

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S)
APPLICATION FOR APPROVAL OF ITS)
RENEWABLE ENERGY ACT PLAN)
FOR 2020 AND PROPOSED 2020 RIDER)
RATE UNDER RATE RIDER NO. 36,)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant.)
_____)

Case No. 19-00 ____-UT

DIRECT TESTIMONY

OF

THOMAS G. FALLGREN

June 3, 2019

NMPRC CASE NO. 19-00 ____-UT
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WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

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I. INTRODUCTION AND PURPOSE

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

A. My name is Thomas G. Fallgren. I am Vice President of Generation for Public Service Company of New Mexico ("PNM" or "Company"). My business address is Public Service Company of New Mexico, 2401 Aztec Road NE, Albuquerque, New Mexico 87107.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A. I have overseen PNM's generation group since November 2016, first in the role of Managing Director and since May 2017 as Vice President of Generation. From July 2013 to November 2016 I was the Plant Manager for the San Juan Generating Station. Before I came to PNM, I worked for various subsidiaries of Xcel Energy as Plant Manager for the Tolk/Plant X Complex, a two site complex consisting of two coal-fired units rated at 1,100 MW and four-unit natural gas-fired steam plants rated at 442 MW, and the Black Dog Generating Facility, a now-retired coal-fired generating station and a one-on-one combined cycle gas plant. Prior to that I served in several management positions at the Sherburne County Generating Station, a three unit 2,238 MW coal-fired facility. I also have thirteen years of experience at the Monticello nuclear generating facility, where I was previously qualified as a Senior Reactor Operator. I have been a registered engineer in the State of Minnesota since 1994. I graduated with a Bachelor of

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1 Mechanical Engineering degree with High Distinction from the University of
2 Minnesota. A copy of my Educational and Professional Summary is attached as
3 PNM Exhibit TGF-1.

4
5 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PROCEEDINGS BEFORE**
6 **THE NEW MEXICO PUBLIC REGULATION COMMISSION**
7 **(“COMMISSION”)?**

8 **A.** Yes. Cases in which I have testified before the Commission are identified in PNM
9 Exhibit TGF-1.

10
11 **Q. ARE YOU SPONSORING ANY OTHER EXHIBITS?**

12 **A.** Yes, I am sponsoring the Power Purchase Agreement (“PPA”) for the La Joya
13 Wind Facility, Phase 2 (“La Joya II”) provided as PNM Exhibit TGF-2. I am also
14 sponsoring PNM Exhibit TGF-3, which summarizes the renewable bids that PNM
15 considered in the selection of the La Joya II PPA.

16
17 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

18 **A.** My testimony addresses several matters:

- 19 1. I describe the approvals requested in this case and identify the other
20 witnesses who are presenting direct testimony on behalf of PNM;
21 2. I provide an overview of PNM’s Renewable Energy Act Plan for 2020
22 (“2020 Plan” or “Plan”);

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- 1 3. I provide an overview of the changes to the Renewable Energy Act,
2 NMSA 1978, §§ 62-16-1 to -10 (“REA”), that have been enacted since
3 PNM filed its last REA plan, in 2018;
- 4 4. I describe the proposed La Joya II procurement and explain why it is in the
5 public interest and should be approved for compliance with the 2021
6 Renewable Portfolio Standard (“RPS”) requirements;
- 7 5. I describe the variances from Commission rules and orders PNM is
8 seeking in this case; and
- 9 6. I respond to certain reporting requirements PNM agreed to in Case No.
10 18-00158-UT with regard to the Lightning Dock Geothermal Facility
11 (“Lightning Dock”).

12

13 **Q. WHAT COMMISSION APPROVALS ARE PNM REQUESTING IN THIS**
14 **CASE?**

15 **A.**PNM is requesting the following:

- 16 1. Approval of PNM’s 2020 Plan, which includes one new procurement: 140
17 MW of wind energy, at a price of \$17.48/ MWh, pursuant to the PPA with
18 La Joya Wind LLC (“La Joya Wind”), a subsidiary of Avangrid
19 Renewables, LLC (“Avangrid”);
- 20 2. Approval of an extension of PNM’s distributed generation (“DG”)
21 programs;
- 22 3. Approval of the 2020 capacity reservation program for solar DG facilities
23 larger than 100 kW;

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- 1 4. Approval to reset the rate for PNM's Renewable Energy Rider, Rider No.
2 36 ("Rider 36"), effective January 1, 2020, for recovery of RPS
3 procurement costs anticipated to be incurred during 2020, including costs
4 for registering and retiring renewable energy certificates ("RECs") in the
5 Western Renewable Energy Generation Information System ("WREGIS"),
6 and a new rate design for Rider 36;
- 7 5. Approval to modify PNM's Fuel and Purchased Power Cost Adjustment
8 Clause, Rider No. 23 ("FPPCAC"), to address recent amendments to the
9 REA; and
- 10 6. Approval of certain variances from Commission rules.

11

12 **Q. PLEASE INTRODUCE THE OTHER PNM WITNESSES WHO ARE**
13 **PRESENTING DIRECT TESTIMONY IN THIS CASE.**

14 **A. The following witnesses are filing direct testimony on behalf of PNM:**

- 15 • Mr. Shane Gutierrez, Engineer IV, provides the RPS projections for the
16 2020 and 2021 plan years, and explains how these projections have
17 changed from previous PNM renewable plans as a result of the recent
18 amendments to the REA. Mr. Gutierrez explains the shortfall PNM
19 projects in 2020, but also demonstrates that the proposed La Joya II wind
20 procurement, along with PNM's existing renewable portfolio, will enable
21 PNM to meet the RPS requirement in 2021.

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- 1 • Mr. Anthony Bueno, Manager, Retail Renewable Energy, presents PNM's
- 2 proposed changes to the small DG programs and the Capacity Reservation
- 3 Program for solar DG facilities larger than 100 kW;
- 4 • Mr. Thomas S. Baker, Manager, Cost of Service, presents the revenue
- 5 requirements that supports PNM's proposed new rate for Rider 36.
- 6 • Mr. Michael J. Settlage, Lead Pricing Analyst, presents PNM's proposed
- 7 new rate for Rider 36, to be effective as of January 1, 2020, and explains
- 8 the changes in the Rider 36 rate design resulting from the recent
- 9 amendments to the REA.
- 10 • Ms. Stephanie Meeks, Manager, Utility Margin, explains the relationship
- 11 between Rider 36 and PNM's FPPCAC, and presents PNM's proposed
- 12 changes to its FPPCAC Rider No. 23 as a result of the recent amendments
- 13 to the REA.

14

15 **II. EFFECT OF RECENT REA AMENDMENTS ON PNM'S 2020 PLAN**

16 **Q. PLEASE DESCRIBE THE RECENT AMENDMENTS TO THE REA.**

17 **A.** On March 22, 2019, the Governor signed Senate Bill 489, also referred to as the

18 Energy Transition Act or ETA, into law. The ETA amends the REA in two

19 significant respects: 1) it increases the RPS beginning in 2025; and 2) eliminates

20 the large customer adjustment and the exemption for certain governmental

21 customers. As Mr. Gutierrez explains in his direct testimony, elimination of the

22 large customer cap and exemption has the effect of increasing PNM's RPS

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1 requirement for 2020. Mr. Settlage addresses how the elimination of the large
2 customer cap and exemption affects the Rider 36 rate design. Ms. Meeks
3 addresses how the elimination of the large customer cap and exemption affects the
4 FPPCAC.

5
6 **Q. IS PNM FILING ITS 2020 PLAN UNDER THE ETA?**

7 **A.** Yes. Because the ETA will be in effect on January 1, 2020, when PNM
8 implements the 2020 Plan, PNM is filing the Plan under the ETA. However,
9 should the Commission find that NMAC 17.9.572 ("Rule 572"), and not the ETA
10 applies to the 2020 Plan, PNM requests a variance from Rule 572. I address this
11 request for a variance in more detail below. However, I want to note here that,
12 even if the Commission determines that the ETA does not apply to PNM's RPS
13 compliance in 2020, the Commission should still approve the new wind
14 procurement because it is necessary to meet the RPS in 2021. Due to the amount
15 of time necessary to construct La Joya II, the procurement must be approved in
16 this case regardless of whether the ETA applies to the 2020 plan year.

17
18 **Q. HOW SPECIFICALLY DOES THE ETA AFFECT THE RPS?**

19 **A.** Prior to the ETA, the REA provided that renewable energy shall comprise no less
20 than twenty percent of each public utility's retail sales by 2020 and did not
21 provide an increased RPS beyond 2020. The ETA establishes the following
22 increased RPS requirements for public utilities in New Mexico:

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- 1 • No later than January 1, 2025, renewable energy shall comprise no less
2 than forty percent of each public utility's total retail sales to New Mexico
3 customers;
- 4 • No later than January 1, 2030, renewable energy shall comprise no less
5 than fifty percent of each public utility's total retail sales to New Mexico
6 customers;
- 7 • No later than January 1, 2040, renewable energy shall comprise no less
8 than eighty percent of all retail sales of electricity in New Mexico,
9 provided that compliance with this standard until December 31, 2047,
10 shall not require the public utility to displace zero carbon resources in the
11 utility's generation portfolio on the effective date of the ETA; and
- 12 • No later than January 1, 2045, zero carbon resources shall supply one
13 hundred percent of all retail sales of electricity in New Mexico.

14
15 **Q. WHAT OTHER CHANGES TO THE REA AFFECT PNM'S PLAN?**

16 **A.** As I mentioned above, the elimination of the large customer cap and exemption
17 for certain governmental customers is the second major change to the REA; Mr.
18 Gutierrez and Mr. Settlage address the impact of this elimination on PNM's 2020
19 RPS Plan in their testimonies.

20
21 The ETA also changed the definition of "reasonable cost threshold" or RCT.
22 Section 28(E) of the ETA defines the RCT as "an average annual levelized cost of
23 sixty (\$60.00) per megawatt-hour at the point of interconnection of the renewable

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1 energy resources with the transmission system, adjusted for inflation after 2020.”

2 This is in contrast to Rule 572, which calculates the RCT on a whole portfolio
3 basis.

4
5 Additionally, the ETA added the requirement that the renewable energy for which
6 the utility plans to retire RECs for RPS compliance be delivered to the public
7 utility and assigned to the public utility’s New Mexico customers, and eliminated
8 diversity requirements for RPS resources.

9
10 **Q. IS PNM REQUESTING VARIANCES FROM COMMISSION RULES**
11 **AND PRIOR COMMISSION ORDERS AS A PART OF THIS FILING?**

12 **A.** Yes. PNM is requesting variances from certain requirements of Rule 572 and the
13 Final Order in Case No. 14-00158-UT that are inconsistent with recently adopted
14 amendments to the REA. PNM is also requesting a variance from the data filing
15 requirements of 17.9.530 NMAC (“Rule 530”). Please see Section V below for
16 further discussion of the requested variances.

17
18 **III. ELEMENTS OF THE 2020 PLAN**

19 **Q. PLEASE DESCRIBE PNM’S 2020 PLAN.**

20 **A.** The 2020 Plan, which describes how the Company intends to meet the RPS
21 requirement in 2020, is attached to Mr. Gutierrez’s Direct Testimony. In PNM’s
22 last RPS case, Case 18-00158-UT, PNM projected meeting the RPS in 2020.

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1 However, as Mr. Gutierrez shows, due to the changes in the RPS calculation
2 resulting from the elimination of the large customer cap and exemptions, PNM
3 projects that it will not be able to meet the RPS in 2020. Approval of the La Joya
4 II PPA will allow PNM to meet the RPS in 2021.

5
6 PNM's 2020 Plan projects to be short of the 2020 RPS requirement by 68,611
7 RECs. Of course, the actual surplus or deficit of RECs will depend on actual
8 generation levels at PNM's various renewable facilities, actual retail sales, and
9 participation in PNM's voluntary renewable energy programs. As shown by Mr.
10 Gutierrez, PNM is projecting that it will have more than sufficient RECs
11 generated from existing resources, with the addition of the 140 MW of La Joya II,
12 to meet the RPS requirements for 2021. PNM plans to retire excess RECs
13 generated in 2021 to "make up" its 2020 compliance.

14
15 The Plan also proposes a change in the Rider 36 rate effective January 1, 2020.
16 This change reflects the recovery of the costs of renewable procurements during
17 2020, as well as the costs associated with the registration and retirement of RECs
18 through WREGIS. The costs that make up the Rider 36 rate are discussed in Mr.
19 Baker's Direct Testimony, and the derivation of the new Rider 36 rate is
20 explained by Mr. Settlage.

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IV. LA JOYA II PROCUREMENT

1

2 **Q. PLEASE DESCRIBE THE LA JOYA II FACILITY.**

3 **A.** La Joya II is a new 140 MW wind facility that will be located 18 miles east of
4 Estancia, New Mexico in Torrance County. A site map is included in Exhibit A-2
5 to the PPA and additional site descriptions are provided in Exhibit A-1 to the PPA
6 (provided as PNM Exhibit TGF-2). Construction is anticipated to begin upon
7 Commission approval of the procurement in this case. The Expected Commercial
8 Operation Date (“COD”) for the facility is December 31, 2020.

9

10 **Q. WHO WILL CONSTRUCT AND OWN LA JOYA II?**

11 **A.** La Joya Wind, which is a wholly owned subsidiary of Avangrid. Avangrid owns
12 and operates 7.1 gigawatts of electricity capacity, primarily through wind power,
13 including a power purchase agreement with PNM for 166 MW of wind energy
14 from La Joya I.

15

16 **Q. PLEASE DESCRIBE THE TERM OF THE LA JOYA II PPA INCLUDING**
17 **ANY OPTIONS TO EXTEND.**

18 **A.** The term of the PPA is twenty years with no option to extend.

19

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1 **Q. WHAT IS THE NAMEPLATE CAPACITY OF LA JOYA II AND THE**
2 **AMOUNT OF ENERGY PNM WILL PURCHASE UNDER THE PPA?**

3 **A.** The nameplate capacity of the La Joya II facility is 140 MW and the project is
4 expected to produce between 530,000 and 550,000 MWh of energy per year.
5 Under Section 3.1 of the PPA, PNM is required to purchase net energy generated
6 by the facility and delivered to PNM beginning on the COD.

7
8 **Q. PLEASE DESCRIBE THE PRICE PNM WILL PAY UNDER THE LA**
9 **JOYA II PPA.**

10 **A.** Under the terms of the agreement, PNM will pay \$17.48/MWh for the twenty-
11 year term if COD occurs on or before December 31, 2020.

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

17 **A.** No.

18
19 **Q. HOW ARE CURTAILMENTS HANDLED UNDER THE PPA?**

20 **A.** PNM has the right to curtail wind production under the PPA for economic and for
21 reliability reasons. Any curtailments for economic reasons would require PNM to
22 make payment for the energy that would have been delivered (Deemed Energy) at
23 the contract price of \$17.48 /MWh plus the Production Tax Credit ("PTC")

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1 compensation amount. These curtailment rights are discussed in Article 4 of the
2 PPA.

3
4 **Q. ARE THERE CONDITIONS PRECEDENT TO THE PPA TAKING**
5 **EFFECT?**

6 **A.** Yes, as discussed in Article 6 of the PPA, there are three conditions precedent.

7
8 First, the PPA is subject to the approval of the Board of Directors of PNM. This
9 approval was obtained on April 6, 2019.

10
11 Second, the PPA is subject to Commission approval. The pricing terms in the
12 PPA are subject to change based on the date the Commission approves the
13 procurement. If the Commission approves the procurement by February 15, 2020,
14 the purchase price will be \$17.48/MWh; if the Commission approves the
15 procurement after February 15, 2020 but on or before September 1, 2020, the
16 price increases to \$20.67/MWh due to the fact that the COD date would move
17 into 2021 thereby reducing part of the PTCs available for this project; and if no
18 Commission approval is received after September 1, 2020, the PPA does not
19 provide a price term but the parties would meet to discuss possible options,
20 including termination of the PPA.

21
22 Third, the PPA is subject to available transmission capability on the PNM system.
23 The La Joya II PPA requires the use of the BB2 transmission line, for which PNM

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1 requested and received a certificate of public convenience and necessity in Case
2 No. 18-00243-UT.

3
4 **Q. PLEASE DESCRIBE THE PPA PROVISIONS RELATING TO DEFAULT**
5 **AND NON-PERFORMANCE.**

6 **A.** Default by La Joya Wind is addressed in Article 12 of the PPA, including the cure
7 period for each type of default and the remedies. A default becomes an Event of
8 Default if not cured within the applicable cure period, or immediately if no cure
9 period is specified. Potential Events of Default by La Joya Wind under the PPA
10 include: (1) the dissolution, or liquidation or abandonment of the facility; (2)
11 assignment of the PPA except as permitted in the PPA; (3) bankruptcy or
12 insolvency; (4) the sale of energy by La Joya II to a third-party or diversion by
13 La Joya II of any energy, RECs or ancillary services; (5) fraud, waste, tampering
14 with PNM facilities or other material misrepresentation or misconduct under the
15 PPA; (6) failure to make any payment when due; (7) failure to register with
16 WREGIS and failure to transfer RECs; (8) failure to maintain security, and (9)
17 failure to maintain the interconnection to the PNM system.

18
19 Upon the occurrence of an Event of Default by La Joya Wind, PNM may collect
20 damages incurred prior to the termination date as a result of the Event of Default,
21 as well as terminate the PPA and receive a termination payment. Such damages
22 would include the cost of replacement energy for the renewable energy that La
23 Joya II failed to deliver under the terms of the PPA.

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1

2 Article 12 also defines Events of Default related to non-performance of the La
3 Joya II facility. Performance-related Events of Default include: (1) failure to
4 achieve the COD on or prior to the Guaranteed Start Date;¹ (2) the failure of the
5 facility to maintain, after the first anniversary of the COD, an availability
6 percentage of at least seventy-five percent (75%) over two consecutive
7 Commercial Operation Years; and (3) the failure of the facility to maintain an
8 availability percentage of ninety percent (90%) over any Commercial Operation
9 Year.

10

11 La Joya Wind is liable for liquidated damages for non-performance. Article 3.7
12 provides that, if the COD has not occurred by the Expected Commercial
13 Operation Date, La Joya Wind will pay PNM liquidated damages in an amount
14 equal to two hundred dollars (\$200) per day for each MW of capacity that is
15 delayed. These delay liquidated damages are capped at thirty-five thousand
16 dollars (\$35,000) per MW of capacity that is delayed. La Joya Wind also must
17 pay liquidated damages if it has not caused all delayed capacity to achieve
18 Commercial Operation by the Guaranteed Start Date in the amount of three
19 hundred fifty thousand dollars (\$350,000) per MW of delayed capacity.

20

¹ Guaranteed Start Date is defined as one hundred eighty days after the Expected Commercial Operation Date. La Joya II PPA, § 3.1.

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1 **Q. ARE THERE ANY APPROVALS OR PERMITS REQUIRED TO**
2 **CONSTRUCT AND OPERATE THE LA JOYA II FACILITY?**

3 **A.**Yes. The required permits, which La Joya Wind is responsible for obtaining, are
4 listed in Exhibit E to the La Joya II PPA which is attached as PNM Exhibit TGF-
5 2.

6
7 **Q. DOES THE PPA PROVIDE FOR PNM ACQUIRING OWNERSHIP OF**
8 **THE LA JOYA II FACILITY DURING OR AFTER THE TERM OF THE**
9 **AGREEMENT?**

10 **A.**No. PNM has no purchase option under the La Joya II PPA.

11

12 **Q. HOW WILL THE ENERGY FROM LA JOYA II BE INTERCONNECTED**
13 **ON PNM'S SYSTEM?**

14 **A.**The La Joya II facility will be interconnected to a new station, the Avangrid-
15 Torrance 345 kV station, which will loop in the existing Avangrid El Cabo station
16 that is currently interconnected to PNM's Clines Corners 345 kV station. Energy
17 from La Joya II will be transmitted to the PNM load centers utilizing the BB2
18 transmission line that is expected to be in-service by November 2020.

19

20 **Q. HOW WILL PNM ACQUIRE TRANSMISSION SERVICE TO DELIVER**
21 **LA JOYA II ENERGY TO RETAIL CUSTOMERS?**

22 **A.**Because the La Joya II energy is a retail resource, its energy is delivered as part
23 of PNM's retail network transmission service. Similar to the La Joya I PPA, the

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1 transmission service is re-designated to retail network transmission service from
2 point-to-point service under Avangrid's Transmission Service Agreement
3 ("TSA"), which provide for a specific receipt and delivery from Clines Corners
4 station to Four Corners switchyard. PNM will take delivery of the renewable
5 energy at Clines Corners station and Avangrid's TSAs will be modified to reflect
6 this retail delivery once the BB2 Line is in service.

7
8 **Q. WHAT ARE THE TRANSMISSION COSTS TO RECEIVE THE POWER**
9 **FROM THE LA JOYA II FACILITY?**

10 **A.** The BB2 project, which will cost approximately \$85 million, is the only
11 transmission system network upgrade needed to bring the power from La Joya II
12 to PNM's customers. The Commission issued a CCN for the BB2 Project in Case
13 No. 18-00243-UT.

14
15 **Q. HOW WILL THE LA JOYA II PROCUREMENT IMPACT**
16 **RATEMAKING TREATMENT FOR THE BB2 PROJECT?**

17 **A.** The La Joya II procurement will be reflected in the allocation of the network
18 transmission system between the retail and wholesale transmission jurisdictions.
19 In Case No. 18-00243-UT the Commission ordered that "PNM should not be
20 allowed to recover any cost of the Proposed BB2 Project from retail ratepayers
21 other than Facebook unless and until otherwise ordered by the Commission," and
22 ordered a direct reimbursement from Facebook that does not properly reflect use
23 of the transmission capacity for a retail system resource. Recommended

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1 Decision, Finding of Fact and Conclusion of Law 8; Recommended Decision at
2 11. The Commission's formula for calculating the direct cost assignment was
3 based on the premise that the BB2 project was solely necessary to bring the power
4 from the 166 MW La Joya I wind facility to a single PNM retail customer. PNM
5 entered into the La Joya I PPA pursuant to its Special Service Agreement with a
6 Facebook, Inc. subsidiary, Greater Kudu, LLC ("GKL"). The Commission
7 approved the La Joya I PPA as a retail system resource in Case No. 18-00009-UT.

8
9 Because the La Joya II PPA, like the La Joya I PPA, is a retail resource and will
10 be delivered through PNM's retail network transmission service, the transmission
11 costs will be included in the jurisdictional allocation of the transmission system
12 between the retail and wholesale jurisdictions. If the Commission does not amend
13 the direct reimbursement ratemaking treatment in Case 18-00243-UT, retail
14 customers other than GKL, who will receive all the benefits of the La Joya II
15 PPA, will not pay any of the related transmission costs. In essence, unless
16 modified, the ratemaking treatment ordered in Case No. 18-00243-UT would
17 result in retail customers beside GKL receiving a substantial transmission cost
18 subsidy.

19
20 **Q. HOW WILL PNM RECOVER THE COSTS OF THE TRANSMISSION**
21 **UPGRADES NECESSARY TO BRING LA JOYA II'S POWER TO PNM'S**
22 **CUSTOMERS IN LIGHT OF THE RATEMAKING TREATMENT**
23 **ORDERED IN CASE NO. 18-00243-UT?**

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1 **A.** The retail transmission cost will be recovered in base rates as part of a general
2 rate case. The ratemaking treatment ordered in Case No. 18-00243-UT would
3 need to be modified so that the costs of the BB2 Project are recovered as part of
4 the transmission system allocations between retail and wholesale jurisdictions.
5 Otherwise, retail customers would not be paying the proper amount for delivery
6 of retail energy. This is because the Federal Energy Regulatory Commission
7 (“FERC”) allocates network upgrade costs, such as the costs of the BB2 project,
8 to transmission customers based on their usage of the entire PNM transmission
9 system.

10
11 **Q. HOW DID PNM SELECT THE LA JOYA II PPA?**

12 **A.** Due to the short duration of time to solicit and procure additional renewables to
13 meet the RPS after passage of the ETA, PNM utilized the bids in response to the
14 October 2017 all resource request for proposals (“RFP”) for San Juan Generating
15 Station replacement resources. This all resource RFP provided for renewables
16 introduced early to allow for utilization of the available Investment Tax Credits or
17 the Production Tax Credits. These bids were reviewed for renewable resources
18 that could provide Commercial Operation Date prior to Dec 2020, allowing PNM
19 to meet the RPS in 2021. PNM Exhibit TGF-3 summarizes the renewable bids
20 PNM received. Since the resource needs for the RPS are to supply renewable
21 energy credits, these resources can be compared directly based on total evaluated
22 delivered energy cost. La Joya Wind bid two options that would have enabled
23 PNM to meet the RPS in 2021, a 160 MW project and a 140 MW wind resource.

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The 160 MW project was not selected as the curtailment hours associated with this project were anticipated to be higher, requiring PNM customers to pay for additional energy that was not delivered for useful credit. In addition, the 140 MW La Joya II option provided the necessary deficit of energy required to achieve the new RPS requirements.

Q. HOW DOES THE COST OF THE LA JOYA II PPA COMPARE TO THE COST OF RECENTLY ADDED PNM RENEWABLES?

A. The cost of the La Joya II PPA is lower than recently added renewable resources. Please see PNM Table TGF-1 for a comparison with PNM's recent renewable procurements.

PNM Table TGF-1 — PNM Resources Comparison

Capacity	Resource Type	Cost	Case
50 MW	Solar	\$29.98/MWhr	18-00009-UT
50 MW	Wind	\$28.12/MWhr	18-00009-UT
166 MW	Wind	\$27.92/MWhr	18-00009- UT
140 MW	Wind	\$17.48/MWhr	Current Case

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1 **Q. DOES THE LA JOYA II PPA EXCEED THE REASONABLE COST**
2 **THRESHOLD AS DEFINED BY THE ETA?**

3 **A.** No. As defined by the ETA, the RCT is as “an average annual levelized cost of
4 sixty (\$60.00) per megawatt-hour at the point of interconnection of the renewable
5 energy resources with the transmission system, adjusted for inflation after 2020.”
6 The cost of the proposed PPA is well below the RCT.

7

8 **V. REQUESTED VARIANCES**

9 **Q. PLEASE DESCRIBE PNM’s REQUESTED VARIANCES FROM**
10 **SECTIONS OF COMMISSION RULE 572.**

11 **A.** As discussed above, some sections of the current version of Rule 572 are
12 inconsistent with recent amendments to the REA contained in the ETA. Should
13 the Commission find that those sections of Rule 572, and not the ETA, apply to
14 this case, PNM requests a variance from the following sections:

- 15 • Sections 9.572.7(C), 9.572.12, and 9.572.14(C) NMAC, which provide a
16 calculation of the RCT that is inconsistent with the RCT described at
17 Sections 28(E) and 29(E) of the ETA, equal to “an average annual
18 levelized cost of sixty dollars (\$60.00)” per MWh;
- 19 • Sections 9.572.7(G) and 9.572.11 NMAC, which require utilities to
20 diversify the types of renewable energy resources in their portfolios
21 consistent with Section of the 62-16-4(A)(4) of the REA. Section 29 of
22 the ETA deletes the diversity mandate from the REA;

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- 1 • Sections 9.572.7(L) and (M), 9.572.12, and 9.572.16 NMAC, which
2 provide for adjustments to the RPS and RCT for certain exempt
3 governmental and large capped non-governmental customers consistent
4 with Section 62-16-4(A)(2) and (3) of the REA. Section 29 of the ETA
5 deletes the provisions of the REA relating to exempt customers and large
6 capped customers; and
- 7 • Section 9.572.17(C)(2) NMAC, which provides that RECs used for RPS
8 compliance “do not require physical delivery of the electric energy
9 represented by the certificate to a public utility,” consistent with Section
10 62-16-5(B)(1) of the REA. Section 29(A) of the ETA amends this
11 requirement, and provides that a “public utility shall meet the renewable
12 portfolio standard requirements... as demonstrated by its retirement of
13 renewable energy certificates; provided that the associated renewable
14 energy is delivered to the public utility and assigned to the public utility's
15 New Mexico customers.”

16

17 **Q. WHY IS PNM REQUESTING A VARIANCE FROM THESE SECTIONS?**

18 **A.** PNM is requesting a variance so that the amendments to the REA contained in
19 the ETA will apply to this case. The variance is necessary only if the
20 Commission finds that the ETA does not otherwise apply. Because REA plans
21 are filed yearly, if the variance is not granted, then the requirements described in
22 the ETA would not apply to PNM’s REA compliance until 2021. To avoid this
23 lengthy delay in implementing the legislature’s amendments to the ETA, the

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1 Commission should apply the ETA to this case and grant any necessary variances
2 to do so.

3
4 As I explained above, the Commission should approve the La Joya II wind
5 procurement regardless of whether the recent amendments to the REA apply to
6 this case because the procurement is necessary to meet the 2021 RPS. If the
7 Commission decides that the ETA does not apply to this case, the effect will be
8 that the changes to Rider 36 and the FPPCAC required by the ETA, which are
9 described in Mr. Settlege's and Ms. Meeks's testimonies, would not take effect
10 until 2021.

11
12 **Q. PLEASE EXPLAIN PNM'S REQUEST FOR A VARIANCE FROM THE**
13 **REQUIREMENT TO PURCHASE MAKE-UP RECS FOR ANY**
14 **SHORTFALL IN MEETING THE RPS.**

15 **A.** Pursuant to Paragraph 7 of the Stipulation approved by the Commission in Case
16 No. 14-00158-UT, PNM is required to annually calculate the prior year's RPS and
17 RCT for the Annual Renewable Energy Portfolio Report. If there are insufficient
18 RECs to meet the applicable RPS quantity requirement (without regard to
19 diversity), PNM is required to acquire additional stand-alone RECs. These RECs
20 are to be procured at the lowest price available through a solicitation of offers,
21 without the need for an RFP, at a price not to exceed the cost of stand-alone RECs
22 of the same type most recently approved by the Commission. This procurement is

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1 not required if it would cause PNM to exceed the RCT during the period for
2 which the REC procurement would apply.

3
4 PNM is requesting a permanent variance from this requirement due to Section 29
5 of the ETA, which revises Section 62-16-4 of the REA. The relevant portion of
6 Section 29 states:

7 A public utility shall meet the renewable portfolio standard
8 requirements, as provided in this section, to include the renewable
9 energy in its electric energy supply portfolio as demonstrated by
10 its retirement of renewable energy certificates; provided that the
11 associated renewable energy is delivered to the public utility and
12 assigned to the public utility's New Mexico customers.
13

14 The requirement that RECs retired for RPS compliance be associated with
15 renewable energy delivered to PNM customers severely limits PNM's ability to
16 purchase market RECs to make-up for any possible shortfalls and makes this
17 requirement impractical. PNM is not aware of any unbundled RECs it could
18 procure that would satisfy this requirement.

19
20 **Q. IS PNM REQUESTING A VARIANCE FROM MEETING THE 2020 RPS?**

21 **A.** PNM is requesting a variance from the requirement in Rule 572.10(B) that PNM
22 meet a 20% RPS in 2020. As described above, due to the limited amount of time
23 PNM had to acquire new resources after passage of the ETA, PNM is unable to
24 comply with the 20% RPS in 2020 due to the new method of calculating the RPS
25 described in the ETA. PNM plans to make up its 2020 RPS shortfall through
26 excess RECs generated in 2021 and beyond.

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1 **Q. WHY IS PNM REQUESTING A VARIANCE FROM THE DATA FILING**
2 **REQUIREMENTS OF RULE 530?**

3 **A.** Rule 530 requires the filing of extensive data schedules that are unnecessary for
4 review and approval of the Rider 36 rate PNM seeks approval of here. PNM is
5 requesting that the Commission grant a variance from the data filing requirements
6 of Rule 530 to the extent that it is required. The Commission has granted similar
7 variances from Rule 530 in the past. *E.g., Order Granting Variances*, Case No.
8 12-00007-UT (February 3, 2012).

9

10 **VI. LIGHTNING DOCK REPORTING REQUIREMENTS PURSUANT TO**
11 **THE CASE NO. 18-00158-UT FINAL ORDER**

12 **Q. PLEASE DESCRIBE PNM'S REPORTING REQUIREMENTS RELATED**
13 **TO LIGHTNING DOCK'S DALE BURGETT GEOTHERMAL**
14 **FACILITY?**

15 **A.** In Case No. 18-00158-UT, the Commission approved PNM's 2019 RPS Plan,
16 including an agreement between PNM and the Commission's Utility Division
17 Staff to make certain reports with regard to Lightning Dock in future REA plan
18 filings. These reporting requirements are to:

- 19 • State the annual energy output by the Dale Burgett facility for the prior
20 calendar year and the first three months of the following year;
- 21 • Identify any change or supplement, including assignments, to the
22 Lightning Dock PPA or the Consent Agreement, and explain whether
23 PNM believes the change or supplement is material;

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- 1 • Report any seller Events of Default in the prior calendar year and up until
2 the filing date of the testimony;
- 3 • Report any future bankruptcy proceeding related to the Lightning Dock
4 procurement during the prior calendar year and up until the filing date of
5 the testimony; and
- 6 • Report about changes, if any, to PNM's credit analysis of Lightning Dock
7 and Cyrq Energy and, if no credit analysis was performed that year,
8 include a simple explanation of why no new credit analysis was required.

9

10 Mr. Gutierrez addresses the first reporting requirement in his direct testimony; I
11 address the remaining requirements below.

12

13 **Q. HAS THERE BEEN ANY CHANGE OR SUPPLEMENT, INCLUDING**
14 **ASSIGNMENTS, OF THE PPA OR THE CONSENT AGREEMENT**
15 **SINCE JUNE 4, 2018, THE DATE PNM ENTERED INTO THE CONSENT**
16 **AGREEMENT?**

17 **A. No.**

18

19 **Q. WERE THERE ANY LIGHTNING DOCK EVENTS OF DEFAULT IN**
20 **THE PRIOR CALENDAR YEAR AND TO DATE IN 2019?**

21 **A. No.**

22

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1 **Q. HAVE THERE BEEN ANY BANKRUPTCY PROCEEDINGS RELATED**
2 **TO THE LIGHTNING DOCK PROCUREMENT IN THE PRIOR**
3 **CALENDAR YEAR AND TO DATE IN 2019?**

4 **A. No.**

5

6 **Q. HAVE THERE BEEN ANY CHANGES TO PNM'S CREDIT ANALYSIS**
7 **OF LIGHTNING DOCK OR CYRQ ENERGY?**

8 **A. No.** PNM has not performed a new credit analysis of Lightning Dock or Cyrq
9 Energy as there have been no identified events, operational concerns, or other
10 issues that indicate potential changes in the previous credit analysis.

11

12 **VII. CONCLUSION**

13 **Q. PLEASE SUMMARIZE THE REASONS WHY PNM'S 2020 PLAN IS IN**
14 **THE PUBLIC INTEREST AND SHOULD BE APPROVED.**

15 **A. The 2020 Plan is in the public interest because it satisfies the policy goals**
16 established in the REA, as amended by the ETA, and Rule 572. The addition of
17 140 MW of La Joya II is required to meet the changed method of calculating the
18 RPS is within the RCT and would be the lowest cost renewable resource on
19 PNM's system. All the existing renewable resources used to meet PNM's RPS
20 are located in New Mexico and all of the current resources have been previously
21 approved by the Commission. Approval of the recovery of costs for these
22 resources and associated WREGIS costs and carrying charges is consistent with

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1 the cost recovery provisions of the REA, Rule 572, and prior Commission orders
2 addressing these matters. PNM's 2020 Plan is in the public interest and therefore
3 should be approved.

4

5 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

6 **A. Yes.**

GCG#525562

THOMAS G. FALLGREN

EDUCATIONAL AND PROFESSIONAL SUMMARY

Address: Public Service Company of New Mexico
Aztec Facility (Z120)
2401 Aztec Road NE, Building A
Albuquerque, New Mexico 87107

Position: Vice President, PNM Generation, May 2017 to present

Previous Positions:

PNM

Managing Director Generation – Nov 2016 to May 2017

PNM

Director – Plant Manager San Juan Generating Station – July 2013 to November 2016

Xcel Energy, Southwestern Public Service (SPS)

Director – Plant Manager Tolk/Plant X Complex - April 2011 to July 2013

Xcel Energy, Northern States Power (NSP)

Director – Plant Manager Black Dog Generating Facility - May 2008 to April 2011

Xcel Energy, Northern States Power (NSP) – Sherburne County Generating Facility 1996-2008

Operations Manager

Engineering & Technical Services Manager

Scheduling Administrator/Outage Manager

Xcel Energy, Northern States Power (NSP) – Monticello Nuclear Generating Plant 1984- 1996

Held Senior Reactor Operator (SRO) license/certification 1989 - 1996

Supt Maintenance Engineering

Maintenance Engineer

Operations Instructor

System Operations Engineer

Professional Affiliation:

Registered Engineer, State of Minnesota since 1994

Education:

University of Minnesota, Bachelor of Mechanical Engineering – High Distinction

Testimony/Affidavits:

NMPRC Case No. 19-00158-UT

NMPRC Case No. 18-00261-UT

NMPRC Case No. 18-00269-UT

NMPRC Case No. 18-00009-UT

NMPRC Case No. 17-00174-UT

NMPRC Case No. 13-00390-UT

PNM Solar Direct

PNM's EIM Application

PNM's Application Facebook PPA-2

PNM's Application Facebook PPA

PNM's 2017 Integrated Resource Plan

PNM's BART 2018 Filing

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EXECUTION VERSION
Contract No. 1056775

POWER PURCHASE AGREEMENT

LA JOYA WIND FACILITY, PHASE 2

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

LA JOYA WIND, LLC

Dated as of May 31, 2019

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EXHIBITS

- Exhibit A Description of Seller's Generation Facilities and Site Map
- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
- Exhibit D Notice Addresses
- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning Tests
- Exhibit G Insurance Coverages
- Exhibit H Transmission
- Exhibit I Availability Guarantee
- Exhibit J Form of Guaranty
- Exhibit K Commercial Operation Form of Certification
- Exhibit L Sample Monthly Update

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POWER PURCHASE AGREEMENT—LA JOYA WIND FACILITY, PHASE 2

This Power Purchase Agreement – La Joya Wind Facility, Phase 2, as may be amended from time to time, is entered into this 31st day of May, 2019 (“**Execution Date**”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**PNM**” or “**Buyer**”), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87158, and La Joya Wind, LLC, an Oregon limited liability company (“**Seller**”), whose principal place of business is 1125 NW Couch Street, Suite 700, Portland, Oregon 97209. Buyer and Seller may be referred to in this PPA individually as a “**Party**” and collectively as the “**Parties**.”

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

WHEREAS, Seller desires to develop, design, construct, own and operate the second phase to a wind energy electric generating facility with an expected total maximum power output of approximately 140 MW installed capacity (“**Project**”), as further defined herein and in Exhibit A; and

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

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

ARTICLE 1

Definitions and Rules of Interpretation

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

“**Abandonment**” means (a) a cessation of work and operations at the Project for more than sixty (60) Days by Seller or Seller’s contractors but only if such cessation is not caused by a Force Majeure, or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this PPA.

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

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

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

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

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

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

"Ancillary Services" means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, other products associated with electric generation and Energy that the Project is capable of providing and all other beneficial outputs of the Project not required for the operation of the Project.

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

"Availability Damages" has the meaning set forth in Exhibit I.

"Available Hours" has the meaning set forth in Exhibit I.

"BAA Cap" has the meaning set forth in the definition of Reliability Curtailment.

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

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

“Balancing Area Authority” or **“BAA”** has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time. As of the Effective Date, the Wholesale Power Marketing Group at PNM is the BAA for the PNM BA, as such entity may be replaced from time to time.

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

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

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

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

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

“Buyer Delivery Term Security” has the meaning set forth in Section 19.2.

“Buyer Guarantor” means any Person that has a long-term credit rating of such Person’s long-term senior unsecured debt, or long-term corporate or issuer rating that is at least “Baa3” or higher by Moody’s and “BBB-” or higher by S&P.

“Buyer Settlement Amount” means the present value of the Replacement Energy Costs and Buyer Costs, on the one hand, netted against the Contract Value, on the other. If the Replacement Energy Costs and Buyer Costs exceed the Contract Value, then the Buyer Settlement Amount shall be an amount Seller owes to Buyer. If the Contract Value exceeds the Replacement Energy Costs and Buyer Costs, then the Buyer Settlement Amount shall be Zero Dollars (\$0).

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

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

“Catastrophic Failure” means failure of the Project’s main transformer, main circuit breaker, or medium voltage switchgear, provided such failure is not due to Seller’s failure to maintain and operate the equipment in accordance with Prudent Utility Practice.

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“CCN” has the meaning set forth in Section 17.4.

“CCN Approval” has the meaning set forth in Section 17.4.

“CCN End Date” has the meaning set forth in Section 17.4.

“Change of Control” means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller.

“Code” means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

“Commercial Operation” means that (a) Wind Turbines with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all required consents and Governmental Approvals, (c) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement, (d) Seller has satisfactorily completed other testing as reasonably requested by Buyer or otherwise in accordance with Interconnection Agreement requirements and industry standards, (e) Seller has obtained required insurance coverage, (f) Buyer has received an officer’s certificate from Seller that the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended), and (g) Seller has delivered to Buyer the Seller Delivery Term Security.

“Commercial Operation Date” or “COD” means the date on which Buyer accepts from Seller (a) a written notification to Buyer that the Commercial Operation has commenced, (b) a certification from an officer of Seller, substantially in the form attached hereto as Exhibit K, and (c) Seller shall have delivered the Seller Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

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

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

“Contract Value” means the present values of the Energy Output, for each Commercial Operation Year (or portion thereof) in the then remaining term, determined without reference to the early termination, of (a) the quantity of Energy and RECs expected to be produced during such Commercial Operation Year (or portion thereof) times (b) the Energy Output Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount

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factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of this PPA.

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

“DC” means direct current.

“Deemed Energy” means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for a Buyer Curtailment or a Reliability Curtailment for oversupply situations in excess of the BAA Cap calculated on five (5) minute blocks as follows: Deemed Energy (MWh) shall be calculated using (I) the Wind Turbine manufacturer’s power curve as provided in the Wind Turbine supply agreement, and (II) wind data (wind speed, ambient temperature, barometric pressure, air density) determined by the computer monitoring system for each Wind Turbine that is part of the Project adjusted to account for electrical losses in delivering Energy to the Point of Delivery. The calculation of Deemed Energy will consider all or a portion of the Wind Turbines taken out of service due to the curtailment but excluding any Wind Turbines taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller’s calculations and data utilized to develop the calculations of Deemed Energy. Deemed Energy results shall be trued up to correct for consistently biased calculation error based on assessment of normal operations periods before and after any given curtailment event. Other calculation methods for Deemed Energy may be used by Seller with consent of Buyer, and such consent shall not be unreasonably withheld if Seller’s proposed method is consistent with Prudent Utility Practices.

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

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

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

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

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

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

“Dispute Notice” has the meaning set forth in Section 13.8(A).

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

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

“Downgrade Event” shall mean that the long-term credit rating of a Person’s long-term senior unsecured debt, or long-term corporate or issuer rating, is not “Baa3” or higher by

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Moody's and "BBB-" or higher by S&P.

"Early Termination Date" has the meaning set forth in Section 12.4.

"Electric Interconnection Point" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System.

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

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

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

"Energy Output" means Metered Output, Environmental Attributes (including RECs) and Ancillary Services generated by the Project.

"Energy Output Payment Rate" means the price to be paid by Buyer to Seller for the Energy Output, as set forth in this PPA.

"Environmental Attributes" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or

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regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (iii) any Energy, reliability or other power attributes from the Project.

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

“Environmental Curtailment” means any curtailment of the Project by Seller pursuant to (a) Applicable Law; or (b) any voluntary curtailment as determined by Seller in its sole discretion pursuant to environmental guidance, subject to the limitations in Section 4.1(D).

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

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

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

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

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

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

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

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

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial,

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legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

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

“Guaranteed Availability Percentage” has the meaning set forth in Exhibit I.

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

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

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

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

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

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

“Issuer Minimum Requirements” has the meaning set forth in Section 19.3.

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

“kWh” means kilowatt hour AC.

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

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

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

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

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

“Month” means a calendar month.

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

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

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

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

“MWh” means megawatt hours AC.

“National Control Center” means Seller’s representative(s) responsible for dispatch of the Project.

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

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

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

“NMPTCs” means any state or local production tax credit or investment tax credit determined by reference to renewable electric energy produced from renewable energy resources in effect in the state of New Mexico.

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

“Non-Governmental Compliance Obligations” means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

“O&M Records” has the meaning set forth in Section 13.4(A).

“OATT” means Open Access Transmission Tariff.

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

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

“Operating Records” means all agreements associated with the Project, operating logs, and environmental permits, plans, and studies, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

“Organized Market” means any wholesale electricity market that uses a bid-based approach to achieve an economic dispatch of energy, including, but not limited to, an Independent System Operator, Regional Transmission Operator, or Western Energy Imbalance Market.

“Outage Notice” has the meaning set forth in Section 7.6(A).

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

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

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

“Point of Delivery” means the electric system point at the PNM Transmission System at which Seller makes available to Buyer and delivers to Buyer the Energy Output being provided by Seller to Buyer under this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this PPA.

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

“Production Tax Credits” or “PTCs” means the tax credits applicable to electricity produced from certain renewable resources pursuant to Section 45 of the Code (as amended from time to time), or such substantially equivalent federal tax benefit that provides Seller with a tax credit based on Energy production from any portion of the Project.

“Project” means Seller’s approximately 140 MW wind installed capacity energy generation facility located in Torrance County, New Mexico which will produce the Energy Output made available to Buyer under this PPA, including one or more of Seller’s Wind Turbines and Seller’s Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce and/or store electricity and deliver such electricity to the Electric Interconnection Point: Seller’s equipment, buildings, all of the conversion and/or generation facilities, including the Wind Turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Energy Output subject to this PPA.

“Project Manager” has the meaning set forth in Section 10.1(D).

“Projected Schedule” has the meaning set forth in Section 7.5(A).

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

“Prudent Utility Practice(s)” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, WECC and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. With respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

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

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

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable,

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trained, and experienced personnel utilizing proper equipment and tools;

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

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

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

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

"PTC Compensation Amount" means an amount equal to the Production Tax Credit calculated on an After Tax Basis associated with Deemed Energy.

"Qualified Operator" is (a) a Person that has at least three (3) years' experience with operating at least five hundred (500) MW of wind generation, or (b) any other Person reasonably acceptable to Buyer.

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

"Receiving Party's Representatives" has the meaning set forth in Section 22.14(B).

"Recording" has the meaning set forth in Section 22.19.

"Regulatory End Date" has the meaning set forth in Section 17.3(B)(4).

"Reliability Curtailment" means any curtailment of the Project associated with an oversupply of generation on Buyer or the Transmission Provider's Transmission System during a period of time when generating facilities connected to the Transmission Provider's Transmission System are interrupted or reduced in an equitable and non-discriminatory manner. Reliability Curtailments shall be capped on a calendar year basis at Twenty-Five Thousand Three Hundred (25,300) MWh ("**BAA Cap**"), after which Buyer shall compensate Seller in an amount equal to the product of (i) the Energy Output Payment Rate plus the PTC Compensation Amount, multiplied by (ii) the Deemed Energy in excess of the BAA Cap that would have been delivered but for such Reliability Curtailment. If any of the conditions set forth in this definition are applicable, Buyer shall be rebuttably presumed not to be curtailing for economic reasons.

"Reliability Organization" means the entity that fulfills the duties of the Reliability

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Coordinator, or its successor, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

“Renewable Energy Certificate” or “REC” means a certificate evidencing ownership of an Environmental Attribute. For purposes of this PPA and registration with WREGIS, RECs are accumulated on a MWh basis with one (1) REC for each MWh of renewable energy generated. RECs include all Environmental Attributes associated with the generated energy. “RECs” excludes (i) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit to Seller based on ownership of, or Energy production from, any portion of the Project, including the Tax Benefits, and (ii) depreciation and other tax benefits arising from ownership or operation of the Project unrelated to its status as a generator of renewable or environmentally clean energy.

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

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

“Scheduled Maintenance Outage” means a time during which ten (10) MW or more of the Installed Capacity is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

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

“Security” means, with respect to Seller, Seller Development Security or Seller Delivery Term Security or both, as applicable, and with respect to Buyer, Buyer Delivery Term Security.

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

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

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“Seller Forced Outage” means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery in an amount of at least five (5) MWs not associated with Seller Excused Hours.

“Seller Guarantor” means (a) Avangrid, Inc. or its successor, or (b) any Person that has a long-term credit rating of such Person’s long-term senior unsecured debt, or long-term corporate or issuer rating that is at least “Baa3” or higher by Moody’s and “BBB-” or higher by S&P.

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

“Seller Permitted Transfer” means any of the following: (a) a Change of Control of Seller’s Ultimate Parent Company; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (c) a transfer of: (i) all or substantially all of the assets of Seller or Seller’s Ultimate Parent Company in a single transaction; (ii) all or substantially all of Seller’s or Seller’s Ultimate Parent Company’s renewable energy generation portfolio in a single transaction; or (iii) all or substantially all of Seller’s or Seller’s Ultimate Parent Company’s wind generation portfolio in a single transaction; *provided*, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller’s credit characteristics and Seller maintains the applicable Seller Security requirements.

Seller Termination Payment means the aggregate of all amounts then owed from Buyer to Seller, less any amounts owed from Seller to Buyer. The Seller Termination Payment will be based on a comparison of the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Energy Output) to the net present value of the then remaining payments under this PPA, plus Seller’s reasonable transactional costs of entering into a new supply or sales arrangement. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, discount rate and similar considerations.

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

“Seller’s Interconnection Facilities” means the equipment between the high side disconnect of the main step-up transformer and the Electric Interconnection Point, including all related relaying protection, metering and physical structures as well as all transmission facilities required to access the Transmission Provider’s Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, “Seller’s Interconnection Facilities” includes Seller’s metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

“Site” means the parcel or parcels of real property on which the Project will be

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constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. For the avoidance of doubt, this PPA is Site specific.

"System Control Center" or "SCC" means Buyer's representative(s) responsible for dispatch of Buyer's generating units and communication with Seller's National Control Center.

"Tax Benefits" means (a) federal and state production tax credits (including PTCs but excluding NMPTCs), investment tax credits and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money relating in any way to such tax credits or the Project.

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

"Tax Equity Investor" has the meaning set forth in the definition of Tax Equity Financing.

"Taxes" means all applicable taxes, including gross receipts, sales, use and related fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"Term" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"Termination Payment" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"Test Energy" means any and all Energy Output generated by the Project and delivered to Buyer during the Test Period.

"Test Period" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date; provided, however, except with respect to a Force Majeure Event, in no event shall the Test Period be longer than ninety (90) Days.

"TP Forced Outage" means an unplanned component failure or other condition that requires all or a substantial portion of the Transmission Provider's Interconnection Facilities or Transmission Provider's Transmission System to be removed from service immediately.

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

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

“TP Reliability Curtailment” means any curtailment by the Transmission Provider in accordance with NERC/WECC operating policies and criteria and the OATT of Energy Output deliveries for reliability reasons, but not including any Buyer Curtailment.

“Transmission Agreements” means the agreements entered into between Seller’s Affiliate Avangrid Renewables, LLC and Transmission Provider, pursuant to Transmission Provider’s FERC-approved OATT, to facilitate, pursuant to Exhibit H, Buyer’s transmission service to enable delivery of the Project Energy over the Transmission Provider’s Transmission System. Transmission Agreements are more fully described in Exhibit H.

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

“Transmission Provider Curtailment” means curtailments of Energy from the Project directed by the Transmission Provider resulting from (a) a TP Forced Outage that is not the result of a Force Majeure Event, (b) a TP Maintenance Outage, (c) a TP Planned Outage, (d) a TP Reliability Curtailment, (e) an Emergency Condition, (f) safety or equipment failure situations, or (g) a BAA curtailment required to meet NERC/WECC criteria or as directed by the Reliability Organization, excluding curtailments that are directly caused by an oversupply situation as described in the definition of Reliability Curtailment.

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

“Transmission Provider’s Transmission System” means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission

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Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

“Ultimate Parent” means Avangrid Renewables, LLC.

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

“Wind Turbine” means a single wind turbine generating system, including the nacelle, rotor, tower, pad, and controller system, installed as part of the Project.

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

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

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

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

1.2 Rules of Construction.

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

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

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

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

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

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

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

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

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

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

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

(D) To the extent there is any inconsistency between the technical requirements in this PPA and the Interconnection Agreement, the Interconnection Agreement will control.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Project is located ("Local Provider") for the supply of House Energy.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

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

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such facility shall not be delivered by Seller to Buyer under this PPA. House Energy shall be real time measured by

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either (i) separate Electric Metering Devices for Metered Output and House Energy or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2 Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3 Project Description

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

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: La Joya Wind, LLC
Project: La Joya Wind Facility, Phase 2	
Point of Delivery: Clines Corners 345 kV	
Contract Term: 20 Commercial Operation Years	Guaranteed Capacity (MWs): 140 MW at the Point of Delivery, subject to Section 3.2
Product Type: Bundled Energy, Ancillary Services and RECs	Energy Output Payment Rate: 17.48/MWh, or, subject to Section 17.3(B)(3), \$20.67/MWh
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: One hundred eighty (180) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: December 31, 2020, subject to extensions as set forth in Section 3.6 and Section 17.3.	

3.2 Project. Exhibit A provides a detailed description of the Project, including identification of the major equipment and components that will make up the Project. Seller shall

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provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project. The Parties agree that Seller may make a one-time adjustment to the Guaranteed Capacity based on final Wind Turbine selection for the Project; *provided* that such adjustment will not exceed plus or minus 2.5 MW in total and *further provided* that the turbine selected by Seller satisfies the definition of Wind Turbine. Seller will provide notice of adjustment of the Guaranteed Capacity within five (5) Business Days after execution of the Wind Turbine supply contract for the Project.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Wind Turbines at the Site. Seller will provide notice to Buyer of the final proposed location of the Wind Turbines at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes.

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

- (A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;
- (B) be equipped for and capable of AGC by Buyer;
- (C) use communication circuits from Seller's National Control Center to Buyer's System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;
- (D) supply Energy with harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;
- (E) deliver Energy to Buyer, at the frequency specified by Transmission Provider;
- (F) be capable of being remotely dispatched by Buyer's System Control Center; and
- (G) be capable of immediate disconnection from the Buyer's system in the event of an Emergency Condition.

The Parties acknowledge and agree that (i) the La Joya Wind Facility and the La Joya Wind Facility, Phase 2 will be separately metered on the high side of the 34.5 kV/345 kV transformer; and (ii) the gen-tie and the Torrance switching station between the Project and the Point of Delivery are shared facilities among the Project and other projects as illustrated in Exhibit B.

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3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth herein, the Commercial Operation Date shall occur no later than the Expected Commercial Operation Date.

3.6 Extension Due to Force Majeure. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended:

(A) By a number of Days, up to a maximum of one hundred eighty (180) Days, equal to the duration of any Force Majeure Event that delays construction or commencement of operation of the Project. Seller will give written notice to Buyer describing any such Force Majeure Event within five (5) Business Days after the occurrence of the Force Majeure Event. The number of Days of such extension is calculated from the date on which the Force Majeure Event begins. If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party;

(B) on a day-for-day basis, up to a maximum of ninety (90) Days, until all of the interconnection facilities, transmission upgrades, and new transmission facilities, if any, described in the Interconnection Agreement and Transmission Agreements and required to connect the Project to the Transmission Provider's Transmission System and deliver Energy from the Project have been completed and placed into operation, except to the extent any delay in such completion and placement into operations was the result of Seller's failure to complete its obligations under the Interconnection Agreement or Transmission Agreements needed to ensure timely completion and operation of such facilities.

Seller shall diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practice on or before the Guaranteed Start Date. Seller will be solely responsible for, and the Energy Output Payment Rate will not be adjusted, to accommodate increased costs or any failure to obtain any Tax Benefits, associated with (i) interconnection of the Project pursuant to the Interconnection Agreement and Transmission Agreement; or (ii) delays affecting Seller's eligibility, in whole or in part, for the Tax Benefits.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer in an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed Capacity for each Day after the Expected Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Capacity and the Installed Capacity. In no event shall the aggregate Delay Damages exceed Thirty-Five Thousand Dollars (\$35,000) per MW of Delayed Capacity.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve

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Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) per MW of Delayed Capacity ("**Capacity Shortfall Damages**"), in which case the Guaranteed Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

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

3.10 Notice of Commercial Operation. Not less than sixty (60) days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

ARTICLE 4 AGC; Curtailment

4.1 AGC; Curtailment.

(A) Prior to the Commercial Operation Date, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term. Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effectuate its curtailment rights pursuant to this Section 4.1(B) through Section 4.1(D). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Seller shall reduce Energy Output from the Project to the extent of a Buyer Curtailment, which includes (i) any curtailment requested by Buyer with the intended purpose of achieving economic savings by not purchasing energy from the Project, and (ii) any curtailment that results from Buyer's economic bidding (each a "**Buyer Curtailment**"). Buyer Curtailment shall also apply in the event Buyer or the Project enters an Organized Market pursuant to Section 4.1(C) below, and the Project is curtailed as a result of Buyer's submission of an economic bid offer into such Organized Market. Such Buyer Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Buyer Curtailment, Buyer shall pay Seller for Deemed Energy in accordance with Section 8.1(A).

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(C) Organized Market. In the event Buyer moves into an Organized Market, Buyer agrees to designate the Project as a participating resource and as the scheduling coordinator for the Project, submit an economic bid curve for the available capacity of the project. If Buyer is unable to enter into an organized market by April 30, 2021, then the BAA Cap will be reduced by 10,000 MWh until Buyer enters an Organized Market at which time the BAA Cap will revert to the amount identified in the Reliability Curtailment definition.

(D) Seller shall reduce Energy Output from the Project during and to the extent of any Reliability Curtailment, Transmission Provider Curtailment, Environmental Curtailment, or Buyer Curtailment. In the event an Environmental Curtailment exceeds seven (7) Days, Seller shall notify Buyer of such curtailment and the Parties shall mutually agree to a method to comply with environmental guidance causing the curtailment.

(E) With the exception of a Buyer Curtailment and any Reliability Curtailment for oversupply situations in excess of the BAA Cap, Buyer shall not be required to pay Seller for any curtailed Energy during any curtailments allowed by Seller under this Section 4.1(D).

(F) Seller has the right to reasonably request records from Buyer related to Reliability Curtailment for this Project. To the extent that it is determined pursuant to the audit process that Buyer has curtailed the Project for reasons other than as provided in Reliability Curtailment and the curtailment is determined to be a Buyer Curtailment, such Buyer Curtailment will be compensated in accordance with Section 4.1(B).

ARTICLE 5 Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy Output from the Project to Buyer at the Point of Delivery.

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

(C) Seller, or its Affiliate Avangrid Renewables, LLC, shall effect with the Transmission Provider a reduction in the Transmission Agreements in an amount equal to the Guaranteed Capacity, subject to Transmission Provider's OATT and in accordance with Exhibit H, such reduction to be effective prior to or commensurate with the Guaranteed Start Date to the extent possible. In accordance with Exhibit H, Buyer shall be responsible for transmission service and costs required to deliver the Energy Output from and beyond the Point of Delivery; provided that any failure to obtain the CCN Approval shall not be a breach by Buyer of its obligations set forth in this Section 5.1(C).

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

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

5.2 Availability Reporting. Seller shall be responsible for providing accurate and timely updates on the current availability of the Project to Buyer's SCC.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point.

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

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. The Energy will be adjusted to reflect all incremental losses caused by the interconnection of the Project based upon a loss calculation and allocation mutually agreed to in writing by the Parties as soon as reasonably practicable after the Execution Date. In no event shall Buyer pay for any Energy not delivered to Buyer as a result of the loss allocation methodology. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Seller shall provide or arrange with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Buyer the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted. Buyer shall also have the right to conduct its own tests of the Electric Metering Devices in Buyer's reasonable discretion no more than once per Commercial Operation Year. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including obtaining any consent or other agreement from the Transmission Provider necessary to allow Buyer such access.

(D) Either Buyer or Seller may elect to install and maintain, at its own

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expense, backup metering devices ("Back-Up Metering") in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. Within thirty (30) days after the execution of this PPA, Buyer shall notify Seller of its desire to install Back-Up Metering. Buyer and Seller will work together on the logistics of installing Back-Up Metering. The installing Party, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Back-Up Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one percent (1.0%) or less error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller's step-up transformer, the Back-Up Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that the Parties cannot agree on the actual period during which

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the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

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

ARTICLE 6 Conditions Precedent

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

- (A) Subject to Section 17.3, receipt of NMPRC Approval;
- (B) Receipt of approval of the Boards of Directors of Buyer and its parent company, as required; and
- (C) Subject to Section 17.4, receipt of CCN Approval.

ARTICLE 7 Sale and Purchase of Energy Output

7.1 Sale and Purchase of Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Energy Output made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Energy Output when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a Transmission Provider Curtailment is continuing, (c) a Reliability Curtailment is continuing, (d) a Seller Forced Outage is continuing, (e) an Environmental Curtailment is continuing, (f) a Buyer Curtailment is continuing, or (g) Seller's performance is excused during Seller Excused Hours.

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

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7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) additional Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such additional Environmental Attributes is included in the Energy Output Payment Rate as Energy Output, and (c) such additional Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this PPA. Seller will provide such additional Environmental Attributes only to the extent that the qualification for, certification of, tracking of or disposition of such additional Environmental Attributes does not (A) require modifications to the Project (or the design thereof) or upgrades or other modifications to any interconnection or transmission facilities, (B) require Seller to reduce or restrict Seller's flexibility in offering, bidding, planning and scheduling the generation of Energy from the Project, (C) result in a reduction in the Available Hours, or (D) interfere with the qualification, certification, tracking or other disposition of any RECs or other Environmental Attributes other than those associated with the of the Project. If in order for Buyer to receive the benefit of any additional Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs to be reimbursed by Buyer; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such additional Environmental Attributes.

7.4 Future Ancillary Services. The Parties acknowledge and agree that (a) the Project does not generate Ancillary Services as of the Execution Date but the Project may generate Ancillary Services after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such future Ancillary Services are included in the Energy Output Payment Rate and (c) such future Ancillary Services shall pass to Buyer in accordance with Section 7.2 of this PPA. Seller will provide such future Ancillary Services only to the extent that the qualification for, certification of, tracking of or disposition of such future Ancillary Services does not (A) require modifications to the Project (or the design thereof) or upgrades or other modifications to any interconnection or transmission facilities, (B) require Seller to reduce or restrict Seller's flexibility in offering, bidding, planning and scheduling the generation of Energy from the Project, (C) result in a reduction in the Available Hours, or (D) interfere with the qualification, certification, tracking or other disposition of any RECs or other Environmental Attributes. If in order for Buyer to receive the benefit of any future Ancillary Services Seller must incur any third-party costs not otherwise provided for in this PPA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs to be reimbursed by Buyer; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to

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effectuate the transfer of such additional Ancillary Services.

7.5 Scheduling.

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

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

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

(D) Unless otherwise specified by superseding policies or procedures of NERC/WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MPT on each Day, submit a good faith estimate of the hourly quantities of Energy Output to be delivered for Buyer at the Point of Delivery for the next three (3) subsequent Days.

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

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7.6 Forced Outages.

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

(B) Within fifteen (15) Business Days after the end of the Month, Seller shall prepare, maintain and deliver to Buyer an operations log showing all turbine outage events and associated reasons. This shall include all outages due to Scheduled Maintenance, deratings and Seller Forced outages that occurred during the month. Upon request, Buyer may request SCADA data showing hourly turbine availability status codes for all turbines for the month.

7.7 Availability Guarantee. Seller guarantees that the Project will achieve the Guaranteed Availability Percentage during each Commercial Operation Year. Seller shall pay Availability Damages in accordance with Seller's obligations under the provisions of Exhibit I if the Plant fails to meet the Guaranteed Availability Percentage in any Commercial Operation Year after the Commercial Operation Date.

ARTICLE 8 Payment Calculations

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

(A) Monthly Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to the sum of (1) the product of (a) the amount of Energy Output (MWh) delivered for Buyer to the Point of Delivery from the Project multiplied by (b) the Energy Output Payment Rate plus (2) the product of (i) Deemed Energy resulting from any Buyer Curtailment and any curtailments in excess of the BAA Cap multiplied by (ii) the Energy Output Payment Rate plus the PTC Compensation Amount. For the avoidance of doubt, the Energy Output Payment Rate also compensates Seller for the

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associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. Nothing herein confers on Buyer the right to, and Buyer may not, direct Seller to reduce the Energy Output of the Project for the provision of Ancillary Services.

(B) If NMPTCs become available in connection with the Energy Output, Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller becomes eligible to receive any NMPTCs with respect to the Project, the value of such NMPTCs will be shared between the Parties. No later than thirty (30) Days after Seller's receipt of any NMPTCs, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such NMPTCs.

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

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

ARTICLE 9 Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

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

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

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail. Charges for partial months shall be prorated.

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

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within twenty (20) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the

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charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

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

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

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

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

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the ninety (90) Day highest grade commercial paper rate as published in *The Wall Street Journal* on the first Business Day of each Month ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within ten (10) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

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

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waived by the Party entitled to such interest.

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that no gross receipts Tax is applicable to the sale or delivery of Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Type 2 or equivalent Nontaxable Transaction Certificate.

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

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

(D) The Parties shall provide each other, upon written request, with copies of

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any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

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

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

9.9 Netting.

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

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

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

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, the PPA and other applicable requirements and standards. Seller will be solely responsible for, and the Energy Output Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates in substantially the same form as Exhibit L. If Seller becomes aware of any critical milestone that will not be

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achieved by the required date, Seller must provide Buyer written notice and a recovery plan to eliminate any delay in the construction schedule. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project.

(C) Seller may not make modifications, alterations, expansions, or other changes to the Project, without the prior written consent of Buyer, that would be expected to materially alter the Guaranteed Capacity, performance or availability of the Project or materially and adversely impact the capabilities of the Project, except as required by Prudent Utility Practices or Applicable Law.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("Project Manager"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and written notices given by Buyer to the Project Manager shall be deemed as having been given to Seller.

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

10.2 Commissioning Tests.

(A) Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("Commissioning Tests") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project with at least 24 hours' prior notice and approval by Seller, including the SCADA room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the

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Project's operations.

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

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("Operating Parameters"), subject only to Emergency Conditions and Force Majeure Events; provided that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Energy Output delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VArS, Ancillary Services and other electrical specifications required by the Transmission Provider.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and all other industry standards. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC PRC standards and Prudent Utility Practices. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices.

10.5 Operating Procedures. Not later than thirty (30) days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, reporting of meteorological data from on-site meteorological towers (wind speed, wind direction, ambient temperature, barometric pressure, air density), data reporting from each wind turbine (including ten (10) second intervals of turbine generation, wind speed, turbine availability, wind direction, and ambient temperature), and data acquisition procedures, curtailment record keeping; key personnel lists for Seller and Buyer, including an appointed authorized representative for each

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Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity and Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this PPA, Prudent Utility Practice, Applicable Laws and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project within one (1) hour, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

10.6 Project Maintenance.

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

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

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

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ARTICLE 11
RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first delivers Energy for sale to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer immediately to the fullest extent permitted by Applicable Law within five (5) business days after REC creation in WREGIS. Seller shall be liable for Buyer's commercially reasonable costs to replace the RECs if Seller fails to deliver RECs within ten (10) Business Days after written notice from Buyer of such failure; provided however, that if Seller is unable to transfer such RECs to Buyer due to a WREGIS system error preventing such transfer, then Seller shall promptly provide written notice to Buyer of the system error and shall transfer such RECs to Buyer as soon as practicable upon resolution of the WREGIS system error. The RECs and Environmental Attributes transferred under this PPA shall be bundled with the associated Energy, and Buyer shall pay Seller for the bundled RECs and Environmental Attributes and Energy as set forth in this PPA.

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

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

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

(E) Seller shall, at its sole expense in accordance with the timelines and provisions specified in the WREGIS Operating Rules, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of tracking all Renewable Energy Certificates corresponding to all Metered Output, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. Seller shall comply with all Applicable Laws and WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's

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WREGIS account to Buyer's WREGIS account.

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

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

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

ARTICLE 12 Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable, unless expressly set forth in this Section 12.1(A):

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18;
- (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;
- (4) The sale by Seller to a third party, or diversion by Seller for any use, of Energy, RECs or Ancillary Services committed to Buyer by Seller;
- (5) Seller's actual fraud, waste, tampering with Buyer-owned facilities or other material misrepresentation or misconduct in connection with this PPA or the operation of the Project;
- (6) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within 10 Business Days of receipt of notice of such failure;
- (7) Subsequent to REC creation in WREGIS Seller's failure to transfer

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RECs in accordance with the terms of this PPA for three (3) consecutive months or an aggregate of six (6) months during the Term;

(8) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA); unless remedied within ten (10) days of receipt of notice of such failure; or

(9) Other than due to a Force Majeure Event under Section 3.6(A), Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date.

(B) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller:

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

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

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

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

(5) The Project fails, after the first anniversary of the Commercial Operation Date, to maintain an Actual Availability Percentage of at least seventy-five percent (75%) as determined over two (2) successive Commercial Operation Years during the Term; or

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

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller:

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

(2) Any representation or warranty made by Seller in this PPA shall

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prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

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

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable unless expressly set forth in this Section 12.2(A):

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

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

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

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

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA), unless remedied within ten (10) days of receipt of notice of such failure.

(B) The following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer:

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

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer:

(1) The filing of an involuntary case in bankruptcy or any proceeding

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under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

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

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

12.3 Damages Prior to Termination.

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

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.4; provided further, that if such Event of Default is due to the insolvency or bankruptcy of the Defaulting Party, then there shall be no waiver of the Non-Defaulting Party's rights.

(1) If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Energy Output so replaced and (y) the Energy Output Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Energy Output notwithstanding the availability or prices of electric energy from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs and any Environmental Attributes pursuant to this PPA. Seller acknowledges that Buyer entered into this PPA for the procurement of Energy Output, which includes RECs and Environmental Attributes.

(2) If Buyer is the defaulting Party, the Parties agree that the damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include an amount of cover damages equal to (A) the Energy Output Payment Rate,

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multiplied by (B) the quantity of energy that would have been produced by the Project plus (C) the PTC Compensation Amount during the period in which Seller would otherwise receive the PTC Compensation Amount, minus (D) the proceeds realized by Seller from the sale, if any, to a third Person of Energy Output not taken or purchased by Buyer as required under this PPA; provided that such PTC Compensation Amount shall not apply unless Seller has used commercially reasonable efforts to mitigate such damages as required under Section 12.9, plus any proceeds from the sale of related Environmental Attributes. Seller's cover damages for an Event of Default also include (i) the reasonable amounts paid or incurred by Seller for transmission or distribution of Energy Output and any associated transmission or distribution costs, and (ii) Seller's expenses, including reasonable attorneys' fees, suffered as a result of Buyer's failure to perform under this PPA. For the avoidance of doubt, Seller shall use commercially reasonable efforts to mitigate such damages as required under Section 12.9.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that Seller may not suspend performance of its obligation to post and maintain Seller Development Security and Seller Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment, *provided, however*, for an Event of Default by Seller pursuant to Section 12.1(A)(9), the Buyer Termination Payment will be an amount equal to the Seller Development Security, plus any Delay Damages already paid or owing to Buyer, and neither Party shall have liability for damages for failure to deliver or purchase Energy Output after the effective date of such termination, including Replacement Energy Costs.

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

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Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

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

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

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

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

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

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

ARTICLE 13

Contract Administration and Notices

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this PPA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

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

13.8 Resolution of Issues.

(A) Negotiations. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the

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issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, either Party may seek legal and equitable remedies.

ARTICLE 14
Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "Force Majeure Event" shall mean an event or circumstance that arises after the Effective Date that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, explosions and fires not originating in the Project and those not caused by its failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement).

(B) Except for a Catastrophic Failure of equipment which shall be expressly included in the definition of Force Majeure Event, equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Energy Output of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event as the definition is applied to such

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third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Buyer's interconnection request; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions, actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or supplies, or that affect demand or price for power or any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including lightning strikes, but excluding unusually severe events, such as tornadoes, and floods.

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

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

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided that failure to provide notice within ten (10) Business Days only waives the Force Majeure Event as to periods prior to when the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred

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

14.4 Delay Caused by Force Majeure Event. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Energy Output from the Project or to deliver Energy Output from the Project, then the hours during which the Force Majeure Event occurs shall be excluded from the payment calculations as set forth in Section 8.1.

ARTICLE 15

Representations, Warranties and Covenants

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

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

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

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

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

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

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of

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the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

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

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

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

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

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

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

(I) Seller has or shall obtain sufficient water necessary for uninterrupted operation of the Project.

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

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

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

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

(N) Upon the execution thereof, Seller shall provide a true and correct copy of

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the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer; and

(O) Seller has stated that Seller will enter into a Joinder Agreement for joint ownership of the gen-tie, Torrance switching station and other shared facilities illustrated in Exhibit B and become a party to the Co-tenancy, Common Facilities and Easement Agreement dated April 23, 2018, with El Cabo Wind LLC and subsequent project owners. Seller warrants and represents that Buyer shall not be subject to the terms of the Co-tenancy, Common Facilities and Easement Agreement or any shared facilities agreement(s), as they may be amended from time to time, governing the ownership and use of shared facilities, and that Buyer is not responsible for any costs or liabilities associated with the construction or operation of such shared facilities.

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

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

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

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

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

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

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

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

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

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

ARTICLE 16

Insurance

16.1 Evidence of Insurance.

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

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Effective Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of three (3) calendar years after the Term.

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

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

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16.3 Endorsements and Other Requirements.

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

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

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

ARTICLE 17

Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws. Each Party shall promptly notify the other Party of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or this PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval; FERC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law in connection with the execution and performance of this PPA, including but not limited to receipt

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of FERC approval of this PPA, if applicable, and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement. In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of this PPA, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is not contested or is no longer subject to appeal or further proceedings on remand (i) approving this PPA, or (ii) approving this PPA in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval of this PPA as sufficient, and further provided that NMPRC Approval of this PPA shall not be contingent upon other approvals requested or contained in PNM's Application to the NMPRC or the NMPRC's final written order on PNM's Application in the docket in which PNM applies for approval of this PPA or any other order or determination by the NMPRC (collectively, "NMPRC Approval").

(1) If the NMPRC disapproves this PPA, then this PPA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer or Seller will elect to amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by February 15, 2020 ("**Regulatory Extension Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory Extension Date regarding whether the Parties will elect to (i) extend the date by which NMPRC Approval is required to the Regulatory End Date in Section 17.3(B)(4) below, and (ii) extend the COD to an agreed date in 2021, in which case the Energy Output Payment Rate shall be increased to \$20.67/MWh for the remainder of the Term. If the Parties are unable to mutually agree on such extensions for NMPRC Approval and the COD, then Seller shall have the right in its sole discretion to terminate this PPA with no further obligation or liability of either Party to the other Party or to any other Person.

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(4) If the NMPRC has not, for any reason, entered an order upon the request for approval by September 1, 2020 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

17.4 CCN Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of final, non-appealable order or other final, binding regulatory determination from NMPRC approving Buyer's application for a Certificate of Public Convenience and Necessity in NMPRC Case No. 18-00243 for the transmission upgrades required to obtain transmission service on and after the Point of Delivery for the Project ("**CCN**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain CCN Approval, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) CCN Approval shall be considered received when the NMPRC issues a final, non-appealable order or other final, binding regulatory determination from the NMPRC either (i) approving Buyer's application for a CCN, or (ii) approving the CCN in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively "**CCN Approval**").

(1) If the NMPRC denies the CCN, then this PPA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect except as set forth below.

(2) If CCN Approval is issued as described in clause 17.4(B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the CCN Approval order regarding whether Buyer and Seller will elect to amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties are unable to mutually agree on any amendments to this PPA to address such CCN Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the parties conferred and be of no further force or effect except as set forth below.

(3) If the NMPRC has not, for any reason, entered an order upon the request for CCN Approval by June 30, 2019 ("**CCN End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the CCN End Date regarding a potential extension of the CCN End Date. If the Parties are unable to mutually agree to an extension of the CCN End Date, then this PPA shall automatically terminate ten (10)

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Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(4) Notwithstanding receipt of CCN Approval as set forth in this Section 17.4, if Buyer has not obtained CCN Approval as that term is defined in the Power Purchase Agreement—Wind Facilities (“PPA 1”) by and between Buyer and Avangrid Renewables, LLC dated December 20, 2017 and PPA 1 has terminated accordingly pursuant to Section 17.4 of PPA 1 (“PPA 1 CCN Termination”), then the Parties shall meet and confer no later than fifteen (15) Days after the date of the PPA 1 CCN Termination, or other date mutually agreed to by the Parties, regarding whether Buyer and Seller will amend this PPA. If the Parties are unable to mutually agree to an amendment to this PPA, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

17.5 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.6 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

17.7 Seller Termination Right. On or before June 30, 2019, Seller shall have the right in its sole discretion to terminate this PPA for any reason upon written notice to Buyer with no further obligation or liability of either Party to the other Party or to any other Person.

ARTICLE 18

Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

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(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's (or assignee's guarantor's, if such assignee is providing a guaranty) creditworthiness is equal to or better than that of Seller (or Seller's Guarantor, if Seller is providing a Guaranty), but in no event less than BBB- by S&P and Baa3 by Moody's; and (d) shall have complied with the obligations of the assigning Party to provide Seller Development Security or Seller Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer, but in no event less than BBB- by S&P and Baa3 by Moody's; and *further provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Intentionally Omitted.

18.4 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.5 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

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18.6 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico shall be so qualified. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.7 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this PPA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this PPA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this PPA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.7 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this PPA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, provided that such a collateral assignment by Seller does not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and further provided that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19
Credit and Security Requirements

19.1 Seller Security. Seller shall post and maintain, at its sole cost and expense, security equal to Seventy-Five Thousand Dollars (\$75,000) per MW multiplied by the Guaranteed Capacity ("**Seller Development Security**") within thirty (30) Days after receipt of NMPRC Approval. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to Fifty Thousand Dollars (\$50,000) per MW multiplied by the Guaranteed Capacity (the "**Seller Delivery Term Security**"). Seller shall replenish Seller Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Seller Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages. In the event that no amounts are due and owing by Seller to Buyer under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this PPA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

19.2 Buyer Security. Buyer shall not be required to post security except due to the occurrence of a Downgrade Event of Buyer. Not later than thirty (30) Days after the occurrence of such a Downgrade Event, Buyer shall post and maintain, at its sole cost and expense, security equal to Fifty Thousand Dollars (\$50,000) per MW multiplied by the Guaranteed Capacity ("**Buyer Delivery Term Security**") in accordance with this Article 19. Buyer shall replenish the Buyer Delivery Term Security to such required amount within fifteen (15) Days after any draw by Seller. In the event that no amounts are due and owing by Buyer to Seller under this PPA and provided no claims are then outstanding, Buyer Delivery Term Security shall be released to Buyer upon the earlier of (i) termination of this PPA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

19.3 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of the Party for which it is posted: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Party for which it is posted issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Guaranty from a Guarantor, or (d) other security as may be reasonably acceptable to the Party for which it is posted. If at any time there shall occur a Downgrade Event with respect to a Party's Guarantor, then the other Party may require such posting Party to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Guaranty comprising the Security. Upon receipt of the Letter of Credit or cash, the Guaranty shall be returned promptly to the other Party. Notwithstanding the foregoing, a Party's obligation to provide a Letter of Credit in lieu of a Guaranty under this Section 19.3 shall be suspended during any period that (x) Guarantor is no longer experiencing a Downgrade Event and (y) the Guaranty is reinstated by Guarantor in accordance with the requirements of this Section 19.3. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless the Party for which the Security is posted receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit

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that the issuing bank elects not to extend the Letter of Credit. If the Party for which the Security is posted receives notice from the issuing bank that the Letter of Credit will not be extended, the Posting Party must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to the Party for which the Security is posted at least thirty (30) Days before the expiration date of the original Letter of Credit. If the posting Party fails to supply a substitute Letter of Credit or other acceptable Security as required, then the Party for which the Security is posted will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as the Party for which the Security is posted in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.4 Grant of Security Interest. To the extent that a Party posts cash to secure its obligations under this PPA, the other Party hereby grants to the posting Party a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by the posting Party to the other Party as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of the Party for which the Security is posted. The posting Party agrees to take such action as reasonably required to perfect in favor of the Party for which the Security is posted a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.5 Use of Security. In addition to any other remedy available to it, the Party for which the Security is posted in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to the Party for which the Security is posted and any amount for which the same Party is entitled to indemnification under this PPA. The Party for which the Security is posted may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to the Party for which the Security is posted and from all such forms, in any sequence and at any time before or after termination of this PPA, as the Party for which the Security is posted may select until such time as the Security is exhausted.

ARTICLE 20

Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its

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Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "Losses") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in the third paragraph of Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the

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indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

20.4 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Energy Output that are imposed on the making available of Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Energy Output that are imposed at and from the taking of Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days

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after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the sale of Energy Output from the Project. Subject to approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed

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counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, potential lenders, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject of Section 22.14(E) to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other (including electronic) means), or which concerns this PPA, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Receiving Party's Representatives;

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(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party;

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party; and

(4) information developed by the Parties during the negotiation of this PPA that relates solely to this PPA (as opposed to confidential business or operating information of either Party), which information shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure in the proceeding shall use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and to make such disclosure of Confidential Information subject to a protective order or other similar procedure; *provided, however*, Seller acknowledges and agrees that Buyer may disclose this PPA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this PPA and the RECs that are generated under this PPA and delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such RECs (all such materials, in whatever media, whether print, electronic, broadcast or

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otherwise, that are associated with such advertising, marketing or promotional purposes are the “Promotional Materials”). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Upon sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this PPA:

- (1) Party names;
- (2) Renewable resource type;
- (3) Term;
- (4) Project location;
- (5) Guaranteed Capacity;
- (6) Commercial Operation Date; and
- (7) Point of Delivery.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this PPA, the Parties acknowledge that this PPA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this PPA, that this PPA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters. The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (i) will

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be considered a finance lease under Accounting Standards Codification 842 - Leases, or (ii) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810-10 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller's Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's financial statements or other financial

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information provided under the terms of this Section in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information, based on the advice of its counsel that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("Recording") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel.

[Signature page(s) follow]

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IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By Thomas Fallgren/31/2019
10A45E858C2C4B9...

Name Thomas Fallgren

Title Vice President-PNM Generation

LA JOYA WIND, LLC

By Steve Krump 5/31/2019
7E2F7B6E03014CE...

Name Steve Krump

Title Authorized Representative

By Laura Beane 5/31/2019
4ACF42F559DA47C...

Name Laura Beane

Title Authorized Representative

DS
UA

[Signature Page to La Joya Wind Facility, Phase 2 Power Purchase Agreement]

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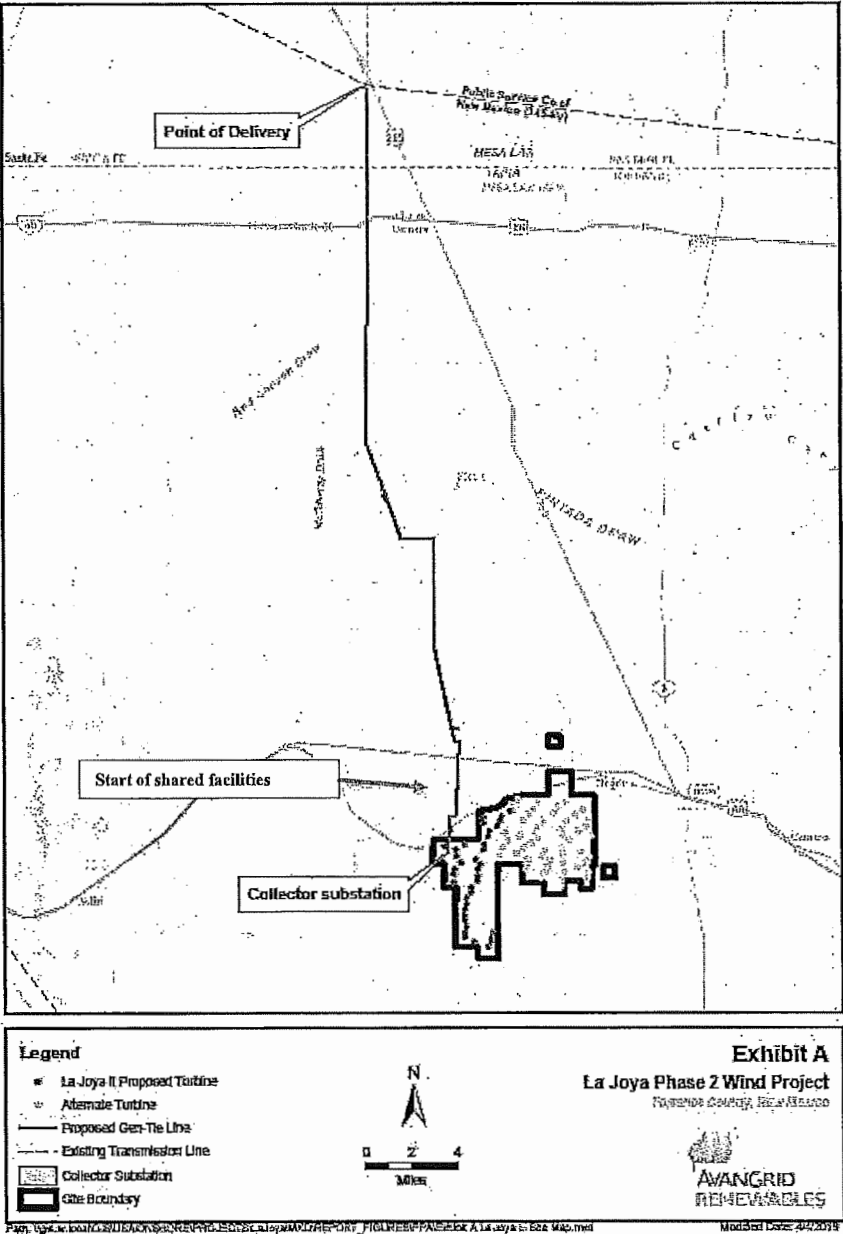
EXHIBIT A
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES
AND SITE MAP**

1. Name of Seller's Project: La Joya Wind Facility, Phase 2

Location: La Joya Wind Facility, Phase 2 is located 18 miles east of Estancia, NM.
Lat 34.9148. Long -105.7929
2. Owner (if different from Seller): La Joya Wind, LLC
3. Operator: Avangrid Renewables, LLC
4. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Wind
 - b. Total number of units at the Project: 53
 - c. Total nameplate capacity: 142.05 MW
 - d. Additional technology-specific information: Project includes:
 - Thirty-eight (38) 2.625 MW wind turbines with 114 meter rotors atop 93 meter towers and
 - Fifteen (15) 2.82 MW wind turbines with 127 meter rotors atop 89 meter towers.
5. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

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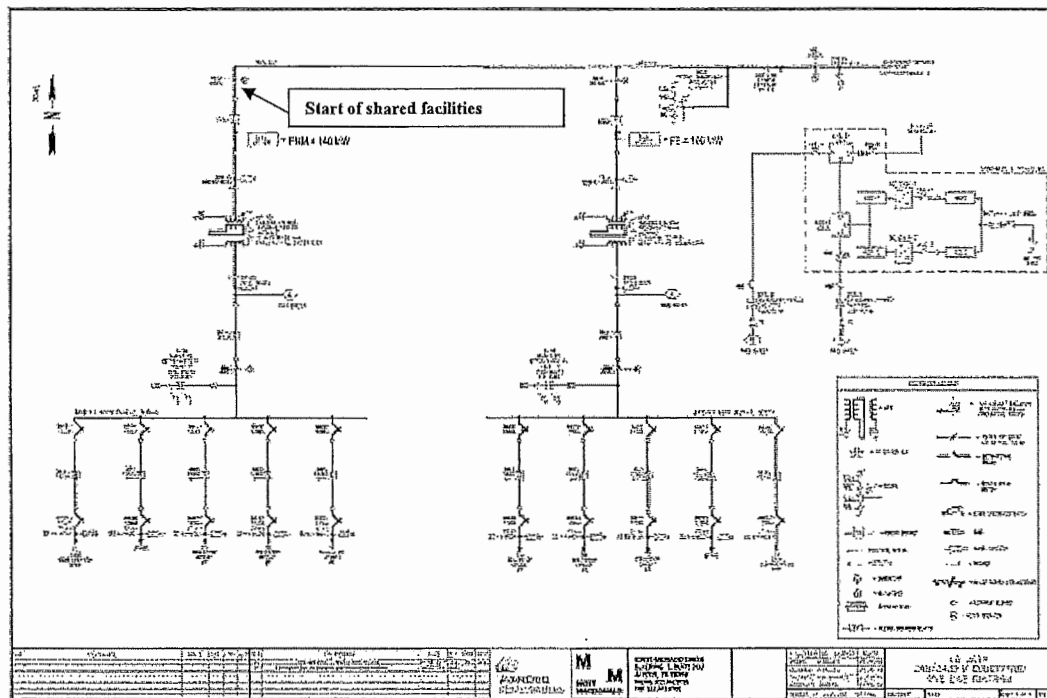


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EXHIBIT B
(to Power Purchase Agreement)

**ONE-LINE DIAGRAM OF PROJECT
AND INTERCONNECTION FACILITIES**

See attached one-line diagrams of the Project, which indicates the Interconnection Facilities, the Point of Delivery and ownership and location of meters. Seller shall provide any necessary updates upon execution of the Interconnection Agreement. Point of Delivery is PNM Clines Corners 345 kV substation.





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EXHIBIT C
(to Power Purchase Agreement)

DESCRIPTION OF SITE

Township/Range	Section	Description	County	State
4N 12E	1	All	Torrance	New Mexico
4N 12E	2	E/2	Torrance	New Mexico
4N 12E	12	All	Torrance	New Mexico
4N 12E	13	All	Torrance	New Mexico
4N 12E	24	N/2	Torrance	New Mexico
4N 13E	1	NE/4	Torrance	New Mexico
4N 13E	2	All but part of the SW part (approx 530 acres)	Torrance	New Mexico
4N 13E	3	All but part of the SE part (approx 614 acres)	Torrance	New Mexico
4N 13E	4	All but part of the S part (approx 495 acres)	Torrance	New Mexico
4N 13E	6	All	Torrance	New Mexico
4N 13E	7	All	Torrance	New Mexico
4N 13E	9	NE part (approx 13 acres)	Torrance	New Mexico
4N 13E	10	North part (approx 121 acres)	Torrance	New Mexico
4N 13E	18	All	Torrance	New Mexico
4N 13E	19	All	Torrance	New Mexico
5N13E	4	SW/4	Torrance	New Mexico
5N13E	16	All	Torrance	New Mexico
5N13E	19	S/2; South part of the N/2 (approx 201 acres)	Torrance	New Mexico
5N13E	20	All	Torrance	New Mexico
5N13E	21	All	Torrance	New Mexico
5N13E	22	All	Torrance	New Mexico
5N13E	27	All	Torrance	New Mexico
5N13E	28	All	Torrance	New Mexico
5N13E	29	All	Torrance	New Mexico
5N13E	30	All	Torrance	New Mexico
5N13E	31	All	Torrance	New Mexico
5N13E	32	All	Torrance	New Mexico
5N13E	33	All	Torrance	New Mexico
5N13E	34	All	Torrance	New Mexico
5N12E	24	South part of the S/2 (approx 218 acres)	Torrance	New Mexico
5N12E	25	All	Torrance	New Mexico
5N12E	34	All	Torrance	New Mexico
5N12E	35	All	Torrance	New Mexico
5N12E	36	All	Torrance	New Mexico

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EXHIBIT D
(to Power Purchase Agreement)
NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

Notices:

Delivery Address:

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

Invoices:

Attn: Energy Analysis
Phone: (505) 541-2585
Fax: (505) 241-2434
Email: PNMEAM@pnmresources.com

Scheduling:

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505) 855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Payments:

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:

Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

LA JOYA WIND, LLC

All Notices/Invoices:

Delivery Address:

La Joya Wind, LLC
1125 NW Couch Street #700
Portland, OR 97209

Invoices:

Attn: Settlements
Phone: 503.796.6959 or 503.796-7150
Fax: 503.796.6905
Email:
IBR_PWR_Settlements@avangrid.com

Scheduling:

Attn: Juan Cartagena
Phone: 503-796-7139 or 503-796-7013
Email: presched.wind@avangrid.com

Payments:

Attn: Settlements
Phone: 503.796.6959 or 503.796-7150
Fax: 503.796.6905
Email:
IBR_PWR_Settlements@avangrid.com

Wire Transfer:

Account Name: La Joya Wind, LLC
BNK: JPMorgan Chase Bank, NA, New
York, NY
ABA: 021000021
ACCT: 816536437

Contract Manager:

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Contract Manager:
Public Service Company of New Mexico
Attention: Kevin Mataczynski
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) 241-4147
Fax: (505) 241-2375

**With additional Notice of an Event of
Default, termination and other legal
notices to:**
Public Service Company of New Mexico
Attention: Tom Fallgren
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) 241-4148
Fax: (505) 241-2375

With a copy to:
Public Service Company of New Mexico
Attention: Madonna N. Bixby, Senior
Corporate Counsel
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-4929
Fax: (505) 241-4318

Attn: Contract Administration
Phone: (503) 796-7034
Email: contracts.admin@iberdrolaren.com

**With additional Notice of an Event of
Default, termination and other legal notices
to:**

Attn: Office of the General Council
Phone: 503-796-7127
Facsimile: 503-796-6904

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EXHIBIT E
(to Power Purchase Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

Name of Permit or Lease Required	Grantor	Description of Permit or Lease	Current Status (to be filed, pending approval, approved)	Projected Timeframe for Approval
Ground Disturbance Permit	New Mexico State Land Office	Permit required for construction on State Trust Land	Approved	N/A
Right of Entry	New Mexico State Land Office	Permit required to enter on State Trust Land	Approved	N/A
National Pollutant Discharge Elimination System (NPDES)	EPA	Requirement to develop stormwater pollution prevention plan	To be filed	Prior to Construction
FAA Determination of No Hazard	Federal Aviation Administration	Permits required for each turbine locations	Filed	Q2 2019
Torrance County Conditional Use Permit	Torrance County	Permit required to construct and operate La Joya Wind Project	Approved	N/A
CWA Sec. 404 Permit	USACE	Wetland Clearance	N/A	N/A
Cultural Resources Survey on the state land	NMSLO	N/A	To be filed	Prior to Construction

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EXHIBIT F
(to Power Purchase Agreement)

COMMISSIONING TESTS

- 1) Turbine supplier has provided, and Seller has accepted, all required turbine commissioning certificates.
- 2) Control functional testing, including voltage, power factor and load control.
- 3) Communications equipment checks, including end-to-end testing of communication links with Buyer.

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EXHIBIT G
(to Power Purchase Agreement)

INSURANCE COVERAGES

Seller shall obtain and maintain the following insurance coverages, at a minimum:

- A. Workers' Compensation Insurance** that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.
- B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.
- C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.
- D. Excess or Umbrella Liability.** Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million dollars (\$20,000,000) written on a per project basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

- E. Property Insurance.** During construction and operation, Seller shall provide standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Project, and each subject to their respective sub-limits; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and engines, in an amount equal to their probable maximum loss.

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EXHIBIT H
(to Power Purchase Agreement)

TRANSMISSION

Buyer shall, as soon as reasonably practicable after the Execution Date, submit a request on the Transmission Provider's OASIS for transmission service for the Project as a network resource. Upon such a time as Buyer is prepared to take receipt of such network service, Seller, or its Affiliate Avangrid Renewables, LLC will make a request to the Transmission Provider to reduce the capacity under its Transmission Agreements by an amount equal to the Guaranteed Capacity. Neither Seller nor its Affiliate Avangrid Renewables, LLC shall be obligated to request the reduction of capacity under its Transmission Agreements until Buyer can take receipt of such network service in order to transmit power from the Point of Delivery.

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EXHIBIT I
(to Power Purchase Agreement)
AVAILABILITY GUARANTEE

Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in Article 1 of this PPA.

“Actual Availability Percentage” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Available Hours for all Wind Turbines that were part of the Project at the beginning of the relevant Commercial Operation Year, divided by (ii) the sum of all Period Hours in the relevant Commercial Operation Year for all Wind Turbines that were part of the Project on the Commercial Operation Date.

“Actual Energy Output” means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

“Aggregate Availability Damages Cap” has the meaning set forth in Section 2(3) of this Exhibit.

“Annual Availability Damages Cap” has the meaning set forth in Section 2(3) of this Exhibit.

“Annual Report” has the meaning set forth in Section 2(5) of this Exhibit.

“Availability Damages” has the meaning set forth in Section 2(2) of this Exhibit.

“Available Hours” means for each Wind Turbine, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Period Hours in such Commercial Operation Year, minus (b) the aggregate Unavailable Hours for such Wind Turbine in such Commercial Operation Year, plus (c) the aggregate Excused Hours for such Wind Turbine in such Commercial Operation Year.

“Excused Hours” means in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year; *provided* that for purposes of the Availability Guarantee only the first fifty (50) hours of Scheduled Maintenance Hours per Wind Turbine per Commercial Operation Year will be treated as Excused Hours. For the avoidance of doubt, the fifty (50) hour allowance for Scheduled Maintenance Hours shall be applicable to each Wind Turbine regardless if the Scheduled Maintenance Hours are the result of an individual Wind Turbine outage or a system outage that results in multiple Wind Turbines being taken out of service.

“Guaranteed Availability Percentage” has the meaning set forth in Section 2(1) of this Exhibit.

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“Period Hours” means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, or eight thousand seven hundred eighty-four (8,784) hours for a Commercial Operation Year that encompasses a leap year, as may be prorated for any partial Commercial Operation Year.

“Scheduled Maintenance Hour” means a time during which a Wind Turbine is shut down or its output reduced by any portion of its capacity to undergo scheduled maintenance.

“Unavailable Hours” means those hours a Wind Turbine is not available to operate for any reason including (a) it is in an emergency, stop, service mode or pause state; (b) it is in “run” status and faulted; (c) it is included in Scheduled Maintenance Outages; (d) a Transmission Provider Curtailment, (e) a Reliability Curtailment, (f) a Buyer Curtailment, (g) a Force Majeure Event, (h) a Catastrophic Failure, (i) Environmental Curtailments, (j) any failure by Buyer to perform a material obligation under this PPA (other than due to a breach by Seller of its obligations under this PPA), or (k) it is otherwise not operational or capable of delivering Energy to the Point of Delivery.

“Wind Turbine” means a single wind turbine generating system, including the tower, pad, transformer and controller system, installed as part of the Project.

Section 2. Availability Guarantee.

1. **Availability Guarantee.** Beginning with the second Commercial Operation Year and for every Commercial Operation Year thereafter, Seller guarantees that the Project shall achieve an Actual Availability Percentage for each Commercial Operation Year equal to or greater than ninety percent (90%) (each, a “Guaranteed Availability Percentage”).

2. **Availability Damages.** For any Commercial Operation Year during which Seller fails to meet the Guaranteed Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Energy Output Payment Rate, multiplied by (y) the Guaranteed Availability Percentage minus the Actual Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Energy Output for such Commercial Operation Year divided by the Actual Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Availability Percentage (expressed as a decimal) (the “Availability Damages”), but in no event in excess of the Annual Availability Damages Cap and the Aggregate Availability Damages Cap. A sample calculation of the Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment I to this Exhibit I.

3. **Damages Cap, Termination and Cure Rights.** The total Availability Damages payable by Seller for failure to meet the Guaranteed Availability Percentage in any Commercial Operation Year shall be capped annually at Two Million Seven Hundred Thousand Dollars (\$2,700,000) (“Annual Availability Damages Cap”) and in the aggregate at Thirty-Four Million Dollars (\$34,000,000) (“Aggregate Availability Damages Cap”) over the Term of the PPA. If at any time Buyer incurs damages in excess of the Aggregate Availability Damages Cap that Seller does not pay when billed by Buyer, Buyer shall have the right to terminate this PPA upon notice to Seller, without further obligation by either Party except as to costs and balances incurred prior

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to the date of such termination except with respect to and the right to declare an Event of Default pursuant to Section 12.1(B)(5), as applicable.

4. Sole Remedy.

A. The Parties agree that Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed Availability Percentage) shall be the payment of damages up to the Annual Availability Damages Cap and Aggregate Availability Damages Cap, the right of termination under this Exhibit I and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the PPA, as applicable, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(5) of the PPA, as applicable. Notwithstanding the foregoing, Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practice, or Seller's failure to pay Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA are an Event of Default of Seller for which Buyer may terminate the PPA and seek damages in accordance with Section 12.4 of the PPA.

B. If all or a portion of the failure to achieve the Guaranteed Availability Percentage during an applicable Commercial Operation Year is caused by a Catastrophic Failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Expected Energy Output for such Commercial Operation Year, then the hours during the first thirteen (13) consecutive months of such Catastrophic Failure will be considered Excused Hours for the for purposes of determining the Actual Availability Percentage under Section 12.1(B)(5), *provided* that such hours will not be excluded for purposes of determining Availability Damages. For the avoidance of doubt, any hours after the first thirteen (13) consecutive months shall not be deemed Excused Hours for any purpose. The damages caps provided in Section 4 will not apply in any year under this Section 4(A).

5. Annual Report. No later than the thirtieth (30th) Day of a Commercial Operation Year, and every Commercial Operation Year thereafter (or thirty Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Availability Percentage for the previous Commercial Operation Year and the Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Availability Damages Cap has been reached, if applicable. If Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the PPA.

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ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION OF AVAILABILITY DAMAGES

I. Example of Actual Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 64 Wind Turbines were part of the Project.

The Wind Turbines had the following operating characteristics:

	Hours	Wind Turbines Affected	Wind Turbine Hours
Period Hours ("PH")	8,760	64	560,640
Unavailable Hours ("UH")			5,000
Excused Hours ("EH")			1,000

Given these assumed facts, the Available Hours for the Wind Turbines during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of Available Hours} = \text{PH} - \text{UH} + \text{EH}: 556,640 = 560,640 - 5,000 + 1000$$

Actual Energy Availability Percentage

Given these assumed facts, the Actual Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of Available Hours: 556,640 hours
- (b) Sum of Period Hours: 560,640 hours
- (c) Actual Availability Percentage: $(\text{Sum of Available Hours} / \text{Sum of Period Hours}) \times 100 = (556,640 / 560,640) \times 100 = 99.3\%$

II. Example of Availability Damages

Example of Availability Damages based on the following assumed facts:

- (a) Seller's Guaranteed Availability in Commercial Operation Year 4 = 90%.
- (b) Seller's Actual Availability in Commercial Operation Year 4 = 83%.
- (c) Energy Output Payment Rate = \$17.48
- (d) Actual Energy Output = 208,223 MWh

Given these assumed facts, Seller calculates the Availability Damages due to Buyer as follows:

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Energy Output Payment Rate x (Guaranteed Availability Percentage in Commercial Operation Year 4 — Actual Availability Percentage for Commercial Operation Year 4) x (Actual Energy Output for Commercial Operation Year 4 ÷ Actual Availability Percentage for Commercial Operation Year 4 x Guaranteed Availability Percentage for Commercial Operation Year 4) = Availability Damage:

$$\$17.48 \times (.90 - .83) \times (208,223 \div .83 \times .9) = \$276,269$$

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EXHIBIT J
(to Power Purchase Agreement)

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by _____ ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. \$ _____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed _____.
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty

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(including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

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4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

- (a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

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- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [insert date] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

<u>TO GUARANTOR:</u>	<u>TO COUNTERPARTY:</u>
<i>Attn: Treasurer</i>	<i>Attn: [●]</i>

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<i>[Tel: [•] -- for use in connection with courier deliveries]</i>	<i>[Tel: [•] -- for use in connection with courier deliveries]</i>
--	--

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors

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or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20____, but it is effective as of the Effective Date.

[•]

By: _____

Name: _____

Title: _____

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EXHIBIT K
(to Power Purchase Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification ("Certification") of Commercial Operation is delivered by _____ ("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Wind Turbines with an aggregate capacity of at least ninety percent (90%) of Guaranteed Capacity have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Wind Turbine manufacturer's requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed Capacity and the punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

EXECUTED by SELLER this _____ day of _____, 20__.

Officer of Seller

Signature: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT L
SAMPLE MONTHLY UPDATE

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1125 NW Couch St., Suite 700
Portland, OR 97209
Engineering & Construction
[DATE]

SAMPLE Monthly Progress Report La Joya Wind



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[DATE]

La Joya Wind

1.0 Brief Generating Facility Description

1.1 General

The Generating Facility is owned and operated by Avangrid Renewables LLC with a maximum nameplate capacity of 263 MW.

1.2 Site

The Generating Facility is located in Torrance County, New Mexico approximately 60 miles southeast of the Albuquerque varying between 6,360 and 6,960 ft. above sea level on a mixture of private and State land, undeveloped and sparsely populated. The area is dominated by shortgrass prairie characterized by rolling rangeland for ranching activities.

1.3 Interconnection

The Generating Facility will interconnect to PNM's 345 kV Cline Corners Substation, located 30 miles north of the project site, adjacent to Hwy 285. A map is included within this report.

1.4 Site Improvements

The site of the Generating Facility will be improved to include the following attributes: []

2.0 Planned Changes to Generating Facility Description

2.1 Planned Changes

3.0 Site Plan of Generating Facility

3.1 Site Plan

[project layout map]
[vicinity map]

4.0 Progress on Milestone Schedule

4.1 Milestone Schedule Update

4.2 Description of Milestone Schedule progress in [MONTH]

ENGINEERING & CONSTRUCTION / 1125 NW Couch St., Portland, OR - USA



Take care of the environment.
Printed in black and white and only if necessary.

PNM 2020 RPS
PNM Exhibit TGF-3
Renewables Available Before 2021

Bid	Bid Type	Bid Type Subcategory	Total Project Capacity (MW)	Quoted PPA Price (\$/MWh)	Levelized Total Evaluated Delivered Cost (\$/MWh)	County
1	PPA	Wind	140	\$17.48	\$24.94	Torrance County
2	PPA	Wind	160 into 140 tie	\$16.67 plus curtailments	\$23.25 plus curtailments	Torrance County
3	PPA	Wind & Solar	150	\$18.65	\$25.98	Torrance County
4	PPA	Wind	120	\$17.93	\$26.46	Torrance County
5	PPA	Wind & Solar	130	\$18.44	\$26.81	Torrance County
6	PPA	Wind	140	\$19.92	\$27.44	Torrance County
7	PPA	Wind	100	\$17.99	\$28.06	Torrance County
8	PPA	Wind	140	\$24.86	\$29.12	Torrance County
9	PPA	Wind	120	\$24.86	\$29.69	Torrance County
10	PPA	Wind	100	\$24.92	\$30.56	Torrance County
11	PPA	Solar	200	\$27.95	\$31.49	San Juan
12	PPA	Solar	150	\$27.95	\$32.34	San Juan
13	PPA	Solar	100	\$27.95	\$33.82	San Juan
14	PPA	Wind & Solar	130	\$25.37	\$33.91	Torrance County
15	EPC	Solar	100	NA	\$44.15	Sandoval
16	EPC	Solar	40	NA	\$46.01	San Juan
17	EPC	Solar	40	NA	\$47.39	Sandoval
18	EPC	Solar	10	NA	\$80.85	San Juan

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S)
APPLICATION FOR APPROVAL OF ITS)
RENEWABLE ENERGY ACT PLAN)
FOR 2020 AND PROPOSED 2020 RIDER)
RATE UNDER RATE RIDER NO. 36)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO)
)
Petitioner.)
_____)

Case No. 19-00 ____-UT

AFFIDAVIT

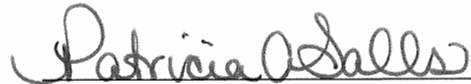
STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

THOMAS G. FALLGREN, Vice President of Generation for Public Service Company of New Mexico, upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Thomas G. Fallgren** and it is true and correct based on my personal knowledge and belief.


SIGNED this 31st day of May, 2019.


THOMAS G. FALLGREN

SUBSCRIBED AND SWORN to before me this 31st day of May, 2019.


NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:


September 14, 2022