

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF THE)
ABANDONMENT OF THE FOUR CORNERS)
POWER PLANT AND ISSUANCE OF A)
SECURITIZED FINANCING ORDER)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
)
Applicant)
_____)**

Case No. 21-_____-UT

**DIRECT TESTIMONY
OF
THOMAS G. FALLGREN**

January 8, 2021

NMPRC CASE NO. 21-_____ -UT
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WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

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SELF-VERIFICATION

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I. INTRODUCTION AND PURPOSE

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

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

Q. WHY IS PNM FILING THIS CASE FOR ABANDONMENT NOW?

A. PNM has a unique opportunity to exit from its participation in the Four Corners coal plant in 2024. This early exit is six and one-half years prior to the conclusion of the current coal supply agreement in 2031. This opportunity arose as a consequence of PNM’s obligation to perform a cost-benefit analysis in its 2020 Integrated Resource Plan on the impact of an early exit from Four Corners as of 2024 and 2028. The abandonment and securitization of the plant under the Energy Transition Act provides cost savings to PNM customers and supports a just transition for the local community. Following on the approval to shut down the San Juan Generating Station, the exit from Four Corners is PNM’s next and final step in transitioning away from coal-fired generation to more sustainable energy resources. If PNM’s application is approved, PNM will no longer have any coal resources in its generation portfolio after 2024. I provide support for PNM’s proposed abandonment and transfer of its interests in the Four Corners coal plant to one of PNM’s co-tenants in the plant, effective December 31, 2024.

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1 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL QUALIFICATIONS AND**
2 **EDUCATIONAL BACKGROUND.**

3 **A.** I have overseen PNM’s Generation operations since November 2016 in the roles of
4 Managing Director, and as of May 2017, as Vice President of Generation. From
5 July 2013 to November 2016, I was the Plant Manager for the San Juan coal plant.
6 Before I came to PNM, I worked for various subsidiaries of Xcel Energy as Plant
7 Manager for the Tolk/Plant X Complex, a two site complex consisting of two coal-
8 fired units rated at 1100 MW and four-unit natural gas-fired steam plants rated at
9 442 MW, and the Black Dog Generating Facility, a now-retired coal-fired
10 generating station and a one-on-one combined cycle gas plant. Prior to that, I
11 served in several management positions at the Sherburne County Generating
12 Station, a three-unit 2,238 MW coal-fired facility. I also have thirteen years of
13 experience at the Monticello nuclear generating facility, where I was previously
14 qualified as a Senior Reactor Operator. I have been a registered engineer in the
15 State of Minnesota since 1994. I graduated with a Bachelor of Mechanical
16 Engineering degree with High Distinction from the University of Minnesota. A
17 copy of my Educational and Professional Summary is attached as PNM Exhibit
18 TGF-1, which includes a list of cases in which I have testified before the New
19 Mexico Public Regulation Commission (“NMPRC” or “Commission”).

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1 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS VICE PRESIDENT**
2 **FOR GENERATION FOR PNM.**

3 **A.** I am responsible for the strategic direction and operation of PNM’s generating
4 resources to ensure that they continue to provide safe, reliable and cost-effective
5 electricity to customers within PNM’s service territory. The functions I oversee
6 include generation operations, maintenance, engineering, construction, fuel and
7 power procurement, wholesale power marketing, resource planning, and other
8 services related to PNM’s generation fleet. I also have executive oversight
9 responsibility for the operation of the San Juan coal plant on behalf of its various
10 owners, in conformity with the San Juan Project Participation Agreement.
11 Likewise, I have executive oversight responsibility with respect to PNM’s
12 ownership interests in shared-owner generation resources where PNM is not the
13 operator, specifically, the Four Corners coal plant and the Palo Verde Nuclear
14 Generating Station (“Palo Verde”).

15
16 **Q. PLEASE SUMMARIZE THE TOPICS YOU COVER IN YOUR**
17 **TESTIMONY.**

18 **A.** I provide background for the Four Corners coal plant, including its ownership and
19 governance structure and processes. I address the circumstances surrounding
20 PNM’s effort to exit from the Four Corners plant, and terms of the agreements for
21 the proposed transfer of PNM’s interest in the Four Corners coal plant to Navajo
22 Transitional Energy Company, LLC (“NTEC”). I provide an overview of PNM’s

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1 generation resources and the role of the Four Corners coal plant in PNM’s portfolio.
2 I address PNM’s changing needs due to significant increases of renewable
3 resources on PNM’s system and why it is in the best interests of customers and the
4 public for PNM to exit the Four Corners power plant in 2024 rather than in 2031.
5 Finally, I provide support for PNM’s recovery of certain plant abandonment costs
6 under the Energy Transition Act consisting of reasonable and necessary capital
7 investments and plant decommissioning costs.
8

II. BACKGROUND OF THE FOUR CORNERS COAL PLANT

10 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE FOUR CORNERS**
11 **COAL PLANT.**

12 **A.** The Four Corners coal plant has been a vital part of serving PNM customers’ needs
13 since PNM acquired a thirteen percent share in Units 4 and 5, representing 200
14 MW, in 1969 and 1970, respectively. For over half a century this plant has provided
15 the critical energy needs of New Mexico. As resource technology and economics
16 have changed in recent years, and with NTEC as a buyer, there are now more
17 economical options to meet our customers’ future needs.
18

19 Arizona Public Service Company (“APS”) is the majority owner and operates the
20 Four Corners coal plant which is located near Fruitland, New Mexico within the
21 Navajo Nation. The plant has been and continues to be a major source of revenue
22 as well as employment for the Navajo Nation and its residents. The plant formerly

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1 consisted of five coal-fired generation units. Units 1, 2 and 3, in which PNM had
2 no ownership interest, were previously retired for purposes of compliance with the
3 EPA’s Regional Haze Rule. The other owners in Units 4 and 5 are APS, the Salt
4 River Project Agricultural Improvement and Power District (“SRP”), Tucson
5 Electric Power Company (“TEP”), and NTEC. The Four Corners coal plant obtains
6 coal exclusively from the adjacent Navajo Mine in what is referred to as a “mine
7 mouth” configuration. In other words, the Navajo Mine has no other customers for
8 this coal other than the Four Corners coal plant.

9

10 **Q. WHAT ECONOMIC IMPACT DOES THE FOUR CORNERS COAL**
11 **PLANT HAVE ON THE NAVAJO NATION?**

12 **A.** The Four Corners coal plant and associated Navajo Mine employ approximately
13 700 direct employees. Over 600 of these direct jobs are currently held by Navajo
14 Nation members. In addition, there are other contractors and temporary workers
15 that rely on the Four Corners plant for income. The Navajo Mine itself spends over
16 \$ 4 million annually with qualified Navajo vendors and supplier.

17

18 The sale of coal to Four Corners by NTEC from the Navajo Mine generates
19 approximately \$35 million per year in royalty payments to the Navajo Nation.
20 NTEC pays an additional \$4 million per year of Possessory Interest Tax (PIT) and
21 \$4 million per year of Business Activity Tax (BAT) to the Nation from the
22 operation of the Navajo Mine. Each participant owner of the Four Corners Plant

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1 also pays an agreed tax in lieu of PIT and BAT to the Nation as a result of the
2 operations of the Four Corners Plant itself.

3
4 The \$40-45 million of royalties and taxes generated as a result of the operations of
5 the Navajo Mine in supplying coal to the Four Corners coal plant accounts for an
6 estimated 23.9% of the Navajo Nation Fiscal Year 2021 General Fund Revenue.

7 This revenue provides benefits to one of the most economically challenged
8 populations in the United States with approximately 33% of Navajo Nation
9 residents living without electricity on a reservation the size of West Virginia. This
10 number accounts for 70% of all households without electricity in the United States.

11 It is also estimated that 40% of Nation residents are living without running water.

12 The Navajo Nation has data indicating that 42.9% of residents are living below the
13 poverty line. The power plant and mine are an important source of employment in
14 this economically challenged region.

15
16 **Q. WHAT ROLE DOES THE FOUR CORNERS COAL PLANT PLAY**
17 **WITHIN PNM’S GENERATION PORTFOLIO?**

18 **A.** As discussed further by PNM Witness Phillips, PNM primarily utilizes Four
19 Corners as what traditionally is referred to as a baseload resource. This means that
20 Four Corners is one of the resources in PNM’s fleet providing a firm power
21 resource to serve PNM’s minimum load requirements and can also be scheduled
22 and dispatched as necessary to meet customer needs.

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1 **Q. PLEASE DESCRIBE THE FOUR CORNERS COAL PLANT OWNERSHIP.**

2 **A.** From its inception, the Four Corners coal plant project has been set up as a tenancy
3 in common ownership. The current plant ownership is as follows:

- 4 • APS (63%)
- 5 • NTEC (7%)
- 6 • SRP (10%)
- 7 • TEP (7%)
- 8 • PNM (13%)
- 9

10 Each of the participants holds an individual undivided interest in their separate
11 shares of the Four Corners coal plant project. The current planned operating life of
12 the plant is through 2031, concurrent with the coal supply agreement with NTEC.
13 The remaining owner-participants have not indicated an intent to accelerate the
14 plant's closure prior to 2031.

15

16 **Q. PLEASE DESCRIBE THE GOVERNANCE OF THE PLANT.**

17 **A.** The Four Corners coal plant project is governed pursuant to the following main
18 agreements: Co-Tenancy Agreement, Operating Agreement, Coal Supply
19 Agreement, and Navajo Nation Lease Agreement. I provide a brief description of
20 each agreement as follows:

21

22 **1. The Co-Tenancy Agreement**

23 The Co-Tenancy Agreement establishes terms and conditions relating to the
24 ownership and operation of the Four Corners coal plant. Under this agreement,
25 participants accept title to Four Corners, are granted lands and leased lands as

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1 tenants in common through the duration of the term of the agreement and waive
2 their right to partition their respective interests from the whole. The agreement
3 establishes the participants' ownership percentages of facilities and capacity rights,
4 including during events of curtailment. It establishes and defines the Coordination
5 Committee as a means of communication and cooperation between the participants
6 in connection with the plant. The Co-Tenancy Agreement governs the participants'
7 right to transfer or assign their respective rights, titles and interests in the plant and
8 includes a right of first refusal. Express prior written consent of all remaining
9 participants must be given for any assignment or transfer of ownership interests in
10 the plant; although that consent cannot be unreasonably withheld. The current Co-
11 Tenancy Agreement is effective through July 7, 2041, allowing for control of
12 activities such as plant decommissioning beyond plant shutdown.

13

14 **2. The Operating Agreement**

15 The Operating Agreement sets the terms, covenants and conditions which relate to
16 the operating work of the Four Corners coal plant. It appoints APS as the Operating
17 Agent and defines APS's duties and responsibilities as such. The Operating
18 Agreement either establishes or refers to governing committees, defining authority,
19 voting structure, functions and responsibilities. The payment of expenses by
20 participants is outlined as to timing, type and responsibility. Timing, transparency
21 and approval of budgets are addressed as well as obligations and authorizations
22 concerning capital expenditures and emergency actions. The ownership shares in

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1 percentage ownership are identified at a facility level for cost apportionment and
2 power, energy and capacity allocations. Scheduling, start-up power and auxiliary
3 requirements are also addressed. The current Operating Agreement is effective
4 concurrent with the Co-Tenancy Agreement.

5

6 **3. The Coal Supply Agreement**

7 The Coal Supply Agreement, to which all participants are a party, provides for
8 NTEC to be the exclusive coal supplier and establishes the minimum annual coal
9 take requirements, coal pricing, coal quality requirements and points of delivery, as
10 well as coal mine reclamation obligations. The Coal Supply Agreement is effective
11 until July 6, 2031, but allows for an early termination provided the Four Corners
12 coal plant is permanently shut down. Twenty-four months advance notice must be
13 provided to the mine operator, and the plant participants must pay for all remaining
14 undepreciated capital investments in the mine and any adjustments to final
15 reclamation costs.

16

17 Early closure notification can only occur if all plant participants (except the current
18 mine operator) unanimously agree to the early closure and permanent plant shut
19 down.

20

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1 **4. The Navajo Nation Land Lease Agreements**

2 The Navajo Nation Land Lease and Supplemental Lease grant certain rights-of-way
3 and easements on property within the Navajo Nation to allow for construction and
4 operation of the Four Corners coal plant and associated transmission system. The
5 current leases expire on July 6, 2041, at which time all associated power plant
6 equipment will need to be removed from the site.

7

8 **III. PNM’S EXIT FROM THE FOUR CORNERS COAL PLANT**

9 **Q. WHAT PROMPTED PNM TO CONSIDER EXITING FOUR CORNERS BY**
10 **TRANSFERRING ITS INTEREST IN FOUR CORNERS TO NTEC?**

11 **A.** As discussed above, Four Corners has served as an important baseload resource in
12 PNM’s generation portfolio for over 50 years. Over the years, PNM has evaluated
13 the role of its two coal plants, SJGS and Four Corners, as generation resources
14 certificated by the Commission to serve customers. These evaluations primarily
15 occurred in the context of PNM’s integrated resource planning processes, the first
16 of which was presented to the Commission in 2008. By way of example, PNM’s
17 Commission-accepted 2017 IRP concluded that the remaining units in SJGS should
18 be retired 2022, whereas Four Corners was included as part of the Most Cost-
19 Effective Portfolio through 2031.

20

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1 In PNM's 2016 rate case (Case No. 16-00276-UT), PNM and other intervenors
2 entered into a stipulated agreement that was adopted and approved by the
3 Commission, which included the following requirement:

4 10. PNM shall perform a cost-benefit analysis as part of its 2020
5 Integrated Resource Plan, on the impact of an early exit from Four
6 Corners as a participating owner, as of 1) 2024, and 2) 2028, that
7 includes an analysis of the cost recovery of and return on PNM's
8 undepreciated investments in Four Corners together with full
9 recovery of all existing contractual obligations, including default
10 payments and penalty.
11

12 In accordance with the stipulation, PNM sought an opportunity to accomplish an
13 early exit in 2024. An early closure and permanent shut down of Four Corners
14 requires unanimous agreement of participants without an interest in the coal mine.
15 Because the stated intent of other participants is to continue operating the plant,
16 absent a transfer of its interest, PNM would be subject to default payments and
17 penalty from an early exit. Without a potential alternative such as the transfer of
18 ownership to NTEC, it would not have been economically reasonable to exit Four
19 Corners in 2024.
20

21 With the negotiation of the transfer of PNM's interests to NTEC and the avoidance
22 of contractual default payments and penalties, the 2024 exit from Four Corners is
23 more beneficial for customers than remaining a plant participant until 2031. These
24 benefits are solidified with the agreement that PNM's shareholders will absorb the
25 costs of the \$75 million payment to NTEC.
26

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1 **Q. WHAT ARE THE TERMS OF THE PROPOSED TRANSFER OF PNM’S**
2 **FOUR CORNERS INTERESTS TO NTEC?**

3 **A.** Under the terms of the Purchase and Sale Agreement attached as PNM Exhibit
4 TGF-2, NTEC will assume all of PNM’s operating and capital ownership interests
5 and obligations in the Four Corners coal plant effective January 1, 2025.
6 Thereafter, NTEC will market its share of energy and capacity from the plant
7 through the remaining terms of the ownership agreements and Coal Supply
8 Agreement, or such other time as determined by the remaining owners. PNM will
9 not be a purchaser under any long-term energy contracts with NTEC for power
10 from the Four Corners coal plant.

11
12 **Q. PLEASE TELL THE COMMISSION ABOUT NTEC.**

13 **A.** NTEC was created in a pioneering effort by the Navajo Nation to achieve greater
14 sovereignty over its natural resources. NTEC was established under Nation law
15 and operates as an autonomous commercial entity with an independent board of
16 directors. NTEC owns the Navajo Mine and currently holds a 7% interest in the
17 Four Corners coal plant. It also owns and operates mines in Montana and
18 Wyoming. Its sole shareholder is the Navajo Nation. NTEC’s mission is to serve
19 as a reliable, safe producer of coal while diversifying the Nation’s energy resources
20 to create economic and environmental sustainability for the Navajo people, and to
21 develop and operate an energy company that values the Navajo Nation, its people
22 and its resources, now and in the future. NTEC’s operation currently provides

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1 approximately 1,300 jobs; supports numerous community benefit initiatives
2 including vital free coal distribution to the Navajo and Hopi Nation for home
3 heating; and promotes STEM fields (science, technology, engineering, and
4 mathematics) in education and vocational training for Navajo Nation students.

5

6 **Q. PLEASE DISCUSS THE GENERAL TERMS OF PNM'S TRANSFER OF**
7 **ITS OWNERSHIP INTERESTS IN THE FOUR CORNERS COAL PLANT**
8 **TO NTEC.**

9 **A.** PNM is selling its entire 13% (200 MW) share of the Four Corners coal plant to
10 NTEC for \$1, with NTEC thereafter assuming all on-going plant operating and
11 capital requirements with that transfer.

12

13 Pursuant to the Purchase and Sale Agreement, PNM will retain its current plant
14 decommissioning and coal mine reclamation obligations.

15

16 **Q. ARE THERE ANY OTHER ASSETS BEING TRANSFERRED AS PART OF**
17 **THIS PURCHASE AND SALE AGREEMENT?**

18 **A.** Yes, the limited portion of the associated Four Corners switchyard equipment
19 necessary to transport the energy from Four Corners across the 500kV and 345kV
20 switchyards is also included in this transfer. For more details on these assets, please
21 see Exhibit A of the Purchase and Sale Agreement included as PNM Exhibit TGF-
22 2. The switchyard assets as part of this transfer are associated with PNM's share

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1 of the Four Corner plant and do not impact PNM’s ability to deliver other PNM or
2 other market resources used to serve PNM customers.

3
4 **Q. WILL PNM CUSTOMERS BE RESPONSIBLE FOR ANY PAYMENTS TO**
5 **NTEC AS PART OF THE TRANSFER OF OWNERSHIP OF THE FOUR**
6 **CORNERS COAL PLANT?**

7 **A.** No. PNM’s shareholders, and not its customers, are paying NTEC \$75 million to
8 relieve PNM of its obligations under the Coal Supply Agreement. This is a unique
9 opportunity to exit coal 6 and a half years early, resulting in significant benefits to
10 PNM customers, while providing for economic support of one of the most
11 economically challenged areas in the nation. This Shareholder payment is a key
12 element in PNM reaching agreement with NTEC on the sale of PNM’s interests in
13 the Four Corners coal plant. As a result, as detailed by PNM witness Nicholas
14 Phillips, PNM’s customers will realize substantial savings from PNM’s early exit
15 from the Four Corners coal plant to accelerate PNM’s transition away from coal-
16 fired resources. These customer savings are due to PNM Shareholders removing
17 the Coal Supply Agreement obligations as well as the avoidance of future
18 obligations for continued capital investments and operating and maintenance
19 expenses for the Four Corners coal plant after 2024.

20

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1 **Q. DO THE OTHER OWNERS OF THE FOUR CORNERS COAL PLANT**
2 **HAVE ANY RIGHTS OF FIRST REFUSAL WITH RESPECT TO**
3 **TRANSFER OF ITS INTERESTS TO NTEC?**

4 **A.** Yes. PNM has provided notice of the proposed transfer of its interests and the other
5 owners may waive or exercise their right of first refusal to acquire PNM’s interest
6 in the Four Corners coal plant

7

8 **Q. YOU INDICATED THAT PNM REMAINS RESPONSIBLE FOR MINE**
9 **RECLAMATION OBLIGATIONS FOR THE FOUR CORNERS COAL**
10 **PLANT. PLEASE EXPLAIN.**

11 **A.** The plant owners have certain mine reclamation obligations under the Coal Supply
12 Agreement and PNM remains responsible for its share of costs associated with mine
13 reclamation under the NTEC Purchase and Sale Agreement. NTEC and PNM will
14 complete a Reclamation Study in 2024 that will provide the latest final mine
15 reclamation cost estimates as of the date of the ownership transfer. PNM will make
16 its final reclamation payment to NTEC based on the Reclamation Study which
17 ensures that the latest cost estimates are fully satisfied and that the full costs for
18 final mine reclamation are provided to NTEC. PNM will then have no further
19 obligations under the Coal Supply Agreement, including no further obligations
20 regarding the mine reclamation after December 2024.

21

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1 **Q. WILL PNM CUSTOMERS HAVE ANY ON-GOING FOUR CORNERS**
2 **MINE RECLAMATION OBLIGATIONS AS A PART OF THIS**
3 **TRANSFER?**

4 **A.** No. Under previous NMPRC rulings, surface mine reclamation recovery for the
5 Four Corners coal plant has been capped. That cap has been satisfied. Therefore,
6 any additional Four Corners surface mine reclamation obligations will be funded
7 by PNM shareholders, including any payments made based on the Reclamation
8 Study discussed above.

9
10 **Q. YOU ALSO INDICATED THAT PNM RETAINS RESPONSIBILITY FOR**
11 **PLANT DECOMMISSIONING COSTS. PLEASE ADDRESS THIS.**

12 **A.** In general terms, decommissioning costs are those costs that are necessary to retire
13 and dismantle the Four Corners coal plant after it ceases operations. The owners
14 of the Four Corners coal plant have certain obligations under the plant agreements
15 for plant decommissioning. PNM is retaining responsibility for these costs which
16 I discuss in more detail in the portion of my testimony that addresses the Four
17 Corners coal plant abandonment costs.

18
19 **Q. DID PNM CONSIDER THE CLOSURE OF THE FOUR CORNERS COAL**
20 **PLANT AS ONE OF THE OPTIONS FOR PLANT EXITING?**

21 **A.** Yes, however, PNM does not have the ability to unilaterally close Four Corners.
22 Under the terms of the Four Corners coal plant ownership agreements, a plant

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1 closure prior to 2031 requires a unanimous vote of all owners. PNM communicated
2 its desire to exit the plant in 2024 and has confirmed to the other owners that it is
3 doing so. PNM's only feasible alternative to exit the plant early is what is presented
4 in this case.

5

6 **Q. COULD PNM JUST SHUT DOWN ITS THIRTEEN PERCENT SHARE OF**
7 **FOUR CORNERS?**

8 **A.** No. As discussed, the plant ownership is a tenancy in common and PNM's share,
9 while a minority interest, is an integral part of the plant. There is no feasible way
10 to shut down 13% of the plant. Moreover, without a permanent shut down of the
11 plant, not only would PNM customers remain obligated to pay a corresponding
12 13% of all on-going O&M, capital, and coal supply costs, PNM also is obligated
13 under Section 25.3 of the Operating Agreement to schedule and receive sufficient
14 power to achieve its share of the minimum net generation of the units to ensure the
15 whole plant minimum net generation is achieved.

16

17 **IV. FOUR CORNERS ABANDONMENT COSTS**

18 **Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR DIRECT**
19 **TESTIMONY?**

20 **A.** In this section of my testimony I support certain abandonment costs referenced in
21 the direct testimony of PNM Witness Baker that are included in PNM's request for
22 securitization financing. Specifically, I address (1) the necessary capital

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1 expenditures for the Four Corners coal plant that will need to be made, but will not
2 be fully recovered by 2024, and (2) plant decommissioning costs. Note that mine
3 reclamation costs have been discussed previously and PNM is not seeking recovery
4 of any reclamation costs for the Four Corners coal plant in this or any future filing.

5

6 *A. Necessary Ongoing Plant Capital Expenses*

7 **Q. IS IT NECESSARY FOR PNM TO MAKE CAPITAL INVESTMENTS IN**
8 **THE PLANT EVEN THOUGH PNM PLANS TO EXIT IN 2024?**

9 **A.** Yes. To ensure the continued safe and reliable operation of the Four Corners coal
10 plant it is necessary for the owners to make certain capital investments. Also, since
11 the plant is anticipated to continue operation beyond December 2024, the Purchase
12 and Sale Agreement with NTEC requires PNM to assign its ownership share in
13 good working order. The Purchase and Sale Agreement requires PNM to approve
14 capital expenditures prior to the transfer date as recommended by APS as the
15 operating agent. Finally, as a current minority owner PNM remains obligated to
16 pay its share of approved O&M and capital expenditures approved by the majority
17 of the owners.

18

19 **Q. HOW ARE THE CAPITAL BUDGETS FOR THE FOUR CORNERS COAL**
20 **PLANT DEVELOPED?**

21 **A.** APS as the plant operator uses a rigorous process to determine project prioritization,
22 cost estimates and funding levels for necessary capital investments. APS presents

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1 the capital plans to the plant owners for review and approval. The owners of the
2 Four Corners coal plant closely scrutinize APS's plans, seek information and
3 provide input on the proposed budgets. The final annual capital budgets are then
4 put to a vote of the plant owners.

5

6 **Q. CAN PNM VETO ANY PROPOSED CAPITAL EXPENDITURE FOR THE**
7 **FOUR CORNERS COAL PLANT?**

8 **A.**No. As a minority owner in the plant, PNM does not have any power to veto a
9 majority vote by the other owners.

10

11 **Q. HOW MUCH DOES PNM ESTIMATE IT WILL NEED TO MAKE IN**
12 **CAPITAL INVESTMENTS FOR THE PERIOD BETWEEN JULY 2020**
13 **AND DECEMBER 2024?**

14 **A.**Based on information and estimates provided by APS, PNM anticipates that its
15 share of capital costs for continued plant operations from July 1, 2020 to December
16 31, 2024, will total approximately \$73 million. PNM Exhibit TGF-3 includes a
17 breakdown of capital expenditures by year.

18

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1 **Q. ARE THESE CAPITAL EXPENSES REASONABLE AND NECESSARY TO**
2 **MAINTAIN THE CONTINUED SAFE AND RELIABLE OPERATIONS OF**
3 **THE PLANT THROUGH THE PROJECTED TRANSFER DATE??**

4 **A.** Yes. They are reasonable and necessary to operate the plant in a safe, reliable
5 manner and remain in regulatory compliance. These costs are also necessary to
6 complete the sale to NTEC. The \$73 million in required capital investments fall
7 within one of three essential categories for plant operations: safety, regulatory
8 compliance, and ensuring reliable service. It is critical to make investments in the
9 plant and facilities to ensure the safety of the Four Corners employees throughout
10 the operation of the plant, as well as keep the plant in a safe operating condition.
11 Adhering to regulatory compliance requirements also necessitates capital
12 investments in plant and equipment. For all projects that are necessary to continue
13 reliable operations, an economic cost-benefit analysis is performed. As part of the
14 Purchase and Sale Agreement with NTEC, PNM is required to fund projects to
15 ensure that the Four Corners coal plant remains in good operating condition and
16 capable of continued operation.

17

18 ***B. Four Corners Decommissioning Costs***

19 **Q. WHAT ARE THE EXISTING REQUIREMENTS FOR**
20 **DECOMMISSIONING AT FOUR CORNERS?**

21 **A.** The Four Corners coal plant is located on Navajo Nation land pursuant to terms of
22 the Navajo Nation Land Lease. As a condition of locating, constructing and

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1 operating the plant on Navajo Nation land, the lease requires that upon termination,
2 all facilities, equipment, buildings, etc. must be dismantled and removed from the
3 site unless otherwise requested by the Navajo Nation. Therefore, the estimated
4 decommissioning costs assume a full plant dismantling and disposal, except for the
5 limited number of office and storage building identified in the Land Lease
6 Agreement.

7

8 **Q. HOW IS THE DECOMMISSIONING OF FOUR CORNERS GOVERNED**
9 **AMONG THE PLANT OWNERS?**

10 **A.** Under the terms of the Four Corners Operating Agreement, the Engineering and
11 Operating Committee must develop a plan for review and approval by the plant
12 Coordination Committee that meets all applicable decommissioning requirements,
13 including the requirements under Navajo Nation Land Lease. All decommissioning
14 activities must be completed prior to the expiration of the Navajo Nation Land
15 Lease in 2041.

16

17 **Q. WHEN WAS THE LATEST DECOMMISSIONING STUDY FOR FOUR**
18 **CORNERS COMPLETED?**

19 **A.** The most recent decommissioning study was completed in December 2020 and is
20 included as PNM Exhibit TGF-4 to my testimony.

21

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1 **Q. WHAT IS THE CURRENT DECOMMISSIONING COST ESTIMATE FOR**
2 **THE FOUR CORNERS COAL PLANT?**

3 **A.** The total Four Corners Unit 4 and 5 ownership share of decommissioning
4 commencing as identified in the most recent Decommissioning Study provided as
5 PNM Exhibit TGF-4 is estimated to be \$138.9 million. This \$138.9 million total is
6 determined by adding the totals from Table 1 (\$105,326,624) and Table 7
7 (\$33,630,000) in the Decommissioning Study. PNM’s share of those
8 decommissioning cost amounts to \$18 million in 2020 dollars. Certain Four
9 Corners decommissioning costs are retained by the previous Unit 1, 2, and 3 owners
10 which are separate from the above value. These costs are then escalated at 2.4% to
11 reflect the year in which actual spending would occur and then discounted at 4.9%
12 to reflect a 2020 present value of PNM’s share of decommissioning cash flows
13 which equals to \$13.6 million. Please reference PNM Exhibit TGF-6 for further
14 details on this calculation. PNM Witness Baker utilizes this \$13.6 million Asset
15 Retirement Obligation (“ARO”) to then determine the decommissioning costs
16 requested per Section 2.H of the Energy Transition Act. Reference PNM Witness
17 Baker’s testimony including PNM Exhibit TSB-4 for further explanation of that
18 determination.

19

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1 **Q. ARE THESE ESTIMATED PLANT DECOMMISSIONING COSTS**
2 **NECESSARY AND REASONABLE?**

3 **A.** Yes. As discussed above, PNM has always been obligated to pay its share of plant
4 decommissioning costs as a necessary cost of serving its customers. The
5 decommissioning cost estimate is based on a sound engineering study which
6 analyses the technical and financial requirements of various components of plant
7 decommissioning and removal and represents the reasonable cost of plant
8 decommissioning for the owners. In addition, the Four Corners owners have a
9 contractual obligation to fully complete all decommissioning obligations prior to
10 expiration of the Navajo Nation Land Lease and therefore the timing of
11 decommissioning activities is already established.

12
13 **Q. IF NTEC IS GOING TO BE OWNING AND OPERATING PNM'S**
14 **FORMER SHARE IN THE FOUR CORNERS COAL PLANT FOR THE**
15 **PERIOD FROM 2025 TO THE PLANT'S FINAL CLOSURE, WHY ISN'T**
16 **NTEC PAYING FOR ITS PROPORTIONATE SHARE OF THE PLANT**
17 **DECOMMISSIONING COSTS?**

18 **A.** As part of the negotiations for PNM to transfer its interests to NTEC, PNM had to
19 agree to retain its obligations for both mine reclamation and plant decommissioning
20 costs. Retention of the full costs was a requisite term of an early exit agreement,
21 which as a whole provides PNM customers significant savings. Further, customers
22 already remained obligated for the majority of these plant decommissioning

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1 expenses based on the more than 50 years of certificated service from the plant.
2 Under these circumstances, it is appropriate that the necessary and reasonable costs
3 of decommissioning be recovered from customers.

4

5 **Q. IS PNM SEEKING RECOVERY OF THESE PLANT DECOMMISSIONING**
6 **COSTS AS PART OF THE ABANDONMENT COSTS AUTHORIZED FOR**
7 **RECOVERY PURSUANT TO A FINANCING ORDER UNDER THE**
8 **ENERGY TRANSITION ACT?**

9 **A.** Yes. This is addressed in more detail by PNM witness Baker.

10

11 **V. OVERVIEW OF PNM'S SYSTEM RESOURCES**

12 **Q. PLEASE DESCRIBE PNM'S GENERATION PORTFOLIO.**

13 **A.** PNM's portfolio is undergoing significant changes as PNM transitions away from
14 coal-fired generation. The ongoing process of transforming its generation portfolio
15 in response to state policies has taken advantage of the widespread availability of
16 low-cost renewable technologies and evolving technologies such as energy storage
17 which both currently enjoy limited time benefits from recently extended federal tax
18 credits.

19

20 PNM's current and near-term planned portfolio contains a diverse mix of
21 generation resources that presently includes coal, nuclear, natural gas and the
22 renewable resources of wind, solar and geothermal generation as well as battery

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1 and renewable additions. PNM’s generation resources are a mixture of utility-
2 owned and purchased power agreements (“PPAs”) where PNM has a contractual
3 entitlement to the full output of the resource. Several of PNM’s current resources
4 are co-owned with other parties including the San Juan coal plant, the Four Corners
5 coal plant, the Luna Generating Station and Palo Verde. In Case No. 19-00018-UT,
6 the Commission approved the abandonment, effective July 1, 2022, of Units 1 and
7 4 of the San Juan coal plant. PNM has also indicated its intent not to retain 114
8 MW of its leased interests in Palo Verde when they expire in 2023 and 2024.

9
10 The near-term resource additions are the result of Commission-approved
11 replacement resources for the San Juan coal plant in Case No. 19-00195-UT,
12 consisting of a 300 MW solar PPA coupled with a 150 MW battery storage project
13 pursuant to an Energy Storage Agreement (“ESA”), a 50 MW solar PPA coupled
14 with a 20 MW battery ESA, a 200 MW solar PPA coupled with a 100 MW battery
15 ESA, and a 100 MW solar PPA coupled with a 30 MW battery ESA. PNM has also
16 received NMPRC approval for resources associated with the PNM Solar Direct
17 project in Case No. 19-00158-UT and resources needed to meet expanding
18 Renewable Portfolio Standards (RPS).

19
20 PNM Exhibit TGF-5 includes a table of PNM’s current and anticipated near term
21 resource generation resources and related capacities that serve PNM retail and
22 voluntary program customers.

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VI. TIMING OF ABANDONMENT OF FOUR CORNERS

Q. WHY IS PNM PROPOSING 2024 AS THE YEAR TO ABANDON FOUR CORNERS?

A. There are several considerations that resulted in the selection of this exit date. In Case No. 16-00276-UT, the NMPRC approved a Revised Modified Stipulation that required PNM to analyze, in PNM’s 2020 IRP, the feasibility of PNM exiting Four Corners in 2024 and in 2028. As part of that requirement, PNM pursued options for an exit in 2024. Through that process, PNM identified the current option that demonstrated that, if PNM shareholders provided for the relief of the Coal Supply Agreement, PNM’s exit in 2024 would be beneficial for customers.

In addition, PNM’s exit from Four Corners will require PNM to secure replacement resources to make up for lost capacity and energy. The December 31, 2024, exit date allows time for PNM to pursue the selection and Commission approval of suitable replacement resources. By seeking abandonment at this point and starting the process to select replacement resources, PNM has time to complete the RFP process and seek Commission approval of appropriate replacement resources so that they can be on-line prior to exiting Four Corners in December of 2024.

In light of these factors, the proposed December 31, 2024, exit date was the date negotiated with, and agreed to by, NTEC.

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1 **Q. HOW DOES AN EARLY EXIT FROM FOUR CORNERS FIT INTO PNM’S**
2 **CHANGING GENERATION RESOURCE NEEDS?**

3 **A.** While Four Corners has been a vital part of New Mexico’s energy mix for over half
4 a century, evolving customer demand and energy requirements along with newer
5 technology resources, including lower cost renewables, provide cost savings to
6 customers while also providing more sustainable options than remaining in Four
7 Corners through 2031.

8
9 An early exit from Four Corners allows PNM to accelerate the changes to more
10 flexible resources available to respond to increasing amounts of renewable
11 resources which are more variable in their production. Flexibility in PNM’s
12 portfolio is key to matching constantly fluctuating levels of demand and the
13 increasing variable resource portfolio. The flexibility that can be provided by fast-
14 ramping generation such as quick-start combustion turbine generation units or by
15 energy storage technologies such as batteries cannot be provided from a baseload
16 resource such as the Four Corners coal plant, which is operated at a steady
17 consistent rate.

18
19 PNM witness Phillips provides more details about the recent and significant market
20 changes that have impacted the continued need for the Four Corners coal plant and
21 the resource planning analyses that support PNM’s exit from the plant in 2024.

22

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1 **Q. IS PNM SEEKING APPROVAL OF REPLACEMENT RESOURCES IN**
2 **THIS FILING?**

3 **A.** No. PNM plans to issue a Request for Proposals for replacement resources in the
4 first quarter of 2021 after the 2020 IRP analysis is completed. Since there should
5 be adequate time to procure replacement resources following the 2020 IRP
6 submittal, PNM believes it is important to allow those IRP findings to inform the
7 resource selection determination. PNM anticipates finalizing that competitive bid
8 selection process during 2021 and plans to file the replacement resources case in
9 the fourth quarter of 2021, after the abandonment request has been reviewed by the
10 Commission. PNM witness Phillips explains that PNM expects there will be
11 sufficient low-cost resources available in the market to supply customer needs if
12 the Commission authorizes PNM's exit from the Four Corners coal plant at the end
13 of 2024.

14

15

VII. CONCLUSION

16 **Q. PLEASE SUMMARIZE WHY YOU SUPPORT THE ABANDONMENT OF**
17 **FOUR CORNERS IN 2024 AS PART OF A TRANSACTION WITH NTEC?**

18 **A.** Fundamentally, the public interest will be served because the early exit of the Four
19 Corners coal plant will save customers money. Approval of the Four Corners
20 abandonment by PNM provides an opportunity to obtain replacement resources
21 with greater operational flexibility and lower costs. It will also allow PNM to
22 reduce the carbon footprint associated with serving its retail customers loads.

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1 Finally, abandoning Four Corners pursuant to the Energy Transition Act provides
2 financial funding towards a just economic transition for the local community.

3

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

5 **A. Yes, it does.**

GCG#527518

THOMAS G. FALLGREN

EDUCATIONAL AND PROFESSIONAL SUMMARY

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

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

Previous Positions:

PNM

Managing Director Generation – Nov 2016 to May 2017

PNM

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

Xcel Energy, Southwestern Public Service (SPS)

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

Xcel Energy, Northern States Power (NSP)

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

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

Operations Manager

Engineering & Technical Services Manager

Scheduling Administrator/Outage Manager

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

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

Supt Maintenance Engineering

Maintenance Engineer

Operations Instructor

System Operations Engineer

Professional Affiliation:

Registered Engineer, State of Minnesota since 1994

Education:

University of Minnesota, Bachelor of Mechanical Engineering – High Distinction

NMPRC Testimony:

NMPRC Case No. 20-00182-UT

NMPRC Case No. 19-00195-UT

NMPRC Case No. 19-00159-UT

NMPRC Case No. 19-00158-UT

NMPRC Case No. 19-00018-UT

NMPRC Case No. 18-00261-UT

PPA and ESA for SJGS Replacement

Replacement Resources for SJGS

PNM's 2020 Renewable Energy Act Plan

PNM Solar Direct Application

Abandonment of SJGS Units 1 and 4

PNM's EIM Application

NMPRC Case No. 18-00269-UT
NMPRC Case No. 18-00009-UT
NMPRC Case No. 17-00174-UT
NMPRC Case No. 13-00390-UT

PNM's Application Facebook PPA-2
PNM's Application Facebook PPA
PNM's 2017 Integrated Resource Plan
PNM's BART 2018 Filing

GCG#527494

PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**NAVAJO TRANSITIONAL ENERGY COMPANY, LLC,
a Navajo Nation limited liability company,**

and

**PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation**

Dated as of November 1, 2020

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Exhibits:

Exhibit A	Acquired Interests
Exhibit B	Excluded Switchyard Interests
Exhibit C	Assignment and Assumption Agreement
Exhibit D	Bill of Sale
Exhibit E	Landfill
Exhibit F	Lease Assignment
Exhibit G	Form of CSA Release
Exhibit H	Form of CSA Assignment
Exhibit I	Pre-Closing Reclamation Study Required Methodology

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is made as of November 1, 2020 (the “**Effective Date**”), by and between **NAVAJO TRANSITIONAL ENERGY COMPANY, LLC**, a Navajo Nation limited liability company (“**Purchaser**”), and **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**Seller**”).

BACKGROUND

A. Seller owns certain interests, as more thoroughly described in Exhibit A to this Agreement (the “**Acquired Interests**”), in facilities and Units comprising the fossil fuel generating facility known as the Four Corners Power Plant located in San Juan County, New Mexico (the “**Plant**”), as well as certain Assets (as defined herein) associated with the ownership of the Acquired Interests.

B. Seller has identified various interests, as more thoroughly described in Exhibit B, in the Facilities Switchyard (as defined herein) that it deems necessary to retain and exclude from the transactions contemplated by this Agreement (the “**Excluded Switchyard Interests**”).

C. Seller is a party to the Coal Supply Agreement (as defined herein). In connection with the transactions contemplated by this Agreement, Purchaser seeks to release Seller from its obligations and liabilities pursuant to and under the Coal Supply Agreement pursuant to the CSA Release (as defined herein) in exchange for the consideration set forth herein and the assignment of such obligations and liabilities pursuant to the CSA Assignment (as defined herein) by Seller.

D. Seller desires to sell, and Purchaser desires to purchase, the Acquired Interests, and the Assets, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms. The following terms when used in this Agreement (or in the Schedules and Exhibits to this Agreement) with initial letters capitalized have the meanings set forth below:

1.1.1 2019 Reclamation Study. “**2019 Reclamation Study**” means that study and report titled “Navajo Mine 2031 Final Reclamation and Closure Plan Cost Estimate”, published by Golder Associates, Inc. and dated as of September 2019 and incorporated herein by reference.

1.1.2 Affiliate. “**Affiliate**” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management or policies of the specified Person,

directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

1.1.3 Agreement. “**Agreement**” means this Purchase and Sale Agreement, together with the Schedules and Exhibits hereto.

1.1.4 Amended Contracts. “**Amended Contracts**” means those Facilities Contracts and Facilities Documents set forth on Schedule 1.1.4 to be amended or reissued in order for (i) Purchaser to become, and assume the obligations of, a Facilities Owner or (ii) Seller and Purchaser to otherwise achieve the respective benefits of the transactions contemplated hereby, including, for the avoidance of doubt, the Facilities Co-Tenancy Agreement Amendment and the Facilities Operating Agreement Amendment. The Amended Contracts shall provide that (a) to the extent the Facilities Contracts and Facilities Documents apply thereto, Seller shall retain all liability for, and Purchaser shall have no liability with respect to, the Excluded Liabilities contemplated herein associated with Landfill Obligations, Decommissioning and Pre-Closing Environmental Liabilities (subject to Section 2.4(i)), including direct billing of payment obligations associated with such liabilities to Seller and (b) to the extent permitted by the other Facilities Owners, Seller shall retain its rights and obligations with respect to Decommissioning under the Facilities Co-Tenancy Agreement, including, for the avoidance of doubt, any voting rights, veto rights or rights to control the processes or liabilities directly related to Decommissioning.

1.1.5 Ancillary Agreements. “**Ancillary Agreements**” means the Lease Assignment, the Bill of Sale, the Assignment and Assumption Agreement, and any other agreement to be executed and delivered by the Parties under this Agreement, and for Purchaser also includes any counterparts to the Facilities Contracts that Purchaser will be required to execute at the Closing.

1.1.6 Article. “**Article**” means a numbered article of this Agreement. An Article includes all the numbered sections of this Agreement that begin with the same number as that Article.

1.1.7 Assignment and Assumption Agreement. “**Assignment and Assumption Agreement**” means the assignment and assumption agreement between Seller and Purchaser in the form attached to this Agreement as Exhibit C, to be delivered at the Closing and pursuant to which Seller shall assign to Purchaser all of Seller’s right, title and interest in and to the Facilities Contracts, certain intangible assets and certain other Assets (which, for the avoidance of doubt, shall not include those interests assigned pursuant to the Lease Assignment and the CSA Assignment), and Purchaser shall accept such assignments and assume the Assumed Liabilities.

1.1.8 Bill of Sale. “**Bill of Sale**” means the bill of sale from Seller to Purchaser in the form attached to this Agreement as Exhibit D, to be delivered at the Closing.

1.1.9 Business Day. “**Business Day**” means a day other than Saturday, Sunday or a day on which banks are legally closed for business in the State of New Mexico.

1.1.10 Capital Expenditure. “**Capital Expenditure**” means any additions to or replacements of property, plant and equipment in accordance with any of the Facilities Contracts, including any costs associated with Capital Improvements.

1.1.11 Capital Improvements. “**Capital Improvements**” means the contemplated or ongoing capital improvements to the Plant listed on Schedule 1.1.11.

1.1.12 Coal Supply Agreement. “**Coal Supply Agreement**” means the Amended and Restated Four Corners 2016 Coal Supply Agreement, dated as of June 29, 2018, but effective as of July 1, 2018 by and among Purchaser, Arizona Public Service Company, Seller, Salt River Project Agricultural and Improvement District, and Tucson Electric Power Company.

1.1.13 Code. “**Code**” means the Internal Revenue Code of 1986, as amended.

1.1.14 Commercially Reasonable Efforts. “**Commercially Reasonable Efforts**” means efforts by a reasonable Person in the position of a Party which are designed to enable a Party to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by, or to perform its obligations under, this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are customary and reasonable in nature and amount for transactions like those contemplated by this Agreement.

1.1.15 Consent Decree. “**Consent Decree**” means that certain Consent Decree, dated August 17, 2015, as amended by that certain First Amendment to Consent Decree, dated June 19, 2018, that settled litigation pending in the United States District Court for the District of New Mexico alleging violations of (a) the Prevention of Significant Deterioration provisions of Part C of Subchapter I of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7470-7492 and the regulations promulgated thereunder as set forth at 40 C.F.R. § 52.21; (b) Section 111 of the CAA, 42 U.S.C. § 7411 and the regulations promulgated thereunder as set forth at 40 C.F.R. § 60.14; and (c) the requirements of Title V of the CAA, 42 U.S.C. §§ 7661 7661f.

1.1.16 Contemporaneous Reclamation. “**Contemporaneous Reclamation**” has the meaning set forth in the Coal Supply Agreement.

1.1.17 Contemporaneous Reclamation Costs. “**Contemporaneous Reclamation Costs**” means any costs arising from or related to Contemporaneous Reclamation.

1.1.18 CSA Assignment. “**CSA Assignment**” means an assignment, assumption and release agreement between Purchaser and Seller in the form attached to this Agreement as Exhibit H, effective as of Closing, assigning the Coal Supply Agreement and all rights and obligations thereunder, including, for the avoidance of doubt, any Reclamation liabilities of Seller, from Seller to Purchaser.

1.1.19 Discount Rate. “**Discount Rate**” means six point seven percent (6.7%) as set forth in Exhibit J.

1.1.20 Dispute Resolution. “**Dispute Resolution**” means the dispute resolution mechanisms set forth in Section 7.6 through 7.10 of this Agreement by which to determine any disputes under Article 7.

1.1.21 Emission Allowance. “**Emission Allowance**” means an authorization to emit one specified unit of pollutant or Hazardous Substance from the Assets, which units are established by the Governmental Authority with jurisdiction over the Assets under (a) an air pollution control

and emission reduction program designed to mitigate interstate or intrastate transport of air pollutants, (b) a program designed to mitigate environmental impairment of surface waters, watersheds, or groundwater or (c) any pollution reduction program with a similar purpose. Emission Allowances include allowances, as described above, including credits, regardless of whether the Governmental Authority establishing such allowances designates such allowances by a name other than “allowances.” Except as specifically addressed in Section 2.2(1) with respect to SO₂ Emission Allowances, the amount of the Emission Allowances shall be all Emission Allowances granted to the Facilities or to Seller as a result of its ownership interests in the Facilities and in existence and not consumed as of the Closing Date, or subsequently authorized in respect of the Assets, reduced by the Emission Allowances consumed in the operation of the Facilities between the Effective Date and the Closing Date in the ordinary course of business.

1.1.22 Encumbrances. “**Encumbrances**” means any and all mortgages, pledges, claims, liens, interests, security interests, conditional and installment sales agreements, easements, activity and use restrictions and limitations, exceptions, rights-of-way, deed restrictions, defects of title, encumbrances, and charges of any kind.

1.1.23 Environment. “**Environment**” means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins, washes and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land (including land surface or subsurface strata or soil vapor), fish, plants, wildlife and other biota or other environmental medium or natural resource.

1.1.24 Environmental Condition. “**Environmental Condition**” means the presence, Release or threatened Release to the Environment of Hazardous Substances, including any migration of Hazardous Substances through the Environment, at, to or from the Facilities or the Facilities Switchyard regardless of when such presence, Release or threatened Release occurred or is discovered.

1.1.25 Environmental Laws. “**Environmental Laws**” means all federal, state, local and tribal civil and criminal laws (including common law), statutes, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to the Environment or human health and welfare, as the same may be amended or adopted, including, without limitation, those relating to Releases or threatened Releases to the Environment or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, threatened Release, transport, disposal or handling of Hazardous Substances, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Oil Pollution Act (33 U.S.C. Sec. 2701 *et seq.*), the Safe Drinking Water Act (42 U.S.C. Secs. 300f through 300j), the Occupational Safety and Health Act (29 U.S.C. Sec. 651 *et seq.*), or any similar and applicable laws of any Governmental Authority.

1.1.26 Environmental Permits. “**Environmental Permits**” means all permits, approvals, licenses, registrations, identification numbers and authorizations from any Governmental Authority issued pursuant to any Environmental Law.

1.1.27 Escrow Agreement. “**Escrow Agreement**” means that certain Four Corners Power Plant Escrow Agreement, dated as of January 15, 2014, by and between Purchaser, U.S. Bank National Association and Operating Agent (on behalf of itself and Seller).

1.1.28 Exhibits. “**Exhibits**” means the exhibits to this Agreement.

1.1.29 Facilities. “**Facilities**” means the “Four Corners Project,” as that term is defined in the Facilities Co-Tenancy Agreement, as well as those facilities defined by the following terms in the Facilities Co-Tenancy Agreement, to the extent they relate to the Four Corners Project, and to the extent such facilities exist, as of the Closing Date: “Existing New Facilities,” “Existing Related Facilities,” “Future New Facilities,” and “Future Related Facilities.”

1.1.30 Facilities Co-Tenancy Agreement. “**Facilities Co-Tenancy Agreement**” means that certain Four Corners Project Co-Tenancy Agreement executed as of July 19, 1966, by and among the Facilities Owners, as amended through Amendment No. 12 dated September 1, 2019.

1.1.31 Facilities Insurance Policies. “**Facilities Insurance Policies**” means all insurance policies carried by or for the benefit of the Facilities Owners with respect to the ownership, operation or maintenance of the Facilities or the Facilities Switchyard, including all liability, property damage, self-insurance arrangements, retrospective assessments and business interruption policies in respect thereof.

1.1.32 Facilities Lease. “**Facilities Lease**” means the Supplemental and Additional Indenture of Lease executed as of July 6, 1966, between the Navajo Tribe of Indians and the Facilities Owners, which supplemented and revised the Indenture of Lease dated December 1, 1960, between the Navajo Tribe of Indians and APS, as amended by Amendment and Supplement No. 1 to Supplemental and Additional Indenture of Lease, dated April 25, 1985, as further amended by Amendment and Supplement No. 2 to Supplemental and Additional Indenture of Lease, dated March 7, 2011, and as further amended by Amendment and Supplement No. 3 to Supplemental and Additional Indenture of Lease, dated March 7, 2011.

1.1.33 Facilities Operating Agreement. “**Facilities Operating Agreement**” means that certain Four Corners Project Operating Agreement entered into as of May 15, 1969, by and among the Facilities Owners, as the same has been amended through Amendment No. 19 dated September 1, 2019.

1.1.34 Facilities Owner. “**Facilities Owner**” means each Person who, as of the relevant time, is a “Participant” under the Facilities Co-Tenancy Agreement, which, as of the date of this Agreement, means Seller, Arizona Public Service Company, Purchaser, Salt River Project Agricultural Improvement and Power District and Tucson Electric Power Company, in each case in such Person’s capacity as a “Participant”.

1.1.35 Facilities Switchyard. “**Facilities Switchyard**” means the 500 kV, 345 kV and 230 kV switchyards located at the Facilities, except the Excluded Switchyard Interests.

1.1.36 FERC. “**FERC**” means the Federal Energy Regulatory Commission as established by the Department of Energy Organization Act of 1977, 42 U.S.C. § 7171, as amended, or its regulatory successor, as applicable.

1.1.37 Final Reclamation. “**Final Reclamation**” means, under the Coal Supply Agreement, all reclamation and remediation activities not included within the definition of Contemporaneous Reclamation (as defined in the Coal Supply Agreement), which are conducted by Purchaser at the Navajo Mine to decommission facilities and restore topography, drainage, vegetation and land use and which are reasonably conducted consistent with prudent mining practices and as required by all federal and state laws, regulations, mine lease terms, and mine permits applicable to Purchaser’s mining operations at the Navajo Mine.

1.1.38 Final Reclamation Costs. “**Final Reclamation Costs**” means all reasonable costs associated with Final Reclamation, estimated in accordance with the Pre-Closing Reclamation Study as set forth in this Agreement.

1.1.39 FIRPTA Certificate. “**FIRPTA Certificate**” means a certificate of non-foreign status that satisfies the requirements of Treasury Regulation Section 1.1445-2(b)(2) and Section 1445 of the Code, to be delivered at the Closing.

1.1.40 Four Corners Financial Assurance Policy. “**Four Corners Financial Assurance Policy**” means the policy set forth as Exhibit 1 to Amendment No. 16 to the Facilities Operating Agreement.

1.1.41 Governmental Authority. “**Governmental Authority**” means any federal, state, local or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal; and any Tribal Authority.

1.1.42 Hazardous Substances. “**Hazardous Substances**” means (a) any petroleum, asbestos, urea formaldehyde foam insulation and/or transformer or other equipment that contains polychlorinated biphenyls, (b) any chemical, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or “hazardous air pollutants,” or words of similar meaning and regulatory effect, under any Environmental Law, and/or (c) any other chemical, material or substance that is listed or regulated under any Environmental Law because it poses a hazard to human health or welfare or the Environment.

1.1.43 Income Tax. “**Income Tax**” means any Tax imposed by any Governmental Authority (a) based upon, measured by or calculated with respect to gross or net income, profits or receipts (including municipal gross receipt Taxes, capital gains Taxes and minimum Taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including corporate franchise Taxes) if one or more of such bases is described in clause (a), in each case together with any interest, penalties or additions attributable to such Tax.

1.1.44 Independent Accounting Firm. “**Independent Accounting Firm**” means such nationally recognized, independent accounting firm as is mutually appointed by Seller and Purchaser for purposes of this Agreement.

1.1.45 Independent Third Party. “**Independent Third Party**” means either Golder Associates Inc. or, in the event that Golder Associates Inc. is unable to be the Independent Third Party, such other party as otherwise selected by the Parties pursuant to Section 7.2 of this Agreement.

1.1.46 Inflation Rate. “**Inflation Rate**” means three percent (3%) as set forth in Exhibit J.

1.1.47 Knowledge. The term “**Knowledge**” or similar phrases in this Agreement means: (a) in the case of Seller, the extent of the actual and current knowledge of Seller’s officers, employees, and knowledgeable persons listed in Schedule 1.1.47(a) at the Effective Date (or, with respect to the certificate delivered pursuant to Section 3.7(j), the date of delivery of the certificate) without any implication of verification or investigation concerning such knowledge; or (b) in the case of Purchaser, the extent of the actual and current knowledge of Purchaser’s officers, employees and authorized agents listed in Schedule 1.1.47(b) at the Effective Date (or, with respect to the certificate delivered pursuant to Section 3.8(g), the date of delivery of the certificate) without any implication of verification or investigation concerning such knowledge.

1.1.48 Landfill. “**Landfill**” means that certain landfill as identified in the sections labeled “LANDFILL” on the map attached as Exhibit E hereto.

1.1.49 Laws. “**Laws**” means all federal, state, local and tribal civil and criminal laws, statutes, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders.

1.1.50 Lease Assignment. “**Lease Assignment**” means an assignment and assumption of Seller’s interest in the Facilities Lease in the form attached hereto as Exhibit F, pursuant to which Seller will convey certain of its right, title and interest in the Assets identified therein to Purchaser under this Agreement, subject to Permitted Encumbrances and may include the retention of certain rights by Seller to access and use the Excluded Switchyard Interests, Excluded Assets and perform Excluded Liabilities, as applicable, including with respect to the § 323 Grants.

1.1.51 Material Adverse Effect. “**Material Adverse Effect**” means any change, event, circumstance, development, occurrence or effect that, individually or in the aggregate with any other change, event, circumstance, development, occurrence or effect has had or would reasonably be expected to have a materially adverse effect on the business, liabilities, operations or condition (financial or otherwise) of the Acquired Interests and the Assumed Liabilities, taken as a whole, except for any such change or event resulting from or arising out of (a) changes in economic conditions generally or in the industries in which the Facilities operate, whether international, national, regional or local, (b) changes in international, national or regional wholesale or retail markets (including market description or pricing) for energy, electricity or ancillary services, including those due to actions by competitors or changes in international, national or regional electric transmission or distribution systems, including the operation or condition thereof, (c) changes in general regulatory or political conditions, including any acts of war, civil unrest or terrorist activities

(or similar activities), (d) any changes in the costs of commodities, services, equipment, materials or supplies, including fuel and other consumables, or changes in the price of energy, capacity or ancillary services, (e) any natural disaster, act of God, pandemic or epidemic, including the coronavirus pandemic, (f) any change in Law, accounting standards or regulatory policy adopted or approved by any Governmental Authority, (g) any changes or adverse conditions in securities markets, interest rate or currency exchange rates, (h) any actions specifically required to be taken or consent to pursuant to or in accordance with this Agreement, (i) the execution and delivery of this Agreement, the identity of Purchaser, the transactions contemplated herein or the announcement thereof, or (j) any failure to meet any estimates or budgets for any period.

1.1.52 Navajo Mine. “Navajo Mine” means the coal mine located on the Navajo Nation property that is owned by Purchaser and that supplies coal to the Facilities.

1.1.53 NMPRC. “NMPRC” means the New Mexico Public Regulation Commission, or its regulatory successor, as applicable.

1.1.54 NMPRC Approval. “NMPRC Approval” means a final, non-appealable approval of NMPRC received by Seller pursuant to Section 6.2 of this Agreement.

1.1.55 Operating Agent. “Operating Agent” means Arizona Public Service Company, as operating agent under the Facilities Co-Tenancy Agreement and the Facilities Operating Agreement, or its successor in interest.

1.1.56 Party. “Party” means either Seller or Purchaser, as the context requires; “Parties” means, collectively, Seller and Purchaser.

1.1.57 Permitted Encumbrances. “Permitted Encumbrances” means (a) liens for Property Taxes and other governmental charges and assessments which are not yet due and payable, (b) liens, encumbrances or title imperfections with respect to the Assets created by or resulting from the acts or omissions of Purchaser or Operating Agent, (c) liens, charges, claims, pledges, security interests, equities and encumbrances arising under the Facilities Contracts, or which will be and are discharged or released either prior to, or simultaneously with, the Closing, (d) the Assumed Liabilities, and (e) liens, charges, claims, pledges, security interests, equities and encumbrances that (i) do not apply only and exclusively to the interest of Seller but that also constitute liens, charges, claims, pledges, security interests, equities or encumbrances upon the interests of all other Facilities Owners in common and/or the Operating Agent, as agent for all of the Facilities Owners and (ii) that, individually or in the aggregate, are not materially adverse to the operations or physical condition of the Facilities or the Facilities Switchyard.

1.1.58 Person. “Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

1.1.59 Pre-Closing Tax Period. “Pre-Closing Tax Period” means (a) any Tax period ending on or before the Closing Date and (b) with respect to a Straddle Period, the portion of such period ending on the Closing Date (which may be the same period as subsection (a)).

1.1.60 Property Tax. “**Property Tax**” means any Tax imposed on the value of real or personal property or a possessory interest in real or personal property assessed by any Governmental Authority.

1.1.61 Purchaser. “**Purchaser**” has the meaning set forth in the introductory paragraph of this Agreement.

1.1.62 Purchaser’s Required Consents. “**Purchaser’s Required Consents**” means all consents specified in Schedule 1.1.62, which include the consent of any Person (other than a Governmental Authority) necessary for Purchaser’s consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

1.1.63 Purchaser’s Required Regulatory Approvals. “**Purchaser’s Required Regulatory Approvals**” means all approvals specified in Schedule 1.1.63, which include the final, non-appealable approval by any Governmental Authority with general regulatory authority over Purchaser or the business and assets represented by the Assets and whose approval is required for Purchaser’s consummation of the transactions contemplated by this Agreement and the Ancillary Agreements.

1.1.64 Reclamation. “**Reclamation**” means all liabilities and obligations allocable to the Acquired Interest with respect to reclamation of the Navajo Mine and the site comprising the same or on which the Navajo Mine exists or has existed which liabilities and obligation arise under Laws (including Environmental Laws) and any other legally binding obligations.

1.1.65 Release. “**Release**” means any release, spill, leak, discharge, disposal of, pumping, pouring, emitting, emptying, injecting, leaching, dumping, depositing, dispersing, escaping or migration of a Hazardous Substance into, onto or through the Environment or within any building, structure, facility or fixture, including the abandonment or discarding of Hazardous Substances in barrels, drums, or other containers.

1.1.66 Remediation. “**Remediation**” means any action of any kind to address an Environmental Condition or Release or threatened Release or the presence of Hazardous Substances on or in the Environment relating to the Facilities, the Facilities Switchyard, or any other location at which Hazardous Substances or nonhazardous substances or materials generated or originating at the Facilities were transported, stored or disposed of, including the following: (a) monitoring, investigation, treatment, cleanup, containment, remediation, removal, mitigation, response or restoration work; (b) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such work; (c) preparing and implementing any plans or studies for such work; (d) obtaining a written notice from a Governmental Authority with jurisdiction under applicable Environmental Laws that no material additional work is required by such Governmental Authority; (e) any response to or preparation for, any inquiry, order, hearing or other proceeding by or before any Governmental Authority with respect to any such Environmental Condition, Release or threatened Release or presence of Hazardous Substances, and (f) any other activities reasonably determined by the Operating Agent of the Facilities or the Facilities Switchyard, as applicable, to be necessary or required under Environmental Laws to address an Environmental Condition, the presence, Release or threatened Release of Hazardous Substances on or in the Environment at the Facilities, the Facilities Switchyard or any other location at which Hazardous

Substances or non-hazardous substances or materials generated or originating at the Facilities were transported, stored or disposed of.

1.1.67 Right of First Refusal. “**Right of First Refusal**” means the right of first refusal held by each other Facilities Owner with respect to the Acquired Interests under Section 13 of the Facilities Co-Tenancy Agreement.

1.1.68 Schedule of Exceptions. “**Schedule of Exceptions**” means the disclosure schedules to this Agreement.

1.1.69 Section. “**Section**” means a numbered section of this Agreement included within the Article that begins with the same number as that section.

1.1.70 § 323 Grants. “**§ 323 Grants**” means one or more grants of rights-of-way and easements under the Act of February 5, 1948 (62 Stat. 17, 18, 25 U.S.C. § 323-328), the Act of March 3, 1879 (20 Stat. 394, 5 U.S.C. § 485), as amended, and the Acts of July 9, 1832, and July 27, 1868 (4 Stat. 564, 15 Stat. 228. 25 U.S.C. § 2) and such regulations promulgated thereunder, as are applicable, including 25 C.F.R. § 1.2 and 25 C.F.R. Part 169 granted to the Facilities Owners pursuant to the Facilities Lease.

1.1.71 Seller. “**Seller**” has the meaning set forth in the introductory paragraph of this Agreement.

1.1.72 Seller’s Required Consents. “**Seller’s Required Consents**” means all consents specified in Schedule 1.1.72 and consents of any Person (other than a Governmental Authority) necessary for Seller’s consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, which includes a consent, waiver and release Agreement by the other Facilities Owners (as further described in Schedule 1.1.72) as detailed in Section 13.11.2 of the Facilities Co-Tenancy Agreement and a consent, waiver and release Agreement by the other Facilities Owners (as further described in Schedule 1.1.72) of the Facilities Operating Agreement.

1.1.73 Seller’s Required Regulatory Approvals. “**Seller’s Required Regulatory Approvals**” means all approvals specified in Schedule 1.1.73, which include the final, non-appealable approval of any Governmental Authority with general regulatory authority over Seller or the business and assets represented by the Assets and whose approval is required for Seller’s consummation of the transaction contemplated by this Agreement and the Ancillary Agreements.

1.1.74 Settlement Agreement. “**Settlement Agreement**” means that Restated and Amended Settlement and Closing Agreement, by and between Seller and the Office of the Navajo Tax Commission, dated as of August 8, 2016.

1.1.75 Straddle Period. “**Straddle Period**” means any Tax period that begins before and ends on or after the Closing Date.

1.1.76 Tax. “**Tax**” means (a) any federal, Tribal Authority, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental , customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, transactional, use,

transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not, including, without limitation, any item for which liability arises as a transferee or successor-in-interest and (b) any liability for the payment of amounts determined by reference to amounts described in clause (a) as a result of being or having been a member of any group of corporations that files, will file, or has filed Tax Returns on a combined, consolidated, unitary or similar basis, as a result of any obligation under any agreement or arrangement (including any Tax allocation agreement, Tax indemnity agreement or Tax sharing agreement), as a result of being a transferee or successor-in-interest, or by contract or otherwise.

1.1.77 Tax Return. “**Tax Return**” means any return, report, information return, declaration, claim for refund, or other document, together with all amendments and supplements thereto (including all related or supporting information), required to be supplied to any Governmental Authority responsible for the administration of Laws governing Taxes.

1.1.78 Third Party Claim. “**Third Party Claim**” means a claim by a Person that is not a member of the Seller Group or the Purchaser Group, including any claim for the costs of conducting Remediation or seeking an order or demanding that a Person undertake Remediation.

1.1.79 Transferable Permits. “**Transferable Permits**” means all those permits relating to the Facilities or the Facilities Switchyard (and all applications pertaining thereto) relating to the Acquired Interests which are transferable under applicable Laws from Seller to Purchaser with or without a filing with, notice to, or consent or approval of any Governmental Authority.

1.1.80 Transfer Tax. “**Transfer Tax**” means any sales Tax, transaction privilege Tax, transaction Tax, conveyance fee, recording fee, use Tax, stamp Tax, stock transfer Tax or other similar Tax, including any related penalties, interest and additions thereto.

1.1.81 Tribal Authority. “**Tribal Authority**” means any sovereign nation recognized by the United States government, federally recognized Indian tribe, or any governmental subdivision, agency, department, or instrumentality thereof with the authority to administer and collect tribal Taxes, administer and enforce tribal laws and administer and enforce tribal agency processes. For the avoidance of doubt, “Tribal Authority” shall include the Navajo Nation.

1.2 Index of Other Defined Terms.

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Updated Seller's Schedule of Exceptions	12.4

1.3 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition;
- (f) "hereunder," "hereof," "hereto" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof;

(g) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;

(h) 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;”

(i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; and

(j) any agreement, instrument, insurance policy, statute, regulation, rule or order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, insurance, policy, statute, regulation, rule or order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein.

ARTICLE 2 **PURCHASE AND SALE OF ASSETS**

2.1 Transfer of Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, convey, assign, transfer and deliver to Purchaser, and Purchaser will purchase and acquire from Seller, those interests of Seller in the Facilities and the Facilities Switchyard as described herein, including Seller’s undivided interest therein as a tenant in common, which Seller owns or to which Seller has rights by reason of any of the Facilities Contracts, free and clear of all Encumbrances other than Permitted Encumbrances, including, without limitation, Seller’s interest in the following, but excluding all Excluded Assets and subject to Section 2.5 (collectively, the “**Assets**”):

(a) **Owner Property Rights.** Other than as set forth in Section 2.1(d), the property owned by Seller, or by the Operating Agent on behalf of Seller, as one of the Facilities Owners, relating to the Facilities or the Facilities Switchyard, together with all buildings, facilities and other improvements thereon and all appurtenances thereto, including all construction work in process (the “**Owned Personal Property**”);

(b) **Leased Real Property.** The real property leasehold estates and the related lease or sublease agreements, if any, related to the Facilities or the Facilities Switchyard, together with all buildings, fixtures and real property improvements thereon and thereto, including all construction work in process (the “**Leased Property**”), including, without limitation, the items set forth on Schedule 2.1(b);

(c) **Rights-of-Way/Easements and Water Rights.** All rights-of-way, easements, grants and privileges (including all water rights) appurtenant to the Owned Personal Property or the Leased Property, including, without limitation, the items set forth on Schedule 2.1(c), except those certain rights retained by Seller in the Lease Assignment (with respect to the Facilities Lease and § 323 Grants);

(d) **Equipment**. All machinery, mobile or otherwise, equipment (including computer hardware and software and communications equipment), vehicles, tools, fixtures, furniture and furnishings, and other tangible personal property that (i) are not Inventory, (ii) are licensed, owned or leased by Seller, or the Operating Agent, on behalf of the Facilities Owners or on behalf of Seller, as one of the Facilities Owners, as of the Closing, and (iii) are related to, used, or useful in the operation of the Facilities or the Facilities Switchyard, or are typically located at the Facilities, the Facilities Switchyard or other locations or facilities which are owned, operated, maintained or under the control of the Operating Agent;

(e) **Fuel Inventory**. All coal under contract or in inventory relating to the operation of the Facilities located at or in transit to the Facilities (the “**Fuel Inventory**”);

(f) **Inventory**. The following items intended to be consumed at the Facilities or the Facilities Switchyard in the ordinary course of business: inventories of spare parts; maintenance, shop and office supplies; and other similar items of tangible personal property in existence as of the Closing, wherever located, excluding Fuel Inventory (the “**Inventory**”) and excluding any Inventory apportioned to the Excluded Switchyard Interests (which shall be an Excluded Asset);

(g) **Emission Allowances**. All Emission Allowances, except for allowances which are to be retained by Seller pursuant to Section 2.2(k);

(h) **Facilities Contracts**. The contracts, agreements, arrangements, licenses and leases of any nature, (i) to which Seller, in its capacity as a Facilities Owner, is a party or under which Seller has rights as a Facilities Owner, including, without limitation, the items set forth on Schedule 2.1(h), or (ii) to which the Operating Agent, on behalf of the Facilities Owners or on behalf of Seller, as one of the Facilities Owners, is a party, and by or to which Seller, the Facilities, or the Facilities Switchyard are bound or subject, in each case relating to the ownership, lease, maintenance or operation of the Facilities or the Facilities Switchyard (the “**Facilities Contracts**”); provided that Seller shall retain all rights under the Facilities Contracts with respect to any Excluded Assets or Excluded Liabilities;

(i) **Permits, Licenses, Etc.** The Transferable Permits and any other permits, licenses, approvals, registrations, franchises, certificates, other authorizations and consents of Governmental Authorities relating to the ownership, lease, maintenance or operation of the Facilities or the Facilities Switchyard that, in each case, as of the Closing are in favor of the Facilities Owners, or the Operating Agent, as agent for the Facilities Owners, except for such licenses, permits, approvals, registrations, franchises, certificates, other authorizations and consents to the extent they relate to Excluded Assets as identified on Schedule 2.1(i) (the “**Facilities Permits**”);

(j) **Documents**. The books, records, materials, documents, information, drawings, reports, operating data, operating safety and maintenance manuals, inspection reports, engineering design plans, blueprints, specifications, and procedures and similar items (i) located at and/or relating to the Facilities or the Facilities Switchyard, other than any Tax Returns or Tax records, or (ii) otherwise relating to the Facilities or the Facilities Switchyard and owned by the Facilities Owners in common or by the Operating Agent as agent for the Facilities Owners, (the

“**Facilities Documents**”); provided that Seller may retain, at its own expense, and may use subject to any confidentiality obligations that may apply to the Facilities Owners, copies of any Facilities Documents related to any Excluded Assets or Excluded Liabilities;

(k) **Third Party Warranties**. All unexpired, transferable warranties and guarantees from third parties with respect to the Facilities or the Facilities Switchyard or arising out of the Facilities Contracts or any contracts entered into thereunder, except to the extent they relate to Excluded Assets or Excluded Liabilities as identified on Schedule 2.1(k);

(l) **Intellectual Property**. All intangible assets of an intellectual property nature, including all patents and patent rights, trademarks and trademark rights, inventions, trade names and copyrights relating to the Facilities or the Facilities Switchyard, including the name of the Facilities and the Facilities Switchyard and all pending applications therefor, together with any trade secrets relating to the Facilities or the Facilities Switchyard, in each case that are owned in common by the Facilities Owners or by the Operating Agent as agent for the Facilities Owners;

(m) **Claims, Rights and Causes of Action**. All rights in, to and under (i) any claims, rights or causes of action against any third parties (including indemnification, contribution and insurance claims) relating to the Assets or the Assumed Liabilities, whether occurring prior to, on or after the Closing, if any, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like; whether received as payment or credit against future liabilities, and (ii) any actual or potential claim or cause of action as a Facilities Owner against the Operating Agent, whether known or unknown, contingent or accrued, arising prior to and in existence at the Closing, except in each case for Excluded Claims;

(n) **Prepayments**. If applicable, any advance payments, prepayments, prepaid expenses, deposits, credits, rights of setoff, recoupment and the like, other than any prepaid Taxes or any other prepaid costs and expenses under the Facilities Contracts (prorated to Seller or applicable to Seller’s Excluded Liabilities), which shall be governed by Section 3.5(b), other than Excluded Assets, if any;

(o) **Insurance Proceeds and Condemnation Proceeds**. Subject to Section 6.4, the right to any claims, settlement or proceeds thereof from a condemnation or eminent domain proceeding and the right to any proceeds from insurance policies to the extent covering the Assets or the Assumed Liabilities, except for Excluded Claims;

(p) **Transferred Transmission Facilities**. Seller’s undivided ownership interests in the Facilities Switchyard. This includes, for the avoidance of doubt, the assets and rights necessary to transmit power within the associated switchyard; and

(q) **Reserved**.

(r) **Miscellaneous**. Any miscellaneous assets necessary, useful or used in or ancillary to operating the Facilities or the Facilities Switchyard and primarily utilized in connection therewith but not otherwise enumerated above, including, without limitation, the assets specified on Schedule 2.1(r), except for Excluded Assets, which in the ordinary course of business are typically located at the Facilities, the Facilities Switchyard or other locations or facilities which

are owned, operated, maintained or under the control of the Operating Agent or one of its Affiliates.

2.2 Excluded Assets. Subject to Section 2.5, nothing in this Agreement will constitute or be construed as conferring on Purchaser, and Purchaser is not acquiring, any right, title or interest of Seller in or to the following (the “**Excluded Assets**”):

(a) the assets listed or described on Schedule 2.2(a), which are associated with the Assets but are specifically excluded from the sale;

(b) certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities;

(c) all cash, cash equivalents, bank deposits, accounts and notes receivable (trade or otherwise) in existence and/or due as of the Closing, except for such assets on deposit with, or under the control of, the Operating Agent; provided, that such exception shall not apply to such assets set forth on Schedule 2.2(c) which are associated with Excluded Liabilities;

(d) any and all data and information pertaining to customers of Seller or its Affiliates, unrelated to the Assets or Assumed Liabilities;

(e) rights in, to and under all agreements and arrangements of any nature, which are not assigned to Purchaser under the terms of this Agreement, including any agreements for the sale by Seller of energy, capacity or ancillary services from the Facilities prior to the Closing, and any trade accounts receivable and all collateral, security arrangements, notes, bonds, and other evidences of indebtedness of and rights to receive payments arising out of or related to such sales, including any rights with respect to any third party collection procedures or any other actions or proceedings which have been commenced in connection therewith;

(f) rights of Seller arising under this Agreement, any instrument or document executed and delivered pursuant to the terms hereof, or the transactions contemplated hereby;

(g) any and all books and records not described in Section 2.1(j);

(h) any rights in, to and under (i) any claims, rights or causes of action against any third parties (including indemnification, contribution and insurance claims) relating to the Excluded Assets or Excluded Liabilities, whether occurring prior to, on or after the Closing, if any, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like; whether received as payment or credit against future liabilities, (ii) any insurance proceeds or condemnation awards, to the extent that such insurance proceeds or condemnation awards relate to costs and expenses incurred by Seller with respect to such event requiring the payment of insurance proceeds or condemnation awards (in connection with Section 6.4 or otherwise), (iii) any actual or potential claim or cause of action as a Facilities Owner against the Operating Agent, whether known or unknown, contingent or accrued, arising prior to and in existence at the Closing relating to the Excluded Assets or Excluded Liabilities, and (iv) any claims for refunds, credits, prepayments, offsets, recoupments, judgments and the like relating to Taxes (claims described in clauses (i) — (iv), “**Excluded Claims**”);

(i) all privileged or proprietary books, records, materials, documents, information, drawings, reports, operating data, operating safety and maintenance manuals, inspection reports, engineering design plans, blueprints, specifications, and procedures and similar items not owned by the Facilities Owners in common or by the Operating Agent as agent for the Facilities Owners and any and all rights to use the same, including, without limitation, intangible assets of an intellectual property nature such as trademarks, service marks and trade names (whether or not registered), computer software that is proprietary to Seller, or the use of which under the pertinent license therefor is limited to operation by Seller or its Affiliates or on equipment owned by Seller or its Affiliates;

(j) the right to receive mail and other communications relating to any of the Excluded Assets or Excluded Liabilities, all of which mail and other communications shall be promptly forwarded by Purchaser to Seller;

(k) Emission Allowances for sulfur dioxide (SO₂) (“**SO₂ Emission Allowances**”) consisting of (i) that portion of the SO₂ Emission Allowances assigned to Seller for the period the Plant is operated by Seller prior to Closing or otherwise required to be provided to Owner to meet any compliance obligations during its ownership and operation of the Acquired Interest (whether before or after Closing), and (ii) any SO₂ Emission Allowances that, pursuant to the Consent Decree, may not be transferred;

(l) Properties, assets and rights of Seller that are not used in the ownership or operation of the Assets or rights that relate primarily to the Excluded Liabilities;

(m) the Excluded Switchyard Interests and any and all transmission rights of Seller other than the Facilities Switchyard; and

(n) any rights specifically excluded from the definition of the Assets under Section 2.1.

At any time or from time to time, up to ninety (90) days following the Closing, any and all of the Excluded Assets that are not part of the Facilities or the Facilities Switchyard may be removed from the Facilities and the Facilities Switchyard by Seller (at no expense to Purchaser, but without charge by Purchaser for temporary storage) provided that Seller shall do so in a manner that does not unduly or unnecessarily disrupt normal business activities at the Facilities and the Facilities Switchyard and Seller provides Purchaser with reasonable notice of its intent to remove such Excluded Assets, and provided further that Excluded Assets may be retained at the Facilities and the Facilities Switchyard to the extent permitted by easements, licenses, agreements or similar arrangements in favor of Seller that have not been assigned to Purchaser pursuant to this Agreement. Further, if Purchaser is in possession of an Excluded Asset that is not part of the Facilities or the Facilities Switchyard following Closing, promptly following the written request of Seller, Purchaser shall make arrangements to deliver to Seller such Excluded Asset at Seller’s sole cost and expense.

2.3 Assumption of Liabilities. Subject to Section 2.5, from and after the Closing, Purchaser will assume the following obligations and liabilities of Seller subject to (the “**Assumed**

Liabilities”), except to the extent that such obligations and liabilities are Excluded Liabilities (as defined below):

(a) All liabilities and obligations, whether or not accrued, contingent, absolute, determined or determinable under the Assets (including arising under applicable Laws (other than as set forth in Section 2.3(b) and (c) below) and under all agreements, contracts, permits, undertakings, and licenses assigned to Purchaser under this Agreement, including the Facilities Contracts and the Transferable Permits in accordance with the terms thereof, including, for the avoidance of doubt, all obligations under the Coal Supply Agreement pursuant to the CSA Assignment (and all Reclamation obligations under the Coal Supply Agreement whenever incurred, accrued or assessed), in all cases (A) to the extent attributable to the period on or after the Closing Date and (B) including any payment obligations arising on or after the Closing Date, whether attributable to an occurrence, claim or liability (including any change in Law or any Capital Expenditure requirements payable on or after the Closing Date) arising prior to the Closing Date or not (other than those payments made by Seller as provided hereunder prior to the Closing Date), except: (i) the payment obligations pro-rated to Seller under Section 3.5, and (ii) as specifically contemplated under Section 2.4;

(b) All liabilities or obligations, whether or not accrued, contingent, absolute, determined or determinable (including, without limitation, any fines, penalties or costs imposed by a Governmental Authority) allocable to the Acquired Interest arising under Environmental Laws or relating to Environmental Conditions or Hazardous Substances in connection with the Assets or the Facilities, in each case, in connection with the post-Closing period, including liability for any Post-Closing off-site disposal of any solid or Hazardous Substances, any violations of Environmental Laws or Environmental Permits occurring or arising post-Closing and any Release of Hazardous Substances occurring or arising post-Closing (collectively, “**Post-Closing Environmental Liabilities**”);

(c) All Pre-Closing Environmental Liabilities (as defined below) arising out of the enactment, coming into force or change in any Environmental Law (including any change in the interpretation, application or enforcement of any such Environmental Law) that requires payment (or the payment of any portion thereof) of such Pre-Closing Environmental Liabilities on or after the Closing Date but in all cases, excluding any of the foregoing liabilities or obligations, including Remediation, arising in connection with Decommissioning;

(d) Any liabilities or obligations in respect of Purchaser’s share of the items prorated in Section 3.5(a); and

(e) Taxes attributable to the ownership, operation or use of the Assets or the Acquired Interests for any Tax period (or portion thereof) after the Closing Date (except for Taxes for which Seller is liable pursuant to Section 3.5, including Seller’s Income Taxes) and any Taxes for which Purchaser is liable under Section 6.3.

2.4 Excluded Liabilities. Subject to Section 2.5, Seller shall retain certain liabilities and obligations after the Closing (the “**Excluded Liabilities**”), all of which Excluded Liabilities shall remain the sole responsibility of Seller and shall be paid and performed by Seller when such payment or performance is required. The Excluded Liabilities include the following:

(a) Except as otherwise specifically set forth in Section 2.3(a) or (c), to the extent attributable to the period prior to the Closing Date, all liabilities and obligations, whether or not accrued, contingent, absolute, determined or determinable (including, without limitation, under the Excluded Assets), including arising under applicable Laws or and including arising under all agreements, contracts, permits, undertakings, and licenses assigned to Purchaser under or in connection with this Agreement, including the Facilities Contracts and the Transferable Permits in accordance with the terms thereof, in all cases (A) to the extent attributable to the period before the Closing Date and (B) including any payment obligations arising before the Closing Date, whether attributable to an occurrence, claim or liability (including any change in Law or any Capital Expenditure requirements payable prior to the Closing Date).

(b) Any liabilities or obligations of Seller in respect of any Excluded Assets or other assets which are not Assets and Seller's ownership, operation and conduct of any business in connection therewith or therefrom;

(c) The prorated payments allocated to Seller under Section 3.5;

(d) Any applicable tariffs on file with the applicable Governmental Authority for general service over facilities that may include, but are not exclusively, the Acquired Interests;

(e) Without duplicating the liabilities set forth in subpart (h) below, any fines, penalties or costs (other than Taxes) resulting from an actual failure to comply with Laws, including Environmental Laws, including costs for environmental mitigation projects, if any, imposed by a Governmental Authority with respect to the Assets, unless such fines, penalties or costs are Post-Closing Environmental Liabilities;

(f) All costs allocable to the Acquired Interest of removal of, or to conduct or perform Remediation of any Environmental Conditions or Hazardous Substances at the Landfill or to conduct or perform Remediation of any Environmental Conditions or Hazardous Substances at the Landfill which liabilities and obligations arise under Laws (including Environmental Laws), the Facilities Lease or the § 323 Grants (collectively, the "**Landfill Obligations**") other than Post-Closing Environmental Liabilities;

(g) All liabilities and obligations allocable to the Acquired Interest with respect to decommissioning the Facilities and the Facilities Switchyard (as determined by application of the FERC Uniform System of Accounts upon the decommissioning of the Facilities or the Facilities Switchyard), including without limitation the dismantling and removal of the Facilities and the Facilities Switchyard and the restoration of their sites and any decommissioning costs necessary to maintain the Facilities and the Facilities Switchyard in a safe condition should decommissioning activities be delayed following cessation of the Coal Supply Agreement in 2031 or earlier as determined by the then existing Facilities Owners (collectively, "**Decommissioning**") under Laws (including Environmental Laws) and any other legally binding obligations;

(h) All liabilities or obligations, whether or not accrued, contingent, absolute, determined or determinable (including, without limitation, any fines, penalties or costs imposed by a Governmental Authority) allocable to the Acquired Interest arising under Environmental Laws or relating to Environmental Conditions or Hazardous Substances in connection with the

Assets, the Facilities, or the Facilities Switchyard, in each case, in connection with the pre-Closing Date period otherwise not constituting Post-Closing Environmental Liabilities, including liabilities for any pre-Closing off-site disposal of any solid or Hazardous Substances, any violations of Environmental Laws or Environmental Permits occurring or arising pre-Closing and any release of Hazardous Substances occurring or arising pre-Closing even if continuing following the Closing Date subject to Section 2.5 (collectively, “**Pre-Closing Environmental Liabilities**”), or arising in connection with the Consent Decree, including any enactment, coming into force or change in any Environmental Law, including any change in the interpretation, application or enforcement of any such Environmental Law that requires payment (or the payment of any portion thereof) of such Pre-Closing Environmental Liabilities prior to the Closing Date, but excluding any Pre-Closing Environmental Liabilities assumed by Purchaser in Section 2.3(c);

(i) Any liability of Seller arising out of a breach by Seller of any of its obligations under this Agreement or the Ancillary Agreements;

(j) Any obligation of Seller to indemnify any Person who is a member of the Purchaser Group pursuant to Article 8;

(k) Any liabilities or obligations in respect of Seller’s share of the items prorated in Section 3.5(a);

(l) Any liabilities or obligations attributable to the fraud, gross negligence or willful misconduct of Seller;

(m) Taxes attributable to the ownership, operation or use of the Assets or the Acquired Interests for a Pre-Closing Tax Period (except for Taxes for which Purchaser is liable pursuant to Section 3.5, including Purchaser’s Income Taxes) and any Taxes for which Seller is liable under Section 6.3;

(n) Any employment-related claims possessed by current, future, or former employees of Seller;

(o) Any liabilities related to default by Seller in its obligations with respect to the Facilities, the Acquired Interests, or the Assets prior to Closing; and

(p) Reserved.

(q) All other liabilities expressly allocated to Seller in this Agreement.

2.5 Asset and Liability Delineation Mechanism.

(a) If the Parties disagree on whether any item of property (the “**Item**”) is either an Asset or Excluded Asset as provided above is not readily discernible by the Parties as provided above, then the Parties will use Commercially Reasonable Efforts to collaborate to determine the historical and potential use of the Item and:

(i) mutually agree on the designation as an Asset or an Excluded Asset within thirty (30) days; or

(ii) to the extent mutual agreement is not achieved pursuant to clause (i), consult the Operating Agent regarding historical practices (if applicable and agreed to by the Parties) or retain a mutually agreed and qualified third party engineering firm (the “**Independent Asset Expert**”) to complete an assessment and make a determination regarding the proper classification of the Item pursuant to the terms hereof (the “**Independent Asset Classification**”). Upon the event the Parties cannot agree on an Independent Asset Expert, each Party shall pick an Independent Asset Expert and such two Independent Asset Experts shall select a third Independent Asset Expert (the Independent Asset Experts, collectively, the “**Independent Asset Expert Panel**”). After the Independent Asset Expert Panel has been determined, then within ten (10) Business Days, each Party shall be permitted to submit grounds and documents with respect to the classification of any such Item. Without limiting the other Items that the Independent Asset Expert or Independent Asset Expert Panel, as applicable, may classify as Assets, upon a finding that any Item is necessary to access, develop, build, construct, install, own, use, operate, electrically interconnect or maintain the Assets, the Independent Asset Expert or Independent Asset Expert Panel shall determine such Item to be an Asset hereunder. The Independent Asset Expert or Independent Asset Expert Panel, as applicable, shall render its written determination on the Independent Asset Classification as soon as possible, but in any event, no later than twenty (20) Business Days following the submission of the Independent Asset Classification to the Independent Asset Expert or Independent Asset Expert Panel, as applicable. The determination by the Independent Asset Expert or Independent Asset Expert Panel, as applicable, shall be deemed to be agreed to by the Parties and shall become final and binding upon the Parties for all purposes hereunder (with respect to the facts and circumstances at the time of such determination). Any fees or expenses charged by the Independent Asset Expert or the Independent Asset Expert Panel, as applicable, in connection with the resolution of any such Independent Asset Classification shall be borne equally by the Parties. By mutual agreement, the Parties may, any time prior to the determination of the Independent Asset Expert or Independent Asset Expert Panel, as applicable, withdraw a matter from consideration under this Section 2.5(a)(ii) and, by notifying the Independent Asset Expert or Independent Asset Expert Panel, as applicable, in writing upon such agreement.

(b) If the Parties disagree on whether any liability, cost, expense or other item is either an Assumed Liability or Excluded Liability as provided above, then the following will apply (other than with respect to Pre-Closing Environmental Liabilities and Post-Closing Environmental Liabilities which shall be determined pursuant to subsection (c) below):

(i) Where the origin of Liabilities cannot be readily discernible by the Parties as an Assumed Liability or Excluded Liability as provided above, then, the Parties will use Commercially Reasonable Efforts to collaborate to determine the most likely start date and classification of the Liability and either (1) mutually agree on the origin and classification of such Liability within thirty (30) days; or (2) to the extent mutual agreement is not achieved, retain a mutually agreed and qualified third party engineering firm as the independent liabilities expert (“**Independent Liabilities Expert**”) to complete an assessment to determine the origination date and classification of the Liability (“**Independent Liabilities Classification**”). In the event the Parties cannot agree on an Independent Liabilities Expert, the Parties shall empanel an “**Independent Liabilities Expert Panel**” pursuant to the empanelment procedures set forth in Section 2.5(a)(ii), applied *mutatis mutandis*. After the Independent Liabilities Expert Panel has been determined, then within ten (10) Business Days, each Party shall be permitted to submit

grounds and documents with respect to the classification of any such Liability. The Independent Liabilities Expert or Independent Liabilities Expert Panel, as applicable, shall render its written determination on the Independent Liabilities Classification as soon as possible, but in any event, no later than twenty (20) Business Days following the submission of the Independent Liabilities Classification to the Independent Liabilities Expert or Independent Liabilities Expert Panel, as applicable. The determination by the Independent Liabilities Expert or Independent Liabilities Expert Panel, as applicable, shall be deemed to be agreed to by the Parties and shall become final and binding upon the Parties for all purposes hereunder (with respect to the facts and circumstances at the time of such determination). Any fees or expenses charged by the Independent Liabilities Expert or the Independent Liabilities Expert Panel, as applicable, in connection with the resolution of any such Independent Liabilities Classification shall be borne equally by the Parties. By mutual agreement, the Parties may, any time prior to the determination of the Independent Liabilities Expert or Independent Liabilities Expert Panel, as applicable, withdraw a matter from consideration under this Section 2.5(b)(i) by notifying the Independent Liabilities Expert or Independent Liabilities Expert Panel, as applicable, in writing upon such agreement.

(c) With respect to Pre-Closing Environmental Liabilities and Post-Closing Environmental Liabilities (Pre-Closing Environmental Liabilities and Post-Closing Environmental Liabilities, as applicable, an “**Environmental Liability**”), the following shall apply:

(i) Any Environmental Liabilities identified in the Environmental Assessment performed pursuant to Section 6.1(c), shall be Pre-Closing Environmental Liabilities and shall be retained by Seller as provided above, whether such costs and expenses arise prior to, on or after Closing.

(ii) With respect to Environmental Liabilities not identified in the Environmental Assessment, the origin of which cannot be readily discernible by the Parties as a Pre-Closing Environmental Liability or a Post-Closing Environmental Liability as provided above, then:

(iii) The Parties will use Commercially Reasonable Efforts to collaborate to determine the most likely start date and classification of the Environmental Liability and either:

a. mutually agree on the origin and classification of such Environmental Liability within thirty (30) days; or

b. to the extent mutual agreement is not achieved, consult the Environmental Consultant regarding the appropriate origin and classification if agreed to by the Parties or retain a mutually agreed and qualified third party environmental engineering firm (the “**Independent Environmental Liabilities Expert**”) to complete an assessment to determine the origination date and classification of the Environmental Liability (“**Independent Environmental Liabilities Classification**”). In the event the Parties cannot agree on an Independent Environmental Liabilities Expert, the Parties shall empanel an “**Independent Environmental Liabilities Expert Panel**” pursuant to the empanelment procedures set forth in Section 2.5(a)(ii), applied *mutatis mutandis*. After the Independent Environmental Liabilities Expert Panel has been determined, then within ten (10) Business Days, each Party shall be permitted to submit grounds and documents with respect to the classification of any such Environmental Liability. The

Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, shall render its written determination on the Independent Environmental Liabilities Classification as soon as possible, but in any event, no later than twenty (20) Business Days following the submission of the Independent Environmental Liabilities Classification to the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable. The determination by the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, shall be deemed to be agreed to by the Parties and shall become final and binding upon the Parties for all purposes hereunder (with respect to the facts and circumstances at the time of such determination). Any fees or expenses charged by the Independent Environmental Liabilities Expert or the Independent Environmental Liabilities Expert Panel, as applicable, in connection with the resolution of any such Independent Environmental Liabilities Classification shall be borne equally by the Parties. By mutual agreement, the Parties may, any time prior to the determination of the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, withdraw a matter from consideration under this Section 2.5(c)(ii)(1)(b) and, upon such agreement by so notifying the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable in writing.

c. If a determination is not made by the Parties or the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, as provided in a. or b. above, then the Environmental Liabilities shall be divided between the parties on a pro rata basis, seventy-five percent (75%) to Seller and twenty-five percent (25%) to Purchaser and such pro rata amounts shall be treated as Pre-Closing Environmental Liabilities and Post-Closing Environmental Liabilities as provided herein.

(iv) The ability to conduct the Environmental Assessment shall be subject to the Facilities Documents and the Operating Agent's approval under the Facilities Operating Agreement, to the extent applicable. If the Facilities Owners or Operating Agent are otherwise aware of an Environmental Liability and choose to allow that Environmental Liability to exist and as a result of that decision such Environmental Liability escalates then:

(1) If such decision to delay addressing was decided prior to Closing, PNM shall retain liability for costs associated with the escalation as a Pre-Closing Environmental Liability, including to the extent the Facilities Owner or the Operating Agent acts according to such decision following Closing.

(2) If such decision to delay addressing was decided as an initial matter on or after Closing, Purchaser shall be liable for costs associated with the escalation as a Post-Closing Environmental Liability.

(3) If the Parties dispute when the decision to delay addressing was made or the level of escalation then the Parties shall use the procedures in paragraph (ii) above applied *mutatis mutandis* to complete an assessment and make a determination of the degree and assignment of the escalation.

ARTICLE 3
CLOSING

3.1 Closing. The closing of the sale of the Assets and the Acquired Interests to, and the assumption of the Assumed Liabilities by, Purchaser (the “**Closing**”) will take place at the offices of Seller, 414 Silver Ave. SW, Albuquerque, New Mexico, at 11:59 p.m. MST on December 31, 2024, or on such other date, in any such other place or in any such other way as agreed to by the Parties, but in no circumstance prior to the satisfaction or waiver of the conditions set forth in Article 9 and Article 10. The time and date of Closing is hereinafter called the “**Closing Date**.”

3.2 Purchase Price. The purchase price for the Assets and the Acquired Interest shall be one dollar (\$1.00) (the “**Purchase Price**”), it being understood that the consideration of the transaction is the assumption of the Assumed Liabilities and retention of Excluded Liabilities, among other things.

3.3 CSA Assignment Payment. Seller shall, as set forth herein, pay to Purchaser the “**CSA Assignment Payment**” in consideration of Purchaser assuming the obligations under the Coal Supply Agreement pursuant to the CSA Assignment and providing the CSA Release, which shall include the Initial CSA Assignment Payment, the Final CSA Assignment Payment and the CSA True-Up Payment, as set forth below and subject to Section 3.4:

(a) Within one (1) Business Day of the execution of this Agreement, Seller shall make an initial payment of fifteen million dollars (\$15,000,000.00) (the “**Initial CSA Assignment Payment**”) to Purchaser. Such Initial CSA Assignment Payment shall be subject to the refund and offset mechanisms pursuant to Section 11.4.

(b) Ten (10) Business Days after Seller’s receipt of the NMPRC Approval pursuant to Section 6.2 (and subject to Section 6.2(b)), Seller shall make a payment of sixty million dollars (60,000,000.00) (the “**Final CSA Assignment Payment**”) to Purchaser. Such Final CSA Assignment Payment shall be subject to the refund and offset mechanisms pursuant to Section 11.4.

(c) At the Closing, Seller shall pay the CSA True-Up Payment as calculated pursuant to Article 7 to Purchaser.

3.4 Payment. Any cash payments required by this Agreement (including the CSA Assignment Payment) shall be paid in U.S. dollars in immediately available funds. The recipient of such funds will designate the account or accounts to which the funds will be wire transferred.

3.5 Allocation of Purchase Price. At least thirty (30) calendar days after the Closing Date, Seller or its designated representative shall propose and deliver to Purchaser a preliminary allocation among the Assets of the Purchase Price and such other consideration to be paid by Seller pursuant to this Agreement as determined in accordance with Applicable Tax Law (as defined below) (an “**Allocation**”). The Allocation shall be consistent with Code Section 1060 and the regulations thereunder (“**Applicable Tax Law**”) and shall be prepared in a manner that facilitates Property Tax reporting and shall separately allocate the Purchase Price to all of the Assets. Purchaser shall within thirty (30) days thereafter propose any changes to the Allocation. Within thirty (30) days following delivery of such proposed changes, Seller shall provide Purchaser with

a statement of any objections to such proposed changes, together with a reasonably detailed explanation of the reasons therefor. If Seller and Purchaser are unable to resolve any disputed objections within ten (10) days thereafter, such objections shall be referred to the Independent Accounting Firm, which shall resolve the disputed item. The Independent Accounting Firm shall be instructed to deliver to Seller and Purchaser a written determination of the proper allocation of such disputed items within twenty (20) Business Days from the date of engagement. Such determination shall be final, conclusive and binding upon the Parties for all Tax purposes, and the Allocation shall be so adjusted (the allocation, including the adjustment, if any, to be referred to as the “**Final Allocation**”). The fees and disbursements of the Independent Accounting Firm attributable to any Allocation shall be shared equally by Seller and Purchaser. Seller and Purchaser agree to timely file Internal Revenue Service Form 8594, and all Tax Returns, in accordance with such Allocation or Final Allocation, as the case may be, and to report the transactions contemplated by this Agreement for federal Income Tax and all other Tax purposes in a manner consistent with the Allocation or Final Allocation, as the case may be. Each of Seller and Purchaser further agree to provide a copy of its Internal Revenue Service Form 8594 for inspection by the other Party not fewer than ten (10) Business Days prior to filing such form. For the avoidance of doubt, the CSA Assignment Payment is not subject to this Section 3.5 and is allocated to the release of liabilities hereunder, including the CSA Release.

3.6 Prorations.

(a) Purchaser and Seller agree that, except as otherwise specifically provided in this Agreement, all of the budgeted, ordinary, and recurring items normally charged to the Facilities Owners, including those listed below and excluding Taxes (except as set forth in Section 3.5(b)), relating to the business and operation of the Assets owned by Seller, shall be prorated and charged as of the Closing Date, without any duplication of payment under the Facilities Contracts, with Seller liable to the extent such items relate to the Acquired Interest and any time period prior to the Closing Date, and Purchaser liable to the extent such items relate to the Acquired Interest and periods commencing with the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days):

(i) Retrospective adjustments and policyholder distributions for the applicable period during which the Closing occurs with respect to Facilities Insurance Policies included in the Assets occurring within ninety (90) days after the year-end following the Closing, if applicable; and

(ii) Operating and maintenance expenses and Capital Expenditures incurred in any period prior to the Closing Date in the nature of the expenses shown on Schedule 3.5(a)(ii), but only to the extent that the amount of such expenses are determined within ninety (90) days after the year end following the Closing.

(b) Any and all liability for any Property Tax or any other possessory interest Tax imposed *in rem* upon the Assets pursuant to the Settlement Agreement (“**PIT**”) shall (x) be the responsibility of Seller to the extent attributable to a Pre-Closing Tax Period, and (y) otherwise be the responsibility of by Purchaser; provided that PIT that is attributable to a Straddle Period shall be prorated to the Pre-Closing Tax Period on a per diem basis based upon the number of days in the Straddle Period prior to the Closing Date and the total number of days in such Straddle

Period. To the extent that prior to the Closing, Seller has made a prepayment of any amount for which Purchaser is liable under this Section 3.5(b), Purchaser shall reimburse Seller for the amount of such prepayment within five (5) Business Days of Seller's delivery of a written request therefor to Purchaser.

(c) In connection with the prorations referred to in Sections 3.5(a) and (b), in the event that actual figures are not available at the Closing Date, the proration shall be based upon the respective amounts accrued through the Closing Date or paid for the most recent year or other appropriate period for which such amounts paid are available. All prorated amounts shall be recalculated and paid to the appropriate Party within sixty (60) days after the date that the previously unavailable actual figures become available, but in any event not later June 1 of the calendar year following the Closing. Seller and Purchaser shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all proration calculations made pursuant to this Section 3.5. Within thirty (30) days after the determination of any prorations referred to in Sections 3.5(a) and (b), either Party may object in good faith to such amounts in writing, stating in reasonable detail its objections thereto. Seller and Purchaser shall attempt to resolve such dispute by negotiation. If the Parties are unable to resolve such dispute within thirty (30) days after any objection by the objecting Party, the Parties shall appoint the Independent Accounting Firm, which shall, at Seller's and Purchaser's joint expense, review the disputed proration and determine the appropriate proration, if any, within thirty (30) days after such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. Upon determination of the appropriate prorations pursuant to this Section 3.5 by agreement of the Parties or by binding determination of the Independent Accounting Firm, the Party owing the difference shall deliver such amount to the other Party no later than three (3) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee.

3.7 Deliveries by Seller. Subject to the terms and conditions hereof, at the Closing Seller shall deliver, or cause to be delivered, the following to Purchaser (collectively, "**Seller's Closing Deliverables**"):

(a) As necessary, the Lease Assignment, duly executed by Seller and in recordable form, subject only to Permitted Encumbrances and to such limitations as set forth therein, together with any normal and customary affidavits or similar documents reasonably requested by Purchaser and required by the title insurer in connection with any leasehold title policy obtained by Purchaser;

(b) The Bill of Sale, duly executed by Seller;

(c) The Assignment and Assumption Agreement, duly executed by Seller;

(d) Evidence of Seller's receipt of (i) Seller's Required Regulatory Approvals, (ii) Seller's Required Consents, and (iii) documentation evidencing the release of all Encumbrances on the Assets, excluding any Permitted Encumbrances, in each case of clauses (i) through (iii), without restrictions that would have a Material Adverse Effect on the operation of the Facilities in the ordinary course after Closing;

(e) A Certificate of Good Standing with respect to Seller, as of a recent date, issued by the New Mexico Secretary of State;

(f) The FIRPTA Certificate and a Seller's properly completed Form W-9, in each case, duly executed by Seller or its taxable parent named therein, as applicable;

(g) Copies, certified by the Secretary or Assistant Secretary of Seller, of corporate minutes or resolutions, as applicable, authorizing the execution and delivery of this Agreement, each Ancillary Agreement to which Seller is a party and the authorization or ratification of all of the other agreements and instruments, in each case, to be executed and delivered by Seller in connection herewith;

(h) A certificate of the Secretary or Assistant Secretary of Seller identifying the name and title and bearing the signatures of the officers of Seller authorized to execute and deliver this Agreement, each Ancillary Agreement to which Seller, is a party and the other agreements and instruments contemplated hereby;

(i) A certificate from Seller, executed by an authorized officer, dated the Closing Date, to the effect that the conditions set forth in Sections 9.1, 9.3 (insofar as such relate to Seller's Required Regulatory Approvals), 9.4 and 9.6 have been satisfied by Seller;

(j) The Updated Seller's Schedule of Exceptions;

(k) An assignment of the Settlement Agreement to Purchaser, where Purchaser shall take on all rights and obligations of Seller thereunder and Seller shall be released from all obligations and liabilities thereunder;

(l) The Amended Contracts (including the Facilities Co-Tenancy Agreement Amendment and the Facilities Operating Agreement Amendment), each, duly executed by all parties thereto (other than Purchaser);

(m) The CSA Assignment, duly executed by Seller;

(n) The CSA True-Up Payment pursuant to Section 3.3;

(o) The Escrow Deliverables; and

(p) All such other agreements, documents, instruments and writings required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or as the Parties and their respective counsel shall deem reasonably necessary to sell, assign, convey, transfer and deliver all of Seller's rights, title and interests in and to the Assets, to Purchaser, in accordance with this Agreement and, where necessary or desirable, in recordable form.

3.8 Deliveries by Purchaser. Subject to the terms and conditions hereof, at the Closing, Purchaser shall deliver, or cause to be delivered, the following to Seller (collectively, "**Purchaser's Closing Deliverables**"):

(a) The Assignment and Assumption Agreement, duly executed by Purchaser;

(b) Evidence of Purchaser's receipt of (i) Purchaser's Required Regulatory Approvals, and (ii) Purchaser's Required Consents;

(c) A Certificate of Good Standing or equivalent with respect to Purchaser, as of a recent date, issued by the Navajo Nation;

(d) Copies, certified by the Secretary of Purchaser, of corporate minutes or resolutions, as applicable, authorizing the execution and delivery of this Agreement, each Ancillary Agreement to which Purchaser is a party and the authorization or ratification of all of the agreements and instruments, in each case, to be executed and delivered by Purchaser in connection herewith;

(e) A certificate of the Secretary of Purchaser identifying the name and title and bearing the signatures of the officers of Purchaser authorized to execute and deliver this Agreement, each Ancillary Agreement to which Purchaser is a party and the other agreements contemplated hereby;

(f) A certificate from Purchaser, executed by an authorized officer, dated the Closing Date, to the effect that the conditions set forth in Sections 10.1, 10.3 (insofar as it relates to Purchaser's Required Regulatory Approvals), 10.5 and 10.7 (insofar as it related to Purchaser's Required Consents) have been satisfied by Purchaser.

(g) A counterpart duly executed by Purchaser of each Amended Contract (including the Facilities Co-Tenancy Agreement Amendment and the Facilities Operating Agreement Amendment);

(h) Evidence that Purchaser has met the financial requirements required of the Facilities Owners, including any requirements under the Four Corners Financial Assurance Policy;

(i) The CSA Assignment, duly executed by Purchaser;

(j) The CSA Release, duly executed by Purchaser; and

(k) All such other agreements, documents, instruments and writings required to be delivered by Purchaser at or prior to the Closing Date pursuant to this Agreement.

3.9 Facilities Contracts. The Parties agree that between the date hereof and the Closing Date, the ownership, lease, maintenance and operation of the Facilities and the Facilities Switchyard will be governed by the Facilities Contracts.

ARTICLE 4 **REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF SELLER**

Except as set forth in Seller's Schedule of Exceptions corresponding to the Section of this Agreement to which such disclosure applies, Seller represents, warrants and, where specified, disclaims to Purchaser as follows:

4.1 Organization and Existence. Seller is a corporation, duly organized, validly existing and in good standing under the laws of the State of New Mexico and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Seller has heretofore delivered to Purchaser complete and correct copies of its Articles of Incorporation and operating agreement as currently in effect.

4.2 Execution, Delivery and Enforceability. Seller has full corporate power to enter into, and carry out its obligations under, this Agreement and the Ancillary Agreements which are executed by Seller and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Ancillary Agreements which are executed by Seller, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action required on the part of Seller and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement and the Ancillary Agreements to which it is a party or to consummate the transactions contemplated hereby and thereby. Assuming Purchaser's due authorization, execution and delivery of this Agreement and the Ancillary Agreements when executed by Purchaser, this Agreement does and the Ancillary Agreements, when executed by Seller, will constitute the valid and legally binding obligations of Seller, enforceable against Seller in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

4.3 No Violation. Subject to Seller obtaining Seller's Required Regulatory Approvals and Seller's Required Consents, neither the execution and delivery of this Agreement or any of the Ancillary Agreements executed by Seller, nor the compliance with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby will:

(a) violate, or conflict with, or result in a breach of any provisions of the Articles of Incorporation or bylaws of Seller;

(b) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, or agreement or other instrument or obligation to which Seller is a party or by which Seller or any of the Assets may be bound, except for such defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been, or prior to the Closing Date will have been, obtained and delivered to Purchaser;

(c) violate any law, rule, regulation, order, writ, injunction, or decree, applicable to Seller or any of its assets, except where such violations, individually or in the aggregate, will not affect the validity or enforceability of this Agreement or the Ancillary Agreements or the validity of the transactions contemplated hereby or thereby; or

(d) require consent or approval of, filing with, or notice to any Person which, if not obtained would prevent Seller from performing its obligations hereunder.

4.4 Compliance with Laws. Seller has no Knowledge that it is in material violation of any applicable Laws, orders, ordinances, rules, regulations or judgment of any Governmental

Authority in existence as of the Effective Date with respect to the Assets, except for violations or alleged violations by the Facilities Owners in common, or by the Operating Agent acting on their behalf.

4.5 Permits, Licenses, Etc. Seller holds all material permits, registrations, franchises, certificates, licenses and other authorizations, consents and approvals of all Governmental Authorities that Seller requires in order to own any of the Assets (collectively, “**Seller Permits**”), except for such failures to hold such Seller Permits that are also failures of all the other Facilities Owners.

4.6 Litigation. There is no claim, action, proceeding or investigation pending, or to Seller’s Knowledge, threatened against or relating to Seller or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which could, individually or in the aggregate, reasonably be expected to result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance of this Agreement or any of the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby, (b) a claim against Purchaser or its Affiliates for damages as a result of Seller entering into this Agreement or any of the Ancillary Agreements, or the consummation by Seller of the transactions contemplated hereby or thereby, or (c) a material impairment of Seller’s ability to perform its obligations under this Agreement or any of the Ancillary Agreements, except for claims, actions, proceedings or investigations pending against, or judgments, decrees or orders set forth on Schedule 4.6 involving all of the other Facilities Owners or the Operating Agent as agent for the Facilities Owners.

4.7 Title. Seller has good and marketable title, or valid and effective leasehold rights in the case of leased property, and valid and effective licenses in the case of licensed rights, to the Owned Personal Property and Leased Property included in the Assets to be sold, conveyed, assigned, transferred and delivered to Purchaser by Seller, free and clear of all Encumbrances of any nature whatsoever, except for (a) those created pursuant to this Agreement by Purchaser, (b) those which will be discharged or released prior to or substantially simultaneously with, the Closing, (c) Permitted Encumbrances and (d) those set forth on Schedule 4.7, which do not apply only and exclusively to the interest of Seller but that also apply to interests of the other Facilities Owners in common and/or the Operating Agent, as agent for any of the Facilities Owners.

4.8 Brokers. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on by Seller and in such a manner as not to give rise to any valid claim against Purchaser (by reason of Seller’s actions) for a brokerage commission, finder’s fee or other like payment to any Person.

4.9 Taxes. To Seller’s Knowledge:

(a) All Tax Returns required to be filed, on or prior to the Closing Date, by Seller with respect to the Assets and the Acquired Interests have been timely filed. Such Tax Returns are true, complete and correct in all material respects. All Taxes due and owing by Seller with respect to the Assets and the Acquired Interests for the Pre-Closing Tax Period (except for any applicable Straddle Period) have been timely paid.

(b) No extensions or waivers of statutes of limitations have been given or requested for any Taxes owed with respect to the Assets or the Acquired Interests.

(c) Seller is not a party to any Tax proceeding with any Governmental Authority with respect to the Assets or the Acquired Interests, other than protests related to property taxes in the ordinary course of business disclosed on Schedule 4.9(c). There are no pending or threatened Tax audits by any Governmental Authority with respect to the Assets or the Acquired Interests.

(d) There are no Encumbrances for Taxes upon the Assets or the Acquired Interests nor is any Governmental Authority in the process of imposing any Encumbrances for Taxes on the Assets or the Acquired Interests, in each case, other than Permitted Encumbrances.

(e) Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

(f) All Taxes with respect to the Assets and the Acquired Interests which are required by Law to be withheld or collected for payment have been duly withheld and collected and have been paid to the appropriate Governmental Authority.

(g) Except as disclosed on Schedule 4.9(g), none of the Assets or the Acquired Interests are subject to any Tax partnership agreement or are otherwise treated as held in an arrangement requiring a partnership income Tax Return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code.

4.10 Environmental Matters. Except as disclosed on Schedule 4.10:

(a) Seller has not received and does not have Knowledge of any of the following written notices for which any allegations or potential liability remains unresolved: (i) from any Governmental Authority, either (y) alleging a material violation of Environmental Laws with respect to the Facilities, the Facilities Switchyard, or the Assets or (z) requesting information concerning compliance with Environmental Laws with respect to the Facilities, the Facilities Switchyard, or Assets; (ii) from any Person threatening or initiating a lawsuit or other proceedings based upon allegations of material violations of Environmental Laws with respect to the Facilities, the Facilities Switchyard, or the Assets; (iii) from any Person or Governmental Authority alleging the occurrence of any Release of Hazardous Materials arising, occurring, or originating within or emanating from the Facilities, the Facilities Switchyard, or the Assets, or in connection with any Hazardous Materials generated or transported in connection with the Facilities, the Facilities Switchyard, or the Assets, which would reasonably be expected to impose material liability upon any Facility Owner; or (iv) from any person alleging any indemnification obligation in connection with Environmental Laws or Hazardous Materials in connection with the Facilities, the Facilities Switchyard, or the Assets.

(b) To Seller’s Knowledge, the Facilities, the Facilities Switchyard, and the Assets are, and have been since September 1, 2015, in compliance with all Environmental Laws. To Seller’s Knowledge, the Facilities, the Facilities Switchyard, the Assets, the Facility Owners and the Operating Agent hold, have an interest in or are subject to all Environmental Permits necessary for the ownership and operations of the Facilities, the Facilities Switchyard, and the

Assets in material compliance with Environmental Laws, all such Environmental Permits are listed on Schedule 4.10 and are in full force and effect, the Facilities, the Facilities Switchyard, the Assets, the Facility Owners and the Operating Agent are, and have been since September 1, 2015, in material compliance with all such Environmental Permits, timely and complete renewal applications have been filed for any such Environmental Permits that will expire within the next twelve (12) months, and Seller has no Knowledge of facts or conditions that would reasonably be expected to result in the modification, termination or revocation of such Environmental Permits.

(c) To Seller's Knowledge, no facts or circumstances exist with regard to Hazardous Materials, Environmental Conditions, Environmental Laws or Releases of Hazardous Materials that would reasonably be expected to have a Material Adverse Effect on the Facilities, the Facilities Switchyard, or Assets.

(d) To Seller's Knowledge, no material obligations must be performed under any settlement agreement, order, or consent decree in connection with the Facilities, the Facilities Switchyard, or the Assets, including under the Consent Decree.

(e) To Seller's Knowledge, seller has provided to Purchaser copies of all material environmental reports and other material environmental documents regarding the current compliance of the Facilities, the Facilities Switchyard, and the Assets with Environmental Law, and any Environmental Condition in connection with the Facilities, the Facilities Switchyard or the Assets that would reasonably be expected to result in material liabilities or obligations with respect to such Assets.

4.11 Facilities Project Contracts. Seller has listed on Schedule 2.1(h) and made available to Purchaser an accurate and complete copy of each Facilities Contract, including all amendments, supplements and waivers. With respect to each Facilities Contracts constituting either a "Project Agreement" as such term is defined in the Facilities Co-Tenancy Agreement or a "Project Agreement" as such term is defined in the Facilities Operating Agreement (collectively, "**Facilities Project Contracts**"), (a) each Facilities Project Contract is valid, binding and in full force and effect, and is enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to creditors' rights generally, and general equitable principles, (b) Seller has performed, in all material respects, the obligations required to be performed by it under each Facilities Project Contract and there has not occurred a material violation of, or material default or material breach by, Seller under any Facilities Project Contract and (c) to Seller's Knowledge, each other party under each Facilities Project Contract has performed, in all material respects, the obligations required to be performed by it under such Facilities Project Contract and there has not occurred a material violation of, or material default or material breach by, any other party under any Facilities Project Contract. Seller has timely paid all undisputed amounts owed by it under the Facilities Project Contracts and any disputed amount owed by Seller under the Facilities Project Contracts is set forth on Schedule 4.11. To the extent any agreement listed on Schedule 2.1(h) is amended following the date hereof (each such amendment, a "**Subsequent Modification**"), Seller shall provide to Purchaser the amendment and an updated Schedule 2.1(h). No Subsequent Modification entered into by Seller has a Material Adverse Effect.

4.12 Excluded Assets. None of the Excluded Assets are necessary to access, develop, build, construct, install, own, use, operate, electrically interconnect and maintain the Assets. Except as set forth on Schedule 4.12, Seller does not own, lease, sublease, occupy, use or otherwise have any interest in any real property that is material to access, develop, build, construct, install, own, use, operate, electrically interconnect and maintain the Assets other than the Assets and the Excluded Assets.

4.13 Emission Allowances. There are no Emission Allowances with respect to the Facilities held in common by the Facilities Owners and all Emission Allowances of Seller with respect to the Facilities will be conveyed to Purchaser pursuant to Section 2.1(g) or retained by Seller pursuant to Section 2.2(k).

4.14 Sufficiency for Delivery. The interest being purchased by Purchaser of the Facilities Switchyard and Assets are of sufficient capacity to physically deliver the output of energy, ancillary services, and any other electrical products produced by the Acquired Interests to the high side of the 345kV and 500 kV buses of the Facilities Switchyard and that the Excluded Assets are not necessary for such delivery.

ARTICLE 5 **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Except as set forth in Purchaser's Schedule of Exceptions corresponding to the Section of this Agreement to which such disclosure applies Purchaser represents, warrants and, where specified, disclaims to Seller as follows:

5.1 Organization and Existence. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the Navajo Nation and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Purchaser is duly qualified to do business and is in good standing in the state where the Facilities are located. Purchaser has heretofore delivered to Seller complete and correct copies of its Certificate of Formation and operating agreement as currently in effect.

5.2 Execution, Delivery and Enforceability. Purchaser has full limited liability company power to enter into, and carry out its obligations under, this Agreement and the Ancillary Agreements which are executed by Purchaser and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Ancillary Agreements which are executed by Purchaser, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary limited liability company action required on the part of Purchaser and no other limited liability company proceedings on the part of Purchaser are necessary to authorize this Agreement and the Ancillary Agreements to which it is a party or to consummate the transactions contemplated hereby and thereby. Assuming Seller's due authorization, execution and delivery of this Agreement and the Ancillary Agreements when executed by Seller, this Agreement does and the Ancillary Agreements, when executed by Purchaser, will constitute the valid and legally binding obligations of Purchaser, enforceable against Purchaser in accordance with its and their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other

similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

5.3 No Violation. Subject to Purchaser obtaining the Purchaser's Required Regulatory Approvals and the Purchaser's Required Consents, neither the execution and delivery of this Agreement or any of the Ancillary Agreements executed by Purchaser, nor the compliance with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby will:

(a) violate, or conflict with, or result in a breach of any provisions of the operating agreement or other organizational documents of Purchaser;

(b) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, or agreement or other instrument or obligation to which Purchaser is a party or by which Purchaser may be bound, except for such defaults (or rights of termination or acceleration) as to which requisite waivers or consents have been, or prior to the Closing Date will have been, obtained;

(c) violate any law, rule, regulation, order, writ, injunction, or decree, applicable to Purchaser or any of its assets, except where such violations, individually or in the aggregate will not affect the validity or enforceability of this Agreement or the Ancillary Agreements or the validity of the transactions contemplated hereby or thereby; or

(d) require consent or approval of, filing with, or notice to any Person which, if not obtained would prevent Purchaser from performing its obligations hereunder.

5.4 Compliance with Laws. Purchaser has no Knowledge that it is in material violation of any applicable Laws, orders, ordinances, rules, regulations or judgment of any Governmental Authority in existence as of the Effective Date with respect to the Assets.

5.5 Litigation. There is no claim, action, proceeding or investigation pending, or to Purchaser's Knowledge, threatened against or relating to Purchaser or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which could, individually or in the aggregate, reasonably be expected to result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance of this Agreement or any of the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby, (b) a claim against Seller or its Affiliates for damages as a result of Purchaser entering into this Agreement or any of the Ancillary Agreements, or the consummation by Purchaser of the transactions contemplated hereby or thereby or (c) a material impairment of Purchaser's ability to perform its obligations under this Agreement or any of the Ancillary Agreements.

5.6 Brokers. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on by Purchaser and in such a manner as not to give rise to any valid claim against Seller (by reason of Purchaser's actions) for a brokerage commission, finder's fee or other like payment to any Person.

5.7 Investigation. Purchaser is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Assets as contemplated hereunder. Purchaser has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Without limiting the generality of the foregoing, Purchaser has reviewed, understands, and at the Closing will be able to perform all of its obligations as a Facilities Owner under the Facilities Contracts, including the Four Corners Financial Assurance Policy.

5.8 “AS IS” SALE. EXCEPT IN THE CASE OF FRAUD OR AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, PURCHASER UNDERSTANDS AND AGREES THAT THE ASSETS ARE BEING ACQUIRED “AS IS, WHERE IS” AND “WITH ALL FAULTS”, AND IN THEIR CONDITION ON THE CLOSING DATE, AND THAT PURCHASER IS RELYING ON ITS OWN EXAMINATION OF THE ASSETS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, PURCHASER UNDERSTANDS AND AGREES THAT SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES AS TO LIABILITIES, OPERATIONS OF THE ASSETS, TITLE, CONDITION, VALUE OR QUALITY OF THE ASSETS OR THE PROSPECTS (FINANCIAL, ENVIRONMENTAL OR OTHERWISE), RISKS AND OTHER INCIDENTS OF THE ASSETS AND ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. PURCHASER FURTHER AGREES THAT NO INFORMATION OR MATERIAL PROVIDED BY OR COMMUNICATION MADE BY SELLER OR ANY REPRESENTATIVE OF SELLER WILL CAUSE OR CREATE ANY REPRESENTATION OR WARRANTY DISCLAIMED BY THE FOREGOING EXCEPT AS DISCLOSED IN THIS AGREEMENT, IN A SCHEDULE ATTACHED HERETO OR IN AN ANCILLARY AGREEMENT.

ARTICLE 6 **COVENANTS OF EACH PARTY**

6.1 Efforts to Close; Conduct Pending Closing.

(a) **Commercially Reasonable Efforts.** Subject to the terms and conditions herein provided, including the specific deadlines set forth in Section 6.2, each of the Parties hereto agrees to use its Commercially Reasonable Efforts to consummate and make effective, as soon as reasonably practicable, the transactions contemplated hereby, including the satisfaction of all conditions thereto set forth herein. Such actions shall include, without limitation, exerting their Commercially Reasonable Efforts to (i) obtain the consents, authorizations and approvals of all private parties and any Governmental Authority whose consent is reasonably necessary to effectuate the transactions contemplated hereby, and (ii) effect all other necessary registrations and filings, including, without limitation, filings under applicable Laws, including with NMPRC,

FERC or any other applicable Governmental Authority. Each Party will provide the other with copies of all written communications from Governmental Authorities relating to the approval or disapproval of the transactions contemplated by the Agreement and the Ancillary Agreements.

(b) **Expenses**. Whether or not the transactions contemplated hereby are consummated, except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such expenses. Notwithstanding the foregoing:

(i) Costs associated with preliminary title reports and title policies, extended coverage and any endorsements shall be borne by Purchaser; and except as otherwise specifically set forth in Section 6.2, all fees, charges and costs of economists and other experts, if any, jointly retained by Purchaser and Seller in connection with submissions made to any Governmental Authority and advice in connection therewith respecting approval of the transactions will be borne one-half by Purchaser and one-half by Seller.

(ii) All such charges and expenses shall be promptly settled between the Parties at the Closing or upon termination of this Agreement, or with respect to such charges and expenses not determined as of such time, as soon thereafter as is reasonably practicable.

(c) **Environmental Assessments**. The Parties acknowledge that all Environmental Liabilities set forth herein shall be apportioned pursuant to Section 2.5(c).

(i) No later than ten (10) Business Days before December 1, 2023, the Parties shall consult and use Commercially Reasonable Efforts to select a mutually acceptable environmental consultant (“**Environmental Consultant**”) in order to conduct a Phase I environmental site assessment and other environmental compliance audits of the Facilities and the Facilities Switchyard as the Parties deem necessary (subject to the Facilities Operating Agreement or any other Facilities Document and any required permissions or approvals from the Facilities Owners or Operating Agent), with the scope of such assessments and investigations to be mutually agreed by the Parties (the “**Environmental Assessment**”). In the event an Environmental Consultant declines to act as Environmental Consultant and perform the Environmental Assessment or to perform the Environmental Assessment according to the mutually agreed-upon requirements set forth in this Section 6.1(c), then, as soon as is reasonably practicable, but in no case later than January 1, 2024, the Parties agree they shall select a mutually agreed upon replacement Environmental Consultant to conduct the Environmental Assessment. Each Party will submit to the other Party a list of up to three (3) suggested Environmental Consultants capable of carrying out the obligations of the Environmental Consultant under this Agreement and a summary of each suggested Environmental Consultant’s experience and qualifications. Within five (5) Business Days thereafter, the Parties will meet and confer by telephone or in person to seek to agree upon the Environmental Consultant from the lists that have been exchanged. If such agreement is not reached as the result of such meeting, the Parties will provide a second list of suggested Environmental Consultant to one another, and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon an Environmental Consultant.

(ii) Beginning January 1, 2024 (or some other reasonable time as mutually agreed among the Parties and the Environmental Consultant), the Environmental Consultant shall, using the methodologies mutually agreed by the Parties and the Environmental Consultant as set forth in Section 6.1(c)(i), carry out the Environmental Assessment. The Environmental Consultant shall provide the Parties with a copy of any final written reports resulting from such Environmental Assessment. Seller shall cooperate with and shall use Commercially Reasonable Efforts to assist the Environmental Consultant in gaining access to the Facility and Facilities Switchyard, personnel and records necessary to conduct such Environmental Assessments and shall promptly notify Environmental Consultant and Purchaser of any communications by Operating Agent or any other Person with respect to any material threatened or existing violations of Environmental Law, material or existing Environmental Conditions or material or existing liability under Environmental Law in connection with the Facilities or the Facilities Switchyard and shall provide to Purchaser any information reasonably requested by it in connection with the foregoing. The results of such Environmental Assessments shall not be binding on the Parties, and shall not be deemed to constitute an agreement by the Parties as to the existence or extent of current Environmental Conditions at the Facilities, although the Parties may introduce such Environmental Assessments into evidence if admissible under applicable Law, and otherwise use such Environmental Assessments, in connection with any proceeding or dispute between them in connection with this Agreement. Any information obtained from any Environmental Assessment pursuant to this Section 6.1(c) shall be kept confidential by the Parties hereto unless otherwise required by Law to be disclosed to a Governmental Authority or to a court of law or other tribunal in any judicial proceeding or as needed for a Party to perform routine business operations, such as communications with its accountants, financial advisors and attorneys or as a Party chooses to use such information or Environmental Assessment in connection with any proceeding or dispute between the Parties in connection with this Agreement.

(iii) All costs arising from or related to the Environmental Assessment and the engagement of the Environmental Consultant shall be borne fifty percent (50%) by each of Seller and Purchaser.

(d) **Conduct Pending Closing.** Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, and except to the extent approved by Purchaser or otherwise contemplated by this Agreement, Seller shall:

(i) Not: (A) sell, lease, transfer or dispose of, or make any contract for the sale, lease, transfer or disposition of, any assets or properties which would be included in the Assets, other than sales in the ordinary course of business which would not, individually or in the aggregate, have a Material Adverse Effect, (but Seller shall use Commercially Reasonable efforts to tender the Acquired Interests upon Closing under circumstances that will allow continued operation and generation of the Plant under the Facilities Contracts through the duration of the Coal Supply Agreement, which efforts shall include, for the avoidance of doubt, making no affirmative vote as a Facilities Owner to reduce the production from or cease the operation of the Plant prior to the end of the Coal Supply Agreement term); (B) incur, assume, guaranty, or otherwise become liable in respect of any indebtedness for money borrowed, in each case which would result in Purchaser assuming such liability hereunder after the Closing; (C) delay the payment and discharge of any liability which, upon Closing, would be an Assumed Liability,

because of the transactions contemplated hereby; or (D) encumber or voluntarily subject to any lien any Asset, except for Permitted Encumbrances;

(ii) Approve, or take all steps necessary to approve, all scheduled Capital Improvements in accordance with the Facilities Co-Tenancy Agreement and any requirements therein, unless mutually agreed not to approve by Purchaser and Seller;

(iii) Not take any action under its control which would cause the Operating Agent to operate the Facilities under the Facilities Operating Agreement in violation of applicable Laws, including Environmental Laws; provided, that the foregoing shall not require Seller to violate the terms or conditions of the Facilities Co-Tenancy Agreement or the Facilities Operating Agreement;

(iv) Upon the request of Purchaser, deliver to Purchaser any written notices from the Operating Agent regarding Environmental Conditions or violations or potential violations of Environmental Law; provided, that the foregoing shall not require Seller to violate the terms or conditions of the Facilities Co-Tenancy Agreement or the Facilities Operating Agreement or any other confidentiality obligation of Seller;

(v) Provide Purchaser and its consultants, representatives and agents with reasonable access and information; provided, that the foregoing shall not require Seller to violate the terms or conditions of the Facilities Co-Tenancy Agreement or the Facilities Operating Agreement or any other confidentiality obligation of Seller; and

(vi) With respect to the Assets or the Acquired Interests, not (A) make or change any material Tax election, (B) settle or compromise any claim, notice, audit report or assessment in respect of material Taxes, (C) change any annual Tax accounting period, adopt or change any method of Tax accounting, (D) enter into any Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement or closing agreement relating to any material Tax, or (E) consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment, other than, in all cases, in the ordinary course of business and consistent with past practices.

(e) **Amended Contracts**. Subject to the terms and conditions herein provided, each of the Parties agrees to cooperate and to use its Commercially Reasonable Efforts in order to amend or amend and restate any Amended Contract in a form reasonably satisfactory to the Facilities Owners. The Parties shall use Commercially Reasonable Efforts to prepare an amendment to the Facilities Co-Tenancy Agreement (the “**Facilities Co-Tenancy Agreement Amendment**”) and an amendment to the Facilities Operating Agreement (the “**Facilities Operating Agreement Amendment**”), each, in form and substance reasonably acceptable to Purchaser and Seller.

6.2 **Consents and Approvals.**

(a) Subject to Section 6.1(a), Purchaser will file the application for any Purchaser’s Required Regulatory Approvals and any Facilities Permits and Seller will file Seller’s Required Regulatory Approvals, in each case, no later than March 30, 2021, unless a later date is mutually agreed to by Purchaser and Seller (each, an “**Applicant**” as applicable); provided, that in

the event that a Purchaser's Required Regulatory Approval or a Seller's Required Regulatory Approval would reasonably expire prior to the Closing Date if such filing occurs prior to March 30, 2021, then the Parties shall make Commercially Reasonable Efforts to select a reasonable date for such filing but in all events to ensure that such approvals will be received by, and will continue to be effective on, December 31, 2024. Subject to Section 6.1(a), Purchaser shall be responsible for obtaining all of Purchaser's Required Consents, Purchaser's Required Regulatory Approvals and Facilities Permits and Seller shall be responsible for obtaining all of Seller's Required Consents and Seller's Required Regulatory Approvals. As promptly as practicable after the date of this Agreement, each Applicant shall use Commercially Reasonable Efforts to take all necessary actions to obtain the same, shall diligently prosecute all applications and shall coordinate with the other Party and afford the other Party the opportunity to review all filings; provided that no Party shall make application to FERC pursuant to sections 203 or 205 of the Federal Power Act prior to January 1, 2023, or such other date as mutually agreed to by the Parties. The other Party will use Commercially Reasonable Efforts to support the application filings of the Applicant and both Parties shall otherwise cooperate with each other with respect to the consummation of such approvals. Each Party will provide the other with copies of all material written communications from Governmental Authorities relating to the approval or disapproval of the transactions contemplated by this Agreement.

(b) Notwithstanding the foregoing, nothing in this Agreement shall be deemed to require Purchaser or Seller to agree to, accept or become subject to, any material requirement, obligation or condition imposed by a Governmental Authority on Applicant or its Affiliates as a condition of granting any necessary approvals, which conditions include, without limitation, conditions that: (i) impose material conditions on Applicant, its Affiliates or its customers or ratepayers; (ii) require the divestiture of any portion of any assets or businesses of Applicant or its Affiliates; (iii) require the redirection or distribution of benefits and burdens associated with this Agreement as between Applicant and its customers or ratepayers, in a manner that is adverse to Applicant (other than in an immaterial way); or (iv) otherwise result in or require Applicant or its Affiliates to take on risk, responsibilities or liabilities (other than any immaterial risks, responsibilities or liabilities) that were not expected or anticipated pursuant to this Agreement.

6.3 Tax Matters.

(a) All Transfer Taxes, if any and to the extent required by applicable Laws, incurred in connection with this Agreement and the transactions contemplated hereby shall be borne fifty percent (50%) by each of Seller and Purchaser. Purchaser will file, to the extent required by applicable Laws, all necessary Tax Returns and other documentation with respect to any such Transfer Taxes, and Seller, if required by applicable Laws, will join in the execution of any such Tax Returns or other documentation; provided that Seller will be entitled to review in advance and provide comments on any Tax Returns the execution of which it joins pursuant to this Section 6.3(a), which comments Purchaser shall consider in good faith.

(b) With respect to Taxes to be prorated in accordance with Section 3.5 of this Agreement, Purchaser shall prepare and timely file all Tax Returns required to be filed after the Closing Date with respect to the Assets and the Acquired Interests, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Purchaser's preparation of those Tax Returns that are for a Pre-Closing Tax Period or a Straddle Period shall be subject to Seller's

approval, which approval shall not be unreasonably withheld or delayed. Purchaser shall make such Tax Returns available for Seller's review and approval (which approval shall not be unreasonably withheld or delayed) no later than fifteen (15) Business Days prior to the due date for filing such Tax Returns, it being understood that Seller's failure to approve any such Tax Returns shall not limit Purchaser's obligation to timely file such Tax Returns and duly and timely pay all Taxes shown to be due thereon. Not less than five (5) Business Days prior to the due date of any such Tax Return, Seller shall, to the extent that such Tax has not been prepaid and has not been reflected in an adjustment to the Purchase Price, pay to Purchaser Seller's prorated portion of the amount shown as due on such Tax Returns as determined in accordance with Section 3.5 of this Agreement and shall, to the extent required by law, join in the execution of any such Tax Returns. Purchaser and Seller shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

(c) Purchaser and Seller shall provide the other Party with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any Governmental Authority, or any judicial or administrative proceedings relating to liability for Taxes with respect to the Assets, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, proceedings or determination as reasonably requested by the requesting Party. Purchaser and Seller shall retain all books and records with respect to liability for Taxes with respect to the Assets for the full period of any applicable statute of limitations for Taxes with respect to the Assets. Any information obtained pursuant to this Section 6.3 or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties hereto unless otherwise required by Law to be disclosed to a Governmental Authority in an audit or examination or to a court of law or other tribunal in any judicial Tax proceeding.

(d) In the event that a dispute arises between Seller and Purchaser as to the amount of any Taxes due with respect to the Assets, the Parties shall attempt in good faith to resolve such dispute, and any amount so agreed upon shall be paid to the appropriate Party. If such dispute is not resolved within thirty (30) days thereafter, the Parties shall submit the dispute to the Independent Accounting Firm for resolution, which resolution shall be final, conclusive and binding on the Parties. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accounting Firm in resolving the dispute shall be borne equally by Seller and Purchaser. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten (10) days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate.

(e) If Purchaser receives or becomes entitled to any Tax refund or any amount credited against Tax that is attributable to the ownership, operation or use of the Assets prior to the Closing Date, Purchaser shall (i) in the case of a refund, pay Seller the amount of any such refund, reduced by any net Tax required under applicable Laws to be paid by Purchaser with respect thereto, and (ii) in the case of a credit, pay to Seller at such time or times as such credit is actually utilized, the excess of (A) the amount of Taxes that would have been payable (or the amount of the Tax refund, offset or other reduction in Tax liability actually receivable) by Purchaser in the absence of such credit over (B) the amount of Taxes actually payable (or the

amount of the Tax refund, offset or other reduction in Tax liability that would have been receivable) by Purchaser.

(f) Nothing in this Section 6.3 or elsewhere in this Agreement shall make either Party liable for the Income Taxes of the other or for any Taxes (other than Transfer Taxes, if applicable) imposed on the other as a result of the transactions contemplated by this Agreement.

6.4 Risk of Loss. Subject to Section 2.2(h), if, before the Closing Date, all or any portion of the Facilities or the Facilities Switchyard, becomes subject to or is threatened with any condemnation or eminent domain proceeding, Seller shall notify Purchaser promptly in writing of such fact. In the event of such taking, Seller, upon the Closing, shall assign to Purchaser any claim, settlement or proceeds thereof. If, before the Closing Date all or any portion of the Facilities or the Facilities Switchyard are damaged or destroyed (whether by fire, theft, vandalism or other casualty) in whole or in part, Seller shall, upon the Closing, transfer the proceeds or the rights to the proceeds of applicable insurance to Purchaser; provided, that any proceeds relating to the Excluded Switchyard Interests (or any other applicable Excluded Assets) shall be retained by Seller.

6.5 Cooperation Relating to Insurance. Until the Closing, Seller will not take any action that will decrease the level of insurance coverage for the Facilities and the Facilities Switchyard as in effect on the date hereof, including, without limitation, property damage and liability insurance, unless agreed by the other Facilities Owners and Purchaser. In addition, Seller agrees to use Commercially Reasonable Efforts to assist Purchaser in making any claims against pre-Closing insurance policies of Seller that may provide coverage related to Assumed Liabilities. Purchaser agrees that it will indemnify Seller for its reasonable out-of-pocket expenses incurred in providing such assistance and cooperation. On and after the Closing, Seller shall authorize the Operating Agent to take any actions necessary to remove Seller from any Facilities Insurance Policies and, except with respect to (a) the extent required to cover the Excluded Assets and (b) insurance rights retained by Seller pursuant to Section 2.2(h), Seller agrees to waive its rights with respect to such insurance coverage from and after the Closing. If requested by Seller, Purchaser agrees to exercise Commercially Reasonable Efforts to assist Seller, at Seller's cost, in obtaining so-called "tail" coverage in respect of claims brought after the Closing for events occurring prior to the Closing, including, if appropriate, listing Seller as an additional insured or named insured in policies of Purchaser and/or the Facilities Owners. Seller agrees that it will reimburse Purchaser for its reasonable out-of-pocket expenses incurred in providing such assistance to Seller in obtaining tail coverage.

6.6 Reasonable Cooperation. Each Party agrees to use Commercially Reasonable Efforts to cooperate with the other Party to effect the consummation of the transactions contemplated by this Agreement, including with respect to all consents and approvals required for Closing, and to provide the other Party with such access or information related to the Facilities as may reasonably be requested in connection with such transactions. Without limiting the generality of the forgoing, the Parties shall work with each other prior to the Closing Date to determine if any Facilities Contract which is not currently listed on Schedule 2.1(h) or Schedule 1.1.62, or approval of any Governmental Authority which is not currently listed on Schedule 1.1.63 or Schedule 1.1.73, should be listed on such Schedules. Each Party agrees to provide reasonably requested assistance of the other and will use Commercially Reasonable Efforts to collaborate with each

other, including involvement as required by applicable Laws. Each Party agrees to use Commercially Reasonable Efforts to reach agreement, if necessary, on mutually acceptable terms and conditions for operation of the Facilities Switchyard post-Closing, including allowing Purchaser transmission access on an open access basis pursuant to a FERC-approved tariff, that does not materially and adversely impact the value (economically or operationally) of the transaction to Purchaser.

6.7 Exclusivity. During the term of this Agreement, and except as necessary to fulfill its obligations under the Facilities Co-Tenancy Agreement, Seller will (a) deal exclusively with Purchaser and will not offer to sell, solicit offers to sell or negotiate with any third party for the sale of the Assets; and (b) promptly notify Purchaser of any unsolicited offer, interest or inquiry by a third party concerning a possible purchase of the Assets and will not provide to any third party any information with respect to a possible sale of the Assets; provided, that Purchaser acknowledges that Seller is required to provide information pursuant to the Facilities Contracts for right of first refusal purposes, and to entertain and negotiate with Facilities Owners with respect to right of first refusal.

6.8 Post Closing — Further Assurances. At any time or from time to time after the Closing, each Party will, upon the reasonable request of the other Party, execute and deliver any further instruments or documents, and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of this Agreement or realize the benefits intended to be afforded hereby. After the Closing, and upon prior reasonable request, each Party shall exercise Commercially Reasonable Efforts to cooperate with the other, at the requesting Party's expense (but including only out-of-pocket expenses to third parties and not the costs incurred by any Party for the wages or other benefits paid to its officers, directors or employees), in furnishing non-privileged records, information, testimony and other assistance in connection with any inquiries, actions, audits, proceedings or disputes involving either of the Parties hereto (other than in connection with disputes between the Parties hereto) and based upon contracts, arrangements or acts of Seller, Purchaser, the other Facilities Owners or the Operating Agent on behalf of one or more of the Facilities Owners which were in effect or occurred on, prior to, or after Closing and which relate to the Assets, including, without limitation, arranging discussions with (and calling as a witness) officers, directors, employees, agents, and representatives of Purchaser or Seller. Without limiting the generality of the foregoing, Purchaser shall use Commercially Reasonable Efforts to (i) assist Seller, at Seller's expense, by making available Purchaser's representatives to provide testimony in proceedings on behalf of Seller and (ii) permit Seller to participate consistent with current practice in the financial audits for the Facilities with respect to pre-Closing periods.

6.9 Post Closing — Information and Records.

(a) Following the Closing, Purchaser will not dispose of any books, records, documents or information reasonably relating to any Excluded Assets or Excluded Liabilities except in accordance with Purchaser's existing record retention policies. During such period, Purchaser will permit Seller to examine and make copies, at Seller's expense, of such books, records, documents and information for any reasonable purpose, including any litigation now pending or hereafter commenced by or against Seller, or the preparation of income or other Tax

Returns. Seller will provide reasonable notice to Purchaser of its need to access such books, records, documents or other information.

(b) Seller shall not be entitled to examine or copy privileged and/or attorney work product documents or information pursuant to Section 6.9(a). If privileged and/or attorney work product documents or information, including communications between Purchaser and its counsel, are disclosed to Seller in the books, records, documents or other information made available by Purchaser, Seller agrees (i) such disclosure is inadvertent, (ii) such disclosure will not constitute a waiver, in whole or in part, of any privilege or work product, (iii) such information will be kept confidential, and (iv) Seller will promptly return to Purchaser (or will destroy or make inaccessible such information to the extent reasonably possible and certify as such to Purchaser) all copies of such books, records, documents or other information in the possession of Seller.

6.10 Limited Waiver of Sovereign Immunity

(a) Purchaser irrevocably agrees that, to the extent that it has or hereafter may acquire any right of immunity against Seller, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the courts of the United States of America, any state of the United States of America, in the courts of the Navajo Nation, in an arbitration proceeding as set forth in the Dispute Resolution or any other arbitrations, or elsewhere, to enforce or collect upon this Agreement or the other agreements entered into in connection with this Agreement, including immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of judgment and immunity of any of its property from attachment prior to entry of judgment, or from attachment in aid of execution upon a judgment, Purchaser expressly, unconditionally and irrevocably waives any such immunity and consents and submits to the Laws set forth in Section 12.10 and the jurisdiction set forth in Section 12.11 to resolve any dispute arising out of, under, or in connection with this Agreement and/or the other agreements entered into in connection with this Agreement.

(b) Purchaser clearly, expressly, unequivocally, and irrevocably waives any benefits, rights, immunities, privileges, or limitations in applicable Navajo Nation Law that would otherwise foreclose specific performance, injunctive relief, money damages, or any other remedies or relief from Purchaser pursuant to this Agreement.

(c) Purchaser clearly, expressly, unequivocally, and irrevocably waives any otherwise existing right or claim of right to require exhaustion of tribal administrative or judicial remedies prior to exercise of the dispute resolution provisions of the Agreement including with respect to Dispute Resolution and any ancillary litigation proceedings, to compel arbitration or enforce any arbitration award in a New Mexico state court of competent jurisdiction. Purchaser's consent to the jurisdiction of a New Mexico state court of competent jurisdiction as provided in this Agreement is irrevocable. Purchaser waives any rights to have any dispute heard in a Navajo Nation tribunal or in any Navajo Nation administrative or judicial body whatsoever.

(d) Purchaser agrees and clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity, but only to Seller and exclusively for the purposes of this Agreement, for recourse and enforcement against any and all of the assets of Purchaser only. Purchaser's agreement and express, unequivocal, and irrevocable waiver of its sovereign immunity

shall not be asserted, interpreted, or applied to permit or authorize the sale or transfer of any property held by the Navajo Nation apart from the Purchaser's property, or any other property held by any other Navajo Nation instrumentality or entity other than Purchaser, whether such property is held in trust by the United States, or otherwise.

(e) Purchaser clearly, expressly, unequivocally, and irrevocably waives its sovereign immunity for Seller to seek to obtain, and where deemed appropriate by an arbitrator, an arbitration panel, or a judge of a New Mexico state court of competent jurisdiction, for Seller to obtain one or more of the following: (A) interpretation of this Agreement; (B) to make Purchaser perform a specific action Purchaser is obligated to perform pursuant to this Agreement, or to make Purchaser discontinue some specific action Purchaser is precluded from performing pursuant to this Agreement; or (C) to require Purchaser to comply with the duties and obligations clearly and expressly agreed to by Purchaser within this Agreement.

(f) Purchaser clearly, expressly, unequivocally, and irrevocably agrees that, to the extent Purchaser changes its company, corporate, or organizational form, any resulting company, corporation, or organization will, by Navajo Nation Council resolution if necessary, provide all of the same limited waivers of sovereign immunity to Seller as those set forth in this Section 6.10.

(g) Purchaser agrees that to the extent any later changes in Navajo Nation Law cause Purchaser to be unable to comply with any provision(s) of this Agreement, Purchaser shall nonetheless remain subject to all of its obligations under this Agreement notwithstanding any such changes in Navajo Nation Law, and Purchaser's failure to comply with any provision(s) of this Agreement on the basis of any such change in Navajo Nation Law shall not be excused and shall constitute a breach this Agreement and be actionable under the dispute resolution terms of this Agreement.

(h) Purchaser's agreement and clear, express, unequivocal, and irrevocable waiver of its sovereign immunity shall not apply, redound, or inure to any other third party (or non-Party) person or entity other than Seller and Seller's successors and assigns.

(i) Purchaser's limited waiver as set forth in this Section 6.10 shall survive the termination or expiration of this Agreement and any ancillary agreements thereto and remain effective until any applicable statute of limitations runs.

(j) Purchaser represents and warrants that all of the persons creating and executing this Agreement and any related agreements necessary to effectuate this Agreement, are actually, fully, properly, apparently, and impliedly authorized to vest all of the persons creating and executing this Agreement with all authorities necessary to bind and obligate Purchaser to the terms of this Agreement.

(k) Nothing in this Agreement and/or the other agreements entered into in connection with this Agreement, and no waiver of Purchaser's sovereign immunity pursuant to this Section 6.10 shall be construed as a waiver of the sovereign immunity or exhaustion of tribal remedies by the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by Purchaser shall create any liability on the part of the Navajo Nation or any other

instrumentality of the Navajo Nation for the debts and obligations of Purchaser, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication, or other determination of liability of any nature incurred by Purchaser. The acts and omissions of Purchaser, its directors, officers, employees, and agents shall not create any liability, obligation, or indebtedness either of the Navajo Nation or payable out of assets, revenues, or income of the Navajo Nation.

ARTICLE 7
RECLAMATION AND CSA TRUE-UP PAYMENT CALCULATION

7.1 Reclamation Obligations. The Parties agree that, subject to Section 7.4 herein, Final Reclamation Costs attributable to Seller at the Navajo Mine under the Coal Supply Agreement shall be paid to Purchaser by Seller as provided in Section 7.4 of this Agreement, and such Final Reclamation Costs shall be determined by the results of the Pre-Closing Reclamation Study (as defined below) pursuant to Section 7.3 (the “**Pre-Closing Study Final Reclamation Costs**”) and shall be apportioned to Seller pursuant to the apportionment set forth in the Coal Supply Agreement, and such Pre-Closing Reclamation Study shall be conducted by a mutually agreed upon Independent Third Party engaged by the Parties pursuant to Section 7.2 of this Agreement, if applicable. This Agreement will in no way be construed to expand or alter Seller’s obligations with respect to Contemporaneous Reclamation Costs pursuant to the Coal Supply Agreement.

7.2 Selection of Independent Third Party; Use of Scheduled Study.

(a) No later than ten (10) Business Days before December 1, 2023, the Parties shall consult with the other Facilities Owners to determine if a reclamation study to estimate the costs of Final Reclamation has been scheduled or will be scheduled pursuant to the Coal Supply Agreement (“**Scheduled Study**”), with such Scheduled Study to commence within ninety (90) calendar days of December 1, 2023, or such other reasonable period as mutually agreed to by the Parties. If the Parties determine that such a Scheduled Study is to occur within such time frame and the Parties mutually agree that the methodology of the Scheduled Study is substantially similar to the methodology set forth in Exhibit I, the Parties agree to use Commercially Reasonable Efforts to (i) obtain any necessary consents or approvals from the Facilities Owners to use the Scheduled Study as the Pre-Closing Reclamation Study for the purposes of this Agreement and (ii) reach an agreement with the Person providing the Scheduled Study to carry out such Scheduled Study pursuant to the terms of Article 7 hereof. If such conditions are met, then the Scheduled Study will operate as the Pre-Closing Reclamation Study for the purposes of this Agreement.

(b) If any of the conditions required to use a Scheduled Study as the Pre-Closing Reclamation Study in Section 7.2(a) are not met, the Parties shall engage the Independent Third Party, who the Parties agree is qualified to accurately conduct the Pre-Closing Reclamation Study to the reasonable satisfaction of all Parties. The Parties shall engage the Independent Third Party no later than December 1, 2023 upon the terms set forth in Section 7.3 herein to carry out the Pre-Closing Reclamation Study.

(c) In the event the Independent Third Party declines to act as the Independent Third Party and perform the Pre-Closing Reclamation Study or to perform the Pre-Closing Reclamation Study according to the requirements set forth in this Article 7, then, as soon as is reasonably practicable, but in no case later than January 1, 2024, the Parties agree they shall select a mutually agreed upon replacement Independent Third Party to conduct the Pre-Closing Reclamation Study. Each Party will submit to the other Party a list of up to three (3) suggested Independent Third Parties capable of carrying out the obligations of the Independent Third Party under this Agreement and a summary of each suggested Independent Third Party's experience and qualifications. Within five (5) Business Days thereafter, the Parties will meet and confer by telephone or in person to seek to agree upon the Independent Third Party from the lists that have been exchanged.

(d) If such agreement is not reached as the result of such meeting, the Parties will provide a second list of suggested Independent Third Parties to one another, and the Parties will meet and confer again within five (5) Business Days thereafter to attempt to reach agreement upon an Independent Third Party. If such agreement on the Independent Third Party is not reached pursuant to the second list of suggested Independent Third Parties, the Parties will proceed to arbitration as further set forth in Dispute Resolution under this Agreement.

7.3 Pre-Closing Reclamation Study.

(a) Beginning January 1, 2024 (or some other reasonable time as mutually agreed among the Parties and the Independent Third Party), the Independent Third Party shall, using substantially the same methodology as the 2019 Reclamation Study set forth in Exhibit I hereto, conduct a study of the Navajo Mine to determine, as accurately as possible, the Final Reclamation Costs arising from the Final Reclamation of the Navajo Mine as provided for in the Coal Supply Agreement that shall make up the Pre-Closing Study Final Reclamation Costs (the "**Pre-Closing Reclamation Study**"). The Parties will work in good faith with the Independent Third Party to ensure that the Pre-Closing Reclamation Study shall be delivered to both Parties as expeditiously as is reasonably practicable, but it is the intent of the Parties that such delivery will occur by or before July 1, 2024.

(b) Upon completion of the Pre-Closing Reclamation Study, the Independent Third Party will provide a draft of the Pre-Closing Reclamation Study to the Parties (the "**Draft Reclamation Study**"). Within thirty (30) days of the receipt of the Draft Reclamation Study, the Parties shall provide any comments to the Independent Third Party. Any comments provided by a Party to the Independent Third Party must also be provided to the other Party to this Agreement contemporaneously with their submission to the Independent Third Party. All communications between a Party and the Independent Third Party with respect to the Draft Reclamation Study shall be copied to the other Party if in writing, and a Party shall be provided an opportunity to participate in any telephonic conversations, in-person meetings, or otherwise between the Independent Third Party and the other Party. The Independent Third Party will provide timely responses to any reasonable comment by any Party with respect to the Draft Reclamation Study and will agree to meet and confer with such commenting Party as necessary. Within sixty (60) days (or some other time as mutually agreed to by the Parties) after the receipt of the final comments by any Party with respect to the Draft Reclamation Study, the Independent Third Party shall issue the Pre-Closing Reclamation Study in writing to both Parties.

(c) Upon the receipt of the Pre-Closing Reclamation Study, the Parties shall have ten (10) Business Days, or such other time period as agreed to by the Parties, to deliver notice of acceptance or rejection of the results of the Pre-Closing Reclamation Study pursuant to Section 12.13. If a Party has not delivered a notice of acceptance or rejection by the end of the time period set forth in this Section 7.3(c), that Party will be deemed to have accepted the results of the Pre-Closing Reclamation Study for purposes of this Agreement. Both an affirmative acceptance of the results of the Pre-Closing Reclamation Study and the lack of rejection within ten (10) Business Days will be defined as a “**Final Reclamation Acceptance**.” Upon the mutual receipt of the Final Reclamation Acceptance, the Parties shall be bound by the findings of the Pre-Closing Reclamation Study.

(d) In the event that (i) ten (10) Business Days lapse without the mutual receipt of the Final Reclamation Acceptance by both Parties from the other Party or (ii) either Party notifies the other Party in writing of its rejection of the Pre-Closing Reclamation Study pursuant to Section 2.3(c), the Parties will proceed to Dispute Resolution.

7.4 CSA True-Up Payment Calculation. When both Parties have tendered their respective Final Reclamation Acceptance pursuant to Section 7.3(c), Seller shall become bound and obligated to pay its proportionate share, as such proportionate share is defined in the Coal Supply Agreement, of the Pre-Closing Study Final Reclamation Costs. Seller shall, subject to the adjustments herein, pay amounts equal to its proportionate share of such Pre-Closing Study Final Reclamation Costs, adjusted for the Inflation Rate and Discount Rates, in unrestricted, immediately available funds to Purchaser, paid by wire transfer to an account or accounts designated in writing by Purchaser at the Closing of this Agreement (the “**CSA True-Up Payment**”). The CSA True-Up Payment will be reduced by the amount of funds held by Seller under the Escrow Agreement, and the CSA True-Up Payment calculation methodology is set forth on Exhibit J.

7.5 Escrow Account. Contemporaneously with the CSA True-Up Payment, Seller shall deliver (a) an executed counterpart to an amendment to the Escrow Agreement, executed by the parties thereto, which will release Seller from all obligations and liabilities and (b) an assignment agreement in a form reasonably satisfactory to Purchaser that assigns all of Seller’s rights and obligations associated with the Escrow Account and to any funds within the Escrow Account ((a) and (b) together, the “**Escrow Deliverables**”).

7.6 CSA Release. At the Closing, Purchaser shall release Seller from all obligations under the Coal Supply Agreement pursuant to the release in the form attached hereto as Exhibit G (the “**CSA Release**”).

7.7 Resolution of Disputes; Executive Conference. Any dispute between the Parties arising pursuant to, out of, or in connection with this Article and its meaning, interpretation, or application, shall be resolved as set forth in this Dispute Resolution.

(a) The Dispute Resolution process will be initiated by the delivery of a written notice by a Party (“**Noticing Party**”) of the dispute (“**Notice of Dispute**”) to the Party with which a dispute is claimed. The Notice of Dispute will specify the existence, nature and extent of the dispute. Copies of the Notice of Dispute will be served on all other Parties. The Notice of Dispute

will specifically state the sums allegedly due, any non-monetary obligation allegedly not performed, or both if applicable.

(b) Within fifteen (15) Business Days of receipt of the Notice of Dispute, the Party alleged not to be performing may protest in writing any or all of the matters set forth in the Notice of Dispute (“**Dispute Protest**”), specifying the basis of the Dispute Protest. Copies of the Dispute Protest will be served by the protesting Party (“**Protesting Party**”) on the other Party.

(c) Within fifteen (15) Business Days of the service of a Notice of Dispute under Section 7.6(a) or within ten (10) Business Days of the service of a Dispute Protest under Section 7.6(b), the executive representatives of the Parties involved in the dispute will meet at a mutually agreeable time and place to attempt to negotiate a timely and amicable resolution of the dispute. If an executive of a Party intends to be accompanied by counsel, the other Parties will be given at least five (5) Business Days’ written notice of such intent and may also be accompanied by counsel. All negotiations will be confidential and will be treated as compromise and settlement negotiations under New Mexico Law. If the matter is not thereafter resolved within sixty (60) calendar days after a Party’s receipt of a notice of dispute from the other Party or such other time period agreed to in writing by the Parties, the matter shall be submitted to binding arbitration, as set forth below.

7.8 Binding Arbitration. In the event negotiations between the Parties do not result in resolution of the Parties’ dispute(s), the Parties shall submit to binding arbitration conducted pursuant to the American Arbitration Association’s (“**AAA**”) Commercial Arbitration Rules and Mediation Procedures for Large, Complex Commercial Disputes, except that if such rules and practices, as modified herein, conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico Law then in force which are specifically applicable to arbitration proceedings, such New Mexico Law will govern. Any substantive resolution of disputes will be governed by the contract and commercial Laws of the State of New Mexico, subject to and conditioned by the following:

(a) Arbitration Notice. The demanding Party (the “**Claimant**”) shall provide a notice of arbitration (the “**Arbitration Notice**”) to the other Party (the “**Respondent**”), which shall include: (i) the designation of such Party’s arbitrator; and (ii) a reasonably detailed statement of the facts and theories supporting that Party’s claims. Within this same period, the Claimant shall provide a copy of the Arbitration Notice to the Respondent in accordance with the notice provisions of Section 12.13. The Claimant shall also provide a copy of the Arbitration Notice to Respondent’s counsel (whether in-house or external) as identified in Section 12.13 of this Agreement.

(b) Response to Arbitration Notice. Within thirty (30) calendar days of receipt of the Arbitration Notice (unless otherwise agreed to in writing by the Parties), the Respondent shall provide the Claimant a Response to the Arbitration Notice, which shall include: (i) the designation of such Party’s arbitrator; and (ii) a reasonably detailed statement of the facts and theories supporting the Respondent’s defenses and counter-claims.

(c) Third Neutral Arbitrator. The two (2) Party arbitrators shall choose the third neutral arbitrator for the arbitration panel. In the event the two (2) Party arbitrators cannot agree

on a third arbitrator, the AAA shall select a third arbitrator from its National Roster, who shall be free of any association of any kind with either Party and whose participation as an arbitrator shall not otherwise constitute a conflict of interest or give rise to an appearance of impropriety. The arbitrators shall be bound by, and strictly adhere to the AAA's Code of Ethics for Arbitration in Commercial Disputes, with particular attention to Canon IX.

(d) Fees and Expenses. Each Party shall pay the costs, fees and expenses of its appointed arbitrator, and the Parties shall each pay one-half of the third arbitrator's costs, fees, and expenses, to conduct the arbitral hearing or proceeding.

(e) Arbitration Panel and Arbitrator Authority to Issue Interim Exigent Equitable Relief. Unless agreed to otherwise, within thirty (30) days of the selection of a third arbitrator, the Parties shall conduct an arbitration hearing or proceeding, and such arbitration shall address all issues then currently in dispute. The arbitration panel shall have authority to issue interim/equitable relief prior to any arbitration proceeding, including the authority to direct discovery, specific performance and injunctive relief during the pendency of the dispute resolution proceedings provided by this Agreement.

(f) Location of Arbitration. The arbitration shall be conducted at a mutually-agreed-upon location, which shall be either of the following cities: Shiprock, Navajo Nation or Albuquerque, New Mexico. In the event the Parties cannot agree to the location of the arbitration hearing or proceeding, a majority of the arbitral panel shall decide on the location of the arbitration hearing or proceeding; which shall be either of the following cities: Shiprock, Navajo Nation or Albuquerque, New Mexico.

(g) Award and Enforcement. The decision or award of the arbitration panel ("**Arbitration Award**") shall be made by a majority of the panel, and given in writing to the Parties within thirty (30) days after the conclusion of the arbitral hearing or proceeding, the submittal of any post-hearing briefs or other filings that may be requested by the arbitration panel. The arbitration panel is authorized to award monetary damages and equitable relief, specific performance and injunctive (preliminary and permanent) and declaratory relief, and/or specific performance to a Party, if such relief, in their opinion, is appropriate. In any arbitration, each Party shall bear its own costs, expenses, and attorneys' fees, unless the arbitration panel orders otherwise. This agreement to arbitrate is specifically enforceable, and the Arbitration Award will be final and binding upon the Parties to the extent provided by the Laws of the State of New Mexico. Any Arbitration Award may be filed with a court of competent jurisdiction in New Mexico and upon motion of a Party the court shall enter a judgment in conformity therewith as provided by the New Mexico Uniform Arbitration Act. Said judgment is enforceable in other States and Territories of the United States under the Full Faith and Credit provisions of the United States Constitution and other Laws.

7.9 Actions to Compel Arbitration, for Equitable Relief, and for Enforcement of Arbitration Provisions or an Arbitral Award.

(a) Forum. The Judicial District Court of the State of New Mexico and any federal court located in the United States District Court for the District of New Mexico shall have exclusive jurisdiction to compel the Parties' participation in binding arbitration pursuant to this

Agreement, enforce an arbitral award, and grant any exigent equitable relief necessary to maintain the status quo, during the pendency of the arbitration.

(b) Choice of Law. The validity, interpretation, and effect of this Dispute Resolution shall be governed by Section 12.10 of this Agreement.

7.10 Legal Remedies. Nothing in this Dispute Resolution will be deemed to prevent a Party from commencing judicial action: (i) to obtain a provisional remedy to protect the effectiveness of the arbitration proceeding; (ii) to confirm, enforce, modify, correct, vacate or challenge an Arbitration Award on grounds provided for in the New Mexico Uniform Arbitration Act; (iii) to obtain relief in instances where the arbitrators are unable or unwilling to act within the time provided for in Section 7.10; (iv) where, as the result of the unreasonable or dilatory conduct of another Party, a Party is not able to obtain a timely valid and enforceable Arbitration Award; (v) if a Party is prohibited by Law from participating in binding arbitration; or (vi) as otherwise set forth in this Agreement.

7.10 Prompt Resolution. The Parties acknowledge the importance of prompt dispute resolution. Accordingly, it is agreed that any arbitration proceeding hereunder will be scheduled and conducted in such a manner that the decision of the arbitrators is rendered no later than one hundred and eighty (180) days after an Arbitration Notice is served pursuant to Section 7.6(a).

ARTICLE 8- **INDEMNIFICATION**

8.1 Indemnification by Seller.

(a) **Purchaser Claims.** Subject to Section 8.1(b) and 8.8(b), from and after the Closing, Seller will indemnify, defend, release and hold harmless Purchaser and its Affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (collectively, the “**Purchaser Group**”), from and against any and all demands, suits, penalties, obligations, damages, claims, losses, liabilities, payments, costs and expenses (including reasonable legal, accounting and other expenses in connection therewith) (collectively, “**Damages**”), and including costs and expenses incurred in connection with investigations, and settlement proceedings arising out of, with respect to or by reason of, the following (collectively, “**Purchaser Claims**”):

(i) Seller’s breach or violation of any covenant or agreement set forth in this Agreement;

(ii) any breach or inaccuracy of the representations or warranties made by Seller contained in Article 4 of this Agreement;

(iii) the Excluded Assets; and

(iv) the Excluded Liabilities.

(b) **SELLER LIMITATIONS.** IF THE CLOSING OCCURS, THE PURCHASER GROUP WILL NOT BE ENTITLED TO ANY PUNITIVE, INCIDENTAL,

INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF ANY PURCHASER CLAIMS, INCLUDING SUCH DAMAGES FOR LOST REVENUES, INCOME, PROFITS OR TAX BENEFITS, DIMINUTION IN VALUE OF THE FACILITIES, OR ANY OTHER SUCH DAMAGE RESULTING FROM THE DISRUPTION TO OR LOSS OF OPERATION OF THE ASSETS, EXCEPT TO THE EXTENT PAYABLE WITH RESPECT TO ANY THIRD PARTY CLAIMS OR THE FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF SELLER.

8.2 Indemnification by Purchaser.

(a) **Seller Claims.** Subject to Section 8.2(b) and 8.8(b), from and after the Closing, Purchaser will indemnify, defend and hold harmless Seller and its Affiliates and each of their officers, directors, employees, attorneys, agents and successors and assigns (collectively, the “**Seller Group**”), from and against any and all Damages, and including costs and expenses incurred in connection with, investigations and settlement proceedings arising out of, with respect to or by reason of the following (collectively, “**Seller Claims**”):

(i) Purchaser’s breach or violation of any covenant or agreement set forth in this Agreement;

(ii) Any breach or inaccuracy of the representations or warranties made by Purchaser contained in Article 5 of this Agreement

(iii) the Assets; and

(iv) the Assumed Liabilities.

(b) **PURCHASER LIMITATIONS.** IF THE CLOSING OCCURS, THE SELLER GROUP WILL NOT BE ENTITLED TO ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF ANY SELLER CLAIM, INCLUDING SUCH DAMAGES FOR LOST REVENUES, INCOME, PROFITS OR TAX BENEFITS, DIMINUTION IN THE VALUE OF THE FACILITIES OR ANY OTHER SUCH DAMAGE RESULTING FROM THE DISRUPTION TO OR LOSS OF OPERATION OF THE ASSETS, EXCEPT TO THE EXTENT PAYABLE WITH RESPECT TO ANY THIRD PARTY CLAIMS OR THE FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF PURCHASER.

8.3 Notice of Claim. Subject to the terms of this Agreement and upon a Party’s receipt of notice of the assertion of a claim or of the commencement of any suit, action or proceeding made or brought by any Person who is not a Party to this Agreement or an Affiliate, the Party seeking indemnification hereunder (the “**Indemnitee**”) will promptly notify the Party against whom indemnification is sought (the “**Indemnitor**”) in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to a claim under Section 8.1 or Section 8.2. (The written notice is referred to as a “**Notice of Claim.**”) A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim. Subject to the terms of this Agreement, the failure to provide (or timely provide) a Notice of Claim will not affect the Indemnitee’s rights to indemnification except, and then only to the extent, such failure shall have materially and adversely prejudiced Indemnitor.

8.4 Defense of Third Party Claims.

(a) The Indemnitor will defend, in good faith and at its expense, any Third Party Claim set forth in a Notice of Claim. The Indemnitee, at its expense, may participate in the defense and employ, at its expense, separate counsel of its choice for such purpose. The Indemnitee cannot settle or compromise any Third Party Claim so long as the Indemnitor is defending in good faith. If the Indemnitor elects not to or does not contest a Third Party Claim, , or the Indemnitor has an unresolvable conflict of interest and therefore cannot undertake the defense of the Third Party Claim on behalf of Indemnitee, the Indemnitee may undertake its defense and the Indemnitor will be bound by the result obtained by the Indemnitee, and the Indemnitor agrees to pay to the Indemnitee promptly upon demand from time to time all reasonable attorneys' fees and other reasonable costs and expenses of defending the Third Party Claim.

(b) The Indemnitor may at any time request the Indemnitee to agree to the payment or compromise by the Indemnitor of the Third Party Claim if such payment or compromise includes a full, complete and unconditional release of the Indemnitee from further liability. If the Indemnitee does not object in writing within fifteen (15) days of the Indemnitor's request, the Indemnitor may proceed with the payment or compromise of the Third Party Claim stated in the request. If within that fifteen (15) day period the Indemnitee notifies the Indemnitor in writing that it has determined that the contest of the Third Party Claim should be continued, the Indemnitor will be liable under this Article 8 only for an amount up to the amount which the third party to the contested Third Party Claim had agreed to accept in payment or compromise as of the time the Indemnitor made its request.

(c) This Section 8.4 is subject to the rights of any Indemnitee's insurance carrier that is defending the Third Party Claim, which insurance carrier's rights shall supersede the rights of Indemnitor with respects to any conflicts.

8.5 (Reserved).

8.6 Direct Claim Procedures. In the event Indemnitee has a claim for indemnity under Section 8.1 or 8.2 against Indemnitor that does not involve a Third Party Claim, Indemnitee agrees to promptly deliver a Notice of Claim to Indemnitor. The Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim. Subject to the terms of this Agreement, the failure to provide (or timely provide) a Notice of Claim will not affect the Indemnitee's rights to indemnification unless, and then only to the extent that, such failure shall have materially and adversely prejudiced Indemnitor. If the Indemnitor does not notify the Indemnitee within thirty (30) days following the receipt of a Notice of Claim that the Indemnitor disputes its indemnity obligation to the Indemnitee with respect to such claim, such claim shall be conclusively deemed a liability of the Indemnitor and the Indemnitor shall promptly pay to the Indemnitee any and all damages arising out of such claim. If the Indemnitor has timely disputed its indemnity obligation with respect to such claim, the Parties shall proceed to resolve such dispute using negotiations or by seeking any other remedy available under contract or applicable Laws.

8.7 Cooperation. The Party defending the Third Party Claim will (a) consult with the other Party throughout the pendency of the Third Party Claim regarding the investigation, defense, settlement, trial, appeal or other resolution of the Third Party Claim; and (b) afford the other Party

the opportunity to be associated in the defense of the Third Party Claim. The Parties will cooperate in the defense of the Third Party Claim. The Indemnitee will make available to the Indemnitor or its representatives all records and other materials reasonably required by them for use in contesting any Third Party Claim (subject to obtaining an agreement to maintain the confidentiality of confidential or proprietary materials in a form reasonably acceptable to Indemnitor and Indemnitee). If requested by the Indemnitor, the Indemnitee will cooperate with the Indemnitor and its counsel in contesting any Third Party Claim that the Indemnitor elects to contest or, if appropriate, in making any counterclaim against the Person asserting the claim or demand, or any cross-complaint against any Person. The Indemnitor will reimburse the Indemnitee for any expenses incurred by Indemnitee in cooperating with or acting at the request of the Indemnitor.

8.8 Mitigation and Limitation on Claims. As used in this Agreement, the term “**Indemnifiable Claim**” means any Purchaser Claims or Seller Claims. Notwithstanding anything to the contrary contained herein:

(a) **Reasonable Steps to Mitigate.** The Indemnitee will take all reasonable steps to mitigate all Damages relating to an Indemnifiable Claim, including to the extent reasonable in the circumstances availing itself of any defenses, limitations, rights of contribution, claims against third Persons and other rights at law or equity, and will provide such evidence and documentation of the nature and extent of the Indemnifiable Claim as may be reasonably requested by the Indemnitor. The Indemnitee’s reasonable steps include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any loss or expense for which indemnification would otherwise be due under this Article 8, and the Indemnitor will reimburse the Indemnitee for the Indemnitee’s reasonable expenditures in undertaking the mitigation, together with, interest thereon from the date of payment to the date of repayment at the “prime rate” as published in *The Wall Street Journal*.

(b) **Minimum Claim.** No Party shall have any liability or obligation to indemnify under Section 8.1(a)(ii) or Section 8.2(a)(ii), as the case may be, unless the aggregate amount for which such Party would be liable thereunder, but for this provision, exceeds One Hundred Fifty Thousand Dollars (\$150,000), and recovery shall be limited only to such amounts as exceed One Hundred Fifty Thousand Dollars (\$150,000). For purposes of the foregoing, individual claims of Fifteen Thousand Dollars (\$15,000) or less shall not be aggregated for purposes of calculating such deductible threshold amount or for calculating damages in excess of such amount. In no event shall either Party’s liability under Section 8.1(a)(ii) or Section 8.2(a)(ii), respectively, exceed five million dollars (\$5,000,000.00)); provided that this limitation shall not apply to indemnification with respect to Sections 4.7 (Title). Nothing in this Section 8.8 is intended to modify or limit a Party’s liability or obligation hereunder for other Indemnifiable Claims, including claims of Purchaser with respect to Excluded Liabilities or claims of Seller with respect to Assumed Liabilities.

(c) The survival periods applicable to this Article 8 are set forth in Section 12.20.

8.9 Exclusivity. Except as specifically set forth in this Agreement, and except for intentional fraud, following the Closing, the rights and remedies of Seller Group, on the one hand, and Purchaser Group, on the other hand, for money damages under this Article 8 are, solely as

between Seller Group on the one hand and Purchaser Group on the other hand, exclusive and in lieu of any and all other rights and remedies for money damages which each of Seller on the one hand, and Purchaser on the other hand, may have under this Agreement under applicable Laws with respect to any Indemnifiable Claim, whether at common law or in equity. Other than with regards to rights or claims either Seller Group or Purchaser Group may have under this Agreement, Seller Group and Purchaser Group each release each other from any Damages arising under Environmental Law in connection with the Facilities, the Facilities Switchyard, or the Assets, their operations and their disposal practices.

ARTICLE 9
CONDITIONS PRECEDENT TO OBLIGATIONS
OF PURCHASER AT THE CLOSING

The obligations of Purchaser under this Agreement to complete the purchase of the Assets and assume the Assumed Liabilities are subject to the satisfaction or waiver, or deemed satisfaction or waiver, on or prior to the Closing, of each of the following conditions precedent:

9.1 Compliance with Provisions. Seller has performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing.

9.2 Injunction. No preliminary or permanent injunction or other order or decree by any federal or state court or Governmental Authority which prevents the consummation of the sale of the Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to cooperate in all efforts to have any such injunction, order or decree lifted) and no Law shall have been enacted by any state or federal government or Governmental Authority, which prohibits the consummation of the sale of the Assets.

9.3 Required Regulatory Approvals. Without limiting the generality of Sections 6.1 and 6.2, Purchaser shall have received all of Purchaser's Required Regulatory Approvals and Seller shall have received all of Seller's Required Regulatory Approvals.

9.4 Representations and Warranties. The representations and warranties of Seller set forth in this Agreement shall be true and correct of the Closing Date, in each case as though made at and as of the Closing Date, except as would not result in a Material Adverse Effect.

9.5 Seller's Closing Deliverables. Purchaser shall have received all of Seller's Closing Deliverables.

9.6 Liens. Any and all Encumbrances (other than Permitted Encumbrances) on the Assets shall have been released and any documents necessary to evidence such release shall have been delivered to Purchaser.

9.7 Required Consents. Without limiting the generality of Sections 6.1(a) and 6.2, all of Seller's Required Consents shall have been obtained. In addition, the Parties have submitted for approval from the Bureau of Indian Affairs any required consent or waiver to the proposed transaction by the Department of the Interior pursuant to the §323 Grant.

9.8 Facilities Permits; Transmission. Purchaser shall have secured the transfer, reissuance or procurement of the Facilities Permits, effective as of the Closing Date. Purchaser shall have secured a reasonably satisfactory agreement, if necessary, with Seller or another qualified party regarding the operation of the Facilities Switchyard post-Closing including allowing Purchaser transmission access on an open access basis pursuant to a FERC-approved tariff, that does not materially and adversely impact the value (economically or operationally) of the transaction to Purchaser.

ARTICLE 10
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER AT THE CLOSING

The obligations of Seller under this Agreement to complete the sale of the Assets and transfer the Assets and Assumed Liabilities to Purchaser are subject to the satisfaction or waiver, or deemed satisfaction or waiver, on or prior to the Closing, of each of the following conditions precedent:

10.1 Compliance with Provisions. Purchaser has performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing.

10.2 Injunction. No preliminary or permanent injunction or other order or decree by any federal or state court or Governmental Authority which prevents the consummation of the sale of the Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to use its best efforts to have any such injunction, order or decree lifted) and no Law shall have been enacted by any state or federal government or Governmental Authority in the United States which prohibits the consummation of the sale of the Assets.

10.3 Required Regulatory Approvals. Without limiting the generality of Sections 6.1(a) and 6.2, Purchaser shall have received all of Purchaser's Required Regulatory Approvals, and Seller shall have received all of Seller's Required Regulatory Approvals.

10.4 Representations and Warranties. The representations and warranties of Purchaser set forth in this Agreement shall be true and correct as of the Closing Date, in each case as though made at and as of the Closing Date, except as would not result in a material adverse effect on Purchaser's ability to consummate the transactions contemplated herein.

10.5 Purchaser's Closing Deliverables. Seller shall have received all of Purchaser's Closing Deliverables.

10.6 Required Consents. Without limiting the generality of Sections 6.1(a) and 6.2, all of Purchaser's Required Consents shall have been obtained, (b) all of Seller's Required Consents shall have been obtained and (c) the Closing shall not result in a material breach by Seller of a material Facilities Contract. In addition, the Parties have submitted for approval from the Bureau of Indian Affairs any required consent or waiver to the proposed transaction by the Department of the Interior pursuant to the §323 Grant.

10.7 Facilities Permits. Purchaser shall have secured the transfer, reissuance or procurement of the Facilities Permits, effective as of the Closing Date.

10.8 Consent Decree. (a) The United States Department of Justice shall have consented to the addition of Purchaser as a party to the Consent Decree effective as of the Closing, (b) the United States District Court for the District of New Mexico shall have issued an appropriate order modifying the Consent Decree to that effect and (c) pursuant to the actions in (a) and (b), Seller shall have been relieved of all rights and obligations under and associated with the Consent Decree.

10.9 Financial Assurance. Purchaser has satisfied the financial credit obligations specified in the Four Corners Financial Assurance Policy of the Facilities Operating Agreement.

10.10 Settlement Agreement. (a) Purchaser shall have assumed all rights and obligations under the Settlement Agreement and (b) Seller shall have been relieved of all rights and obligations under and associated with the Settlement Agreement, pursuant to an executed assignment agreement as described in Section 3.7(k).

ARTICLE 11 **TERMINATION**

11.1 Rights To Terminate. This Agreement may, by written notice given on or prior to the Closing Date, in the manner provided in Section 12.13, be terminated at any time prior to the Closing Date (or such other date as may be set forth below):

(a) by Seller if there has been a misrepresentation by Purchaser that would have a material adverse effect with respect to this Agreement and the transactions contemplated herein or a material default or material breach by Purchaser with respect to the due and timely performance of any of Purchaser's covenants and agreements contained in this Agreement (a "**Purchaser Event of Default**"), and such misrepresentation, default or breach is not cured by the earlier of the Closing Date or the date thirty (30) days after receipt by Purchaser, of written notice specifying particularly such misrepresentation, default or breach;

(b) by Purchaser if there has been a misrepresentation by Seller that would have a Material Adverse Effect with respect to this Agreement and the transactions contemplated herein or a material default or material breach by Seller with respect to the due and timely performance of any of Seller's covenants and agreements contained in this Agreement (a "**Seller Event of Default**" and together with a Purchaser Event of Default, an "**Event of Default**"), and such misrepresentation, default or breach is not cured by the earlier of the Closing Date, or the date thirty (30) days after receipt by Seller of written notice specifying particularly such misrepresentation, default or breach;

(c) by Purchaser or Seller upon written notice, if any Right of First Refusal has not expired or been waived in writing by every Facilities Owner other than Seller and Purchaser (as applicable) within one hundred and eighty (180) days of the Effective Date or such other date as mutually agreed by the Parties; provided, that if any Facilities Owner exercises its Right of First Refusal, then the Purchaser, to the extent it is authorized to exercise its Right of Refusal under the Facilities Co-Tenancy Agreement, shall exercise such right in accordance with Section 13 of the Facilities Co-Tenancy Agreement; and provided, further, the Purchaser and Seller, pursuant to Section 6.6 and subject to the requirements of Section 13 of the Facilities Co-Tenancy Agreement, agree to (i) amend this Agreement to account for such exercise (to amend the description of the

Assets to reflect the reduced interest to be acquired hereunder); and (ii) this Agreement, as so amended, shall (A) be the terms and conditions upon which Seller will convey the amended Assets to Purchaser provided hereunder with respect to the exercise of Purchaser's Right of First Refusal under the Facilities Co-Tenancy Agreement and (B) be deemed by Purchaser and Seller to have met the requirements of Section 13 of the Facilities Co-Tenancy Agreement;

(d) by Purchaser or Seller, if a permanent injunction or other order or decree by any federal or state court or Governmental Authority is issued which prevents the consummation of the transactions or if a Law shall have been enacted by any state or federal government or Governmental Authority in the United States which prohibits the consummation of the transactions; provided, that the Party seeking termination hereunder has satisfied any reasonable appeals process with respect to such permanent injunction or other order or decree;

(e) by Seller if a Seller's Required Regulatory Approval is denied or if Seller has a material condition placed upon it as set forth in Section 6.2 or by Purchaser if a Purchaser's Required Regulatory Approval is denied or if Purchaser has a material condition placed upon it as set forth in Section 6.2;

(f) by Purchaser or Seller, if Closing does not occur by December 31, 2024 (unless such date has been mutually agreed to be changed pursuant to Section 3.1, in which case such other mutually agreed date shall apply); provided, that the defaulting or breaching Party shall have no right to terminate this Agreement under this Section 11.1(f) if such Party's default or breach caused, or resulted in, the failure of the Closing to occur on or before December 31, 2024 (unless such date has been mutually agreed to be changed pursuant to Section 3.1, in which case such other mutually agreed date shall apply);

(g) by Purchaser pursuant to Section 12.4; or

(h) by mutual agreement of Seller and Purchaser.

11.2 Effect of Termination. If this Agreement is terminated pursuant to Section 11.1, all further obligations and liabilities of the Parties to consummate the transactions hereunder will terminate; provided, that the Parties will have all remedies at law or in equity for breach or default occurring prior to termination (including specific performance as provided in Section 11.3) and the obligations set forth in Sections 4.8, 5.6, and Articles 8, 11 and 12 shall survive. Upon termination, the originals of any items, documents or written materials provided by one Party to the other Party will be returned by the receiving Party to the providing Party.

11.3 Specific Performance; Limitation of Damages. Seller acknowledges that the transactions contemplated by this Agreement are unique and that Purchaser will be irreparably injured should such transactions not be consummated in a timely fashion. Consequently, Purchaser will not have an adequate remedy at law if Seller shall fail to transfer, assign and convey the Assets when required to do so hereunder. In such event, prior to any termination of this Agreement pursuant to Section 11.1, Purchaser shall have the right, in addition to any other remedy available in equity or law, to seek specific performance of such obligation by Seller and to seek an injunction or injunctions to prevent breaches by Seller hereunder, subject to Purchaser's performance of its obligations hereunder. Purchaser acknowledges that the transactions contemplated by this

Agreement are unique and that Seller will be irreparably injured should such transactions not be consummated in a timely fashion. Consequently, Seller will not have an adequate remedy at law if Purchaser shall fail to purchase the Assets when required to do so hereunder. In such event, prior to any termination of this Agreement pursuant to Section 11.1, Seller shall have the right, in addition to any other remedy available in equity or law, to seek specific performance of such obligation by Purchaser and to seek an injunction or injunctions to prevent breaches by Purchaser hereunder, subject to Seller's performance of its obligations hereunder. Except with respect to Third Party Claims as contemplated in Sections 8.1(b) and 8.2(b), neither Party will be entitled to any punitive, incidental, indirect, special or consequential damages, including such damages for lost revenues, income or profits, resulting from or arising out of a breach of this Agreement, whether or not the Closing occurs.

11.4 Refund Upon Termination.

(a) In the event this Agreement is terminated pursuant to Section 11.1 (other than a termination under Section 11.1(b) or Section 12.4) prior to the Closing, Purchaser shall refund any portion of the Initial CSA Assignment Payment and Final CSA Assignment Payment received by Purchaser from Seller prior to such termination. Purchaser shall pay any such amount at the sooner of (i) within twenty (20) Business Days of the termination of this Agreement and (ii) December 31, 2024; or such other date as mutually agreed to in writing by the Parties. Upon the termination of this Agreement, any payment made pursuant to this Section 11.4 shall be made by Purchaser to Seller in cash, with interest at an annual compounded rate of six point seven percent (6.7%) with such interest accruing from the date any such refunded amount was originally paid to Purchaser and ending on the date such payment set forth herein is paid to Seller.

(b) In the event this Agreement is terminated pursuant to Section 11.1(b) or Section 12.4, Purchaser shall offset any portion of the Initial CSA Assignment Payment and Final CSA Assignment Payment received from Seller against payments owed to Purchaser by Seller under the Coal Supply Agreement in an amount equal to such Initial CSA Assignment Payment and Final CSA Assignment Payment received. Upon the event of such termination as set forth herein, the Parties agree that they shall cooperate to create and implement any mechanisms required, if necessary, to carry out the offset against Seller's obligations under the Coal Supply Agreement. Any amount offset against Seller's obligations under the Coal Supply Agreement made pursuant to this Section 11.4(b) shall be increased by interest deemed accrued at an annual compounded rate of six point seven percent (6.7%), with such interest accruing from the date any such offset amount was originally paid to Purchaser and ending on the date such termination event giving rise to Seller's right of offset occurs.

ARTICLE 12 **MISCELLANEOUS AGREEMENTS AND ACKNOWLEDGMENTS**

12.1 Expenses. Except as otherwise provided herein, each Party is responsible for its own costs and expenses (including attorneys' and consultants' fees, costs and expenses) incurred in connection with this Agreement and the consummation of the transactions contemplated by this Agreement.

12.2 Entire Document. This Agreement (including the Exhibits and Schedules to this Agreement) and the Ancillary Agreements contain the entire agreement between the Parties with respect to the transactions contemplated hereby and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings between the Parties with respect to the subject matter of this Agreement prior to the execution date of this Agreement, written or oral.

12.3 Amendment and Waiver. No waiver and no modification or amendment of any provision of this Agreement is effective unless made in writing and duly signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective, referring specifically to this Agreement, and then only to the specific purpose, extent and interest so provided. Except as otherwise provided in this Agreement, no failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude or estop any other or further exercise thereof or the exercise of any other right, power or privilege. Except as set forth in Section 8.9, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

12.4 Schedules. The Parties agree and acknowledge that the Schedules delivered pursuant to the terms of this Agreement are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. In addition to the foregoing, if after the Effective Date, Seller gains Knowledge of any potential breach of any representation or warranty set forth in Article 4, then until eleven (11) Business Days prior to the Closing, Seller shall have the right to supplement, modify, or update the Seller's Schedule of Exceptions (the "**Updated Seller's Schedule of Exceptions**") (including with respect to representations and warranties set forth in Article 4 that are not qualified by reference to Seller's Schedule of Exceptions as of the date hereof); provided, that such right to supplement, modify, or update shall not apply to Schedule 2.1(q) and Schedule 2.4(q). Such Updated Seller's Schedule of Exceptions shall be given effect for all purposes under this Agreement, including with respect to the satisfaction of the conditions precedent set forth in Article 9 and with respect to the determination of indemnification obligations under Article 8; provided, that if without giving effect to the Updated Seller's Schedule of Exceptions there would be a breach that would allow the termination of this Agreement, then Purchaser shall have the right to terminate this Agreement by providing written notice to Seller within ten (10) Business Days after such Updated Seller's Schedule of Exceptions was provided.

12.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Party hereto.

12.6 Severability. If any provision hereof is held invalid or unenforceable, including as a result of future legislative action, this holding or action will be strictly construed and will not affect the validity or effect of any other provision hereof, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. To the extent permitted by law, the Parties waive, to

the maximum extent permissible, any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

12.7 Assignability.

(a) Except as provided in Section 12.7(b), this Agreement is not assignable by either Party without the prior written consent of the other Party, which may not be unreasonably withheld by the non-assigning Party, and no assignment shall relieve the assigning Party of any of its obligations hereunder, except with consent of the non-assigning Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, prior written consent of the other Party shall not be required for any upstream change in control, merger or similar transaction with respect to either Party or any of such Party's Affiliates. This Agreement is binding upon and inures to the benefit of the successors and permitted assigns of the Parties.

(b) Purchaser shall have the right upon written notice to Seller (without requiring the consent of Seller) to assign all or any part of this Agreement and Purchaser's rights and obligations hereunder to any corporation or entity the stock or ownership of which is wholly owned by Purchaser; provided, that such assignee expressly assumes the rights and obligations of Purchaser being assigned; provided, further, that in the event of such assignment, Purchaser shall provide a guaranty guaranteeing all of such assignee's obligations under this Agreement in form and substance reasonably acceptable to Seller.

12.8 Reliance on Counsel; Mutuality of Drafting. Each of the Parties agrees that it has been represented by independent counsel during the negotiation and execution of this Agreement, and that it has executed this Agreement upon the advice of such independent counsel. Each of the Parties agrees that it is not relying on the statements of the other Party as inducements to enter into this Agreement, and that no representations and warranties are made by any Party other than those set forth in this Agreement. Each Party cooperated in the drafting and preparation of this Agreement, and any and all drafts related thereto shall be deemed the work product of the Parties and not construed against any Party by reason of its preparation. Each Party hereby waives the application of any law, regulation, holding or rule of construction that provides that ambiguities in an agreement are construed against the Party drafting such agreement or document.

12.9 Captions. The captions of the various Articles, Sections, Exhibits and Schedules of this Agreement have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Agreement.

12.10 Governing Law. The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the state of New Mexico applicable to contracts made and performed in such state and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by federal law.

12.11 Jurisdiction; Service of Process. Each of the Parties hereto, and subject to Dispute Resolution (a) hereby irrevocably consents to the exclusive jurisdiction of the courts of the State of New Mexico and of any federal court located in the United States District Court for the District of New Mexico (or, if such courts do not accept jurisdiction, any state or federal court of competent jurisdiction in the United States) in connection with any suit, action or other proceeding arising

out of or relating to this Agreement or the transactions contemplated herein, (b) hereby agrees to waive any objection to venue in the State of New Mexico and Bernalillo County, and (c) agrees that, to the extent permitted by law, service of process in connection with any such proceeding may be effected by mailing in the same manner provided in Section 12.13 hereof.

12.12 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO A DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

12.13 Notices. All notices, requests, demands and other communications under this Agreement must be in writing and must be delivered in person or sent by certified mail, postage prepaid, or by overnight delivery, and properly addressed as follows:

If to Purchaser:

Navajo Transitional Energy Company, LLC
4801 N Butler Ave.
Farmington, NM 87401
Attention: Bernard Masters

With a copy to:

Zev Simpser
50 South 6th Street
Suite 1500
Minneapolis, MN 55402

If to Seller:

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102
Attn: Thomas Fallgren

With a copy to:

Madonna Bixby
414 Silver Ave. SW
Albuquerque, NM 87102
Attn: General Counsel

Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change is effective until it is actually received by the Party sought to be charged with its contents.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 12.13 are effective upon delivery, if received prior to

5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice or communication shall be deemed not to have been received until the next succeeding Business Day.

12.14 Public Statements. The Parties shall first cooperate with each other prior to disseminating any press release or other public announcement or disclosure concerning this Agreement, the transactions contemplated herein or the Closing (which cooperation will include information that cannot be disseminated except in accordance with the following proviso); provided, that if pursuant to such cooperation the Parties have agreed in writing that certain information not be disseminated, then neither the other Party nor any of its respective Affiliates will disseminate any such press release or other public announcement or disclosure without the prior written consent of the requesting Party.

12.15 Time is of the Essence. Time is of the essence of each term of this Agreement. Without limiting the generality of the foregoing, all times provided for in this Agreement for the performance of any act will be strictly construed.

12.16 No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party.

12.17 No Joint Venture. Nothing contained in this Agreement creates or is intended to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to any Party.

12.18 Construction of Agreement. Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any Party, but will be construed in the manner that most accurately reflects the Parties' intent as of the date they executed this Agreement.

12.19 Conflicts. In the event of any inconsistencies between the terms of and statements in the body of this Agreement and those in the Ancillary Agreements or the Exhibits and Schedules (other than an exception expressly set forth as such in the Schedules), the terms of and statements in the body of this Agreement will control.

12.20 Survival.

(a) The representations and warranties given or made by any Party in Article 4 or Article 5 hereof or in any certificate or other writing furnished in connection herewith shall survive the Closing until the first anniversary of the Closing Date, provided that the representations and warranties contained in Sections 4.7 (Title), 4.8 (Brokers), 5.6 (Brokers), 5.7 (Investigation) and 5.8 (As Is Sale) shall survive indefinitely or until the latest date permitted by law and the representations and warranties contained in Section 4.9 (Taxes) shall survive the Closing until the date that is thirty (30) days following the expiration of the applicable statute of limitations.

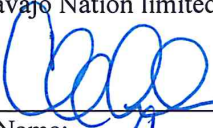
(b) The covenants and agreements of the Parties contained in this Agreement, including those set forth in Sections 6.9, 6.10, and 11.4 and Article 8, shall survive the Closing indefinitely or until the latest date permitted by law, unless otherwise specified herein.

Notwithstanding the foregoing, any breach of covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to this Section 12.20, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the Party against whom such indemnity may be sought prior to such time.

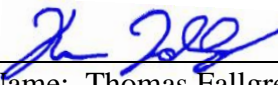
(Signature page follows)

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

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC,
a Navajo Nation limited liability company

By: 
Name: C. A. MOSELEY
Title: MANAGEMENT COMMITTEE EXECUTIVE

PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation

By:  _____
Name: Thomas Fallgren
Title: Vice President of Generation

Schedules to Purchase and Sale Agreement

1.1.4	“Amended Contracts”
1.1.11	“Capital Improvements”
1.1.47(a)	“Seller’s Officers, Employees, and Knowledgeable Persons”
1.1.47(b)	“Purchaser’s Officers, Employees and Authorized Agents”
1.1.62	“Purchaser’s Required Consents”
1.1.63	“Purchaser’s Required Regulatory Approvals”
1.1.72	“Seller’s Required Consents”
1.1.73	“Seller’s Required Regulatory Approvals”
2.1(b)	“Leased Property”
2.1(c)	“Rights-of-Way/Easements and Water Rights”
2.1(h)	“Facilities Contracts”
2.1(i)	“Facilities Permits”
2.1(k)	“Third Party Warranties”
2.1(r)	“Miscellaneous Assets”
2.2(a)	“Excluded Assets”
2.2(c)	“Cash Exceptions”
3.6(a)(ii)	“Operating and Maintenance Expense Pro-Rations”
4.6	“Litigation”
4.7	“Title”
4.9(c)	“Tax Proceedings”
4.9(g)	“Partnership Taxes”
4.10	“Environmental Matters”
4.11	“Facilities Project Contracts”
4.12	“Other Material Real Property”

Schedule 1.1.4

Amended Contracts

1. Facilities Co-Tenancy Agreement
2. Facilities Operating Agreement
3. Four Corners Cost Allocation Agreement

Schedule 1.1.11

Capital Improvements

Attached for informational purposes are the forecasted long-range Capital Improvements, which list is for informational purposes only. Seller shall provide to Purchaser within a reasonable time any updates to the forecasted long-range Capital Improvements that are provided to Seller by Operating Agent. Pursuant to Section 6.1(d)(ii), modifications and approvals to such Capital Improvements which are presented by the Operating Agent will be approved or disapproved as provided therein.

1. [See attached]

Four Corners 2020 Capital LRF

Line #	WA	CBI	Project Name	NPVBCR	Unit Code	Outage	Prior Years	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Project Total
1	FCC014267	FC19-25	2nd Stage Secondary Superheater Replacement	2.91	F4	Out	4,933	8,589	-	-	-	-	-	-	-	-	-	13,522
2	FCC014866	FC20-49	Thickener Replacement	1.84	F4	Out	2,143	3,355	-	-	-	-	-	-	-	-	-	5,498
3	FCC012891	FC20-14	Burner Replacement - Phase 2	-	F4	Out	1,884	9,119	-	-	-	-	-	-	-	-	-	11,003
4	FCC08309	FC19-41	Exciter Replacement	1.07	F4	Out	1,834	2,683	-	-	-	-	-	-	-	-	-	4,517
5	FCC09075	FC20-40	Reheat Connecting Bank Replacement	2.25	F4	Out	1,578	4,058	-	-	-	-	-	-	-	-	-	5,636
6	FCC08859	FC19-54	Baghouse Vent Header Replacement	2.26	F5	Out	2,377	-	-	-	-	-	-	-	-	-	-	2,377
7	FCC08917	FC20-39	T-621 Auxillary Transformer Replacement	3.85	F4	Out	1,484	150	1,451	-	-	-	-	-	-	-	-	3,085
8	FCC08730	FC20-08	Phase 5 Water Piping Replacement	-	F45	Out	1,460	1,341	1,242	-	-	-	-	-	-	-	-	4,043
9	FCC09069	FC19-61	Boiler Convection Pass Tube Replacement	4.90	F4	Out	1,751	7,266	-	-	-	-	-	-	-	-	-	9,017
10	FCC08897	FC20-11	Scrubber Outlet Dampers	-	F4	Out	1,359	1,230	1,283	-	-	-	-	-	-	-	-	3,872
11	FCC06843	FC19-29	Horizontal Reheat Inlet Header Repl	7.58	F5	Out	2,245	-	-	-	-	-	-	-	-	-	-	2,245
12	FCC08473	FC20-06	Baghouse Vent Header Replacement	-	F4	Out	1,002	1,018	-	-	-	-	-	-	-	-	-	2,020
13	FCC03957	FC19-26	1st Stage Pendant Secondary Superheater Replacement	5.40	F4	Out	1,059	3,561	0	-	-	-	-	-	-	-	-	4,620
14	FCC06840	FC19-28	Horizontal Reheat Inlet Header Repl	4.83	F4	Out	1,147	4,276	-	-	-	-	-	-	-	-	-	5,462
15	FCC08798	FC20-63	4th Point Feedwater Heater Replacement	2.52	F5	Out	940	2,555	-	-	-	-	-	-	-	-	-	3,504
16	FCC015279	FC20-31	Baghouse North Elevator Replacement	-	F4	Out	881	438	-	-	-	-	-	-	-	-	-	1,319
17	FCC015280	FC20-32	Baghouse South Elevator Replacement	-	F4	Out	817	476	-	-	-	-	-	-	-	-	-	1,293
18	FCC08317	FC-20-04	2021 Turbine Minor Overhaul	69.10	F4	Out	763	1,512	-	-	-	-	-	-	-	-	-	2,275
19	FCC08797	FC20-64	4th Point Feedwater Heater Replacement	3.31	F4	Out	757	1,923	-	-	-	-	-	-	-	-	-	2,680
20	FCC015707	FC20-38R1	Supply Chain Optimization System Development	-	FC	Out	666	1,211	841	-	-	-	-	-	-	-	-	2,718
21	FCC014253	FC20-24	Coal Piping Knife Gate Isolation Valve	-	F4	Out	601	631	-	-	-	-	-	-	-	-	-	1,232
22	FCC012896	FC20-15	Safety Valve Replacement	7.21	F4	Out	553	942	-	-	-	-	-	-	-	-	-	1,495
23	FCC06587	FC20-70	6th Point Feedwater Heater Replacement	3.77	F5	Out	511	1,375	0	-	-	-	-	-	-	-	-	1,888
24	FCC012938	FC20-42	Boiler Feedwater Miniflow Piping Replacement	3.03	F4	Out	498	1,443	-	-	-	-	-	-	-	-	-	1,941
25	FCC08872	FC20-10	Fly Ash Transport System Replacement	-	F4	Out	482	834	-	-	-	-	-	-	-	-	-	1,316
26	FCC08996	FC20-13	U45 Sulfur Tank Addition	-	F45	Out	326	527	-	-	-	-	-	-	-	-	-	853
27	FCC012943	FC20-44	Boiler Feedwater Discharge Block Valve Replacement	3.43	F5	Out	322	883	-	-	-	-	-	-	-	-	-	1,205
28	FCC013854	FC20-21	Boiler 200 Valve Replacement	11.91	F4	Out	301	661	-	-	-	-	-	-	-	-	-	962
29	FCC013856	FC20-22	Boiler 201A Valve Replacement	33.47	F4	Out	295	-	-	-	-	-	-	-	-	-	-	295
30	FCC013857	FC20-23	Boiler 201A Valve Replacement	32.57	F5	Out	288	-	-	-	-	-	-	-	-	-	-	288
31	FCC014942	FC20-26	Economizer Inlet Block Valve Replacement	5.36	F4	Out	277	1,071	-	-	-	-	-	-	-	-	-	1,348
32	FCC014943	FC20-27	Economizer Inlet Block Valve Replacement	5.52	F5	Out	256	1,034	-	-	-	-	-	-	-	-	-	1,290
33	FCC012934	FC20-18	Fly Ash Level Indicator Replacement	-	F4	Out	219	165	-	-	-	-	-	-	-	-	-	384
34	FCC014272	FC20-46	1st Point Feedwater Inlet MOV Replacement	9.91	F4	Out	197	622	-	-	-	-	-	-	-	-	-	819
35	FCC014273	FC20-47	1st Point Feedwater Inlet MOV Replacement	10.21	F5	Out	186	602	-	-	-	-	-	-	-	-	-	788
36	FCC013149	FC20-19	Lime Feed Header Replacement	-	F4	Out	179	483	-	-	-	-	-	-	-	-	-	662
37	FCC08547	FC20-07	Main Elevator Modernization	-	F45	Out	177	1,110	10	-	-	-	-	-	-	-	-	1,297
38	FCC012942	FC20-43	Boiler Feed Pump Discharge Check Valve Replacement	5.51	F4	Out	164	476	-	-	-	-	-	-	-	-	-	640
39	FCC016439	FC20-80	FC Supply Chain Optimization - FC Contract Mgmt License Fee 2020-2022	-	F45	Out	162	5	5	-	-	-	-	-	-	-	-	172
40	FCC016440	FC20-81	FC Supply Chain Optimization - Contract Mgmt Implementation	-	F45	Out	45	27	11	-	-	-	-	-	-	-	-	83
41	FCC016441	FC20-82	FC Supply Chain Optimization - FC Inventory Optimization	-	F45	Out	41	12	5	-	-	-	-	-	-	-	-	58
42	FCC08151	FC19-37	Heat Trace - Phase 3	-	F45	Out	528	1,475	1,475	-	-	-	-	-	-	-	-	3,478
43	FCC08229	FC19-38	Pulverizer Motor Replacement	3.38	F5	Out	111	236	-	-	-	-	-	-	-	-	-	347
44	FCC015144	FC21-05	Motors, Pumps and Valves - 2021	-	F45	Out	-	6,350	-	-	-	-	-	-	-	-	-	6,350
45	FCC07348	FC19-32	Highway and Road Paving	-	FC	Out	-	3,905	-	-	-	-	-	-	-	-	-	3,905
46	FCC016078	FC21-07	F45 Pulverizer Grinding Zone and Gear Drive Replacements - 2021	-	F45	Out	-	3,500	-	-	-	-	-	-	-	-	-	3,500
47	FCC016494	FC21-36	F45 ELG Plant Modifications	-	F45	Out	-	3,099	15,643	6,526	-	-	-	-	-	-	-	25,360
48	FCC06570	FC21-35	GSU Transformer T641 Replacement	3.35	F4	Out	-	-	-	-	2,659	1,881	-	-	-	-	-	4,541
49	FCC015124	FC21-03	FC Electrical Systems - 2021	-	F45	Out	-	1,587	-	-	-	-	-	-	-	-	-	1,587
50	FCC014803	FC21-34	Area Lighting Replacement Phase 3	-	F45	Out	-	1,592	-	-	-	-	-	-	-	-	-	1,592
51	FCC08407	FC21-11	2022 CBI Development	-	F45	Out	-	1,174	-	-	-	-	-	-	-	-	-	1,174
52	FCC07210	FC21-08	2021 Fabric Filter Bag Replacement	-	F4	Out	-	1,173	-	-	-	-	-	-	-	-	-	1,173
53	FCC07211	FC21-09	2021 Fabric Filter Bag Replacement	-	F5	Out	-	1,172	-	-	-	-	-	-	-	-	-	1,172
54	FCC016148	FC21-21	Baghouse North Elevator Replacement	-	F5	Out	-	1,138	2	-	-	-	-	-	-	-	-	1,140
55	FCC016149	FC21-22	Baghouse South Elevator Replacement	-	F5	Out	-	1,131	13	-	-	-	-	-	-	-	-	1,144
56	FCC016351	FC21-42	Fire Warning Detection System Replacement - Phase 2	-	F45	Out	-	1,106	1,247	-	-	-	-	-	-	-	-	2,381

Four Corners 2020 Capital LRF

Line #	WA	CBI	Project Name	NPVBCR	Unit Code	Outage	Prior Years	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Project Total
57	FCC015100	FC21-33	Phase 6 Water Piping Replacement	-	F45		-	1,499	-	-	-	-	-	-	-	-	-	1,499
58	FCC016424	FC21-43	DCS Power Supplies Replacement	3.81	F4	Out	-	865	-	-	-	-	-	-	-	-	-	865
59	FCC016807	FC20-87	F4 Condenser Expansion Joint Replacement	44.11	F4	Out	50	700	-	-	-	-	-	-	-	-	-	750
60	FCC016380	FC21-47	Baghouse Air Compressor Replacement	3.29	F45		-	703	-	-	-	-	-	-	-	-	-	703
61	FCC015368	FC21-31	Baghouse Poppet Valve Actuator Replacement	1.37	F4	Out	-	566	-	-	-	-	-	-	-	-	-	566
62	FCC015384	FC21-06	Coal Handling Replacements - 2021	-	F45		-	555	-	-	-	-	-	-	-	-	-	555
63	FCC016659	FC21-45	DCS Card and Power Supplies Replacement	6.18	F45	Out	-	880	-	-	-	-	-	-	-	-	-	880
64	FCC015086	FC21-28	Boiler FW Booster Pump Replacement	15.53	F5		-	446	361	-	-	-	-	-	-	-	-	815
65	FCC015085	FC21-27	Boiler FW Booster Pump Replacement	14.96	F4	Out	-	446	361	-	-	-	-	-	-	-	-	815
66	FCC013745	FC21-48	ABB HMI Replacement	5.37	F45		-	441	1,008	-	-	-	-	-	-	-	-	1,449
67	FCC015071	FC21-13	Purchase New 75 Ton Crane	1.05	F45		-	440	-	-	-	-	-	-	-	-	-	440
68	FCC06555	FC21-46	Startup Valve Replacement (205)	16.54	F4	Out	-	448	-	-	-	-	-	-	-	-	-	459
69	FCC016656	FC21-44	Potable Water Treatment System Upgrade	-	F45		-	397	643	-	-	-	-	-	-	-	-	1,055
70	FCC08861	FC21-39	Baghouse Booster Fan Motor Replacement - C	4.37	F5	Out	-	256	-	-	-	-	-	-	-	-	-	256
71	FCC08863	FC21-40	Baghouse Booster Fan Motor Replacement - A	4.47	F4	Out	-	268	-	-	-	-	-	-	-	-	-	268
72	FCC015134	FC21-04	Water Systems/Membranes Program - 2021	-	F45		-	350	-	-	-	-	-	-	-	-	-	350
73	FCC012928	FC21-12	North Area Sump Replacement	-	F45		-	322	839	-	-	-	-	-	-	-	-	1,194
74	FCC08924	FC21-41	Baghouse 13.8KV Fan Motor Protective Relay Replacement	1.03	F4	Out	-	325	271	-	-	-	-	-	-	-	-	617
75	FCC08232	FC21-10	2021 Plant Tools	-	F45		-	300	-	-	-	-	-	-	-	-	-	300
76	FCC012911	FC21-02	Miscellaneous Lagging & Insulation Replacement - 2021	-	F5		-	300	-	-	-	-	-	-	-	-	-	300
77	FCC012910	FC21-01	Miscellaneous Lagging & Insulation Replacement - 2021	-	F4		-	300	-	-	-	-	-	-	-	-	-	300
78	FCC015097	FC21-20	North & South Train Lime Weigh Belt Feeders Replacement	3.72	F5		-	286	1,561	-	-	-	-	-	-	-	-	1,892
79	FCC015081	FC21-18	O2 Injection System Replacement	4.38	F45	Out	-	271	-	474	-	-	-	-	-	-	-	744
80	FCC08548	FC21-23	Lime Silo Elevator Replacement	-	F45		-	281	780	-	-	-	-	-	-	-	-	1,088
81	FCC08585	FC21-32	Bottom Ash Clinker Grinder Replacement	2.48	F5	Out	-	280	-	-	-	-	-	-	-	-	-	280
82	FCC015096	FC21-19	South Train Lime Weigh Belt Feeders Replacement	6.86	F4		-	217	901	-	-	-	-	-	-	-	-	1,157
83	FCC013147	FC21-24	Bottom Ash Control Valve Replacement	1.58	F45	Out	-	200	318	-	-	-	-	-	-	-	-	527
84	FCC015094	FC21-30	Superheater Spray CV And Block Valves Replacement	5.67	F5	Out	-	197	450	-	-	-	-	-	-	-	-	655
85	FCC015093	FC21-29	Superheater Spray CV And Block Valves Replacement	5.47	F4	Out	-	197	450	-	-	-	-	-	-	-	-	655
86	FCC015072	FC21-14	Lime Storage Tank Agitator and Gearbox Replacement	8.64	F4	Out	-	189	724	-	-	-	-	-	-	-	-	921
87	FCC015076	FC21-16	Reverse Air Fan Outlet Damper Replacement	1.11	F4	Out	-	189	484	-	-	-	-	-	-	-	-	679
88	FCC015077	FC21-17	Reverse Air Fan Outlet Damper Replacement	1.36	F5	Out	-	172	4,196	-	-	-	-	-	-	-	-	672
89	FCC015073	FC21-15	Lime Storage Tank Agitator Gearbox Replacement	13.83	F5		-	166	377	-	-	-	-	-	-	-	-	551
90	FCC015080	FC21-26	DA Pegging Steam Control Valve Replacement	5.41	F5	Out	-	-	158	276	-	-	-	-	-	-	-	434
91	FCC015079	FC21-25	DA Pegging Steam Control Valve Replacement	5.41	F4	Out	-	-	158	276	-	-	-	-	-	-	-	434
92	FCC08575	FC21-37	4X FD Fan Motor Replacement	10.42	F4	Out	-	122	-	-	-	-	-	-	-	-	-	122
93	FCC08578	FC21-38	4X PA Fan Motor Replacement	8.63	F4	Out	-	122	-	-	-	-	-	-	-	-	-	122
94	FCC015145	TBD	Motors, Pumps and Valves - 2022	-	F45		-	-	5,000	-	-	-	-	-	-	-	-	5,000
95	FCC016598	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2022	-	F45		-	-	3,500	-	-	-	-	-	-	-	-	3,500
96	FCC015125	TBD	FC Electrical Systems - 2022	-	F45		-	-	1,300	-	-	-	-	-	-	-	-	1,300
97	FCC07213	TBD	F5 2022 Fabric Filter Bag Replacement	-	F5		-	-	1,202	-	-	-	-	-	-	-	-	1,202
98	FCC07212	TBD	F4 2022 Fabric Filter Bag Replacement	-	F4		-	-	1,202	-	-	-	-	-	-	-	-	1,202
99	FCC08408	TBD	2023 CBI Development	-	F45		-	-	1,132	-	-	-	-	-	-	-	-	1,132
100	FCC08549	TBD	Plant Elevator Replacement - 2022	-	F45		-	-	794	-	-	-	-	-	-	-	-	794
101	FCC015074	TBD	North #1 Hydrobin Cone Replacement	-	F45		-	-	879	787	-	-	-	-	-	-	-	1,666
102	FCC08494	TBD	Miscellaneous Lagging and Insulation Replacement - 2022	-	F5		-	-	500	-	-	-	-	-	-	-	-	500
103	FCC012912	TBD	Miscellaneous Lagging & Insulation Replacement - 2022	-	F4		-	-	500	-	-	-	-	-	-	-	-	500
104	FCC016727	TBD	Baghouse Air Compressor Replacement - 2022	-	F45		-	-	750	-	-	-	-	-	-	-	-	750
105	FCC014804	TBD	Area Lighting Replacement Phase 4	-	F45		-	-	500	-	-	-	-	-	-	-	-	500
106	FCC08233	TBD	2022 Plant Tools	-	F45		-	-	476	-	-	-	-	-	-	-	-	476
107	FCC08535	TBD	Microsoft License Agrmnt, 2022-2024	-	F45		-	-	470	-	-	-	-	-	-	-	-	470
108	FCC016509	TBD	Morgan Dam Piezometer Install	-	FC		-	-	413	-	-	-	-	-	-	-	-	413
109	FCC015135	TBD	Water Systems/Membranes Program - 2022	-	F45		-	-	350	-	-	-	-	-	-	-	-	350
110	FCC08864	TBD	Baghouse Booster Fan Motor Replacement - B	-	F4	Out	-	-	211	-	-	-	-	-	-	-	-	211
111	FCC016352	TBD	PH Sampling Stations Replacement	1.23	F5	Out	-	-	332	606	-	-	-	-	-	-	-	938
112	FCC015095	TBD	PH Sampling Stations Replacement	1.23	F4	Out	-	-	332	600	-	-	-	-	-	-	-	932

Four Corners 2020 Capital LRF

Line #	WA	CBI	Project Name	NPVBCR	Unit Code	Outage	Prior Years	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Project Total
113	FCC015385	TBD	Coal Handling Replacements - 2022	-	F45	-	-	-	300	-	-	-	-	-	-	-	-	300
114	FCC08918	TBD	1st Stage Pendant Secondary Superheater Replacement - Phase II	-	F5	Out	-	-	261	1,562	5,484	-	-	-	-	-	-	7,307
115	FCC09081	TBD	Boiler Waterwall Replacement	-	F5	Out	-	-	100	600	2,800	-	-	-	-	-	-	3,500
116	FCC06589	TBD	Circ Water Pump Replacement 2024	-	F5	Out	-	-	245	1,912	(336)	-	-	-	-	-	-	1,821
117	FCC09082	TBD	Primary Superheater Replacement	-	F5	Out	-	-	100	400	2,750	-	-	-	-	-	-	3,250
118	FCC09084	TBD	Boiler Screen Tube Replacement	-	F5	Out	-	-	100	400	2,500	-	-	-	-	-	-	3,000
119	FCC08582	TBD	Bottom Ash Clinker Grinder Replacement	-	F4	Out	-	-	206	-	-	-	-	-	-	-	-	206
120	FCC06586	TBD	Circ Water Pump Replacement 2024	-	F4	Out	-	-	163	958	464	-	-	-	-	-	-	1,585
121	FCC016253	TBD	Reverse Air Fan Inlet Damper Replacement	-	F4	Out	-	-	149	252	-	-	-	-	-	-	-	401
122	FCC015078	TBD	Reverse Air Fan Inlet Damper Replacement	-	F5	Out	-	-	142	247	-	-	-	-	-	-	-	389
123	FCC03905	TBD	Boiler Nose Replacement	-	F5	Out	-	-	139	870	2,162	-	-	-	-	-	-	3,172
124	FCC09058	TBD	Convection Pass Water Tube Replacement	-	F5	Out	-	-	100	900	3,157	-	-	-	-	-	-	4,157
125	FCC012719	TBD	Furnace Waterwall Replacement	-	F5	Out	-	-	100	500	3,500	-	-	-	-	-	-	4,100
126	FCC016369	TBD	Slurry Density Control Valves Replacement	-	F5	Out	-	-	88	-	-	-	-	-	-	-	-	88
127	FCC015089	TBD	Condensate Pump #3 Replacement	-	F4	Out	-	-	75	-	-	-	-	-	-	-	-	75
128	FCC015091	TBD	Condensate Pump #2 Replacement	-	F5	Out	-	-	75	-	-	-	-	-	-	-	-	75
129	FCC08264	TBD	Confined Space/High Angle/Low Angle Rescue Equipment	-	F45	-	-	-	70	-	-	-	-	-	-	-	-	70
130	FCC08267	TBD	SCBA Tank/Pack Set Equipment Replacements - Year 2	-	F45	-	-	-	54	-	-	-	-	-	-	-	-	54
131	FCC016368	TBD	Slurry Density Control Valves Replacement	-	F4	Out	-	-	45	-	-	-	-	-	-	-	-	45
132	FCC07903	FC18-08	GSU Transformer T-1092 Replacement	19.46	F5	Out	-	-	32	2,502	991	-	-	-	-	-	-	3,526
133	FCC012937	TBD	High Energy Pipe Hanger Replacement	-	F5	Out	-	-	25	275	-	-	-	-	-	-	-	300
134	FCC012936	TBD	High Energy Pipe Hanger Replacement	11.43	F4	Out	-	-	25	225	-	-	-	-	-	-	-	250
135	FCC015146	TBD	Motors, Pumps and Valves - 2023	-	F45	-	-	-	-	5,000	-	-	-	-	-	-	-	5,000
136	FCC016599	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2023	-	F45	-	-	-	-	3,500	-	-	-	-	-	-	-	3,500
137	FCC08530	TBD	APH Basket Replacement	-	F5	Out	-	-	-	3,388	2,005	-	-	-	-	-	-	5,393
138	FCC08532	TBD	Third Pass Waterwall Tube Replacement	-	F5	Out	-	-	-	1,838	2,156	-	-	-	-	-	-	3,995
139	FCC06563	TBD	HP-IP-LP Turbine Major Overhaul	-	F5	Out	-	-	-	1,500	9,600	-	-	-	-	-	-	11,100
140	FCC08898	TBD	Scrubber Outlet Dampers	-	F5	Out	-	-	-	1,473	3,270	-	-	-	-	-	-	4,743
141	FCC015126	TBD	FC Electrical Systems - 2023	-	F45	-	-	-	-	1,300	-	-	-	-	-	-	-	1,300
142	FCC08272	TBD	F4 2023 Fabric Filter Bag Replacement	-	F4	-	-	-	-	1,231	-	-	-	-	-	-	-	1,231
143	FCC08269	TBD	F5 2023 Fabric Filter Bag Replacement	-	F5	-	-	-	-	1,226	-	-	-	-	-	-	-	1,226
144	FCC08409	TBD	2024 CBI Development	-	F45	-	-	-	-	1,132	-	-	-	-	-	-	-	1,132
145	FCC015386	TBD	Coal Handling Replacements - 2023	-	F45	-	-	-	-	1,000	-	-	-	-	-	-	-	1,000
146	FCC03934	TBD	Baghouse Turning Vane Replacement	-	F5	Out	-	-	-	872	2,185	-	-	-	-	-	-	3,057
147	FCC08492	TBD	Baghouse Expansion Joint Replacements	-	F5	Out	-	-	-	870	4,395	-	-	-	-	-	-	5,265
148	FCC07322	TBD	Lower Economizer Replacement	-	F5	Out	-	-	-	780	6,426	2,307	-	-	-	-	-	9,512
149	FCC08424	TBD	Baghouse Air Locks Replacements	-	F5	Out	-	-	-	544	1,992	-	-	-	-	-	-	2,536
150	FCC06583	TBD	Steam Piping Hanger replacement	-	F5	Out	-	-	-	529	1,972	-	-	-	-	-	-	2,501
151	FCC08503	TBD	SO2 Scrubber Expansion Joint Replacement	-	F5	Out	-	-	-	500	1,146	-	-	-	-	-	-	1,646
152	FCC012914	TBD	Miscellaneous Lagging & Insulation Replacement - 2023	-	F5	-	-	-	-	500	-	-	-	-	-	-	-	500
153	FCC012913	TBD	Miscellaneous Lagging & Insulation Replacement - 2023	-	F4	-	-	-	-	500	-	-	-	-	-	-	-	500
154	FCC016370	TBD	F4 Fiberglass Lime Feed Header Replacement	-	F4	-	-	-	-	500	-	-	-	-	-	-	-	500
155	FCC08528	TBD	Partial Upper Economizer Replacements	-	F5	Out	-	-	-	437	3,237	3,056	-	-	-	-	-	6,730
156	FCC06584	TBD	Steam Piping Hanger Replacements	-	F4	Out	-	-	-	406	982	1,404	-	-	-	-	-	2,792
157	FCC08431	TBD	Baghouse Bypass Poppets/Actuators Replacement	-	F5	Out	-	-	-	369	1,473	-	-	-	-	-	-	1,841
158	FCC015136	TBD	Water Systems/Membranes Program - 2023	-	F45	-	-	-	-	350	-	-	-	-	-	-	-	350
159	FCC08083	TBD	FD Fan Motor Replacement	-	F4	Out	-	-	-	350	-	-	-	-	-	-	-	350
160	FCC08234	TBD	2023 Plant Tools	-	F45	-	-	-	-	300	-	-	-	-	-	-	-	300
161	FCC08586	TBD	Bottom Ash Clinker Grinder Replacement	-	F5	Out	-	-	-	217	-	-	-	-	-	-	-	217
162	FCC03904	TBD	Boiler Nose Replacement	-	F4	Out	-	-	-	142	872	2,163	-	-	-	-	-	3,176
163	FCC012941	TBD	Boiler Turbine Valve Replacement	-	F5	Out	-	-	-	133	544	-	-	-	-	-	-	678
164	FCC012717	TBD	Partial Economizer Replacement	2.41	F4	Out	-	-	-	100	3,336	3,549	-	-	-	-	-	6,985
165	FCC07300	TBD	Lower Economizer Replacement	-	F4	Out	-	-	-	100	1,200	4,200	-	-	-	-	-	5,500
166	FCC09057	TBD	Convection Pass Water Tube Replacement	10.50	F4	Out	-	-	-	100	1,000	3,157	-	-	-	-	-	4,257
167	FCC09073	TBD	Boiler Waterwall Replacement	-	F4	Out	-	-	-	100	600	2,800	-	-	-	-	-	3,500
168	FCC012718	TBD	Furnace Waterwall Replacement	-	F4	Out	-	-	-	100	500	3,500	-	-	-	-	-	4,100

Four Corners 2020 Capital LRF

Line #	WA	CBI	Project Name	NPVBCR	Unit Code	Outage	Prior Years	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Project Total
169	FCC09074	TBD	Primary Superheater Replacement	-	F4	Out	-	-	-	100	400	2,750	-	-	-	-	-	3,250
170	FCC013150	TBD	Lime Feed Header Replacement	-	F5	Out	-	-	-	100	400	-	-	-	-	-	-	500
171	FCC012884	TBD	Battery Replacement - 2023	-	F45	-	-	-	-	100	-	-	-	-	-	-	-	100
172	FCC015092	TBD	Condensate Pump #3 Replacement	-	F5	-	-	-	-	75	-	-	-	-	-	-	-	75
173	FCC08268	TBD	SCBA Tank/Pack Set Equipment Replacements - Year 3	-	F45	-	-	-	-	54	-	-	-	-	-	-	-	54
174	FCC08265	TBD	Hazmat Operations Level Equipment	-	F45	-	-	-	-	34	-	-	-	-	-	-	-	34
175	FCC015147	TBD	Motors, Pumps and Valves - 2024	-	F45	-	-	-	-	-	5,000	-	-	-	-	-	-	5,000
176	FCC016600	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2024	-	F45	-	-	-	-	-	3,500	-	-	-	-	-	-	3,500
177	FCC08533	TBD	APH Basket Replacement	-	F4	Out	-	-	-	-	3,375	2,006	-	-	-	-	-	5,380
178	FCC015359	FC20-51	Coal Silo Liner Installation	-	F5	-	-	-	-	-	1,875	29	-	-	-	-	-	1,904
179	FCC08531	TBD	Third Pass Waterwall Tube Replacement	-	F4	Out	-	-	-	-	1,872	2,158	-	-	-	-	-	4,030
180	FCC06564	TBD	HP-IP-LP Turbine Major Overhaul	-	F4	Out	-	-	-	-	1,500	9,600	-	-	-	-	-	11,100
181	FCC015127	TBD	FC Electrical Systems - 2024	-	F45	-	-	-	-	-	1,300	-	-	-	-	-	-	1,300
182	FCC08270	TBD	F5 2024 Fabric Filter Bag Replacement	-	F5	-	-	-	-	-	1,251	-	-	-	-	-	-	1,251
183	FCC08273	TBD	F4 2024 Fabric Filter Bag Replacement	-	F4	-	-	-	-	-	1,250	-	-	-	-	-	-	1,250
184	FCC08410	TBD	2025 CBI Development	-	F45	-	-	-	-	-	1,132	-	-	-	-	-	-	1,132
185	FCC08321	TBD	Turbine Seal & Packing Replacement	-	F5	Out	-	-	-	-	1,000	-	-	-	-	-	-	1,000
186	FCC03936	TBD	Baghouse Turning Vane Replacement	-	F4	Out	-	-	-	-	940	2,099	-	-	-	-	-	3,039
187	FCC016362	TBD	SCR to Primary Air Duct Expansion Joint Replacement	-	F5	Out	-	-	-	-	863	-	-	-	-	-	-	863
188	FCC08430	TBD	Baghouse Bypass Poppets/Actuators Replacement	-	F4	Out	-	-	-	-	576	617	-	-	-	-	-	1,193
189	FCC06558	TBD	Baghouse Air Locks Replacements	1.26	F4	Out	-	-	-	-	539	1,855	-	-	-	-	-	2,394
190	FCC08491	TBD	Misc Expansion Joint Replacements	-	F4	Out	-	-	-	-	500	1,500	-	-	-	-	-	2,000
191	FCC08502	TBD	SO2 Scrubber Expansion Joint Replacement	-	F4	Out	-	-	-	-	500	1,146	-	-	-	-	-	1,646
192	FCC012916	TBD	Miscellaneous Lagging & Insulation Replacement - 2024	-	F5	-	-	-	-	-	500	-	-	-	-	-	-	500
193	FCC012915	TBD	Miscellaneous Lagging & Insulation Replacement - 2024	-	F4	-	-	-	-	-	500	-	-	-	-	-	-	500
194	FCC015137	TBD	Water Systems/Membranes Program - 2024	-	F45	-	-	-	-	-	350	-	-	-	-	-	-	350
195	FCC015387	TBD	Coal Handling Replacements - 2024	-	F45	-	-	-	-	-	300	-	-	-	-	-	-	300
196	FCC08235	TBD	2024 Plant Tools	-	F45	-	-	-	-	-	300	-	-	-	-	-	-	300
197	FCC08581	TBD	Bottom Ash Clinker Grinder Replacement	-	F4	Out	-	-	-	-	246	-	-	-	-	-	-	246
198	FCC08862	TBD	Baghouse Booster Fan Motor Replacement - B	-	F5	Out	-	-	-	-	219	-	-	-	-	-	-	219
199	FCC012881	TBD	Baghouse Booster Fan Motor Replacement - D	-	F5	Out	-	-	-	-	219	-	-	-	-	-	-	219
200	FCC012885	TBD	Battery Replacement - 2024	-	F45	-	-	-	-	-	100	-	-	-	-	-	-	100
201	FCC015148	TBD	Motors, Pumps and Valves - 2025	-	F45	-	-	-	-	-	-	5,000	-	-	-	-	-	5,000
202	FCC016601	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2025	-	F45	-	-	-	-	-	-	3,500	-	-	-	-	-	3,500
203	FCC015360	TBD	Coal Silo Liner Installation	-	F4	-	-	-	-	-	-	1,875	29	-	-	-	-	1,904
204	FCC015128	TBD	FC Electrical Systems - 2025	-	F45	-	-	-	-	-	1,300	-	-	-	-	-	-	1,300
205	FCC08271	TBD	F5 2025 Fabric Filter Bag Replacement	-	F5	-	-	-	-	-	1,274	-	-	-	-	-	-	1,274
206	FCC08274	TBD	F4 2025 Fabric Filter Bag Replacement	-	F4	-	-	-	-	-	-	1,269	-	-	-	-	-	1,269
207	FCC08411	TBD	2026 CBI Development	-	F45	-	-	-	-	-	-	1,132	-	-	-	-	-	1,132
208	FCC08320	TBD	Turbine Seal & Packing Replacement	-	F4	Out	-	-	-	-	-	1,000	-	-	-	-	-	1,000
209	FCC016363	TBD	SCR to Primary Air Duct Expansion Joint Replacement	-	F4	Out	-	-	-	-	-	863	-	-	-	-	-	863
210	FCC08865	TBD	Baghouse Booster Fan Motor Replacement - C	-	F4	Out	-	-	-	-	-	862	-	-	-	-	-	862
211	FCC012918	TBD	Miscellaneous Lagging & Insulation Replacement - 2025	-	F5	-	-	-	-	-	-	500	-	-	-	-	-	500
212	FCC012917	TBD	Miscellaneous Lagging & Insulation Replacement - 2025	-	F4	-	-	-	-	-	-	500	-	-	-	-	-	500
213	FCC08536	TBD	Microsoft License Agrmnt, 2025-2027	-	F45	-	-	-	-	-	-	499	-	-	-	-	-	499
214	FCC015138	TBD	Water Systems/Membranes Program - 2025	-	F45	-	-	-	-	-	-	350	-	-	-	-	-	350
215	FCC015388	TBD	Coal Handling Replacements - 2025	-	F45	-	-	-	-	-	-	300	-	-	-	-	-	300
216	FCC08236	TBD	2025 Plant Tools	-	F45	-	-	-	-	-	-	300	-	-	-	-	-	300
217	FCC012900	TBD	Bottom Ash Clinker Grinder Replacement - 2025	-	F5	Out	-	-	-	-	-	254	-	-	-	-	-	254
218	FCC012880	TBD	Baghouse Booster Fan Motor Replacement - D	-	F4	Out	-	-	-	-	-	219	-	-	-	-	-	219
219	FCC012886	TBD	Battery Replacement - 2025	-	F45	-	-	-	-	-	-	100	-	-	-	-	-	100
220	FCC015149	TBD	Motors, Pumps and Valves - 2026	-	F45	-	-	-	-	-	-	-	5,000	-	-	-	-	5,000
221	FCC016602	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2026	-	F45	-	-	-	-	-	-	-	3,500	-	-	-	-	3,500
222	FCC015129	TBD	FC Electrical Systems - 2026	-	F45	-	-	-	-	-	-	1,300	-	-	-	-	-	1,300
223	FCC08922	TBD	2026 Fabric Filter Bag Replacement	-	F5	-	-	-	-	-	-	1,298	-	-	-	-	-	1,298
224	FCC08921	TBD	2026 Fabric Filter Bag Replacement	-	F4	-	-	-	-	-	-	1,298	-	-	-	-	-	1,298

Four Corners 2020 Capital LRF

Line #	WA	CBI	Project Name	NPVBCR	Unit Code	Outage	Prior Years	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Project Total
225	FCC08412	TBD	2027 CBI Development	-	F45								1,132					1,132
226	FCC012920	TBD	Miscellaneous Lagging & Insulation Replacement - 2026	-	F5								500					500
227	FCC012919	TBD	Miscellaneous Lagging & Insulation Replacement - 2026	-	F4								500					500
228	FCC015139	TBD	Water Systems/Membranes Program - 2026	-	F45								350					350
229	FCC015389	TBD	Coal Handling Replacements - 2026	-	F45								300					300
230	FCC08926	TBD	2026 Plant Tools	-	F45								300					300
231	FCC013858	TBD	Bottom Ash Clinker Grinder Replacement - 2026	-	F4	Out							254					254
232	FCC012887	TBD	Battery Replacement - 2026	-	F45								100					100
233	FCC015150	TBD	Motors, Pumps and Valves - 2027	-	F45									5,000				5,000
234	FCC016603	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2027	-	F45									3,500				3,500
235	FCC012864	TBD	2027 Fabric Filter Bag Replacement	-	F5									1,336				1,336
236	FCC012863	TBD	2027 Fabric Filter Bag Replacement	-	F4									1,336				1,336
237	FCC015130	TBD	FC Electrical Systems - 2027	-	F45									1,300				1,300
238	FCC015120	TBD	2028 CBI Development	-	F45									750				750
239	FCC012922	TBD	Miscellaneous Lagging & Insulation Replacement - 2027	-	F5									500				500
240	FCC012921	TBD	Miscellaneous Lagging & Insulation Replacement - 2027	-	F4									500				500
241	FCC015140	TBD	Water Systems/Membranes Program - 2027	-	F45									350				350
242	FCC015390	TBD	Coal Handling Replacements - 2027	-	F45									300				300
243	FCC013859	TBD	Bottom Ash Clinker Grinder Replacement - 2027	-	F5	Out								254				254
244	FCC012888	TBD	Battery Replacement - 2027	-	F45									100				100
245	FCC015151	TBD	Motors, Pumps and Valves - 2028	-	F45										5,000			5,000
246	FCC016604	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2028	-	F45										3,500			3,500
247	FCC08316	TBD	Turbine Minor Overhaul	-	F5	Out									1,500			1,500
248	FCC012866	TBD	2028 Fabric Filter Bag Replacement	-	F5										1,368			1,368
249	FCC012865	TBD	2028 Fabric Filter Bag Replacement	-	F4										1,368			1,368
250	FCC015131	TBD	FC Electrical Systems - 2028	-	F45										1,300			1,300
251	FCC012924	TBD	Miscellaneous Lagging & Insulation Replacement - 2028	-	F5										500			500
252	FCC012923	TBD	Miscellaneous Lagging & Insulation Replacement - 2028	-	F4										500			500
253	FCC015121	TBD	2029 CBI Development	-	F45										500			500
254	FCC015141	TBD	Water Systems/Membranes Program - 2028	-	F45										350			350
255	FCC015391	TBD	Coal Handling Replacements - 2028	-	F45										300			300
256	FCC013861	TBD	Bottom Ash Clinker Grinder Replacement - 2028	-	F4	Out									254			254
257	FCC012889	TBD	Battery Replacement - 2028	-	F45										100			100
258	FCC015152	TBD	Motors, Pumps and Valves - 2029	-	F45											5,000		5,000
259	FCC016605	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2029	-	F45											3,500		3,500
260	FCC08318	TBD	Turbine Minor Overhaul	-	F4	Out										1,500		1,500
261	FCC016364	TBD	2029 Fabric Filter Bag Replacement	-	F4											1,400		1,400
262	FCC016365	TBD	2029 Fabric Filter Bag Replacement	-	F5											1,400		1,400
263	FCC015132	TBD	FC Electrical Systems - 2029	-	F45											1,300		1,300
264	FCC015142	TBD	Water Systems/Membranes Program - 2029	-	F45											350		350
265	FCC015392	TBD	Coal Handling Replacements - 2029	-	F45											300		300
266	FCC012904	TBD	Bottom Ash Clinker Grinder Replacement - 2029	-	F4	Out										254		254
267	FCC012890	TBD	Battery Replacement - 2029	-	F45											100		100
268	FCC016606	TBD	Pulverizer Grinding Zone and Gear Drive Replacements - 2030	-	F45												1,750	1,750
269	FCC016858	TBD	Contract Management License Fee Renewal (2022)	-	F45		98											98
270	FCC016859	TBD	Contract Management License Fee Renewal (2024)	-	F45						103							103
271	FCC016860	TBD	Contract Management License Fee Renewal (2026)	-	F45								110					110
272	FCC016861	TBD	Contract Management License Fee Renewal (2028)	-	F45											116		116
273	FCC016862	TBD	Inventory Optimization License Fee Renewal (2024)	-	F45						18							18
274	FCC016863	TBD	Inventory Optimization License Fee Renewal (2026)	-	F45									19				19
275	FCC016864	TBD	Inventory Optimization License Fee Renewal (2028)	-	F45											20		20
276	FCC016865	TBD	Phase 7 Water Piping Replacement	-	F45				1,500	4,000								5,500
277	FCC016916	TBD	South #1 Hydrobin Cone Replacement	-	F45				841	715								1,556
278																		

Sub-Total																		109,727	62,417	57,710	105,652	72,872	15,990	15,226	16,676	15,104	1,750	473,125
																		LRF Total					473,125					

Cashflows in \$1,000's
2022 - 2030 cashflows do not contain overhead loads

Four Corners 2020 Capital LRF

Line #	WA	CBI	Project Name	NPVBCR	Unit Code	Outage	Prior Years	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Project Total
279	PE016821	FC21-55	Building - Planned/ Predictive Replacement		F45			300										300
280	PE016824	FC21-53	Exterior - Planned/ Predictive Replacement		F45			100										100
281	PE016823	FC21-54	HVAC - Planned/ Predictive Replacement		F45			300										300
282	PE015678	FC20-56	Training Building Remodel/Refurbishment		F45		458	2,284										2,742
283	PE016818	FC21-52	Polymer Building HVAC Replacement		F45			209										209
284	PE016574	FC21-49	Bag House Control Room HVAC		F45			124										124
285	PE016621	FC21-50	4160 MCC HVAC		F45			151										151
286	PE016577	FC21-51	FC Admin Basement Gen		F45			150										150
287	TBD	TBD	FC Admin Warehouse HVAC		F45				43									43
288	TBD	TBD	FC Fire Brigade HVAC		F45				153									153
289	TBD	TBD	FC SO2 C&M Bldg 69 roof		F45				730									730
290	TBD	TBD	FC Bag House Cntrl Rm Roof		F45					318								318
291	TBD	TBD	FC Bldg 114 Roof		F45					70								70
292	TBD	TBD	FC Warehouse Paving		F45						77							77
293	TBD	TBD	FC HVAC Misc Equipment Replacement		F45				300	300	300	300	300	300	300	300	300	2,700
294	TBD	TBD	FC Plant Building Misc Equipment Replacement		F45				300	300	300	300	300	300	300	300	300	2,700
295	TBD	TBD	FC Plant Exterior Misc Replacement		F45				100	100	100	100	100	100	100	100	100	900
Facilities Sub-Total								3,618	1,626	1,088	777	700	700	700	700	700	700	11,309

296	FCC06576	FC20-01	SCR Catalyst Layer Addition 2021		F4	Out	1,966	1,611										3,577
297	FCC06574	TBD	SCR Catalyst replacement 2023		F5	Out			2,087	1,367								3,455
298	FCC06577	TBD	SCR Catalyst replacement 2024		F4	Out				2,140	1,527							3,667
299	FCC06575	TBD	SCR Catalyst replacement 2026		F5	Out						5,080	6,934					12,014
300	FCC013512	TBD	SCR Catalyst Replacement 2027		F4	Out							5,151	6,893				12,044
301																		
SCR Related Sub-Total								1,611	2,087	3,508	1,527	5,080	12,085	6,893	-	-	-	32,791

302	FCC06752	FC16-22R2	Dry Fly Ash Disposal Area Site 4 Construction		F45		10,871	18										10,889
303	FCC06342	FC16-19	FC Combined Waste Treatment Pond (CWTP) Construction		F45		3,130	4,267	2,367									9,764
304	FCC08902	FC18-39	CCR Groundwater Mitigation		F45		1,323	624										1,947
305	FCC014276	FC20-48	Ash Sluice Piping Replacement		F45	Out	284	570										854
306	FCC06753	TBD	Ash Disposal Site 5		F45					662	22,969	20						23,651
307	FCC08904	FC16-19	Dry Fly Ash Disposal Area 6		F45											273	6,130	6,458
308																		
CCR Sub-Total								5,479	2,367	662	22,969	20	-	-	-	273	6,130	37,900

Allowance For Unknown Projects								3,989										3,989
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Sub-Total								124,424	68,498	62,968	130,925	78,672	28,774	22,819	17,376	16,077	8,580	559,114
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Overhead Estimate									453	417	866	521	190	151	115	106	57	2,876
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Sub-Total								124,424	68,951	63,385	131,791	79,193	28,965	22,970	17,491	16,184	8,636	561,990
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Decommissioning								1,576	2,307	1,858	7,345	1,794	1,029	-	-	310	6,186	22,406
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Four Corners Total								126,000	71,258	65,243	139,137	80,987	29,993	22,970	17,491	16,493	14,823	584,396
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Cashflows in \$1,000's
2022 - 2030 cashflows do not contain overhead loads

Schedule 1.1.47(a)

Seller's Officers, Employees, and Knowledgeable Persons

1. Thomas Fallgren, Vice President, PNM Generation

Schedule 1.1.47(b)

Purchaser's Officers, Employees and Authorized Agents

1. Clark Moseley, NTEC, Chief Executive Officer

Schedule 1.1.62

Purchaser's Required Consents

1. NTEC's written consent to the assignment, assumption and release of the Coal Supply Agreement, effective as of Closing
2. Third-party consents to assign any of the Assets as may be required by the Facilities Contracts, Facilities Permits, Facilities Documents, or otherwise

Schedule 1.1.63

Purchaser's Required Regulatory Approvals

1. Receipt by Seller of final, non-appealable approval of abandonment of Seller's ownership interest in FCPP including any requested financing or other cost recovery method from the New Mexico Public Regulation Commission
2. Receipt by Seller and/or Purchaser, as applicable, of a final, non-appealable approval from the Federal Energy Regulatory Commission ("FERC") pursuant to Section 203 of the Federal Power Act ("FERC FPA 203 Approval")
3. Receipt by Purchaser of a final, non-appealable order from FERC with respect to any items pursuant to Section 205 of the Federal Power Act ("FERC FPA 205 Approval") as may be deemed necessary and/or prudent by Purchaser
4. Purchaser has received all permits from any applicable Governmental Authority and/or consent to assign any such existing permits relating to the PNM FCPP Interest, including those that must be transferred, secured, reissued or procured
5. If deemed necessary and/or prudent in Purchaser's discretion in connection with the Transferred Transmission Facilities or otherwise, any FERC exemptions or waivers are necessary to regulation of transmission (e.g., maintaining an OATT, Standards of Conduct)
6. If required in connection with the transaction to maintain environmental permits for operation of the FCPP in full force and effect, notice has been made to, or approval received from, regulators who have issued such environmental permits
7. If required, HSR filing and waiting period expiration

Schedule 1.1.72

Seller's Required Consents

1. Participants under the Facilities Co-Tenancy Agreement
2. PNM Resources, Inc. Finance Committee and Board Approval
3. PNM Board Approval
4. Waiver or expiration of each Facilities Owner's of Right of First Refusal
5. Consents of the Navajo Nation set forth in Section 3.6(o)

Schedule 1.1.73

Seller's Required Regulatory Approvals

1. Federal Energy Regulatory Commission FPA Section 203 Approval
2. Receipt of final, non-appealable approval of abandonment of Seller's ownership interest in FCPP including any requested financing or other cost recovery method from the New Mexico Public Regulation Commission
3. United States Department of Justice and United States District Court for the District of New Mexico under the Consent Decree
4. If required, HSR filing and expiration of HSR Waiting Period

Schedule 2.1(b)

Leased Property

Subject to any express reservations set forth in the Agreement:

1. Facilities Lease
2. The real property interests described in Exhibits 2 – 9 of the Facilities Lease
3. See Schedule 2.1(c) which is incorporated herein by reference

Schedule 2.1(c)

Rights-of-Way/Easements and Water Rights

1. Multiparty Section 323 Grant for Plant Site

Grant Date: 7/6/2016

Expiration Date: 7/6/2041

2. See Item 16 on Schedule 2.1(h) related to water rights

Schedule 2.1(h)

Facilities Contracts

In each case, only to the extent Seller, in its capacity as a Facilities Owner, will be a party at the Closing or would otherwise have rights or obligations thereunder which would survive the Closing, but for the assignment of those rights and obligations at the Closing pursuant to the Agreement:

1. § 323 Grants (see Schedule 2.1(c))
2. Facilities Lease
3. Facilities Co-Tenancy Agreement
4. Facilities Operating Agreement
5. Four Corners 2016 Coal Supply Agreement, effective July 1, 2018 between NTEC and the Participants
6. Four Corners Project Emission Abatement System Operating Power Agreement, dated October 15, 1982 among the Participants
7. Four Corners Power Plant Acid Rain Program Designated Representation Agreement dated June 22, 2012 among the Participants and Amendment No. 1 dated January 13, 2014, as amended from time to time when Plant Manager changes
8. Four Corners Power Plant Greenhouse Gas Reporting Program Designated Representative Agreement dated June 22, 2012 among the Participants and Amendment No. I dated January 13, 2014, as amended from time to time when Plant Manager changes
9. Principles of Interconnected Operation for Four Corners Project dated May 12, 1969, among the Participants, as amended
10. Voluntary Compliance Agreement Air Quality, dated May 18, 2005, as amended, by and among the Navajo Nation, Salt River Project Agricultural Improvement and Power District, as operating agent for the Navajo Generating Station (“NGS”) and with the express written consent of each participant of NGS and APS, as operating agent for the Four Corners Power Plant and with the express written consent of each Participant
11. Settlement and Closing Agreement, dated August 8, 2016, by and between the Seller and the Office of the Navajo Tax Commission
12. Shiprock-Four Corners Project 345-kV Switchyard Interconnection Agreement, dated October 2, 2002, by and among the Facilities Owners and Public Service Company of Colorado, Tri-State Generation and Transmission Association, Inc., and Western Area Power Administration as the same may be amended

13. Agreement for the Transfer of Interests in New Mexico Office of the State Engineer Permits 2838 and SJ-2197, by and among BHP Navajo Coal Company, BHP Billiton New Mexico Coal Inc., the Participants, and individually with Public Service Company of New Mexico and Tucson Electric Power, dated December 20, 2013
14. Agreement for Divisions of Interests in New Mexico Office of the State Engineer Permit 2838, by and among BHP Billiton New Mexico Coal Inc., the Participants, and individually with Public Service Company of New Mexico and Tucson Electric Power, dated December 30, 2013
15. New Mexico Office of the State Engineer Permit 2838, dated May 29, 2015
16. Water Rights Deed to New Mexico Office of the State Engineer Permit 2838, by and among BHP Billiton New Mexico Coal Inc. and the Participants

Schedule 2.1(i)

Permits, Licenses, Etc. Related Solely to Excluded Assets

1. EPA PSD Permit
2. EPA Federal Implementation Plan for final BART implementation
3. NNEPA NSR Permit
4. NNEPA Title V Operating Permit
5. EPA NPDES Permit
6. Four Corners Clean Air Act Settlement Consent Decree

Schedule 2.1(k)

Third Party Warranties

1. None

Schedule 2.1(r)

Miscellaneous Assets

1. None

Schedule 2.2(a)

Excluded Assets Associated with the Assets

Excluded Switchyard Interests include:

1.	345 kV Switchyard Bus Facilities	16.27%
2.	345 kV/500 kV Switchyard Common Facilities	11.93%
3.	Connection to 345 kV Switchyard Facilities	14.36%
4.	Four Corners 230 kV Switchyard Facilities	8.33%

Schedule 2.2(c)

Cash Exceptions

1. None

Schedule 3.6(a)(ii)

Operating and Maintenance Expense Pro-Rations

The following costs and expenses incurred for the applicable period during which the Closing occurs shall be pro-rated between the Parties:

1. None.

Schedule 4.6

Litigation

1. None

Schedule 4.7

Title

1. None

Schedule 4.9(c)

Tax Proceedings

1. None

Schedule 4.9(g)

Partnership Taxes

1. None

Schedule 4.10

Environmental Matters

1. Four Corners Clean Air Act Settlement Consent Decree obligations:
 - Respiratory Health Care Trust Fund (fully funded)
 - Weatherization Program (fully funded)

Schedule 4.11

Facilities Project Contracts

1. None.

Schedule 4.12

Other Material Real Property

1. None

Exhibit A to Purchase and Sale Agreement

Acquired Interests

The Acquired Interests are comprised of the following assets in the below percentages (as such assets may be defined in the Facilities Co-Tenancy Agreement):

1) FCPP Units 4 and 5	13.00%
2) Existing New Facilities	13.00%
3) Existing Related Facilities (as of Amendment No. 8)	9.42%
4) Related Facilities (subsequent to Amendment No. 8)	13.00%
5) Common Facilities	13.00%
6) Minimum Coal Storage Pile	13.00%
7) Fuel Agreement	13.00%
8) 500 kV Switchyard Bus Facilities	6.50%
9) 345 kV Switchyard Bus Facilities	4.36%
10) 345 kV/500 kV Switchyard Common Facilities	4.94%
11) 345 kV/500 kV Transformer (1AA) and the Connection to Reserve Auxiliary Power Source	13.00%
12) Reserve Auxiliary Power Source	13.00%
13) Connection to 345 kV Switchyard Facilities	11.13%
14) Four Corners 230 kV Switchyard Facilities	2.60%
15) 230 kV Connection and 69 kV Switchyard, Plant 69/12/4kV Facilities	13.00%

Exhibit B to Purchase and Sale Agreement

Excluded Switchyard Interests

The following assets in the below percentages and any associated equipment, breakers, relays or other materials not specifically listed and related to such assets are excluded from this transaction and will remain owned by Seller:

1) 345 kV Switchyard Bus Facilities	16.27%
2) 345 kV/500 kV Switchyard Common Facilities	11.93%
3) Connection to 345 kV Switchyard Facilities	14.36%
4) Four Corners 230 kV Switchyard Facilities	8.33%

Exhibit C to Purchase and Sale Agreement
Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “**Agreement**”) is made as of [] (the “**Effective Date**”), by and between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**Seller**”), and **NAVAJO TRANSITIONAL ENERGY COMPANY**, a Navajo Nation limited liability company (“**Purchaser**”). Capitalized terms used herein without definition shall have the respective meanings set forth in the Purchase Agreement (as defined below).

BACKGROUND

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of November 1, 2020 (the “**Purchase Agreement**”), by and between Seller and Purchaser, Seller has, by Bill of Sale of even date herewith, sold, assigned, transferred, conveyed and delivered unto Purchaser to have and to hold forever, all of its right, title and interest in and to the Assets. This Agreement effects such assignment of the Assets by Seller to Purchaser and the assumption by Purchaser of the Assumed Liabilities, except, for the avoidance of doubt, those interests assigned pursuant to the Lease Assignment and the CSA Assignment.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree as follows:

1. Assignment and Assumption. As of the Effective Date, subject to the terms and conditions of the Purchase Agreement, including without limitation the representations and warranties contained therein, (i) Seller hereby assigns, sells, transfers, conveys and delivers to Purchaser all of Seller’s right, title, and interest in and to the Assets, to the extent the same are assignable, and all of Seller’s obligations and liabilities in connection with each of the Assumed Liabilities (except, for the avoidance of doubt, those interests assigned pursuant to the Lease Assignment and the CSA Assignment), (ii) Purchaser hereby accepts such assignment and assumes and agrees to perform, pay and discharge when due all of the Assumed Liabilities, and (iii) Purchaser assumes no Excluded Liabilities, and the Parties agree that all such Excluded Liabilities shall remain the sole responsibility of Seller.

2. Further Acts and Agreements. Each of Purchaser and Seller agrees to, upon the reasonable request of the other Party, execute and deliver any further instruments or documents and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of the Purchase Agreement or realize the benefits intended to be afforded thereby.

3. Terms of the Purchase and Sale Agreement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter the representations, warranties, covenants and obligations of the Parties contained in the Purchase Agreement or the survival thereof.

4. Miscellaneous.

4.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective permitted successors and assigns.

4.2 Governing Law. The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the state in which the Assets and the Facilities are located applicable to contracts made and performed in such state and without regard to conflicts of law doctrines, except to the extent that certain matters are preempted by federal law or are governed by the law of the jurisdiction of organization of the respective Parties.

4.3 Amendment. None of the provisions of this Agreement may be waived, superseded, changed or altered except by a written instrument signed by Purchaser and Seller, provided that the terms and conditions hereof may be waived by a writing signed only by the Party waiving compliance.

4.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Assignment and Assumption Agreement to be executed in their respective names by their respective undersigned duly authorized signatories as of the day and year first above written.

SELLER:

By: _____
Name:
Title:

PURCHASER:

By: _____
Name:
Title:

Exhibit D to Purchase and Sale Agreement

Bill of Sale

BILL OF SALE

This **BILL OF SALE** (“**Bill of Sale**”), is made as of [___], by and between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**Seller**”), and **NAVAJO TRANSITIONAL ENERGY COMPANY**, a Navajo Nation limited liability company (“**Purchaser**”). Capitalized terms used herein without definition shall have the respective meanings set forth in the Purchase Agreement (as defined below).

BACKGROUND

WHEREAS, Seller and Purchaser have entered into a Purchase and Sale Agreement, dated as of November 1, 2020 (the “**Purchase Agreement**”), pursuant to which Seller has agreed to sell, assign, transfer, convey and deliver to Purchaser, and Purchaser has agreed to purchase and acquire from Seller, all interest of Seller in the Assets.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller agrees as follows:

1. As of the Effective Date, upon the terms and subject to the conditions of the Purchase Agreement, including without limitation the representations and warranties contained therein, Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser all of Seller’s interest in the Assets, free and clear of all Encumbrances other than Permitted Encumbrances, to have and to hold unto Purchaser, its successors and assigns, forever.

2. At any time and from time to time after the Effective Date, Seller agrees to, upon reasonable request by Purchaser, execute and deliver any further instruments or documents, and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of the Purchase Agreement and to carry out the intent and purpose of this Bill of Sale.

3. Notwithstanding anything to the contrary contained herein, Seller is not selling, assigning, transferring or conveying to Purchaser, and Purchaser is not purchasing or acquiring from Seller, any right, title, or interest in any of the Excluded Assets.

4. This Bill of Sale is binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

5. The validity, interpretation and effect of this Bill of Sale are governed by and will be construed in accordance with the laws of the state in which the Assets and the Facilities are located applicable to contracts made and performed in such state and without regard to conflicts of law doctrines, except to the extent that certain matters are preempted by federal law or are governed by the law of the jurisdiction of organization of the respective Parties.

6. None of the provisions of this Bill of Sale may be waived, superseded, changed or altered, except by a written instrument signed by Purchaser and Seller, provided that the terms and conditions hereof may be waived by a writing signed only by the Party waiving compliance.

7. Without limiting Section 2 hereof, as of the Effective Date, Seller hereby constitutes and appoints Purchaser the true and lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller, but on behalf of and for the benefit of Purchaser and its respective successors and assigns, from time to time:

- (a) to demand, receive and collect any and all of the Assets and to give receipts and releases for and with respect to the same, or any part thereof;
- (b) to institute and prosecute, in the name of Seller, any and all proceedings at law, in equity or otherwise, that Purchaser or its respective successors and assigns may deem proper in order to collect or reduce to possession any of the Assets and in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be; and to do all things legally permissible, required or reasonably deemed by Purchaser to be required to recover and collect the Assets.
- (c) Seller hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller.

8. In the event of a conflict between the terms and conditions of this Bill of Sale and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter the representations, warranties, covenants and obligations of the Parties contained in the Purchase Agreement or the survival thereof.

9. This Bill of Sale may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, Seller has caused, and Purchaser has acknowledged, this Bill of Sale to be executed as of the date first written above.

SELLER:

By: _____
Name:
Title:

Agreed and Accepted:

PURCHASER:

By: _____
Name:
Title:

Exhibit E to Purchase and Sale Agreement

Landfill

[see attached]

Exhibit E-1

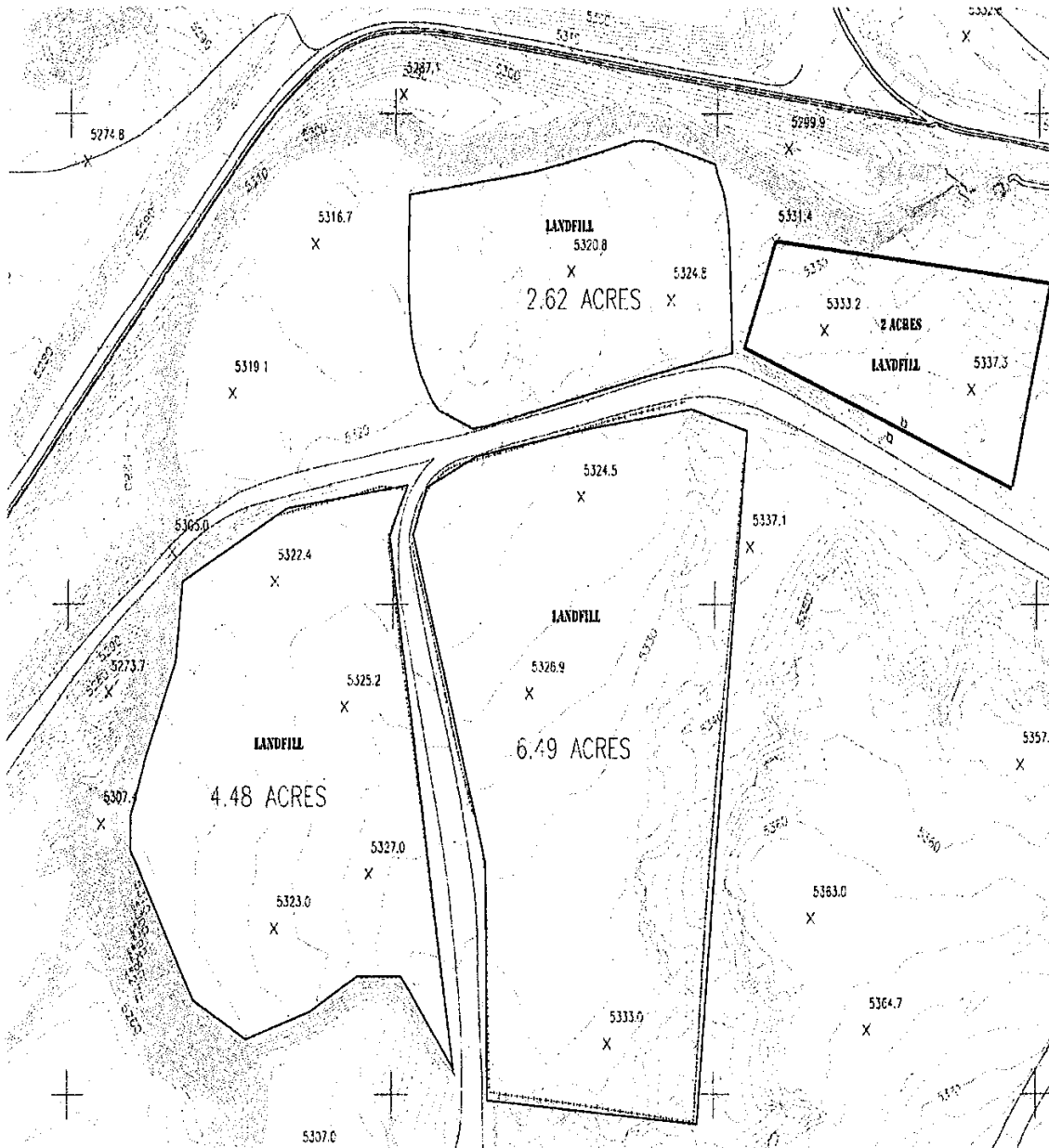
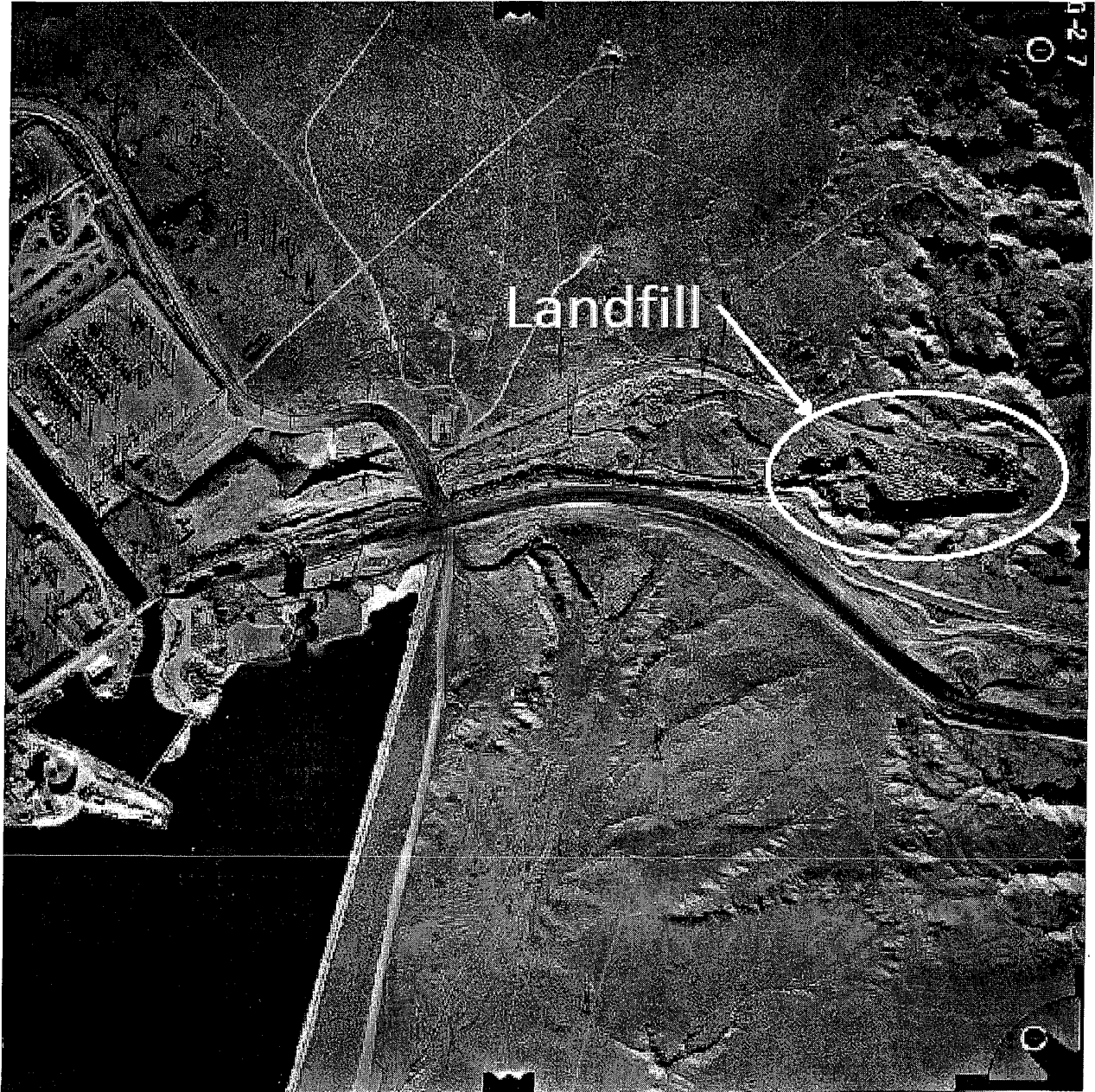


Exhibit E-1



Four Corners Power Plant
Aerial Photo taken on 12/18/1979

EXHIBIT E-2

Exhibit F to Purchase and Sale Agreement
Assignment and Assumption Agreement (Lease and Right of Way)

ASSIGNMENT AND ASSUMPTION AGREEMENT

Lease and Right of Way

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “**Agreement**”) is made as of [___], by and between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**Seller**”), and **NAVAJO TRANSITIONAL ENERGY COMPANY**, a Navajo Nation limited liability company (“**Purchaser**”). Seller and Purchaser are individually referred to herein as a “**Party**” and collectively as the “**Parties.**” Capitalized terms used herein without definition shall have the respective meanings set forth in the Purchase Agreement (as defined below).

BACKGROUND

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of November 1, 2020 (the “**Purchase Agreement**”), by and between Seller and Purchaser, Seller has, by Bill of Sale of even date herewith, sold, assigned, transferred, conveyed and delivered unto Purchaser to have and to hold forever, all of its right, title and interest in and to the Assets. This Agreement effects the assignment by Seller to Purchaser of that certain Supplemental and Additional Indenture of Lease dated July 6, 1966, as amended (the “**Lease**”), and that certain § 323 Grant of Federal Rights-of-Way Easements, dated August 4, 2015 (the “**§ 323 Grant**”), and the assumption by Purchaser of the Assumed Liabilities relating to the Lease.

WHEREAS, the Parties acknowledge that Seller is retaining certain rights of access under the § 323 Grants and such other rights of access required to construct, reconstruct, use, operate, maintain, relocate and remove the Excluded Assets and the Excluded Switchyard Interests and to perform the Excluded Liabilities pursuant to the Purchase Agreement, and that such rights of access shall not be assigned by Seller to Purchaser pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree as follows:

1. Retained Rights of Access. The Parties agree that Seller does not assign, and Purchaser does not assume, those rights pursuant to the Facilities Lease required by Seller to construct, reconstruct, use, operate, maintain, relocate and remove the Excluded Switchyard Interests and the Excluded Assets and to perform the Excluded Liabilities, as applicable. The Parties further agree that Seller does not assign, and Purchaser does not assume, those rights pursuant to the § 323 Grants required by Seller to access and use the Excluded Switchyard Interests, Excluded Assets, and to perform the Excluded Liabilities, as applicable.

2. Assignment and Assumption. Effective upon the Effective Date (as defined below), and subject to the terms and conditions of the Purchase Agreement, including without limitation the representations and warranties contained therein, and subject to the limitations set forth in Section 1 of this Agreement, (i) Seller hereby assigns, sells, transfers, conveys and delivers to Purchaser all of Seller’s right, title, and interest in and to the Lease and the § 323 Grant, and all of Seller’s obligations and liabilities in connection with the Assumed Liabilities related to the Lease and the § 323 Grant, (ii) Purchaser hereby accepts such assignment and assumes and agrees

to perform, pay and discharge when due all of the Assumed Liabilities related to the Lease and the § 323 Grant.

3. Further Acts and Agreements. Each of Purchaser and Seller agrees to, upon the reasonable request of the other Party, execute and deliver any further instruments or documents and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of the Purchase Agreement or realize the benefits intended to be afforded thereby.

4. Terms of the Purchase and Sale Agreement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter the representations, warranties, covenants and obligations of the parties contained in the Purchase Agreement or the survival thereof.

5. Effective Date. This Agreement shall be effective upon the Effective Date of the Purchase Agreement.

6. Miscellaneous.

(a) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective permitted successors and assigns.

(b) **Governing Law.** The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the state of New Mexico applicable to contracts made and performed in such state and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by federal law.

(c) **Amendment.** None of the provisions of this Agreement may be waived, superseded, changed or altered except by a written instrument signed by Purchaser and Seller, provided that the terms and conditions hereof may be waived by a writing signed only by the party waiving compliance.

(d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

[Signature page follows]

Consent to Assignment and Assumption:

The Navajo Nation Resources and Development Committee represents that it has the requisite legal authority to provide this consent on behalf of the Navajo Nation, and hereby consents to the assignment and assumption of the Lease and § 323 GRANTS as set forth above.

The Navajo Nation Resources and Development Committee

By: _____

Name:

Title:

Exhibit G to Purchase and Sale Agreement

Form of CSA Release

COAL SUPPLY AGREEMENT RELEASE

This **COAL SUPPLY AGREEMENT RELEASE** (this “**CSA Release**”) is entered into as of [●] (the “**Effective Date**”), by and between **NAVAJO TRANSITIONAL ENERGY COMPANY, LLC**, a Navajo Nation limited liability company (“**NTEC**”) and **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**PNM**”). NTEC and PNM are individually referred to herein as a “**Party**” and collectively as the “**Parties**.” Capitalized terms not defined herein have the meaning prescribed to them in that certain Purchase and Sale Agreement, dated as of November 1, 2020 (“**Purchase Agreement**”).

RECITALS

A. NTEC and PNM are parties to that certain Amended and Restated Four Corners 2016 Coal Supply Agreement, dated as of June 29, 2018, but effective as of July 1, 2018, by and among NTEC, Arizona Public Service Company, PNM, Salt River Project Agricultural and Improvement District, and Tucson Electric Power Company, as amended (the “**Coal Supply Agreement**”);

B. PNM has certain obligations arising under the Coal Supply Agreement to, among other things, purchase fuel from NTEC or otherwise pay liquidated damages, through July 6, 2031; and

C. The Parties are party to that certain Purchase Agreement, pursuant to which NTEC is obligated to deliver to PNM, upon satisfaction of the conditions contained therein, a release from the Coal Supply Agreement, such conditions of the Purchase Agreement have been satisfied and therefore the Parties desire to execute this CSA Release to fulfill such obligations.

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants, and agreements contained in the Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

RELEASE AND TERMINATION

1. **RELEASE.** As of the Effective Date, NTEC, for itself and on behalf of its past and present parent companies, subsidiaries, predecessors, successors, heirs, assigns, principals, agents, employees, shareholders, officers, directors, managers, members, trustees, insurers, attorneys, representatives and all related or affiliated persons and entities, hereby releases and forever discharges PNM and their respective parent companies, subsidiaries, predecessors, successors, heirs, assigns, principals, agents, employees, shareholders, officers, directors, managers, members, trustees, insurers, attorneys, representatives and all related or affiliated persons and entities, from any and all obligations of any kind whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, which any of them may now have or may acquire resulting from, based upon, arising out of or relating to, directly or indirectly, the Coal Supply Agreement.

2. **FUTURE COAL SUPPLY.** For the avoidance of doubt, following the effectiveness of this CSA Release, in the event PNM desires to purchase coal or otherwise transact with NTEC in the future on similar matters as covered in the Coal Supply Agreement, the terms set forth in

the Coal Supply Agreement shall not be indicative, binding, or applicable to any such future transaction and PNM and NTEC must negotiate and reach new agreed upon terms.

3. COUNTERPARTS. The Parties signing this CSA Release each hereby acknowledge that this CSA Release may be executed in counterparts, in ink or electronically (by digital pen but not by typing in a name on the signature line), and exchanged by facsimile transmission or by optical or digitally scanned copies transmitted by email or otherwise, and that such facsimile, optical or digitally scanned copies of each of the Parties' respective signatures shall be as binding as if the same were an original signature, and the execution of each such counterpart copy or original shall be deemed as binding and valid as if a single original document were executed by all of the Parties hereto.

4. GOVERNING LAW. The validity, interpretation, and effect of this CSA Release are governed by and will be construed in accordance with the Laws of the state of New Mexico applicable to contracts made and performed in such state and without regard to conflicts of Law doctrines except to the extent that certain matters are preempted by federal Law.

[Signature Page Follows]

IN WITNESS WHEREOF, authorized representatives of the Parties have entered this
CSA Release as of the date first above written.

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC,
a Navajo Nation limited liability company

By: _____
Name:
Title:

PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation

By: _____
Name:
Title:

Exhibit H to Purchase and Sale Agreement

Form of CSA Assignment

COAL SUPPLY AGREEMENT ASSIGNMENT

This **COAL SUPPLY AGREEMENT ASSIGNMENT** (this “**CSA Assignment**”) is made as of [] (the “**Effective Date**”), by and between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“**Seller**”), and **NAVAJO TRANSITIONAL ENERGY COMPANY**, a Navajo Nation limited liability company (“**Purchaser**”). Capitalized terms used herein without definition shall have the respective meanings set forth in in that certain Purchase and Sale Agreement, dated as of November 1, 2020 (“**Purchase Agreement**”).

BACKGROUND

WHEREAS, Purchaser and Seller are parties to that certain Amended and Restated Four Corners 2016 Coal Supply Agreement, dated as of June 29, 2018, but effective as of July 1, 2018, by and among Purchaser, Arizona Public Service Company, Seller, Salt River Project Agricultural and Improvement District, and Tucson Electric Power Company, as amended (the “**Coal Supply Agreement**”);

WHEREAS, Seller has certain obligations arising under the Coal Supply Agreement to, among other things, purchase fuel from Purchaser or otherwise pay liquidated damages, through July 6, 2031; and

WHEREAS, the Parties are party to that certain Purchase Agreement, pursuant to which Seller is obligated to deliver to Purchaser, upon satisfaction of the conditions contained therein and in consideration for the CSA Release, the CSA Assignment Payment and an assignment of all rights and obligations under the Coal Supply Agreement pursuant to this CSA Assignment, such conditions of the Purchase Agreement have been satisfied and therefore the Parties desire to execute this CSA Assignment to fulfill such obligations.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree as follows:

1. Assignment and Assumption of the Coal Supply Agreement. As of the Effective Date, subject to the terms and conditions of the Purchase Agreement, including without limitation the representations and warranties contained therein, and in consideration for the CSA Release, (i) Seller hereby assigns, transfers, conveys and delivers to Purchaser all of Seller’s right, title, and interest in and to and all obligations and liabilities in connection with the Coal Supply Agreement and (ii) Purchaser hereby accepts such assignment and assumes and agrees to perform, pay and discharge when due all of the obligations and liabilities in connection with the Coal Supply Agreement.

2. Further Acts and Agreements. Each of Purchaser and Seller agrees to, upon the reasonable request of the other Party, execute and deliver any further instruments or documents and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required to fulfill and implement the terms of the Purchase Agreement or realize the benefits intended to be afforded thereby.

3. Terms of the Purchase and Sale Agreement. In the event of a conflict between the terms and conditions of this CSA Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter the representations, warranties, covenants and obligations of the Parties contained in the Purchase Agreement or the survival thereof.

4. Miscellaneous.

4.1 Binding Effect. This CSA Assignment shall be binding upon and inure to the benefit of Purchaser and Seller and their respective permitted successors and assigns.

4.2 Governing Law. The validity, interpretation, and effect of this CSA Assignment are governed by and will be construed in accordance with the Laws of the state of New Mexico applicable to contracts made and performed in such state and without regard to conflicts of Law doctrines except to the extent that certain matters are preempted by federal Law.

4.3 Amendment. None of the provisions of this CSA Assignment may be waived, superseded, changed or altered except by a written instrument signed by Purchaser and Seller, provided that the terms and conditions hereof may be waived by a writing signed only by the Party waiving compliance.

4.4 Counterparts. The Parties signing this CSA Assignment each hereby acknowledge that this CSA Assignment may be executed in counterparts, in ink or electronically (by digital pen but not by typing in a name on the signature line), and exchanged by facsimile transmission or by optical or digitally scanned copies transmitted by email or otherwise, and that such facsimile, optical or digitally scanned copies of each of the Parties' respective signatures shall be as binding as if the same were an original signature, and the execution of each such counterpart copy or original shall be deemed as binding and valid as if a single original document were executed by all of the Parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Coal Supply Agreement Assignment to be executed in their respective names by their respective undersigned duly authorized signatories as of the day and year first above written.

SELLER:

By: _____
Name:
Title:

PURCHASER:

By: _____
Name:
Title:

Exhibit I to Purchase and Sale Agreement

Pre-Closing Reclamation Study Required Methodology

The Pre-Closing Reclamation Study shall be conducted substantially in accordance with the general procedures and methodologies used to develop the 2019 Reclamation Study. In particular, the Pre-Closing Reclamation Study shall assume that as much reclamation work as possible would be completed prior to expiration of the Coal Supply Agreement in 2031 (or early termination thereof) without infringing upon active mining areas. Thus, the only areas that were not reclaimed and remained open in 2031 were those required for backfilling and grading the ramps and final pit as noted in §3.5 of the 2019 Reclamation Study. The Pre-Closing Reclamation Study shall include one or more topographical map(s), similar to Figures A-1 and A-2 in Appendix A of the 2019 Reclamation Study, that clearly delineate the extent of Contemporaneous Reclamation and the boundary between Contemporaneous Reclamation and Final Reclamation that was determined in the Pre-Closing Reclamation Study. In addition, the work effort assumed completed during the contemporaneous reclamation period by mine area and function shall be documented in a Table similar to Table B.1 in Appendix B of the 2019 Reclamation Study.

Exhibit J to Purchase and Sale Agreement
CSA True-Up Payment Calculation Methodology

[see attached]

Exhibit J - CSA True-Up Payment Calculation Methodology

Pre-Closing Study Final Reclamation Costs	\$ 268,453,000 ¹
PNM's proportionate share	<u>9.77% ²</u>
PNM's Share of Final Reclamation Costs	\$ 26,227,858
Inflation Rate	3.00%
Escalated Settlement Amount	\$ 29,959,209 ³
Discount Rate	6.70%
PNM's Share of adjusted Final Reclamation Cost	\$ 22,376,412 ³
Balance in Escrow Account	\$ 18,000,000 ⁴
CSA True-Up Payment	<u>\$ 4,376,412</u>

¹ Representative Value for Study in 2024

² Based on cumulative share of MMBTUs consumed over the life of the plant as defined in the CSA

³ Assumes escalation and discounting period of 4.5 years in accordance with CSA Section 6.7(b) two years prior to the Termination Date (July 2031), payments for Final reclamation shall be made from escrow.

⁴ Projected balance in Escrow account at December 31, 2024

Capital Clearings 7/1/2020 through 12/31/2024

2020*	2021	2022	2023	2024
\$7,171,900	\$17,362,625	\$14,482,322	\$12,281,253	\$21,653,315

* July through December 2020



2020 Decommissioning Cost Estimate Update
2031 Shutdown Scenario
Four Corners Power Plant – Units 4 & 5



Revision 2

Issued: 31 December 2020





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1.0 Executive Summary

Aptim Environmental Services, LLC (Aptim) is pleased to provide to Arizona Public Service (APS) updated cost estimates related to the Four Corners Harvest Study. This estimate involved updating the Four Corners Harvest Study assessment performed by then Shaw Environmental & Infrastructure and the update to that assessment in 2013 and 2015 conducted by CB&I Environmental & Infrastructure. These are legacy companies to Aptim Environmental Services. This review of previous data also included the removal of common buildings from the overall cost estimate in anticipation they would be left on site after the decommissioning and remediation is complete. This analysis involved updating and validating data collected in the 2009, 2012 and 2013 site surveys and reports and as well as evaluating costs and revenue given the current market value of scrap material and the new proposed schedule of events. This report is based on the update of rates based on November 2020 rates. The estimate was then escalated at a 2.5% rate to represent the costs based on a projected shutdown date of 31 October 2031.

Four previous decommissioning studies have been performed for the entire Four Corners Site. In December 2009 Shaw completed an assessment titled “Facility Wide Indicative Demolition Cost Estimate – Four Corners Power Plant”. The 2009 assessment characterized project costs and potential revenue sources associated with decommissioning and dismantlement of the Four Corners Generating Station, Units 1 – 5. In June of 2012, Shaw performed a site walk down assessment of Units 1, 2 & 3 to quantify changes to the plant since 2009, and to collect actual sample data of environmental elements of concern. In August 2013 the study was updated with respect to Units 4 & 5 according to work performed at the plant since 2009, and to account for demolition and salvage cost changes. The cost of closing the ash ponds at Four Corners has been updated to reflect current cost estimates provided by APS. In 2015 the report was additionally updated to provide additional information on the cost of closing additional ponds associated with the wastewater system and the ash system and an expected shutdown in 2038.

This updated analysis given the new shutdown schedule of 31 October 2031 will provide APS with a decommissioning and demolition cost and revenue assessment, and schedule for planning activities. This deliverable will assist APS in determining the optimum path for completing the remaining station decommissioning, dismantlement and demolition, considering the project’s short and long-term economics.

In order to provide recommendations regarding the update to the 2015 report which was based on a 2038 shut down scenarios, Aptim performed data analysis on the following items:

- Remaining Unit 1, 2 & 3 demolition activities





- Updated Unit 4 & 5 environmental costs
- Updated existing Unit 4 & 5 demolition estimate
- Analyzed the new systems which have been installed since 2015
- Updated the material salvage estimate
- Updated the existing Four Corners decommissioning and demolition schedule
- Desired Final Disposition of the Site

According to the existing lease agreement with the Navajo Nation, once the overall decommissioning project is complete and the property control is returned to the Nation, there are four (4) buildings which are required to remain. They are the admin building, the warehouse, the maintenance shop and the common building. For the assumptions of this study it was decided to have the following buildings remain: the new admin building (# 02), the Unit 4 & 5 maintenance shop (# 59), the training building and the warehouse (# 03). Building numbers were based on drawing F123-C-06-PBS-2318 sht1.

Table 1 – Four Corners Shutdown 2031 Overall Project Credits and Costs

Overall Unit 4 & 5 Project Credits and Costs	
Description	Total (\$)
Material Salvage Credit	
Units 4 & 5 (remaining common) Estimated Salvage Value	(\$19,758,000)
Transportation Costs	\$4,311,621
Total Estimated Salvage Value (includes transportation costs)	(\$15,446,379)
Environmental	
Complete ACM Abatement of Units 4 & 5 and Buildings	\$4,845,802
ROM Cost Estimate for Clean, Flush, Removal, Transport and Disposal of Universal/Hazardous Wastes for Unit 4 & 5	\$1,058,929
Unit 4 & 5 Ash Ponds Closure (and share of common ponds)	\$33,603,059
Environmental Costs Subtotal	\$39,507,790
Decommissioning/Demolition	
Above Ground Estimated Cost for Decommissioning and Demolition of Four Corners Units 4 & 5 and Common Buildings	\$40,074,930
Below Ground Estimated Cost for Decommissioning and Demolition of Four Corners Units 4 & 5 and Common Buildings	\$10,585,591
Cleaning of Units 4 and 5 and Associated Structures and Conveyors	\$727,768
Demolition of Unit 4 & 5 SCRs	\$1,561,625
Demolition of the Air Compressor Building and Slab	\$234,786
Demolition of the Urea Plant	\$201,176
Demolition of the San Juan River Pump House and Removal of Intake Pipe from River to Plant	\$1,408,994



Overall Unit 4 & 5 Project Credits and Costs	
Description	Total (\$)
Removal of Ash-Concrete Haul Road to Ash Landfill	\$969,102
Remove Units 4 & 5 Bottom Ash Structure	\$484,831
Decommissioning/Demolition Cost Subtotal	\$56,248,803
Total Environmental & Decommissioning Costs	\$95,756,593
Navajo Sales Tax	\$5,745,396
New Mexico Sales Tax	\$4,907,525
Contingency (15%)	\$14,363,489
Overall Project Cost in 2020	\$105,326,624

At the request of one of the owner participants, Aptim has added a specific line item in the overall cost summary table specifically for contingency. Contingency was removed from the Unit 4 & 5 Above Grade and Below Grade line items to represent the projected values. A requested contingency of 15% was applied to the subtotals prior to sales tax to represent the total amount of unidentified risks to be included in the current project costs.

To ensure consistency and a full representation of the costs, Aptim has also included a line item for the two (2) types of sales tax which will be charge for work conducted at the Four Corners plant site. As part of the 2015 report, Navajo Sales Tax was calculated at 4%. Since then, Navajo Sales Tax has increased to 6%. Additionally, New Mexico Sales Tax is also applicable to the overall cost of the project which currently is 5.125%. Both types of sales tax were applied to the Total Cost prior to any salvage credit.

Table 2 – Four Corners Shutdown 2031 Unit 1, 2 & 3 Costs

Units 1, 2 & 3 Project Costs	
Description	Total (\$)
Decommissioning/Demolition	
Below Ground Estimated Cost for Decommissioning and Demolition of Four Corners Units 1, 2 & 3	\$3,244,644
Units 1, 2 & 3 Decommissioning Cost Subtotal	\$3,244,644
Navajo Sales Tax	\$194,679
New Mexico Sales Tax	\$166,288
Contingency	\$486,697
Units 1, 2 & 3 Overall Cost	\$4,092,307



2.0 Four Corners Units 1, 2 & 3 Remaining Costs

The decommissioning and demolition of Units 1, 2 & 3 were substantially completed at the end of 2016. During the demolition of Units 1, 2 & 3, no below grade activity occurred due to the necessity to maintain critical systems such as service water, fire water, storm water and sewer system and not impact normal operations of Units 4 & 5. With that the foundations, structures and all below grade work for all structures throughout the Unit 1, 2 & 3 area remain to be completed and will be a required item for the overall reclamation of the site. During the decommissioning of Units 1, 2 & 3 the decision was made to flow fill the inlet lines for the circulating water lines to minimize the risk of the abandoned lines collapsing before the overall site reclamation would occur. These structures are identified as items which will be completely removed as the site below grade activities are occurring and have been included in the Unit 1, 2 & 3 cost estimate. The discharge circulating water lines will be abandoned in place as they are deeper than the 6 feet below grade threshold for structures to be removed.

Table 3 – Units 1, 2 & 3 Remaining Costs

Overall Project Credits and Costs	
Description	Total (\$)
Decommissioning/Demolition	
Below Ground Estimated Cost for Decommissioning and Demolition of Four Corners Units 1, 2 & 3	\$3,244,644
U1, 2 & 3 Decommissioning Cost Subtotal	\$3,244,644



3.0 Four Corners Units 4 & 5 Environmental Costs

Aptim looked at the overall costs for managing the currently identified environmental risks at the site. This included the review of the identified wastes based on previous assessment of major storage vessels on site and the inclusion of new materials which have been added to support new systems.

3.1 Waste Management

During the review and analysis of the previous estimate, the survey data included the inspection of potential universal waste materials sources, such as lead acid batteries, mercury switches, liquid transformers, lube-oil and sodium/mercury and fluorescent bulbs. The field investigation was divided into several areas; “Unit 4 Superstructure”, “Unit 5 Superstructure”, “Turbine Building No. 88”, and individual Support Buildings 13, 14, 15, 16, 19, 20, 21, 29, 30, 32, 42, 43, 46 & 68. Additionally, during the review of the previous estimate and building on the experience gained during the demolition of Units 1, 2 & 3, it was determined to include initial shutdown cleaning as a portion of the estimate. These are tasks which will occur immediately after the unit is taken offline and before the facility is made completely cold and dark. The post shutdown tasks to include:

- a. Remove and correctly dispose of all remaining universal wastes on site.
- b. Remove and correctly containerize and dispose of all remaining hazardous materials such as mercury, lead, PCBs and other wastes on site.
- c. Vacuum and cleaning of all duct work, air heaters, wind boxes, baghouse compartments, ash silos to ensure the proper removal of all CCR waste and the coal conveyance system to remove a bulk of the coal fines.
- d. High pressure power wash of tanks, vessels, bottom ash hoppers and sumps to ensure the impacted interior surfaces throughout the site and scrubber system to eliminate any oils, and chemical contamination.
- e. Excavate, characterize, dispose of the contents of all collection sumps, pits and ponds which collect sedimentation and other materials during normal operations and move the contents to either the onsite landfill or to an offsite landfill.



Table 4 – Universal Waste Removal and Disposal Costs

Overall Project Credits and Costs	
Description	Total (\$)
Environmental	
ROM Cost Estimate for Clean, Flush, Removal, Transport and Disposal of Universal/Hazardous Wastes	1,058,929
Environmental Subtotal	1,058,929

3.2 Asbestos Containing Materials

During the review and analysis of the previous estimate, the team looked through the previous survey data which included the sampling and testing of potential sources of asbestos containing materials (ACM). While there have been several projects which have occurred throughout the plant, there was insufficient information to identify locations in which asbestos may have been abated. To that end, Aptim has carried forward all quantities previously identified in the last report. The overall cost for removal has been updated to represent current rates for abatement. Aptim used the cost of disposal of ACM during the decommissioning of Units 1, 2 & 3 as a reference point in estimating an overall disposal costs of ACM for Units 4 & 5 and the associated common buildings.

As in previous site reviews the expectation would be that a contractor would conduct all site remediation to include the ash ponds related to Units 4 & 5.

Table 5 – ACM Removal and Disposal Costs

ACM Project Costs	
Description	Total (\$)
Environmental – ACM	
Complete ACM Abatement of Units 4 & 5	\$4,603,512
Transportation and Disposal	\$242,290
Environmental – ACM Subtotal	\$4,845,802

3.3 Coal Combustion Residual (CCR) Landfill & Pond Closures

During the review and analysis of the previous estimates, the team looked through the projects which were identified for the closure of several of the ponds, landfills or other coal combustion residual (CCR) impoundments. The most recent estimate provided for the Unit 4 & 5 ash landfill closure were last provided in 2015 and the value of that estimate was included as the Unit 4 and 5 Ash



Pond Closure value in Table 1. The projects which had been added to the 2015 report are shown in Table 6. These projects had been estimated by AECOM and the values provided below were taken directly from those estimates. APS has identified that these projects were initial estimates for Effluent Limitation Guideline (ELG) rules where were being proposed by the EPA at the time of the 2015 report. These projects have been replaced by the new 2020 Long Range Forecast (LRF) projects in Table 7. All projects in Table 6 have been removed from the overall project estimate.

Table 6 – Other Civil Work

Activity	2015 Estimate
Closure of Evaporation Ponds 1 – 4	\$639,000
Closure of Decant Cell (LVWW) Pond	\$389,059
Closure of DFADA Site 5 & 6	\$7,937,000
Closure of DFADA Site 7 & 8	\$6,858,000
Closure of LVWW Pond	\$687,010
Closure of FGD Dewatering Surge Pond	\$744,000
Closure of Lower Retention Pond	\$124,000
Closure of Seepage Intercept System	\$90,000
Total	\$17,468,069

The following projects have been identified in the APS Long Range Forecast as key projects prior to the shutdown of Four Corners Units 4 & 5. These projects are part of the Effluent Limitation Guidelines (ELG) rules which have been enacted by the EPA since the 2015 report. These projects have been identified as updates and replacements of all projects listed in Table 6. These independent estimates were provided by APS as part of the Four Corners 2020 LRF decommissioning projects. Their scope and amounts have been communicated to the Four Corners E&O Committee and their values are shown in Table 7. Additional subsurface investigations may be required associated with these projects which are unable to be estimated or predicted until design and construction begins. Since these projects are forecasted to be completed prior to the 31 October 2031 shutdown, their costs were not incorporated in the overall estimate for the final closure of the Four Corners plant site.



Table 7 – APS Fossil LRF Four Corners Decommissioning Projects

WA	CBI	Unit Code	Activity	2020 LRF Estimate	Completion Year
FCC06339	FC18-35	F45	Lined Ash Impoundment Closure	\$5,464,000	2026
FCC07660	FC18-38	F45	LDWP (Ash Pond 3) Closure	\$3,197,000	2026
FCC07661	TBD	F45	Dry Fly Ash Disposal Area (DFADA) Section B Closure	\$6,405,000	2024
FCC08905	TBD	F45	Dry Fly Ash Disposal Area (DFADA) Section C Closure	\$4,966,000	2030
FCC08396	TBD	FC	Seepage Intercept System Closure	\$910,000	2026
FCC08397	TBD	F45	Seepage Intercept System Closure	\$90,000	2026
FCC08366	TBD	F45	Dry Fly Ash Disposal Area (DFADA) Section E Closure	\$12,598,000	2030
Total				\$33,630,000	



4.0 Four Corners Units 4 & 5 Demolition Costs

Aptim looked at the overall costs for demolition of Four Corners Units 4 & 5 with a projected shutdown date of 31 October 2031.

4.1 Unit 4 & 5 Above Grade Demolition Costs

This analysis was to focus on utilizing only a demolition contractor to perform all the work in decommissioning and demolition. This includes the demolition of the entire facility including the turbine building and associated pedestals, boilers to existing grade, all concrete foundations, scrubbers, lime units, all conveyors, asphalt pavements, and foundational concrete.

It is for this reason and based upon our experience, that we organized the demolition sequence and ROM engineer's demolition estimate in defined zones that are prioritized in a manner that will best accommodate the deconstruction sequence of the plant both safely and efficiently. The general direction of removal will be from the extreme western end of the plant moving east toward the administration building. The stacks will be dropped once the turbines, boilers, scrubbers and common structures are removed. At this time, we are anticipating that the larger stacks will be dropped in a due west direction of the plant.

4.2 Unit 4 & 5 Below Grade Demolition Costs

Aptim looked at the overall costs for below grade demolition. This included removal of all concrete structures down to six (6) feet below grade and this material will be processed on site and reused as structural backfill to offset the cost of import. This depth allows for the removal of most foundations, duct banks and other major below grade structures. The backfill is primarily to be used to backfill former foundation footprints or other areas required to bring former foundation excavations to finished grade including the hot well pits, reclaim pits, sumps, underflow structures and impoundments. The estimate included flow filling of the Unit 4 and 5 circulating water lines instead of removing them as they are currently estimated to be below the 6-foot threshold.

4.3 Four Corners Common Structures Demolition Costs

The decommissioning and demolition of Units 1, 2 and 3 were substantially completed at the end of 2016. Several structures which were originally included in the original Unit 1, 2 & 3 estimate were identified to remain in support of Units 4 & 5. These structures include:

Unit 1, 2 & 3 Maintenance Building

Unit 1, 2 & 3 Electrical Shop

Training Building

Unit 1, 2 & 3 Insulation Shop



Unit 1, 2 & 3 Intercept Sump

The cost of demolition of these structures have been shifted from the cost of demolition of Units 1, 2 & 3 and have been included in the overall shutdown and demolition of Units 4 and 5. Their costs were included in the common structures portion of the estimate.



5.0 Four Corners Units 4 & 5 New Equipment

Since the last report issued in 2015 there have been several large construction projects which have occurred to support ongoing operations of Units 4 & 5. These projects include but are not limited to the following system:

1. Unit 4 & 5 SCR's,
2. Urea Plant,
3. DSI system (hydrated lime silo and injection)
4. Air Compressor Building,
5. Unit 4 & 5 New Air Heaters
6. Bottom Ash Water Reclamation System
7. New Main Air Compressor System
8. New Main Tool Room
9. Lubrication Building
10. Ash Haul Road

Aptim has incorporated these systems into the overall estimate to determine how they would impact the overall schedule, additional material salvage as well as the additional disposal of universal waste associated with these systems.



6.0 Four Corners Material Salvage

For the 2031 shutdown scenarios, Aptim utilized previous quantities of salvageable materials and updated salvage value rates to update the possible revenue that could be recovered as part of decommissioning. This analysis included the projected costs of transportation of materials to the nearest cost-effective recyclers for processing. The optimum use of rail and trucking were analyzed to identify the best transportation costs. The updated total salvage quantities are detailed in Table 8.

Table 8 – Units 4 & 5 Salvage Value

Four Corners Units 4 & 5	Steel (gross ton)	Copper (ton)	Stainless Steel (ton)
Current Average Salvage Value	\$148	\$4,000	\$800
Current Material Quantities	80,000	1,060	4,600
Total Four Corners Units 4 & 5 Salvage Value Subtotal	\$ 11,840,000	\$ 4,238,000	\$ 3,680,000
Subtotal Four Corners Units 4 & 5	\$ 19,758,000		
Estimated Shipping Costs	(\$ 4,311,621)		
Total Units 4 & 5 Salvage Value	\$ 15,446,379		



7.0 Overall Estimate Assumptions

1. All foundations will be removed to no less than 6 feet below final grade. Currently there is not a defined final grading plan;
2. The Unit 4 & 5 Base of Estimate from 2015 carries revised 2020 rates for labor, equipment and other direct costs;
3. The SCRs were newly installed following the demolition of Units 1, 2 and 3. The SCR demolition costs are therefore included in the 2020 estimate;
4. Demolition of the SCRs includes an implosion budget followed by concrete removal and metals processing;
5. Time in the SCR demolition is included for burners to weaken the structure prior to implosion;
6. The estimate includes the removal of the Units 1, 2 and 3 circulating water lines. The intake lines are comprised of two buried 84" and 90" diameter lines each adjacent to one another from the intake structure at the lake to where they manifold near the former location of the Units 1, 2 and 3 plant structure location.
7. Total Length of the circulating water lines is 2,200 lf.
8. The circulating water line intakes are completely flow-filled. It is assumed that all subsurface piping must be removed, and the former trench backfilled with clean certified fill material.
9. The tops of the circulating water lines are assumed to be 4-foot bgs with inverts down to 10-foot total depth bgs. Excavation is to be stepped down for safety to expose both pipes prior to extraction from the ground;
10. Approximately 12,222 cy of completely flow-filled circulating water line pipe requires removal from the ground. Removed spoils handling is 21,000 cy of total backfill required including compaction
11. Units 1, 2 and 3 discharge lines are approximately 1,628 linear feet; Units 1, 2 and 3 discharge lines are not flow filled. Assume 8,800 cy of imported fill to backfill intake and discharge trenches plus compaction are included in the estimate
12. The main air compressor building, and slab require simple demolition of an engineered building.
13. The Urea Plant consists of a control/storage building, tank and pipe. Total square footage is approximately 8,428 SF. Demolition is assumed to be 900 SF/day including metal and concrete processing.
14. The San Juan River pump house is 6,000 SF with little room to work due to steep elevation changes around the plant and intake structure located on the river.
15. The pipeline volume from the San Juan River is approximately 26,000 cy of material that requires fill material to regrade the trench. The trench is assumed to be 8-foot deep and 3 foot below grade to its top. The estimate assumes the



first 600 lf of pipe will be left in place and plugged with cement retainers in the segment closest to the pump house location to ensure slope stability that may be caused by its removal.

16. A \$6,000 allowance for the cement retainers was included in the estimate to isolate this segment of piping at the San Juan River.
17. It is assumed that 54,000 cy of clean certified import is required to backfill the trench once all the pipe is removed from the subsurface. Backfill price is assumed to be \$18/cy delivered and is included in the estimate.
18. Costs for cleaning of Units 4 and 5 are generally offset by plant personnel prior to decommissioning and demolition. However, a budget to clean the baghouses, SCRs, scrubber system, coal silos, conveyor system wash down, interior vacuuming, exterior wash, ductwork cleaning, boiler tube cleaning and boiler back-pass cleaning have been included in the costs. The budget is based upon an assessment of cleaning done at other plants with attention to the amount of dust/ash/fines accumulations currently observed.



8.0 Four Corners Overall Decommissioning and Demolition Schedule

The overall Four Corners Decommissioning and Demolition Schedule reflects the new proposed start dates of 01 October 2030 and start the post shutdown activities on 01 November 2031. The schedule represents the planning, execution and closeout of all work that would be included in the decommissioning, demolition and remediation of the site. This is to include:

- Hazardous Waste Removal
- Asbestos Abatement
- Structural Demolition
- Ash Pond Closures
- Site Remediation

The schedule has been created with four key phase activities. Phase II represent the planning, development of the overall scope of work and specifications. Phase III represents the actual shutdown of the various units and the initiation of decommissioning. Phase IV represents the initiation of asbestos abatement and the completion of the demolition of structures on site. Phase V represents the overall site remediation and restoration. Below are Level-1 schedule completion roll up summary dates.

Table 9 – Overall Four Corners Site Schedule Summary

Activity	Approximate Date
Phase II: Pre shutdown Planning	10/01/2030
Phase III: Post Shutdown	
Unit 4 & 5 Shutdown	10/31/2031
Initiate Decommissioning	11/01/2031
Phase IV: Asbestos Abatement Begins	11/01/2031
Unit 4 & 5 Asbestos Abatement Complete	04/30/3032
Unit 4 & 5 Exterior & Structural Demolition Complete	04/30/2033
Phase V: Site Restoration Complete	11/01/2033
Total Duration:	1,280 days
Project Closeout	01/31/2034



9.0 Cost Escalation for 2031 Four Corners Shutdown

The overall Four Corners Unit 4 & 5 Project costs have been escalated at a 2.5% annual rate to represent the project cost of the project in 2031 dollars. The Material Salvage Credit has been removed from Table 10 due to volatility of the price of salvage material and should not be associated with an escalation factor applied to the project. Sales tax was itemized and applied after the escalation of the estimated costs with the assumption that there would be no change in the sales tax percentage.

Table 10 – Four Corners Shutdown 2031 Escalated Overall Project Credits and Costs

Overall Unit 4 & 5 Project Credits and Costs	
Description	Total (\$)
Material Salvage Credit	
Units 4 & 5 (remaining common) Estimated Salvage Value	Not Calculated
Transportation Costs	Not Calculated
Total Estimated Salvage Value (includes transportation costs)	Not Calculated
Environmental	
Complete ACM Abatement of Units 4 & 5 and Buildings	\$6,358,112
ROM Cost Estimate for Clean, Flush, Removal, Transport and Disposal of Universal/Hazardous Wastes for Unit 4 & 5	\$1,389,407
Unit 4 & 5 Ash Ponds Closure (and share of common ponds)	\$44,090,125
Environmental Costs Subtotal	\$51,837,644
Decommissioning/Demolition	
Above Ground Estimated Cost for Decommissioning and Demolition of Four Corners Units 4 & 5 and Common Buildings	\$52,581,781
Below Ground Estimated Cost for Decommissioning and Demolition of Four Corners Units 4 & 5 and Common Buildings	\$13,889,213
Cleaning of Units 4 and 5 and Associated Structures and Conveyors	\$954,895
Demolition of Unit 4 & 5 SCRs	\$2,048,987
Demolition of the Air Compressor Building and Slab	\$308,060
Demolition of the Urea Plant	\$263,960
Demolition of the San Juan River Pump House and Removal of Intake Pipe from River to Plant	\$1,848,722
Removal of Ash-Concrete Haul Road to Ash Landfill	\$1,271,546
Remove Units 4 & 5 Bottom Ash Structure	\$636,140
Decommissioning/Demolition Cost Subtotal	\$73,803,304
Total Environmental & Decommissioning Costs	\$125,640,948
Navajo Sales Tax	\$7,538,457
New Mexico Sales Tax	\$6,439,099
Contingency (15%)	\$18,846,142
Overall Project Cost in 2031	\$158,464,646



The projected cashflow for the project based on the escalated 2031 dollars is shown in Table 11. This breakdown includes the contingency and sales tax shown in Table 10.

Table 11 – Projected Cashflow in 2031 Dollars

2030	2031	2032	2333	2034
\$ 333,375	\$6,293,693	\$ 47,671,835	\$ 103,943,492	\$ 222,250

The overall Four Corners Unit 1, 2 & 3 remaining costs have been escalated at a 2.5% annual rate to represent the project cost of the project in 2031 dollars. Sales tax was itemized and applied after the escalation of the estimated costs with the assumption that there would be no change in the sales tax percentage.

Table 12 – Four Corners Shutdown 2031 Escalated Unit 1, 2 & 3 Costs

Units 1, 2 & 3 Project Costs	
Description	Total (\$)
Decommissioning/Demolition	
Below Ground Estimated Cost for Decommissioning and Demolition of Four Corners Units 1, 2 & 3	\$4,257,254
Unit 1, 2 & 3 Decommissioning Cost Subtotal	\$4,491,346
Navajo Sales Tax	\$255,435
New Mexico Sales Tax	\$218,184
Contingency (15%)	\$638,588
Overall Unit 1, 2 & 3 Decommissioning Cost	\$5,369,462

Sector	Technology	Plant	In-service Date	Net maximum capacity (MW) (100%)(NMC)	% of Total Project	Net max capacity (MW) (PNM share)
Electric Utility	Conventional Steam Coal	Four Corners 4	7/1/1969	770.0	13%	100.1
		Four Corners 5	7/1/1970	770.0	13%	100.1
		San Juan 1	12/31/1976	340.0	50%	170
					64.482% PNM / 12.815% PNM Merchant	
	Natural Gas Fired Combined Cycle	San Juan 4	4/28/1982	507.0		327 / 65
		Afton 1x1 CC	10/12/2007	235.0	100%	235
		Luna 2x1 CC	4/1/2006	570.0	33.33%	190.0
		Luna 1x1 CC	4/1/2006	273.9	33.33%	91.3
	Natural Gas Fired Combustion Turbine	Afton SC	Nov-2002	156.0	100%	156
		La Luz	12/18/2015	41.0	100%	41.0
		Lordsburg 1	7/1/2002	42.7	100%	42.7
		Lordsburg 2	7/1/2002	42.7	100%	42.7
	Natural Gas Steam Turbine	Rio Bravo (NG)	4/15/2000	149.0	100%	149.0
		Reeves 1	8/31/1960	42.0	100%	42.0
		Reeves 2	3/1/1960	41.0	100%	41.0
		Reeves 3	7/31/1962	63.0	100%	63.0
	Nuclear	Palo Verde 1	1/28/1986	1311.0	2.3% owned / 7.9% leased	134.0
		Palo Verde 2	9/19/1986	1314.0	9.4% owned / 0.8% leased	134.0
		Palo Verde 3	1/8/1988	1312.0	10.2%	134.0
	Solar Photovoltaic	Alamogordo Solar	10/15/2011	4.95	100%	4.95
		Albuquerque Solar Energy Center (Reeves)	4/8/2011	2.00	100%	2.00
		Cibola Solar	2/1/2015	8.00	100%	8.00
		Deming Solar	8/8/2011	9.00	100%	9.00
		Las Vegas Solar	12/15/2011	5.00	100%	5.00
		Los Lunas Solar	6/1/2011	7.00	100%	7.00
		Manzano Solar	10/11/2013	8.00	100%	8.00
		Meadow lake Solar	12/31/2014	8.89	100%	8.89
		Otero Solar	12/1/2013	7.50	100%	7.50
		Prosperity Solar	9/19/2011	0.50	100%	0.50
		Rio Communities Solar	12/31/2015	9.88	100%	9.88
		Rio Del Oro Solar	5/31/2019	9.80	100%	9.80
		Rio Rancho Solar	12/3/2019	9.70	100%	9.70
	San Miguel 1 Solar	9/20/2019	10.00	100%	10.00	
	San Miguel 2 Solar	10/15/2019	10.00	100%	10.00	
	Sandoval Solar	12/31/2014	5.96	100%	5.96	
	Santa Fe Solar	12/31/2015	9.21	100%	9.21	
	Santolina Solar	12/31/2015	10.50	100%	10.50	
	South Valley Solar	12/31/2015	9.92	100%	9.92	
	Vista Solar	3/5/2019	9.85	100%	9.85	
	Prosperity Battery	9/19/2011	0.50	100%	0.50	
	Batteries					

Sector	Technology	Plant	In-service Date	Net maximum capacity (100%) (MWC)	% of Total Project	Net max capacity (MW) (PNM share)
IPP	Geothermal Natural Gas Fired Combustion Turbine Onshore Wind Turbine	Dale Burgett Geothermal Plant (Lightning Dock)	1/1/2018	11.0	100%	11.0
		Valencia	5/31/2008	155.1	100%	155.1
		Casa Mesa Wind ^C	11/13/2018	50.0	100%	50.0
		La Joya 1 Wind ^C	1/15/2021 ^A	165.02	100%	165.02
		La Joya 2 Wind	1/29/2021 ^A	141.18	100%	141.18
		Lone Mesa Wind (NMWEC)	9/17/2018	200.0	100%	200.0
		Red Mesa Wind	1/1/2015	102.0	100%	102.0
		Arroyo Solar	6/30/2022	300.0	100%	300.0
		Britton Solar ^C	12/13/2019	50.0	100%	50.0
		Encino Solar ^C	6/1/2020	50.0	100%	50.0
	Solar Photovoltaic	Facebook 1 Solar ^C	12/29/2017	10.0	100%	10.0
		Facebook 2 Solar ^C	2/26/2018	10.0	100%	10.0
		Facebook 3 Solar ^C	4/5/2018	10.0	100%	10.0
		Jicarilla Solar 1	4/30/2022 ^A	50.0	100%	50.0
		Jicarilla Solar 2 ^D	6/29/2021 ^A	50.0	100%	50.0
		Route 66 Solar ^C	12/1/2021 ^A	49.5	100%	49.5
		Rockmont Solar	6/20/2022 ^A	100.0	100%	100.0
		San Juan Solar	6/10/2022 ^A	200.0	100%	200.0
		Arroyo Storage	6/30/2022 ^A	150.0	100%	150.0
		Casa Mesa Battery ^C	11/13/2018	1.0	100%	1.0
Batteries	Jicarilla Storage ^B	4/30/2022 ^A	20.0	100%	20.0	
	Rockmont Storage ^B	6/20/2022 ^A	30.0	100%	30.0	
	San Juan Storage ^B	6/10/2022 ^A	100.0	100%	100.0	

^A - Date based on estimated COD

^B - Four hour duration

^C - Datacenter resource

^D - Solar direct program resource

CASH FLOW MODEL - 2020 Four Corners Decommissioning Study

Inflation Rate - 30 yr. average	2.40%
Discount Rate	4.90%
Annual effective discount rate	5.01%

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	Table 1 2020 Dollars	Table 7 2020 Dollars	Total 2020 Dollars	PNM Share 2020 Dollars	PNM Share Escalated @ 2.4%	PNM Share Discounted @ 4.9%
2024	-	6,405,000	6,405,000	832,650	915,508	752,904
2026	-	9,661,000	9,661,000	1,255,930	1,447,989	1,079,894
2030	221,584	17,564,000	17,785,584	2,312,126	2,930,968	1,797,647
2031	4,183,226	-	4,183,226	543,819	705,918	412,303
2032	31,686,017	-	31,686,017	4,119,182	5,475,332	3,045,388
2033	69,088,074	-	69,088,074	8,981,450	12,224,916	6,475,112
2034	147,723	-	147,723	19,204	26,766	13,501
	105,326,624	33,630,000	138,956,624	18,064,361	23,727,397	13,576,750

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF THE)
ABANDONMENT OF THE FOUR CORNERS)
POWER PLANT AND ISSUANCE OF A)
SECURITIZED FINANCING ORDER)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant)
_____)**

Case No. 21-_____-UT

SELF AFFIRMATION

Thomas G. Fallgren, Vice President of Generation for Public Service Company of New Mexico, upon penalty of perjury under the laws of the State of New Mexico, affirm and state:
I have read the foregoing **Direct Testimony of Thomas G. Fallgren** and it is true and correct based on my personal knowledge and belief.

DATED this 8th day of January, 2021.

/s/ Thomas G. Fallgren _____
THOMAS F. FALLGREN