuation of a Default or an Event of Default and (C) any request to continue a SOFR Loan that fails to comply with the terms hereof or any failure to request a continuation of a SOFR Loan at the end of an Interest Period shall be deemed a request to convert such SOFR Loan to a Base Rate Loan on the last day of the applicable Interest Period.

2.4 Minimum Amounts.

Each request for a borrowing, conversion or continuation shall be subject to the requirements that (a) each SOFR Loan shall be in a minimum amount of \$3,000,000 and in integral multiples of \$1,000,000 in excess thereof, (b) each Base Rate Loan shall be in a minimum amount of \$1,000,000 and in integral multiples of \$100,000 in excess thereof (or the remaining amount of outstanding Revolving Loans) and (c) no more than fifteen SOFR Loans and SOFR Swing Line Loans shall be outstanding hereunder at any one time. For the purposes of this Section 2.4, separate SOFR Loans and SOFR Swing Line Loans that begin and end on the same date, as well as SOFR Loans and SOFR Swing Line Loans that begin and end on different dates, shall all be considered as separate SOFR Loans and SOFR Swing Line Loans.

2.5 Extension Option.

(a) Request for Extensions. At any time after the Restatement Date, the Borrower may by notice to the Lenders, request that the Lenders extend the then current Maturity Date for one additional year; provided that (i) not more than two such requests may be made during the term of this Credit Agreement and (ii) such extension shall not become effective before the date which is five years before the Maturity Date as so extended. Each Lender shall, by notice to the Borrower and the Administrative Agent not later than the 30th day following the date of any such request from the Borrower, advise the Borrower whether or not it agrees to extend the Maturity Date as requested. Each decision by a Lender shall be in the sole discretion of such Lender, and any Lender that has not so advised the Administrative Agent by the 30th day following the date of such request from the Borrower shall be deemed to have declined to agree to such extension. Each of the parties hereto acknowledges and agrees that no Lender shall be obligated to extend the Maturity Date pursuant to the terms of this Section 2.5. Any Lender who fails to agree to the extension request of the Borrower, as set forth herein, shall be referred to, for purposes of this Section, as a “Non-Extending Lender”.

(b) Extension. If Lenders holding Commitments representing at least 50% of the Revolving Committed Amount agree to any such request for extension of the Maturity Date (collectively, the “Approving Lenders”), then the Borrower may, subject to receipt of all approvals with respect thereto, if any, extend the Maturity Date for an additional year solely as to the

Approving Lenders with a Revolving Committed Amount equal to the aggregate Commitments of the Approving Lenders during such extension period; provided that the Maturity Date shall never extend beyond any date for which the Borrower does not have approval. If Non-Extending Lenders hold Commitments representing more than 50% of the Revolving Committed Amount, then the Borrower shall withdraw its extension request and the Maturity Date will remain unchanged. With respect to the Non-Extending Lenders, it is understood and agreed that the Maturity Date relating to the Non-Extending Lenders shall remain unchanged and the repayment of all obligations owed to them and the termination of their Commitments shall occur on the then existing Maturity Date without giving effect to such extension request.

2.6 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to its Borrower Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(b) In addition to the accounts and records referred to in subsection (a) above, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.7 Swing Line Loans.

(a) Availability. Subject to the terms and conditions of this Credit Agreement, the Swing Line Lender shall make Swing Line Loans to the Borrower from time to time from the Closing Date through, but not including, the Maturity Date; provided that after giving effect to any amount requested, (i) the sum of the aggregate principal amount of outstanding Revolving Loans plus the aggregate principal amount of outstanding L/C Obligations plus the aggregate principal amount of Swing Line Loans shall not exceed the Revolving Committed Amount, (ii) with respect to each individual Lender, the sum of the aggregate principal amount of outstanding Revolving Loans of such Lender plus such Lender's Pro Rata Share of the aggregate principal amount of outstanding L/C Obligations and Swing Line Loans shall not exceed such Lender's Commitment and (iii) the aggregate amount of Swing Line Loans shall not at any time exceed the Swing Line Sublimit. Each Swing Line Loan shall be a Base Rate Loan or a SOFR Swing Line Loan. Notwithstanding the foregoing, the Swing Line Lender shall not be under any obligation to issue a Swing Line Loan if any Lender is at that time a Defaulting Lender, unless the Swing Line Lender has entered into arrangements, including the delivery of Cash Collateral, with the Borrower or such Lender to eliminate the Swing Line Lender's actual or potential Fronting Exposure (after giving effect to Section 3.16(c)) with respect to the Defaulting Lender arising from the Swing Line Loan then proposed to be made and all other Swing Line Loans as to which the Swing Line Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(b) Refunding.

(i) Swing Line Loans shall be refunded by the Lenders on demand by the Swing Line Lender. Such refundings shall be made by the Lenders in accordance with their respective Pro Rata Shares and shall thereafter be reflected as Revolving Loans of the Lenders on the books and records of the Administrative Agent. Each Lender shall fund its respective Pro Rata Share of Revolving Loans as required to repay Swing Line Loans outstanding to the Swing Line Lender upon demand by the Swing Line Lender but in no event later than 1:00 p.m. on the next succeeding Business Day after such demand is made. No Lender's obligation to fund its respective Pro Rata Share of a Swing Line Loan shall be affected by any other Lender's failure to fund its Pro Rata Share of a Swing Line Loan, nor shall any Lender's Pro Rata Share be increased as a result of any such failure of any other Lender to fund its Pro Rata Share of a Swing Line Loan.

(ii) The Borrower shall pay to the Swing Line Lender on demand the amount of such Swing Line Loans to the extent amounts received from the Lenders are not sufficient to repay in full the outstanding Swing Line Loans requested or required to be refunded. In addition, the Borrower hereby authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swing Line Lender (up to the amount available therein) in order to immediately pay the Swing Line Lender the amount of such Swing Line Loans to the extent amounts received from the Lenders are not sufficient to repay in full the outstanding Swing Line Loans requested or required to be refunded. If any portion of any such amount paid to the Swing Line Lender shall be recovered by or on behalf of the Borrower from the Swing Line Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Lenders in accordance with their respective Pro Rata Shares (unless the amounts so recovered by or on behalf of the Borrower pertain to a Swing Line Loan extended after the occurrence and during the continuance of an Event of Default of which the Administrative Agent has received notice in the manner required pursuant to Section 11.1 and which such Event of Default has not been waived by the Required Lenders or the Lenders, as applicable).

(iii) Each Lender acknowledges and agrees that its obligation to refund Swing Line Loans in accordance with the terms of this Section is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 5. Further, each Lender agrees and acknowledges that if prior to the refunding of any outstanding Swing Line Loans pursuant to this Section, one of the events described in Section 9.1(e) shall have occurred, each Lender will, on the date the applicable Revolving Loan would have been made, purchase an undivided Participation Interest in the Swing Line Loan to be refunded in an amount equal to its Pro Rata Share of the aggregate amount of such Swing Line Loan. Each Lender will immediately transfer to the Swing Line Lender, in immediately available funds, the amount of its Participation Interest and upon receipt thereof the Swing Line Lender will deliver to such Lender a certificate evidencing such Participation Interest dated the date of receipt of such funds and for such amount. Whenever, at any time after the Swing Line Lender has received from any Lender such Lender's Participation Interest in a Swing Line Loan, the Swing Line Lender receives any payment on account thereof, the Swing Line Lender will distribute to such Lender its Participation Interest in such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's Participation Interest was outstanding and funded).

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Section 2.7, the Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when any other Lender is a Defaulting Lender, unless the Swing Line Lender has entered into arrangements (which may include the delivery of Cash Collateral) with the Borrower or such Defaulting Lender which are satisfactory to the Swing Line Lender to eliminate the Swing Line Lender's Fronting Exposure (after giving effect to Section 3.16(c)) with respect to such Defaulting Lender.

(d) Requests for Borrowing of Swing Line Loans. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of Exhibit 2.7(d) (a "Notice of Swing Line Borrowing") not later than 12:00 noon on the same Business Day as each Swing Line Loan, of its intention to borrow, specifying (i) the date of such borrowing, which shall be a Business Day, (ii) the amount of such borrowing, which shall be in an aggregate principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof and (iii) whether such Swing Line Loan will accrue interest at (a) the Adjusted Base Rate or (b) Adjusted Daily Simple SOFR plus the Applicable Percentage for SOFR Swing Line Loans. A Notice of Swing Line Borrowing received after 12:00 noon shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the Lenders of each Notice of Swing Line Borrowing.

(e) Disbursement of Swing Line Loans. Not later than 1:00 p.m. on the proposed borrowing date, the Swing Line Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, the Swing Line Loans to be made on such borrowing date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section in immediately available funds by wiring such proceeds to the deposit account of the Borrower identified in the most recent Account Designation Letter delivered by the Borrower to the Administrative Agent or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time.

(f) Repayment of Swing Line Loans and Participations.

(i) If outstanding Swing Line Loans have not been refinanced with Revolving Loans pursuant to Section 2.7(b) hereof, Swing Line Loans shall be due and payable within fourteen (14) days following the making of such Swing Line Loan.

(ii) At any time after any Lender has purchased and funded a Participation Interest in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, such Swing Line Lender will distribute to such Lender its Pro Rata Share thereof in the same funds as those received by such Swing Line Lender.

(iii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by such Swing Line Lender under any of the circumstances described in this Credit Agreement (including pursuant to any settlement entered into by such Swing Line Lender in its discretion), each Lender shall pay to such Swing Line Lender its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Overnight Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Borrower Obligations and the termination of this Credit Agreement.

(g) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans on the first Business Day following the end of each calendar month. Until each Lender funds its Revolving Loan or Participation Interest pursuant to this Section 2.7 to refinance such Lender's Pro Rata Share of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender.

(h) Payments Directly to Swing Line Lenders. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

(i) Swing Line Note. At the request of the Swing Line Lender, any Swing Line Loans made by the Swing Line Lender shall be evidenced by a duly executed promissory note of the Borrower to the Swing Line Lender in substantially the form of Exhibit 2.7.

SECTION 3

GENERAL PROVISIONS APPLICABLE TO LOANS

3.1 Interest.

(a) Interest Rate. Subject to Section 3.1(b), (i) all Base Rate Loans shall accrue interest at the Adjusted Base Rate, (ii) all SOFR Loans shall accrue interest at Adjusted Term SOFR plus the Applicable Percentage and (iii) all Swing Line Loans shall bear interest at (A) the Adjusted Base Rate or (B) Adjusted Daily Simple SOFR plus the Applicable Percentage for SOFR Swing Line Loans, as requested by the Borrower.

(b) Default Rate of Interest.

(i) After the occurrence, and during the continuation, of an Event of Default pursuant to Section 9.1(a), the principal of and, to the extent permitted by Law, interest on the Loans and any other amounts owing hereunder or under the other Credit Documents (including without limitation fees and expenses) shall bear interest, payable on demand, at the Default Rate.

(ii) After the occurrence, and during the continuation, of an Event of Default (other than an Event of Default pursuant to Section 9.1(a)), at the request of the Required Lenders, the principal of and, to the extent permitted by Law, interest on the Loans and any other amounts owing hereunder or under the other Credit Documents (including without limitation fees and expenses) shall bear interest, payable on demand, at the Default Rate.

(c) Interest Payments. Interest on Loans shall be due and payable in arrears on each Interest Payment Date.

3.2 Payments Generally.

(a) No Deductions; Place and Time of Payments. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in

immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. Each payment to the Administrative Agent on account of the principal of or interest on the Swing Line Loans or of any fee, commission or other amounts payable to the Swing Line Lender shall be made in like manner, but for the account of the Swing Line Lender. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Notwithstanding the foregoing, if there exists a Defaulting Lender, each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with Section 3.16(b).

(b) Payment Dates. Subject to the definition of "Interest Period," if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Advances by Administrative Agent. Unless the Borrower or any Lender has notified the Administrative Agent, prior to the time any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in immediately available funds at the Overnight Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the Overnight Rate from time to time in effect. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to such Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) Several Obligations. The obligations of the Lenders hereunder to make Revolving Loans and to fund or purchase Participation Interests are several and not joint. The failure of any Lender to make any Revolving Loan or to fund or purchase any Participation Interest on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan or fund or purchase its Participation Interest.

(e) Funding Offices. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

3.3 Prepayments.

(a) Voluntary Prepayments. The Borrower shall have the right to prepay the Revolving Loans or Swing Line Loans in whole or in part from time to time without premium or penalty; provided, however, that (i) all prepayments under this Section 3.3(a) shall be subject to Section 3.14, (ii) SOFR Loans may only be prepaid on three U.S. Government Securities Business Days' prior written notice to the Administrative Agent, (iii) each such partial prepayment of SOFR Loans shall be in the minimum principal amount of \$1,000,000 and integral multiples of \$1,000,000 (iv) each such partial prepayment of Base Rate Loans shall be in the minimum principal amount of \$500,000 and integral multiples of \$100,000, (v) each such partial prepayment of Swing Line Loans shall be in the minimum principal amount of \$100,000 and integral multiples of \$100,000 or, in the case of clauses (iii), (iv) and (v), if less than such minimum amounts, the entire principal amount thereof then outstanding. Amounts prepaid pursuant to this Section 3.3(a) shall be applied as the Borrower may elect based on the Lenders' Pro Rata Shares; provided, however, if the Borrower fails to specify, such prepayment shall be applied by the Administrative Agent, subject to Section 3.7, in such manner as it deems reasonably appropriate.

(b) Mandatory Prepayments. If at any time (i) the sum of the aggregate principal amount of Revolving Loans outstanding plus the aggregate principal amount of L/C Obligations outstanding plus the aggregate principal amount of Swing Line Loans outstanding exceeds the Revolving Committed Amount, (ii) the aggregate principal amount of L/C Obligations outstanding exceeds the Letter of Credit Sublimit or (iii) the aggregate principal amount of Swing Line Loans outstanding exceeds the Swing Line Sublimit, the Borrower shall immediately make a principal payment on the Loans to the Administrative Agent and/or Cash Collateralize outstanding L/C Obligations in a manner, in an amount and in Dollars as is necessary to be in compliance with Sections 2.1, 2.2 and 2.7, as applicable, and as directed by the Administrative Agent. All amounts required to be prepaid pursuant to this Section 3.3(b) shall be applied first to Swing Line Loans pro rata among all outstanding Swing Line Loans (first to Base Rate Loans and then to SOFR Swing Line Loans), second to Base Rate Loans, third to SOFR Loans in direct order of Interest Period maturities and fourth to Cash Collateralize outstanding L/C Obligations. All prepayments pursuant to this Section 3.3(b) shall be subject to Section 3.14.

3.4 Fees.

(a) Commitment Fees. In consideration of the Revolving Committed Amount being made available by the Lenders hereunder, the Borrower agrees to pay to the Administrative Agent, for the pro rata benefit of each Lender (other than the Defaulting Lenders, if any) based on its Pro Rata Share, a per annum fee equal to the daily average sum of the Applicable Percentage for Commitment Fees for each day during the period of determination multiplied by the Unused Revolving Commitment for each such day (the "Commitment Fees"). The Commitment Fees shall

commence to accrue on the Closing Date and shall be due and payable in arrears on the third Business Day after the end of each Fiscal Quarter (as well as on the Maturity Date and on any date that the Revolving Committed Amount is reduced) for the Fiscal Quarter (or portion thereof) then ending, beginning with the first of such dates to occur after the Closing Date. For purposes of clarification, Swing Line Loans shall not be considered usage of the Revolving Committed Amount for the purpose of calculating the Commitment Fees.

(b) [Reserved].

(c) L/C Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share a fee for each Letter of Credit equal to the Applicable Percentage for L/C Fees times the daily maximum amount available to be drawn under such Letter of Credit (the "L/C Fees"). The L/C Fees shall be computed on a quarterly basis in arrears and shall be due and payable on the third Business Day after the end of each Fiscal Quarter (as well as on the Letter of Credit Expiration Date) for the Fiscal Quarter (or portion thereof) then ending, beginning with the first of such dates to occur after the issuance of such Letter of Credit and continuing until each such Letter of Credit has expired.

(d) Administrative Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, an annual fee as agreed to between the Borrower and the Administrative Agent (the "Administrative Fees") in the Fee Letter.

3.5 Payment in full at Maturity.

Subject to the terms of Section 2.5, on the Maturity Date, the entire outstanding principal balance of all Loans, together with accrued but unpaid interest and all fees and other sums owing under the Credit Documents, shall be due and payable in full, unless accelerated sooner pursuant to Section 9.2; provided that if the Maturity Date is not a Business Day, then such principal, interest, fees and other sums shall be due and payable in full on the next preceding Business Day.

3.6 Computations of Interest and Fees.

(a) Calculation of Interest and Fees. Except for Base Rate Loans that are based upon the Prime Rate, in which case interest shall be computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, all computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days. Interest shall accrue from and including the first date of Borrowing (or continuation or conversion) to but excluding the last day occurring in the period for which such interest is payable. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) Usury. It is the intent of the Lenders and the Borrower to conform to and contract in strict compliance with applicable usury Law from time to time in effect. All agreements between the Lenders and the Borrower are hereby limited by the provisions of this subsection which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment or acceleration of the maturity of any Borrower Obligation), shall the interest taken, reserved, contracted for, charged, or received under this Credit Agreement, under the Notes or otherwise, exceed the maximum nonusurious amount permissible under applicable Law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to

the provisions of this subsection and such documents shall be automatically reduced to the maximum nonusurious amount permitted under applicable Law, without the necessity of execution of any amendment or new document. If any Lender shall ever receive anything of value which is characterized as interest on the Loans under applicable Law and which would, apart from this provision, be in excess of the maximum nonusurious amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Loans and not to the payment of interest, or refunded to the Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Loans. The right to demand payment of the Loans or any other Indebtedness evidenced by any of the Credit Documents does not include the right to accelerate the payment of any interest which has not otherwise accrued on the date of such demand, and the Lenders do not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lenders with respect to the Loans shall, to the extent permitted by applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Loans so that the amount of interest on account of the Loans does not exceed the maximum nonusurious amount permitted by applicable Law.

3.7 Pro Rata Treatment.

Except to the extent otherwise provided herein, each Borrowing, each payment or prepayment of principal of any Loan, each L/C Credit Extension, each payment of interest, each payment of fees (other than administrative fees paid to the Administrative Agent and fronting, documentary and processing fees paid to the L/C Issuers), each conversion or continuation of any Revolving Loans and each reduction in the Revolving Committed Amount, shall be allocated pro rata among the relevant Lenders in accordance with their Pro Rata Shares; provided that, if any Lender shall have failed to pay its Pro Rata Share of any Revolving Loan or fund or purchase its Participation Interest, then any amount to which such Lender would otherwise be entitled pursuant to this Section 3.7 shall instead be payable to the Administrative Agent until the share of such Revolving Loan or such Participation Interest not funded or purchased by such Lender has been repaid. In the event any principal, interest, fee or other amount paid to any Lender pursuant to this Credit Agreement or any other Credit Document is rescinded or must otherwise be returned by the Administrative Agent, (a) such principal, interest, fee or other amount that had been satisfied by such payment shall be revived, reinstated and continued in full force and effect as if such payment had not occurred and (b) such Lender shall, upon the request of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to the Overnight Rate if repaid within two (2) Business Days after such request and thereafter the Base Rate.

3.8 Sharing of Payments.

The Lenders agree among themselves that, except to the extent otherwise provided herein, in the event that any Lender shall obtain payment in respect of any Revolving Loan, any Swing Line Loan, any L/C Obligations or any other obligation owing to such Lender under this Credit Agreement through the exercise of a right of setoff, banker's lien or counterclaim, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable Debtor Relief Law or other similar Law or otherwise, or by any other means, in excess of its Pro Rata Share of such payment as provided for in this Credit Agreement, such Lender shall promptly pay in cash or purchase from the other Lenders a participation in such Revolving Loans, Swing Line Loans, L/C Obligations and other obligations in such amounts, and make such other adjustments from time to time, as shall be equitable to the end that all Lenders share such payment in

accordance with their Pro Rata Shares. The Lenders further agree among themselves that if payment to a Lender obtained by such Lender through the exercise of a right of setoff, banker's lien, counterclaim or other event as aforesaid shall be rescinded or must otherwise be returned, each Lender which shall have shared the benefit of such payment shall, by payment in cash or a repurchase of a participation theretofore sold, return its share of that benefit (together with its share of any accrued interest payable with respect thereto) to each Lender whose payment shall have been rescinded or otherwise returned. The Borrower agrees that (a) any Lender so purchasing such a participation may, to the fullest extent permitted by Law, exercise all rights of payment, including setoff, banker's lien or counterclaim, with respect to such participation as fully as if such Lender were a holder of such Revolving Loan, Swing Line Loan, L/C Obligations or other obligation in the amount of such participation and (b) the Borrower Obligations that have been satisfied by a payment that has been rescinded or otherwise returned shall be revived, reinstated and continued in full force and effect as if such payment had not occurred. Except as otherwise expressly provided in this Credit Agreement, if any Lender or the Administrative Agent shall fail to remit to any other Lender an amount payable by such Lender or the Administrative Agent to such other Lender pursuant to this Credit Agreement on the date when such amount is due, such payments shall be made together with interest thereon for each date from the date such amount is due until the date such amount is paid to the Administrative Agent or such other Lender at a rate per annum equal to the Overnight Rate. If under any applicable Debtor Relief Law or other similar Law, any Lender receives a secured claim in lieu of a setoff to which this Section 3.8 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 3.8 to share in the benefits of any recovery on such secured claim.

Notwithstanding the foregoing, if there exists a Defaulting Lender, all amounts received by such Defaulting Lender hereunder shall be applied in accordance with Section 3.16(b).

3.9 Capital Adequacy.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the FRB, as amended and in effect from time to time)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender or any L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer any other condition, cost or expense (other than Taxes) affecting this Credit Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, any L/C Issuer or such other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, such L/C Issuer or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of

maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, such L/C Issuer or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, such L/C Issuer or other Recipient, the Borrower shall promptly pay to any such Lender, such L/C Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such L/C Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Credit Agreement, the Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time upon written request of such Lender or such L/C Issuer the Borrower shall promptly pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender, or an L/C Issuer or such other Recipient setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such L/C Issuer's or such other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender or an L/C Issuer or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or such L/C Issuer or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such L/C Issuer's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Survival. All of the obligations of the Borrower under this Section 3.9 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

(f) Similarly Situated Customers. Each Lender, L/C Issuer or other Recipient shall make any determination to request compensation under this Section 3.9 in good faith (and not on an arbitrary or capricious basis) and consistent with similarly situated customers of the applicable Lender, L/C Issuer or Recipient after consideration of such factors as such Lender, L/C Issuer or Recipient then reasonably determines to be relevant.

3.10 Changed Circumstances.

(a) Circumstances Affecting Benchmark Availability. Subject to clause (c) below, in connection with any request for a SOFR Loan or SOFR Swing Line Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for ascertaining Adjusted Term SOFR or Adjusted Daily Simple SOFR for the applicable Interest Period with respect to a proposed SOFR Loan or SOFR Swing Line Loan on or prior to the first day of such Interest Period or (ii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR or Adjusted Daily Simple SOFR does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Revolving Loans during such Interest Period or SOFR Swing Line Loans, then, in each case, the Administrative Agent shall promptly give notice thereof to the Borrower. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make SOFR Loans or SOFR Swing Line Loans, and any right of the Borrower to convert any Revolving Loan to or continue any Revolving Loan as a SOFR Loan, shall be suspended (to the extent of the affected SOFR Loans or SOFR Swing Line Loans or the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans or SOFR Swing Line Loans (to the extent of the affected SOFR Loans, SOFR Swing Line Loans or the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in the amount specified therein (or, in the case of any requested SOFR Swing Line Loan, a Swing Line Loan bearing interest at the Adjusted Base Rate) and (B) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.14.

(b) Laws Affecting SOFR Availability. If, after the date hereof, the introduction of, or any change in, any applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any SOFR Loan or SOFR Swing Line Loan, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR or Term SOFR, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, (i) any obligation of the Lenders to make SOFR Loans or SOFR Swing Line Loans, and any right of the Borrower to convert any Revolving Loan to a SOFR Loan or continue any Revolving Loan as a SOFR Loan, shall be suspended and (ii) if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate", in each case until each such affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans and SOFR Swing Line Loans to Base Rate Loans (in each case, if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without

reference to clause (c) of the definition of “Base Rate”), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans or SOFR Swing Line Loans, to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans or SOFR Swing Line Loans to such day. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.14.

(c) Benchmark Replacement Setting.

(i) Benchmark Replacement.

(A) Notwithstanding anything to the contrary herein or in any other Credit Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Credit Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 3.10(c)(i)(A) will occur prior to the applicable Benchmark Transition Start Date.

(B) No Hedging Agreement shall be deemed to be a “Credit Document” for purposes of this Section 3.10(c).

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Credit Agreement or any other Credit Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.10(c)(iv). Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.10(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Credit Agreement or any other Credit Document, except, in each case, as expressly required pursuant to this Section 3.10(c).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans or SOFR Swing Line Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans (or, in the case of any requested SOFR Swing Line Loan, a Swing Line Loan bearing interest at the Adjusted Base Rate) and (B) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

3.11 [Reserved].

3.12 [Reserved].

3.13 Taxes.

(a) Defined Terms. For purposes of this Section 3.13, the term “Lender” includes any L/C Issuer and the term “Applicable Law” includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Credit Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent

shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.3(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 3.13, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will

permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.13(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed copies of IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit 3.13-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.13-2 or Exhibit 3.13-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.13-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

For purposes of determining withholding Taxes imposed under FATCA, from and after the Restatement Date, the Borrower and the Administrative Agent shall treat (and the Lenders and the L/C Issuers hereby authorize the Administrative Agent to treat) each of the Loans as not qualifying as "grandfathered obligations" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.13 (including by the payment of additional amounts pursuant

to this Section 3.13), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 3.13 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

3.14 Compensation Indemnity

The Borrower hereby indemnifies each of the Lenders against any loss, cost or expense (including any loss, cost or expense arising from the liquidation or reemployment of funds or from any fees payable) which may arise, be attributable to or result due to or as a consequence of (a) any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a SOFR Loan or SOFR Swing Line Loan, (b) any failure of the Borrower to borrow or continue a SOFR Loan or SOFR Swing Line Loan or convert to a SOFR Loan on a date specified therefor in a Notice of Borrowing or Notice of Continuation/Conversion, (c) any failure of the Borrower to prepay any SOFR Loan or SOFR Swing Line Loan on a date specified therefor in any notice of prepayment under Section 3.3, (d) any payment, prepayment or conversion of any SOFR Loan or SOFR Swing Line Loan on a date other than the last day of the Interest Period therefor (including as a result of an Event of Default) or (e) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 11.20. A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error. All of the obligations of the Borrower under this Section 3.14 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

3.15 Determination and Survival of Provisions

All determinations by the Administrative Agent or a Lender of amounts owing under Sections 3.9 through 3.14, inclusive, shall, absent manifest error, be conclusive and binding on the parties hereto and all amounts owing thereunder shall be due and payable within ten Business Days of demand therefor. In determining such amount, the Administrative Agent or such Lender may use any reasonable averaging and

attribution methods. Section 3.9 through 3.14, inclusive, shall survive the termination of this Credit Agreement and the payment of all Borrower Obligations.

3.16 Defaulting Lenders.

Notwithstanding anything to the contrary contained in this Credit Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Credit Agreement shall be restricted as set forth in Section 11.6.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, or otherwise, and including any amounts made available to the Administrative Agent for the account of such Defaulting Lender pursuant to Section 11.2), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the applicable L/C Issuer and/or the Swing Line Lender hereunder; third, if so determined by the Administrative Agent or requested by the applicable L/C Issuer and/or the Swing Line Lender, to be held as Cash Collateral for future funding obligations of such Defaulting Lender of any Participation Interest in any Swing Line Loan or Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Credit Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Credit Agreement; sixth, to the payment of any amounts owing to the Administrative Agent, the Lenders, the applicable L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by the Administrative Agent, any Lender, any L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (i) such payment is a payment of the principal amount of any Revolving Loans or funded Participation Interests in Swing Line Loans or Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share and (ii) such Revolving Loans or funded Participation Interests in Swing Line Loans or Letters of Credit were made at a time when the conditions set forth in Section 5 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of, and funded Participation Interests in Swing Line Loans or Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or funded Participation Interests in Swing Line Loans or Letters of Credit owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 3.16(b) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Reallocation of Pro Rata Shares to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund Participation Interests in Letters of Credit or Swing Line Loans pursuant to Section 2.2(c) and Section 2.7(b), the “Pro Rata Share” of each Non-Defaulting Lender shall be computed without giving effect to the Commitment of such Defaulting Lender; provided that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund reallocated Participation Interests in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (A) the Commitment of that Non-Defaulting Lender minus (B) the aggregate outstanding principal amount of such Lender’s Revolving Loans and Participation Interests (without regard to any such reallocation) in Letters of Credit and Swing Line Loans. Subject to Section 11.22, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender’s increased exposure following such reallocation.

(d) Cash Collateral for Letters of Credit. Promptly on demand by any L/C Issuer or the Administrative Agent from time to time, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure with respect to such L/C Issuer (after giving effect to Section 3.16(c)) on terms reasonably satisfactory to the Administrative Agent and such L/C Issuer (and such Cash Collateral shall be in Dollars). Any such Cash Collateral shall be deposited in a separate account with the Administrative Agent, subject to the exclusive dominion and control of the Administrative Agent, as collateral (solely for the benefit of such L/C Issuer) for the payment and performance of each Defaulting Lender’s Pro Rata Share of outstanding L/C Obligations. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable L/C Issuer immediately for each Defaulting Lender’s Pro Rata Share of any drawing under any Letter of Credit which has not otherwise been reimbursed by the Borrower or such Defaulting Lender.

(e) Prepayment of Swing Line Loans. Promptly on demand by the Swing Line Lender or the Administrative Agent from time to time, the Borrower shall prepay Swing Line Loans in an amount of all Fronting Exposure with respect to the Swing Line Lender (after giving effect to Section 3.16(c)).

(f) Certain Fees. For any period during which such Lender is a Defaulting Lender, such Defaulting Lender (i) shall not be entitled to receive any Commitment Fee pursuant to Section 3.4 (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender) and (ii) shall not be entitled to receive any L/C Fees pursuant to Section 3.4(c) otherwise payable to the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral or other credit support arrangements satisfactory to the applicable L/C Issuer pursuant to Section 3.16(d), but instead, the Borrower shall pay to the Non-Defaulting Lenders the amount of such L/C Fees in accordance with the upward adjustments in their respective Pro Rata Shares allocable to such Letter of Credit pursuant to Section 3.16(c), with the balance of such fee, if any, payable to the applicable L/C Issuer for its own account.

(g) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swing Line Lender and the L/C Issuers agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the date specified in such notice and subject to any conditions set

forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded Participation Interests in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Shares (without giving effect to Section 3.16(c)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

3.17 Mitigation Obligations.

If any Lender requests compensation under Section 3.9, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any L/C Issuer or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.13 or if any Lender gives a notice pursuant to Section 3.10(b), then, at the request of the Borrower, such Lender or such L/C Issuer shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.9 or Section 3.13, as the case may be, in the future or eliminate the need for the notice pursuant to Section 3.10(b), as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or any L/C Issuer in connection with any such designation or assignment.

SECTION 4

CONDITIONS PRECEDENT TO CLOSING

4.1 Closing Conditions.

The obligation of the Lenders to enter into this Credit Agreement and make Loans is subject to satisfaction of the following conditions:

(a) Executed Credit Documents. Receipt by the Administrative Agent of duly executed copies of: (i) this Credit Agreement, (ii) the Notes, and (iii) all other Credit Documents, each in form and substance reasonably acceptable to the Lenders in their sole discretion.

(b) Authority Documents. Receipt by the Administrative Agent of the following:

(i) Organizational Documents. Copies of the articles of incorporation of the Borrower certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its formation and copies of the bylaws of the Borrower certified by a secretary or assistant secretary (or the equivalent) of the Borrower to be true and correct as of the Restatement Date.

(ii) Resolutions. Copies of resolutions of the board of directors of the Borrower approving and adopting this Credit Agreement and the other Credit Documents

to which it is a party, the transactions contemplated herein and therein and authorizing execution and delivery hereof and thereof, certified by a secretary or assistant secretary (or the equivalent) of the Borrower to be true and correct and in full force and effect as of the Restatement Date.

(iii) Good Standing. Copies of a certificate of good standing, existence or its equivalent with respect to the Borrower certified as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its formation.

(iv) Incumbency. An incumbency certificate of the Borrower certified by a secretary or assistant secretary (or the equivalent) of the Borrower to be true and correct as of the Restatement Date.

(c) Opinions of Counsel. Receipt by the Administrative Agent of opinions of counsel from counsel to the Borrower (which may include in-house counsel with respect to matters of New Mexico law), in form and substance acceptable to the Administrative Agent, addressed to the Administrative Agent and the Lenders and dated as of the Restatement Date.

(d) Financial Statements. Receipt by the Administrative Agent of a copy of (i) the annual consolidated financial statements (including balance sheets, income statements and cash flow statements) of the Borrower and its Subsidiaries for Fiscal Years 2020 and 2021, audited by independent public accountants of recognized national standing and (ii) such other financial information regarding the Borrower as the Administrative Agent may reasonably request. The Administrative Agent acknowledges that the items described in clause (i) above have been posted on the Borrower's website address listed on Schedule 11.1 and are therefore deemed to have been received by the Administrative Agent.

(e) [Reserved].

(f) Material Adverse Effect. Since December 31, 2021, except as disclosed in the SEC Reports, (i) there shall have been no development or event relating to or affecting the Borrower or any of its Subsidiaries that has had or could be reasonably expected to have a Material Adverse Effect and (ii) no Material Adverse Change shall have occurred in the facts and information regarding the Borrower and its Subsidiaries as disclosed in the SEC Reports.

(g) [Reserved].

(h) Litigation. There shall not exist any material order, decree, judgment, ruling or injunction or any material pending or threatened action, suit, investigation or proceeding against the Borrower or any of its Subsidiaries except as disclosed in the SEC Reports.

(i) Consents. All necessary governmental, shareholder and third party consents and approvals, if any, with respect to this Credit Agreement and the Credit Documents and the transactions contemplated herein and therein have been received and no condition or Requirement of Law exists which would reasonably be likely to restrain, prevent or impose any material adverse conditions on the transactions contemplated hereby and by the other Credit Documents.

(j) Officer's Certificates. Receipt by the Administrative Agent of a certificate or certificates executed by a Financial Officer or an Authorized Officer of the Borrower as of the Restatement Date stating that (i) the Borrower and each of its Subsidiaries are in compliance in all material respects with all existing material financial obligations and all material Requirements of

Law, (ii) there does not exist any material order, decree, judgment, ruling or injunction or any material pending or threatened action, suit, investigation or proceeding against the Borrower or any of its Subsidiaries, except as disclosed in the SEC Reports, (iii) the financial statements and information delivered to the Administrative Agent on or before the Restatement Date were prepared in good faith and in accordance with GAAP and (iv) immediately after giving effect to this Credit Agreement, the other Credit Documents and all the transactions contemplated herein or therein to occur on such date, (A) the Borrower is Solvent, (B) no Default or Event of Default exists, (C) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects, (D) since December 31, 2021, except as disclosed in the SEC Reports, there has been no development or event relating to or affecting the Borrower or any of its Subsidiaries that has had or could be reasonably expected to have a Material Adverse Effect and no Material Adverse Change has occurred in the facts and information regarding the Borrower and its Subsidiaries as disclosed in the SEC Reports and (E) the Borrower is in compliance with the financial covenant set forth in Section 7.2, as of March 31, 2022, as demonstrated in the Covenant Compliance Worksheet attached to such certificate.

(k) Account Designation Letter. Receipt by the Administrative Agent of an executed counterpart of the Account Designation Letter.

(l) PATRIOT Act. The Borrower shall have provided to the Administrative Agent and the Lenders the documentation and other information reasonably requested by the Administrative Agent in order to comply with requirements of the PATRIOT Act.

(m) Beneficial Ownership Certification. The Borrower shall have delivered to the Administrative Agent, and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to it, in each case at least five (5) Business Days prior to the Restatement Date.

(n) Fees and Expenses. Unless waived by the Person entitled thereto, payment by the Borrower of all fees and expenses owed by them to the Administrative Agent, the Arrangers and the Lenders on or before the Restatement Date, including, without limitation, as set forth in the Fee Letter.

(o) Other. Receipt by the Lenders of such other documents, instruments, agreements or information as reasonably requested by any Lender.

SECTION 5

CONDITIONS TO ALL EXTENSIONS OF CREDIT

5.1 Funding Requirements.

In addition to the conditions precedent stated elsewhere herein, the Lenders shall not be obligated to make Loans and the L/C Issuers shall not be obligated to issue or amend Letters of Credit unless:

(a) Notice. The Borrower shall have delivered (i) in the case of any new Revolving Loan, a Notice of Revolving Borrowing, duly executed and completed, by the time specified in Section 2.1, (ii) in the case of any Letter of Credit, a Letter of Credit Application, duly executed and completed, by the time specified in Section 2.2 and (iii) in the case of any new Swing Line Loan, a Notice of Swing Line Borrowing, duly executed and completed, by the time specified in Section 2.7.

(b) Representations and Warranties. The representations and warranties made by the Borrower in any Credit Document (other than the representation and warranties in Section 6.7(a) (but only with respect to clause (a) of the definition of Material Adverse Effect) and Section 6.9 of the Credit Agreement) are true and correct in all material respects (except to the extent that any representation and warranty that is qualified by materiality, Material Adverse Effect or Material Adverse Change shall be true and correct in all respects) at and as if made as of such date except to the extent they expressly and exclusively relate to an earlier date.

(c) No Default. No Default or Event of Default shall exist and be continuing either prior to or after giving effect to such Credit Extension.

(d) Availability. Immediately after giving effect to such Credit Extension (and the application of the proceeds thereof), (i) the aggregate principal amount of outstanding Revolving Loans plus the aggregate principal amount of outstanding L/C Obligations plus the aggregate principal amount of outstanding Swing Line Loans shall not exceed the Revolving Committed Amount, (ii) with respect to each individual Lender, the sum of outstanding principal amount of Revolving Loans of such Lender plus such Lender's Pro Rata Share of the outstanding principal amount of L/C Obligations and Swing Line Loans shall not exceed such Lender's Pro Rata Share of the Revolving Committed Amount, (iii) the aggregate amount of L/C Obligations shall not exceed the Letter of Credit Sublimit and (iv) the aggregate amount of Swing Line Loans shall not exceed the Swing Line Sublimit.

The delivery of each Notice of Borrowing or a Letter of Credit Application shall constitute a representation and warranty by the Borrower of the correctness of the matters specified in subsections (b), (c) and (d) above.

SECTION 6

REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Credit Agreement and to induce the Lenders to extend the credit contemplated hereby, the Borrower represents and warrants to the Administrative Agent and the Lenders as follows:

6.1 Organization and Good Standing.

Each of the Borrower and its Subsidiaries (a) is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) is duly qualified and in good standing as a foreign entity authorized to do business in every other jurisdiction where the failure to so qualify would have a Material Adverse Effect and (c) has the requisite power and authority to own its properties and to carry on its business as now conducted and as proposed to be conducted. Neither the Borrower nor any of its Subsidiaries is an Affected Financial Institution or a Covered Party.

6.2 Due Authorization.

The Borrower (a) has the requisite corporate power and authority to execute, deliver and perform this Credit Agreement and the other Credit Documents and to incur the obligations herein and therein provided for and (b) has been authorized by all necessary action to execute, deliver and perform this Credit Agreement and the other Credit Documents.

6.3 No Conflicts.

Neither the execution and delivery of this Credit Agreement and the other Credit Documents, nor the consummation of the transactions contemplated herein and therein, nor performance of and compliance with the terms and provisions hereof and thereof by the Borrower will (a) violate or conflict with any provision of its organizational documents, (b) violate, contravene or conflict with any law, regulation (including without limitation, Regulation U and Regulation X), order, writ, judgment, injunction, decree or permit applicable to it, (c) violate, contravene or conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound, the violation of which would have or would be reasonably expected to have a Material Adverse Effect or (d) result in or require the creation of any Lien upon or with respect to its properties.

6.4 Consents.

(a) With respect to the initial Revolving Committed Amount and Maturity Date, other than the filing of annual short-term financing plans with the New Mexico Public Regulation Commission in the normal course of business, and such Commission's actions thereon, no consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Credit Agreement or any of the other Credit Documents that has not been obtained or completed.

(b) If the Revolving Committed Amount has been increased pursuant to Section 2.1(f) or the Maturity Date has been extended pursuant to Section 2.5, other than the approval of the New Mexico Public Regulation Commission (which will have been obtained before such increase of the Revolving Committed Amount or extension of the Maturity Date may become effective), no consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Credit Agreement or any of the other Credit Documents that has not been obtained or completed.

6.5 Enforceable Obligations.

This Credit Agreement and the other Credit Documents have been duly executed and delivered and constitute the legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except as may be limited by Debtor Relief Laws or similar laws affecting creditors' rights generally or by general equitable principles.

6.6 Financial Condition.

The financial statements delivered to the Lenders pursuant to Section 4.1(d) and pursuant to Sections 7.1(a) and 7.1(b): (i) have been prepared in accordance with GAAP except that the quarterly financial statements are subject to year-end adjustments and have fewer footnotes than annual statements and (ii) present fairly the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries as of such date and for such periods. No opinion provided with respect to the Borrower's financial statements pursuant to Section 7.1 (or as to any prior annual financial statements) has been withdrawn.

6.7 No Material Change.

(a) Since December 31, 2021, except as disclosed in the SEC Reports, there has been no development or event relating to or affecting the Borrower or any of its Subsidiaries which would have or would reasonably be expected to have a Material Adverse Effect.

(b) Since December 31, 2021, except as disclosed in the SEC Reports, there has been no sale, transfer or other disposition by the Borrower or any of its Subsidiaries of any material part of its business or property, and no purchase or other acquisition by the Borrower or any of its Subsidiaries of any business or property (including the Capital Stock of any other Person) material in relation to the financial condition of the Borrower or any of its Subsidiaries, in each case which is not (i) reflected in the most recent financial statements delivered to the Lenders pursuant to Section 4.1(d) or 7.1 or in the notes thereto or (ii) otherwise permitted by the terms of this Credit Agreement and communicated to the Lenders.

6.8 No Default.

Neither the Borrower nor any of its Subsidiaries is in default in any respect under any contract, lease, loan agreement, indenture, mortgage, security agreement or other agreement or obligation to which it is a party or by which any of its properties is bound which default would have or would reasonably be expected to have a Material Adverse Effect. No Default or Event of Default presently exists and is continuing.

6.9 Litigation.

Except as disclosed in the SEC Reports, there are no actions, suits, investigations or legal, equitable, arbitration or administrative proceedings, pending or, to the knowledge of the Borrower, threatened against the Borrower or any of its Subsidiaries which would have or would reasonably be expected to have a Material Adverse Effect.

6.10 Taxes.

Each of the Borrower and its Subsidiaries has filed, or caused to be filed, all material tax returns (federal, state, local and foreign) required to be filed and paid all amounts of taxes shown to be due (including interest and penalties) and has paid all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owed by it, except for such taxes (i) the amount of which, individually or in the aggregate, is not material, or (ii) which are not yet delinquent or that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP.

6.11 Compliance with Law.

Each of the Borrower and its Subsidiaries is in compliance with all laws, rules, regulations, orders and decrees applicable to it or to its properties, unless such failure to comply would not have or would not reasonably be expected to have a Material Adverse Effect.

6.12 ERISA.

(a) Except as would not result or reasonably be expected to result in a Material Adverse Effect:

(i) Each Single Employer Plan has been maintained, operated, and funded in compliance with its own terms and in material compliance with the provisions of ERISA, the Code, and any other applicable federal or state laws, regulations and published interpretations thereunder, except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired. Each Single Employer Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified, and each trust related to such plan has been determined to be exempt under Section 501(a) of the Code except for such plans that have not yet received determination letters but for which the remedial amendment period for submitting a determination letter has not yet expired. No liability has been incurred by the Borrower or any ERISA Affiliate which remains unsatisfied for any taxes or penalties assessed with respect to any Single Employer Plan or any Multiemployer Plan except for a liability that could not reasonably be expected to have a Material Adverse Effect;

(ii) No ERISA Event has occurred or is reasonably expected to occur;

(iii) No prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary responsibility has occurred with respect to a Single Employer Plan which has subjected or would be reasonably likely to subject the Borrower or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Code, or under any agreement or other instrument pursuant to which the Borrower or any ERISA Affiliate has agreed or is required to indemnify any person against any such liability.

(iv) No proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit and/or investigation is existing or, to the best of the knowledge of the Borrower after due inquiry, threatened concerning or involving (i) any employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by the Borrower or any ERISA Affiliate (a "Welfare Plan"), (ii) any Single Employer Plan or (iii) any Multiemployer Plan.

(v) Each Welfare Plan to which Sections 601-609 of ERISA and Section 4980B of the Code apply has been administered in compliance in all material respects with such sections.

(b) The Borrower represents and warrants as of the Restatement Date that the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

6.13 Use of Proceeds; Margin Stock.

The proceeds of the Credit Extensions hereunder will be used solely for the purposes specified in Section 7.9. None of such proceeds will be used (a)(i) for the purpose of purchasing or carrying any Margin Stock or (ii) for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry Margin Stock, or (iii) for any other purpose that might constitute this transaction a "purpose credit" within the meaning of Regulation U or (b) for the acquisition of another Person unless the board of directors (or other comparable governing body) or stockholders, as appropriate, of such Person has approved such acquisition.

6.14 Government Regulation.

The Borrower is not an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended, or controlled by such a company.

6.15 Solvency.

The Borrower is and, after the consummation of the transactions contemplated by this Credit Agreement, will be Solvent.

6.16 Disclosure.

Neither this Credit Agreement nor any financial statements delivered to the Administrative Agent or the Lenders nor any other document, certificate or statement furnished to the Administrative Agent or the Lenders by or on behalf of the Borrower in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein, taken as a whole, not misleading. As of the Restatement Date, all of the information included in the Beneficial Ownership Certification is true and correct.

6.17 Environmental Matters.

Except as would not result or reasonably be expected to result in a Material Adverse Effect: (a) each of the properties of the Borrower and its Subsidiaries (the “Properties”) and all operations at the Properties are in substantial compliance with all applicable Environmental Laws, (b) there is no undocumented or unreported violation of any Environmental Law with respect to the Properties or the businesses operated by the Borrower and its Subsidiaries (the “Businesses”) that the Borrower is aware of, and (c) there are no conditions relating to the Businesses or Properties that have given rise to or would reasonably be expected to give rise to a liability under any applicable Environmental Laws or to any Environmental Claim.

6.18 [Reserved].

6.19 [Reserved].

6.20 Anti-Corruption Laws and Sanctions.

The Borrower has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Borrower, any Subsidiary and their respective directors, officers and employees with the Anti-Corruption Laws and applicable Sanctions. The Borrower, any Subsidiary and to the knowledge of the Borrower or such Subsidiary their respective officers, directors and employees, are in compliance with the Anti-Corruption Laws and applicable Sanctions in all material respects. None of (i) the Borrower, any Subsidiary or, to the knowledge of the Borrower or such Subsidiary, any of their respective directors, officers, employees or Affiliates, or (ii) to the knowledge of the Borrower, any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facilities established by this Credit Agreement, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) is under administrative, civil or criminal investigation for an alleged violation of, or received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Anti-Corruption Laws or Sanctions by a governmental authority that enforces Sanctions or any Anti-Corruption Laws, or (D) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons. No Borrowing, use of proceeds or, to the knowledge of the Borrower, other transactions by the Borrower

or any Subsidiary contemplated by this Credit Agreement will violate any Anti-Corruption Law in any material respect or applicable Sanctions.

SECTION 7

AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that, until the termination of the Commitments, the termination or expiration of all Letters of Credit and the payment in full of all Borrower Obligations:

7.1 Information Covenants.

The Borrower will furnish, or cause to be furnished, to the Lenders:

(a) Annual Financial Statements. As soon as available, and in any event within 120 days after the close of each Fiscal Year of the Borrower (commencing with the Fiscal Year ending December 31, 2022), a consolidated balance sheet and income statement of the Borrower and its Subsidiaries, as of the end of such Fiscal Year, together with the related consolidated statements of income and of cash flows for such Fiscal Year, setting forth in comparative form figures for the preceding Fiscal Year, all such financial information described above to be in reasonable form and detail and, in each case, audited by independent certified public accountants of recognized national standing reasonably acceptable to the Required Lenders and whose opinion shall be furnished to the Lenders, and shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur) and shall not be limited as to the scope of the audit or qualified in any respect. To the extent that any VIEs have been consolidated with the Borrower in the preparation of the financial statements furnished pursuant to this Section 7.1(a) (as contemplated in Section 1.3(c)), the Borrower shall deliver to the Administrative Agent with such financial statements a reconciliation of such financial statements that excludes the impact of such consolidation.

(b) Quarterly Financial Statements. As soon as available, and in any event within 60 days after the close of each Fiscal Quarter of the Borrower (other than the fourth Fiscal Quarter) (commencing with the Fiscal Quarter ending June 30, 2022), a consolidated balance sheet and income statement of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter, together with the related consolidated statement of income for such Fiscal Quarter and a year to date statement of cash flows, in each case setting forth in comparative form figures for the corresponding period of the preceding Fiscal Year, all such financial information described above to be in reasonable form and detail and reasonably acceptable to the Required Lenders, and, in each case, accompanied by a certificate of a Financial Officer of the Borrower to the effect that such quarterly financial statements fairly present in all material respects the financial condition of such Person and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and except that the quarterly financial statements have fewer footnotes than annual statements. To the extent that any VIEs have been consolidated with the Borrower in the preparation of the financial statements furnished pursuant to this Section 7.1(b) (as contemplated in Section 1.3(c)), the Borrower shall deliver to the Administrative Agent with such financial statements a reconciliation of such financial statements that excludes the impact of such consolidation.

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(a) and 7.1(b) above, a certificate of a Financial Officer substantially in the form of Exhibit 7.1(c): (i) setting forth calculations demonstrating compliance by the Borrower with the

financial covenant set forth in Section 7.2 as of the end of such fiscal period and (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto.

(d) Reports. Notice of the filing by the Borrower of any Form 10-Q, Form 10-K or Form 8-K with the SEC promptly upon the filing thereof and copies of all financial statements, proxy statements, notices and reports as the Borrower shall send to its shareholders concurrently with the mailing of any such statements, notices or reports to its shareholders.

(e) Notices. Upon the Borrower obtaining knowledge thereof, the Borrower will give written notice to the Administrative Agent within ten days of (i) the occurrence of a Default or Event of Default, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto and (ii) the occurrence of any of the following with respect to the Borrower or any of its Subsidiaries (A) the pendency or commencement of any litigation, arbitration or governmental proceeding against the Borrower or any of its Subsidiaries which, if adversely determined, would have or would reasonably be expected to have a Material Adverse Effect, (B) one or more judgments, orders, or decrees shall be entered against the Borrower or any of its Subsidiaries involving a liability of \$20,000,000 or more, in the aggregate or (C) the institution of any proceedings against the Borrower or any of its Subsidiaries with respect to, or the receipt of notice by such Person of potential liability or responsibility for violation or alleged violation of, any federal, state or local law, rule or regulation (including, without limitation, any Environmental Law), the violation of which would have or would reasonably be expected to have a Material Adverse Effect.

(f) ERISA. Upon the Borrower or any ERISA Affiliate obtaining knowledge thereof, the Borrower will give written notice to the Administrative Agent promptly (and in any event within ten days) of any of the following which would result in or reasonably would be expected to result in a Material Adverse Effect: (i) any unfavorable determination letter from the IRS regarding the qualification of a Single Employer Plan under Section 401(a) of the Code (along with a copy thereof), (ii) all notices received by the Borrower or any ERISA Affiliate of the PBGC's intent to terminate any Single Employer Plan or to have a trustee appointed to administer any Single Employer Plan, (iii) with respect to any Multiemployer Plan, the receipt of notice as prescribed in ERISA or otherwise of any withdrawal liability assessed against the Borrower or any of its ERISA Affiliates, or of a determination that any Multiemployer Plan is insolvent (within the meaning of Title IV of ERISA); or (iv) the Borrower obtaining knowledge or reason to know that the Borrower or any ERISA Affiliate has filed or intends to file a notice of intent to terminate any Single Employer Plan under a distress termination within the meaning of Section 4041(c) of ERISA. Promptly upon request, the Borrower shall furnish the Lenders with such additional information concerning any Single Employer Plan as may be reasonably requested, including, but not limited to, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(g) Debt Ratings. Prompt notice of any change in its Debt Ratings.

(h) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Borrower as the Lenders may reasonably request.

Documents required to be delivered pursuant to Section 7.1(a), 7.1(b) or 7.1(d) (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Officer's Certificate required by Section 7.1(c) to the Administrative Agent. Except for such Officer's Certificate, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

7.2 Financial Covenant.

The ratio of (a) Consolidated Indebtedness to (b) Consolidated Capitalization shall be less than or equal to 0.65 to 1.0 as of the last day of any Fiscal Quarter.

7.3 Preservation of Existence and Franchises.

(a) The Borrower will do (and will cause each of its Subsidiaries to do) all things necessary to preserve and keep in full force and effect its existence and material rights, franchises and authority.

(b) The Borrower will maintain (and will cause each of its Subsidiaries to maintain) its properties in good condition and not waste or otherwise permit such properties to deteriorate, reasonable wear and tear excepted; provided that this Section 7.3(b) shall not prevent the Borrower or any Subsidiary from discontinuing the operation or the maintenance of any of the properties if such discontinuance is desirable in the conduct of its business and the Borrower has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

7.4 Books and Records.

The Borrower will keep (and will cause each of its Subsidiaries to keep) complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

7.5 Compliance with Law.

(a) The Borrower will comply (and will cause each of its Subsidiaries to comply) with all laws (including, without limitation, all Environmental Laws and ERISA laws), rules, regulations and orders, and all applicable restrictions imposed by all Governmental Authorities, applicable to

it and its properties, if the failure to comply would have or would reasonably be expected to have a Material Adverse Effect.

(b) Without limiting clause (a) above, the Borrower will, and will cause each of its Subsidiaries to, ensure that no person who owns a controlling interest in or otherwise controls the Borrower or any Subsidiary is or shall be a Sanctioned Person.

(c) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers and employees with the Anti-Corruption Laws and applicable Sanctions.

(d) The Borrower shall, and shall cause each Subsidiary to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with the PATRIOT Act and applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Beneficial Ownership Regulation.

7.6 Payment of Taxes and Other Indebtedness.

The Borrower will (and will cause each of its Subsidiaries to) pay, settle or discharge (a) all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent, (b) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien upon any of its properties, and (c) all of its other Indebtedness as it shall become due (to the extent such repayment is not otherwise prohibited by this Credit Agreement); provided, however, that the Borrower and its Subsidiaries shall not be required to pay any such tax, assessment, charge, levy, claim or Indebtedness which is being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been established in accordance with GAAP, unless the failure to make any such payment (i) would give rise to an immediate right to foreclose or collect on a Lien securing such amounts or (ii) would have or would be reasonably expected to have a Material Adverse Effect.

7.7 Insurance.

The Borrower will (and will cause each of its Subsidiaries to) at all times maintain in full force and effect insurance (including worker’s compensation insurance and general liability insurance) in such amounts, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice.

7.8 Performance of Obligations.

The Borrower will perform (and will cause each of its Subsidiaries to perform) in all material respects all of its obligations under the terms of all material agreements, indentures, mortgages, security agreements or other debt instruments to which it is a party or by which it is bound.

7.9 Use of Proceeds.

The proceeds of the Credit Extensions may be used solely (a) to repay amounts under the Existing Credit Agreement, (b) to pay fees and expenses required by the Credit Documents, (c) for letters of credit, and (d) for general corporate purposes of the Borrower (including, but not limited to, working capital, refinancing of Indebtedness and capital expenditures). The Borrower will not request any Borrowing, and the Borrower shall not use, and shall use commercially-reasonable efforts to ensure that any Subsidiary and

its or their respective directors, officers and employees shall not use, the proceeds of any Borrowing directly or, to the knowledge of the Borrower, indirectly (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person in violation of applicable Sanctions, or in any Sanctioned Country in violation of applicable Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

7.10 Audits/Inspections.

Upon reasonable notice and during normal business hours, and subject to the Borrower's applicable safety protocols, the Borrower will permit representatives appointed by the Administrative Agent or the Lenders, including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect the Borrower's property, including its books and records, its accounts receivable and inventory, the Borrower's facilities and its other business assets, and to make photocopies or photographs thereof and to write down and record any information such representative obtains and shall permit the Administrative Agent or such Lender or its representatives to investigate and verify the accuracy of information provided to it and to discuss all such matters with the officers, employees and representatives of the Borrower; provided, that an officer or authorized agent of the Borrower shall be present during any such discussions between the officers, employees or representatives of the Borrower and the representatives of the Administrative Agent or any Lender.

SECTION 8

NEGATIVE COVENANTS

Unless otherwise approved in writing by the Required Lenders, the Borrower covenants and agrees that, until the termination of the Commitments, the termination or expiration of all Letters of Credit and the payment in full of all Borrower Obligations:

8.1 Nature of Business.

The Borrower will not materially alter the character of its business from that conducted as of the Restatement Date.

8.2 Consolidation and Merger.

The Borrower will not (a) enter into any transaction of merger or (b) consolidate, liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); provided that, so long as no Default or Event of Default shall exist or be caused thereby, a Person may be merged or consolidated with or into the Borrower so long as the Borrower shall be the continuing or surviving Person.

8.3 Sale or Lease of Assets.

The Borrower will not (nor will it permit its Subsidiaries to) sell, lease, transfer or otherwise dispose of, any of its assets (including, without limitation, all or substantially all of its assets, whether in one transaction or a series of related transactions) except (a) sales or transfers of accounts receivable and related rights to payment in connection with a State Approved Securitization and other sales and transfers of accounts receivable and related rights to payment so long as such other sales and transfers are non-recourse to the Borrower (other than with respect to Standard Securitization Undertakings) and are otherwise on commercially reasonable terms; (b) sales of assets (excluding those permitted in clause (a) hereof) for fair

value, if the aggregate value of all such transactions in any calendar year, does not exceed 25% of the book value of Total Assets, as calculated as of the end of the most recent Fiscal Quarter; and (c) the sale, lease, transfer or other disposition, at less than fair value, of any other assets, provided that the aggregate book value of such assets shall not exceed \$20,000,000 in any calendar year.

8.4 Affiliate Transactions.

The Borrower will not enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any Affiliate other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an Affiliate.

8.5 Liens.

The Borrower will not (nor will it permit its Subsidiaries to) contract, create, incur, assume or permit to exist any Lien with respect to any of its property or assets of any kind (whether real or personal, tangible or intangible), whether now owned or hereafter acquired, securing any Indebtedness other than the following: (a) Liens securing Borrower Obligations, including Liens on cash or deposits granted in favor of the Swing Line Lender or a L/C Issuer to Cash Collateralize any Defaulting Lender's participation in Letters of Credit or Swing Line Loans, (b) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (c) Liens in respect of property imposed by law arising in the ordinary course of business such as materialmen's, mechanics', warehousemen's, carrier's, landlords' and other nonconsensual statutory Liens which are not yet due and payable, which have been in existence less than 90 days or which are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof), (d) pledges or deposits made in the ordinary course of business to secure payment of worker's compensation insurance, unemployment insurance, pensions or social security programs, (e) Liens arising from good faith deposits in connection with or to secure performance of tenders, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (other than obligations in respect of the payment of borrowed money), (f) Liens arising from good faith deposits in connection with or to secure performance of statutory obligations and surety and appeal bonds, (g) easements, rights-of-way, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances not, in any material respect, impairing the use of the encumbered property for its intended purposes, (h) judgment Liens that would not constitute an Event of Default, (i) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights as to deposit accounts or other funds maintained with a creditor depository institution, (j) any Lien created or arising over any property which is acquired, constructed or created by the Borrower or its Subsidiaries, but only if (i) such Lien secures only principal amounts (not exceeding the cost of such acquisition, construction or creation) raised for the purposes of such acquisition, construction or creation, together with any costs, expenses, interest and fees incurred in relation thereto or a guarantee given in respect thereof, (ii) such Lien is created or arises on or before 180 days after the completion of such acquisition, construction or creation, (iii) such Lien is confined solely to the property so acquired, constructed or created and any improvements thereto and (iv) the aggregate principal amount of all Indebtedness secured by such Liens shall not exceed \$50,000,000 at any one time outstanding, (k) any Lien on Margin Stock, (l) the assignment of, or Liens on, accounts receivable and related rights to payment in connection with (i) a State Approved Securitization, (ii) any other accounts receivable securitization so long as such other securitization is non-recourse to the Borrower (other than with respect to Standard Securitization Undertakings) and is otherwise on commercially reasonable terms, and the filing of related financing statements under the Uniform Commercial Code of the applicable jurisdictions, (m) the

assignment of, or Liens on, demand, energy or wheeling revenues, or on capacity reservation or option fees, payable to the Borrower with respect to any wholesale electric service or transmission agreements, the assignment of, or Liens on, revenues from energy services contracts, and the assignment of, or Liens on, capacity reservation or option fees payable to the Borrower with respect to asset sales permitted herein, (n) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Liens referred to in the foregoing clauses (a) through (m), for amounts not exceeding the principal amount of the Indebtedness secured by the Lien so extended, renewed or replaced, provided that such extension, renewal or replacement Lien is limited to all or a part of the same property or assets that were covered by the Lien extended, renewed or replaced (plus improvements on such property or assets), (o) Liens on Property that is subject to a lease that is classified as an operating lease as of the Closing Date but which is subsequently converted to a capital lease, (p) Liens securing obligations under Hedging Agreements entered into in the ordinary course of business and not for speculative purposes, (q) Liens granted by bankruptcy remote special purpose Subsidiaries to secure stranded cost securitization bonds in connection with the San Juan Generation Station, and (r) Liens on Property, in addition to those otherwise permitted by clauses (a) through (q) above, securing, directly or indirectly, Indebtedness or obligations arising pursuant to other agreements entered into in the ordinary course of business which do not exceed, in the aggregate at any one time outstanding, \$50,000,000.

8.6 Accounting Changes.

The Borrower will not (nor will it permit any of its Subsidiaries to) make or permit, any change in accounting policies or reporting practices, except as required by GAAP, or as permitted by GAAP, if the amounts involved are not material.

SECTION 9

EVENTS OF DEFAULT

9.1 Events of Default.

An Event of Default shall exist upon the occurrence of any of the following specified events (each an "Event of Default"):

(a) Payment. The Borrower shall: (i) default in the payment when due of any principal of any of the Loans or L/C Obligations; or (ii) default, and such default shall continue for three or more Business Days, in the payment when due of any interest on the Loans or L/C Obligations or of any fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith or therewith.

(b) Representations. Any representation, warranty or statement made or deemed to be made by the Borrower herein, in any of the other Credit Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was deemed to have been made.

(c) Covenants. The Borrower shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 7.1(e)(i), 7.2, 7.3(a) (solely with respect to the existence of the Borrower), 7.9, 7.10 or 8.1 through 8.6 inclusive; or

(ii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b) or (c)(i) of this Section 9.1) contained in this Credit Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 days after the earlier of an Authorized Officer of the Borrower becoming aware of such default or notice thereof given by the Administrative Agent.

(d) Credit Documents. Any Credit Document shall fail to be in force and effect or the Borrower shall so assert or any Credit Document shall fail to give the Administrative Agent or the Lenders the rights, powers, liens and privileges purported to be created thereby.

(e) Bankruptcy, etc. The occurrence of any of the following with respect to the Borrower or any of its Subsidiaries (i) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower or any of its Subsidiaries in an involuntary case under any applicable Debtor Relief Law now or hereafter in effect, or appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or any of its Subsidiaries or for any substantial part of their property or ordering the winding up or liquidation of its affairs; or (ii) an involuntary case under any applicable Debtor Relief Law now or hereafter in effect is commenced against the Borrower or any of its Subsidiaries and such petition remains unstayed and in effect for a period of 60 consecutive days; or (iii) the Borrower or any of its Subsidiaries shall commence a voluntary case under any applicable Debtor Relief Law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or any substantial part of its property or make any general assignment for the benefit of creditors; or (iv) the Borrower or any of its Subsidiaries admit in writing its inability to pay its debts generally as they become due or any action shall be taken by any Person in furtherance of any of the aforesaid purposes.

(f) Defaults under Other Agreements.

(i) The Borrower or any of its Subsidiaries shall default in the due performance or observance (beyond the applicable grace period with respect thereto) of any material obligation or condition of any contract or lease to which it is a party, if such default would have or would reasonably be expected to have a Material Adverse Effect.

(ii) With respect to any Indebtedness of the Borrower or any of its Subsidiaries (other than Indebtedness outstanding under this Credit Agreement) in excess of \$40,000,000 in the aggregate (A) the Borrower or such Subsidiary shall (x) default in any payment (beyond the applicable grace period with respect thereto, if any) with respect to such Indebtedness, or (y) default (after giving effect to any applicable grace period) in the observance or performance of any covenant or agreement relating to such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default or other event or condition is to cause or permit the holder or the holders of such Indebtedness (or any trustee or agent on behalf of such holders) to cause (determined without regard to whether any notice or lapse of time is required) such Indebtedness to become due prior to its stated maturity; or (B) such Indebtedness shall be declared due and payable, or required to be prepaid other than by a regularly scheduled required prepayment prior to the stated maturity thereof; or (C) such Indebtedness shall mature and remain unpaid.

(g) Judgments. Any judgment, order or decree involving a liability of \$40,000,000 or more, or one or more judgments, orders, or decrees involving a liability of \$80,000,000 or more, in the aggregate, shall be entered against the Borrower or any of its Subsidiaries and such judgments, orders or decrees shall continue unsatisfied, undischarged and unstayed for a period ending on the first to occur of (i) the last day on which such judgment, order or decree becomes final and unappealable and, where applicable, with the status of a judicial lien or (ii) 60 days; provided that if such judgment, order or decree provides for periodic payments over time then the Borrower or such Subsidiary shall have a grace period of 30 days with respect to each such periodic payment.

(h) ERISA. The occurrence of any of the following events or conditions (i) an ERISA Event or (ii) the Borrower or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Single Employer Plan or Sections 412 or 430 of the Code, the Borrower or any ERISA Affiliate is required to pay as contributions thereto and which are in excess of the Threshold Amount.

(i) Change of Control. There shall occur a Change of Control.

9.2 Acceleration; Remedies

Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent may or, upon the request and direction of the Required Lenders, shall take the following actions without prejudice to the rights of the Administrative Agent or any Lender to enforce its claims against the Borrower, except as otherwise specifically provided for herein:

(a) Termination of Commitments. Declare the Commitments and the obligation of the L/C Issuers to make L/C Credit Extensions terminated whereupon the Commitments and the obligation of the L/C Issuers to make L/C Credit Extensions shall be immediately terminated.

(b) Acceleration of Loans. Declare the unpaid principal of and any accrued interest in respect of all Loans, all L/C Obligations and any and all other Borrower Obligations of any and every kind owing by the Borrower to the Administrative Agent or the Lenders under the Credit Documents to be due, whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

(c) Cash Collateral. Direct the Borrower to Cash Collateralize (and the Borrower agrees that upon receipt of such notice, or upon the occurrence of an Event of Default under Section 9.1(e), it will immediately Cash Collateralize) L/C Obligations in respect of subsequent drawings under all then outstanding Letters of Credit in an amount equal to the then outstanding principal amount of L/C Obligations.

(d) Enforcement of Rights. To the extent permitted by Law enforce any and all rights and interests created and existing under applicable Law and under the Credit Documents, including, without limitation, all rights of set-off.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(e) shall occur, then the Commitments and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate and all Loans, all L/C Obligations, all accrued interest in respect thereof, all accrued and unpaid fees and other Borrower Obligations owing to the Administrative Agent and the Lenders hereunder shall immediately become due and payable without the giving of any notice or other action by the Administrative Agent or the Lenders, which notice or other action is expressly waived by the Borrower.

Notwithstanding the fact that enforcement powers reside primarily with the Administrative Agent, each Lender has, to the extent permitted by Law, a separate right of payment and shall be considered a separate "creditor" holding a separate "claim" within the meaning of Section 101(5) of the Bankruptcy Code or any other insolvency statute.

9.3 Allocation of Payments After Event of Default.

Notwithstanding any other provisions of this Credit Agreement, after the occurrence and during the continuation of an Event of Default, all amounts collected or received by the Administrative Agent or any Lender on account of amounts outstanding under any of the Credit Documents shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including the reasonable fees and expenses of legal counsel) of the Administrative Agent, the L/C Issuers or any of the Lenders in connection with enforcing the rights of the Administrative Agent, the L/C Issuers and the Lenders under the Credit Documents, ratably among them in proportion to the amounts described in this clause "FIRST" payable to them;

SECOND, to payment of any fees owed to the Administrative Agent, the Swing Line Lender, the L/C Issuers or any Lender, ratably among them in proportion to the amounts described in this clause "SECOND" payable to them;

THIRD, to the payment of all accrued interest payable to the Lenders, the Swing Line Lender and the L/C Issuers hereunder, ratably among them in proportion to the amounts described in this clause "THIRD" payable to them;

FOURTH, to the payment of the outstanding principal amount of the Revolving Loans, the Swing Line Loans and L/C Obligations, ratably among them in proportion to the amounts described in this clause "FOURTH" payable to them;

FIFTH, to the Administrative Agent, for the account of the L/C Issuers, to Cash Collateralize that portion of the L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

SIXTH, to all other Borrower Obligations which shall have become due and payable under the Credit Documents and not repaid pursuant to clauses "FIRST" through "FIFTH" above, ratably among the holders of such Borrower Obligations in proportion to the amounts described in this clause "SIXTH" payable to them; and

SEVENTH, the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus.

Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause "FIFTH" above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Borrower Obligations, if any, in the order set forth above.

SECTION 10

AGENCY PROVISIONS

10.1 Appointment and Authority.

Each of the Lenders and each L/C Issuer hereby irrevocably appoints Wells Fargo Bank, National Association to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

10.2 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.3 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable Law, including, for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, its Subsidiaries or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.6 and 9.2) or (b) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or a L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Credit Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Credit Agreement, any other Credit Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Section 4 or Section 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or (vi) the utilization of any L/C Issuer's L/C Commitment (it being understood and agreed that each L/C Issuer shall monitor compliance with its own L/C Commitment without any further action of the Administrative Agent).

10.4 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or a L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance, extension, renewal or increase of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Agent-Related Persons of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in

connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Credit Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and Section 11.5 shall continue in effect for the benefit of such retiring or removed

Administrative Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by, or removal of, Wells Fargo Bank, National Association as Administrative Agent pursuant to this Section shall also constitute its resignation as an L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, if in its sole discretion it elects to, and Swing Line Lender, (ii) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (iii) the successor L/C Issuer, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

10.7 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Agent-Related Persons and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Credit Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Agent-Related Persons and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Credit Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

10.8 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers or agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Credit Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or a L/C Issuer hereunder.

10.9 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Borrower Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts

due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.2(i) and (k), 3.4 and 11.5 allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuers to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.4 and 11.5.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuers any plan of reorganization, arrangement, adjustment or composition affecting the Borrower Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

10.10 ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Commitments or this Credit Agreement;

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Credit Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement satisfies the requirements of sub-sections (b) through (g) of Part

I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent, any Arranger and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Credit Agreement, any Credit Document or any documents related hereto or thereto).

10.11 Erroneous Payments.

(a) Each Lender, each L/C Issuer and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or L/C Issuer (Affiliate thereof) or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender or L/C Issuer (each such recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 10.11(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "Erroneous Payment"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the Overnight Rate.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an “Erroneous Payment Return Deficiency”), then at the sole discretion of the Administrative Agent and upon the Administrative Agent’s written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the “Erroneous Payment Impacted Class”) to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent’s applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 11.3 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 10.11 or under the indemnification provisions of this Credit Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Credit Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Borrower Obligations, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making a payment on the Borrower Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited

as payment or satisfaction of any of the Borrower Obligations, the Borrower Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making a payment on the Borrower Obligations.

(f) Each party's obligations under this Section 10.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Borrower Obligations (or any portion thereof) under any Credit Document.

(g) Nothing in this Section 10.11 will constitute a waiver or release of any claim of the Administrative Agent hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

SECTION 11

MISCELLANEOUS

11.1 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or a L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.1; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Section 2 if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to

procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Borrower Materials/The Platform. The Borrower hereby acknowledges that (i) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, Intralinks, SyndTrak or a substantially similar electronic transmission system (the "Platform"). THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and the L/C Issuers may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the L/C Issuers. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including

telephonic Notices of Borrowing) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuers, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.2 Right of Set-Off.

In addition to any rights now or hereafter granted under applicable Law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default and the commencement of remedies described in Section 9.2, each Lender, each L/C Issuer and the Swing Line Lender is authorized at any time and from time to time, without presentment, demand, protest or other notice of any kind (all of which rights being hereby expressly waived), to set-off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by such Lender, such L/C Issuer or the Swing Line Lender (including, without limitation, branches, agencies or Affiliates of such Lender, such L/C Issuer or the Swing Line Lender wherever located) to or for the credit or the account of the Borrower against obligations and liabilities of the Borrower to the Lenders hereunder, under the Notes, the other Credit Documents or otherwise, irrespective of whether the Administrative Agent, the Lenders, the L/C Issuers or the Swing Line Lender shall have made any demand hereunder and although such obligations, liabilities or claims, or any of them, may be contingent or unmatured, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of such Lender subsequent thereto. The Borrower hereby agrees that any Person purchasing a participation in the Revolving Loans and Commitments hereunder pursuant to Sections 3.8 or 11.3(d) may exercise all rights of set-off with respect to its participation interest as fully as if such Person were a Lender hereunder.

11.3 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (h) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Agent-Related Persons of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement

(including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); provided that

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified below in the aggregate or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed, and the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received written notice thereof);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Credit Agreement with respect to the Loans or the Commitment assigned;

(iii) no consent shall be required for any assignment to an Eligible Assignee except to the extent required by paragraph (b)(i) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that the Borrower shall be deemed to have given its consent five (5) Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Borrower prior to such fifth (5th) Business Day;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consents of the L/C Issuers and the Swing Line Lender (such consents not to be unreasonably withheld or delayed) shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 for each assignment (provided, that only one such fee will be payable in connection with simultaneous assignments to two or more Approved Funds by a Lender), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Ineligible Institutions. No such assignment shall be made to any Ineligible Institution.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuers, the Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Credit Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.9, 3.13, 3.14, and 11.5(b) with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this subsection shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Credit Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and the L/C Issuers at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change

to the Credit Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, any L/C Issuer or the Swing Line Lender sell participations to any Person (other than an Ineligible Institution), or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Credit Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Credit Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.6 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.9, 3.13, and 3.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 3.7 as though it were a Lender, provided such Participant agrees to be subject to Section 3.8 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.9, 3.13, or 3.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.13 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.13(g) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include Electronic Signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an “SPC”) the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Credit Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Credit Agreement (including its obligations under Section 3.9 and 3.14), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Credit Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Credit Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Credit Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (A) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee in the amount of \$2,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (B) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guarantee or credit or liquidity enhancement to such SPC.

Notwithstanding any notice or consent requirement herein to the contrary, all the parties hereto hereby consent to any assignment by MUFG Union Bank, N.A. of its Commitments and Loans and L/C Issuer role to its affiliate MUFG Bank, Ltd., which will otherwise be documented in accordance with the terms hereof.

11.4 No Waiver; Remedies Cumulative.

No failure or delay on the part of the Administrative Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower and the Administrative Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Administrative Agent or any Lender would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent or the Lenders to any other or further action in any circumstances without notice or demand.

11.5 Attorney Costs, Expenses, Taxes and Indemnification by Borrower.

(a) The Borrower agrees (i) to pay or reimburse the Administrative Agent and the Arrangers for all costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Credit Agreement and the other Credit Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all reasonable fees and expenses of legal counsel, and (ii) to pay or reimburse the Administrative Agent and each Lender for all costs and expenses incurred in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Credit Agreement or the other Credit Documents (including all such costs and expenses incurred during any “workout” or restructuring in respect of the Borrower Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law), including all reasonable fees and expenses of legal counsel. The foregoing costs and expenses shall include all search, filing, recording, and appraisal charges and fees and taxes related thereto, and other out-of-pocket expenses incurred by the Administrative Agent and the Arrangers and the cost of independent public accountants and other outside experts retained by the Administrative Agent, the Arrangers or any Lender. Other than costs and expenses payable in connection with the closing of the transactions contemplated by this Credit Agreement pursuant to this Section 11.5(a) (which shall be payable on the Restatement Date unless otherwise agreed by the Administrative Agent and the Arrangers), all amounts due under this Section 11.5 shall be payable within ten Business Days after demand therefor. The agreements in this Section shall survive the termination of the Commitments and repayment of all other Borrower Obligations.

(b) Whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the “Indemnitees”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including the reasonable fees and expenses of legal counsel) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Credit Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by a L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand

do not strictly comply with the terms of such Letter of Credit), or (iii) any actual or alleged presence or release of Hazardous Substances on or from any property currently or formerly owned or operated by the Borrower, any Subsidiary of the Borrower, or any Environmental Claim related in any way to the Borrower or any Subsidiary of the Borrower, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding), whether brought by a third party or by the Borrower or any Subsidiary, and regardless of whether any Indemnitee is a party thereto or (v) any penalty or fine assessed by OFAC against, and all reasonable costs and expenses (including counsel fees and disbursements) incurred in connection with defense thereof, by the Administrative Agent or any Lender as a result of conduct of the Borrower that violates a sanction enforced by OFAC (all the foregoing, collectively, the “Indemnified Liabilities”); in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through any Platform in connection with this Credit Agreement, nor shall any Indemnitee have any liability for any special, punitive, indirect or consequential damages relating to this Credit Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date).

(c) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), a L/C Issuer, the Swing Line Lender or any Agent-Related Person of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer, the Swing Line Lender or such Agent-Related Person, as the case may be, such Lender’s Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such L/C Issuer or the Swing Line Lender in its capacity as such, or against any Agent-Related Person of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 3.2(d).

All amounts due under this Section 11.5 shall be payable within ten Business Days after demand therefor. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Borrower Obligations.

11.6 Amendments, Etc.

Except as set forth below or as specifically provided in any Credit Document (including Section 3.10(c)), no amendment or waiver of any provision of this Credit Agreement or any other Credit Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Section 4.1 without the written consent of each Lender;
- (b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.2) without the written consent of such Lender;
- (c) postpone any date fixed by this Credit Agreement or any other Credit Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of the Revolving Committed Amount hereunder or under any other Credit Document without the written consent of each Lender directly affected thereby;
- (d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (v) of the second proviso to this Section 11.6) any fees or other amounts payable hereunder or under any other Credit Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation to pay interest or L/C Fees at the Default Rate;
- (e) change Section 3.8 or Section 9.3 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;
- (f) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender; or
- (g) release the Borrower from its obligations, or consent to the assignment or transfer by the Borrower of any of its rights and obligations under (or in respect of) the Credit Documents without the written consent of each Lender;

and, provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of a L/C Issuer under this Credit Agreement or any other agreement relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Credit Agreement or any other Credit Document; (iii) Section 11.3(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; (iv) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Credit Agreement and (v) a Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

11.7 Counterparts; Electronic Execution.

- (a) Counterparts. This Credit Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed signature page of this Credit

Agreement by facsimile transmission or other secure electronic format (.pdf) shall be effective as delivery of a manually executed counterpart hereof.

(b) Electronic Execution. The words “execute,” “execution,” “signed,” “signature,” “delivery” and words of like import in or related to this Credit Agreement, any other Credit Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Credit Agreement or any other Credit Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept such Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Borrower, electronic images of this Credit Agreement or any other Credit Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (B) waives any argument, defense or right to contest the validity or enforceability of the Credit Documents based solely on the lack of paper original copies of any Credit Documents, including with respect to any signature pages thereto.

11.8 Headings.

The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

11.9 Survival of Indemnification and Representations and Warranties.

(a) Survival of Indemnification. All indemnities set forth herein shall survive the execution and delivery of this Credit Agreement, the making of any Credit Extension and the repayment of the Loans and other Borrower Obligations and the termination of the Commitments hereunder.

(b) Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Borrower Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.10 Governing Law; Venue; Service.

(a) THIS CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICTS OF LAW RULES). Any legal action or proceeding with respect to this Credit Agreement or any other Credit Document may be brought in the courts of the State of New York or of the United States for the Southern District of New York and appellate courts thereof, and, by execution and delivery of this Credit Agreement, the Borrower hereby irrevocably accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of such courts.

(b) The Borrower irrevocably consents to the service of process in any action or proceeding with respect to this Credit Agreement or any other Credit Document by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address for notices pursuant to Section 11.1, such service to become effective ten days after such mailing. Nothing herein shall affect the right of a Lender to serve process in any other manner permitted by Law.

11.11 Waiver of Jury Trial; Waiver of Consequential Damages.

EACH OF THE PARTIES TO THIS CREDIT AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT, ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. Each of the parties to this Credit Agreement agrees not to assert any claim against any other party hereto, Administrative Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to any of the transactions contemplated herein and in the other Credit Documents; provided that nothing contained in this Section 11.11 shall limit the Borrower's indemnification and reimbursement obligations set forth in Section 11.5.

11.12 Severability.

If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

11.13 Further Assurances.

The Borrower agrees, upon the request of the Administrative Agent, to promptly take such actions, as reasonably requested, as is necessary to carry out the intent of this Credit Agreement and the other Credit Documents.

11.14 Confidentiality.

Each of the Administrative Agent, the Lenders and each L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by, or required to be disclosed to, any rating agency or regulatory authority purporting to have jurisdiction over it or an Affiliate (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Credit Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Credit Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facilities provided for herein, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN THE IMMEDIATELY PRECEDING PARAGRAPH FURNISHED TO IT PURSUANT TO THIS CREDIT AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS CREDIT AGREEMENT WILL BE SYNDICATE-LEVEL

INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

11.15 Entirety.

This Credit Agreement together with the other Credit Documents and the Fee Letter represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

11.16 Binding Effect; Continuing Agreement.

(a) This Credit Agreement shall become effective at such time when all of the conditions set forth in Section 4.1 have been satisfied or waived by the Lenders and it shall have been executed by the Borrower and the Administrative Agent, and the Administrative Agent shall have received copies hereof (telexed or otherwise) which, when taken together, bear the signatures of each Lender, and thereafter this Credit Agreement shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and their respective successors and assigns.

(b) This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Loans, interest, fees and other Borrower Obligations have been paid in full and all Letters of Credit and Commitments have been terminated. Upon termination, the Borrower shall have no further obligations (other than the indemnification provisions and other provisions that by their terms survive) under the Credit Documents; provided that should any payment, in whole or in part, of the Borrower Obligations be rescinded or otherwise required to be restored or returned by the Administrative Agent or any Lender, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, then the Credit Documents shall automatically be reinstated and all amounts required to be restored or returned and all costs and expenses incurred by the Administrative Agent or any Lender in connection therewith shall be deemed included as part of the Borrower Obligations.

11.17 Regulatory Statement.

Pursuant to the terms of an order issued by the New Mexico Public Regulation Commission, the Borrower is required to include the following separateness covenants in any debt instrument:

(a) The Borrower and its corporate parent, PNM Resources, Inc. ("Parent") are being operated as separate corporate and legal entities. In agreeing to make loans to Parent, Parent's lenders are relying solely on the creditworthiness of Parent based on the assets owned by Parent, and the repayment of the loan will be made solely from the assets of Parent and not from any assets of the Borrower; and the Parent's lenders will not take any steps for the purpose of procuring the appointment of an administrative receiver or the making of an administrative order for instituting any bankruptcy, reorganization, insolvency, wind up or liquidation or any like proceeding under applicable law in respect of the Borrower.

(b) Notwithstanding any of the foregoing set forth in this Section 11.17, the Borrower and the Lenders hereby acknowledge and agree that (i) this Credit Agreement and the Notes evidence Indebtedness of the Borrower and not of the Parent, (ii) the Lenders are not, and shall not at any time be deemed to be, “Parent’s lenders” under this Credit Agreement and the Notes, (iii) as set forth in this Credit Agreement and the Notes, the Borrower is responsible for the repayment of all amounts outstanding hereunder, and (iv) the Lenders reserve all rights to pursue any and all remedies available at law and otherwise (including, without limitation, in bankruptcy) should the Borrower breach any of its obligations under this Credit Agreement and/or the Notes.

11.18 USA Patriot Act Notice; Anti-Corruption Laws.

The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act or any other Anti-Corruption Laws, each of them is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the PATRIOT Act or such Anti-Corruption Laundering Laws.

11.19 Acknowledgment.

Section 7 and Section 8 of this Credit Agreement contain affirmative and negative covenants applicable to the Borrower. Each of the parties to this Credit Agreement acknowledges and agrees that any such covenants that require the Borrower to cause any of its Subsidiaries to take or to refrain from taking specified actions will be enforceable unless prohibited by applicable Law or regulatory requirement.

11.20 Replacement of Lenders.

If (a) any Lender requests compensation under Section 3.9, or the Borrower is required to pay any Indemnified Taxes or any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.13, (and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.17) or (b) a Lender (a “Non-Consenting Lender”) does not consent to a proposed change, waiver, discharge or termination with respect to any Credit Document that has been approved by the Required Lenders as provided in Section 11.6 but requires unanimous consent of all Lenders or all Lenders directly affected thereby (as applicable) or (c) any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.3), all of its interests, rights and obligations under this Credit Agreement and the related Credit Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.3(b);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any amounts under Section 3.14) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.9 or payments required to be made pursuant to Section 3.13, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Laws; and

(v) in the case of any such assignment resulting from a Non-Consenting Lender's failure to consent to a proposed change, waiver, discharge or termination with respect to any Credit Document, the applicable replacement bank, financial institution or Fund consents to the proposed change, waiver, discharge or termination; provided that the failure by such Non-Consenting Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such Non-Consenting Lender and the mandatory assignment of such Non-Consenting Lender's Commitments and outstanding Loans and participations in L/C Obligations pursuant to this Section shall nevertheless be effective without the execution by such Non-Consenting Lender of an Assignment and Assumption.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

11.21 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Credit Agreement provided by the Administrative Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) each of the Administrative Agent, the Arrangers and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Arranger nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (iii) each of the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Administrative Agent, the Arrangers or the Lenders has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each of the Administrative Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.22 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Credit Document, to the extent such

liability is unsecured, may be subject to the Write-Down and Conversion Powers of an applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Credit Agreement or any other Credit Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

11.23 Amendment and Restatement.

(a) Amendment and Restatement. The parties hereto agree that, subject to the satisfaction of the conditions set forth in Section 4.1, from and after the Restatement Date, the Existing Credit Agreement is hereby amended and restated in its entirety to read as set forth in this Credit Agreement.

(b) Reallocation. On the Restatement Date, the loans and commitments made by the Lenders under the Existing Credit Agreement shall be re-allocated and restated among the Lenders so that, and the loans and commitments shall be made by the Lenders so that, as of the Restatement Date, the respective commitments of the Lenders shall be as set forth on Schedule 1.1(a) attached hereto.

(c) No Novation of Existing Credit Agreement. It is the intent of the parties hereto that, from and after the Restatement Date, this Credit Agreement (i) shall re-evidence the Borrower's obligations and indebtedness under the Existing Credit Agreement, (ii) is entered into in substitution for, and not in payment of, the obligations and indebtedness of the Borrower under the Existing Credit Agreement, and (iii) is in no way intended to constitute a novation of any of the Borrower's obligations and indebtedness which were evidenced by the Existing Credit Agreement or any of the other "Credit Documents" (as defined in the Existing Credit Agreement) (including any fee letters or Notes delivered in connection therewith). All Loans made and "Borrower Obligations" under and as defined in the Existing Credit Agreement which are outstanding on the Restatement Date shall continue as Loans and Borrower Obligations under (and shall be governed by the terms of) this Credit Agreement. Without limiting the foregoing, upon the effectiveness hereof, the Administrative Agent shall make such reallocations of each Lender's share of the outstanding Loans under the Existing Credit Agreement as are necessary in order that each such Lender's share of the outstanding Loans hereunder reflects such Lender's ratable share of the Revolving Committed Amount hereunder as specified on Schedule 1.1(a). On the Restatement Date, (i) the Borrower shall pay to the Administrative Agent for the ratable account of the Lenders then party to the Existing Credit Agreement, (A) accrued and unpaid facility fees under the Existing Credit Agreement through the Restatement Date, (B) accrued and unpaid interest on Loans under (and as defined in) the Existing Credit Agreement through the Restatement Date and (ii) the revolving loans previously made to the Borrower by the Departing Lenders under the Existing Credit Agreement which remain outstanding as of the date of this Credit Agreement shall be repaid in full (accompanied by any accrued and unpaid interest and fees thereon), the Departing

Lenders' "Commitments" under the Existing Credit Agreement shall be terminated and no Departing Lender shall be a Lender hereunder.

(d) References to This Credit Agreement in Credit Documents. All references herein to "hereunder," "hereof," or words of like import and all references in any other Credit Document to the "Credit Agreement" or words of like import shall mean and be a reference to the Existing Credit Agreement as amended and restated hereby (and any section references in such Credit Documents to the Existing Credit Agreement shall refer to the applicable equivalent provision set forth herein although the section number thereof may have changed).

11.24 Acknowledgement Regarding Any Supported QFCs. To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and, each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.24, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

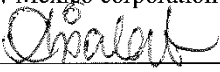
“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

BORROWER:

PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation

By:  _____

Name: Elisabeth A. Eden

Title: Vice President and Treasurer

LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
individually in its capacity as a Lender and in its capacity as
Administrative Agent and a L/C Issuer

By:  _____


Name: Gregory R. Gredvig

Title: Director

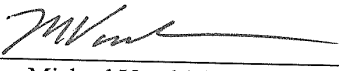
MUFG UNION BANK, N.A.,
as a Lender, an L/C Issuer, and as Syndication Agent

By: 
Name: Jeffrey Fesenmaier
Title: Managing Director

BANK OF AMERICA, N.A.,
as a Lender and as a Co-Documentation Agent

By: 
Name: Scott Blackman
Title: SVP

CITIBANK, N.A.,
as a Lender and as a Co-Documentation Agent

By: 
Name: Michael Vondriska
Title: Vice President

MORGAN STANLEY BANK, N.A.,
as a Lender

By: Michael King
Name: Michael King
Title: Authorized Signatory

COBANK ACB,
as a Lender

By: _____
Name: Jared A Greene
Title: Assistant Corporate Secretary



KEYBANK NATIONAL ASSOCIATION,
as a Lender

By: Jonathan Bouvet
Name: Jonathan Bouvet
Title: Senior Vice President

ROYAL BANK OF CANADA,
as a Lender

By: Mark W. Condon
Name: Mark W. Condon
Title: Authorized Signatory


U.S. BANK NATIONAL ASSOCIATION,
as a Lender

By: 
Name: Eric J. Cosgrove
Title: Senior Vice President

THE BANK OF NEW YORK MELLON,
as a Lender

By: Molly H Ross
Name: Molly H. Ross
Title: Vice President

BOKF, NA dba BANK OF ALBUQUERQUE,
as a Lender

By: 
Name: Michael Bickel
Title: Senior Vice President

The undersigned Departing Lender hereby acknowledges and agrees that upon the repayment in full in immediately available funds of the revolving loans previously made to the Borrower by the undersigned Departing Lender under the Existing Credit Agreement which remain outstanding as of the Restatement Date, together with any accrued and unpaid interest and fees thereon (including without limitation any applicable breakage fees), it is no longer a party to the Existing Credit Agreement and will not be a party to this Credit Agreement; provided, however, that all provisions of the Existing Credit Agreement that, by their terms, survive the replacement of the undersigned Departing Lender, the termination of the commitments of the undersigned Departing Lender under the Existing Credit Agreement, and the repayment, satisfaction or discharge of all the other Borrower Obligations (collectively, the "Departing Lender Repayment") shall survive the Departing Lender Repayment, including without limitation the indemnities in favor of the undersigned Departing Lender set forth in the Existing Credit Agreement.

JPMORGAN CHASE BANK, N.A.,
as a Departing Lender (and solely with respect to Section 11.23 of the Credit Agreement)

By: 
Name: Nancy R. Barwig
Title: Executive Director

SCHEDULE 1.1(a)
PRO RATA SHARES

Lender	Commitment	Pro Rata Share
Wells Fargo Bank, National Association	\$53,571,428.57	13.392857143%
MUFG Union Bank, N.A.	\$53,571,428.57	13.392857143%
Bank of America, N.A.	\$53,571,428.57	13.392857143%
Citibank, N.A.	\$53,571,428.57	13.392857143%
Morgan Stanley Bank, N.A.	\$37,142,857.14	9.285714287%
CoBank ACB	\$28,571,428.57	7.142857143%
KeyBank National Association	\$28,571,428.57	7.142857143%
Royal Bank of Canada	\$28,571,428.57	7.142857143%
U.S. Bank National Association	\$28,571,428.57	7.142857143%
The Bank of New York Mellon	\$20,000,000.00	5.000000000%
BOKF, NA dba Bank of Albuquerque	\$14,285,714.30	3.571428567%
TOTAL	\$400,000,000.00	100%

Schedule 1.1(b)
Existing Letters of Credit

None.

SCHEDULE 11.1
NOTICES

Borrower:

Public Service Company of New Mexico
414 Silver Ave. SW, MS0905
Albuquerque, New Mexico 87102-3289
Attention: Elisabeth A. Eden, Vice President and Treasurer
Telephone No.: (505) 241-0676
Fax No.: (505) 241-4314
E-mail: cashdesk@pnmresources.com

Address for notices as Administrative Agent:

Wells Fargo Bank, National Association
1525 West W.T. Harris Blvd.
Mail Code: D1109-019
Charlotte, NC 28262
Attention: Syndication Agency Services
Telephone No.: (704) 590-2706
Telecopy No.: (704) 590-2790
E-mail: agencyservices.requests@wellsfargo.com

Address for notices as Credit Contact:

Wells Fargo Bank, National Association
90 S. Seventh Street, 6th Floor
Minneapolis, MN 55402
MAC N9305-06G
Attention: Greg Gredvig
Telephone No.: (612) 667-4832
Telecopy No.: (612) 316-0506
Email: Gregory.R.Gredvig@wellsfargo.com

Administrative Agent Wiring Instructions:

On file with the Borrower and the Administrative Agent.

EXHIBIT 2.1(b)

FORM OF
NOTICE OF REVOLVING BORROWING

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

RE: Fifth Amendment to and Restatement of Credit Agreement dated as of [_____], 2022 among Public Service Company of New Mexico (the "Borrower"), the Lenders identified therein and Wells Fargo Bank, National Association, as administrative agent (the "Administrative Agent") (as amended, modified, extended or restated from time to time, the "Credit Agreement").

DATE: _____, 202__

1. This Notice of Revolving Borrowing is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.

2. Please be advised that the Borrower is requesting a Revolving Loan on the terms set forth below:

(a) Principal amount of requested Revolving Loan \$_____

(b) Date of requested Revolving Loan (the "Borrowing Date") _____

(c) Interest rate applicable to the requested Revolving Loan:

(i) _____ Adjusted Base Rate

(ii) _____ Adjusted Term SOFR for an Interest Period of:

_____ one month
_____ three months
_____ six months

3. The undersigned hereby certifies that the following statements will be true on the Borrowing Date:

(a) The representations and warranties made by the undersigned in any Credit Document (other than the representation and warranties in Section 6.7(a) (but only with respect to clause (a) of the definition of Material Adverse Effect) and Section 6.9 of the Credit Agreement) are true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all

respects) at and as if made as of such date except to the extent they expressly and exclusively relate to an earlier date.

(b) No Default or Event of Default exists or shall be continuing either prior to or after giving effect to the Revolving Loan made pursuant to this Notice of Revolving Borrowing.

(c) Subsequent to the funding of the requested Revolving Loan, the aggregate principal amount of the Revolving Loans will not exceed the aggregate amount of the Lenders' Commitments.

4. The undersigned hereby acknowledges and agrees that the Borrower shall indemnify each Lender to the extent provided in Section 3.14 as a result of any failure by the Borrower to borrow the Revolving Loan requested by the Borrower in this Notice of Revolving Borrowing on the Borrowing Date.

PUBLIC SERVICE COMPANY OF NEW
MEXICO, a New Mexico corporation

By: _____
Name: _____
Title: _____

EXHIBIT 2.1(e)

FORM OF REVOLVING NOTE

Lender: _____, 202__

FOR VALUE RECEIVED, PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the "Borrower"), hereby promises to pay to the Lender referenced above (the "Lender"), at the Administrative Agent's Office set forth in that certain Fifth Amendment to and Restatement of Credit Agreement dated as of [_____], 2022 (as amended, modified, extended or restated from time to time, the "Credit Agreement") among the Borrower, the Lenders party thereto (including the Lender) and Wells Fargo Bank, National Association, as administrative agent (the "Administrative Agent") (or at such other place or places as the holder of this Note may designate), the aggregate unpaid principal amount of the Revolving Loan made by the Lender to the Borrower under the Credit Agreement, in lawful money and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement (but, in any event, no later than the Maturity Date), and to pay interest on the unpaid principal amount of the Revolving Loan made by the Lender, at such office, in like money and funds, for the period commencing on the date of the Revolving Loan until such Revolving Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement and evidences the Revolving Loan made by the Lender to the Borrower thereunder. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement and the terms and conditions of the Credit Agreement are expressly incorporated herein and made a part hereof.

The Credit Agreement provides for the acceleration of the maturity of the Revolving Loan evidenced by this Note upon the occurrence of certain events (and for payment of collection costs in connection therewith) and for prepayment of the Revolving Loan upon the terms and conditions specified therein. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorney fees.

The date, amount, type, interest rate and duration of Interest Period (if applicable) of the Revolving Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books; provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or under this Note in respect of the Revolving Loan to be evidenced by this Note, and each such recordation or endorsement shall be prima facie evidence of such information, absent manifest error.

Except as permitted by Section 11.3(b) of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW
MEXICO,
a New Mexico corporation

By: _____
Name: _____
Title: _____

EXHIBIT 2.3

FORM OF
NOTICE OF CONTINUATION/CONVERSION

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

RE: Fifth Amendment to and Restatement of Credit Agreement dated as of [_____], 2022 among Public Service Company of New Mexico (the "Borrower"), the Lenders identified therein and Wells Fargo Bank, National Association, as administrative agent (the "Administrative Agent") (as amended, modified, extended or restated from time to time, the "Credit Agreement").

DATE: _____, 202__

-
1. This Notice of Continuation/Conversion is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.
 2. Please be advised that the Borrower is requesting that a portion of the current outstanding Revolving Loan in the amount of \$_____, currently accruing interest at _____, be extended or converted as of _____, 202_ at the interest rate option set forth in paragraph 3 below.
 3. The interest rate option applicable to the extension or conversion of all or part of the existing Revolving Loan referenced above shall be:
 - a. _____ the Adjusted Base Rate
 - b. _____ Adjusted Term SOFR for an Interest Period of:
 - _____ one month
 - _____ three months
 - _____ six months
 4. As of the date hereof, no Default or Event of Default has occurred and is continuing.

[signature page follows]

PUBLIC SERVICE COMPANY OF NEW
MEXICO,
a New Mexico corporation

By: _____
Name: _____
Title: _____

EXHIBIT 2.7

FORM OF SWINGLINE NOTE

Swing Line Lender: _____, 202__

FOR VALUE RECEIVED, PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the "Borrower"), hereby promises to pay to the Swing Line Lender referenced above (the "Swing Line Lender"), at the Administrative Agent's Office set forth in that certain Fifth Amendment to and Restatement of Credit Agreement dated as of [_____], 2022 (as amended, modified, extended or restated from time to time, the "Credit Agreement") among the Borrower, the Lenders party thereto (including the Swing Line Lender) and Wells Fargo Bank, National Association, as administrative agent (the "Administrative Agent") (or at such other place or places as the holder of this Note may designate), the aggregate unpaid principal amount of the Swing Line Loan made by the Swing Line Lender to the Borrower under the Credit Agreement, in lawful money and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement (but, in any event, no later than the Maturity Date), and to pay interest on the unpaid principal amount of the Swing Line Loan made by the Swing Line Lender, at such office, in like money and funds, for the period commencing on the date of the Swing Line Loan until such Swing Line Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement and evidences the Swing Line Loan made by the Swing Line Lender to the Borrower thereunder. Capitalized terms used in this Note have the respective meanings assigned to them in the Credit Agreement and the terms and conditions of the Credit Agreement are expressly incorporated herein and made a part hereof.

The Credit Agreement provides for the acceleration of the maturity of the Swing Line Loan evidenced by this Note upon the occurrence of certain events (and for payment of collection costs in connection therewith) and for prepayment of the Swing Line Loan upon the terms and conditions specified therein. In the event this Note is not paid when due at any stated or accelerated maturity, the Borrower agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorney fees.

The date, amount, type, interest rate of the Swing Line Loan made by the Swing Line Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Swing Line Lender on its books; provided that the failure of the Swing Line Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or under this Note in respect of the Swing Line Loan to be evidenced by this Note, and each such recordation or endorsement shall be prima facie evidence of such information, absent manifest error.

Except as permitted by Section 11.3(b) of the Credit Agreement, this Note may not be assigned by the Swing Line Lender to any other Person.

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE
WITH, THE LAWS OF THE STATE OF NEW YORK.**

[signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW
MEXICO,
a New Mexico corporation

By: _____
Name: _____
Title: _____

EXHIBIT 2.7(d)

FORM OF NOTICE OF SWING LINE BORROWING

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

RE: Fifth Amendment to and Restatement of Credit Agreement dated as of [_____], 2022 among Public Service Company of New Mexico (the "Borrower"), the Lenders identified therein and Wells Fargo Bank, National Association, as administrative agent (the "Administrative Agent") (as amended, modified, extended or restated from time to time, the "Credit Agreement").

DATE: _____, 202__

1. This Notice of Swing Line Borrowing is made pursuant to the terms of the Credit Agreement. All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Credit Agreement.

2. Please be advised that the Borrower is requesting a Swing Line Loan on the terms set forth below:

(a) Principal amount of requested Swing Line Loan \$ _____

(b) Date of requested Swing Line Loan (the "Borrowing Date") _____

(c) Interest rate applicable to the requested Swing Line Loan:

(i) _____ Adjusted Base Rate

(ii) _____ Adjusted Daily Simple SOFR

3. The undersigned hereby certifies that the following statements will be true on the Borrowing Date:

(a) The representations and warranties made by the undersigned in any Credit Document (other than the representation and warranties in Section 6.7(a) (but only with respect to clause (a) of the definition of Material Adverse Effect) and Section 6.9 of the Credit Agreement) are true and correct in all material respects (except that any representation and warranty that is qualified by materiality shall be true and correct in all respects) at and as if made as of such date except to the extent they expressly and exclusively relate to an earlier date.

(b) No Default or Event of Default exists or shall be continuing either prior to or after giving effect to the Swing Line Loan made pursuant to this Notice of Swing Line Borrowing.

(c) Subsequent to the funding of the requested Swing Line Loan, (i) the sum of the aggregate principal amount of outstanding Revolving Loans plus the aggregate principal amount of outstanding L/C Obligations plus the aggregate principal amount of Swing Line Loans shall not exceed the Revolving Committed Amount, (ii) with respect to each individual Lender, the sum of the aggregate principal amount of outstanding Revolving Loans of such Lender plus such Lender's Pro Rata Share of the aggregate principal amount of outstanding L/C Obligations and Swing Line Loans shall not exceed such Lender's Commitment and (iii) the aggregate amount of Swing Line Loans shall not at any time exceed the Swing Line Sublimit.

4. The undersigned hereby acknowledges and agrees that the Borrower shall indemnify the Swing Line Lender to the extent provided in Section 3.14 as a result of any failure by the Borrower to borrow the Swing Line Loan requested by the Borrower in this Notice of Swing Line Borrowing on the Borrowing Date.

PUBLIC SERVICE COMPANY OF NEW
MEXICO, a New Mexico corporation

By: _____
Name: _____
Title: _____

EXHIBIT 4.1(k)

FORM OF
ACCOUNT DESIGNATION LETTER

[Date]

Wells Fargo Bank, National Association
[address]
Attention: [_____]

Ladies and Gentlemen:

This Account Designation Letter is delivered to you by PUBLIC SERVICE COMPANY OF NEW MEXICO (the "Borrower"), a New Mexico corporation, under Section 4.1(k) of the Fifth Amendment to and Restatement of Credit Agreement, dated as of [_____], 2022 (as amended, restated or otherwise modified from time to time, the "Credit Agreement"), by and among the Borrower, the Lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent (the "Administrative Agent").

[The Administrative Agent is hereby authorized to disburse all Loan proceeds into the following account, unless the Borrower shall designate, in writing to the Administrative Agent, one or more other accounts:

A/C# _____
ABA _____
Reference:]

IN WITNESS WHEREOF, the undersigned has executed this Account Designation Letter this __ day of _____, 20__.

PUBLIC SERVICE COMPANY OF NEW
MEXICO, a New Mexico corporation

By: _____
Name: _____
Title: _____

EXHIBIT 7.1(c)

**FORM OF
COMPLIANCE CERTIFICATE**

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION as Administrative Agent

RE: Fifth Amendment to and Restatement of Credit Agreement dated as of [____], 2022 among Public Service Company of New Mexico (the “Borrower”), Wells Fargo Bank, National Association (the “Administrative Agent”), and the Lenders identified therein (as amended, modified, extended or restated from time to time, the “Credit Agreement”).

DATE: _____, 202__

Pursuant to the terms of the Credit Agreement, I, _____, [Title of Financial Officer] of Public Service Company of New Mexico, hereby certify on behalf of the Borrower that, as of the [Fiscal Quarter] [Fiscal Year] ended _____, 202__, the statements below are accurate and complete in all respects (all capitalized terms used below shall have the meanings set forth in the Credit Agreement):

a. Attached hereto as Schedule 1 are calculations (calculated as of the date of the annual financial statements delivered in accordance with Section 7.1(a) of the Credit Agreement or as of the date of the quarterly financial statements referred to in paragraph c. below) demonstrating compliance by the Borrower with the financial covenant contained in Section 7.2 of the Credit Agreement.

b. No Default or Event of Default exists under the Credit Agreement, except as indicated on a separate page attached hereto, together with an explanation of the action taken or proposed to be taken by the Borrower with respect thereto.

c. [Attached hereto as Schedule 2 are the quarterly financial statements for the fiscal quarter ended _____, 202__ and such quarterly financial statements] [The quarterly financial statements for the fiscal quarter ended _____, 202__, delivered electronically pursuant to the last paragraph of Section 7.1 of the Credit Agreement,] fairly present in all material respects the financial condition of the Borrower and its Subsidiaries and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments and except that the quarterly financial statements have fewer footnotes than annual statements]¹.

[signature page follows]

¹ Use the first bracketed language when delivering paper copies of quarterly financial statements and the second bracketed language when delivering quarterly financial statements electronically.

**PUBLIC SERVICE COMPANY OF NEW
MEXICO, a New Mexico corporation**

By: _____
Name: _____
Title: _____

SCHEDULE 1
TO EXHIBIT 7.1(c)

FINANCIAL COVENANT CALCULATIONS

A. Debt Capitalization

1. Consolidated Indebtedness of the Borrower	\$ _____
2. Consolidated Capitalization of the Borrower	\$ _____
3. Debt to Capitalization Ratio (Line A1 ÷ A2)	_____ to 1.0
<i>Maximum Permitted</i>	<i>.70 to 1.0</i>

SCHEDULE 2

TO EXHIBIT 7.1(c)

[QUARTERLY][ANNUAL] FINANCIAL STATEMENTS

[Attached]

EXHIBIT 11.3(b)

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between _____ (the “Assignor”) and _____ (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Schedule 1 attached hereto (the “Standard Terms and Conditions”) are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (a) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned pursuant to clauses (a) and (b) above being referred to herein collectively as, the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
and is an Affiliate/Approved Fund of _____
3. Borrower: Public Service Company of New Mexico, a New Mexico corporation
4. Administrative Agent: Wells Fargo Bank, National Association, as the Administrative Agent under the Credit Agreement
5. Credit Agreement: Fifth Amendment to and Restatement to Credit Agreement dated as of [_____], 2022 among the Borrower, the Administrative Agent, and the Lenders identified therein

6. Assigned Interest:

Aggregate Amount of Commitments/Loans for all Lenders	Amount of Commitment/Loan Assigned	Percentage Assigned of Commitment/Loan
\$	\$	%

7. After giving effect to the foregoing assignment, the Assignor and the Assignee shall have the following Commitments, Pro Rata Shares and outstanding Loans:

	Commitments	Pro Rata Share	Outstanding Loans
Assignor			
Assignee			

8. Trade Date: _____

Effective Date: _____, 202__

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

Consented to and Accepted if applicable:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name: _____
Title: _____

Consented to if applicable:

PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation

By: _____
Name: _____
Title: _____

SCHEDULE 1
TO EXHIBIT 11.3(b)

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 7.1 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a foreign lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and

other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

A draft form of the Note Purchase Agreement

PNM Exhibit KAA- 3

Is contained in the following 77 pages.

Troutman Draft 1/29/24

PUBLIC SERVICE COMPANY OF NEW MEXICO

\$_[]

\$_[] [_]% Senior Unsecured Notes, Series A, due [], 20[_]
\$_[][_]% Senior Unsecured Notes, Series B, due [], 20[_]¹

NOTE PURCHASE AGREEMENT

Dated _____, 2024

¹ **NTD**: There may be more or less series. To be determined.

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PUBLIC SERVICE COMPANY OF NEW MEXICO
414 SILVER AVE. SW
ALBUQUERQUE, NEW MEXICO 87102

\$_[] []% Senior Unsecured Notes, Series A, due [], 20[]
\$_[] []% Senior Unsecured Notes, Series B, due [], 20[]

_____, 2024

TO EACH OF THE PURCHASERS LISTED IN
THE PURCHASER SCHEDULE HERETO:

Ladies and Gentlemen:

Public Service Company of New Mexico, a New Mexico corporation (the “**Company**”), agrees with each of the Purchasers as follows:

SECTION 1. AUTHORIZATION OF NOTES.

The Company will authorize the issue and sale of (i) \$_[] aggregate principal amount of its []% Senior Unsecured Notes, Series A, due [], 20[] (the “**Series A Notes**”), and (ii) \$_[] aggregate principal amount of its []% Senior Unsecured Notes, Series B, due [], 20[] (the “**Series B Notes**”; collectively with the Series A Notes, the “**Notes**”). The Notes shall be substantially in the forms set out in Schedule 1-A and Schedule 1-B, as applicable. Certain capitalized and other terms used in this Agreement are defined in Schedule A and, for purposes of this Agreement, the rules of construction set forth in Section 22.4 shall govern. References to “**Series**” of Notes shall refer to the Series A Notes and the Series B Notes or all, as the context may require.

SECTION 2. SALE AND PURCHASE OF NOTES.

Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in Section 3, Notes in the principal amount and series specified opposite such Purchaser’s name in the Purchaser Schedule at the purchase price of 100% of the principal amount thereof. The Purchasers’ obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.

SECTION 3. CLOSING.

The execution and delivery of this Agreement will be made at the office of Chapman and Cutler LLP, 320 S. Canal Street, Chicago, Illinois 60606 on [____], 2024 (the “**Execution Date**”).

The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Chapman and Cutler LLP, 320 S. Canal Street, Chicago, Illinois 60606, at 7:00 a.m. Chicago time, on [____], 2024 (the “**Closing**”). At the Closing the Company will deliver to each Purchaser the Notes of such Series to be purchased by such Purchaser in the form of a single Note of such Series (or such greater number of Notes in denominations of at least \$100,000 as such Purchaser may request) dated the date of the Closing and registered in such Purchaser’s name (or in the name of its nominee), against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company in accordance with the instructions delivered by the Company pursuant to Section 4.10. If at the Closing the Company shall fail to tender such Notes to any Purchaser as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to such Purchaser’s reasonable satisfaction, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure by the Company to tender such Notes or any of the conditions specified in Section 4 not having been fulfilled to such Purchaser’s satisfaction.

SECTION 4. CONDITIONS TO CLOSING.

Each Purchaser’s obligation to execute and deliver this Agreement on the Execution Date and the obligations of each Purchaser to purchase and pay for the Notes to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser’s reasonable satisfaction, prior to or at the Closing, of the following conditions:

Section 4.1. Representations and Warranties. The representations and warranties of the Company in this Agreement shall be correct when made and at the Closing.

Section 4.2. Performance; No Default. The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing. Before and after giving effect to the issuance and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.14) no Default or Event of Default shall have occurred and be continuing.

Section 4.3. Compliance Certificates.

(a) *Officer’s Certificate.* The Company shall have delivered to such Purchaser an Officer’s Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1, 4.2 and 4.9 have been fulfilled.

(b) *Secretary's Certificate.* The Company shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to (i) the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and this Agreement and (ii) the Company's organizational documents as then in effect.

Section 4.4. Opinions of Counsel. Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Troutman Pepper Hamilton Sanders LLP, counsel for the Company, and in-house legal counsel to the Company, covering the matters set forth in Schedule 4.4(a) and covering such other matters incident to the transactions contemplated hereby as such Purchaser or its counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers) and (b) from Chapman and Cutler LLP, the Purchasers' special counsel in connection with such transactions, covering such matters incident to such transactions as such Purchaser may reasonably request.

Section 4.5. Purchase Permitted By Applicable Law, Etc. On the date of the Closing such Purchaser's purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

Section 4.6. Sale of Other Notes. Contemporaneously with the Closing, the Company shall sell to each other Purchaser and each other Purchaser shall purchase the Notes to be purchased by it at the Closing as specified in the Purchaser Schedule.

Section 4.7. Payment of Special Counsel Fees. Without limiting Section 15.1, the Company shall have paid on or before the date of the Closing the fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the date of the Closing.

Section 4.8. Private Placement Number. A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for each Series of Notes.

Section 4.9. Changes in Corporate Structure. Other than transactions permitted by Section 10, the Company shall not have changed its jurisdiction of incorporation or organization, as applicable, or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Schedule 5.5.

Section 4.10. Funding Instructions. At least five (5) Business Days prior to the date of the Closing, each Purchaser shall have received written wire transfer instructions signed by a Responsible Officer on letterhead of the Company including (i) the name and address of the transferee bank, (ii) such transferee bank's ABA number and (iii) the account name and number into which the purchase price for the Notes is to be deposited. Each Purchaser has the right, but not the obligation, upon written notice (which may be by email) to the Company, to elect to deliver a micro deposit (less than \$50.00) to the account identified in the written instructions no later than two (2) Business Days prior to Closing. If a Purchaser delivers a micro deposit, a Responsible Officer must verbally verify the receipt and amount of the micro deposit to such Purchaser on a telephone call initiated by such Purchaser prior to Closing. The Company shall not be obligated to return the amount of the micro deposit, nor will the amount of the micro deposit be netted against the Purchaser's purchase price of the Notes.

Section 4.11. Regulatory Approvals. The issue and sale of the Notes hereunder shall have been duly authorized by each regulatory authority whose consent or approval shall be required for the issue and sale of the Notes to such Purchaser and any orders issued pursuant thereto shall be in full force and effect as of the Closing and all appeal periods, if any, shall have expired; *provided, however,* that with respect to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue sky laws of any applicable jurisdiction, satisfaction of the foregoing condition assumes the accuracy of the representations and warranties of the Purchasers contained in Section 6.1 of this Agreement. Such Purchaser shall have received copies of such consents, approvals or orders including a copy of the approval of the NMPRC authorizing this transaction.

Section 4.12. Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Purchaser as of the Closing, that:

Section 5.1. Organization; Power and Authority. The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts, to execute and deliver this Agreement and the Notes and to perform the provisions hereof and thereof.

Section 5.2. Authorization, Etc. This Agreement and the Notes have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes, and upon execution and delivery thereof each Note will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.3. Disclosure. This Agreement, the financial statements listed in Schedule 5.5 and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company on or prior to [____], 2024 in connection with the transactions contemplated hereby and identified in Schedule 5.3 (this Agreement and such documents, certificates or other writings and such financial statements delivered to each Purchaser being referred to, collectively, as the "**Disclosure Documents**"), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since December 31, 2023, there has been no change in the financial condition, operations, business, or properties of the Company or any Subsidiary except changes that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.4. Organization; Affiliates. Schedule 5.4 contains (except as noted therein) complete and correct lists of (i) the Company's Affiliates and (ii) the Company's directors and senior officers. The Company has no active Subsidiaries as of the date of this Agreement.

Section 5.5. Financial Statements; Material Liabilities. The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on Schedule 5.5. All of such financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

Section 5.6. Compliance with Laws, Other Instruments, Etc. The execution, delivery and performance by the Company of this Agreement and the Notes will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter, regulations or by-laws, shareholders agreement or any other agreement or instrument to which the Company or any Subsidiary is bound or by which the Company or any Subsidiary or any of their respective properties may be bound or affected, the violation of which would have or would be reasonably be expected to have a Material Adverse Effect, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority

applicable to the Company or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Company or any Subsidiary.

Section 5.7. Governmental Authorizations, Etc. No consent, approval, authorization or order of, or registration, filing or declaration with, any Governmental Authority or body having jurisdiction over the Company is required in connection with the execution, delivery or performance by the Company of this Agreement or the Notes, except for (i) such approval by the NMPRC as has been obtained and (ii) required notice filings related to this Agreement with the SEC or the NMPRC; *provided* that with respect to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue sky laws of any applicable jurisdiction, the foregoing representation and warranty assumes the accuracy of the representations and warranties of the Purchasers contained in Section 6.1 of this Agreement.

Section 5.8. Litigation; Observance of Agreements, Statutes and Orders. (a) Except as disclosed in the Disclosure Documents, there are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company or any Subsidiary or any property of the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any Subsidiary is (i) in violation of any order, judgment, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (ii) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including Environmental Laws, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 5.16), which default or violation would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.9. Taxes. The Company and its Subsidiaries have filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which, individually or in the aggregate, is not Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Company and its Subsidiaries in respect of U.S. federal, state or other taxes for all fiscal periods are adequate. The U.S. federal income tax liabilities of the Company and its Subsidiaries have been finally determined (whether by reason of completed audits or the statute of limitations having run) for all fiscal years up to and including the fiscal year ended December 31, 2019.

Section 5.10. Title to Property; Leases. The Company and its Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company or any Subsidiary after such date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and

clear of Liens prohibited by this Agreement except for those defects in title and Liens that, individually or in the aggregate, would not have a Material Adverse Effect. All Material leases are valid and subsisting and are in full force and effect in all material respects.

Section 5.11. Licenses, Permits, Etc. Except as disclosed in the Disclosure Documents, the Company and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not have a Material Adverse Effect.

Section 5.12. Compliance with Employee Benefit Plans. (a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability (other than liabilities for PBGC premiums that have been or will be paid in a timely manner) pursuant to Titles I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition relating to such employee benefit plans has occurred or exists that would, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Titles I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the last valuation date for which results have been certified on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities by more than \$70,000,000 in the case of any single Plan and by more than \$70,000,000 in the aggregate for all Plans. The term "**benefit liabilities**" has the meaning specified in section 4001 of ERISA and the terms "**current value**" and "**present value**" have the meaning specified in section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The present value (determined using actuarial and other assumptions which are reasonable with respect to the benefits provided and the employees participating) of the liability of the Company and each ERISA Affiliate for post-retirement welfare benefits to be provided to their current and former employees under Plans which are welfare benefit plans (as defined in section 3(1) of ERISA), net of all assets under all such Plans allocable to such benefits, are

reflected on the financial statements in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Company to each Purchaser in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of such Purchaser's representation in Section 6.2 as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

(f) The Company and its Subsidiaries do not have any Non-U.S. Plans.

Section 5.13. Private Offering by the Company. Neither the Company nor anyone acting on its behalf has offered the Notes or any similar Securities for sale to, or solicited any offer to buy the Notes or any similar Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than forty (40) Institutional Investors (including the Purchasers), each of which has been offered the Notes at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue sky laws of any applicable jurisdiction.

Section 5.14. Use of Proceeds; Margin Regulations. The Company will apply the proceeds of the sale of the Notes hereunder for repayment of indebtedness, funding of capital expenditures, and general corporate purposes. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any Securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 5% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock will constitute more than 5% of the value of such assets. As used in this Section, the terms "**margin stock**" and "**purpose of buying or carrying**" shall have the meanings assigned to them in said Regulation U.

Section 5.15. Existing Indebtedness; Future Liens. (a) Except as described therein, Schedule 5.15 sets forth a complete and correct list of all individual items of outstanding Indebtedness of the Company and its Subsidiaries that exceeds \$40,000,000 (or in the case of Contingent Obligations, such Contingent Obligations guaranteeing or otherwise in respect of obligations that exceed \$40,000,000 described in the definition of "Indebtedness") as of December 31, 2023 (including descriptions of the obligors and obligees, principal amounts outstanding, any collateral therefor and any Guaranty thereof), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of the Company or its Subsidiaries. Neither the Company nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or

interest on any Indebtedness of the Company or such Subsidiary and no event or condition exists with respect to any Indebtedness of the Company or any Subsidiary the outstanding principal amount of which exceeds \$40,000,000 that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in Schedule 5.15 or as permitted in Section 10.6, neither the Company nor any Subsidiary has agreed or consented to cause or permit any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness or to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness.

(c) Neither the Company nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Company or such Subsidiary, any agreement relating thereto or any other agreement (including its charter or any other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Company, except as disclosed in Schedule 5.15.

Section 5.16. Foreign Assets Control Regulations, Etc. (a) Neither the Company nor any Controlled Entity (i) is a Blocked Person, (ii) has been notified that its name appears or may in the future appear on a State Sanctions List or (iii) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) Neither the Company nor any Controlled Entity (i) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) to the Company's knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No part of the proceeds from the sale of the Notes hereunder:

(i) constitutes or will constitute funds obtained on behalf of any Blocked Person in violation of applicable law or will otherwise be used by the Company or any Controlled Entity, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person or any Sanctioned Jurisdiction in violation of applicable law, (B) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (C) otherwise in violation of any U.S. Economic Sanctions Laws;

(ii) will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

(iii) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case

which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

(d) The Company has established procedures and controls which it reasonably believes are adequate (and otherwise in compliance with applicable law) to ensure that the Company and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

Section 5.17. Status under Certain Statutes. Neither the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, the ICC Termination Act of 1995, or Section 204 of the Federal Power Act, nor is the Company or any Subsidiary a holding company for the purposes of the Public Utility Holding Company Act of 2005.

Section 5.18. Environmental Matters. Except as would not result or reasonably be expected to result in a Material Adverse Effect: (a) each of the real properties of the Company and its Subsidiaries and all operations at such real properties are in substantial compliance with all applicable Environmental Laws, (b) there is no undocumented or unreported violation of any Environmental Laws with respect to such real properties or the businesses operated by the Company and its Subsidiaries that the Company is aware of, and (c) to the Company's knowledge, there are no conditions relating to such businesses or real properties that have given rise to or would reasonably be expected to give rise to a liability under any applicable Environmental Laws or to any Environmental Claim.

Section 5.19. Solvency. The Company is and, after the issuance of Notes and the consummation of the transactions contemplated by this Agreement, will be, Solvent.

SECTION 6. REPRESENTATIONS OF THE PURCHASERS.

Section 6.1. Purchase for Investment. Each Purchaser severally represents that it is (a) purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control and (b) it is an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act). Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

Section 6.2. Source of Funds. Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption

(“PTE”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the “**NAIC Annual Statement**”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser’s state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser’s fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “**QPAM Exemption**”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the

conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms “**employee benefit plan**,” “**governmental plan**,” and “**separate account**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

SECTION 7. INFORMATION AS TO COMPANY

Section 7.1. Financial and Business Information. The Company shall deliver to each Purchaser and each holder of a Note that is an Institutional Investor:

(a) *Quarterly Statements* — within sixty (60) days (or such shorter period as is the earlier of (x) fifteen (15) days greater than the period applicable to the filing of the Company’s Quarterly Report on Form 10-Q (the “**Form 10-Q**”) with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each Fiscal Quarter in each Fiscal Year of the Company (other than the last quarterly fiscal period of each such Fiscal Year), duplicate copies of

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such Fiscal Quarter,

(ii) consolidated statements of income of the Company and its Subsidiaries, for such Fiscal Quarter and (in the case of the second and third quarters) for the portion of the Fiscal Year ending with such Fiscal Quarter, and

(iii) consolidated statements of changes in shareholders’ equity and cash flows of the Company and its Subsidiaries for the portion of the Fiscal Year ending with such Fiscal Quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments;

(b) *Annual Statements* — within one hundred twenty (120) days (or such shorter period as is the earlier of (x) fifteen (15) days greater than the period applicable to the filing of the Company’s Annual Report on Form 10-K (the “**Form 10-K**”) with the SEC regardless of whether the Company is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each Fiscal Year of the Company, duplicate copies of

(i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such Fiscal Year, and

(ii) consolidated statements of income, changes in shareholders’ equity and cash flows of the Company and its Subsidiaries for such Fiscal Year,

setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon (without a “going concern” or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances;

(c) *SEC and Other Reports* — promptly upon their becoming available, one copy of (i) each financial statement, report, notice, proxy statement or similar document sent by the Company or any Subsidiary (x) to its creditors under any Material Credit Facility (excluding information sent to such creditors in the ordinary course of administration of a credit facility, such as information relating to pricing and borrowing availability) or (y) to its public Securities holders generally, and (ii) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such holder), and each prospectus and all amendments thereto filed by the Company or any Subsidiary with the SEC;

(d) *Notice of Default or Event of Default* — promptly, and in any event within ten (10) days after a Responsible Officer becoming aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in Section 11(f), a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(e) *Employee Benefits Matters* — promptly, and in any event within ten (10) days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof;

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, would reasonably be expected to have a Material Adverse Effect;

(f) *Debt Ratings* — prompt notice of any change in its Debt Ratings; and

(g) *Requested Information* — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries (including actual copies of the Company's Form 10-Q and Form 10-K) or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any such Purchaser or holder of a Note; *provided* that any such requested information is subject to the confidentiality provisions set forth in Section 20.

Section 7.2. Officer's Certificate. In connection with each set of financial statements delivered to a Purchaser or holder of a Note pursuant to Section 7.1(a) or Section 7.1(b), the

Company shall deliver on or before the deadline set forth in Section 7.1(a) or Section 7.1(b), as applicable, a certificate of a Senior Financial Officer:

(a) *Covenant Compliance* — setting forth the information from such financial statements that is required in order to establish whether the Company was in compliance with the requirements of Section 10 during the quarterly or annual period covered by the financial statements then being furnished (including with respect to each such provision that involves mathematical calculations, the information from such financial statements that is required to perform such calculations) and detailed calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Section, and the calculation of the amount, ratio or percentage then in existence. In the event that the Company or any Subsidiary has made an election to measure any financial liability using fair value (which election is being disregarded for purposes of determining compliance with this Agreement pursuant to Section 22.2) as to the period covered by any such financial statement, such Senior Financial Officer's certificate as to such period shall include a reconciliation from GAAP with respect to such election;

(b) *Event of Default* — certifying that such Senior Financial Officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including any such event or condition resulting from the failure of the Company or any Subsidiary to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto; and

(c) *Guarantors* — setting forth a list of all Subsidiaries and other entities that are Guarantors and certifying that each Subsidiary or other entity that is required to be a Guarantor pursuant to Section 9.7 is a Guarantor, in each case, as of the date of such certificate of Senior Financial Officer.

Section 7.3. Visitation. The Company shall permit the representatives of each Purchaser and holder of a Note that is an Institutional Investor:

(a) *No Default* — if no Default or Event of Default then exists, at the expense of such Purchaser or holder and upon reasonable prior notice to the Company, to visit the principal executive office of the Company, to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Company's officers, and (with the consent of the Company, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) *Default* — if a Default or Event of Default then exists, at the expense of the Company to visit and inspect any of the offices or properties of the Company or any Subsidiary, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be requested.

Section 7.4. Electronic Delivery. Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be delivered by the Company pursuant to Sections 7.1(a), (b) or (c) and Section 7.2 shall be deemed to have been delivered if the Company satisfies any of the following requirements with respect thereto:

(a) such financial statements satisfying the requirements of Section 7.1(a) or (b) and related Officer's Certificate satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c) are delivered to each Purchaser or holder of a Note by e-mail at the e-mail address set forth in such Purchaser's or holder's Purchaser Schedule or as communicated from time to time in a separate writing delivered to the Company;

(b) the Company shall have timely filed such Form 10-Q or Form 10-K, satisfying the requirements of Section 7.1(a) or Section 7.1(b), as the case may be, with the SEC on EDGAR and shall have made such form and the related Officer's Certificate satisfying the requirements of Section 7.2 available on its home page on the internet, which is located at <https://www.pnm.com> as of the date of this Agreement;

(c) such financial statements satisfying the requirements of Section 7.1(a) or Section 7.1(b) and related Officer's Certificate(s) satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c) are timely posted by or on behalf of the Company on IntraLinks or on any other similar website to which each Purchaser and holder of Notes has free access; or

(d) the Company shall have timely filed any of the items referred to in Section 7.1(c) with the SEC on EDGAR and shall have made such items available on its home page on the internet or on IntraLinks or on any other similar website to which each Purchaser and each holder of Notes has free access;

provided, however, that in no case shall access to such financial statements, other information and Officer's Certificates be conditioned upon any waiver or other agreement or consent (other than confidentiality provisions consistent with Section 20 of this Agreement); *provided, further*, that in the case of any of clauses (b), (c) or (d), the Company shall have given each Purchaser and each holder of a Note prior written notice, which may be by e-mail or in accordance with Section 18, of such posting or filing in connection with each delivery, *provided, further*, that upon request of any Purchaser or any holder to receive paper copies of such forms, financial statements, other

information and Officer's Certificates or to receive them by e-mail, the Company will promptly e-mail them or deliver such paper copies, as the case may be, to such Purchaser or such holder.

SECTION 8. PAYMENT AND PREPAYMENT OF THE NOTES.

Section 8.1. Maturity. As provided therein, the entire unpaid principal balance of each Note shall be due and payable on the Maturity Date thereof.

Section 8.2. Optional Prepayments with Make-Whole Amount. (a) The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes of any Series, in an amount not less than 20% of the aggregate principal amount of the Notes of any Series to be prepaid then outstanding in the case of a partial prepayment, at 100% of the principal amount so prepaid, and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Notes written notice of each optional prepayment under this Section 8.2 not less than ten (10) days and not more than sixty (60) days prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to Section 17. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Notes of each Series to be prepaid on such date, the principal amount of each Note of each Series held by such holder to be prepaid (determined in accordance with Section 8.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due with respect to each Series of Notes to be prepaid in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two (2) Business Days prior to such prepayment, the Company shall deliver to each holder of Notes a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

(b) Notwithstanding anything contained in this Section 8.2 to the contrary, if and so long as any Default or Event of Default shall have occurred and be continuing, any prepayment of the Notes pursuant to the provisions of Section 8.2(a) shall be allocated among all of the Notes of all Series at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof.

Section 8.3. Allocation of Partial Prepayments. In the case of each partial prepayment of the Notes pursuant to Section 8.2, the principal amount of the Notes of the Series to be prepaid shall be allocated among all of the Notes of such Series at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

Section 8.4. Maturity; Surrender, Etc. In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount

shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

Section 8.5. Purchase of Notes. The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes of any Series except (a) upon the payment or prepayment of the Notes of any Series in accordance with this Agreement and the Notes or (b) pursuant to an offer to purchase made by the Company or an Affiliate pro rata to the holders of all Notes of any Series at the time outstanding upon the same terms and conditions, *provided* that if and so long as any Default or Event of Default exists, such written offer shall be made pro rata to the holders of all Notes of all Series outstanding upon the same terms and conditions. Any such offer shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least five (5) Business Days. If the holders of more than 20% of the principal amount of the Notes of the applicable Series then outstanding accept such offer, the Company shall promptly notify the remaining holders of such Series of Notes of such fact and the expiration date for the acceptance by holders of such Series of Notes of such offer shall be extended by the number of days necessary to give each such remaining holder at least ten (10) Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment or prepayment of Notes pursuant to this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

Section 8.6. Make-Whole Amount.

The term “**Make-Whole Amount**” means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero; *provided further* that the Make-Whole Amount shall equal zero with respect to the relevant Series of Notes if such prepayment occurs (i) on or after the date which is [____], 20[___] in the case of the Series A Notes and (ii) on or after the date which is [____], 20[___] in the case of the Series B Notes. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

“**Called Principal**” means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

“**Discounted Value**” means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

“**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the sum of (a) 0.50% plus (b) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m.

(New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (“**Reported**”) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (i) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then “**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the sum of (x) 0.50% plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

“**Remaining Average Life**” means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year comprised of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“**Remaining Scheduled Payments**” means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2 or Section 12.1.

“**Settlement Date**” means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

Section 8.7. Change of Control.

(a) *Notice of Change of Control.* The Company will, within fifteen (15) Business Days after the occurrence of any Change of Control, give written notice (the “**Change of Control Notice**”) of such Change of Control to each holder of Notes. Such Change of Control Notice shall contain and constitute an offer to prepay the Notes as described in Section 8.7(b) hereof and shall be accompanied by the certificate described in Section 8.7(e).

(b) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by Section 8.7(a) shall be an offer to prepay, in accordance with and subject to this Section 8.7, all, but not less than all, of the Notes held by each holder (in this case only, “holder” in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such Change of Control Notice (the “**Proposed Prepayment Date**”). Such date shall be not fewer than thirty (30) days and not more than sixty (60) days after the date of delivery of the Change of Control Notice.

(c) *Acceptance.* Any holder of Notes may accept the offer to prepay made pursuant to this Section 8.7 by causing a notice of such acceptance to be delivered to the Company not fewer than ten (10) days prior to the Proposed Prepayment Date. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.7 shall be deemed to constitute a rejection of such offer by such holder.

(d) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 8.7 shall be at 100% of the principal amount of such Notes together with accrued and unpaid interest thereon but without any Make-Whole Amount or other premium. The prepayment shall be made on the Proposed Prepayment Date.

(e) *Officer’s Certificate.* Each offer to prepay the Notes pursuant to this Section 8.7 shall be accompanied by a certificate, executed by a Senior Financial Officer and dated the date of delivery of the Change of Control Notice, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.7; (iii) the principal amount of each Note offered to be prepaid (which shall be 100% of the outstanding principal balance of each such Note); (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this Section 8.7 required to be fulfilled prior to the giving of notice have been fulfilled; and (vi) in reasonable detail, the general nature and date of the Change of Control.

Section 8.8. Payments Due on Non-Business Days. Anything in this Agreement or the Notes to the contrary notwithstanding, (x) except as set forth in clause (y), any payment of interest on any Note that is due on a date that is not a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; and (y) any payment of principal of or

Make-Whole Amount on any Note (including principal due on the Maturity Date of such Note) that is due on a date that is not a Business Day shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

SECTION 9. AFFIRMATIVE COVENANTS.

From the Closing and thereafter, so long as any of the Notes are outstanding, the Company covenants that:

Section 9.1. Compliance with Laws. Without limiting Section 10.4, the Company will, and will cause each of its Subsidiaries to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject (including ERISA, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 5.16) and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.2. Insurance. The Company will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated.

Section 9.3. Maintenance of Properties. The Company will, and will cause each of its Subsidiaries to, maintain and keep, or cause to be maintained and kept, their respective properties in good working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section 9.3 shall not prevent the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and *provided, further*, that this provision shall not apply to properties required to be closed, discontinued or abandoned pursuant to a law, legal order, mandate or requirement from the NMPRC or any other federal or state governmental authority or regulatory authority with the authority to regulate or oversee any aspect of the business of the Company or its Affiliates.

Section 9.4. Payment of Taxes and Claims. The Company will, and will cause each of its Subsidiaries to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, levies or claims payable by any of them, to the extent the same have become due and payable and before they have become delinquent, *provided* that neither the Company nor

any Subsidiary need pay any such tax, assessment, charge, levy or claim if (i) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (ii) the nonpayment of all such taxes, assessments, charges, levies and claims would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.5. Corporate Existence, Etc. Subject to Section 10.2, the Company will at all times preserve and keep its existence in full force and effect. Subject to Sections 10.2 and 10.3, the Company will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless dissolved or merged into the Company or a Wholly-Owned Subsidiary) and all Material rights and franchises of the Company and its Subsidiaries unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise would not, individually or in the aggregate, have a Material Adverse Effect.

Section 9.6. Books and Records. The Company will, and will cause each of its Subsidiaries to, maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Company or such Subsidiary, as the case may be. The Company will, and will cause each of its Subsidiaries to, keep books, records and accounts which, in reasonable detail, accurately reflect all transactions and dispositions of assets. The Company and its Subsidiaries have devised a system of internal accounting controls sufficient to provide reasonable assurances that their respective books, records, and accounts accurately reflect all transactions and dispositions of assets and the Company will, and will cause each of its Subsidiaries to, continue to maintain such system.

Section 9.7. Guarantors. (a) The Company will (x) cause each of its Subsidiaries that guarantees or otherwise becomes liable at any time, whether as a borrower or an additional or co-borrower or otherwise, for or in respect of any Indebtedness under any Material Credit Facility (a “**Subsidiary Guarantor**”) and (y) use commercially reasonable efforts to cause any other entity that is not a Subsidiary that guarantees or otherwise becomes liable at any time, whether as a borrower or an additional or co-borrower or otherwise, for or in respect of any Indebtedness under a Material Credit Facility (a “**Non-Subsidiary Guarantor**”); together with any other Non-Subsidiary Guarantors and any Subsidiary Guarantors, each a “**Guarantor**”) to concurrently therewith (or, if prior to the Closing, at Closing):

(i) enter into an agreement in form and substance satisfactory to the Required Holders providing for the guaranty by such Guarantor, on a joint and several basis with all other such Guarantors, of (x) the prompt payment in full when due of all amounts payable by the Company pursuant to the Notes (whether for principal, interest, Make-Whole Amount or otherwise) and this Agreement, including all indemnities, fees and expenses payable by the Company thereunder and (y) the prompt, full and faithful performance, observance and discharge by the Company of each and every covenant, agreement, undertaking and provision required pursuant to the Notes or this Agreement to be performed, observed or discharged by it (a “**NPA Guaranty**”); and

(ii) deliver the following to each Purchaser and holder of a Note:

(A) an executed counterpart of such NPA Guaranty;

(B) a certificate signed by an authorized responsible officer of such Guarantor containing representations and warranties on behalf of such Guarantor to the same effect, *mutatis mutandis*, as those contained in Sections 5.1, 5.2, 5.6, 5.7 and 5.16 of this Agreement (but with respect to such Guarantor and such NPA Guaranty rather than the Company);

(C) all documents as may be reasonably requested by the Required Holders to evidence the due organization, continuing existence and, where applicable, good standing of such Guarantor and the due authorization by all requisite action on the part of such Guarantor of the execution and delivery of such NPA Guaranty and the performance by such Guarantor of its obligations thereunder; and

(D) an opinion of counsel reasonably satisfactory to the Required Holders covering such matters relating to such Guarantor and such NPA Guaranty as the Required Holders may reasonably request.

(b) At the election of the Company and by written notice to each holder of Notes, any Guarantor may be discharged from all of its obligations and liabilities under its NPA Guaranty and shall be automatically released from its obligations thereunder without the need for the execution or delivery of any other document by the holders, *provided* that (i) if such Guarantor is a guarantor or is otherwise liable for or in respect of any Material Credit Facility, then such Guarantor has been released and discharged (or will be released and discharged concurrently with the release of such Guarantor under its NPA Guaranty) under such Material Credit Facility, (ii) at the time of, and after giving effect to, such release and discharge, no Default or Event of Default shall be existing, (iii) no amount is then due and payable under such NPA Guaranty, (iv) if in connection with such Guarantor being released and discharged under any Material Credit Facility, any fee or other form of consideration is given to any holder of Indebtedness under such Material Credit Facility for such release, the holders of the Notes shall receive equivalent consideration substantially concurrently therewith and (v) each holder shall have received a certificate of a Responsible Officer certifying as to the matters set forth in clauses (i) through (iv).

(c) The failure of a Non-Subsidiary Guarantor to comply with Section 9.7(a)(i) or (ii) will constitute non-compliance by a Guarantor with this Section 9.7.

Section 9.8. Most Favored Lender. (a) If at any time after the date of this Agreement the Company amends or modifies any financial covenant or any event of default in the nature of a financial covenant (or the related definitions or provisions governing accounting terms) (each, a “**Financial Covenant**”) in any Material Credit Facility that is similar to any Financial Covenant now or hereafter included herein, or if a Financial Covenant is added to such Material Credit Facility (any such amended, modified or added Financial Covenant, a “**Modified Covenant**”), then the Company shall provide a Most Favored Lender Notice to each holder (or if prior to

Closing, to the Purchasers) of the Notes, and such Financial Covenant herein shall be deemed to be amended, modified or added automatically without any further action on the part of the Company or any holder; *provided* that if such Modified Covenant is less restrictive on the Company, then the amendment, modification or addition to this Agreement shall take effect fifteen (15) days after receipt of such Most Favored Lender Notice, unless the Required Holders notify the Company of their objection to such amendment, modification or addition within such fifteen (15) day period, in which case such amendment, modification or addition to this Agreement will not take effect; *provided further* that, notwithstanding the foregoing, no such amendment, modification or addition shall increase the ratio contained in this Section 10.7 in excess of 0.65 to 1.00 (whether by amending the ratio, the related definitions or provisions governing accounting terms) without the consent of the Required Holders.

(b) Notwithstanding the foregoing, if a Default or an Event of Default then exists and the amendment, modification or addition of any Financial Covenant herein would make such provision less restrictive on the Company, then such Financial Covenant shall only be deemed automatically amended, modified or added at such time when such Default or Event of Default no longer exists, if such time should occur. Furthermore, if any fee or other consideration shall be given to the lenders under such Material Credit Facility in connection with a Modified Covenant, the equivalent of such fee or other consideration shall be given, pro rata, to the holders of the Notes; *provided* that no fee or other consideration shall be due if the Modified Covenant is made in connection with a renewal, restatement or extension of or entry into such Material Credit Facility.

(c) “**Most Favored Lender Notice**” means, in respect of any Modified Covenant, a written notice to each of the holders of the Notes delivered promptly, and in any event within twenty (20) Business Days after the inclusion of such Modified Covenant in any Material Credit Facility (including by way of amendment or other modification of any existing provision thereof) from a Responsible Officer referring to the provisions of this Section 9.8 and setting forth a reasonably detailed description of such Modified Covenant (including any defined terms used therein) and related explanatory calculations, as applicable.

SECTION 10. NEGATIVE COVENANTS.

From the Closing and thereafter, so long as any of the Notes are outstanding, the Company covenants that:

Section 10.1. Transactions with Affiliates. The Company will not, and will not permit any Subsidiary to, enter into directly or indirectly any Material transaction or Material group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Company or another Subsidiary), except pursuant to the reasonable requirements of the Company’s or such Subsidiary’s business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would be obtainable in a comparable arm’s-length transaction with a Person not an Affiliate.

Section 10.2. Consolidation and Merger. The Company will not (a) enter into any transaction of merger or (b) consolidate, liquidate, wind up or dissolve itself (or suffer any

liquidation or dissolution); *provided* that, so long as no Default or Event of Default shall exist or be caused thereby, a Person may be merged or consolidated with or into the Company so long as the Company shall be the continuing or surviving Person.

Section 10.3. Sale or Lease of Assets. The Company will not (nor will it permit its Subsidiaries to) sell, lease, transfer or otherwise dispose of, any of its assets (including all or substantially all of its assets, whether in one transaction or a series of related transactions) except (a) sales or transfers of accounts receivable and related rights to payment in connection with a State Approved Securitization and other sales and transfers of accounts receivable and related rights to payment so long as such other sales and transfers are non-recourse to the Company (other than with respect to Standard Securitization Undertakings) and are otherwise on commercially reasonable terms, (b) sales of assets (excluding those permitted in clause (a) hereof) for fair value, if the aggregate value of all such transactions in any calendar year, does not exceed 25% of the book value of Total Assets, as calculated as of the end of the most recent Fiscal Quarter and (c) the sale, lease, transfer or other disposition, at less than fair value, of any other assets, *provided* that the aggregate book value of such assets shall not exceed \$20,000,000 in any calendar year.

Section 10.4. Line of Business. The Company will not and will not permit any Subsidiary to engage in any business if, as a result, the general nature of the business in which the Company and its Subsidiaries, taken as a whole, would then be engaged would be substantially changed from the general nature of the business in which the Company and its Subsidiaries, taken as a whole, are engaged on the date of this Agreement as described in the Company's Annual Report on Form 10-K for the year ended December 31, 2023.

Section 10.5. Economic Sanctions, Etc. The Company will not, and will not permit any Controlled Entity to (a) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or knowingly indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any holder or any affiliate of such holder to be in violation of any law or regulation applicable to such holder or (ii) is prohibited by any U.S. Economic Sanctions Laws.

Section 10.6. Liens. The Company will not (nor will it permit its Subsidiaries to) contract, create, incur, assume or permit to exist any Lien with respect to any of its property or assets of any kind (whether real or personal, tangible or intangible), whether now owned or hereafter acquired, securing any Indebtedness other than the following:

- (a) Liens securing the Notes;
- (b) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof);
- (c) Liens in respect of property imposed by law arising in the ordinary course of business such as materialmen's, mechanics', warehousemen's, carrier's, landlords' and

other nonconsensual statutory Liens which are not yet due and payable, which have been in existence less than ninety (90) days or which are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof);

(d) pledges or deposits made in the ordinary course of business to secure payment of worker's compensation insurance, unemployment insurance, pensions or social security programs;

(e) Liens arising from good faith deposits in connection with or to secure performance of tenders, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (other than obligations in respect of the payment of borrowed money);

(f) Liens arising from good faith deposits in connection with or to secure performance of statutory obligations and surety and appeal bonds;

(g) easements, rights-of-way, restrictions (including zoning restrictions), minor defects or irregularities in title and other similar charges or encumbrances not, in any material respect, impairing the use of the encumbered property for its intended purposes;

(h) judgment Liens that would not constitute an Event of Default;

(i) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights as to deposit accounts or other funds maintained with a creditor depository institution;

(j) any Lien created or arising over any property which is acquired, constructed or created by the Company or its Subsidiaries, but only if (i) such Lien secures only principal amounts (not exceeding the cost of such acquisition, construction or creation) raised for the purposes of such acquisition, construction or creation, together with any costs, expenses, interest and fees incurred in relation thereto or a guarantee given in respect thereof, (ii) such Lien is created or arises on or before one hundred eighty (180) days after the completion of such acquisition, construction or creation, (iii) such Lien is confined solely to the property so acquired, constructed or created and any improvements thereto and (iv) the aggregate principal amount of all Indebtedness secured by such Liens shall not exceed \$50,000,000 at any one time outstanding;

(k) any Lien on Margin Stock;

(l) the assignment of, or Liens on, accounts receivable and related rights to payment in connection with (i) a State Approved Securitization or (ii) any other accounts receivable securitization so long as such other securitization is non-recourse to the Company (other than with respect to Standard Securitization Undertakings) and is

otherwise on commercially reasonable terms, and the filing of related financing statements under the Uniform Commercial Code of the applicable jurisdictions;

(m) the assignment of, or Liens on, demand, energy or wheeling revenues, or on capacity reservation or option fees, payable to the Company with respect to any wholesale electric service or transmission agreements, the assignment of, or Liens on, revenues from energy services contracts, and the assignment of, or Liens on, capacity reservation or option fees payable to the Company with respect to asset sales permitted herein;

(n) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Liens referred to in the foregoing clauses (a) through (m), for amounts not exceeding the principal amount of the Indebtedness secured by the Lien so extended, renewed or replaced, *provided* that such extension, renewal or replacement Lien is limited to all or a part of the same property or assets that were covered by the Lien extended, renewed or replaced (plus improvements on such property or assets);

(o) Liens on Property that is subject to a lease that is classified as an operating lease as of the date of the Closing but which is subsequently converted into a capital lease;

(p) Liens securing obligations under Hedging Agreements entered into in the ordinary course of business and not for speculative purposes;

(q) Liens granted by bankruptcy remote special purpose Subsidiaries to secure stranded cost securitization bonds in connection with the San Juan Generating Station or any other energy-generating facility or property of the Company; and

(r) Liens on Property, in addition to those otherwise permitted by clauses (a) through (q) above, securing, directly or indirectly, Indebtedness or obligations arising pursuant to other agreements entered into in the ordinary course of business which do not exceed, in the aggregate at any one time outstanding, \$50,000,000; *provided* that the Company and its Subsidiaries shall not secure pursuant to this Section 10.6(r) any Indebtedness outstanding under any Material Credit Facility unless and until the Notes (and any guaranty delivered in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Required Holders in substance and in form.

Section 10.7. Financial Covenant. The Company shall not permit the ratio of (a) Consolidated Indebtedness to (b) Consolidated Capitalization to be greater than 0.65 to 1.0 as of the last day of any Fiscal Quarter.

SECTION 11. EVENTS OF DEFAULT.

An **“Event of Default”** shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five (5) Business Days after the same becomes due and payable; or

(c) the Company defaults in the performance of or compliance with any term contained in Section 7.1(d), Section 9.5 or Section 10; or

(d) the Company or any Guarantor defaults in the performance of or compliance with any term contained herein (other than those referred to in Sections 11(a), (b) and (c)) or in any NPA Guaranty and such default is not remedied within thirty (30) days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this Section 11(d)); or

(e) (i) any representation or warranty made in writing by or on behalf of the Company or by any officer of the Company in this Agreement or any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made, or (ii) any representation or warranty made in writing by or on behalf of any Guarantor or by any officer of such Guarantor in any NPA Guaranty or any writing furnished in connection with such NPA Guaranty proves to have been false or incorrect in any material respect on the date as of which made; or

(f) (i) the Company or any Significant Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$40,000,000 (or its equivalent in the relevant currency of payment) beyond any period of grace provided with respect thereto, or (ii) the Company or any Significant Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$40,000,000 (or its equivalent in the relevant currency of payment) or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests),

(x) the Company or any Significant Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$40,000,000 (or its equivalent in the relevant currency of payment), or (y) one or more Persons have the right to require the Company or any Significant Subsidiary so to purchase or repay such Indebtedness in an amount of at least \$40,000,000; or

(g) the Company or any Significant Subsidiary (i) admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or other Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Significant Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Significant Subsidiaries, or any such petition shall be filed against the Company or any of its Significant Subsidiaries and such petition shall not be dismissed within sixty (60) days; or

(i) any event occurs with respect to the Company or any Significant Subsidiary which under the laws of any jurisdiction is analogous to any of the events described in Section 11(g) or Section 11(h), *provided* that the applicable grace period, if any, which shall apply shall be the one applicable to the relevant proceeding which most closely corresponds to the proceeding described in Section 11(g) or Section 11(h); or

(j) any final judgment or order for the payment of money aggregating in excess of \$40,000,000 or one or more such judgments or orders in excess of \$80,000,000 in the aggregate (or its equivalent in the relevant currency of payment), including any such final order enforcing a binding arbitration decision, are rendered against one or more of the Company and its Significant Subsidiaries and which judgments are not, within sixty (60) days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within sixty (60) days after the expiration of such stay; or

(k) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to

terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) there is any “amount of unfunded benefit liabilities” (within the meaning of section 4001(a)(18) of ERISA) under one or more Plans, determined in accordance with Title IV of ERISA, (iv) the aggregate present value of accrued benefit liabilities under all funded Non-U.S. Plans exceeds the aggregate current value of the assets of such Non-U.S. Plans allocable to such liabilities, (v) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (vi) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, (vii) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder, (viii) the Company or any Subsidiary fails to administer or maintain a Non-U.S. Plan in compliance with the requirements of any and all applicable laws, statutes, rules, regulations or court orders or any Non-U.S. Plan is involuntarily terminated or wound up, or (ix) the Company or any Subsidiary becomes subject to the imposition of a financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans; and any such event or events described in clauses (i) through (ix) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Effect. As used in this Section 11(k), the terms “**employee benefit plan**” and “**employee welfare benefit plan**” shall have the respective meanings assigned to such terms in section 3 of ERISA; or

(l) any NPA Guaranty shall cease to be in full force and effect, any Guarantor or any Person acting on behalf of any Guarantor shall contest in any manner the validity, binding nature or enforceability of any NPA Guaranty, or the obligations of any Guarantor under any NPA Guaranty are not or cease to be legal, valid, binding and enforceable in accordance with the terms of such NPA Guaranty.

SECTION 12. REMEDIES ON DEFAULT, ETC.

Section 12.1. Acceleration. (a) If an Event of Default with respect to the Company described in Section 11(g), (h) or (i) (other than an Event of Default described in clause (i) of Section 11(g) or described in clause (vi) of Section 11(g) by virtue of the fact that such clause encompasses clause (i) of Section 11(g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in Section 11(a) or (b) has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon (including interest accrued thereon at the Default Rate) and (y) the Make-Whole Amount determined in respect of such principal amount, shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

Section 12.2. Other Remedies. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note or NPA Guaranty, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

Section 12.3. Rescission. At any time after any Notes have been declared due and payable pursuant to Section 12.1(b) or (c), the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

Section 12.4. No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, any NPA Guaranty or any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including reasonable attorneys' fees, expenses and disbursements.

SECTION 13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.

Section 13.1. Registration of Notes. The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. If any holder of one or more Notes is a nominee, then (a) the name and address of the beneficial owner of such Note or Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Agreement. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

Section 13.2. Transfer and Exchange of Notes. Upon surrender of any Note to the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)), for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof), within ten (10) Business Days thereafter, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes of the same series (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Schedule 1-A through Schedule 1-B, as applicable. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of Notes of a Series, one Note of such Series may be in a denomination of less than \$100,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

Section 13.3. Replacement of Notes. Upon receipt by the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

- (a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (*provided* that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$50,000,000 or a Qualified

Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within ten (10) Business Days thereafter, the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

SECTION 14. PAYMENTS ON NOTES.

Section 14.1. Place of Payment. Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of Wells Fargo Bank, National Association in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

Section 14.2. Payment by Wire Transfer. So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all other amounts becoming due hereunder by the method and at the address specified for such purpose below such Purchaser's name in the Purchaser Schedule, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchasers have made in this Section 14.2.

Section 14.3. FATCA Information. By acceptance of any Note, the holder of such Note agrees that such holder will with reasonable promptness duly complete and deliver to the Company, or to such other Person as may be reasonably requested by the Company, from time to time (a) in the case of any such holder that is a United States Person, such holder's United States tax identification number or other Forms reasonably requested by the Company necessary to establish such holder's status as a United States Person under FATCA and as may otherwise be necessary for the Company to comply with its obligations under FATCA and (b) in the case of any

such holder that is not a United States Person, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for the Company to comply with its obligations under FATCA and to determine that such holder has complied with such holder's obligations under FATCA or to determine the amount (if any) to deduct and withhold from any such payment made to such holder (and the Company agrees that under current FATCA regulations in place as of the date of this Agreement as originally executed, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, as well as a U.S. Tax Compliance Certificate substantially in the form of Schedule 14.3 attached hereto, in both cases completed and executed, shall satisfy this requirement). Nothing in this Section 14.3 shall require any holder to provide information that is confidential or proprietary to such holder unless the Company is required to obtain such information under FATCA and, in such event, the Company shall treat any such information it receives as confidential. Notwithstanding any other provision of this Agreement, the Company or its agent shall be entitled to make a deduction or withholding from any payment which it makes under this Agreement for or on account of any present or future taxes, duties or charges if and to the extent so required by any applicable law and any current or future regulations or agreements thereunder or official interpretations thereof or any law implementing an intergovernmental approach thereto or by virtue of the holder failing to satisfy any certification or other requirements in respect of the Notes, in which event the Company or its agent shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities for the amount so withheld or deducted and shall have no obligation to gross up any payment hereunder or pay any additional amount as a result of such withholding tax.

SECTION 15. EXPENSES, ETC.

Section 15.1. Transaction Expenses. Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required by the Required Holders, local or other counsel) incurred by the Purchasers and each other holder of a Note in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, any NPA Guaranty or the Notes (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, any NPA Guaranty or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, any NPA Guaranty or the Notes, or by reason of being a holder of any Note, (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and any NPA Guaranty and (c) the costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO, *provided* that such costs and expenses under this clause (c) shall not exceed \$5,000 per Series of Note. If required by the NAIC, the Company shall obtain and maintain at its own cost and expense a Legal Entity Identifier (LEI).

The Company will pay, and will save each Purchaser and each other holder of a Note harmless from, (i) all claims in respect of any fees, costs or expenses, if any, of brokers and finders

(other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes), (ii) any and all wire transfer fees that any bank or other financial institution deducts from any payment under such Note to such holder or otherwise charges to a holder of a Note with respect to a payment under such Note and (iii) any judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense (including reasonable attorneys' fees and expenses) or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Notes by the Company.

Section 15.2. Certain Taxes. The Company agrees to pay all stamp, documentary or similar taxes or fees which may be payable in respect of the execution and delivery or the enforcement of this Agreement or any NPA Guaranty or the execution and delivery (but not the transfer) or the enforcement of any of the Notes in the United States or any other jurisdiction where the Company or any Guarantor has assets or of any amendment of, or waiver or consent under or with respect to, this Agreement or any NPA Guaranty or of any of the Notes, and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Company pursuant to this Section 15, and will save each holder of a Note to the extent permitted by applicable law harmless against any loss or liability resulting from nonpayment or delay in payment of any such tax or fee required to be paid by the Company hereunder.

Section 15.3. Survival. The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement, any NPA Guaranty or the Notes, and the termination of this Agreement.

SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a validly transferred Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement, the Notes and any NPA Guaranty embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

SECTION 17. AMENDMENT AND WAIVER.

Section 17.1. Requirements. This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), only with the written consent of the Company and the Required Holders, except that:

- (a) no amendment or waiver of any of Sections 1, 2, 3, 4, 5, 6 or 21 hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing; and

(b) no amendment or waiver may, without the written consent of each Purchaser and the holder of each Note at the time outstanding, (i) subject to Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of (x) interest on the Notes or (y) the Make-Whole Amount, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any amendment or waiver or the principal amount of the Notes that the Purchasers are to purchase pursuant to Section 2 upon the satisfaction of the conditions to Closing that appear in Section 4, or (iii) amend any of Sections 8 (except as set forth in the second sentence of Section 8.2), 11(a), 11(b), 12, 17 or 20.

Section 17.2. Solicitation of Holders of Notes.

(a) *Solicitation.* The Company will provide each Purchaser and each holder of a Note with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Purchaser or such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes or any NPA Guaranty. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 17 or any NPA Guaranty to each Purchaser and each holder of a Note promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Purchasers or holders of Notes.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any Purchaser or holder of a Note as consideration for or as an inducement to the entering into by such Purchaser or holder of any waiver or amendment of any of the terms and provisions hereof or of any NPA Guaranty or any Note unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each Purchaser and each holder of a Note even if such Purchaser or holder did not consent to such waiver or amendment.

(c) *Consent in Contemplation of Transfer.* Any consent given pursuant to this Section 17 by a holder of a Note that has transferred or has agreed to transfer its Note to (i) the Company, (ii) any Subsidiary or any other Affiliate or (iii) any other Person in connection with, or in anticipation of, such other Person acquiring, making a tender offer for or merging with the Company and/or any of its Affiliates, in each case in connection with such consent, shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

Section 17.3. Binding Effect, Etc. Any amendment or waiver consented to as provided in this Section 17 or any NPA Guaranty applies equally to all Purchasers and holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default

not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and any Purchaser or holder of a Note and no delay in exercising any rights hereunder or under any Note or NPA Guaranty shall operate as a waiver of any rights of any holder of such Note.

Section 17.4. Notes Held by Company, Etc. Solely for the purpose of determining whether the Purchasers or holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement, any NPA Guaranty or the Notes, or have directed the taking of any action provided herein or in any NPA Guaranty or the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

SECTION 18. NOTICES.

Except to the extent otherwise provided in Section 7.4, all notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by an internationally recognized overnight delivery service (charges prepaid), (b) by registered or certified mail with return receipt requested (postage prepaid) or (c) by an internationally recognized overnight delivery service (charges prepaid). Any such notice must be sent:

- (i) if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in the Purchaser Schedule, or at such other address as such Purchaser or nominee shall have specified to the Company in writing,
- (ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or
- (iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of the Treasurer of the Company, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notwithstanding the foregoing, any notices or communications to be provided by the Company hereunder may be delivered to each Purchaser or its nominee by electronic delivery at the e-mail address set forth for such Purchaser or nominee in the Purchaser Schedule, or, for each Purchaser or its nominee or any holder of a Note, to the e-mail address as communicated from time to time in a separate writing delivered to the Company.

Notices under this Section 18 will be deemed given only when actually received.

SECTION 19. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the

Closing (except the Notes themselves) and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

SECTION 20. CONFIDENTIAL INFORMATION.

For the purposes of this Section 20, “**Confidential Information**” means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser’s behalf or any Person from whom such disclosure would, to the knowledge of such Purchaser, violate a duty of confidentiality to the Company or any Subsidiary, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or any Person from whom such disclosure would, to the knowledge of such Purchaser, violate a duty of confidentiality to the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, *provided* that such Purchaser may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), (ii) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (v) any Person from which it offers to purchase any Security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser’s investment portfolio, or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in

connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes, this Agreement or any NPA Guaranty. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying this Section 20.

In the event that as a condition to receiving access to information relating to the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement, any Purchaser or holder of a Note is required to agree to a confidentiality undertaking (whether through IntraLinks, another secure website, a secure virtual workspace or otherwise) which is different from this Section 20, this Section 20 shall not be amended thereby and, as between such Purchaser or such holder and the Company, this Section 20 shall supersede any such other confidentiality undertaking.

SECTION 21. SUBSTITUTION OF PURCHASER.

Each Purchaser shall have the right to substitute any one of its Affiliates or another Purchaser or any one of such other Purchaser's Affiliates (a "**Substitute Purchaser**") as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Substitute Purchaser, shall contain such Substitute Purchaser's agreement to be bound by this Agreement and shall contain a confirmation by such Substitute Purchaser of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 21), shall be deemed to refer to such Substitute Purchaser in lieu of such original Purchaser. In the event that such Substitute Purchaser is so substituted as a Purchaser hereunder and such Substitute Purchaser thereafter transfers to such original Purchaser all of the Notes then held by such Substitute Purchaser, upon receipt by the Company of notice of such transfer, any reference to such Substitute Purchaser as a "Purchaser" in this Agreement (other than in this Section 21), shall no longer be deemed to refer to such Substitute Purchaser, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

SECTION 22. MISCELLANEOUS.

Section 22.1. Successors and Assigns. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Note) whether so expressed or not, except that, subject to Section 10.2, the Company may not assign or otherwise transfer any of its rights or obligations hereunder or under the Notes without the prior written consent of each holder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns

permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

Section 22.2. Accounting Terms. (a) All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (i) all computations made pursuant to this Agreement shall be made in accordance with GAAP and (ii) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including Section 9, Section 10 and the definition of “Indebtedness”), any election by the Company to measure any financial liability using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 – *Fair Value Option*, International Accounting Standard 39 – *Financial Instruments: Recognition and Measurement* or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in this Agreement (including the financial covenant contained in Section 10.7), and either the Company or the Required Holders shall so request, the holders of Notes and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Holders); *provided* that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the holders of Notes financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 22.3. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 22.4. Construction, Etc. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Defined terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time

amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and, for purposes of the Notes, shall also include any such notes issued in substitution therefor pursuant to Section 13, (b) subject to Section 22.1, any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections and Schedules shall be construed to refer to Sections of, and Schedules to, this Agreement, and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

Section 22.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement. The parties agree to electronic contracting and signatures with respect to this Agreement and any other agreement or instrument hereunder (other than the Notes). Delivery of an electronic signature to, or a signed copy of, this Agreement and any other agreement or instrument delivered hereunder (other than the Notes) by facsimile, email or other electronic transmission shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and any other agreement or instrument delivered hereunder shall be deemed to include electronic signatures, the electronic matching of assignment terms (other than the Notes) and contract formations on electronic platforms approved by the Issuer, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 22.6. Regulatory Statement. Pursuant to the terms of an order issued by the NMPRC and a stipulation that has been approved by the NMPRC, the Company is required to include the following separateness covenants in any debt instrument:

- (a) The Company and its corporate parent, the Parent, are being operated as separate corporate and legal entities. In agreeing to make loans to Parent, Parent's lenders are relying solely on the creditworthiness of Parent based on the assets owned by Parent, and the repayment of any loan to Parent will be made solely from the assets of Parent and not from any assets of the Company; and the Parent's lenders will not take any steps for the purpose of procuring the appointment of an administrative receiver or the making of an administrative order for instituting any bankruptcy, reorganization, insolvency, wind up or liquidation or any like proceeding under applicable law in respect of the Company.

(b) Notwithstanding any of the foregoing set forth in this Section 22.6, the Company and the holders hereby acknowledge and agree that (i) this Agreement and the Notes evidence Indebtedness of the Company and not of the Parent, (ii) the holders are not, and shall not at any time be deemed to be, “Parent’s lenders” under this Agreement and the Notes, (iii) as set forth in this Agreement and the Notes, the Company is responsible for the repayment of all amounts outstanding hereunder, and (iv) the holders of Notes reserve all rights to pursue any and all remedies available at law and otherwise (including in bankruptcy) should the Company breach any of its obligations under this Agreement and/or the Notes.

Section 22.7. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

Section 22.8. Jurisdiction and Process; Waiver of Jury Trial. (a) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement or the Notes. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 22.8(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

(c) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in Section 22.8(a) by mailing a copy thereof by registered, certified, priority or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Section 18 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(d) Nothing in this Section 22.8 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may

Public Service Company of New Mexico

Note Purchase Agreement

have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(e) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, THE NOTES OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

* * * * *

Public Service Company of New Mexico

Note Purchase Agreement

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name:

Title:

Public Service Company of New Mexico

Note Purchase Agreement

This Agreement is hereby
accepted and agreed to as
of the date hereof.

[PURCHASER]

By _____

Name:

Title:

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

“Acceptable Rating Agency” means S&P, Moody’s or other nationally recognized statistical ratings organization so designated by the SEC, in each case, whose status has been confirmed by the SVO.

“Affiliate” means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

“Agreement” means this Note Purchase Agreement, including all Schedules attached to this Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Anti-Corruption Laws” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

“Anti-Money Laundering Laws” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

“Authorized Officer” means any of the president, chief executive officer, chief financial officer or treasurer of the Company.

“Bankruptcy Code” means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

“Blocked Person” means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity or organization that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or otherwise beneficially owned fifty percent (50%) or more by, controlled by or acting on behalf of, directly or indirectly, any one or more Person(s), entity or organization described in clause (a) or (b) or a Sanctioned Jurisdiction.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed.

“Capital Lease” means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

“Capital Stock” means (a) in the case of a corporation, all classes of capital stock of such corporation, (b) in the case of a partnership, partnership interests (whether general or limited), (c) in the case of a limited liability company, membership interests and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person; including, in each case, all warrants, rights or options to purchase any of the foregoing.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, promulgation, implementation or application thereof by any Governmental Authority, (c) the adoption or taking effect of any request, rule, guideline, policy or directive (whether or not having the force of law) by any Governmental Authority or (d) any change in any request, rule, guideline, policy or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means the failure of the Parent to own and control more than 50% of the Voting Stock of the Company.

“Closing” is defined in Section 3.

“Code” means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder from time to time.

“Company” is defined in the first paragraph of this Agreement.

“Confidential Information” is defined in Section 20.

“Consolidated Capitalization” means the sum of (a) all of the shareholders’ equity or net worth of the Company and its Subsidiaries, as determined in accordance with GAAP plus (b) Consolidated Indebtedness minus (c) Securitization Equity.

“Consolidated Indebtedness” means, as of any date of determination, with respect to the Company and its Subsidiaries on a consolidated basis, the difference of (a) an amount equal to all

Indebtedness of the Company and its Subsidiaries as of such date minus (b) Non-Recourse Securitization Indebtedness.

“Contingent Obligation” means, with respect to any Person, any direct or indirect liability of such Person with respect to any Indebtedness, liability or other obligations (the **“primary obligation”**) of another Person (the **“primary obligor”**), whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor in respect thereof to make payment of such primary obligation or (d) otherwise to assure or hold harmless the owner of any such primary obligation against loss or failure or inability to perform in respect thereof; *provided, however*, that, with respect to the Company and its Subsidiaries, the term Contingent Obligation shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation of any Person shall be deemed to be an amount equal to the maximum amount of such Person’s liability with respect to the stated or determinable amount of the primary obligation for which such Contingent Obligation is incurred or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms **“Controlled”** and **“Controlling”** shall have meanings correlative to the foregoing.

“Controlled Entity” means (a) any of the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates and (b) if the Company has a parent company, such parent company and its Controlled Affiliates.

“Debt Rating” means the long-term unsecured senior non-credit enhanced debt rating of the Company by an Acceptable Rating Agency.

“Default” means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

“Default Rate” means that rate of interest as defined in the first paragraph of the Notes of such Series.

“Disclosure Documents” is defined in Section 5.3.

“EDGAR” means the SEC’s Electronic Data Gathering, Analysis and Retrieval System or any successor SEC electronic filing system for such purposes.

“Environmental Claim” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of its business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Laws or relating to any permit issued, or any approval given, under any such Environmental Laws (collectively, **“Claims”**), including (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Laws and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

“Event of Default” is defined in Section 11.

“Execution Date” is defined in Section 3.

“FATCA” means (a) sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

“Financial Covenant” is defined in Section 9.8(a).

“Fiscal Quarter” means each of the calendar quarters ending as of the last day of each March, June, September and December.

“Fiscal Year” means the calendar year ending December 31.

“Form 10-K” is defined in Section 7.1(b).

“Form 10-Q” is defined in Section 7.1(a).

“GAAP” means (a) generally accepted accounting principles as in effect from time to time in the United States of America and (b) for purposes of Section 9.6, with respect to any Subsidiary, generally accepted accounting principles (including International Financial Reporting Standards, as applicable) as in effect from time to time in the jurisdiction of organization of such Subsidiary.

“Guarantor” is defined in Section 9.7.

“Governmental Authority” means

- (a) the government of
 - (i) the United States of America or any state or other political subdivision thereof, or
 - (ii) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

“Governmental Official” means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

“Guaranty” means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including obligations incurred through an agreement, contingent or otherwise, by such Person:

- (a) to purchase such indebtedness or obligation or any property constituting security therefor;
- (b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;
- (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or
- (d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

“Hazardous Materials” means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized by any applicable law, including asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

“Hedging Agreements” means, collectively, interest rate protection agreements, equity index agreements, foreign currency exchange agreements, option agreements or other interest or exchange rate or commodity price hedging agreements (other than forward contracts for the delivery of power or gas written by the Company to its jurisdictional and wholesale customers in the ordinary course of business).

“holder” means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1, *provided, however*, that if such Person is a nominee, then for the purposes of Sections 7, 12, 17.2 and 18 and any related definitions in this Schedule A, “holder” shall mean the beneficial owner of such Note whose name and address appears in such register.

“INHAM Exemption” is defined in Section 6.2(e).

“Indebtedness” means, with respect to any Person (without duplication), (a) all indebtedness and obligations of such Person for borrowed money or in respect of loans or advances of any kind, (b) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments, (c) all reimbursement obligations of such Person with respect to surety bonds, letters of credit and bankers’ acceptances (in each case, whether or not drawn or matured and in the stated amount thereof), (d) all obligations of such Person to pay the deferred purchase price of property or services, (e) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (f) all obligations of such Person as lessee under leases that are or are required to be, in accordance with GAAP, recorded as capital leases, to the extent such obligations are required to be so recorded, (g) the net termination obligations of such Person under any Hedging Agreements, calculated as of any date as if such agreement or arrangement were terminated as of such date in accordance with the applicable rules under GAAP, (h) all Contingent Obligations of such Person, (i) all obligations and liabilities of such Person incurred in connection with any transaction or series of transactions providing for the financing of assets through one or more securitizations or in connection with, or pursuant to, any synthetic lease or similar off-balance sheet financing, (j) the aggregate amount of uncollected accounts receivable of such Person subject at the time of determination to a sale of receivables (or similar transaction) to the extent such transaction is effected with recourse to such Person (whether or not such transaction would be reflected on the balance sheet of such Person in accordance with GAAP) and (k) all indebtedness referred to in clauses (a) through (j) above secured by any Lien

on any property or asset owned or held by such Person regardless of whether the indebtedness secured thereby shall have been assumed by such Person or is nonrecourse to the credit of such Person.

“Institutional Investor” means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any Related Fund of any holder of any Note.

“Lien” means any mortgage, pledge, hypothecation, assignment, security interest, lien (statutory or otherwise), preference, priority, charge or other encumbrance of any nature, whether voluntary or involuntary, including the interest of any vendor or lessor under any conditional sale agreement, title retention agreement, capital lease or any other lease or arrangement having substantially the same effect as any of the foregoing.

“Make-Whole Amount” is defined in Section 8.6.

“Margin Stock” has the meaning ascribed to such term in Regulation U.

“Material” means material in relation to the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, (b) the ability of the Company to perform its obligations under this Agreement and the Notes or (c) the validity or enforceability of this Agreement or the Notes, *provided, however*, that a Material Adverse Effect shall not include the effect of the shutdown or closure of the San Juan Generating Station or the Four Corners Power Plant, *provided* that the Company remains in compliance with Section 10.7 of this Agreement.

“Material Credit Facility” means, as to the Company and its Subsidiaries,

(a) the Sixth Amendment to and Restatement of Credit Agreement dated as of January 26, 2023 among the Company, the lenders identified therein, and Wells Fargo Bank, National Association, as administrative agent, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(b) the Term Loan Agreement dated as of August 5, 2022 among the Company and Royal Bank of Canada and CoBank ACB, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(c) the Note Purchase Agreement dated as of July 28, 2017 among the Company and the holders of the notes issued thereunder, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(d) the Note Purchase Agreement dated as of April 30, 2020 among the Company and the holders of the notes issued thereunder, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(e) the Note Purchase Agreement dated as of July 14, 2021 among the Company and the holders of the notes issued thereunder, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(f) the Note Purchase Agreement dated as of September 23, 2021 among the Company and the holders of the notes issued thereunder, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(g) the Note Purchase Agreement dated as of April 28, 2023 among the Company and the holders of the notes issued thereunder, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof; and

(h) any other agreement(s) creating or evidencing indebtedness for borrowed money (other than indebtedness owed to affiliates of the Company) entered into on or after the date of this Agreement by the Company or any Subsidiary, or in respect of which the Company or any Subsidiary is an obligor or otherwise provides a guarantee or other credit support (“**Credit Facility**”), in a principal amount outstanding or available for borrowing equal to or greater than (i) \$75,000,000 for the purposes of Section 9.8 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency) or (ii) \$40,000,000 for all other provisions under this Agreement (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency); and if no Credit Facility or Credit Facilities equal or exceed such amounts, then the largest Credit Facility shall be deemed to be a Material Credit Facility.

“**Maturity Date**” is defined in the first paragraph of each Note.

“**Modified Covenant**” is defined in Section 9.8(a).

“**Moody’s**” means Moody’s Investors Service, Inc. and its successors.

“**Most Favored Lender Notice**” is defined in Section 9.8(c).

“**Multiemployer Plan**” means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

“**NAIC**” means the National Association of Insurance Commissioners.

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

“Non-U.S. Plan” means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by the Company or any Subsidiary primarily for the benefit of employees of the Company or one or more Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment and (b) is not subject to ERISA or the Code.

“Non-Recourse Securitization Indebtedness” means, as of any date of determination, all Indebtedness related to State Approved Securitizations up to a maximum amount of \$500,000,000 at any one time; *provided* that such Indebtedness is non-recourse to the Company, other than with respect to Standard Securitization Undertakings.

“Non-Subsidiary Guarantor” is defined in Section 9.7(a).

“Notes” is defined in Section 1.

“NPA Guaranty” is defined in Section 9.7(a).

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“OFAC Sanctions Program” means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

“Officer’s Certificate” means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

“Parent” means PNM Resources, Inc., a New Mexico corporation.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

“Plan” means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five (5) years, has been established or maintained, or to which contributions are or, within the preceding five (5) years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

“Property” means any right, title or interest in or to any property or asset of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“property” or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

“PTE” is defined in Section 6.2(a).

“Purchaser” or **“Purchasers”** means each of the purchasers that has executed and delivered this Agreement to the Company and such Purchaser’s successors and assigns (so long as any such assignment complies with Section 13.2), *provided, however*, that any Purchaser of a Note that ceases to be the registered holder or a beneficial owner (through a nominee) of such Note as the result of a transfer thereof pursuant to Section 13.2 shall cease to be included within the meaning of “Purchaser” of such Note for the purposes of this Agreement upon such transfer.

“Purchaser Schedule” means the Purchaser Schedule to this Agreement listing the Purchasers of the Notes and including their notice and payment information.

“Qualified Institutional Buyer” means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

“QPAM Exemption” is defined in Section 6.2(d).

“Related Fund” means, with respect to any holder of any Note, any fund or entity that (a) invests in Securities or bank loans, and (b) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

“Required Holders” means, at any time, (a) prior to the Closing, the Purchasers, and (b) on or after the date of the Closing, the holders of at least 51% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

“Responsible Officer” means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

“Sanctioned Jurisdiction” means, at any time, a country or territory which is itself subject to or the target of any comprehensive country-wide sanctions under U.S. Economic Sanctions Laws (as opposed to individual, entity or other list-based sanctions).

“S&P” means S&P Global Ratings, and its successors.

“SEC” means the Securities and Exchange Commission of the United States of America.

“Securities” or **“Security”** shall have the meaning specified in section 2(1) of the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“Securitization Equity” means, as of any date of determination, with respect to a Subsidiary of the Company formed for the purpose of entering into a State Approved Securitization, all of the equity of such Subsidiary, as determined in accordance with GAAP.

“Senior Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Company.

“Series” is defined in Section 1.

“Series A Notes” is defined in Section 1.

“Series B Notes” is defined in Section 1.

“Significant Subsidiary” means at any time any Subsidiary that would at such time constitute a “significant subsidiary” (as such term is defined in Regulation S-X of the SEC as in effect on the date of this Agreement) of the Company.

“Solvent” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, Contingent Obligations and other commitments as they mature in the normal course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the assets of such Person is greater than the total amount of liabilities of such Person and (e) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured.

“Source” is defined in Section 6.2.

“Standard Securitization Undertakings” means representations, warranties, covenants and indemnities entered into by the Company or a Subsidiary thereof that are reasonably customary in non-recourse securitization transactions.

“State Approved Securitization” means a securitization financing entered into by the Company pursuant to existing or future New Mexico statutory authority and regulatory approval by the NMPRC authorizing the imposition on electric customers of a charge to permit the recovery over time of costs identified by a financing order issued by the NMPRC pursuant to statutory authority, so long as such securitization financing is non-recourse to the Company (other than with respect to Standard Securitization Undertakings).

“State Sanctions List” means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other

commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

“Subsidiary” means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Any reference to a Subsidiary of the Company herein shall not include a Subsidiary that is inactive, has minimal or no assets and does not generate revenues. Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Company.

“Substitute Purchaser” is defined in Section 21.

“SVO” means the Securities Valuation Office of the NAIC.

“United States Person” has the meaning set forth in Section 7701(a)(30) of the Code.

“USA PATRIOT Act” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 and the rules and regulations promulgated thereunder from time to time in effect.

“U.S. Economic Sanctions Laws” means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

“Voting Stock” means the Capital Stock of a Person that is then outstanding and normally entitled to vote in the election of directors and other securities of such Person convertible into or exercisable for such Capital Stock (whether or not such securities are then currently convertible or exercisable).

“Wholly-Owned Subsidiary” means, at any time, any Subsidiary all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company’s other Wholly-Owned Subsidiaries at such time.

[FORM OF SERIES A NOTE]

PUBLIC SERVICE COMPANY OF NEW MEXICO

[]% SENIOR UNSECURED NOTE, SERIES A, DUE [], 20[]

No. []
\$[]

[Date]
PPN []

FOR VALUE RECEIVED, the undersigned, PUBLIC SERVICE COMPANY OF NEW MEXICO (herein called the “**Company**”), a corporation organized and existing under the laws of the State of New Mexico, hereby promises to pay to [], or registered assigns, the principal sum of [] DOLLARS (or so much thereof as shall not have been prepaid) on [], 20[] (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of []% per annum from the date hereof, payable semiannually, on the [] day of [] and [] in each year, commencing with [], 2024, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, (x) on any overdue payment of interest and (y) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the greater of (i) []% or (ii) 2.00% over the rate of interest publicly announced by Wells Fargo Bank, National Association from time to time in New York, New York as its “base” or “prime” rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand) (the “**Default Rate**”).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Wells Fargo Bank, National Association or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Unsecured Notes (herein called the “**Notes**”) issued pursuant to the Note Purchase Agreement, dated [], 2024 (as from time to time amended, the “**Note Purchase Agreement**”), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) made the representation set forth in Section 6.2 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the

SCHEDULE 1-A
(to Note Purchase Agreement)

transferee. Prior to due presentment for registration of transfer, the Company may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

[FORM OF SERIES B NOTE]

PUBLIC SERVICE COMPANY OF NEW MEXICO

[]% SENIOR UNSECURED NOTE, SERIES B, DUE [], 20[]

No. []
\$[]

[Date]
PPN []

FOR VALUE RECEIVED, the undersigned, PUBLIC SERVICE COMPANY OF NEW MEXICO (herein called the “**Company**”), a corporation organized and existing under the laws of the State of New Mexico, hereby promises to pay to [], or registered assigns, the principal sum of [] DOLLARS (or so much thereof as shall not have been prepaid) on [], 20[] (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of []% per annum from the date hereof, payable semiannually, on the [] day of [] and [] in each year, commencing with [], 2024, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, (x) on any overdue payment of interest and (y) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the greater of (i) []% or (ii) 2.00% over the rate of interest publicly announced by Wells Fargo Bank, National Association from time to time in New York, New York as its “base” or “prime” rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Wells Fargo Bank, National Association or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Unsecured Notes (herein called the “**Notes**”) issued pursuant to the Note Purchase Agreement, dated [], 2024 (as from time to time amended, the “**Note Purchase Agreement**”), between the Company and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 20 of the Note Purchase Agreement and (ii) made the representation set forth in Section 6.2 of the Note Purchase Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the

SCHEDULE 1-B
(to Note Purchase Agreement)

transferee. Prior to due presentment for registration of transfer, the Company may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

SCHEDULE 4.4(a)

FORM OF OPINION OF IN-HOUSE COUNSEL TO THE COMPANY

The following opinions are to be provided by in-house counsel to the Company, pursuant to New Mexico law, subject to customary assumptions, limitations and qualifications. All capitalized terms used herein without definition shall have the meanings ascribed thereto in the Note Purchase Agreement.

1. The Company is a corporation validly existing and in good standing under the laws the State of New Mexico.

2. The Company has the corporate power and execute, deliver and perform its obligations under the Note Purchase Agreement and the Notes, and the Company has taken all necessary corporate action to authorize the execution, delivery and performance by it of the Note Purchase Agreement and the Notes.

3. The Company has duly executed and delivered the Note Purchase Agreement and the Notes.

4. Other than the Company's filing with the NMPRC, and the NMPRC's approval, of the transactions contemplated by the Note Purchase Agreement, which have previously been made and obtained, no consent, approval or authorization of, or filing with, any governmental authority of the State of New Mexico applicable to the Company is required in connection with the execution, delivery or performance of the Note Purchase Agreement and the Notes by the Company, except (i) as have been previously made or obtained and (ii) filings which are necessary in order to release liens not permitted by the Note Purchase Agreement.

5. The execution, delivery and performance by the Company of the Note Purchase Agreement and the Notes do not (i) violate the articles of incorporation or bylaws of the Company, (ii) violate any applicable law or regulation of the State of New Mexico, (iii) violate or constitute a default under any order, decree, injunction or judgment (each an "Order") or under any material indenture, credit agreement, mortgage, deed of trust, contract or other agreement or instrument (each an "Agreement"), in each case known to me and to which the Company is a party or by which the Company or its properties may be bound or (iv) to my knowledge, result in the creation or imposition of any Lien on any asset of the Company pursuant to the terms of any Order or Agreement.

6. To my knowledge, after making reasonable inquiry of other members of the law department of the Company, and except as disclosed in the Company's Annual Report on Form 10-K for the Fiscal Year ended December 31, 2023, there are no actions, suits or legal, equitable, arbitration or administrative proceedings pending or threatened against the Borrower that (a) draw into question the validity of the Note Purchase Agreement or the Notes or (b) would have or would be reasonably expected to have a Material Adverse Effect.

**FORM OF OPINION OF SPECIAL COUNSEL
FOR THE COMPANY**

The following opinions are to be provided by the special counsel of the Company, pursuant to New York and federal law, subject to customary assumptions (including assumptions regarding matters covered by the opinion of Company counsel), limitations and qualifications. All capitalized terms used herein without definition shall have the meanings ascribed thereto in the Note Purchase Agreement.

1. Each of the Note Purchase Agreement and the Notes constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance its terms under the laws of the State of New York.

2. No consent, approval or authorization of or filing with, any Governmental Authority of the State of New York or the United States that, in each case, is applicable to the Company is required for the execution, delivery or performance by the Company of the Note Purchase Agreement or the Notes, except (i) as have been previously made or obtained and (ii) filings which are necessary in order to release liens not permitted by the Note Purchase Agreement, if any.

3. The Company is not required to be registered under the Investment Company Act of 1940, as amended.

4. No registration under the Securities Act of 1933, as amended, of the Notes, and no qualification of an Indenture under the Trust Indenture Act of 1939, as amended, in respect of the Notes, is required for the offer and sale of the Notes in the manner contemplated by the Note Purchase Agreement, it being understood that no opinion is expressed as to any subsequent resale of any Notes.

5. Neither the execution and delivery by the Company of the Note Purchase Agreement or the Notes, nor the performance by the Company of its obligations thereunder violates any statute or regulation of New York or United States federal law (including Regulation T, U or X of the Board of Governors of the United States Federal Reserve System) that is applicable to the Company.

SCHEDULE 5.3

DISCLOSURE MATERIALS

PUBLIC SERVICE COMPANY OF NEW MEXICO

SyndTrak Items: **Document Title**

Financial Statements Listed in Schedule 5.5

SEC Filings: PNM's Annual Reports on Form 10-K for the years ended December 31, 2021-2023 and Current Reports on Form 8-K filed to date in 2024 are all available on the following link:

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000081023&owner=exclude&count=40&hidefilings=0>

SCHEDULE 5.4

AFFILIATES; DIRECTORS AND OFFICERS²

The Company's Subsidiaries (as defined):

None.

i) The Company's Affiliates³, other than Subsidiaries (as defined):

- a) PNM Resources, Inc.
- b) TNP Enterprises, Inc.
- c) Texas-New Mexico Power Company
- d) PNMR Services Company
- e) PNMR Development and Management Corporation
- f) NM Renewable Development, LLC
- g) NMRD Data Center, LLC
- h) NMRD Data Center II, LLC
- i) NMRD Data Center II-Britton, LLC
- j) NMRD Data Center III, LLC
- k) NMRD Data Center III-Encino, LLC

ii) The Company's Directors and Officers:

a) Directors:

Patricia K. Collawn, Chairman
Ronald N. Darnell, Director
Elisabeth A. Eden, Director
Michael P. Mertz, Director
Joseph D. Tarry, Director

b) Officers:

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Ronald N. Darnell, Senior Vice President, Public Policy
Elisabeth A. Eden, Senior Vice President, Chief Financial Officer and
Treasurer
Todd Fridley, Vice President, NM Operations

² **NTD**: Company to update/confirm.

³ List does not include inactive Affiliates.

Maureen Gannon, Vice President and Chief Sustainability Officer
Michael P. Mertz, Vice President and Chief Information Officer
Henry E. Monroy, Vice President, Regulatory and Corporate Controller
Julie Rowey, Vice President, Chief Customer Officer
Joseph D. Tarry, President and Chief Executive Officer
Becky R. Teague, Vice President, Human Resources

SCHEDULE 5.5

**FINANCIAL STATEMENTS OF PUBLIC SERVICE COMPANY OF NEW MEXICO
CONTAINED IN THE FOLLOWING SEC FILINGS:**

Date Filed	SEC Filings	Description
03/01/2022	10-K	Annual Report for year ended 12/31/21
02/28/2023	10-K	Annual Report for year ended 12/31/22
[__/__/2024]	10-K	Annual Report for year ended 12/31/23

Available on the following link:

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000081023&owner=exclude&count=40&hidefilings=0>

SCHEDULE 5.15

EXISTING INDEBTEDNESS OF THE COMPANY AT DECEMBER 31, 2023⁴

Description	Principal Outstanding (000s)	Interest Rate	Year Issued	Final Maturity Date	Tax Exempt Mandatory Put Date
Farmington PCBs, 2016 Series A	\$46,000	2.150%	2021	4/1/2033	
Farmington PCBs, 2016 Series B	\$100,000	2.150%	2021	4/1/2033	
Farmington PCBs, 2010 Series B	\$37,000	3.000%	2022	6/1/2040	Jun 1 2024
Maricopa PCBs, 2003 Series A	\$36,000	3.000%	2022	1/1/2038	Jun 1 2024
Farmington PCBs, 2010 Series D	\$130,000	1.100%	2020	6/1/2040	Jun 1 2023
Farmington PCBs, 2010 Series A	\$40,045	0.875%	2021	6/1/2040	Oct 1 2026
Maricopa PCBs, 2010 Series A	\$39,300	0.875%	2021	6/1/2043	Oct 1 2026
Maricopa PCBs, 2010 Series B	\$21,000	0.875%	2021	6/1/2043	Oct 1 2026
Farmington PCBs, 2010 Series C	\$65,000	1.150%	2020	6/1/2040	Jun 1 2024
Farmington PCBs, 2010 Series E	\$60,000	1.150%	2020	6/1/2040	Jun 1 2024
PNM SUNs, 2015 Series	\$250,000	3.850%	2015	8/1/2025	
PNM SUNs, 2018 Series A	\$55,000	3.150%	2018	5/15/2023	
PNM SUNs, 2018 Series B	\$104,000	3.450%	2018	5/15/2025	
PNM SUNs, 2018 Series C	\$88,000	3.680%	2018	5/15/2028	
PNM SUNs, 2018 Series D	\$15,000	3.780%	2018	8/1/2028	
PNM SUNs, 2018 Series E	\$38,000	3.930%	2018	5/15/2033	
PNM SUNs, 2018 Series F	\$45,000	4.220%	2018	5/15/2038	
PNM SUNs, 2018 Series G	\$20,000	4.500%	2018	5/15/2048	
PNM SUNs, 2018 Series H	\$85,000	4.600%	2018	8/1/2048	
PNM SUNs, 2020 Series A	\$150,000	3.210%	2020	4/30/2030	
PNM SUNs, 2020 Series B	\$50,000	3.570%	2020	4/29/2039	
PNM SUNs, 2021 Series A	\$80,000	2.590%	2021	7/15/2033	
PNM SUNs, 2021 Series B	\$80,000	3.140%	2021	7/15/2041	
PNM SUNs, December 2021 Series A	\$50,000	2.290%	2021	12/30/2031	
PNM SUNs, December 2021 Series B	\$100,000	2.970%	2021	12/30/2041	
PNM SUNs, 2023 Series A	\$150,000	5.51%	2023	4/28/2035	
PNM SUNs, 2023 Series B	\$50,000	5.92%	2023	4/28/2053	
TOTAL	\$1,984,345				

⁴ **NTD**: Company to update.

Public Service Company of New Mexico Bank Credit Facilities: Variable Rate Revolvers and Term Loans

Credit Facility	Effective Date	Expiration Date	Drawn Credit Facility Pricing	Principal Outstanding 12/31/22; (in \$000)	Borrowing Rate as of 12/31/22
PNM \$400M Revolver	10/31/2011	10/31/2025* (extension option to 10/31/2026)	SOFR+CSAs+125 bps	\$145,900	5.67%
PNM \$40M Revolver	12/12/2017	5/20/2026	SOFR+CSA+125 bps	\$40,000	5.68%
PNM \$225M Term Loan	8/5/2022	2/5/2024	SOFR+CSA+75 bps	\$225,000	5.09%
PNM \$100M Inter-company Loan Agreement with PNMR	12/17/2010	9/30/2024 (renewed annually)	Function of PNMR's Revolver borrowing rate, at the time of borrowing	\$0	0.00%

*Expiration date extended to October 31, 2025 effective January 26, 2023.

Schedule 14.3 to the Note Purchase Agreement

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

Reference is hereby made to that certain Note Purchase Agreement dated as of [____], 2024 (the “**Note Purchase Agreement**”), among Public Service Company of New Mexico, a New Mexico corporation (the “**Company**”), and the purchaser party thereto. Certain capitalized and other terms used in this Certificate are as defined in the Note Purchase Agreement.

The undersigned hereby certifies that:

- (i) it is the sole record and beneficial owner of the Note(s) in respect of which it is providing this certificate;
- (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code;
- (iii) it is not a ten percent shareholder of the Company within the meaning of Section 871(h)(3)(B) of the Code; and
- (iv) it is not a controlled foreign corporation related to the Company as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Company with a certificate of its non-U.S. Person status on IRS W-8BEN-E.

The undersigned understands that this certification may be disclosed to the Internal Revenue Service by the Company and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Purchaser.

[Purchaser Name]

By: _____

Name:

Title:

Date: _____

PUBLIC SERVICE COMPANY OF MEXICO
INFORMATION RELATING TO PURCHASERS

NAME AND ADDRESS OF PURCHASER	SERIES OF NOTES	PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED
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PURCHASER SCHEDULE
(to Note Purchase Agreement)

A draft form of the Sixth Supplemental Indenture

PNM Exhibit KAA- 4

Is contained in the following 15 pages.

PUBLIC SERVICE COMPANY OF NEW MEXICO

TO

U.S. BANK NATIONAL ASSOCIATION

Trustee

SIXTH SUPPLEMENTAL INDENTURE

Dated as of _____, 2024

To

INDENTURE

Dated as of August 1, 1998

Providing for

___% Senior Unsecured Notes due 20_

SIXTH SUPPLEMENTAL INDENTURE, dated as of _____, 2024, between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (the “**Company**”), having its principal office at 414 Silver Ave. SW, Albuquerque, New Mexico 87102, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (as ultimate successor to The Chase Manhattan Bank, as trustee), as Trustee (the “**Trustee**”) under the Indenture, dated as of August 1, 1998, between the Company and the Trustee (the “**Indenture**”).

RECITALS OF THE COMPANY

The Company has executed and delivered the Indenture to the Trustee to provide for the issuance from time to time of its senior notes (the “**Notes**”), said Notes to be issued in one or more series as in the Indenture provided.

The Company has executed and delivered to the Trustee a First Supplemental Indenture, dated as of August 1, 1998, between the Company and the Trustee to establish the forms and terms of two series of Notes, a Second Supplemental Indenture, dated as of September 1, 2003, between the Company and the Trustee to establish the form and terms of one series of Notes, a Third Supplemental Indenture, dated as of May 13, 2008, between the Company and the Trustee, among other things, to establish the form and terms of one series of Notes, a Fourth Supplemental Indenture, dated as of October 12, 2011, between the Company and the Trustee, among other things, to establish the form and terms of one series of Notes, and a Fifth Supplemental Indenture, dated as of August 11, 2015, between the Company and the Trustee, among other things, to establish the form and terms of one series of Notes (the Indenture, as supplemented and amended by said First Supplemental Indenture, said Second Supplemental Indenture, said Third Supplemental Indenture, said Fourth Supplemental Indenture, and said Fifth Supplemental Indenture, the “**Indenture, as heretofore supplemented**”).

Effective as of March 15, 2021, U.S. Bank National Association succeeded to MUFG Union Bank, N.A., as Trustee. Effective June 1, 2011, MUFG Union Bank, N.A. (under its then name, Union Bank, N.A.) succeeded to The Bank of New York Mellon Trust Company, N.A. as Trustee. Effective as of October 1, 2006, The Bank of New York Mellon Trust Company, N.A. (under its then name, The Bank of New York Trust Company, N.A.) succeeded to JPMorgan Chase Bank, N.A. (formerly JPMorgan Chase Bank (formerly known as The Chase Manhattan Bank)) as Trustee.

Pursuant to the terms of the Indenture, the Company desires to provide for the establishment of a new series of its Notes to be known as its ___% Senior Unsecured Notes due 20 (herein called the “**2024 Notes**”), the form and substance of the 2024 Notes and the terms, provisions, and conditions thereof to be set forth as provided in the Indenture, as heretofore supplemented, and this Sixth Supplemental Indenture.

Section 9.01 of the Indenture provides that, without the consent of any Holders, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental to the Indenture, as heretofore supplemented, as provided in Section 9.01 of the Indenture, as heretofore

supplemented, and the Company desires to amend the Indenture, as heretofore supplemented, as hereinafter provided, and has requested that the Trustee join in the execution and delivery hereof.

All things necessary to make this Sixth Supplemental Indenture a valid, binding and enforceable agreement of the Company, and to make the 2024 Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company have been done.

NOW, THEREFORE, THIS SIXTH SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the 2024 Notes by the Holders thereof, and for the purpose of setting forth, as provided in the Indenture, the form and substance of the 2024 Notes and the terms, provisions, and conditions thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the 2024 Notes as follows:

ARTICLE I

GENERAL TERMS AND CONDITIONS OF THE 2024 NOTES

Section 1.01 There shall be and is hereby authorized a series of Notes designated the “__% Senior Unsecured Notes due 20__”. The 2024 Notes shall initially be authenticated and delivered in the aggregate principal amount of \$_0,000,000. The 2024 Notes shall mature and the principal thereof shall be due and payable together with all accrued and unpaid interest thereon on _____. The Company may issue, without the consent of the Holders of the 2024 Notes, additional 2024 Notes from time to time in accordance with Section 3.01 hereof. Any such additional 2024 Notes shall have identical terms as the 2024 Notes, unless otherwise determined by the Company with respect to their original date of issuance, their original interest accrual date, and their original Interest Payment Date (as hereinafter defined), provided that if such additional 2024 Notes are not fungible with the 2024 Notes initially authenticated and delivered for U.S. federal income tax purposes, such additional 2024 Notes will be issued with a separate CUSIP number. Any such additional 2024 Notes, together with the other 2024 Notes, shall constitute a single series for purposes of the Indenture.

Section 1.02 The 2024 Notes shall be issued in fully registered form without coupons, initially as one or more Global Notes to and registered in the name of Cede & Co., as nominee of The Depository Trust Company, as Depository therefor. Any 2024 Notes to be issued or transferred to, or to be held by, Cede & Co. (or any successor thereof) for such purpose shall bear the depository legend in substantially the form set forth in the second paragraph at the top of the form of 2024 Note in Article II hereof (in addition to that set forth in Section 2.04 of the Indenture), unless otherwise agreed by the Company, such agreement to be confirmed in writing to the Trustee. Each such Global Note may be exchanged in whole or in part for a 2024 Note registered, and any transfer of such Global Note in whole or in part may be registered, in the name or names of Persons other than such Depository or a nominee thereof only under the circumstances set forth in Clause (2) of the last paragraph of Section 3.05 of the Indenture, or such other circumstances in addition to or in lieu of those set forth in Clause (2) of the last

paragraph of Section 3.05 of the Indenture as to which the Company shall agree, such agreement to be confirmed in writing to the Trustee.

Section 1.03 Each 2024 Note will bear interest at the rate of ___% per annum, from [] [____], 2024 or from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for, payable semi-annually in arrears on _____ 1 and _____ 1 in each year (each an “**Interest Payment Date**”), commencing _____, 202[3] until the principal thereof is paid or made available for payment. The interest so payable on a 2024 Note, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name such 2024 Note or any Predecessor Note is registered at the close of business on the Regular Record Date for such interest, which shall be the second Business Day immediately preceding the applicable Interest Payment Date. Any such installment of interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name such 2024 Note or any Predecessor Note is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of the 2024 Notes not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the 2024 Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

The amount of interest payable on the 2024 Notes for any period will be computed on the basis of a 360-day year of twelve 30-day months. In the event that any Interest Payment Date, Redemption Date or Stated Maturity of any 2024 Note is not a Business Day, then payment of interest or principal (and premium, if any) payable on such date will be made on the next Business Day (and without any interest or other payment in respect of any such delay), in each case with the same force and effect as if made on such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

As used in this Sixth Supplemental Indenture, “**Business Day**” means any day, other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in The City of New York are authorized or required by law, regulation, or executive order to remain closed, or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

Section 1.04 Payment of the principal of, and premium, if any, and interest on the 2024 Notes shall be payable, registration of transfer or exchange of the 2024 Notes may be effected, and notices and demands to or upon the Company in respect of the 2024 Notes and the Indenture, as heretofore and hereby supplemented and amended, may be served at the office or agency of the Company maintained for that purpose in the City of Phoenix, Arizona, which shall be the office of the Trustee located at U.S. Bank Center, Phoenix 101 N 1st Ave, Suite 1600, Phoenix, AZ 85003 or at such other office or agency in the City of Los Angeles and State of California as may be designated for such purpose by the Company from time to time; and such payment shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Note

Register. Notices and demands to or upon the Company in respect of the 2024 Notes and the Indenture may be served at the office or agency of the Company maintained for that purpose, which initially shall be the Corporate Trust Office of the Trustee.

Section 1.05 The Company, at its option, may redeem at any time all, or from time to time, any part of the 2024 Notes on not less than 30 days nor more than 60 days' notice as provided in the Indenture (except that, in respect of any redemption referred to below in Paragraph A of this Section 1.05, notwithstanding the provisions of Section 11.04 of the Indenture, any notice of redemption for the 2024 Notes given pursuant to said Section need not set forth the Redemption Price but only the manner of calculation thereof) at a Redemption Price equal to:

A. in the event of any redemption, the Redemption Date in respect of which occurs prior to _____ (____ months prior to the Stated Maturity of _____), the greater of the

following amounts:

(i) 100% of the principal amount of the 2024 Notes then Outstanding to be so redeemed; and

(ii) the sum of the present values of the remaining scheduled payments of principal amount and interest on the 2024 Notes to be redeemed that would be due if such 2024 Notes matured on _____, but for the redemption (not including any portion of payments of interest accrued as of the applicable Redemption Date), discounted to the applicable Redemption Date in accordance with customary market practice on a semi-annual basis at a rate equal to the sum of the Treasury Rate plus __. __%,

plus, in either of the above cases, accrued and unpaid interest on the principal amount being redeemed to the applicable Redemption Date; or

B. in the event of any redemption, the Redemption Date in respect of which occurs on or after ____ (____ months prior to the Stated Maturity of _____), 100% of the principal amount of the 2024 Notes then Outstanding to be so redeemed, plus accrued and unpaid interest on the principal amount being redeemed to the applicable Redemption Date.

The Redemption Price referred to in Paragraph A of this Section 1.05 shall be calculated by the Independent Investment Banker assuming a 360-day year consisting of twelve 30-day months.

For purposes of Paragraph A of this Section 1.05, the following terms will have the meanings set forth below.

“Comparable Treasury Issue” means the U.S. Treasury security or securities selected by the Independent Investment Banker as having a maturity comparable to the remaining term of the 2024 Notes to be redeemed (assuming for this purpose, that the 2024 Notes matured on _____) that would be used, at the time of selection and in accordance with customary market practice, in pricing new issues of corporate debt securities of a comparable maturity to the remaining term of such 2024 Notes.

“Comparable Treasury Price” means, with respect to any Redemption Date:

- (i) the bid-side for the Comparable Treasury Issue as of the third Business Day preceding the Redemption Date, as set forth in the daily statistical release (or any successor release) published by *The Wall Street Journal* in the table entitled “Treasury Bonds, Notes, and Bills,” as determined by the Independent Investment Banker, or
- (ii) if such release (or any successor release) is not published or does not contain such prices on such Business Day:
 - (x) the average of the Reference Treasury Dealer Quotations for that Redemption Date, after excluding the highest and lowest of the Reference Treasury Dealer Quotations,
 - (y) if the Independent Investment Banker obtains fewer than four Reference Treasury Dealer Quotations, the average of all Reference Treasury Dealer Quotations so received, or
 - (z) if only one Reference Treasury Dealer Quotation is received, such quotation.

“Independent Investment Banker” means one of the Reference Treasury Dealers selected by the Company.

“Reference Treasury Dealer” means each of four primary U.S. Government securities dealers in New York City (each a **“Primary Treasury Dealer”**), consisting of (i) _____ (or its affiliates), (ii) one Primary Treasury Dealer selected by _____, and (iii) two other nationally recognized investment banking firms (or their affiliates) that are selected by the Company in connection with the particular redemption, and their respective successors, provided that if any of them ceases to be a Primary Treasury Dealer, the Company will substitute another nationally recognized investment banking firm (or its affiliate) that is a Primary Treasury Dealer.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 3:30 p.m., New York City time, on the third Business Day preceding that Redemption Date.

“Treasury Rate” means, with respect to any Redemption Date, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated on the third Business Day preceding the applicable Redemption Date, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for that Redemption Date.

The Independent Investment Banker shall give to the Company and the Trustee written notice of any Redemption Price referred to in Paragraph A of this Section 1.05 applicable to the 2024 Notes promptly after its calculation thereof.

The Trustee shall be under no duty to inquire into, may conclusively presume the correctness of, and shall be fully protected in relying upon the Independent Investment Banker's calculation of any Redemption Price referred to in Paragraph A of this Section 1.05, and shall have no responsibility for such calculation.

If less than all of the 2024 Notes are to be redeemed, the Trustee shall select by lot, on a pro-rata basis or in such other manner as it shall deem appropriate and fair, the particular 2024 Notes or portions thereof to be redeemed. Notice of redemption shall be given by mail not less than 30 nor more than 60 days prior to the Redemption Date to the Holders of 2024 Notes to be redeemed (which, as long as the 2024 Notes are held in the book-entry only system, will be The Depository Trust Company (or its nominee) or a successor Depository); *provided, however*, that the failure to duly give such notice by mail, or any defect therein, shall not affect the validity of any proceedings for the redemption of 2024 Notes as to which there shall have been no such failure or defect. Such notice may state that such redemption shall be conditional upon receipt by the Paying Agent or Agents for such 2024 Notes, on or prior to the Redemption Date, of money sufficient to pay the principal of and premium, if any, and interest, if any, on such 2024 Notes and that if such money shall not have been so received such notice shall be of no force or effect and the Company shall not be required to redeem such 2024 Notes. On and after the Redemption Date (unless the Company shall default in the payment of the 2024 Notes or portions thereof to be redeemed at the applicable Redemption Price, together with interest accrued thereon to such date), interest on the 2024 Notes or the portions thereof so called for redemption shall cease to accrue.

Section 1.06 The 2024 Notes will not be subject to any sinking fund.

Section 1.07 The 2024 Notes are subject to defeasance pursuant to and in accordance with Section 13.02 and Section 13.03 of the Indenture.

Section 1.08 Regulatory Statement. Pursuant to the terms of an order issued by the New Mexico Public Regulation Commission each of the Company and its corporate parent, PNM Resources, Inc. ("**Parent**"), is required to include the following covenants in any debt instrument:

The Company and its Parent are being operated as separate corporate and legal entities. In agreeing to make loans to Parent, Parent's lenders are relying solely on the creditworthiness of Parent based on the assets owned by Parent, and the repayment of the loan will be made solely from the assets of Parent and not from any assets of the Company; and the Parent's lenders will not take any steps for the purpose of procuring the appointment of an administrative receiver or the making of an administrative order for instituting any bankruptcy, reorganization, insolvency, wind up or liquidation or any like proceeding under applicable law in respect of the Company.

ARTICLE II

FORM OF 2024 NOTES

Section 2.01 The 2024 Notes and the Trustee's certificate of authentication to be endorsed thereon are to be substantially in the following form:

Form of 2021 Note.

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS NOTE MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A NOTE REGISTERED, AND NO TRANSFER OF THIS NOTE IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO PUBLIC SERVICE COMPANY OF NEW MEXICO OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

Form of Face of ___% Senior Unsecured Notes due 20__.

PUBLIC SERVICE COMPANY OF NEW MEXICO

___% Senior Unsecured Notes due 20__

No. _____

\$ _____

CUSIP No. _____

ISIN No. _____

PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation duly organized and existing under the laws of New Mexico (herein called the "**Company**", which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ Dollars on _____ and to pay interest thereon from _____ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on February 1 and August 1 in each year, commencing _____ at the rate of ___% per annum, until the

principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest, which shall be the second Business Day immediately preceding the applicable Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Notes of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

Payment of the principal of (and premium, if any) and interest on this Note will be made at the office or agency of the Company maintained for that purpose in the City of Los Angeles, California, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Note Register.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
[Name:]
[Title:]

Attest:

[Assistant] Secretary

Form of Trustee's Certificate of Authentication.

CERTIFICATION OF AUTHENTICATION

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

Dated:

MUFG UNION BANK, N.A., as Trustee

By: _____
Authorized Signatory

Form of Reverse of ___% Senior Unsecured Notes due 20__.

This Note is one of a duly authorized issue of senior notes of the Company (herein called the “Notes”), issued and to be issued in one or more series under an Indenture, dated as of August 1, 1998, as supplemented and amended (herein, together with any amendments thereto, called the “Indenture”, which term shall have the meaning assigned to it in such instrument), between the Company and MUFG Union Bank, N.A., a national banking association (formerly known as Union Bank, N.A., as ultimate successor to The Chase Manhattan Bank, as trustee), as Trustee (herein called the “Trustee”, which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture, including the Sixth Supplemental Indenture, dated as of _____, 2024 (the “Sixth Supplemental Indenture”), creating the series designated on the face hereof, for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. This Note is one of the series designated on the face hereof to be authenticated and delivered in an unlimited aggregate principal amount.

The Company, at its option, may redeem all, or from time to time, any part of the Notes of this series at the then applicable Redemption Price set forth in the Sixth Supplemental Indenture and upon the other terms and conditions therein and in the Indenture provided.

The Notes of this series will not be subject to any sinking fund.

In the event of redemption of this Note in part only, a new Note or Notes of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture contains provisions for defeasance at any time of the entire indebtedness of this Note or certain restrictive covenants and Events of Default with respect to this Note, in each case upon compliance with certain conditions set forth in the Indenture.

If an Event of Default with respect to Notes of this series shall occur and be continuing, the principal of the Notes of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits the Company and the Trustee to enter into one or more supplemental indentures for certain purposes as therein provided without the consent of any Holders. In addition, the Indenture permits, with certain exceptions as therein provided, the Company and the Trustee to enter into one or more supplemental indentures for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, the Indenture with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes of all series then Outstanding under the Indenture, considered as one class; provided, however, that if there shall be Notes of more than one series Outstanding under the Indenture and if a proposed supplemental indenture shall directly affect the rights of the Holders of Notes of one or more, but less than all, of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Notes of all series so directly affected, considered as one class, shall be required; and provided, further, that if the Notes of any series shall have been issued in more than one Tranche and if the proposed supplemental indenture shall directly affect the rights of the Holders of Notes of one or more, but less than all, of such Tranches, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Notes of all Tranches so directly affected, considered as one class, shall be required. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes of each, or all series, as the case may be, then Outstanding under the Indenture, on behalf of the Holders of all Notes of such series, to waive compliance by the Company with certain provisions of the Indenture and permitting the Holders of specified percentages in principal amount of the Notes of each series Outstanding under the Indenture, on behalf of the Holders of all Notes of such series, to waive certain past defaults under the Indenture and their consequences, provided, however, that if any such past default affects more than one series of Notes, the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, shall have the right to waive such past default, and not the Holders of the Notes of any one such series. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, the Holder of this Note shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Notes of this series, the Holders of not less than a majority in aggregate principal amount of the Notes of all series at the time Outstanding in respect of which an Event of Default shall have occurred and be continuing shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Notes of all series at the time Outstanding in respect of which an Event of Default shall have occurred and be continuing a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer

of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Note at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Note Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Note Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Notes of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Notes of this series are exchangeable for a like aggregate principal amount of Notes of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with transfer or exchange.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

As used in this Note, "Business Day" means any day other than (i) a Saturday or a Sunday, (ii) a day on which banking institutions in The City of New York are authorized or required by law, regulation, or executive order to remain closed, or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business. Unless otherwise defined herein, all other terms used in this Note which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ARTICLE III

ORIGINAL ISSUE OF 2024 NOTES

Section 3.01 2024 Notes in the aggregate principal amount of \$_0,000,000, and additional 2024 Notes as in Section 1.01 of this Sixth Supplemental Indenture provided, may,

upon execution of this Sixth Supplemental Indenture, or from time to time thereafter, be executed on behalf of the Company by any officer or employee authorized to do so by a Board Resolution, under its corporate seal affixed thereto or reproduced thereon attested by its Secretary or by one of its Assistant Secretaries and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said 2024 Notes in accordance with a Company Order delivered to the Trustee by the Company, all pursuant to and in accordance with Section 3.03 of the Indenture, as heretofore supplemented.

ARTICLE IV

PAYING AGENT AND REGISTRAR

Section 4.01 U.S. Bank National Association will be the Paying Agent and Note Registrar for the 2024 Notes.

ARTICLE V

SUNDRY PROVISIONS

Section 5.01 Except as otherwise expressly provided in this Sixth Supplemental Indenture or in the form of 2024 Notes or otherwise clearly required by the context hereof or thereof, all terms used herein or in said form of the 2024 Notes that are defined in the Indenture shall have the several meanings respectively assigned to them thereby.

Section 5.02 The Indenture, as heretofore supplemented and as supplemented and amended by this Sixth Supplemental Indenture, is in all respects ratified and confirmed, and this Sixth Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 5.03 The Trustee hereby accepts the trusts herein declared, provided, created, supplemented, or amended and agrees to perform the same upon the terms and conditions herein and in the Indenture, as heretofore supplemented, set forth and upon the following terms and conditions:

The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Sixth Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made by the Company solely. In general, each and every term and condition contained in Article VI of the Indenture shall apply to and form part of this Sixth Supplemental Indenture with the same force and effect as if the same were herein set forth in full with such omissions, variations, and insertions, if any, as may be appropriate to make

the same conform to the provisions of this Sixth Supplemental Indenture.

Section 5.04 This Sixth Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 5.05 This Sixth Supplemental Indenture shall be governed by and construed in accordance with the law of the State of New York (including without limitation Section 5-1401 of the New York General Obligations Law or any successor to such statute).

IN WITNESS WHEREOF, the parties hereto have caused this Sixth Supplemental Indenture to be duly executed as of the day and year first above written.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____

Name:

Title:

Attest:

Assistant Secretary

**U.S. BANK NATIONAL ASSOCIATION, as
Trustee**

By: _____

Name:

Title:

PNM's Registration Statement on Form S-3, SEC File No. 333-271969

PNM Exhibit KAA- 5

Is contained in the following 49 pages.

S-3 1 pnmforms-35152023.htm S-3

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As filed with the Securities and Exchange Commission on May 16, 2023

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

**PUBLIC SERVICE COMPANY
OF NEW MEXICO**

(Exact name of registrant as specified in its charter)

New Mexico
(State or other jurisdiction of
incorporation or organization)

85-0019030
(I.R.S. Employer
Identification Number)

**414 Silver Ave. SW
Albuquerque, New Mexico 87102-3289
(505) 241-2700**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Patrick V. Apodaca, Esq.
Senior Vice President, General Counsel & Secretary
PNM Resources, Inc.
414 Silver Ave. SW
Albuquerque, New Mexico 87102-3289
Telephone: (505) 241-2898
Fax: (505) 241-2368**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Leonard D. Sanchez, Esq.
Associate General Counsel
414 Silver Ave. SW
Albuquerque, New Mexico 87102-3289
Telephone: (505) 241-4941
Fax: (505) 241-2338**

**David I. Meyers, Esq.
Troutman Pepper Hamilton Sanders LLP
1001 Haxall Point, 12th Floor
Richmond, Virginia 23219
Telephone: (804) 697-1202
Fax: (804) 698-5176**

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MAY 16, 2023

PRELIMINARY PROSPECTUS

\$650,000,000

PUBLIC SERVICE COMPANY OF NEW MEXICO

SENIOR UNSECURED NOTES

We may offer from time to time up to an aggregate of \$650,000,000 of our senior unsecured notes. We will specify the principal amount of senior unsecured notes being offered and the underwriters, dealers or agents, if any, for the offering, together with the terms and conditions for such offering, the public offering price, the underwriting discounts and commissions or other fees and our net proceeds from the sale thereof, in supplements to this prospectus. You should read both the prospectus and the applicable prospectus supplement carefully before you invest.

Our principal executive offices are located at 414 Silver Ave. SW, Albuquerque, New Mexico, 87102-3289 and our telephone number is (505) 241-2700.

Investing in our senior unsecured notes involves risk. See "Risk Factors" on page 3.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is May , 2023.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration process. Under this shelf registration process, we may sell the securities described in this prospectus in one or more offerings up to a total dollar amount of \$650,000,000. This prospectus provides you with a general description of the securities that we may offer. Each time we offer any of the securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the documents that are incorporated by reference herein that are described under the heading “Where You Can Find More Information” before investing in the securities. This prospectus contains summaries of certain provisions contained in some of the documents described in this prospectus. Please refer to the actual documents for complete information. All of these summaries are qualified in their entirety by the actual documents. Copies of the documents referred to in this prospectus have been filed, or will be filed or incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under “Where You Can Find More Information.”

Unless otherwise indicated or unless the context otherwise requires, all references in this prospectus to “PNM”, “we”, “our”, “us”, or similar references mean Public Service Company of New Mexico and all of its subsidiaries.

You should rely only on the information contained or incorporated by reference in this prospectus, any applicable prospectus supplements and any free writing prospectus prepared by or on behalf of us. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, any applicable prospectus supplement, any free writing prospectuses and the documents incorporated by reference is accurate only as of the respective dates of those documents in which the information is contained. Our business, financial condition, results of operations and prospects may have changed since those dates.

In particular, you should carefully consider the risks and uncertainties described under the section titled “Risk Factors” or otherwise included in any applicable prospectus supplement or incorporated by reference in this prospectus before you decide whether to purchase the securities. These risks and uncertainties, together with those not known to us

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or those that we may deem immaterial, could impair our business and ultimately affect our ability to make payments on the securities.

[Table of Contents](#)**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports and other information with the SEC. The SEC maintains an Internet website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC, available at www.sec.gov.

Our Internet address is www.pnm.com. Our filings with the SEC, including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports, filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are accessible free of charge at www.pnmresources.com/investors, the website of PNM Resources, Inc. (“PNMR”), our parent company, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The contents of the websites are not a part of the registration statement of which this prospectus is a part. These reports are also available upon request in print from us free of charge.

We are “incorporating by reference” in this prospectus information we file with the SEC, which means that we are disclosing important information to you by referring you to those documents. Our filings with the SEC present separate filings by PNMR, PNM and Texas-New Mexico Power Company (“TNMP”), an indirect wholly-owned subsidiary of PNMR. Information contained therein relating to an individual registrant is filed by that registrant on its own behalf and each registrant makes no representation as to information relating to other registrants. The information we incorporate by reference is considered to be part of this prospectus, unless it is updated or superseded by the information contained in this prospectus or the information we file subsequently with the SEC that is incorporated by reference in this prospectus or a prospectus supplement. We are incorporating by reference the following documents that we have filed with the SEC (except those portions of filings that relate to PNMR or TNMP as separate registrants), other than any information in these documents that is deemed not to be “filed” with the SEC:

- Our Annual Report on Form 10-K for the year ended December 31, 2022, as filed on [February 28, 2023](#);
- Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2023 as filed on [May 5, 2023](#);
- PNMR's Proxy Statement on Schedule 14A as filed [March 28, 2023](#); and
- Our Current Reports on Form 8-K, as filed on [April 28, 2023](#) and [May 15, 2023](#).

We also incorporate by reference into this prospectus any filings we make with the SEC (excluding information furnished under Items 2.02 or 7.01 of Current Reports on Form 8-K) under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date of initial filing of the registration statement that contains this prospectus.

You may obtain without charge a copy of any of the documents we incorporate by reference, except for exhibits to such documents which are not specifically incorporated by reference into such documents, by contacting us at Public Service Company of New Mexico, 414 Silver Ave. SW, Albuquerque, New Mexico, 87102-3289, Attention: Shareholder Services, or by telephone at (505) 241-2868.

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PUBLIC SERVICE COMPANY OF NEW MEXICO

We are an electric utility that provides electric generation, transmission, and distribution service to our rate-regulated customers. We were incorporated in the State of New Mexico in 1917. Our retail electric service territory covers a large area of north-central New Mexico, including the cities of Albuquerque, Rio Rancho, and Santa Fe, and certain areas of southern New Mexico. Service to retail electric customers is subject to the jurisdiction of the New Mexico Public Regulation Commission (“NMPRC”).

Other services provided by us include wholesale transmission services to third parties. Regulation encompasses the utility’s electric rates, service, accounting, issuances of securities, construction of major new generation, abandonment of existing generation, types of generation resources, transmission and distribution facilities, and other matters. We are a wholly-owned subsidiary of PNMR, an investor-owned holding company of energy and energy-related businesses.

Our executive offices are located at 414 Silver Ave. SW, Albuquerque, New Mexico 87102-3289, and our telephone number is (505) 241-2700.

RISK FACTORS

Investing in the securities involves risk. Please carefully consider the specific risks set forth under the section entitled “Risk Factors” in our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and other reports filed with the SEC, which are all incorporated by reference in this prospectus and in the applicable prospectus supplement. Before making an investment decision, you should carefully consider these risks as well as other information contained or incorporated by reference in this prospectus or the applicable supplement to this prospectus. The risks and uncertainties described are not the only ones facing us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations, financial results and the value of our securities.

[Table of Contents](#)**DISCLOSURE REGARDING FORWARD LOOKING STATEMENTS**

This prospectus contains or incorporates by reference “forward-looking statements,” which you can generally identify by our use of forward-looking words including “believe,” “expect,” “intend,” “may,” “will,” “should,” “could,” “anticipate” or “plan” or the negative or other variations of these terms or comparable terminology, or by discussion of strategies that involve risks and uncertainties. These forward-looking statements relate to future events or our expectations, projections, estimates, intentions, goals, targets, and strategies are made pursuant to the Private Securities Litigation Reform Act of 1995. You are cautioned that all forward-looking statements are based upon current expectations and estimates, and we assume no obligation to update this information.

Because actual results may differ materially from those expressed or implied by these forward-looking statements, we caution you not to place undue reliance on these statements. Our business, financial condition, cash flows, and operating results are influenced by many factors, which are often beyond our control, that can cause actual results to differ from those expressed or implied by the forward-looking statements. These factors include, which are neither presented in order of importance nor weighted:

- Our ability to recover costs and earn allowed returns in regulated jurisdictions, including the outcome of our 2024 rate change, prudence of our undepreciated investments in Four Corners and recovery of our investments and other costs associated with that plant, revisions to our rates to remove San Juan Generating Station (“SJGS”) by issuing rate credits prior to issuing securitized bonds and the establishment of the energy transition charge, and the impact on service levels for our customers if the ultimate outcomes do not provide for the recovery of costs and operating and capital expenditures, as well as other impacts of federal or state regulatory and judicial actions
- Our ability to successfully forecast and manage our operating and capital expenditures, including aligning expenditures with the revenue levels resulting from the ultimate outcomes of our 2024 rate change, other regulatory proceedings, or resulting from potential mid-term or long-term impacts related to COVID-19
- Uncertainty relating to our decision to return the leased generating capacity in Palo Verde Nuclear Generating Station (“PVNGS”) Units 1 and 2 at the expiration of their lease terms in 2023 and 2024, including future regulatory outcomes relating to the ratemaking treatment
- Uncertainty surrounding the status of our participation in jointly-owned generation projects, including the changes in our generation entitlement share for PVNGS following termination of the leases in 2023 and 2024, and the proposed exit from Four Corners
- Uncertainty regarding the requirements and related costs of decommissioning power plants and reclamation of coal mines, as well as the ability to recover those costs from customers, including the potential impacts of current and future regulatory proceedings including our 2024 rate change
- The impacts on the electricity usage of customers and consumers due to performance of state, regional, and national economies, energy efficiency measures, weather, seasonality, alternative sources of power, advances in technology, and other changes in supply and demand
- Uncertainty related to the potential for regulatory orders, legislation or rulemakings that provide for municipalization of utility assets or public ownership of utility assets, including generation resources, or which would delay or otherwise impact the procurement of necessary resources in a timely manner
- Our ability to maintain our debt and access the financial markets in order to provide financing to repay or refinance debt as it comes due and for ongoing operations and construction expenditures, including disruptions in the capital or credit markets, actions by ratings agencies, and fluctuations in interest rates resulting from any negative impacts from our 2024 rate change or other regulatory proceedings, economic impacts of COVID-19, actions by the Federal Reserve, geopolitical activity, or the entry into the merger agreement between PNM Resources, Inc. and Avangrid, Inc.

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- The risks associated with the cost and completion of generation, transmission, distribution, and other projects, including uncertainty related to regulatory approvals and cost recovery, the ability of counterparties to meet their obligations under certain arrangements (including renewable energy resources,

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and approved power purchase agreements related to replacement resources for facilities to be retired or for which the leases will terminate), and supply chain or other outside support services that may be disrupted

- The performance of generating units, transmission systems, and distribution systems, which could be negatively affected by operational issues, fuel quality and supply chain issues (disruptions), unplanned outages, extreme weather conditions, wildfires, terrorism, cybersecurity breaches, and other catastrophic events, including the impacts of COVID-19, as well as the costs we may incur to repair our facilities and/or the liabilities we may incur to third parties in connection with such issues
- State and federal regulation or legislation relating to environmental matters and renewable energy requirements, the resultant costs of compliance, and other impacts on the operations and economic viability of our generating plants
- State and federal regulatory, legislative, executive, and judicial decisions and actions on ratemaking, and taxes, including guidance related to the interpretation of changes in tax laws, the Inflation Reduction Act of 2022, the Infrastructure Investment and Jobs Act, and other matters
- Risks related to climate change, including potential financial and reputational risks resulting from increased stakeholder scrutiny related to climate change, litigation and legislative and regulatory efforts to limit GHG, including the impacts of the New Mexico Energy Transition Act
- Employee workforce factors, including cost control efforts and issues arising out of collective bargaining agreements and labor negotiations with union employees
- Variability of prices and volatility and liquidity in the wholesale power and natural gas markets, including the impacts to transmission margins
- Changes in price and availability of fuel and water supplies, including the ability of the mine supplying coal to Four Corners and the companies involved in supplying nuclear fuel to provide adequate quantities of fuel
- Regulatory, financial, and operational risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainties
- The impacts of decreases in the values of marketable securities maintained in trusts to provide for decommissioning, reclamation, pension benefits, and other postretirement benefits, including potential increased volatility resulting from actions by the Federal Reserve to address inflationary concerns, international developments and the impacts of COVID-19
- Uncertainty surrounding counterparty performance and credit risk, including the ability of counterparties to supply fuel and perform reclamation activities and impacts to financial support provided to facilitate the coal supply at SJGS
- The effectiveness of risk management regarding commodity transactions and counterparty risk
- The outcome of legal proceedings, including the extent of insurance coverage
- Changes in applicable accounting principles or policies

Important risk factors that could cause our results to differ materially from those expressed in the forward-looking statements are listed under “Risk Factors” in a prospectus supplement and may also be found in our periodic reports filed with the SEC at www.sec.gov.

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USE OF PROCEEDS

Except as may otherwise be set forth in a prospectus supplement, the proceeds from the sale of these senior unsecured notes may be used for repayment of indebtedness, funding of capital expenditures, and general corporate purposes.

[Table of Contents](#)**DESCRIPTION OF SENIOR UNSECURED NOTES*****General***

The following description sets forth certain general terms and provisions of our senior unsecured notes, or SUNs. When we offer SUNs in the future, a prospectus supplement will explain the particular terms of those SUNs, and the extent to which any of these general provisions will not apply.

The SUNs will be our unsecured and unsubordinated obligations ranking equally with all of our existing and future unsecured and unsubordinated obligations. We may issue the SUNs from time to time in one or more series, under the indenture dated as of August 1, 1998 between us and U.S. Bank Trust Company, National Association (ultimate successor to The Chase Manhattan Bank), as trustee (the “Trustee”). This indenture, as heretofore amended and supplemented, and as it may be amended and supplemented from time to time, is referred to in this prospectus as the Indenture.

We have summarized selected provisions of the Indenture below. You should read this summary together with the Indenture, any supplemental indentures or other documents establishing the SUNs for a complete understanding of the provisions that may be important to you. You should also read this prospectus and any applicable prospectus supplement before you make any investment decision. The following descriptions of the SUNs and the Indenture are qualified by reference to the Indenture, which is filed as an exhibit to the registration statement of which this prospectus is a part. References to certain sections of the Indenture are included in parentheses. Whenever particular provisions or defined terms in the Indenture are referred to under this “Description of Senior Unsecured Notes,” such provisions or defined terms are incorporated by reference herein. The Indenture is qualified under the Trust Indenture Act of 1939. You should refer to the Trust Indenture Act of 1939 for provisions that apply to the SUNs.

The Indenture provides that the applicable SUNs will be issued in one or more series, may be issued at various times, may have differing maturity dates and may bear interest at differing rates. We need not issue all SUNs of one series at the same time and, unless otherwise provided, we may reopen a series, without the consent of the holders of the SUNs of that series for issuances of additional SUNs of that series.

The prospectus supplement relating to any series of SUNs being offered will include specific terms relating to that offering. These terms will include any of the following terms that apply to that series:

- the title of the SUNs;
- the total principal amount of the SUNs;
- the person or persons to whom interest payments are made, if other than the registered holder;
- the date or dates on which the principal of the SUNs will be payable, and how the dates will be determined;
- the rate or rates at which the SUNs will bear interest, if any, and how the rate or rates will be determined;
- the date or dates from which interest on the SUNs will accrue, the interest payment dates on which interest will be paid, and the record dates for the interest payments;
- the right, if any, to extend the interest payment periods for the SUNs and the duration of the extension;

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- the place or places at which or methods by which payments will be made;
- whether we have the option to redeem the SUNs and, if so, the terms of our redemption option;
- any sinking fund or other provisions or options held by holders of the SUNs that would obligate us to repurchase or otherwise redeem the SUNs;
- if the SUNs will be issued in denominations other than \$1,000 and integral multiples thereof;

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- any index or formula used for determining principal, premium or interest;
- the currency or currencies in which payments will be made if other than United States dollars, and the manner of determining the equivalent of those amounts in United States dollars;
- if payments may be made on any of the SUNs, at our election or at the holder's election, in a currency or currencies other than that in which the SUNs are stated to be payable, then the currency or currencies in which those payments may be made, the terms and conditions of the election and the manner of determining those amounts;
- the portion of the principal payable upon acceleration of maturity, if other than the entire principal;
- if the principal payable on the maturity date will not be determinable on one or more dates prior to the maturity date, the amount which will be deemed to be such principal amount as of any such date or the manner of determining such amount;
- whether the provisions described below under “ - Discharge, Defeasance and Covenant Defeasance” will apply to the SUNs;
- whether the SUNs will be issuable as global securities and, if so, the securities depository;
- any changes or additions to the events of default under the Indenture or changes or additions to our covenants under the Indenture; and
- any other terms of the SUNs not inconsistent with the terms of the Indenture.

(See Section 3.01)

All SUNs of any one series will be substantially identical except as to denomination and except as may otherwise be determined in the manner provided for in the Indenture. (See Section 3.01)

The SUNs are not secured by any property or assets and represent our unsecured debt obligations. As discussed below under “ - Restrictions on Liens” and “ - Restrictions on Sale and Lease-Back Transactions,” the Indenture contains certain limitations on our ability to create liens and enter into sale and leaseback transactions. Such limitations do not afford holders of the SUNs protection in the event of a highly leveraged or other transaction involving us that may adversely affect the holders of the SUNs. The Indenture does not limit our ability to pay dividends or limit our ability to incur other unsecured and unsubordinated debt ranking equally with all of our existing and future unsecured and unsubordinated obligations. However, debt to capital requirements in certain of our financial instruments and regulatory agreements would limit the amount of additional debt we could issue.

SUNs may be sold at a substantial discount below their principal amount. You should consult the applicable prospectus supplement for a description of certain special United States federal income tax considerations which may apply to SUNs sold at an original issue discount or denominated in a currency other than United States dollars.

Global SUNs

We may issue some or all of the SUNs as book-entry securities. Any such book-entry securities will be represented by one or more fully registered global securities. We will register each global security with or on behalf of a securities depository identified in the applicable prospectus supplement. Each global security will be deposited with the

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securities depository or its nominee or a custodian for the securities depository.

As long as the securities depository or its nominee is the registered holder of a global security representing SUNs, that person will be considered the sole owner and holder of the global security and the SUNs it represents for all purposes. Except in limited circumstances, owners of beneficial interests in a global security:

- may not have the global security or any of the SUNs it represents registered in their names;
- may not receive or be entitled to receive physical delivery of certificated SUNs in exchange for the global security; and

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- will not be considered the owners or holders of the global security or any of the SUNs it represents for any purposes under the SUNs or the Indenture.

We will make all payments of principal and any premium and interest on a global security to the securities depository or its nominee as the holder of the global security. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

Ownership of beneficial interests in a global security will be limited to institutions having accounts with the securities depository or its nominee, which are called “participants” in this discussion, and to persons that hold beneficial interests through participants. When a global security representing SUNs is issued, the securities depository will credit on its book entry, registration and transfer system the principal amounts of SUNs the global security represents to the accounts of its participants. Ownership of beneficial interests in a global security will be shown only on, and the transfer of those ownership interests will be effected only through, records maintained by:

- the securities depository, with respect to participants’ interests; and
- any participant, with respect to interests the participant holds on behalf of other persons.

Payments to owners of beneficial interests held through participants will be the responsibility of those participants. The securities depository may from time to time adopt various policies and procedures governing payments, transfers, exchanges and other matters relating to beneficial interests in a global security. None of the following will have any responsibility or liability for any aspect of the securities depository’s or any participant’s records relating to beneficial interests in a global security representing SUNs, for payments made on account of those beneficial interests or for maintaining, supervising or reviewing any records relating to those beneficial interests:

- PNM;
- the Trustee; or
- an agent of either of them.

Redemption

We will set forth any terms for the redemption of the SUNs in a prospectus supplement. Unless we indicate differently in a prospectus supplement, the SUNs will be redeemable upon notice by mail to the holders between 30 and 60 days prior to the redemption date. If less than all of the SUNs of any series are to be redeemed, the Trustee will select the SUNs to be redeemed. In the absence of any provision for selection, the Trustee will choose a method of random selection that it deems fair and appropriate. (See Sections 11.03 and 11.04)

The SUNs will cease to bear interest on the redemption date. We will pay the redemption price and any accrued interest once the SUNs are surrendered for redemption. (See Section 11.06) If only part of a SUN is redeemed, the Trustee will deliver to you a new SUN of the same series for the remaining portion without charge. (See Section 11.07)

We may make any redemption, at our option, conditional upon the receipt by the paying agent or agents, on or prior to the date fixed for redemption, of money sufficient to pay the redemption price. If the paying agent or agents have not received the money by the date fixed for redemption, we will not be required to redeem the SUNs. (See Section 11.04)

Payment

Except as may be provided in the prospectus supplement, interest, if any, on each SUN payable on each interest payment date will be paid to the person in whose name the SUN is registered as of the close of business on the regular record date for the interest payment date. If there has been a default in the payment of interest on any SUN, the defaulted interest may be paid to the holder of that SUN as of the close of business on a date to be fixed by

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the Trustee, which will be between 10 and 15 days prior to the date we proposed for payment of the defaulted interest, and not less than 10 days after receipt by the Trustee of the notice of the proposed payment. The defaulted interest may also be paid in any other manner permitted by any securities exchange on which that SUN may be listed, if the Trustee finds it practicable. (See Section 3.07)

Registration of Transfer and Exchange

Unless otherwise specified in a prospectus supplement, the transfer of the SUNs may be registered, and the SUNs may be exchanged for other SUNs of the same series, of authorized denominations and with the same terms and principal amount, at the corporate trust office of the Trustee. We may change the place for registration of transfer and exchange of the SUNs and may designate additional places for registration and exchange. Unless otherwise provided in the prospectus supplement, no service charge will be made for any transfer or exchange of the SUNs. However, we may require payment to cover any tax or other governmental charge that may be imposed. We will not be required to execute or to provide for the registration of transfer of, or the exchange of:

- any SUN during a period of 15 days prior to giving any notice of redemption; or
- any SUN selected for redemption except the unredeemed portion of any SUN being redeemed in part.

(See Section 3.05)

Restrictions on Liens

The Indenture provides that so long as any SUNs are outstanding, we will not issue, assume, or guarantee any Debt (as defined below) secured by any mortgage, security interest, pledge, or lien (Mortgage) of or on any Operating Property (as defined below), owned as of the date of the Indenture or thereafter acquired, without also securing the outstanding SUNs (so long as the other Debt is so secured) equally and ratably with the Debt.

This limitation does not apply in the case of any Debt secured by:

- Mortgages on any property existing at the time we acquired it;
- Mortgages on property of a corporation with which we consolidated or merged or which transfers or leases all or substantially all of its properties to us;
- Mortgages on property to secure all or part of the cost of acquiring, constructing, developing, or substantially repairing, altering, or improving the property, or to secure indebtedness incurred to provide funds for any of these purposes or for the reimbursement of funds previously expended for any of these purposes if created within a certain period;
- Mortgages in favor of the United States of America or any State thereof, or any department, agency, or instrumentality or political subdivision of the United States of America or any State thereof, or for the benefit of holders of securities issued by any such entity, to secure any Debt incurred for the purpose of financing all or any part of the purchase price or the cost of constructing, developing or substantially repairing, altering, or improving the property subject to such Mortgages;
- Mortgages on any property (x) which, at any time subsequent to January 1, 1985 through the date of the Indenture, was leased to us, or (y) pursuant to the terms of any lease to us in effect at any time subsequent to January 1, 1985 through the date of the Indenture, title to which would not have been vested in us (assuming that the lease

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remained in effect on the date of determination as the lease was in effect immediately prior to the date of the Indenture);

- the extension, renewal or replacement, in whole or in part, of any Mortgage referred to above; provided, however, that the principal amount of Debt so secured and not otherwise authorized by the previous clauses, shall not exceed the principal amount of Debt, plus any premium or fee payable in connection with any such extension, renewal, or replacement, so secured at the time of such extension, renewal, or replacement.

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Notwithstanding the foregoing, so long as any SUNs are outstanding, we may issue, assume, or guarantee Debt, or permit to exist Debt, secured by mortgages which would otherwise be subject to the foregoing restrictions up to an aggregate principal amount that, together with the principal amount of all of our other Debt, secured by mortgages (other than mortgages permitted by the Indenture that would otherwise be subject to the foregoing restrictions) and the Value (as defined below) of all Sale and Lease-Back Transactions (as defined below) in existence at such time (other than certain Sale and Lease-Back Transactions specified in the Indenture), does not exceed at the time the greater of ten percent (10%) of Net Tangible Assets (as defined below) or ten percent (10%) of Capitalization (as defined below). (See Section 10.05)

Restrictions on Sale and Lease-Back Transactions

The Indenture provides that so long as any SUNs are outstanding, we will not enter into any Sale and Lease-Back Transaction with respect to any Operating Property if the commitment by or on behalf of the purchaser was obtained more than 18 months after the later of (i) the completion of the acquisition, construction, or development of the Operating Property or (ii) the placing in operation of the Operating Property or of the Operating Property as constructed, developed, or substantially repaired, altered, or improved, unless:

- we are entitled pursuant to the Indenture to issue, assume, or guarantee Debt secured by a mortgage on such Operating Property without equally and ratably securing the SUNs; or
- we are entitled pursuant to the Indenture, after giving effect to the Sale and Lease-Back Transaction, to incur \$1.00 of additional Debt secured by mortgages (other than mortgages permitted by the Indenture); or
- we apply or cause to be applied:
 - in the case of a sale or transfer for cash, an amount equal to the net proceeds thereof (but not in excess of the net book value of the Operating Property at the date of sale or transfer), or,
 - in the case of a sale or transfer otherwise than for cash, an amount equal to the fair value (as determined by our board of directors) of the Operating Property so leased, to the retirement, within 180 days after the effective date of the Sale and Lease-Back Transaction, of our Debt ranking senior to, or equally with, the SUNs. However, the amount to be applied to the retirement of Debt will be reduced by an amount equal to the principal amount, plus any premium or fee paid in connection with any redemption in accordance with the terms of Debt voluntarily retired by us within the 180-day period, excluding retirement pursuant to mandatory sinking fund or prepayment provisions and payments at maturity. (Section 10.10)

Certain Definitions

The term “Capitalization,” as used above, means the total of all the following items appearing on, or included in, our consolidated balance sheet: (i) liabilities for indebtedness maturing more than twelve (12) months from the date of determination; and (ii) any common stock, preferred stock, premium on capital stock, capital surplus, capital in excess of par value, and retained earnings (however the foregoing may be designated), less, to the extent not otherwise deducted, the cost of shares of our capital stock held in our treasury.

The term “Debt,” as used above, means any outstanding debt for money borrowed evidenced by notes, debentures, bonds, or other securities.

The term “Net Tangible Assets,” as used above, means the amount shown as total assets on our consolidated balance sheet, less the following: (i) intangible assets including, but without limitation, such items as goodwill, trademarks, trade names, patents, and unamortized debt discount and expense and other regulatory assets carried as an

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asset on our consolidated balance sheet; and (ii) appropriate adjustments, if any, on account of minority interests.

The term “Operating Property,” as used above, means (i) any interest in real property owned by us and (ii) any asset owned by us that is depreciable in accordance with generally accepted accounting principles.

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The term “Sale and Lease-Back Transaction,” as used above, means any arrangement with any entity providing for the leasing to us of any Operating Property (except for temporary leases for a term, including any renewal thereof, of not more than forty-eight (48) months), which Operating Property has been or is to be sold or transferred by us to such entity; provided, however, Sale and Lease-Back Transaction shall not include any arrangement (i) first entered into prior to the date of the Indenture and (ii) involving the exchange of any Operating Property for any property subject to an arrangement specified in the preceding clause (i).

The term “Value,” as used above, means, with respect to a Sale and Lease-Back Transaction, as of any particular time, the amount equal to the greater of (1) the net proceeds to us from the sale or transfer of the property leased pursuant to such Sale and Lease-Back Transaction or (2) the net book value of such property, as determined in accordance with generally accepted accounting principles by us at the time of entering into such Sale and Lease-Back Transaction, in either case multiplied by a fraction, the numerator of which shall be equal to the number of full years of the term of the lease that is part of such Sale and Lease-Back Transaction remaining at the time of determination and the denominator of which shall be equal to the number of full years of such term, without regard, in any case, to any renewal or extension options contained in such lease.

Restrictions on Mergers and Sale of Assets

Under the terms of the Indenture, we may not consolidate with or merge into any other entity or convey, transfer or lease our properties and assets substantially as an entirety to any entity, unless:

- the surviving or successor entity is organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and it expressly assumes our obligations on all SUNs and under the Indenture;
- immediately after giving effect to the transaction, no event of default and no event which, after notice or lapse of time or both, would become an event of default shall have occurred and be continuing; and
- we deliver to the Trustee, an officers’ certificate and an opinion of counsel as to compliance with the foregoing.

(See Section 8.01)

Discharge, Defeasance and Covenant Defeasance

The Indenture provides that we may be:

- discharged from our obligations, with certain limited exceptions, with respect to any series of SUNs, as described in the Indenture and any additional covenants set forth in the applicable prospectus supplement, such a discharge being called a “defeasance” in this prospectus; and
- released from our obligations under certain restrictive covenants especially established with respect to any series of SUNs, including the covenants described under “ - Restrictions on Liens” and “ - Restrictions on Sale-Leaseback Transactions” as described in the Indenture, such a release being called a “covenant defeasance” in this prospectus. (See Sections 13.02 and 13.03)

We must satisfy certain conditions to effect a defeasance or covenant defeasance. Those conditions include the irrevocable deposit with the Trustee, in trust, of money or government obligations which through their scheduled payments of principal and interest would provide sufficient money to pay the principal and any premium and interest on those SUNs on the maturity dates of those payments or upon redemption. (See Section 13.04)

In addition, we will be required to deliver to the Trustee an opinion of counsel to the effect that the deposit and related defeasance or covenant defeasance will not cause the holders of the applicable series of SUNs to recognize gain or loss for federal income tax purposes, and that such holders will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and related defeasance or covenant defeasance were not to occur. In the case of a defeasance, that opinion of counsel must be based upon a ruling from the Internal Revenue Service or a change in federal income tax law. (See Section 13.04)

[Table of Contents](#)***Modification of the Indenture***

We and the Trustee may enter into one or more supplemental indentures without the consent of any holder of the SUNs for certain specified purposes, including:

- to evidence the assumption by any permitted successor of our covenants in the Indenture and in the SUNs;
- to add to our existing covenants for the benefit of the holders or to surrender any of our rights or powers under the Indenture;
- to add additional events of default;
- to add to or change any of the provisions to such extent necessary for the issuance of SUNs in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of SUNs in uncertificated form;
- to change, eliminate, or add any provision to the Indenture; provided, however, if the change, elimination, or addition will adversely affect the interests of the holders of the SUNs of any series in any material respect, that change, elimination, or addition will become effective only:
 - when the consent of the holders of a majority in aggregate principal amount of the SUNs of that series has been obtained in accordance with the Indenture; or
 - when no SUNs of the affected series remain outstanding under the Indenture;
- to secure the SUNs;
- to establish the form or terms of the SUNs of any other series as permitted by the Indenture;
- to evidence and provide for the acceptance of appointment of a successor trustee;
- to provide for or facilitate the administration of the trusts by more than one Trustee;
- to cure any ambiguity or inconsistency or to make any other provisions with respect to matters and questions arising under the Indenture; provided that the action will not adversely affect the interests of the holders of the SUNs of any series in any material respect.

(See Section 9.01)

If the Trust Indenture Act of 1939 is amended after the date of the Indenture to require changes to the Indenture, the Indenture will be deemed to be amended so as to conform to that amendment of the Trust Indenture Act of 1939. We and the Trustee may, without the consent of any of the holders, enter into one or more supplemental indentures to evidence that amendment. (See Section 9.01)

The consent of the holders of a majority in aggregate principal amount of the SUNs of all series then outstanding, considered as one class, is required for all other modifications to the Indenture. However, if less than all of the series of SUNs outstanding are directly affected by a proposed supplemental indenture, then only the consent of the holders of a majority in aggregate principal amount of the outstanding SUNs of all series that are directly affected will be required. No amendment or modification may:

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- change the stated maturity of the principal of, or any installment of principal of or interest on, any SUN, or reduce the principal amount of any SUN or its rate of interest or change the method of calculating the interest rate or reduce any premium payable upon redemption, or change the currency in which payments are made, or impair the right to institute suit for the enforcement of any payment on or after the date that any principal or interest is due and payable on any SUN, without the consent of the holder;
- reduce the percentage in principal amount of the outstanding SUNs of any series the consent of which is required for any supplemental indenture or any waiver of compliance with a provision of the Indenture or any default thereunder and its consequences, or reduce the requirements for quorum or voting, without the consent of all the holders of the series; or

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- modify certain provisions of the Indenture relating to supplemental indentures, waivers of certain covenants and waivers of past defaults with respect to the SUNs of any series, without the consent of the holder of each outstanding SUN affected thereby.

(See Section 9.02)

A supplemental indenture which changes the Indenture solely for the benefit of one or more particular series of SUNs, or modifies the rights of the holders of the SUNs of one or more series, will not affect the rights under the Indenture of the holders of the SUNs of any other series. (See Section 9.02)

The Indenture provides that the SUNs owned by us or anyone else required to make payment on the SUNs will be disregarded and considered not to be outstanding in determining whether the required holders have given a request or consent. (See Section 1.01)

We may fix in advance a record date to determine the required number of holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or other such act of the holders, in certain situations. If the record date is fixed, the holders of the outstanding SUNs of the relevant series on that record date, and no other holders, will be entitled to take or revoke the relevant action, whether or not those holders remain holders after that record date. No action, however, will be effective unless taken on or prior to the applicable expiration date by holders of the requisite principal amount of the outstanding SUNs of that series on that record date. Any request, demand, authorization, direction, notice, consent, waiver or other act of a holder will bind every future holder of the same SUNs and the holder of every SUN issued upon the registration of transfer of or in exchange of those SUNs. A transferee will be bound by our acts or those of the Trustee taken in reliance thereon, whether or not notation of that action is made upon that SUN. (See Section 1.04)

Events of Default

“Event of default” when used in the Indenture with respect to any series of SUNs, means any of the following:

- failure to pay interest on any SUN of the applicable series for 60 days after it is due;
- failure to pay the principal of or premium on any SUN of the applicable series when due (whether at maturity or upon earlier redemption);
- failure to pay the deposit of any sinking fund payment, when and as due by the terms of the applicable series;
- failure to perform any other covenant in the Indenture, other than a covenant that does not relate to that series of SUNs, that continues for 90 days after we receive written notice from the Trustee, or we and the Trustee receive a written notice from the holders of a majority in principal amount of the SUNs of such series; however, the Trustee or the Trustee and such holders can agree to an extension of the 90-day period and this extension will be automatic if we are diligently pursuing action to correct the default;
- certain events in bankruptcy, insolvency or reorganization of PNM; or
- any other event of default provided with respect to the SUNs of that series.

(See Section 5.01)

Remedies

Acceleration of Maturity

If an event of default with respect to any one series of SUNs occurs and continues, either the Trustee or the holders of a majority in principal amount of the outstanding SUNs of that series may declare the principal amount of all the SUNs of that series to be due and payable immediately. However, if the event of default is applicable to more than one series of SUNs, the Trustee or the holders of a majority in principal amount of all the outstanding SUNs of

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all series, considered as one class, and not the holders of any one series, may make a declaration of acceleration. (See Section 5.02)

At any time after a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee, the event of default giving rise to the declaration of acceleration will be considered waived, and the declaration and its consequences will be automatically rescinded and annulled, if:

- we have paid or deposited with the Trustee a sum sufficient to pay:
 - all overdue interest on all the SUNs of the series;
 - the principal of and premium, if any, on any SUNs of the series which have otherwise become due and interest, if any, that is currently due;
 - interest, if any, on overdue interest (to the extent lawful);
 - all amounts due to the Trustee under the Indenture; and
- any other event of default with respect to the SUNs of that series has been cured or waived as provided in the Indenture.

(See Section 5.02)

The holders of a majority in principal amount of the outstanding SUNs of any series may on behalf of the holders of all the SUNs of that series waive any past default under the Indenture with respect to that series and its consequences, except a default (i) in the payment of the principal of or any premium or interest on any SUN of that series, or (ii) in respect of a covenant or provision of the Indenture which cannot be modified or amended without the consent of the holder of each outstanding SUN of the series affected. However, if a default occurs and continues with respect to more than one series of SUNs, the holders of a majority in aggregate principal amount of the outstanding SUNs of all such series, considered as one class, have the right to waive the default, and not the holders of the SUNs of any one such series. Upon any waiver, the default ceases to exist, and any and all events of default arising therefrom is deemed to have been cured, for every purpose of the Indenture; but no waiver will extend to any subsequent or other default or impair any right consequent thereon. (See Section 5.13)

Right to Direct Proceedings

If an event of default with respect to any series of SUNs occurs and continues, the holders of a majority in principal amount of the outstanding SUNs of that series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the SUNs of that series. However, if an event of default occurs and continues with respect to more than one series of SUNs, the holders of a majority in aggregate principal amount of the outstanding SUNs of all such series, considered as one class, have the right to make the direction, and not the holders of the SUNs of any one of such series. In either case, the Indenture further provides that:

- such direction will not be in conflict with any rule of law or with the Indenture;
- the Trustee may take any other action deemed proper by the Trustee and not inconsistent with such direction; and
- subject to the provisions of the Indenture the Trustee will have the right to decline to follow any direction if the Trustee in good faith determines that the proceeding so directed would involve the Trustee in personal liability.

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(See Section 5.12)

Limitation on Right to Institute Proceedings

No holder of SUNs of any series will have any right to institute any proceeding, judicial or otherwise, with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture, unless:

- the holder has previously given to the Trustee written notice of a continuing event of default;

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- the holders of a majority in aggregate principal amount of the outstanding SUNs of all series in respect of which an event of default has occurred and is continuing, considered as one class, have made a written request to the Trustee;
- such holder or holders have offered reasonable indemnity to the Trustee to institute proceedings; and
- the Trustee has failed to institute any proceeding for 60 days after notice, request and offer of indemnity and has not received any direction inconsistent with the written request of the holders during that period.

(See Section 5.07)

No Impairment of Right to Receive Payment

The limitations on the right to institute proceedings, however, do not apply to a suit by a holder of a SUN for payment of the principal of or premium, if any, or interest if any, on that SUN on or after the applicable due date. (See Section 5.08)

Annual Notice to Trustee

We will provide to the Trustee an annual statement, within 120 days after the end of each fiscal year, by an appropriate officer as to whether we are in default in the performance and observance of any of the terms, provisions and conditions of the Indenture. (See Section 10.04)

Notices

Notices to holders of the SUNs will be given by mail to the holders at the addresses that appear in the security register. (See Section 1.06)

Title

We, the Trustee, and any of our agents or the agents of the Trustee, may treat the person in whose name the SUNs are registered as the absolute owner thereof, whether or not such SUNs may be overdue, for the purpose of making payments and for all other purposes irrespective of notice to the contrary. (See Section 3.08)

Governing Law

The Indenture and the SUNs are governed by, and construed in accordance with, the laws of the State of New York. (See Section 1.12)

Regarding the Trustee

The Trustee is U.S. Bank Trust Company, National Association (ultimate successor to The Chase Manhattan Bank as trustee). In addition to acting as the Trustee, U.S. Bank Trust Company, National Association acts as trustee under various indentures of our affiliates. We and our affiliates also maintain credit and liquidity facilities and conduct other banking transactions with the Trustee and affiliates of the Trustee in the ordinary course of our businesses.

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The Trustee may resign at any time by giving us written notice or be removed at any time by an act of the holders of a majority in principal amount of any series of SUNs then outstanding delivered to the Trustee and PNM. In addition, provided that no event of default has occurred or is continuing, we may appoint a new trustee upon delivering to the Trustee, a resolution of our board of directors appointing a successor trustee and the successor's acceptance of our appointment. In this case, the Trustee will be deemed to have resigned and the successor will be deemed to have been appointed as trustee in accordance with the Indenture. In any event, the resignation or removal of the Trustee, and no appointment of a successor trustee, will be effective until the acceptance of appointment by a successor trustee. (See Section 6.10)

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The Trustee will perform only those duties that are specifically set forth in the Indenture unless an event of default under the Indenture occurs and continues. In case an event of default occurs and continues, the Trustee will exercise the same degree of care and skill as a prudent individual would exercise under the circumstances in the conduct of his or her own affairs. (See Section 6.01)

[Table of Contents](#)**PLAN OF DISTRIBUTION**

We may sell SUNs, in or outside of the United States, to underwriters or dealers, through agents, directly to purchasers or through a combination of these methods. The applicable prospectus supplement will contain specific information relating to the terms of the offering, including, to the extent not otherwise included in the prospectus:

- the name or names of any underwriters or agents;
- the purchase price of the SUNs;
- our net proceeds from the sale of the SUNs;
- any underwriting discounts or agency fees and other items constituting underwriters' or agents' compensation; and
- any initial public offering price and any discounts or concessions allowed or re-allowed or paid to dealers.

By Underwriters

If underwriters are used in the sale, the SUNs will be acquired by the underwriters for their own account. Underwriters may offer the SUNs directly or through underwriting syndicates represented by one or more managing underwriters. The underwriters may resell the SUNs in one or more transactions, including negotiated transactions, at a fixed public offering price, which may be changed, or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the SUNs will be subject to certain conditions. The initial public offering price and any discounts or concessions allowed or re-allowed or paid to dealers may be changed from time to time.

By Dealers

If dealers are used in the sale, unless otherwise specified in the applicable prospectus supplement, we will sell the SUNs to the dealers as principals. The dealers may then resell the SUNs to the public at varying prices to be determined by the dealers at the time of resale. The applicable prospectus supplement will contain more information about the dealers, including the names of the dealers and the terms of our agreement with them.

By Agents and Direct Sales

We may sell the SUNs directly to the public, without the use of underwriters, dealers or agents. We may also sell the SUNs through agents we designate from time to time. The applicable prospectus supplement will contain more information about the agents, including the names of the agents and any commission we agree to pay the agents.

We also may engage a broker-dealer from time to time to act as agent or principal for the offer of our SUNs in one or more placements pursuant to a distribution agreement. If we and the broker-dealer agree, we will sell to the broker-dealer as agent or as principal, and the broker-dealer will seek to solicit offers to purchase on an agency basis and/or will purchase on a principal basis, our SUNs. The amount and purchase price (less an underwriting discount) of the SUNs we sell to the broker-dealer will be mutually agreed on the relevant trading day. The SUNs sold under the distribution agreement will be sold at prices related to the prevailing market price for such securities, and therefore exact figures regarding the price, proceeds that will be raised or commissions to be paid will be described in a prospectus supplement to this prospectus or in other filings made in accordance with and as permitted by the Securities Act and the Exchange Act. The broker-dealer may make sales of our SUNs pursuant to the distribution agreement in privately

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negotiated transactions and/or any other method permitted by law deemed to be an “at-the-market” offering as defined in Rule 415 promulgated under the Securities Act including sales made on the New York Stock Exchange, the current trading market for our debt securities.

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General Information

Underwriters, dealers and agents that participate in the distribution of the SUNs may be deemed underwriters as defined in the Securities Act, and any discounts or commissions we pay to them and any profit made by them on the resale of the SUNs may be treated as underwriting discounts and commissions under the Securities Act. Any underwriters or agents will be identified and their compensation from us will be described in the applicable prospectus supplement.

We may agree with the underwriters, dealers and agents to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments which the underwriters, dealers or agents may be required to make.

Underwriters, dealers and agents may be customers of, engage in transactions with or perform services for, us in the ordinary course of their businesses.

[Table of Contents](#)**LEGAL MATTERS**

Certain legal matters in connection with the SUNs offered hereby will be passed upon for us by Leonard D. Sanchez, Esq., Associate General Counsel of PNMR and Troutman Pepper Hamilton Sanders LLP. As of May 10, 2023, Mr. Sanchez held 1,966 shares of PNMR common stock (pursuant to the vesting of restricted stock rights) and 1,426 unvested restricted stock rights (which vest in equal annual installments over a three-year period from the respective grant date). If legal matters in connection with offerings made pursuant to this prospectus are passed upon by counsel for the underwriters, dealers or agents, if any, such counsel will be named in the applicable prospectus supplement relating to such offering.

EXPERTS

The consolidated financial statements and schedule of Public Service Company of New Mexico and subsidiaries as of December 31, 2022 and 2021, and for each of the years in the three-year period ended December 31, 2022, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

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PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. *Other Expenses of Issuance and Distribution.*

The estimated expenses of issuance and distribution other than underwriting discounts and commissions, to be paid by PNM are as follows:

	Amount to be Paid
SEC filing fee	\$ *
Printing and engraving expenses	*
Accounting fees and expenses	*
Legal fees and expenses	*
Trustee fees and expenses	*
Rating agency fees	*
Miscellaneous	*
Total expenses	\$ *

* Estimated expenses are not presently known. The foregoing sets forth the general categories of expenses (other than underwriting discounts and commissions) that we anticipate we will incur in connection with the offering of securities under this registration statement. An estimate of the aggregate expenses in connection with the issuance and distribution of the securities being offered will be included in the applicable prospectus supplement.

Each prospectus supplement will reflect estimated expenses of PNM based upon the amount of the related offering.

Item 15. *Indemnification of Directors and Officers.*

Section 7 of Article II of Public Service Company of New Mexico's Bylaws contains the following provisions with respect to indemnification of directors and officers:

Each person serving as a director or an officer of the Corporation, or, at the request of the Corporation, as a director or an officer of any other company in which the Corporation has a financial interest and regardless of whether or not the person is then in office, and the heirs, executors, administrators and personal representatives of the person, shall be indemnified by the Corporation to the full extent of the authority of the Corporation to so indemnify as authorized by New Mexico law.

Section 53-11-4.1 of the Business Corporation Act of the State of New Mexico provides that a corporation shall have power to indemnify any person made (or threatened to be made) a party to any proceeding (whether threatened, pending or completed) by reason of the fact that the person is or was a director (or, while a director, is or was serving in any of certain other capacities) if: (1) the person acted in good faith; (2) the person reasonably believed: (a) in the case of conduct in the person's official capacity with the corporation, that the person's conduct was in its best interests; and (b) in all other cases, that the person's conduct was at least not opposed to its best interests; and (3) in the case of any criminal proceeding, the person had no reasonable cause to believe the person's conduct was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses, actually incurred by the person in connection with the proceeding, but may be limited or unavailable with respect to certain proceedings. In

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some instances, indemnification of a director may be mandatory or, upon the application of a director, may be ordered by a court. Reasonable expenses incurred by a director may, under certain circumstances, be paid or reimbursed in advance of a final disposition of a proceeding. Unless limited by its articles of incorporation, a corporation may (or, as the case may be, shall) indemnify and advance expenses to an officer of

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the corporation to the same extent as to a director under Section 53-11-4.1. Also, unless limited by its articles of incorporation, a corporation has (1) the power to indemnify and to advance expenses to an employee or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under the statute and (2) additional power to indemnify and to advance reasonable expenses to an officer, employee or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its Board of Directors, or contract.

Section 53-11-4.1 was amended in 1987 to provide that the indemnification authorized thereunder shall not be deemed exclusive of any rights to which those seeking indemnification may be entitled under the articles of incorporation, the by-laws, an agreement, a resolution of shareholders or directors or otherwise. PNM and/or its parent PNMR, have entered into agreements with each director and officer which provide for indemnification of directors and officers to the fullest extent permitted by law including advancement of litigation expenses where appropriate. The agreements provide for the appointment of a reviewing party by the applicable board of directors to make a determination whether claimed indemnification is permitted under applicable law.

Insurance is maintained on a regular basis (and not specifically in connection with this offering) against liabilities arising on the part of directors and officers out of their performance in such capacities or arising on the part of PNM out of its foregoing indemnification provisions, subject to certain exclusions and to the policy limits.

Item 16. Exhibits.

The following exhibits are included herein or incorporated herein by reference:

Exhibit Number	Exhibit Description
1.1**	Form of Underwriting Agreement for Senior Unsecured Notes.
3.1*	Restated Articles of Incorporation of Public Service Company of New Mexico, as amended through May 31, 2002 (Exhibit 3.1.1 to Quarterly Report on Form 10-Q for the quarter ended June 30, 2002 in File No. 1-6986).
3.2*	Bylaws of Public Service Company of New Mexico with all amendments to and including July 1, 2022 (Exhibit 3.5 to Current Report on Form 8-K filed July 1, 2022 in File No. 1-6986).
4.1*	Indenture (for Senior Notes), dated as of August 1, 1998, between Public Service Company of New Mexico and U.S. Bank Trust Company, National Association (ultimate successor trustee to The Chase Manhattan Bank), as Trustee (Exhibit 4.1 to Form S-3 No. 333-106079).
4.2*	Fourth Supplemental Indenture, dated as of October 12, 2011, supplemental to Indenture dated as of August 1, 1998, between PNM and U.S. Bank Trust Company, National Association (ultimate successor as trustee to The Chase Manhattan Bank), as Trustee (Exhibit 4.1 to Current Report on Form 8-K filed October 12, 2011 in File No. 1-6986).
4.3*	Fifth Supplemental Indenture, dated as of August 11, 2015, supplemental to the Indenture dated as of August 1, 1998, between PNM and U.S. Bank Trust Company, National Association (ultimate successor as trustee to The Chase Manhattan Bank), as Trustee (Exhibit 4.2 to Current Report on Form 8-K filed August 11, 2015 in File No. 1-6986).
4.4**	Form of Supplemental Indenture establishing Senior Unsecured Notes (with form of note attached).
5.1	Opinion of Leonard D. Sanchez, Esq., Associate General Counsel of PNM Resources, Inc.
5.2	Opinion of Troutman Pepper Hamilton Sanders LLP.

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23.1	Consent of KPMG LLP.
23.2	Consent of Leonard D. Sanchez, Esq. (included in Exhibit 5.1).
23.3	Consent of Troutman Pepper Hamilton Sanders LLP (included in Exhibit 5.2).
24	Power of Attorney (contained on the signature page of this registration statement).
25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939 of U.S. Bank Trust Company, National Association (ultimate successor to The Chase Manhattan Bank), as Trustee for the Senior Unsecured Notes.
107	Filing Fee Table

*Incorporated herein by reference as indicated

**To be filed by an amendment or pursuant to a report to be filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as applicable.

Item 17. Undertakings.

(a). The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; *provided, however*, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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Document

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is

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first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; *provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b). The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c). Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described under Item 15 above, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, and will be governed by the final adjudication of such issue.

(d). That, for purposes of determining any liability under the Securities Act of 1933:

(1) The information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(2) Each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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[Table of Contents](#)**SIGNATURES**

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Albuquerque, State of New Mexico, on May 16, 2023.

PUBLIC SERVICE COMPANY OF NEW MEXICOBy: /s/ E.A. EDEN**E.A. Eden****Senior Vice President, Chief Financial Officer and Treasurer****POWER OF ATTORNEY**

Each person whose signature appears below hereby constitutes and appoints, jointly and severally, Joseph D. Tarry, Elisabeth A. Eden and Henry E. Monroy, and each of them acting individually, as his or her attorney-in-fact, each with full power of substitution, for him or her any and all capacities, to sign any and all amendments (including, without limitation, post-effective amendments and any amendments or abbreviated registration statements increasing the amount of securities for which registration is being sought) to this registration statement, with all exhibits and any and all documents required to be filed with respect thereto, with the Securities and Exchange Commission or any regulatory authority, granting unto such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to effectuate the same as fully to all intents and purposes as he or she might or could do if personally present, hereby ratifying and confirming all that such attorneys-in-fact and agents, or any of them, or their substitute or substitutes, may lawfully do or cause to be done.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

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Signature	Title	Date
/s/ J. D. TARRY <hr/> J. D. Tarry	President, Chief Executive Officer and Director (Principal Executive Officer)	May 16, 2023
/s/ E. A. EDEN <hr/> E. A. Eden	Senior Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer and Director)	May 16, 2023
/s/ H. E. MONROY <hr/> H. E. Monroy	Vice President, Regulatory and Corporate Controller (Principal Accounting Officer)	May 16, 2023
/s/ P. K. COLLAWN <hr/> P. K. Collawn	Chairman of the Board of Directors	May 16, 2023
/s/ R. N. DARNELL <hr/> R. N. Darnell	Director	May 16, 2023
/s/ M. P. MERTZ <hr/> M. P. Mertz	Director	May 16, 2023

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S APPLICATION)
FOR AUTHORIZATIONS PERTAINING TO THE)
PROPOSED AMENDMENT OF ITS \$400 MILLION)
REVOLVING CREDIT FACILITY AND TO)
ISSUE UP TO \$250 MILLION OF SENIOR)
UNSECURED NOTES)**

Case No. 24-____-UT

**PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant)
_____)**

SELF AFFIRMATION

KYNDRA A. APODACA, Senior Manager, Treasury for 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 Kyndra A. Apodaca** and it is true and correct based on my
personal knowledge and belief.

DATED this 9th day of February, 2024.

/s/ Kyndra A. Apodaca
KYNDRA A. APODACA

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
 COMPANY OF NEW MEXICO’S APPLICATION)
 FOR AUTHORIZATIONS PERTAINING TO THE)
 PROPOSED AMENDMENT OF ITS \$400 MILLION)
 REVOLVING CREDIT FACILITY AND TO)
 ISSUE UP TO \$250 MILLION OF SENIOR)
 UNSECURED NOTES)
)
 PUBLIC SERVICE COMPANY OF NEW)
 MEXICO,)
)
 Applicant)
 _____)

Case No. 24-____-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **Public Service Company of New Mexico’s Application** was emailed to the parties listed below on February 9, 2024:

NMPRC Record Management Bureau	prc.records@prc.nm.gov ;
NMAG	
Gideon Elliot	gelliot@nmag.gov ;
NMAG Utility Division	utilityfilings@nmag.gov ;
NMPRC	
Bamadou Ouattara	bamadou.ouattara@prc.nm.gov ;
Bradford Borman	bradford.borman@prc.nm.gov ;
Ed Rilkoff	ed.rilkoff@prc.nm.gov ;
Edison Jimenez	Edison.Jimenez@prc.nm.gov ;
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Georgette Ramie	Georgette.Ramie@prc.nm.gov ;
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PNM	
Carey Salaz	Carey.salaz@pnm.com ;
Justin Rivord	Justin.rivord@pnm.com ;
Leonard Sanchez	leonard.sanchez@pnmresources.com ;
Mark Fenton	mark.fenton@pnm.com ;
Stacey Goodwin	stacey.goodwin@pnmresources.com ;

Dated this 9th day of February, 2024

By: /s/Justin Rivord
Justin Rivord, Project Manager
PNM Regulatory Policy & Case Management
Public Service Company of New Mexico