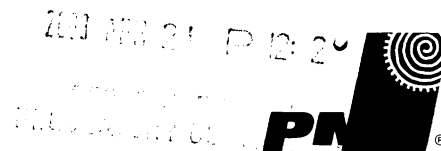


Alvarado Square  
 Albuquerque, NM 87158-0920  
 P 505 241-2700  
 F 505 241-2386  
 PNM.com

ORIGINAL

FILED  
OFFICE OF THE  
SECRETARY

April 18, 2008



A personal commitment  
 to New Mexico

Ms. Kimberly D. Bose, Secretary  
 Federal Energy Regulatory Commission  
 Room 1-A  
 888 First Street, N.E.  
 Washington, DC 20426

Re: Public Service Company of New Mexico,  
 Docket No. ER08-853-000

Dear Ms. Bose:

Pursuant to section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d (2000), and Part 35 of the Regulations of the Federal Energy Regulatory Commission (“Commission”), Public Service Company of New Mexico (“PNM”) submits for filing an original and five copies of an “Engineering, Procurement and Construction Agreement” (the “Agreement”) dated April 11, 2008, between itself and High Lonesome Wind Ranch, LLC (“High Lonesome”).

As explained more fully below, PNM requests waiver of the Commission’s 60-day notice requirement, 18 C.F.R. § 35.3(a) (2007), to permit the Agreement to become effective on April 11, 2008, the date the Agreement was executed by the parties.

### **Background and Reason for Filing**

High Lonesome is planning to construct a 100 MW wind energy generation facility located approximately five miles south of the Willard 115 kV Switching Station (“Willard Station”) in Torrance County, New Mexico, which is owned and operated by Tri-State Generation and Transmission Association, Inc. (“Tri-State”). High Lonesome has requested interconnection service for its wind generating facility from PNM pursuant to PNM’s Open Access Transmission Tariff (“OATT”). Tri-State’s electric transmission facilities in New Mexico are interconnected with PNM’s transmission system and Tri-State is a part of the Balancing Authority for which PNM is responsible. Tri-State and PNM are signatories to several agreements and operating procedures that facilitate reciprocal considerations in the operation of their interconnected transmission systems. PNM, through its agreements with Tri-State has certain rights at Willard Station and it was determined that interconnection of the High Lonesome wind generation facility to PNM’s transmission system could best be facilitated by a new interconnection point created at Willard Station. To facilitate the interconnection, Willard Station will need to be expanded and enhanced, and Tri-State as owner and operator of Willard Station, will be the entity completing the work through a separate contract for the capital

Ms. Kimberly D. Bose  
April 18, 2008  
Page 2

construction and interconnection, which PNM and Tri-State will have entered into concurrently, and which has been filed separately with the Commission.

In order to advance the implementation of the interconnection, High Lonesome has requested pursuant to Section 9 of the Large Generator Interconnection Procedures ("LGIP") in PNM's OATT, that PNM offer an Engineering and Procurement Agreement ("E&P Agreement") that authorizes PNM (through Tri-State, the entity that will perform the services called for under the E&P Agreement) to begin design, engineering and procurement of long-lead items necessary for the interconnection, while a Large Generator Interconnection Agreement ("LGIA") between PNM and High Lonesome is still under development. Pursuant to follow-on discussions between PNM and Tri-State and PNM and High Lonesome, it was decided that the scope of the E&P Agreement should be expanded to include the requisite construction activity associated with the expansion and enhancements to Willard Station. As a result, the Agreement is now an Engineering, Procurement and Construction Agreement ("EPC Agreement").

The EPC Agreement provides for the engineering, procurement, and construction services reasonably necessary in order to design, engineer, obtain bids, place purchase orders and otherwise to procure materials and equipment, and begin construction in connection with the proposed interconnection facilities and network upgrades at Willard Station. The EPC Agreement will ultimately be superseded by the LGIA between PNM and High Lonesome once it is executed, which is provided for in Section 7 of the EPC Agreement.

### **Rates and Charges**

The EPC Agreement provides for the Interconnection Customer to pay the cost of all activities authorized by the Interconnection Customer. Pursuant to Section 4 of the EPC Agreement, High Lonesome has agreed to pay for all actual costs and expenses reasonably incurred by PNM and an itemized list of estimated costs is included in Exhibit A to the EPC Agreement. All of the costs shown in Exhibit A are estimated amounts prepared by Tri-State, and will be trued-up to the actual costs incurred, once such costs are known.

### **Effective Date**

PNM respectfully requests waiver of the Commission's prior notice and filing requirements. *See Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993). The Commission has determined that waiver of the notice requirements will be granted for agreements as long as the agreements are filed within 30 days after service commences.<sup>1</sup> PNM is filing the E&P Agreement within 30 days of its execution. As a result, PNM requests that the Commission establish an effective date of April 11, 2008, for the EPC Agreement.

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<sup>1</sup> See, e.g., *Elkem Metals Company - Alloy, L.P.*, 114 FERC ¶ 61,181 at n.7 (2006), citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 65 FERC ¶ 61,081 at 61,984 (1993) (finding that waiver of the 60-day prior notice will be granted if service agreements are filed within 30 days after service commences).

Ms. Kimberly D. Bose  
April 18, 2008  
Page 3

### **Designation**

PNM is filing the EPC Agreement as PNM Service Agreement No. 286 under the PNM OATT.

### **Waiver of Filing Requirements**

To the extent that any filing requirement in Part 35 of the Commission's regulations is not satisfied by this filing and the materials enclosed herewith, PNM respectfully requests waiver of such requirements.

### **Correspondence**

PNM requests that the following persons be included on the official service list in these proceedings and that all communications concerning this filing be addressed to the following persons:

Charles V. García  
Senior Counsel, Regulatory Policy  
PNM Resources Inc.  
Alvarado Square, MS-0806  
Albuquerque, NM 87158  
(t) 505-241-4939  
(f) 505-241-0866  
(e) [charles.garcia@pnmresources.com](mailto:charles.garcia@pnmresources.com)

Amie V. Colby  
TROUTMAN SANDERS LLP  
401 9<sup>th</sup> Street, NW, Suite 1000  
Washington, DC 20004  
(t) 202-274-2922  
(f) 202-654-5605  
(e) [amie.colby@troutmansanders.com](mailto:amie.colby@troutmansanders.com)

and

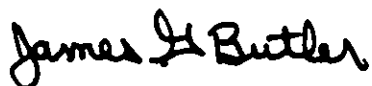
Mr. James G. Butler  
Public Service Company of New Mexico  
Alvarado Square (MS-0920)  
Albuquerque, New Mexico 87158  
(t) (505) 241-2388  
(f) (505) 241-2386  
(e) [jbutler@pnm.com](mailto:jbutler@pnm.com)

Ms. Kimberly D. Bose  
April 18, 2008  
Page 4

**Service and Posting**

Copies of this filing have been served on High Lonesome, and have been provided to the New Mexico Public Regulation Commission and the New Mexico Attorney General for informational purposes. This filing also will be posted in conformance with 18 C.F.R. § 35.2(d) (2007).

Sincerely,



James G. Butler  
Regulatory Project Manager

**Attachment**

cc: Mr. Roger Eklund - PNM

High Lonesome Wind Ranch, LLC  
C/o Edison Mission Energy, Inc.  
18101 Von Karman Avenue, Suite 1700  
Irvine, California 92612-1046  
Attention: Craig Pospisil

Mr. Warren Byrne  
President & CEO  
Foresight Wind Energy, LLC  
657 Mission Street, Suite 504  
San Francisco, CA 94105

Mr. Ronald X. Montoya  
New Mexico Public Regulation Commission  
224 East Palace Avenue  
Santa Fe, New Mexico 87501-2013

Jeff Taylor, Esq.  
Assistant Attorney General  
State of New Mexico  
PO Drawer 1508  
Santa Fe, NM 87504-1508

Public Service Company of New Mexico  
FERC Electric Tariff  
Second Revised Volume No. 6

Service Agreement No. 286

**SERVICE AGREEMENT NO. 286**  
**UNDER**  
**PUBLIC SERVICE COMPANY OF NEW MEXICO**  
**FERC ELECTRIC TARIFF**  
**SECOND REVISED VOLUME NO. 6**

**Engineering, Procurement and Construction Agreement**  
**between**

**Public Service Company of New Mexico**  
**and**

**High Lonesome Wind Ranch, LLC**

**Issued By: James G. Butler**  
**Regulatory Project Manager**  
**Issued On: April 18, 2008**

**Effective Date: April 11, 2008**

## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT ("EPC Agreement") is made and entered into this 11<sup>th</sup> day of April, 2008, by and between Public Service Company of New Mexico ("PNM"), a New Mexico corporation ("Transmission Provider") and High Lonesome Wind Ranch, LLC, a Delaware limited liability company ("Interconnection Customer"). Interconnection Customer and Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

### RECITALS

WHEREAS, Interconnection Customer is planning to construct a 100 MW wind energy generating facility ("Project"); and

WHEREAS, Transmission Provider has an Open Access Transmission Tariff ("OATT"), which includes the Large Generator Interconnection Procedures ("LGIP") and the associated pro forma Large Generator Interconnection Agreement ("LGIA"), on file with and made effective by the Federal Energy Regulatory Commission ("FERC"); and

WHEREAS, pursuant to the OATT, Interconnection Customer has requested generation interconnection service for the Project from Transmission Provider; and

WHEREAS, in order to advance the implementation of the interconnection, Interconnection Customer has requested, pursuant to the OATT, that Transmission Provider begin certain activities relative to the interconnection of the Project prior to the completion and execution of the LGIA specified in the OATT; and

WHEREAS, Section 9 of the LGIP provides that upon the request by the Interconnection Customer, Transmission Provider shall offer an Engineering and Procurement Agreement ("E&P Agreement") that authorizes Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection; and

WHEREAS, the LGIP provides that the E&P Agreement shall provide for the Interconnection Customer to pay the cost of all activities authorized by the Interconnection Customer and to make advance payments or provide other satisfactory security for such costs; and

WHEREAS, the Parties have agreed to expand the scope of the E&P Agreement to include certain construction activities directly related to the engineering and procurement services to be provided, and create an EPC Agreement relative to certain aspects of the interconnection of the Project to Transmission Provider's transmission system; and

WHEREAS, the Parties wish to set forth their agreement with respect to such engineering, procurement and construction services related to the Transmission Provider Interconnection Facilities and Network Upgrades necessary to connect the Project to Transmission Provider's transmission system, and Interconnection Customer's payment therefor;  
NOW THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

**AGREEMENT**

1. **Engineering, Procurement and Construction Services to be Provided.** In accordance with the terms of this EPC Agreement and provided that Interconnection Customer (a) is not in Default under the terms of this EPC Agreement or (b) has not failed to comply with any prerequisites specified in the OATT, and (c) is otherwise making substantial progress towards bringing the Project to fruition, Transmission Provider shall commence or cause to have commenced the engineering services as further described herein ("Engineering Services"), the procurement services as further described herein ("Procurement Services"), and the construction services as further described herein ("Construction Services"). For purposes of this EPC Agreement, the Project interconnection to the Transmission Provider electrical transmission facilities ("Transmission Provider Transmission System") involves the Transmission Provider Transmission System located at the Willard 115 kV Switching Station ("Willard Station"). Willard Station is owned and operated by Tri-State Generation and Transmission Association, Inc. ("Tri-State"), which will be the entity completing the Engineering Services, the Procurement Services, and the Construction Services, defined in this EPC Agreement on behalf of Transmission Provider, under a separate Contract for Capital Construction and Interconnection, Contract No. TS-08-0038, (the "Corresponding Contract") between Transmission Provider and Tri-State, which is being entered into concurrently herewith.

For purposes of this EPC Agreement:

"Transmission Provider Interconnection Facilities" shall include all facilities and equipment, including all Metering Equipment, communications equipment and System Protection Facilities required to be installed as a result of the interconnection of the Project, that will be owned, controlled and operated by Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified on Page 1 of 1 in Exhibit B hereto.

"Network Upgrades" shall mean all additions, modifications, and upgrades to the Willard Station facilities necessary to accommodate interconnection of the Project to the Transmission Provider Transmission System and that are not defined as Transmission Provider Interconnection Facilities.

"Engineering Services" shall mean the services (and costs) set out in Exhibit A hereto (including such other related services and costs as agreed upon by Transmission Provider and Tri-State) reasonably necessary in order to design and engineer the Transmission Provider Interconnection Facilities and the Network Upgrades at Willard Station (including the services of any consultant or professional engineering firms that may be retained by Transmission Provider or Tri-State in connection therewith) to accommodate interconnection of the Project to the Transmission Provider Transmission System.

"Procurement Services" shall mean the services (and costs) set out in Exhibit A (including such other related services and costs as agreed upon by Transmission Provider and Tri-State) reasonably necessary in order to specify, obtain bids, place purchase orders and otherwise to procure materials and equipment in connection with the Transmission Provider Interconnection Facilities and Network Upgrades at Willard Station to accommodate interconnection of the Project to the Transmission Provider Transmission System.

"Construction Services" shall mean the services (and costs) set out in Exhibit A (including such other related services and costs agreed upon by Transmission Provider and Tri-State) reasonably necessary in order to construct and install, and/or to cause to be constructed and installed all facilities and equipment required for the Transmission Provider Interconnection Facilities and the Network Upgrades at Willard Station, to accommodate interconnection of the Project to the Transmission Provider Transmission System.

The Engineering Services, Procurement Services and Construction Services shall be collectively referred to herein as the "Services". All costs shown for the Services set out in Exhibit A are estimated amounts, prepared by Tri-State, to fund such Services in advance of their respective initiation. Tri-State will invoice Transmission Provider under the Corresponding Contract, in accordance with the "Cash-Flow" schedule set out on Page 4 of 5 of Exhibit A hereto, and Transmission Provider will send corresponding invoices to Interconnection Customer in accordance with the provisions set out in Section 5 below. All estimated costs advanced for the Services under this EPC Agreement will be true-up to actual costs and invoiced (or refunded) in accordance with the provisions of Section 5 below.

**2. Performance Standards.** Each Party shall perform all of the obligations imposed on it by this EPC Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice. To the extent a Party is required or prevented or limited in taking any action by such laws, regulations and standards, such Party shall not be deemed to be in breach of this EPC Agreement. Notwithstanding anything in this EPC Agreement to the contrary, under no circumstances shall Transmission Provider be liable under the terms of this EPC Agreement

for any delay in completion of the Services, it being the intention of the Parties that the remedy for any delay in performance shall be as set out in the LGIA which, as of the date of this EPC Agreement, has not yet been executed. Additionally, Transmission Provider will not commence or cause to be commenced any Services pursuant to this EPC Agreement until it has received the appropriate financial security as provided for in Section 3 below and written authorization from Interconnection Customer to proceed.

**3. Provision of Financial Security.** Prior to the commencement of Services by Transmission Provider, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, surety bond, letter of credit or other form of financial security that is acceptable to Transmission Provider, in Transmission Provider's sole discretion, and is consistent with the Uniform Commercial Code of the State of New Mexico. Such financial security for payment shall be in an amount sufficient to cover the estimated costs of the Services and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes. The Parties agree that the initial amount of the financial security shall be \$1,428,720, which represents the total estimated costs set out on Page 4 of 5 of Exhibit A, less \$113,000 as described in Section 5 below. If a guarantee is provided, such guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and must contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount. If a letter of credit is provided, the letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date. If a surety bond is provided, the surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date. Interconnection Customer and Transmission Provider shall agree to what constitutes a reasonable expiration date.

**4. Compensation.** Interconnection Customer shall be required to pay for all actual costs and expenses reasonably incurred by Transmission Provider in connection with providing or causing to be provided the Services. Such costs and expenses shall include, but not be limited to, all costs charged to Transmission Provider by Tri-State for the design, engineering, procurement of materials, and construction and installation of materials and equipment required for the Transmission Provider Interconnection Facilities and the Network Upgrades, which costs shall include: all costs and expenses itemized in Exhibit A, including all actual contractor labor, material, equipment costs, and all lawfully chargeable taxes; and all of Tri-State's expenses which shall include, but not be limited to, labor costs, and an allowance for stores overheads, pension, benefits, and labor overhead, and self insurance expenses. Tri-State's labor costs also include a reasonable allowance for administrative and general expenses not to exceed sixty-five percent (65%) of direct labor charges. Such costs and expenses shall

also include any suspension or cancellation fees and costs incurred by Tri-State, in the event Tri-State is required to suspend, cancel or terminate any purchase order or other contract for the delivery of goods or services prior to the full performance under such purchase order or other contract and any costs incurred during a suspension, potential subsequent delay, and/or remobilization of Services, if applicable.

**5. Billing and Payment.** Transmission Provider shall submit invoices to Interconnection Customer at the address set out below for the estimates of amounts due for Services as set out on Page 4 of 5 to Exhibit A hereto, upon Transmission Provider's receipt of similar invoices from Tri-State under the Corresponding Contract. Such invoices shall be submitted and paid in advance of the initiation of such Services. Each invoice shall state the specifics to which the invoice applies and describe the Services to be provided. Interconnection Customer shall pay the invoice within thirty (30) Calendar Days of receipt, provided, however, that Interconnection Customer shall, on the date of execution of this EPC Agreement, pay to Transmission Provider an initial payment of \$113,000. All payments shall be made to the addresses set out below, in immediately available funds payable to Transmission Provider, or by wire transfer to the bank named and account designated by Transmission Provider. Payment of invoices will not constitute a waiver of any rights or claims either Party may have under this EPC Agreement. Transmission Provider will invoice Interconnection Customer for the difference, if any, between the actual costs for the Services and the estimated amounts previously paid by Interconnection Customer as described above, promptly upon receipt of any such actual cost invoice from Tri-State under the Corresponding Contract and Interconnection Customer shall pay any such invoice within thirty (30) Calendar Days of receipt. Transmission Provider shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for the estimated costs for Services exceeds the actual costs of Services within thirty (30) Calendar Days of receipt of those same amounts from Tri-State under the Corresponding Contract. The Parties agree that any actual cost true-up invoice/refund may occur after the date that this EPC Agreement has been superseded by an LGIA between the Parties. Transmission Provider and Interconnection Customer agree to address any billing dispute in accordance with the provisions of Section 18. In no event shall Transmission Provider be obligated to provide, or cause to be provided, Services if Interconnection Customer fails to make any payment due hereunder. Within thirty (30) Calendar Days after the resolution of the dispute, if it is determined that one Party owes money to the other Party, the Party owing shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(iii).

Billings and payments shall be sent to the following addresses:

Payments to Transmission Provider:

By Check:

Public Service Company of New Mexico  
414 Silver Ave, S.W.  
Mail Stop 0604  
Albuquerque, NM 87102  
Attention: Kathy Maddux  
Telephone: (505) 241-2565  
Fax: (505) 241-4363

By Wire Transfer:

Wells Fargo Bank  
PNM Depository Account  
Albuquerque, New Mexico  
Bank Acct # 651-10036-98  
ABA # 121-000-248  
Attention: Kathy Maddux  
Telephone: (505) 241-2565  
Fax: (505) 241-4363

Billings to Interconnection Customer:

High Lonesome Wind Ranch, LLC  
C/o Edison Mission Energy, Inc.  
18101 Von Karman Avenue, Suite 1700  
Irvine, California 92612-1046  
Attention: Carol Gerraughty  
Telephone: (949) 798-7822  
Fax: (949) 225-7781

**6. Indemnity and Consequential Damages.**

**6.1 Indemnity.** The Parties shall at all times indemnify, defend, and hold the other Party (and its Affiliates, their respective directors, officers, employees, agents) harmless from, any and all damages, losses, claims, including claims and actions relating to or death of any person (including employees) or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this EPC Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

It shall be a condition to a Party's obligation to indemnify pursuant to this Section that it be given written notice of the obligation and in the case of claims, demands or suits, an opportunity to defend, and the right to approve any settlement.

**6.2 Consequential Damages.** In no event shall either Party be liable under any provision of this EPC Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, loss of business reputation and opportunity, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special indirect, incidental, or consequential damages hereunder. The Parties hereby waive, release and discharge any and all claims for indirect, consequential, special, punitive and incidental damages and costs.

**7. Superseding LGIA.** Interconnection Customer has submitted a request for interconnection service, which is presently in Transmission Provider's generator interconnection Queue, and the Parties expect to enter into an LGIA for the Project. This EPC Agreement shall terminate and be superseded upon the effective date of the LGIA, except with respect to any on-going payment, refund or other obligation as set out herein, including any resulting Audit obligation (including over or under payment settlement) as set out in Section 16, which will be carried over to and will remain an obligation to each respective Party under the LGIA, as applicable; and shall not alter the Interconnection Customer's Queue position or the In-Service Date for the Project.

**8. Regulatory Requirements and Governing Law.**

**8.1 Regulatory Requirements.** Each Party's obligations under this EPC Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use Reasonable Efforts to obtain such approvals. Nothing in this EPC Agreement shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Regulatory Policies Act of 1978.

**8.2 Adverse Regulatory Action.** If any Governmental Authority or regulatory agency should take any action that would require any change or impose any additional requirements or conditions that would adversely affect this EPC Agreement, or any related agreement, including the Corresponding Contract, the Parties shall meet and confer in good faith within thirty (30) Calendar

Days after such Governmental Authority or regulatory agency issues such order or decision. No Party shall have any obligation under this EPC Agreement to accept any changes, additional requirements or conditions to this EPC Agreement or any related agreement imposed or required by such Governmental Authority or regulatory agency. If either Party has not agreed to the changes or modifications imposed or required by such Governmental Authority or regulatory agency at the end of such thirty (30) Calendar Day period, either Party may terminate this EPC Agreement upon written notice to the other Party, subject to the respective obligations of the Parties as set forth in Sections 27.2 and 27.3 below.

**8.3 Governing Law.**

**8.3.1** The validity, interpretation and performance of this EPC Agreement and each of its provisions shall be governed by the laws of the State of New Mexico, without regard to its conflicts of law principles.

**8.3.2** This EPC Agreement is subject to all Applicable Laws and Regulations.

**8.3.3** Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

**9. Notices.**

**9.1 General.** Unless otherwise provided in this EPC Agreement, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

**Transmission Provider:**

**Secretary  
Public Service Company of New Mexico  
414 Silver Ave, S.W.  
Albuquerque, NM 87102  
Fax: (505) 241-2368**

**And a copy to**

**Lead Director, Transmission Operations  
Public Service Company of New Mexico  
414 Silver Ave, S.W.  
Mail Stop 0604  
Albuquerque, NM 87102**

Telephone: (505) 241-4570  
Fax: (505) 241-4363  
Email: gmiller@pnm.com

Interconnection Customer:

High Lonesome Wind Ranch, LLC  
C/o Edison Mission Energy, Inc.  
18101 Von Karman Avenue, Suite 1700  
Irvine, California 92612-1046  
Attention: Managing Director, Construction – High Lonesome  
Telephone: (949) 798-7908  
Fax: (949) 225-0809  
Email: pgoldbrunner@edisonmission.com

And a copy to:

High Lonesome Wind Ranch, LLC  
C/o Edison Mission Energy, Inc.  
18101 Von Karman Avenus, Suite 1700  
Irvine, California 92612-1046  
Attention: General counsel  
Telephone: (949) 798-7976  
Fax: (949) 757-0807  
Email: seisenberg@edisonmission.com

Either Party may change the notice information in this EPC Agreement by giving fifteen (15) Business Days written notice subsequent to the effective date of the change.

**9.2 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to the other and not required by this EPC Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out above.

**10. Force Majeure.**

**10.1** Economic hardship is not considered a Force Majeure event.

**10.2** Neither Party shall be considered to be in Default with respect to any obligation hereunder, other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. For purposes of this EPC Agreement, "Force Majeure" means any cause beyond the control of the Party affected, including, but not restricted to, failure or threat of failure of facilities, flood, earthquake, storm, fire, pestilence, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage,

sabotage, subversion, acts of terror, or restraint by court order or public or regulatory authority and action or non-action by, or failure despite the exercise of due diligence, to obtain necessary authorizations or approvals from any Governmental Authority. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Section 10.2 shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

**11. Default.**

**11.1 General.** No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this EPC Agreement or the result of an act of omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party. Except as provided in Section 11.2, the breaching Party shall have thirty (30) Calendar Days from receipt of such notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

**11.2 Right to Terminate.** If a Breach is not cured as provided in Section 11.1, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall have the right to declare a Default and terminate this EPC Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this EPC Agreement, to recover from the breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. In the event of a termination by the non-breaching Party, the Parties shall abide by the respective obligations of the Parties as set forth in Section 27.2 and 27.3. The provisions of this Section will survive termination of this EPC Agreement until such obligations are satisfied.

**12. Assignment.** This EPC Agreement may be assigned by either Party only with the

written consent of the other; provided that either Party may assign this EPC Agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this EPC Agreement; and provided further that Interconnection Customer shall have the right to assign this EPC Agreement, without the consent of Transmission Provider, for collateral security purposes to aid in providing financing for the Project, provided that Interconnection Customer will promptly notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s), including providing the Transmission Provider with proof that it meets the requirements of Section 3. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this EPC Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

**13. Severability.** If any provision in this EPC Agreement is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this EPC Agreement.

**14. Comparability.** The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

**15. Confidentiality.**

**15.1 Confidentiality.** Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this EPC Agreement ("Confidential Information"). Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Section 15 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

**15.2 Term for Confidential Information.** During the term of this EPC

Agreement, and for a period of three (3) years after the expiration or termination of this EPC Agreement, except as otherwise provided in this Section 15, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

**15.3 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this EPC Agreement; or (6) is required, in accordance with Section 15.8 of the EPC Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this EPC Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

**15.4 Release of Confidential Information.** Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or are considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this EPC Agreement, unless such person has first been advised of the confidentiality provisions of this Section 15 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Section 15.

**15.5 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

**15.6 No Warranties.** By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with

any other relationship or joint venture.

**15.7 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this EPC Agreement or its regulatory requirements.

**15.8 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this EPC Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

**15.9 Termination of Agreement.** Upon termination of this EPC Agreement for any reason, each Party shall, within ten (10) calendar days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

**15.10 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Section 15. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Section 15, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Section 15, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Section 15.

**15.11 Disclosure to FERC, its Staff, or a State.** Notwithstanding anything in this Section 15 to the contrary, and pursuant to 18 CFR section 1b.20, if FERC or its staff, during the

course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this EPC Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this EPC Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party to the EPC Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner, if consistent with the applicable state rules and regulations.

**15.12** Subject to the exception in Section 15.11, any information that a Party claims is competitively sensitive, commercial or financial information under this EPC Agreement shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this EPC Agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

**16. Information Access and Audit Rights.**

**16.1 Information Access.** Each Party (the "disclosing Party") shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this EPC Agreement; and (ii) carry out its obligations and responsibilities under this EPC Agreement. The Parties shall not use such information for purposes

other than those set forth in this Section and to enforce their rights under this EPC Agreement.

**16.2 Reporting of Non-Force Majeure Events.** Each Party (the "notifying Party") shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this EPC Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Section shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this EPC Agreement.

**16.3 Audit Rights.** Subject to the requirements of confidentiality under Section 15 of this EPC Agreement, each Party shall have the right, during normal business hours, and upon thirty (30) Calendar Days advance notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this EPC Agreement. Such audit rights shall include audits of the other Party's costs and calculation of invoiced amounts and, in the case of an audit by Interconnection Customer of Tri-State to Transmission Provider, shall include the audit of all calculations, invoices and records provided by Transmission Provider, shall include the audit of all calculations, invoices and records provided by Customer believes additional information regarding the services performed for Transmission Provider under the Corresponding Contract is necessary, Transmission Provider agrees to request such additional information from Tri-State. Any audit authorized by this Section 16.3 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this EPC Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described below.

**16.4 Audit Rights Periods.**

**16.4.1 Audit Rights Period for Services-Related Accounts and Records.** Accounts and records related to the design, engineering, procurement and construction of Transmission Provider's Interconnection Facilities and Network Upgrades shall be subject to audit for the period of time up to the "Project Completion Date" as used in the Corresponding Contract. The term Project Completion Date means the point in time after the interconnection and energization of the Transmission Provider Interconnection Facilities and Network Upgrades for testing purposes when: (a) the Transmission Provider Interconnection Facilities and Network Upgrades are capable of delivering the output of the Project to the interconnected transmission system, (b) all Tri-State construction contracts entered into for the purpose of the Corresponding Contract have been closed

out, (c) all issues concerning material provided for construction of the Transmission Provider Interconnection Facilities and Network Upgrades have been resolved, and (d) as-built drawings under the Corresponding Contract have been completed and provided as required. Transmission Provider and Tri-State agree to use Reasonable Efforts to ensure that the Project Completion Date does not occur more than twenty-four (24) months after the Commercial Operation Date of the Project.

**16.4.2 Audit Rights Period for All Other Accounts and Records.**

Accounts and records related to either Party's performance or satisfaction of all obligations under this EPC Agreement subject to the Project Completion Date described in Section 16.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four (24) months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four (24) months after the event for which the audit is sought.

**16.5 Audit Results.** If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination. Refunds for overpayments or payment of deficiencies shall be made by the owing Party, without interest, as soon as practicable, but in no event later than thirty (30) Calendar Days after resolution of the audit findings.

**17. Subcontractors.**

**17.1 General.** Nothing in this EPC Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this EPC Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this EPC Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

**17.2 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this EPC Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall Transmission Provider be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under this EPC Agreement. Any applicable obligation imposed by this EPC Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

**17.3 No Limitation by Insurance.** The obligations under this Section 17 will not be limited in any way by any limitation of subcontractor's insurance.

**18. Disputes.**

**18.1 Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this EPC Agreement or its performance, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within sixty (60) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to mediation and resolved in accordance with the mediation procedures set forth below.

**18.2 Mediation.** In the event the dispute is not resolved by Senior Representatives for each Party, the Parties will submit to mediation to address any controversy or claim arising out of, or relating to this EPC Agreement. Prior to the beginning of the mediation process, the Parties may agree that if there are one or more disputed items that remain unresolved at the end of the mediation, the Parties will proceed with binding mediation where the mediator will render a final and binding decision on those unresolved items. The mediation shall be conducted pursuant to the procedures and process recommended by the New Mexico Mediation Association. Both Parties shall share the cost of the mediation dispute resolution process equally up to and including the mediation settlement agreement, although attorneys and witnesses or experts are the direct responsibility of each Party and their fees and expenses shall be the responsibility of the retaining Party. As part of the decision of the mediator in binding mediation, the mediator shall award the prevailing Party reasonable attorney's fees and reasonable expenses in any manner in which the mediator deems is fair and equitable to the Parties. Any mediation settlement agreement entered into by the Parties shall be binding on the Parties and shall be enforceable in any court of competent jurisdiction.

**19. Representations, Warranties, and Covenants.**

**19.1 General.** Each Party makes the following representations, warranties and covenants:

**19.1.1 Good Standing.** Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the State of New Mexico; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this EPC Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this EPC

Agreement.

**19.1.2 Authority.** Such Party has the right, power and authority to enter into this EPC Agreement, to become a Party hereto and to perform its obligations hereunder. This EPC Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

**19.1.3 No Conflict.** The execution, delivery and performance of this EPC Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

**19.1.4 Consent and Approval.** Such Party has sought or obtained, or, in accordance with this EPC Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this EPC Agreement, and it will provide to any Governmental Authority notice of any actions under this EPC Agreement that are required by Applicable Laws and Regulations.

## 20. Taxes.

**20.1** The Parties intend that any asset transfer or payments made by Interconnection Customer to Transmission Provider (the "Taxpayer") under the terms of this EPC Agreement shall be non-taxable contributions to capital, in accordance with Section 118(a) of the Internal Revenue Code of 1986, as amended (the "Code"), IRS Notices 87-82, 2001-82, and 88-129, as applicable, and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Code and any applicable state tax laws. Except as provided below, the Taxpayer shall not include a gross-up for income taxes in the amounts charged to Interconnection Customer under this EPC Agreement.

**20.2** Notwithstanding the foregoing, to the extent any Governmental Authority determines that the Taxpayer's receipt of such payments or asset transfer constitutes income that is subject to taxation, Interconnection Customer shall protect, indemnify and hold harmless the Taxpayer for any tax, interest, or penalty associated with such determination. Interconnection Customer's liability under this Section 20 shall be calculated on a fully grossed-up basis by taking into account the Taxpayer's federal and state composite tax rate, and the present value of all tax depreciation deductions to which the Taxpayer is entitled over the life of the capital improvements and/or assets acquired from such contributions by Interconnection Customer, based on a discount rate of 8.00%.

The Taxpayer shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Interconnection Customer shall not be required to pay the Taxpayer for such tax, interest and/or penalties prior to the seventh day before the date on which the Taxpayer is required to pay the tax, interest and/or penalties.

**20.3** Interconnection Customer shall have the right to require the Taxpayer, at Interconnection Customer's expense, to seek a Private Letter Ruling (including, if applicable, a Technical Advice Memorandum) from the Internal Revenue Service as to whether any asset transfer by Interconnection Customer to the Taxpayer, or any of the sums paid by Interconnection Customer to the Taxpayer under the terms of this EPC Agreement, are subject to income taxation. The Taxpayer and Interconnection Customer shall cooperate in good faith with respect to such request for a Private Letter Ruling and shall provide each other with notices relating to such Private Letter Ruling. To the extent that a Private Letter Ruling issued concludes that such sums are not subject to income taxation, the Taxpayer shall promptly refund to Interconnection Customer any amounts paid by Interconnection Customer pursuant to this Section 20.

**20.4** Although Interconnection Customer and/or its representatives will prepare any request for a Private Letter Ruling, Interconnection Customer shall also pay the reasonable internal costs directly incurred by Transmission Provider as a result of cooperating with Interconnection Customer's request for a Private Letter Ruling, provided that Taxpayer provides Interconnection Customer with written documentation to support such costs. Such internal costs may include, but are not limited to, long-distance telephone calls, printing and reproduction expenses, and the portion of salary and/or wages of personnel properly allocated to time spent on cooperating with such request for a Private Letter Ruling.

## **21. Miscellaneous.**

**21.1 Binding Effect.** This EPC Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

**21.2 Conflicts.** In the event of a conflict between the body of this EPC Agreement and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this EPC Agreement shall prevail and be deemed the final intent of the Parties.

**21.3 Rules of Interpretation.** This EPC Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this EPC Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any contract, agreement (including this EPC Agreement),

document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Section means such Section of this EPC Agreement or such Exhibit to this EPC Agreement, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this EPC Agreement as a whole and not to any particular Section or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

**21.4 No Third Party Beneficiaries.** This EPC Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

**21.5 Waiver.** The failure of a Party to this EPC Agreement to insist, on any occasion, upon strict performance of any provision of this EPC Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this EPC Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this EPC Agreement. Termination or Default of this EPC Agreement for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this EPC Agreement shall, if requested, be provided in writing.

**21.6 Headings.** The descriptive headings of the various Sections of this EPC Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this EPC Agreement.

**21.7 Amendment.** The Parties may by mutual agreement amend this EPC Agreement by a written instrument duly executed by the Parties.

**21.8 Modification by the Parties.** The Parties may by mutual agreement amend the Exhibits to this EPC Agreement by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this EPC Agreement upon satisfaction of all

Applicable Laws and Regulations.

**21.9 Reservation of Rights.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this EPC Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this EPC Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this EPC Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

**21.10 No Partnership.** This EPC Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership 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 or be an agent or representative of, or to otherwise bind, the other Party.

**22. Risk of Loss.** Until Transmission Provider takes possession and control of the improvements and facilities additions, pursuant to the terms of this EPC Agreement, or upon termination of this EPC Agreement, Interconnection Customer hereby assumes the risk of loss for the work and activities, including, without limitation, any equipment and materials, whether on or off the job site, and all work in progress. If any loss, damage, theft or destruction occurs to the equipment and materials for which Interconnection Customer has so assumed the risk of loss, Interconnection Customer shall, at its cost, promptly repair or replace such work and the property affected thereby.

**23. Compliance with Laws.** Interconnection Customer shall comply with all Applicable Laws and Regulations. Interconnection Customer shall indemnify, defend, and hold harmless Transmission Provider and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all damages asserted or awarded against or incurred by such indemnitees arising out of, resulting from or relating to the violation by Interconnection Customer of any Applicable Laws and Regulations.

**24. Counterparts.** This EPC Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Transmission Provider and Interconnection

Customer may retain a duplicate copy (e.g., electronic imager, photocopy, facsimile) of this EPC Agreement, which shall be considered an equivalent to this original.

**25. Entire Agreement.** This EPC Agreement, including all appendices and schedules, represents the entire agreement and understanding between Transmission Provider and Interconnection Customer with respect to the subject matter hereof and performance of the Services hereunder, and supersede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this EPC Agreement.

**26. Agreement Authors.** The Parties have agreed to this EPC Agreement and no ambiguity shall be construed against either Party based on the identity of the author or authors of this EPC Agreement.

**27 Effective Date, Term and Termination.**

**27.1 Effective Date and Term.** This EPC Agreement shall become effective on the date of execution by the Parties, subject to acceptance by FERC, or on such later date as FERC shall order if such FERC order is agreed to by both Parties, and shall remain in effect until superseded on the effective day of the LGIA. Notwithstanding the Effective Date of this EPC Agreement, Services to be provided shall not commence until Transmission Provider and Tri-State have executed the Corresponding Contract, and Transmission Provider has provided Tri-State written authorization to proceed, along with the same initial payment amount for Services as referenced in Section 5, once such payment has been received from the Interconnection Customer. The Corresponding Contract shall also become effective on its date of execution, subject to acceptance by FERC, or on such later date as FERC shall order if such FERC order is agreed to by Transmission Provider and Tri-State.

**27.2 Termination by Transmission Provider.** In the event the Parties do not execute an LGIA or file an unexecuted LGIA with FERC within a reasonable period of time after the effective date of this EPC Agreement, Transmission Provider may terminate this EPC Agreement upon thirty (30) Calendar Days written notice to Interconnection Customer. Any such termination shall be filed at FERC by Transmission Provider and shall be subject to acceptance for filing by FERC. For purposes of this Section 27.2 the term "reasonable period of time" shall mean the later of: (i) the date of Transformer Delivery set out on Line 9, of the Timeline on Page 5 of 5 of Exhibit A; (ii) November 1, 2008; or (iii) the date by which all Services under this EPC Agreement have been completed. In the event of such termination by Transmission Provider, this EPC Agreement shall terminate, except with respect to: (a) Interconnection Customer's obligation to pay all amounts due Transmission Provider for Services provided or caused to be provided on or prior to the termination date, including materials provided in conformity with this EPC Agreement, plus an amount for Transmission Provider's verified and substantiated costs actually incurred in preparation for the

Services not yet performed, and in demobilizing and stopping Services hereunder, including cancellation fees and costs incurred to cancel or terminate any purchase order or other contract for the delivery of goods or services prior to full performance under such purchase order or other contract; (b) Transmission Provider's obligation to refund to Interconnection Customer any amounts advanced by Interconnection Customer in excess of the actual costs of Services provided on or prior to the termination date, including materials provided in conformity with this EPC Agreement, plus an amount for Transmission Provider's verified and substantiated costs actually incurred in preparation for the Services not yet performed, and in demobilizing and stopping Services hereunder, including cancellation fees and costs incurred to cancel or terminate any purchase order or other contract for the delivery of goods or services prior to full performance under such purchase order or other contract; and (c) Transmission Provider's obligation to return or refund any unused portion of the financial security provided pursuant to Section 3.

**27.3 Termination by Interconnection Customer.** Interconnection Customer may terminate this EPC Agreement for any reason by providing thirty (30) Calendar Days written notice to Transmission Provider. Upon receipt of any such notice of termination from Interconnection Customer, Transmission Provider shall: (i) promptly provide notice thereof to Tri-State; and (ii) as required, file a notice of termination at FERC. If Interconnection Customer terminates this EPC Agreement, or any portion of the Services being performed or caused to be performed hereunder, the applicable provisions of this EPC Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and/or refund obligations as set forth below. Interconnection Customer shall pay Transmission Provider for all Services provided prior to the date of termination, including for materials provided in conformity with this EPC Agreement, plus an amount for Transmission Provider's verified and substantiated costs actually incurred in preparation for the Services not yet performed, and in demobilizing and stopping Services hereunder, including cancellation fees and costs incurred to cancel or terminate any purchase order or other contract for the delivery of goods or services prior to full performance under such purchase order or other contract. Notwithstanding the foregoing, in no event shall the total sum payable to Transmission Provider upon such termination exceed the costs assessed to Transmission Provider by Tri-State under the Corresponding Contract for services completed and/or costs or fees incurred in connection with the cancellation or termination of the Corresponding Contract. In addition, Transmission Provider shall promptly refund to Interconnection Customer any amounts advanced by Interconnection Customer in excess of the actual costs of Services, materials, and fees for demobilizing, cancellation or termination of Services, purchase orders or other contracts, and any unused portion of the financial security provided pursuant to Section 3.

**28. Definitions.** Unless otherwise defined herein, all terms used with initial capitalization shall have the meanings ascribed to such terms in the pro forma LGIA specified in the OATT. Interconnection Customer acknowledges that it has a copy of the OATT.

IN WITNESS WHEREOF, the Parties have executed this EPC Agreement as of the date first set forth above.

PUBLIC SERVICE COMPANY OF NEW MEXICO (TRANSMISSION PROVIDER)

By:  RDE DS

Title: Lead Director, Transmission Operations

HIGH LONESOME WIND RANCH, LLC (INTERCONNECTION CUSTOMER)

By: Foresight Wind Energy, LLC

Title: Managing Member

By: 

Title: PRESIDENT

**EXHIBIT A**

**Engineering, Procurement and Construction Agreement**

**Revised Cost Estimate and Timeline**

**For Transmission Provider Interconnection Facilities**

**And Network Upgrades at Willard Station**

**Prepared by Tri-State on behalf of Transmission Provider**

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT  
REVISED TOTAL PROJECT COST ESTIMATE SUMMARY**

Tri-State Generation & Transmission Assoc., Inc.						
PROJECT COST SUMMARY						
Budget Year	2008					
Project Title	Wilbur Switch Fifth Bay Addition & Bus Upgrade					CM# 0
Estimated By	Kendall Farnish & Marc Salsman					Date Prepared: 04/04/08
DESIGN AND CONSTRUCTION	Prior Actuals	2008	2009	2010	2011	TOTAL
10) Salaries (From Overhead)	0	67,579	0	0	0	67,579
10) Environmental Permitting/Licensing Contracts	0	5,000	0	0	0	5,000
20) Surveys/Inspection Contracts	0	15,000	0	0	0	15,000
30) Engineering Contracts	0	0	0	0	0	0
20) Drafting Contracts	0	0	0	0	0	0
20) Inspection/Construction Management	0	112,000	0	0	0	112,000
20) Construction Contracts	0	601,750	0	0	0	601,750
70) Equipment Lease/Rental Contracts	0	0	0	0	0	0
40) Major Materials (From Material Detail Page)	0	343,900	0	0	0	343,900
40) Minor Materials and Supplies (From Material Detail Page)	0	34,300	0	0	0	34,300
40) Variable Costs (Calculated as a % of Labor (CG 10))	0	8,738	0	0	0	8,738
60) Heavy Equipment Society Expenses	Error	0	0	0	0	0
62) Travel Costs (Calculated as a % of Labor (CC 10))	0	8,738	0	0	0	8,738
64) Meals (Calculated as a % of Labor (CC 10))	0	4,309	0	0	0	4,309
65) Catering Expenses	Error	0	0	0	0	0
<b>Sub Total Design and Construction</b>	0	<b>1,221,264</b>	0	0	0	<b>1,221,264</b>
RECYCLAGE						
10) Salaries/Removal	0	0	0	0	0	0
10) Credit for Salvage Value of Retired Material (Return in Year Indicated on Retirement Sheet)	0	0	0	0	0	0
<b>Sub Total Recycle Salvage</b>	0	0	0	0	0	0
LANDS AND LAND RIGHTS						
30) Repair/Maintenance of Grounds (Land Damages)	Error	0	0	0	0	0
70) Leases, Rentals, Permits (Land Acquisition)	Error	0	0	0	0	0
<b>Sub Total Land and Land Rights</b>	0	0	0	0	0	0
OVERHEADS						
11/13) SOVN Benefits, Labor Overheads (From Labor Estimate Page)	0	66,402	0	0	0	66,402
93) Administrative & General Costs (From Labor Est Page)	0	66,780	0	0	0	66,780
40) Materials Overheads (From Material Est Page)	0	30,253	0	0	0	30,253
<b>Sub Total Overheads</b>	0	<b>145,251</b>	0	0	0	<b>145,251</b>
93) CONTINGENCY (Based on items on Setup Page; Calculated as a % of Project Start-Up)	0	1,361,815	0	0	0	1,361,815
<b>SUBTOTAL PROJECT ESTIMATE</b>	0	<b>1,664,497</b>	0	0	0	<b>1,664,497</b>
ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION						
30) AFUDC (Applied only to Projects with Budget > \$1M. Value varies from Cash Flow Page)	0	38,219	0	0	0	38,219
<b>TOTAL PROJECT ESTIMATE</b>	0	<b>1,702,716</b>	0	0	0	<b>1,702,716</b>
Tri-State's Participation Share of:	6.11%	\$0	\$0	\$0	\$0	\$0

Wilbur Switch Fifth Bay Addition & Bus Upgrade (Var 2) - Total Project Costs

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT  
REVISED CONTRACT COST ESTIMATES

Tri State Generation & Transmission Assoc., Inc. <b>CONTRACT ESTIMATE</b>					
Budget Year	2008				
Project Title	Willard Switch Fifth Bay Addition & Bus Upgrade				CPR
Estimated By	Scott Ferris & Mac Stewart				Date Prepared
					N/A
<b>ENVIRONMENTAL / PERMITTING / LICENSING CONTRACTS</b>					
Cultural Resource Survey for the Ohiofly Line	5,000	0	0	0	5,000
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
SubTotal	5,000	0	0	0	5,000
<b>SURVEYING</b>					
Boundary and Topography Survey	15,000	0	0	0	15,000
	0	0	0	0	0
	0	0	0	0	0
SubTotal	15,000	0	0	0	15,000
<b>ENGINEERING</b>					
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
SubTotal	0	0	0	0	0
<b>DRAFTING</b>					
	0	0	0	0	0
	0	0	0	0	0
SubTotal	0	0	0	0	0
<b>INSPECTION/CONSTRUCTION MANAGEMENT</b>					
Construction Inspection	112,000	0	0	0	112,000
	0	0	0	0	0
	0	0	0	0	0
SubTotal	112,000	0	0	0	112,000
<b>CONSTRUCTION CONTRACTS</b>					
High Line Service Bay & Yard Addition Construction	310,850	0	0	0	310,850
New Construction & Switch Replacement Ohiofly	100,000	0	0	0	100,000
Temporary Making Switch Replacements	35,600	0	0	0	35,600
	157,300	0	0	0	157,300
SubTotal	603,750	0	0	0	603,750
<b>EQUIPMENT LEASES / RENTALS</b>					
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0
SubTotal	0	0	0	0	0
<b>TOTALS</b>	<b>733,750</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>733,750</b>

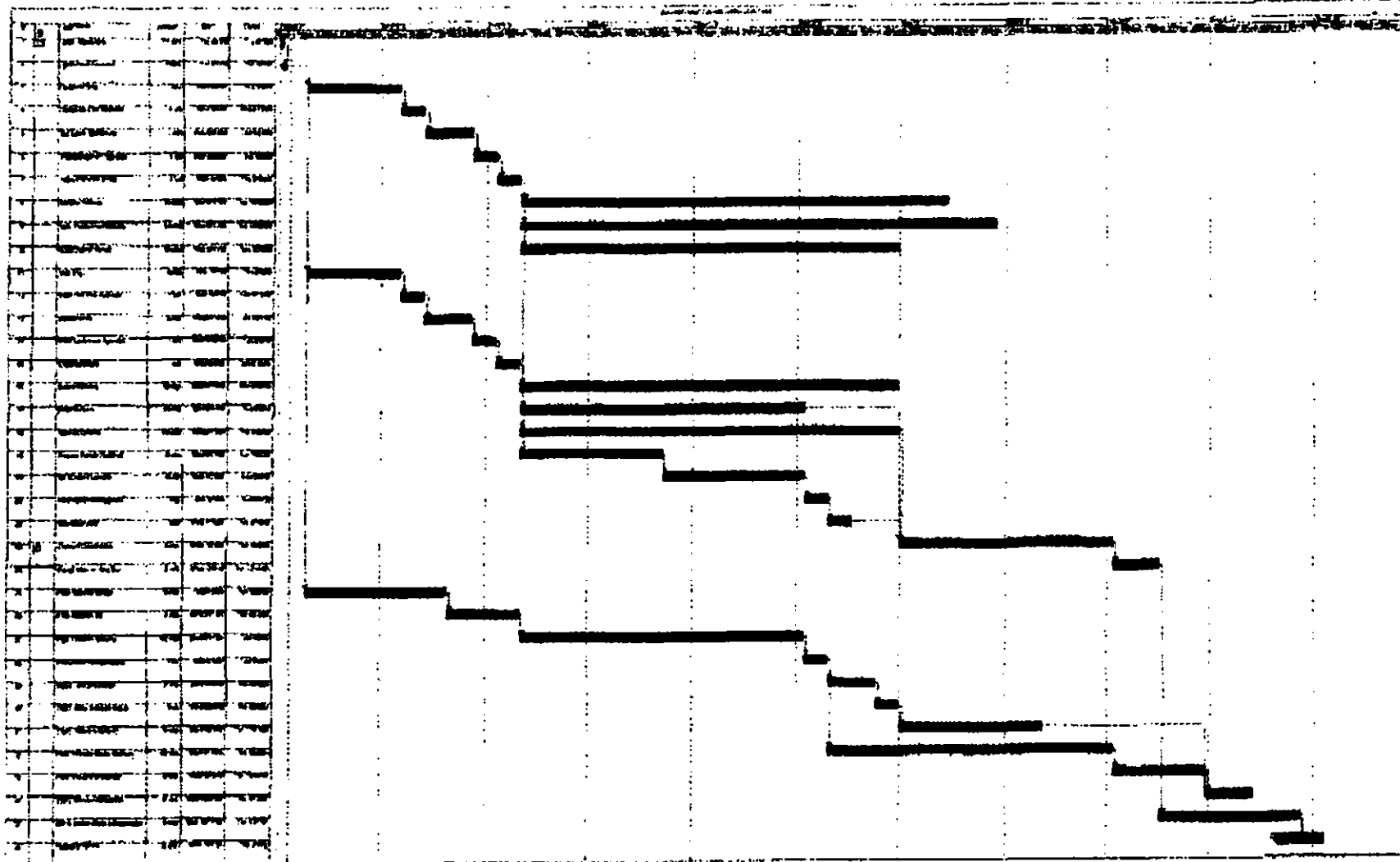
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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT  
REVISED CASH-FLOW SCHEDULE

HIGH LONESOME WIND RANCH INTERCONNECTION AT WILLARD STATION REVISED CASH FLOW				
				4/4/2008
	Due at EPC Agreement Execution (per Section 5)	Due Upon Invoice from Transmission Provider for Equipment Orders (per Section 5)	Due Upon Invoice from Transmission Provider for Award of Construction Contract (per Section 5)	Totals
Internal costs (engineering)	\$60,000	\$20,000	\$65,870	\$145,870
A & G	\$23,400	\$7,800	\$25,600	\$56,800
Travel & Transportation	\$9,600	\$5,100	\$7,150	\$21,850
Contract costs:				
Environmental	\$5,000			\$5,000
Site survey	\$15,000			\$15,000
Construction Contract			\$601,750	\$601,750
On-site Inspection			\$112,000	\$112,000
Major Equipment & Materials		\$343,900		\$343,900
Minor Materials		\$34,390		\$34,390
Material OH		\$30,260		\$30,260
Contingency			\$136,680	\$136,680
AFUDC			\$38,220	\$38,220
<b>Total Due</b>	<b>\$113,000</b>	<b>\$441,450</b>	<b>\$987,270</b>	<b>\$1,541,720</b>
<b>Timing of Advance of Funds</b>	<b>NTP</b>	<b>NTP + 1.5 months</b>	<b>NTP + 4.0 months</b>	
NTP = Notification to Proceed				
High Lonesome Wind Ranch Cash flow				

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT  
REVISED TIME-LINE



**EXHIBIT B**

**Generic Diagram of Project Interconnection at Willard Station**

**Prepared by Transmission Provider**

