

SAN JUAN GENERATING STATION EXTENDED OPERATIONS AGREEMENT

THIS SAN JUAN GENERATING STATION EXTENDED OPERATIONS AGREEMENT (“Agreement”) 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 Unit 1 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. The Parties entered into that certain Amendment No. 1 to New Exit Date Amendment Amending and Restating the Amended and Restated San Juan Project Participation Agreement entered into on February [●], 2022 (the “Amendment”) to provide for the continued operation of Unit 4 at SJGS and cessation of operations of Unit 1 as of June 30, 2022.

E. 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 and 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.

F. Pursuant to Section ___ of the Amendment, the Parties agreed to negotiate and execute an agreement that contains certain terms regarding the rights, responsibilities, and obligations of the Parties associated with the operation of Unit 4 and associated SJGS facilities on or after July 1, 2022.

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. Effective Date. This Agreement shall become effective on the effective date of the Amendment.

2. Definitions. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings ascribed to them in the Amendment or NEDA.

3. Cessation of Operations of Unit 1 and Unit 1 and 2 Common Facilities. Unit 1 and the common facilities associated with Unit 1 will cease all operations beginning on July 1, 2022, subject to (i) any liabilities and obligations arising under the Restructuring Agreement, the Decommissioning Agreement or the Mine Reclamation Agreement or as otherwise may be agreed to by the Parties in writing, or (ii) any requirements contained in an agreement related to the sale of Unit 1 to a third-party.

4. Indemnification of TEP From Liabilities and Costs

(a) Liabilities Arising Prior to July 1, 2022. All Parties will be responsible for liabilities arising from SJGS plant operations and ownership prior to July 1, 2022, pursuant to the terms and conditions of the NEDA.

(b) Liabilities Arising on or After July 1, 2022. 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, only the non-TEP Parties will be responsible, in accordance with their respective ownership interests in Unit 4 as set forth in the NEDA, 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. The non-TEP Parties will defend, indemnify and hold harmless TEP and its agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against liabilities to the extent solely caused by the extension of Unit 4 operations during the Extension Period. 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 the NEDA.

(c) Costs Caused Prior to July 1, 2022. All Parties will be responsible for costs caused prior to July 1, 2022, pursuant to the terms and conditions of the NEDA.

(d) Costs Caused on or After July 1, 2022. 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, only the non-TEP Parties will be responsible, in accordance with their respective ownership interests in Unit 4 as set forth in the

NEDA, for any Unit 4 and associated plant site costs solely caused by the extended operation of Unit 4 during the Extension Period. The non-TEP Parties will defend, indemnify and hold harmless TEP and its agents, affiliates, members, officers, directors, commissioners, Boards, employees, successors and assigns from and against costs solely caused by the extension of Unit 4 operations during the Extension Period. 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 the NEDA.

(e) Anti-Indemnity Provisions. The Parties acknowledge the potential applicability of NMSA 1978, §§ 56-7-1 and 56-7-2. Any agreement to indemnify contained herein will be enforced only to the extent it is consistent with such statutes.

(f) Farmington and Los Alamos. Farmington (and the Farmington Electric Utility System) and Los Alamos are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington and the Farmington Electric Utility System or Los Alamos in this Agreement will be limited by the provisions of the New Mexico Tort Claims Act. Notwithstanding any other provisions of this Agreement, the payment for all purchases, fees or charges made by Farmington and Los Alamos under this Agreement will be made from the legally available revenues of Farmington's and/or Los Alamos's Electric Utility System. In no event will the obligation to pay under this Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or Los Alamos.

(g) Utah Associated Municipal Power Systems. UAMPS is a joint action agency organized under the laws of the State of Utah, created to acquire, construct, finance, operate and maintain generation and transmission projects on behalf of its members. In no event will the obligation to pay under this Restructuring Agreement be considered an obligation against the general faith and credit of taxing power of any member of UAMPS.

5. No Other Amendments. Except as otherwise modified herein, all the terms and provisions of the NEDA shall remain in full force and effect, and TEP shall retain all rights, liabilities and obligations under the NEDA, including those relating to the shutdown or cessation of operations of Unit 1 and the SJGS.

6. Purposes. The purposes underlying this Agreement 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 resulting from 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 Agreement. The Parties further agree that any conflict or ambiguity arising from the interpretation of the NEDA or this Agreement during the Extension Period shall be resolved such that it is consistent with these purposes.

7. Approvals. The Parties will use good faith efforts to obtain, on a timely basis, any required board and regulatory approvals relating to this Agreement. 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 of statements or letters of concurrence, by intervening in support of the filings, or by not taking any action to oppose the filings.

8. Counterparts; Delivery. This Agreement 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.

9. Governing Law. The interpretation and enforcement of this Agreement 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.

[Signature page(s) follow]

DRAFT

IN WITNESS WHEREOF, the undersigned Parties, by their duly authorized representatives, have caused this Agreement 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