

**AMENDMENT NO. 1
TO NEW EXIT DATE AMENDMENT AMENDING AND RESTATING THE
AMENDED AND RESTATED SAN JUAN PROJECT PARTICIPATION AGREEMENT**

THIS AMENDMENT NO. 1 TO NEW EXIT DATE AMENDMENT AMENDING AND RESTATING THE AMENDED AND RESTATED SAN JUAN PROJECT PARTICIPATION AGREEMENT (this “Amendment”) is entered into this [●] day of February, 2022 (“Execution Date”), by and among Public Service Company of New Mexico (“PNM”), Tucson Electric Power Company (“TEP”), The City of Farmington, New Mexico (“Farmington”), The Incorporated County of Los Alamos, New Mexico (“LAC”), and Utah Associated Municipal Power Systems (“UAMPS”). PNM, TEP, Farmington, LAC and UAMPS are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Parties entered into that certain New Exit Date Amendment Amending and Restating the Amended and Restated San Juan Project Participation Agreement (“NEDA”) effective as of September 1, 2017 (“NEDA”) providing for, among other things, the operation of the San Juan Generating Station (“SJGS”) through the term of the NEDA, which will terminate on July 1, 2022, unless otherwise agreed by the Parties.

B. PNM, Farmington, LAC and UAMPS hold varying ownership interest percentages in Unit 4 at SJGS and desire to maintain SJGS as a baseload generating resource on a short-term basis through on or about September 30, 2022, to help minimize the anticipated shortfall in generating resources during the 2022 summer peak period.

C. PNM and TEP each hold a fifty percent (50%) ownership interest in Unit 1 at SJGS and desire to cease operating Unit 1 under their ownership as of June 30, 2022. Cessation of operations of the unit will help reduce emissions and is consistent with the Unit 1 owners’ regulatory obligations and corporate commitments, including TEP’s obligation to cease participation in SJGS operations and procurement of electricity from coal-fired power plants after June 30, 2022.

D. PNM and Westmoreland San Juan Mining, LLC (“WSJM”) are parties to a Coal Supply Agreement effective as of January 31, 2016 (“Original CSA”) for the supply of all the coal requirements for the SJGS. The term of the Original CSA was set to expire on June 30, 2022. PNM and WSJM have agreed to extend the term of the Original CSA through the Extension Period, as hereinafter defined, to ensure coal supply to the SJGS through the end of the Extension Period.

E. The Parties wish to amend the NEDA to reflect the extension of its term, cessation of operations of Unit 1, and other related matters as set forth in this Amendment.

AGREEMENT

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:

1. Amendments. The NEDA is amended as follows:
 - a. Section 4.4 *[relates to the term of the NEDA]* is hereby amended by deleting Section 4.4 in its entirety and substituting the following:

“This Agreement shall continue in force and effect until the end of the Extension Period, unless otherwise agreed in writing by the Participants or as provided for in Sections 40A or 40B.”
 - b. Section 5.0, Definitions, is hereby amended by:
 - i. Adding the following definition:

“5.17(c) “EXTENSION PERIOD”: The period of time commencing on July 1, 2022 and ending on the earlier of the date commercial production of electrical power at SJGS ceases under current ownership or September 30, 2022.”
 - ii. Deleting the definition of UNIT 1 in its entirety and substituting the following:

“5.49 UNIT 1: The second operating unit of the San Juan Project, which was placed in commercial service on December 31, 1976, presently has a net capacity rating of 340 MW, and will cease to be operated by TEP and PNM on June 30, 2022, regardless of whether the term of this Agreement is extended.”
 - c. Section 14.1 *[relates to entitlement to capacity and energy]*, is hereby amended by deleting “each of Unit 1 and” and adding the following sentence to the end of the section:

“For the avoidance of doubt, TEP owns no Participation Shares in Unit 4 and is not entitled to any Energy generated by Unit 4.”
 - d. Section 19.3 *[list of E&O Committee duties]* is hereby amended by adding the following new Section 19.3.6:

“19.3.6 Plan for an orderly closure of the San Juan Project as set forth in Section 40B.3.”
 - e. Section 22.1 *[relates to O&M expense allocations]* is hereby amended by adding Subsection 22.1.8.1, as follows:

“22.1.8.1 Except as otherwise provided in the Restructuring Agreement, the Decommissioning Agreement, the Mine Reclamation Agreement, or other arrangements agreed to in writing by the affected Parties, the Unit 4 owners will be responsible for any Unit 4 and associated plant site costs solely caused by the extension of Unit 4 operations during the Extension Period, including fuel costs under the CSA, based on their respective ownership interests in Unit 4. It is recognized that some events giving rise to costs may potentially begin on or after January 1, 2018 but prior to July 1, 2022 and continue after July 1, 2022, including but not limited to costs arising under the CCRDA. In such event, responsibility will be apportioned among all Parties based on the relative time periods before and after July 1, 2022 during which such costs were incurred and pursuant to the provisions of this Agreement.”

- f. Section 22.1.7 [relates to O&M expense allocations] is hereby amended by deleting the second paragraph in its entirety and substituting the following:

“If the term of this Agreement is extended beyond June 30, 2022, then the percentages shown in Section 6.2.6 (as modified by any transfers pursuant to Sections 40A or 40B) shall apply after June 30, 2022 in lieu of the percentages set forth in this Section 22.1.7. Notwithstanding anything to the contrary in this section, TEP shall have no liability for any O&M Expenses, Capital Improvement costs, or A&G expenses incurred under this Agreement during the Extension Period, except to the extent such liability arises under the Restructuring Agreement, the Decommissioning Agreement or the Mine Reclamation Agreement.”

- g. Section 23.0, Fuel Costs, is hereby amended by adding Subsection 23.20, as follows:

“23.20 Except as otherwise provided in the Restructuring Agreement, the Decommissioning Agreement, or other arrangements agreed to in writing by the affected Parties, the Unit 4 owners will be responsible for all Unit 4 and associated plant site fuel-related costs described in this Section 23 solely caused by the extension of Unit 4 operations during the Extension Period. The Unit 4 owners’ responsibility for such costs will be determined by the allocation methods set forth in Section 23. It is recognized that some events giving rise to fuel-related costs may potentially begin on or after January 1, 2018 but prior to July 1, 2022 and continue after July 1, 2022. In such event, responsibility will be apportioned among the Parties based on the relative time periods before and after July 1, 2022 during which such fuel-related costs were incurred and pursuant to the provisions of this Agreement.”

- h. Section 36, Liability, is hereby amended by adding Subsection 36.10, as follows:

“36.10 Except as otherwise provided in the Restructuring Agreement, the Decommissioning Agreement, the Mine Reclamation Agreement, or other arrangements agreed to in writing by the affected Parties, the Unit 4 owners will be

responsible for all Unit 4 and associated plant site liabilities solely caused by the extension of Unit 4 operations during the Extension Period, including liabilities under the CSA, based on their respective ownership interests in Unit 4. It is recognized that some events giving rise to liabilities may potentially begin on or after January 1, 2018 but prior to July 1, 2022 and continue after July 1, 2022, including but not limited to liabilities arising under the CCRDA. In such event, responsibility will be apportioned among the Parties based on the relative time periods before and after July 1, 2022 during which such liabilities were incurred and pursuant to the provisions of this Agreement.”

- i. Section 36.2 [relates to liability] is hereby amended by adding a comma after “36.5”, deleting “and”, and adding “and 36.10” after “36.6”.
2. Purposes. The purposes underlying this Amendment are that (i) Unit 1 owners will cease operation of Unit 1 on June 30, 2022; (ii) Unit 4 owners will continue operation of Unit 4 on a short-term, temporary basis to cover the 2022 summer peak; (iii) the Parties who benefit from the availability of MWs generated by Unit 4 during the Extension Period will be solely responsible for costs and liabilities caused by those operations; (iv) TEP, which does not own an interest in or benefit from continued Unit 4 operations, should be held harmless for those specific costs and liabilities; and (v) TEP will retain all rights, obligations and liabilities relating to ownership in SJGS except as expressly modified by this Amendment. The Parties agree to use good faith efforts to promptly negotiate an agreement and related procedures as necessary to reflect those purposes for the operation of SJGS during the Extension Period. The Parties further agree that any conflict or ambiguity arising from the interpretation of the NEDA or this Amendment during the Extension Period shall be resolved such that it is consistent with these purposes.
3. Defined Terms. Capitalized terms used in this Amendment but not otherwise defined herein shall have the meanings ascribed to them in the NEDA.
4. No Other Changes; Conflict. Except as expressly modified hereby, all the terms and provisions of the NEDA shall remain in full force and effect. In the event of a conflict between the terms of the NEDA and this Amendment, the terms of this Amendment shall prevail to the extent of the conflict.
5. Approvals. The Parties will use good faith efforts to obtain, on a timely basis, any required board and regulatory approvals relating to this Amendment. Each Party agrees that it will promptly notify all other Parties that it has obtained its necessary approvals. Each Party further agrees that it will support or not oppose any required regulatory filings of any other Party by either promptly filing statements or letters of concurrence, by intervening in support of the filings, or by not taking any action to oppose the filings.
6. Counterparts; Delivery. This Amendment 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 delivered by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

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

8. Effective Date; Conditions Precedent. This Amendment shall become effective on June 30, 2022 at 12:00 midnight; provided, however, the rights, liabilities and obligations of the Parties under this Amendment are subject to satisfaction of the following conditions precedent: (1) approval by the New Mexico Public Regulation Commission of PNM's application for waiver of its compliance obligations in [Case No. 19-00018-UT; (2) acceptance by FERC of this Amendment for filing with no subsequent order for hearing; and (3) approval of the relevant governing body for each Party (collectively, "Conditions Precedent"). This Amendment will be null and void if the Conditions Precedent are not satisfied by June 30, 2022.

[Signature page(s) follow]

DRAFT

IN WITNESS WHEREOF, the undersigned Parties, by their duly authorized representatives, have caused this Amendment to be executed as of the Execution Date.

**PUBLIC SERVICE COMPANY
OF NEW MEXICO**

By _____
Its _____

TUCSON ELECTRIC POWER COMPANY

By _____
Its _____

THE CITY OF FARMINGTON, NEW MEXICO

By _____
Its _____

**THE INCORPORATED COUNTY OF LOS ALAMOS,
NEW MEXICO**

By _____
Its _____

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS

By _____
Its _____

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2022, by _____, _____ of Public Service Company of New Mexico, a New Mexico corporation, on behalf of the corporation.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2022, by _____, _____ of Tucson Electric Power Company, an Arizona corporation, on behalf of the corporation.

Notary Public

My commission expires:

STATE OF NEW MEXICO)
) ss.
COUNTY OF SAN JUAN)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2022, by _____, _____ of The City of Farmington, New Mexico, a New Mexico municipal corporation, on behalf of the municipal corporation.

Notary Public

My commission expires:

STATE OF NEW MEXICO)
) ss.
COUNTY OF LOS ALAMOS)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2022, by _____, _____ of The Incorporated County of Los Alamos, New Mexico, a New Mexico Class H County, on behalf of said county.

Notary Public

My commission expires:

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2022, by _____, _____ of Utah Associated Municipal Power Systems, a political subdivision of the State of Utah, on behalf of said entity.

Notary Public

My commission expires:

DRAFT