



TransWest Express Application for Participating Transmission Owner Status



California Independent
System Operator, Inc.

July 14, 2022



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TransWest Express LLC Application for Participating Transmission Owner Status

July 14, 2022

Pursuant to Section 4.3.1.1 of the California Independent System Operator Corporation (“CAISO”) Tariff and Section 2.2.1 of the Transmission Control Agreement (“TCA”). TransWest Express LLC (“TransWest”) respectfully submits its application to become a Participating Transmission Owner (“PTO”) with respect to the TransWest Express Transmission Project (“TWE Project”). TransWest is a wholly-owned affiliate of The Anschutz Corporation, a privately held company based in Denver, Colorado. The TWE Project is a new 732-mile interregional transmission system that has been designed to connect renewable resources in Wyoming with load serving entities (“LSE”) in the west, predominantly LSE’s located in California.

TransWest has been granted negotiated rate authority by FERC and will offer long-term firm service to subscribers at negotiated rates. Consequently, the TWE Project will derive revenues for long-term firm transmission service from its subscribers at negotiated rates and for other transmission services pursuant to a separate wheeling charge specific to the TWE Project, as approved by the Federal Energy Regulatory Commission (“FERC”), so the costs of the TWE Project would not be included in the CAISO Transmission Access Charge.

Through an open solicitation process approved by FERC, TransWest has entered into two customer agreements with the Power Company of Wyoming LLC (“PCW Customer Agreements”) for firm point-to-point transmission service on the TWE Project in the north-to-south direction. TransWest would propose to have the Transmission Service Agreements resulting from the PCW Customer Agreements be deemed Encumbrances. TransWest intends to execute the Transmission Control Agreement providing CAISO Operational Control of the TWE Project subject to the Encumbrances. TransWest will offer other transmission service on the TWE Project as provided in its Transmission Owner Tariff (“TO Tariff”).

1. The TransWest Express Transmission System

As an interregional transmission system, the TWE Project will connect to the existing bulk power system in Wyoming and Utah as well as directly to the California Independent System Operator (“CAISO”) Controlled Grid in Nevada.

The TWE Project will consist of three linked segments that include: (1) a 405-mile, 3,000 MW, high-voltage direct current (“HVDC”) system between Wyoming and Utah; (2) a 278-mile, 1,500 MW, 500 kV high-voltage alternating current (“HVAC”) transmission line between Utah and Nevada; and (3) a 49-mile, 1,500 MW, 500 kV HVAC transmission line in Nevada.

The TWE Project’s 405-mile HVDC segment will include terminals located near Sinclair, Wyoming (“Wyoming Terminal”) and Delta, Utah (“Utah Terminal”). At the Wyoming Terminal, the TWE Project will interconnect to a new substation on PacifiCorp’s Gateway West 500 kV transmission line (“Ferris Substation”). At the Utah Terminal, the TWE Project will interconnect to the Intermountain Power Agency’s Intermountain Power Project 345 kV Switchyard (“IPP 345 kV Switchyard”), enabling the project to interconnect with the Los Angeles Department of Water and Power’s (“LADWP”) Balancing Authority Area and deliver

renewable energy to southern California Municipal Utilities. The 278-mile HVAC segment will extend from the Utah Terminal to an interconnection with a new substation on Desert Link’s Harry Allen-to-Eldorado 500 kV line, which is part of the CAISO controlled grid and the CAISO Balancing Authority Area, and NV Energy’s Crystal North 500 kV Substation located northeast of Las Vegas, Nevada (“CAISO DesertLink/NVE Crystal Substations”). From there, a 49-mile HVAC segment could interconnect with the 500 kV transmission facilities in the Eldorado Valley southwest of Boulder City, Nevada owned by Southern California Edison Company, the Western Area Power Administration, the Los Angeles Department of Water and Power, NV Energy, and others (“CAISO Eldorado Substation”), within the CAISO Balancing Authority Area.

Attached as Appendix A is a map showing the TWE Project in the context of the Western transmission grid and the TWE Project interconnections. Attached as Appendix B is a one-line diagram of the TWE Project.

The TWE Project is in an advanced stage of development, focused on pre-construction matters including tower design and testing; interconnections; contracting with engineering, procurement, and construction contractors; and financing. All major permits have been acquired and 100% of the easements/authorizations to build on private lands have been secured. TransWest anticipates that the 1,500 MW HVDC segment from the Ferris Substation to the IPP 345 kV Switchyard and the 500 kV HVAC segment from the IPP 345 kV Switchyard to the CAISO DesertLink/NVE Crystal Substations can be placed in service as early as 2026.

2. Entitlements

There are currently no Entitlements as defined in the CAISO Tariff with respect TransWest’s interest in the TWE Project or other transmission lines.

3. Encumbrances

As background, in February 2021, FERC granted TransWest negotiated rate authority and approved an open solicitation process proposed by TransWest.¹ The open solicitation process was conducted between June and November 2021 and was open to all market participants seeking access to Wyoming resources and to Wyoming resources seeking access to markets accessed by the TWE Project. The capacity offered through the TWE Project open solicitation included long-term, firm point-to-point transmission service packaged as two south-bound products, including a 1,500 MW Wyoming to Utah product and a 1,500 MW Wyoming to Nevada product. TransWest ultimately negotiated customer agreements that allocated 100% of the TWE Project capacity offered in the open solicitation to the Power Company of Wyoming LLC (“PCW”). In February 2022, the Commission accepted the results of TransWest’s open solicitation process.²

¹ See *TransWest Express LLC*, 174 FERC ¶ 61,160 (2021).

² The Commission accepted TransWest’s capacity allocation process compliance filing in *TransWest Express LLC*, Docket No. ER21-645-000 (Feb. 16, 2022) (Delegated Letter Order).

As a result of the open solicitation, the TWE Project is subject to the following Encumbrances:

1. Pursuant to a Customer Agreement, TransWest will provide 1,500 MW of firm point-to-point transmission service in the north-to-south direction to PCW between the Wyoming Terminal and the IPP 345 kV Switchyard and the LADWP Balancing Authority Area.
2. Pursuant to a Customer Agreement, TransWest will provide 1,500 MW of firm point-to-point transmission service in the north-to-south direction to PCW between the Wyoming Terminal and one or more of the CAISO DesertLink/NVE Crystal Substations and CAISO Eldorado Substation.

The matrix summary of Encumbrances is included below as Appendix C-1.

The referenced confidential Customer Agreements, which were filed as confidential with the Federal Energy Regulatory Commission (“FERC”) and have otherwise been maintained as confidential by TransWest, are included as Confidential Appendix C-2.

4. Statement of Intent to Place All Transmission Lines, Associated Facilities, Entitlements Under CAISO Operational Control

TransWest intends to place under the CAISO’s Operational Control all of the TWE Project transmission lines and associated facilities listed in Section 1 above. In addition, TransWest requests that the Transmission Service Agreements be treated as Encumbrances consistent with Section 16 of the CAISO Tariff, TransWest intends to provide CAISO with operational control over the Encumbrances described in Section 3 above.

5. Local Reliability Criteria to be Included as part of the Applicable Reliability Criteria

There are no Local Reliability Criteria applicable to the TWE Project. TransWest shall comply with all Reliability Standards and reliability criteria established by the North American Electric Reliability Corporation (“NERC”) and the Western Electricity Coordination Council (“WECC”) and approved by FERC.

6. Maintenance Practices

TransWest intends to enter into any necessary operating and maintenance agreements with third parties, which will require that all operating and maintenance work be performed according to Prudent Utility Practice, CAISO-approved maintenance standards, and the respective agreements and applicable guidelines.

7. Applicable Reliability Criteria Waivers

TransWest does not request any temporary waivers for the Applicable Reliability Criteria.

8. Applicant's proposed Transmission Owner Tariff

Attached as Appendix D is TransWest's draft TO Tariff. TransWest has not yet filed its draft TO Tariff with FERC and reserves the right to make corrections or changes to these documents prior to filing. TransWest intends to file a final version of these documents with FERC after reaching agreement with CAISO.

9. FERC Transmission Revenue Requirement Filing

TransWest does not anticipate the need for a FERC transmission revenue requirement. FERC has authorized TransWest to sell transmission rights at negotiated rates. TransWest anticipates that it will enter into service agreements based on negotiated rates for long-term firm transmission capacity subscribers on the line, as it has already done with PCW.

To the extent that CAISO takes over operational responsibilities of the line and incorporates it into the CAISO Balancing Authority Area, TWE anticipates that transmission capacity that is not reserved will be subject to a wheeling charge specific to the TWE Project and made available consistent with the Transmission Control Agreement. TransWest will obtain FERC approval for the TWE Project Subscriber Wheeling Charge consistent with Appendix F, Schedule 3 of the CAISO Tariff.

10. Address and Contact Names

TransWest Express LLC
555 17th Street, Suite 2400
Denver, CO 80202
Attention: Roxane Perruso
Email: Roxane.Perruso@tac-denver.com

TransWest Express LLC
555 17th Street, Suite 2400
Denver, CO 80202
Attention: David F. Smith
Email: David.Smith@tac-denver.com

11. Other information reasonably required by CAISO

TransWest intends to provide any other information required by CAISO.

12. Settlement Account

TransWest will establish a Settlement Account in coordination with the CAISO.

13. MWh Demand

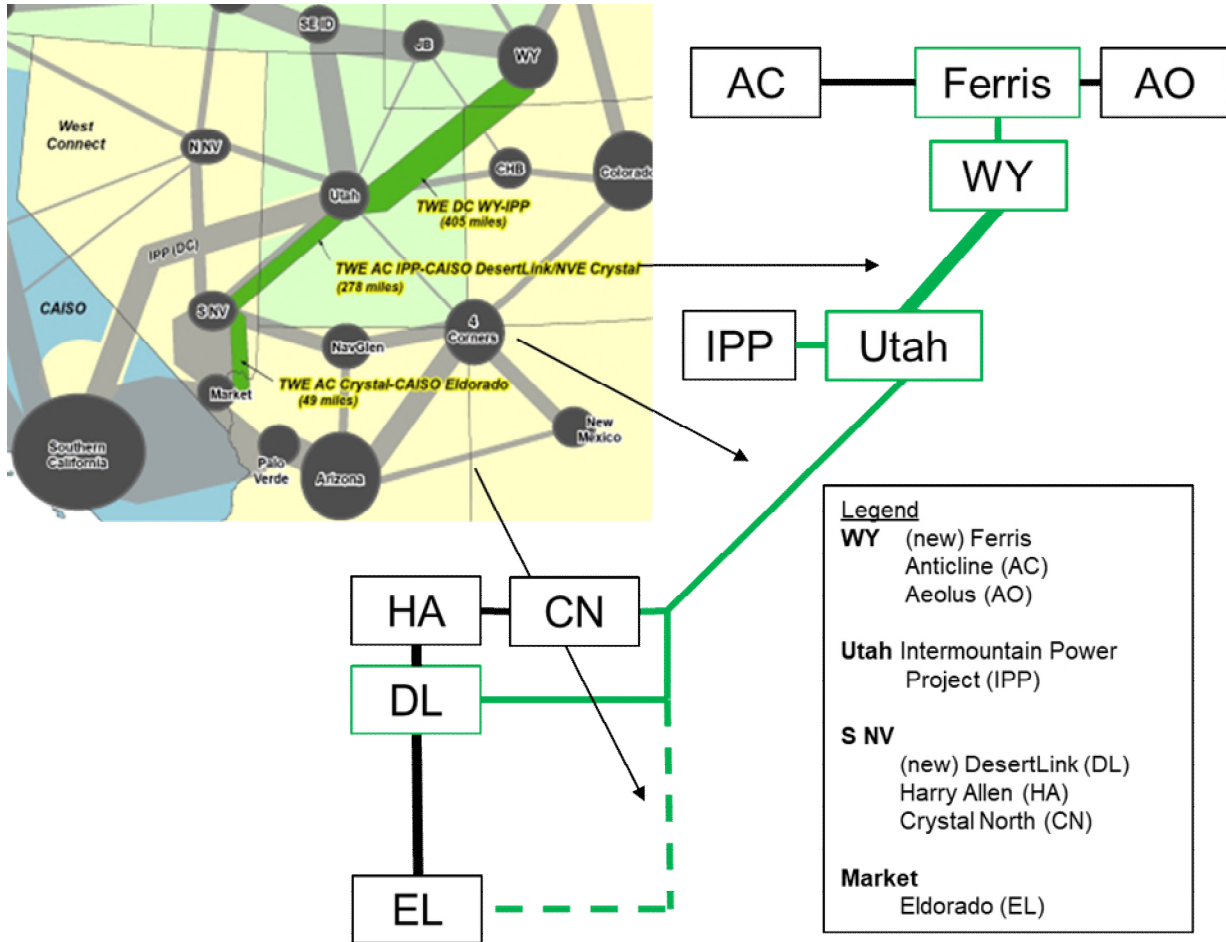
As a non-load serving independent transmission company, TransWest does not have MWh demand. This section is therefore inapplicable.

14. Encumbrances and Entitlements Instructions

Instructions will be developed jointly with the CAISO and the operating agents/transmission providers associated with TransWest's transmission Encumbrances.

Appendix A

Map of the TransWest Express Transmission Project



TWE Project Transmission System Interconnections

DC Segment Wyoming Terminal

1. PacifiCorp's Gateway West 500 kV line (new Ferris substation)

DC Segment Utah Terminal

2. IPA's IPP 345 kV Switchyard

AC Segment to S NV CAISO DesertLink/Crystal Substations

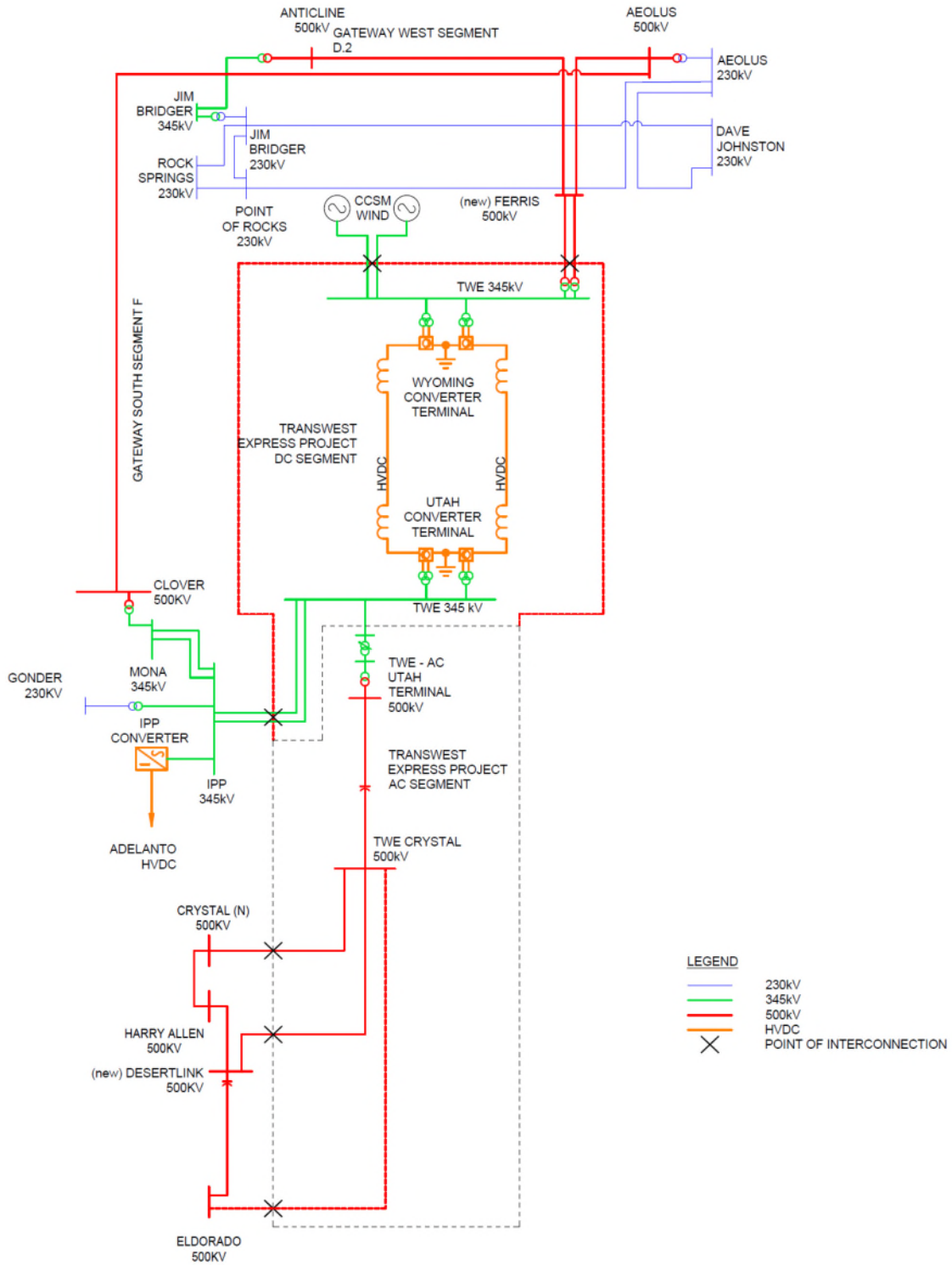
3. CAISO/DesertLink Harry Allen-Eldorado 500 kV line (new DesertLink substation)
4. NVE Crystal North 500 kV

AC Segment to CAISO Eldorado Substation

5. CAISO/Joint Owner's Eldorado 500 kV

Appendix B

TransWest Express Transmission Project One-Line Diagram



Appendix C – Encumbrances

Appendix C-1

Encumbrance Matrix

Point of Receipt-Delivery	Parties	Direction	Contract Title	FERC No.	Contract Start Date	Contract Termination	Contract Amount ³
WY to UT	Power Company of Wyoming LLC	WY-to-UT [north-to-south]	Customer Agreement / Transmission Services Agreement				1,620 MW
WY to NV	Power Company of Wyoming LLC	WY-to-NV [north-to-south]	Customer Agreement / Transmission Services Agreement				1,620 MW

³ The TWE Project’s nominal contract amount for each encumbrance is 1,500 MW as measured at the Utah and Nevada Points of Delivery. The TWE Project contracts are based on the capacity at the Wyoming Point of Receipt. The difference between the 1,500 MW as measured at the Utah and Nevada Points of Delivery and the 1,620 MW at the Wyoming Point of Receipt is due to transmission line losses at rated path flows.

Confidential Appendix C-2
Customer Agreements

CUSTOMER AGREEMENT

This CUSTOMER AGREEMENT (this “Agreement”), dated as of [_____] (the “Effective Date”), is made and entered into by and between TransWest Express LLC, a Delaware limited liability company (“Provider”), and [_____] (“Customer”). Provider and Customer are hereinafter sometimes also referred to individually as a “Party” and collectively as the “Parties.”

W I T N E S S E T H:

WHEREAS, Provider intends to develop, construct, own, operate, and maintain the TransWest Express Transmission Project, a 732-mile high-voltage transmission system consisting of (i) a 405-mile, 3,000 MW, 500kV HVDC transmission line from a point of receipt (the “Point of Receipt”) located near Sinclair, Wyoming to a delivery point (the “First Delivery Point”) located near Delta, Utah; (ii) a 278-mile, 1,500 MW, 500 kV HVAC transmission line from the First Delivery Point to a delivery point (the “Second Delivery Point”) located at the Crystal Substation located north of Las Vegas, Nevada; and (iii) a 49-mile, 1,500 MW, 500kV HVAC transmission line from the Second Delivery Point to a delivery point (the “Third Delivery Point”) located in the Eldorado Valley near Boulder City, Nevada;

WHEREAS, *[to describe customer purpose, such as: Customer is developing electric generating facilities for the purpose of selling electric energy for resale and has expressed interest in receiving Firm Point-to-Point Transmission Service (as defined below) for transmission capacity for [_____] MW of generation from Provider (or a designated Provider Affiliate (as defined below)) from the Point of Receipt to the First Delivery Point];* and

WHEREAS, *[to describe customer purpose, such as: Customer is also developing electric generating facilities for the purpose of selling electric energy for resale and has expressed interest in receiving Firm Point-to-Point Transmission Service (as defined below) for transmission capacity for [_____] MW of generation from Provider (or a designated Provider Affiliate (as defined below)) from the Point of Receipt to either the Second Delivery or, if elected by Customer, the Third Delivery Point];* and

WHEREAS, the Parties desire to set forth the terms under which the Parties will enter into an agreement (the “Transmission Services Agreement”) pursuant to which (1) Provider (or a designated Provider Affiliate) will construct, own, operate, and maintain the Transmission Facilities and (2) Customer will receive the Firm Point-to-Point Transmission Service.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1. Definitions. As used herein, the following terms shall have the following respective meanings:

“Affiliate” means, with respect to a specified Person, any other Person that directly or indirectly Controls, is Controlled by or is under common Control with the specified Person.

“Agreement” has the meaning provided in the preamble to this Agreement.

“Applicable Law” means any duly promulgated federal, state or local law, regulation, rule, ordinance, code, decree, judgment, directive or judicial or administrative order, permit or other duly authorized and valid action of any Governmental Authority, including any binding interpretation of any of the foregoing by any Governmental Authority, which is applicable to a Person, its property or a transaction.

“Business Day” means any day except Saturday, Sunday or any other day on which the Federal Reserve member banks are required or authorized to close for business.

“Capital Expenditures” has the meaning set forth in Attachment 1 to Exhibit B.

“Capital Expenditures Estimate” has the meaning set forth in Attachment 2 to Exhibit B.

“Confidential Information” has the meaning provided in Section 6.10(a).

“Contracted Capacity” means [_____] MW, as such may be adjusted in accordance with the terms hereof.

“Commercial Operation Date” means the date on which the Transmission Facilities have been completed, tested, and are synchronized with the transmission facilities with which they connect.

“Control” (including its correlative meanings “Controlled by” and “under common Control with”) means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the specified Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or Applicable Law or otherwise.

“Creditworthy Person” has the meaning provided in Exhibit A hereto.

“Credit Support” has the meaning provided in Exhibit A hereto.

“Customer” has the meaning provided in the preamble to this Agreement.

“Customer Deposit” has the meaning provided in Section 4.1.

“Customer Project” means the [_____] generation project known as [_____] under development by Customer in [_____].

“Customer’s Guarantor” means, if applicable, the Person providing a Guaranty pursuant to the terms of Exhibit A hereto.

“Delivery Point” means, either the (i) Second Delivery Point only, or (ii) Second Delivery Point and Third Delivery Point, as elected by Customer pursuant to a written notice provided to Provider no later than [_____].

“Development Failure” means the Phase 2 Completion Date has not occurred by the Phase 2 Completion Date Deadline, as such may be extended pursuant to Section 4.10.

“Effective Date” has the meaning provided in the preamble to this Agreement.

“Electric Reliability Organization” means any organization responsible for ensuring the reliable operation of the electric grid impacted by the Transmission Facilities.

“FERC” means the Federal Energy Regulatory Commission, or any successor regulatory agency that administers the Federal Power Act.

“Financial Closing” means the date on which Provider has satisfied all of the conditions precedent in its financing agreement for the initial funding of the costs and expenses incurred in connection with the development, design, engineering, procurement, construction, commissioning, start-up, and commencement of commercial operation of the Transmission Facilities.

“Firm Point-to-Point Transmission Service” means the reservation and transmission of capacity and energy on the Transmission Facilities on a firm basis from the Point of Receipt to the Delivery Point in an amount up to the Contracted Capacity.

“First Delivery Point” has the meaning provided in the recitals to this Agreement.

“Fixed Rate” has the meaning set forth in Attachment 1 to Exhibit B.

“Force Majeure Event” means any event that is not in the reasonable control of the Party affected and with the exercise of due diligence could not reasonably be prevented, avoided or removed by such Party, which causes the Party claiming that a Force Majeure Event occurred to be delayed, in whole or in part, or unable, using commercially reasonable efforts, to partially or wholly perform its obligations under this Agreement, including, natural disasters, acts of God, events such as earthquake, flood, hurricane, tornado, snowstorm, landslide, avalanches, hazardous fog, drought, fire, lightning, hail, ice and ice storms, dust storms, and volcanic activity, outbreaks, epidemics, pandemics (including COVID 19 and any variant thereof), war (whether declared or undeclared) or other armed conflict, riot, explosions, civil disturbance, sabotage, vandalism, strikes, lockouts or other labor disputes (except for strikes, lockouts or labor disputes isolated to the Party claiming a Force Majeure Event), trade embargo, terrorism or threats of terrorism, blockades, closing of or congestion in any railway, railhead, harbor, dock, port, canal or area adjunct thereto, action or inaction of any Governmental Authority (including any failure or delay in receiving, issuing, or renewing any Governmental Approval), changes in any Governmental

Approval or the conditions imposed thereunder, any material legislative, judicial or administrative change in any Applicable Law existing as of the Effective Date, any material change in the enforcement, interpretation or application of any Applicable Law, existing as of the Effective Date, the enactment of any Applicable Law on or after the Effective Date, and action or inaction in connection with the requirements from an Electric Reliability Organization applicable to the Transmission Facilities.

“GAAP” means United States generally accepted accounting principles, consistently applied and as in effect from time to time.

“Governmental Approval” means any authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, waiver, exemption, filing, variance, claim, order, judgment, or decree by a Governmental Authority.

“Governmental Authority” means any government or agency or other political subdivision thereof, including any state or municipality, or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, regulatory, public or statutory instrumentality, authority, body, agency, commission, department, board, bureau or entity exercising judicial, executive, legislative, administrative or regulatory functions, any court or arbitrator with authority to bind a party at law, and shall include, to the extent exercising powers delegated by any Governmental Authority acting under Applicable Law, any electric reliability organization or regional transmission organization. For avoidance of doubt, Governmental Authority includes FERC and the North American Electric Reliability Corporation, including its Regional Entities.

“International Financial Reporting Standards” means the accounting standards and interpretations adopted by the International Accounting Standards Board.

“Initial Cure Period” has the meaning provided in Section 2.2(b).

“Initial Term of Service” has the meaning provided in Attachment 1 of Exhibit B.

“Letter of Credit” has the meaning provided in Exhibit A.

“Material Credit Default” has the meaning provided in Section 2(b) of Exhibit A hereto.

“Monthly Transmission Rate” means the monthly transmission rate for Firm Point-to-Point Transmission Service.

“MW” means megawatt.

“OATT” means the Open Access Transmission Tariff for the Transmission Facilities.

“Offtake Development Milestone” means that Customer has secured offtake commitments (via a power purchase agreement, hedge or similar financial commitment) for a portion of the generating capacity of the Customer Project, or has otherwise obtained financial commitments, sufficient to allow Provider to achieve Financial Closing.

“Parties” and “Party” have the meanings provided in the preamble to this Agreement.

“Person” means any legal person, including any natural person, domestic or foreign corporation, limited liability company, general or limited partnership, joint venture, association, joint stock company, business trust, estate, trust, enterprise, unincorporated organization, any Governmental Authority, or any other legal or commercial entity.

“Phase 1 Completion Date” means the date on which Provider has notified Customer pursuant to Section 4.4(a) that Provider has (i) executed all interconnection agreements needed for the Transmission Facilities, (ii) obtained all Governmental Approvals required to develop and construct the Transmission Facilities, (iii) obtained all Governmental Approvals required to provide Firm Point-to-Point Transmission Service from the Point of Receipt to the Delivery Points, except approval of the OATT and the Transmission Service Agreement from the FERC, (iv) acquired all real property rights required to develop, construct, operate, and maintain the Transmission Facilities, (v) entered into definitive agreements, in form and substance satisfactory to Provider, in its sole discretion, for the engineering, procurement and construction of the Transmission Facilities, (vi) executed customer agreements for an aggregate contracted capacity of not less than the estimated capacity of the Transmission Facilities, and (vii) provided Customer with the Phase 1 Updated Capital Expenditure Estimate and the amount of the adjusted Termination Payment.

“Phase 1 Updated Capital Expenditure Estimate” has the meaning set forth in Attachment 2 to Exhibit B.

“Phase 2 Completion Date” means the date on which Provider has notified Customer pursuant to Section 4.4(a) that Provider has achieved Financial Closing and issued full notice to proceed under one or more material agreement(s) for the engineering, procurement and construction of the Transmission Facilities.

“Phase 2 Completion Date Deadline” means December 31, 2023, as such date may be extended pursuant to Section 4.10.

“Point of Receipt” has the meaning provided in the recitals to this Agreement.

“Provider” has the meaning provided in the preamble to this Agreement.

“Provider Affiliate” means an Affiliate of Provider that will own the Transmission Facilities or that will have a demonstrable right to control the Transmission Facilities sufficient to discharge its obligations under this Agreement and the Transmission Services Agreement.

“Review Period” has the meaning set forth in Attachment 2 to Exhibit B.

“Second Delivery Point” has the meaning provided in the recitals to this Agreement.

“Subsidiary” means, with respect to a specified Person, any other Person that directly or indirectly is Controlled by the specified Person.

“Term” has the meaning provided in Section 2.1.

“Term Sheet” has the meaning provided in Section 3.1.

“Termination Payment” is an amount equal to [_____] of the Capital Expenditures Estimate and is set forth in Exhibit D. The Termination Payment shall be adjusted at the Phase I Completion Date by the percentage increase or decrease in the Phase I Updated Capital Expenditures Estimate compared to the Capital Expenditures Estimate.

“Third Delivery Point” has the meaning provided in the recitals to this Agreement.

“Transmission Facilities” means the transmission facilities described in the first recital to this Agreement from the Point of Receipt to the Delivery Point.

“Transmission Services Agreement” has the meaning provided in the recitals to this Agreement.

“WAPA” means the Western Area Power Administration.

Section 1.2. Interpretation. In this Agreement, unless the context otherwise requires, the following rules shall apply to the usage of terms:

Section 1.2.1. Singular; Plural; Gender; Corollary Meaning. The singular shall include the plural and vice versa, and any pronoun shall include the corresponding masculine, feminine and neuter forms. If a term is defined as one part of speech (such as a noun), then it shall have a corresponding meaning when used as another part of speech (such as a verb).

Section 1.2.2. Coordinating Conjunctions. The word “or” shall have the inclusive meaning represented by the phrase “and/or.”

Section 1.2.3. Self-Reference. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

Section 1.2.4. Inclusive References. The words “include,” “includes,” and “including” when used in this Agreement shall be deemed to be followed by “without limitation” or “but not limited to,” whether or not they are in fact followed by such words or words of like import.

Section 1.2.5. Incorporation by Reference. Any reference in this Agreement to an “Article,” “Section” or other subdivision or to an “Exhibit” or other schedule or attachment shall be references to an article, section or other subdivision of, or to an exhibit, schedule or attachment to, this Agreement, unless otherwise stated, and all such Articles, Sections, and Exhibits are incorporated into this Agreement by reference (all of which comprise part of one and the same agreement with equal force and effect).

Section 1.2.6. Subsequent Acts. In the event any index or publication referenced in this Agreement ceases to be published or a concept defined by reference to any such index or publication ceases to exist, each such reference shall be deemed to be a reference to a successor or alternate index, publication or concept reasonably agreed to by the Parties. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules and

attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and as in effect from time to time.

Section 1.2.7. Inclusive of Permitted Successors. Unless otherwise expressly stated, references to any Person also include its permitted successors and assigns.

Section 1.2.8. Time Computation. In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

Section 1.2.9. Business Days. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken under this Agreement on or by a day that is not a Business Day, such action may be validly taken on or by the next day that is a Business Day, and in the case of payments (including refunds of payments), no interest shall accrue on the amount due; provided that such payment is made in full on the next day that is a Business Day.

Section 1.2.10. Regulatory Approvals. Any Governmental Approval shall be deemed to have been obtained upon issuance, even if such Governmental Approval is subject to appeal or rehearing.

Section 1.2.11. Currency. All references to prices, values or monetary amounts referred to in this Agreement shall be paid in United States currency, unless expressly provided otherwise.

Section 1.2.12. Headings. The captions of the Articles and Sections of this Agreement are solely for convenience and shall not be deemed a part of this Agreement for the purpose of construing the meaning of this Agreement or for any other purpose.

ARTICLE 2

TERM

Section 2.1. Effective Date; Term. This Agreement will become effective beginning on the Effective Date. The term of this Agreement (“Term”) shall begin on the Effective Date and shall end, unless earlier terminated or extended in accordance with its terms, on the date on which Provider or a Provider Affiliate, on the one hand, and Customer, on the other hand, execute the Transmission Services Agreement.

Section 2.2. Termination.

(a) Either Party may terminate this Agreement upon the occurrence of a Development Failure, except that the terminating Party shall not be entitled to terminate this Agreement to the extent the Development Failure arises out of, with respect to Customer, any act or omission of Customer or Customer’s breach of the terms of this Agreement, and with respect to Provider, Provider’s breach of this Agreement. Upon such termination, neither Party will have any liability to the other Party, and, for the avoidance of doubt, no amounts shall be payable by either

Party, except that Provider shall promptly (but in any event within ten (10) days after such termination) return to Customer the Customer Deposit.

(b) In the event of any default by a Party under Section 4.6 that is not cured within thirty (30) days after the defaulting Party's receipt of written notice of such default (the "Initial Cure Period"), the non-defaulting Party, as its sole and exclusive remedy, may terminate this Agreement; provided, that Initial Cure Period shall be extended for up to an additional sixty (60) days to the extent that a cure of the default cannot be completed within such thirty (30) days and the defaulting Party has initiated a cure during such thirty (30) days. In addition, Provider may terminate this Agreement if a Material Credit Default has occurred or if Customer fails to post or maintain Credit Support in accordance with this Agreement and such failure has not been cured within ten (10) Business Days after such failure. Upon any such termination under this Section 2.2(b):

(i) if the defaulting Party is Provider, then neither Party will have any liability to the other Party, and, for the avoidance of doubt, no amounts shall be payable by either Party, except that Provider shall promptly (but in any event within ten (10) days after such termination) return to Customer the Customer Deposit;

(ii) if the defaulting Party is Customer and this Agreement is terminated at any time prior to the Phase 2 Completion Date, then Provider shall be entitled to the Customer Deposit and shall retain the Customer Deposit if the Customer Deposit is in the form of a cash deposit, and draw down on and retain the proceeds from the Letter of Credit if the Customer Deposit is in the form of a Letter of Credit; and

(iii) if the defaulting Party is Customer and this Agreement is terminated on or after the Phase 2 Completion Date, Customer shall pay Provider the applicable Termination Payment and Provider shall be entitled to draw down on the Credit Support to the extent of Customer's Termination Payment obligation.

(c) In addition to the termination rights set forth in Section 2.2(a) and Section 2.2(b), Provider will have the right to terminate this Agreement (i) if Customer fails to achieve the Offtake Development Milestone on or before [_____] and Provider shall be entitled to the Customer Deposit and shall retain the Customer Deposit if the Customer Deposit is in the form of a cash deposit, and draw down on and retain the proceeds from the Letter of Credit if the Customer Deposit is in the form of a Letter of Credit or (ii) in accordance with Section 4.4(b).

(d) In addition to the specific termination rights set forth above, this Agreement may be terminated at any time upon the mutual written agreement of the Parties. Upon such termination, each Party will have such liability, if any, to the other Party as then mutually agreed by the Parties.

(e) The Parties acknowledge and agree that the payment of the Termination Payment and/or the reimbursement, draw down, or retention of the Customer Deposit, as applicable, pursuant to this Section 2.2 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind. The Parties further acknowledge and agree that the damages for the termination of this Agreement are difficult or impossible to determine and

that the remedies provided for under this Section 2.2 constitute a reasonable approximation of the harm or loss to the receiving Party as a result of such termination.

Section 2.3. Effect of Termination. Except for those provisions that expressly survive termination of this Agreement pursuant to Section 6.14, upon expiration or other termination of this Agreement pursuant to its terms, each of the Parties will be released from all of its obligations, other than any accrued but unpaid payment obligations.

ARTICLE 3

TRANSMISSION SERVICES AGREEMENT

Section 3.1. Transmission Services Agreement. Set forth on Exhibit B hereto is a summary of certain terms and conditions (the “Term Sheet”) that the Parties intend to serve as the basis for a Transmission Services Agreement to be executed by Provider or a Provider Affiliate, on the one hand, and Customer, on the other hand, for Firm Point-to-Point Transmission Service. In addition to the terms and conditions in the Term Sheet, the Transmission Services Agreement shall incorporate the terms of the OATT. The Parties shall endeavor in good faith, using commercially reasonable efforts, to negotiate and agree upon the form of such Transmission Services Agreement as soon as practical after the Effective Date, but in no event later than [_____], which shall have terms and conditions that substantially adhere to the Term Sheet and that achieve, as nearly as practicable, the commercial intent of the Parties as of the Effective Date; provided that the Parties acknowledge that such terms and conditions will be updated as necessary based on the circumstances and arrangements for the provision of Firm Point-to-Point Transmission Service prevalent or proposed at the time of such negotiations.

Section 3.2. Transmission Service Agreement Subject to Parties Agreement. Notwithstanding Section 3.1, the Parties acknowledge and agree that, unless and until (a) an agreed form of such Transmission Services Agreement has been negotiated by the Parties pursuant to Section 3.1, and (b) (i) the Phase 2 Completion Date has occurred and (ii) Provider has received approval of the OATT and the Transmission Services Agreement negotiated by the Parties from the FERC, neither Party shall be under any legal obligation to execute and deliver the Transmission Services Agreement. Unless this Agreement is earlier terminated in accordance with its terms, the Parties shall execute and deliver the agreed upon form of Transmission Services Agreement within ten (10) Business Days after the later to occur of (x) the date Provider has received approval of the OATT from the FERC and (y) the date Provider has received approval of the Transmission Services Agreement negotiated by the Parties from the FERC.

ARTICLE 4

OBLIGATIONS OF THE PARTIES

Section 4.1. Customer Deposit. No later than five (5) Business Days after the Effective Date, Customer shall either (x) pay to Provider a cash deposit (to be held pursuant to an agreement in form and substance satisfactory to Provider in its sole discretion) or (y) provide to Provider a Letter of Credit, in each case, in an amount equal to the amount set forth in Exhibit D (the “Customer Deposit”). Except as provided in Section 2.2(a), Section 2.2(b)(i), Section 4.3(a) and

Section 4.4(b), the Customer Deposit shall not be refundable. The Customer Deposit may be applied to the Credit Support required to be provided under this Agreement or returned to Customer when Customer provides the Credit Support, as elected by Customer.

Section 4.2. Credit Support. The rights and obligations of the Parties under this Agreement with respect to Credit Support are set forth on Exhibit A hereto and a summary of certain of the Credit Support requirements is set forth on Exhibit C hereto.

Section 4.3. Development Efforts.

(a) Provider shall proceed in good faith, using commercially reasonable efforts to satisfy the requirements of both the Phase 1 Completion Date and the Phase 2 Completion Date, including (i) filing applications for all Governmental Approvals required to develop and construct the Transmission Facilities in a timely fashion and taking such other actions as are reasonably required to obtain such Governmental Approvals and (ii) taking all such other actions as are reasonably required to develop and construct the Transmission Facilities. Should Provider fail to act in good faith using commercially reasonable efforts as required by this Section 4.3(a), and Customer terminates this Agreement under Section 2.2(a), then, as Customer's sole and exclusive remedy, and Provider's sole and exclusive liability for such failure, Provider shall return to Customer an amount equal to one hundred and ten percent (110%) of any Customer Deposit held as of the date of termination by Provider.

(b) Commencing upon the Effective Date and continuing throughout the Term of this Agreement, Provider shall provide progress reports on a quarterly basis in a form reasonably satisfactory to Customer. The progress reports shall describe the status of the development, major equipment procurement and construction of the Transmission Facilities as of the end of the preceding quarter, including (a) a description of the progress of development and construction; (b) an explanation of any material changes in the development and construction schedule; and (c) an estimate of the Commercial Operation Date. Customer shall have the right to monitor the construction, start-up and testing of the Transmission Facilities during normal business operating hours, and Provider shall comply with all reasonable requests of Customer with respect to the monitoring of such events; provided, however, that Customer shall provide Provider with reasonable advance written notice of any such monitoring requests, shall not unreasonably interfere with or disrupt the activities of the Provider and shall comply with all site and safety rules applicable to the areas on which construction work is being performed.

(c) Customer shall proceed in good faith, using commercially reasonable efforts to achieve the Offtake Development Milestone by the date set forth in Section 2.2(c). In addition, commencing on the Effective Date and continuing throughout the Term of this Agreement, Customer shall provide to Provider progress reports on a quarterly basis in a form reasonably satisfactory to Provider, which shall include the status of Customer's progress toward achievement of the Offtake Development Milestone, development, construction and financing of the Customer Project, Customer's status with respect to interconnection to the Transmission Facilities, and any other information relevant to Customer's completion of items required for Customer to commence use of transmission service on the Transmission Facilities.

(d) Each Party covenants to the other Party that it will (i) not interfere with or obstruct the receipt of any Governmental Approvals required to develop and construct the Transmission Facilities, (ii) use commercially reasonable efforts to support and cooperate with the other Party in order for that Party to obtain any Governmental Approvals required to develop and construct their respective facilities, and (iii) not otherwise interfere with or obstruct the siting and development of the Party's facilities.

(e) Each Party agrees to (i) cooperate with the other Party in responding to or complying with the reasonable requirements or reasonable requests of any financing party, including due diligence activities required prior to obtaining financing and providing existing data, reports, and other documents related to such Party, to the Transmission Facilities, or the Customer Project that are in such Party's possession if reasonably requested by a financing party; (ii) permit access to the Transmission Facilities or the Customer Project, as applicable, to any independent engineer of a financing party, as reasonably requested by such financing party; (iii) provide reasonable assistance to the other Party in complying with the reporting requirements set forth in any financing agreements of the financing parties required to be prepared by such Party, (iv) deliver to the financing parties of the other Party any required estoppel certificates, consents or other documents as reasonably required by the financing parties; and (v) cooperate with the other Party's counsel in providing such information and documentation as may be reasonably necessary for such Party's counsel to prepare any legal opinions required in connection with the closing of any financing with any financing party.

Section 4.4. Development Progress.

(a) Provider shall promptly notify Customer following the (i) Phase 1 Completion Date, (ii) Phase 2 Completion Date, and (iii) the date or dates on which Provider obtains FERC approval for the OATT and the Transmission Services Agreement. Provider shall promptly notify Customer of the occurrence or non-occurrence of any event, change, effect, or development of any kind which would or could reasonably be expected to result in an inability to achieve the Phase 1 Completion Date or the Phase 2 Completion Date.

(b) The Fixed Rate shall be adjusted as of the Phase 1 Completion Date and as of the Commercial Operation Date in accordance with the methodology and process set forth in Attachment 2 to Exhibit B. If the adjustment to the Fixed Rate as of the Phase 1 Completion Date or as of the Commercial Operation Date would result in an increase to the Fixed Rate by more than [_____] in the aggregate, Provider shall have the right to terminate this Agreement by delivering written notice to Customer within thirty (30) days after the determination of any such Fixed Rate increase, unless (i) Customer agrees to pay the Fixed Rate, as adjusted or (ii) the Parties otherwise mutually agree. Upon any termination by Provider pursuant to this Section, Provider shall release or return to Customer the Customer Deposit or any Credit Support that has been provided by Customer.

(c) Customer shall promptly notify Provider of the occurrence or non-occurrence of any event, change, effect, or development of any kind which would or could reasonably be expected to result in an inability to achieve the Offtake Development Milestone by the date set forth in Section 2.2(c) or an inability to construct and finance the Customer Project.

Section 4.5. Further Assurances. Each Party hereby covenants to take such further actions as may be reasonably required to perform under this Agreement and to consummate the transactions contemplated hereby, and each Party hereby covenants to cooperate in good faith with each other to use commercially reasonable efforts to accommodate any reasonable requests by the other Party in connection with this Agreement. In addition, notwithstanding anything in this Agreement to the contrary, if Customer, exercising good faith and reasonable judgment, believes that a potential material counterparty in an offtake commitment arrangement will require a definition of force majeure in such offtake commitment arrangement that differs in any significant meaning from the definition of Force Majeure in this Agreement, then Provider shall negotiate with Customer in good faith such amendments to the definition of the term Force Majeure set forth herein to reflect the commercial terms deemed necessary to secure such offtake commitment arrangement.

Section 4.6. Mutual Covenants.

(a) Provider shall not (and shall cause its directors, officers, Affiliates, employees and other agents and representatives not to) enter into binding transmission services agreements for an aggregate contracted capacity using the Transmission Facilities that, together with the Contracted Capacity, exceeds the aggregate capacity of the Transmission Facilities.

(b) Customer shall not (and shall cause its directors, officers, Affiliates, employees and other agents and representatives not to) enter into any contract, agreement, arrangement or commitment to procure transmission or interconnection service across alternate transmission facilities that are competitive with the Transmission Facilities or that would otherwise be reasonably expected to replace or substitute all or any portion of the Firm Point-to-Point Transmission Service offered to Customer hereunder.

Section 4.7. Financial Statements; Evidence of Creditworthiness.

(a) Customer shall provide Provider with either (i) if available, the most recent audited financial statements of Customer and, if applicable, Customer's Guarantor, prepared in accordance with International Financial Reporting Standards or GAAP, as applicable, as soon as practical after each calendar year, but in any event within ten (10) days after the date on which such Person releases its financial statements to the public as required under Applicable Law, or (ii) if the financial statements described in clause (i) are not available, then other evidence of Customer and, if applicable, Customer's Guarantor, showing that Customer or Customer's Guarantor is a Creditworthy Person or otherwise has creditworthiness reasonably acceptable to Provider upon Provider's reasonable request. Reasonable evidence of Customer's creditworthiness shall include a letter verifying Customer's financial condition signed by Customer's auditor, and if applicable, reasonable evidence of Customer's Guarantor's creditworthiness shall include a letter verifying Customer's Guarantor's financial condition signed by Customer's Guarantor's auditor.

(b) All financial information made available under this Section 4.7, if not publicly available, shall be subject to Section 6.10.

Section 4.8. Reserved.

Section 4.9. Reserved

Section 4.10. Force Majeure Event. Neither Party will have any liability or be considered to be in breach or default of its obligations under this Agreement to the extent that performance of such obligations or its efforts to cure are delayed or prevented, directly or indirectly, due to a Force Majeure Event; provided that (i) the affected Party shall give the other Party written notice describing the particulars of the occurrence, with written notice given promptly after the occurrence of the event and in no event more than five (5) days after the affected Party becomes aware that such occurrence is a Force Majeure Event; (ii) the suspension of the performance shall be of no greater scope and of no longer duration than is reasonably required by the event; (iii) the affected Party shall use all reasonable efforts to continue to perform its obligations in this Agreement unaffected by the Force Majeure Event; and (iv) the affected Party shall promptly resume performance when it is able to resume performance of the affected obligations. The Phase 2 Completion Date Deadline shall be extended for a period of time as may be reasonably required based on the actual delay caused by the Force Majeure Event. Any failure of the affected Party to provide written notice of a Force Majeure Event within the above referenced five (5) day period shall not waive, prejudice or otherwise affect such Party's right to relief under this Section 4.10.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

Section 5.1. Representations and Warranties of Provider. Provider hereby represents and warrants that all of the statements contained in this Section 5.1 are true and correct as of the Effective Date.

(a) Provider is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Provider has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(c) Assuming due authorization, execution and delivery by Customer, this Agreement is a legal, valid and binding obligation of Provider enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and by general equitable principles (regardless of whether considered in a proceeding in equity or at law).

(d) The execution and delivery by Provider of this Agreement, and the compliance by Provider with any of the terms and provisions hereof, do not and will not (i) conflict with, breach or contravene the provisions of the governing documents of Provider or any contractual obligation of Provider, (ii) result in a condition or event that constitutes an event of default (or that, upon notice or lapse of time or both, would constitute an event of default or give rise to any right of termination, cancellation or acceleration by any counterparty) under any

material contractual obligation of Provider or (iii) violate any Applicable Law with respect to Provider or the Transmission Facilities.

(e) There is no claim, action, proceeding or investigation pending or, to Provider's knowledge, threatened against or relating to Provider or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which claim, action, proceeding or investigation, individually or in the aggregate, has resulted in or would reasonably be expected to have a material adverse effect on Provider's ability to consummate the transactions contemplated by this Agreement.

(f) Provider has not violated any Applicable Law, the effect of which, individually or in the aggregate, has resulted in or would reasonably be expected to have a material adverse effect on Provider's ability to consummate the transactions contemplated by this Agreement.

(g) Except for those Governmental Approvals not yet required to be obtained that Provider anticipates will be obtained in the ordinary course of business, no consent or approval of, or filing with or notice to, any Governmental Authority or other Person is required in connection with the authorization, execution and delivery by Provider of this Agreement, or the performance by Provider of its obligations hereunder.

Section 5.2. Representations and Warranties of Customer. Customer hereby represents and warrants that all of the statements contained in this Section 5.2 are true and correct as of the Effective Date.

(a) Customer is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Customer has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(c) Assuming due authorization, execution and delivery by Provider, this Agreement is a legal, valid and binding obligation of Customer enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and by general equitable principles (regardless of whether considered in a proceeding in equity or at law).

(d) The execution and delivery by Customer of this Agreement, and the compliance by Customer with any of the terms and provisions hereof, do not and will not (i) conflict with, breach or contravene the provisions of the governing documents of Customer or any contractual obligation of Customer, (ii) result in a condition or event that constitutes an event of default (or that, upon notice or lapse of time or both, would constitute an event of default or give rise to any right of termination, cancellation or acceleration by any counterparty) under any material contractual obligation of Customer or (iii) violate any Applicable Law with respect to Customer.

(e) There is no claim, action, proceeding or investigation pending or, to Customer's knowledge, threatened against or relating to Customer or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which claim, action, proceeding or investigation, individually or in the aggregate, has resulted in or would reasonably be expected to have a material adverse effect on Customer's ability to consummate the transactions contemplated by this Agreement.

(f) Customer has not violated any Applicable Law, the effect of which, individually or in the aggregate, has resulted in or would reasonably be expected to have a material adverse effect on Customer's ability to consummate the transactions contemplated by this Agreement.

(g) No consent or approval of, or filing with or notice to, any Governmental Authority or other Person is required in connection with the authorization, execution and delivery by Customer of this Agreement, or the performance by Customer of its obligations hereunder.

ARTICLE 6

MISCELLANEOUS

Section 6.1. Limitation of Liability. No Party (or its Affiliates or its or their respective officers, directors, employees, agents, equity holders or representatives) shall, under any circumstance, be liable to any other Party (or its Affiliates or its or their respective officers, directors, employees, agents, equity holders and representatives) for any indirect, exemplary, consequential or punitive damages claimed by such other Party under the terms or due to any breach of this Agreement, except (a) to the extent any such damages arise out of such Party's (or its Affiliates or its or their respective officers, directors, employees, agents, equity holders or representatives) (i) gross negligence or willful misconduct or (ii) breach of Section 6.10, or (b) with respect to the payment of the Termination Payment, the reimbursement, draw down, or retention of the Customer Deposit pursuant to Section 2.2, or the payment required by Section 4.3(a).

Section 6.2. Exclusive Remedies. The express remedies and measure of damages provided in this Agreement satisfy the essential purposes hereof and shall be the sole and exclusive remedies of the respective Parties, and a Party's liability shall be limited as set forth in such provisions. All other remedies or damages at law are hereby waived.

Section 6.3. Expenses. Each of the Parties shall each bear its own expenses (including attorneys' fees) incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated hereby and the consummation of the transactions contemplated hereby and thereby.

Section 6.4. Assignment. No Party shall assign its rights, interests or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Provider may, without the

consent of Customer, assign its rights, interests or obligations under this Agreement to a Provider Affiliate.

Section 6.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

Section 6.6. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties in respect of the subject matter hereof and supersedes all prior negotiations, understandings and writings between the Parties in respect of the subject matter hereof.

Section 6.7. Severability. The invalidity or enforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 6.8. Notices. All notices, requests and other communications hereunder shall be in writing (regardless of whether the applicable provision expressly requires a writing) and shall be deemed to have been given if (i) personally delivered, (ii) mailed, first class, registered or certified mail, postage prepaid, (iii) delivered by overnight courier, or (iv) delivered by electronic mail to the address or email address set forth below, and shall be deemed delivered, given, and received when actually received or rejected, as reflected by the postal return receipt or courier's receipt in the case of overnight mail or courier, and, in the case of electronic mail, upon delivery thereof. The Parties may update this Section 6.8, from time to time, to designate other persons, addresses or offices, or to change persons, addresses or offices, to which notices shall be delivered by delivering notice to the other Party in accordance with this Agreement.

(a) If to Provider:

TransWest Express LLC
555 17th Street, Suite 2400
Denver, CO 80202
Attention: David F. Smith
Email: David.Smith@tac-denver.com

with a copy to:

TransWest Express LLC
555 17th Street, Suite 2400
Denver, CO 80202
Attention: Lisa A. Christian
Email: Lisa.Christian@tac-denver.com

(b) If to Customer:

[_____]
[_____]
[_____]

Attention: [_____]
Email: [_____]

with a copy to:

[_____]
[_____]
[_____]
Attention: [_____]
Email: [_____]

Section 6.9. Waiver. No (a) failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, (b) partial exercise by any Party of any of its rights under this Agreement or (c) course of dealing among the Parties shall constitute a waiver of the rights of any Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such instrument shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

Section 6.10. Confidentiality.

(a) No Party shall disclose to a third party (x) the terms and conditions of this Agreement, (y) any information delivered to it under this Agreement or (z) any confidential or non-public information regarding the other Party or its Affiliates (collectively, "Confidential Information") (other than to the Party's Affiliates or its or their respective employees, lenders or potential lenders or other investors or potential investors, investment committees, counsel, accountants or advisors who have a need to know such information and have agreed to keep such Confidential Information confidential), except as approved for release or disclosure by the other Party or to comply with Applicable Law or the requirements of a Governmental Authority. Each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure of Confidential Information. The receiving Party shall be liable to the disclosing Party for any use or disclosure of Confidential Information by any of the receiving Party's Affiliates or its or their respective employees, lenders or potential lenders or other investors or potential investors, investment committees, counsel, accountants or advisors other than in accordance with and pursuant to the terms and conditions of this Agreement. The Parties are entitled to all remedies at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. "Confidential Information" shall not include the following information:

- (i) Information that at the time of disclosure or thereafter is generally available to, or known by, the public other than as a result of a disclosure by the receiving Party or its representatives in violation of this Agreement;
(ii) Information provided to the receiving Party on a non-confidential basis from Persons not bound to keep such information confidential; and

(iii) Information that was otherwise independently acquired or developed by the receiving Party without reference to the Confidential Information of the disclosing Party or otherwise violating its obligations under this Agreement.

(b) The Parties acknowledge and agree that the transactions contemplated by this Agreement and any access or information provided hereunder shall be subject to Section 6.10(a).

(c) The Parties acknowledge and agree that any press release or other public statement that addresses specific commercial terms of this Agreement shall be mutually agreed upon by the Parties. Notwithstanding anything to the contrary in this Section 6.10, Provider may (i) disclose (including by press release) without the consent of Customer (A) the identity of Customer as a recipient of Firm Point-to-Point Transmission Service over the Transmission Facilities, (B) the Initial Term of Service and (C) the Contracted Capacity and (ii) use this Agreement as the basis for precedent or customer agreements or transmission service agreements with other Persons, but only after Customer has been given a reasonable opportunity by Provider to redact those portions of the Agreement that customer reasonably determines are confidential, proprietary or commercially sensitive to Customer.

Section 6.11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, legal representatives and assigns.

Section 6.12. Relationship of the Parties; Construction. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party pursuant to this Agreement. This Agreement shall be considered for all purposes as having been prepared through the mutual efforts of the Parties and shall not be construed against one Party or another as a result of the preparation, substitution, submission or other event of the negotiation, drafting or execution of this Agreement.

Section 6.13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if each of the Parties had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

Section 6.14. Survival. The provisions of Section 2.2, Section 2.3 and this Article 6 shall survive the expiration or earlier termination of this Agreement.

Section 6.15. Amendments. This Agreement may be changed or modified or terminated only by an instrument in writing duly executed by each of the Parties.

Section 6.16. No Recourse. No past, present or future director, officer, manager, employee, member, stockholder, partner, incorporator or Affiliate of any Party or any of its Affiliates shall have any liability for any obligations of such Party under this Agreement or for any claim based on, in respect of, or by reason of such obligations or their creation.

[Remainder of Page Intentionally Left Blank]

The Parties have executed this Agreement as of the Effective Date.

TransWest Express LLC

By: _____

Name: Roxane J. Perruso

Title: Executive Vice President and Chief Operating Officer

[Customer]

By: _____

Name: [_____]

Title: [_____]

Exhibit A

CREDIT SUPPORT

Section 1. Definitions. Capitalized terms in this Exhibit A have the meanings set forth in Section 1.1 of the Agreement. In addition, the following terms shall have the following respective meanings:

“Credit Support” means:

- (a) a Letter of Credit;
- (b) a Guaranty from a Creditworthy Person;
- (c) proceeds of a Letter of Credit drawn by Provider pursuant to the Agreement (to the extent not used for the purpose of paying amounts owing to Provider under the Agreement); or
- (d) any other form of credit support reasonably acceptable to Provider;

in each case of clauses (a) through (d), individually or in the aggregate, such that the total amount thereof is equal to the Required Credit Support Amount.

“Creditworthy Person” means any Person (a)(i) with a long-term credit rating (corporate or long-term senior unsecured debt) of (A) (1) “Baa1” or higher from Moody’s or (2) “BBB+” or higher from S&P or (B) if rated by both Moody’s and S&P, both clauses (A)(1) and (A)(2), and (ii) with a Net Worth set forth in its most recent audited financial statements or as verified in a letter signed by the auditor who audited such financial statements of between \$350,000,000 and \$1,000,000,000, which amount will be determined based on negotiated Agreement terms, or (b) if not rated by either Moody’s or S&P, with a Net Worth set forth in its most recent audited financial statements or as verified in a letter signed by the auditor who audited such financial statements of between \$700,000,000 and \$2,000,000,000, which amount will be determined based on negotiated Agreement terms.

“Guaranty” means a guaranty in form and substance reasonably acceptable to Provider.

“Letter of Credit” means an irrevocable standby letter of credit in form and substance reasonably acceptable to Provider and that satisfies the requirements of Section 4 of this Exhibit A.

“Material Credit Default” has the meaning provided in Section 2(b) of this Exhibit A.

“Material Credit Event” means, if applicable, (a) Customer’s Guarantor is not a Creditworthy Person; and (b) Customer has not provided or converted or caused to be provided or converted Credit Support as required hereunder.

“Moody’s” means Moody’s Investor Services, a Delaware corporation, and its successors and assigns.

“Net Worth” means, with respect to a Person, all shareholders’ equity in such Person and its subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Outstanding Credit Support” has the meaning provided in Section 5(a) of this Exhibit A.

“Qualified Bank” means a U.S. commercial bank or a foreign bank approved in advance by Provider with a U.S. branch, with such bank having (a) a credit rating on its senior unsecured debt of (i)(A) “A3” or higher from Moody’s or (B) “A-” or higher from S&P or (ii) if rated by both Moody’s and S&P, both clauses (i)(A) and (i)(B), and (b) a Net Worth of at least One Billion Dollars (\$1,000,000,000).

“Required Credit Support Amount” means, from the period commencing on the Phase 2 Completion Date and continuing through the end of the Term of this Agreement, an amount equal to the Termination Payment, as may be adjusted.

“S&P” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., a New York corporation, and its successors and assigns.

Section 2. Customer’s Credit Support.

(a) Customer’s Credit Support. No later than five (5) Business Days prior to the Phase 2 Completion Date, Customer agrees to provide Credit Support, or cause Credit Support to be provided, to Provider. Customer shall maintain Credit Support without any requirement for replenishment until the end of the Term of this Agreement; provided that if this Agreement is terminated for a Customer default under Section 2.2(b)(iii), then any Credit Support shall remain in effect until Provider has been paid the Termination Payment pursuant to Section 2.2(b)(iii).

(b) Notice of Material Credit Event. Customer shall notify Provider in writing of the occurrence of any event that, with notice or the passage of time or both, would constitute a Material Credit Event, which notice shall be given by Customer within five (5) Business Days after the occurrence of such event. If there shall occur a Material Credit Event, and such Material Credit Event is not cured within three (3) Business Days after the date of written notice thereof from Provider to Customer, then a “Material Credit Default” shall be deemed to have occurred without further notice or opportunity for cure; provided that if the Credit Support is a Letter of Credit, a Material Credit Default shall be cured by Provider liquidating the Credit Support and holding any resulting cash.

Section 3. Provider’s Credit Support. Provider shall have no obligation to provide, and Customer shall have no right to request, performance assurances from, or on behalf of, Provider.

Section 4. Letter of Credit Requirements.

(a) Any Letter of Credit hereunder shall:

- (i) be issued by a Qualified Bank;
- (ii) name Provider as the beneficiary;

(iii) be governed by the International Standby Practices;

(iii) only be issued by a foreign bank with a U.S. branch if Customer has received prior written approval of same from Provider and shall permit Provider to present for payment to the U.S. branch;

(iv) be issued for a minimum term of three hundred sixty-five (365) days;

(v) include a provision for at least thirty (30) days' advance written notice to Provider of any expiration or earlier termination of the Letter of Credit so as to allow Provider sufficient time to exercise its rights under such Letter of Credit if Customer fails to extend the Letter of Credit or replace the Letter of Credit with alternative Credit Support in a form permitted hereunder;

(vi) automatically renew without written amendment for one (1) year;

(vii) permit Provider to draw up to the then current available amount as defined in the Letter of Credit for the purpose of paying any and all amounts owing to Provider under the Agreement; and

(viii) permit Provider to draw the entire available amount thereunder to hold as cash collateral for any and all amounts due and owing to Provider under the Agreement if (A) the Letter of Credit will expire in fewer than thirty (30) days and (B) Customer has not extended the Letter of Credit or replaced the Letter of Credit with alternative Credit Support in a form permitted hereunder.

(b) Customer shall cooperate with Provider, at Provider's cost and expense, in causing the Letter of Credit to be amended, amended and restated, or replaced in the event Provider's interests under the Agreement are transferred to a permitted assignee or a successor-in-interest.

Section 5. Substitution, Return and Handling of Credit Support.

(a) Election to Change Form of Credit Support. Customer shall have the right, at any time and from time to time, to replace any or all of the Credit Support provided by Customer (the "Outstanding Credit Support") with alternative Credit Support in a form permitted hereunder, whereupon Provider shall cooperate with Customer, at Customer's cost and expense, in obtaining the concurrent release, termination or return (as many as may be applicable) of the Outstanding Credit Support in favor of or held by Provider.

(b) Return of Original Credit Support Documents. Provider shall return to Customer all original Letters of Credit, Guaranties or other Credit Support documents, and all amendments, extensions and other related documents, promptly after the termination, cancellation or replacement thereof.

(c) Handling of Cash Collateral. If any cash collateral is expected to be or is received by Provider pursuant to the Agreement, whether following a Letter of Credit drawing contemplated by this Exhibit A or otherwise, the Parties shall cooperate to cause such cash collateral to be delivered to Provider as soon as practicable. Provider shall hold cash in an interest-bearing account

that is segregated from the general funds held by Provider for other purposes. Applicable interest on such cash collateral shall be calculated in accordance with the methodology specified for interest on refunds in the FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) (2021).

(d) Security Interest. Customer hereby pledges to Provider, as security for its obligations under the Agreement, and grants to Provider a first priority continuing security interest in, lien on and right of set-off against all cash collateral received by Provider pursuant to this Agreement. Upon a return of cash collateral by Provider to Customer, the security interest and lien granted hereunder on that cash collateral will be immediately released without any further action by either party.

Section 6. Credit Support Not a Limit. Notwithstanding any other provision of this Exhibit A, Credit Support contemplated by this Exhibit A constitutes security for, but is not a limitation of, Customer's obligations under this Exhibit A and the Agreement.

Section 7. Credit Support Draw. Provider agrees that draws on Credit Support shall only be made following a failure to pay by Customer within five (5) Business Days after receiving written notice from Provider. In addition to any other remedy available to it, Provider may, before or after termination of the Agreement, draw on the Credit Support in such amounts as are necessary to recover amounts due and owing to Provider pursuant to the Agreement, including any compensation for damages for Customer's failure to perform under the Agreement. Provider may, in its sole discretion, draw all or any part of amounts due and owing to it and not paid as required in the Agreement from any form of security to the extent available pursuant to this Exhibit A, and from all such forms, and in any sequence as Provider may select. Any failure to draw on the Credit Support or other security for any damages or other amounts due to Provider shall not prejudice Provider's rights to recover such damages or amounts in any other manner.

Section 8. Credit Support Conversion. If a Letter of Credit issuer is no longer a Qualified Bank, then, within two (2) Business Days after the earlier of (a) the date of written notice thereof from Provider to Customer and (b) the date Customer obtains knowledge thereof, Customer shall be required to convert the Letter of Credit provided by such issuer into a form of Credit Support permitted hereunder. If a Guaranty is in place and the Person providing such Guaranty is no longer a Creditworthy Person, then, within two (2) Business Days after such rating action, Customer shall be required to convert the Guaranty provided by such Person into a form of Credit Support permitted hereunder.

Exhibit B

TERM SHEET FOR A TRANSMISSION SERVICES AGREEMENT

FOR THE

TRANSWEST EXPRESS TRANSMISSION PROJECT

This Indicative Term Sheet for a Transmission Services Agreement for the TransWest Express Transmission Project (this “Term Sheet”) is non-binding on the parties and is intended to describe, in summary, certain terms and conditions that would be elaborated in any eventual Transmission Services Agreement entered into between Provider (as defined below) and Customer (as defined below). Except as expressly provided in the Customer Agreement, unless and until a definitive Transmission Services Agreement has been executed by Provider and Customer, (1) no contract or agreement providing for a Transmission Services Agreement shall be deemed to exist between Provider and Customer and (2) no party will be under any legal obligation of any kind whatsoever with respect to a Transmission Services Agreement. Unless otherwise defined in this Term Sheet, capitalized terms in this Term Sheet have the meanings set forth in the Customer Agreement.

1. <i>Transmission Owner:</i>	TransWest Express LLC, a Delaware limited liability company (“ <u>Provider</u> ”).
2. <i>Customer:</i>	See Attachment 1.
3. <i>Transmission Facilities:</i>	“ <u>Transmission Facilities</u> ” means the TransWest Express Transmission Project, a 732-mile high-voltage transmission system consisting of (i) a 405-mile, 3,000 MW, 500kV HVDC transmission line and all related facilities from a point of receipt (the “ <u>Point of Receipt</u> ”) located near Sinclair, Wyoming to a delivery point (the “ <u>First Delivery Point</u> ”) located near Delta, Utah; (ii) a 278-mile, 1,500 MW, 500 kV HVAC transmission line and all related facilities from the First Delivery Point to a delivery point (the “ <u>Second Delivery Point</u> ”) located at the Crystal Substation located north of Las Vegas, Nevada; and (iii) a 49-mile, 1,500 MW, 500kV HVAC transmission line and all related facilities from the Second Delivery Point to a delivery point (the “ <u>Third Delivery Point</u> ”) located in the Eldorado Valley near Boulder City, Nevada. The Transmission Facilities will be developed, constructed, owned, operated, and maintained by Provider. The target commercial operation date of the Transmission Facilities is December 31, 2026.
4. <i>Contracted Capacity:</i>	See Attachment 1.
5. <i>Firm Point-to-Point Transmission Service:</i>	“ <u>Firm Point-to-Point Transmission Service</u> ” means the reservation and transmission of capacity and energy on the Transmission Facilities on a firm basis from the Point of Receipt

	to the Customer Delivery Point (see Attachment 1) in an amount up to the Contracted Capacity.
6. <i>Initial Term of Service:</i>	See Attachment 1.
7. <i>Point of Receipt:</i>	A point located near Sinclair, Wyoming (the “ <u>Point of Receipt</u> ”). The Point of Receipt may be modified by mutual agreement of the parties.
8. <i>Monthly Transmission Rate:</i>	See Attachment 1.
9. <i>Renewal Term:</i>	<p>Not less than one (1) year prior to termination of the Transmission Services Agreement, Customer may request to extend the Term of Service of the Transmission Services Agreement for a minimum of five (5) years (such period, the “<u>Renewal Term</u>”) at a rate to be mutually agreed by the parties.</p> <p>If there is a competing request from another customer for firm transmission services at the end of the Initial Term of Service for a length not less than the Renewal Term, then Customer shall have a right of first refusal consistent with FERC’s pro forma OATT.</p>
10. <i>Losses under the Transmission Services Agreement:</i>	Customer’s obligations with respect to losses shall be established under the Transmission Services Agreement, as calculated pursuant to the OATT. Losses will be settled physically in the time interval set forth in the Transmission Services Agreement. The calculation of losses shall be subject to further discussion by the Parties upon Provider’s preparation of the OATT. The Parties anticipate that the OATT shall include a fixed amount of estimated losses for the first year of the Transmission Facilities’ operation, with a calculation and true-up based on actual measured losses in the years that follow.
11. <i>Ancillary Services:</i>	<p>Customer shall be entitled to its pro rata share, based on the ratio of the Contracted Capacity to the capacity of the Transmission Facilities, of all revenues received (net of any costs incurred by Provider to realize such revenue) in respect of any ancillary services (however defined) with respect to the Transmission Facilities, including any black-start service, var support, voltage support, frequency regulation and any spinning reserve.</p> <p>Customer shall be responsible for obtaining all ancillary services required to facilitate transactions associated with the Transmission Services Agreement from Provider or another entity. The provision of and the charges for Ancillary Services shall be subject to further discussion by the Parties upon Provider’s preparation of the OATT.</p>
12. <i>Credit Support:</i>	Customer shall provide and maintain credit support at all times during the Term of Service of the Transmission Services Agreement. The general terms governing credit support in the Transmission Services Agreement shall be consistent with the

	terms set forth in Exhibit A to the Customer Agreement, except that the Required Credit Support Amount shall be as set forth in Attachment 1.
<i>13. Representations and Warranties:</i>	Each party will make customary representations and warranties for transactions of this nature that will address the following matters: due organization, valid existence and good standing; due authorization; enforceability; no violation of, or conflict with, organizational documents, applicable laws or material contracts; no outstanding litigation or other proceedings that would affect such party's ability to enter into and perform its obligations under the Transmission Services Agreement; compliance with applicable laws; and governmental approvals.
<i>14. Assignment:</i>	Neither party may assign its rights or obligations under the Transmission Services Agreement without the prior written consent of the other party (not to be unreasonably withheld, delayed or conditioned); <u>provided, however</u> , that at any time, and from time to time, Provider may assign Transmission Services Agreement in whole to one or more Provider Affiliates, with notice to, but without the prior written consent of, Customer.
<i>15. Governing Law:</i>	Colorado
<i>16. Costs and Expenses:</i>	Each party will bear its own costs and expenses in drafting and negotiating the Transmission Services Agreement and in obtaining all Governmental Approvals required thereby unless otherwise provided in the Transmission Services Agreement.
<i>17. Other Provisions:</i>	<p>The Transmission Services Agreement will also contain customary provisions for transactions of this nature relating to the following matters:</p> <ul style="list-style-type: none"> (i) definitions and rules of interpretation; (ii) conditions precedent to the obligations of each party; (iii) development, construction and financing milestones for Customer Project and progress reporting; (iv) operation and maintenance of the Transmission Facilities; (v) metering; (vi) termination payment due from Customer for early termination of the Transmission Services Agreement (see Attachment 1); (vii) outages on the Transmission Facilities and allocation of outages among customers; (viii) expected availability and operating reliability of the Transmission Facilities; (ix) change in law or regulation; (x) defaults and remedies; (xi) indemnification; (xii) force majeure; (xiii) further assurances;

	<ul style="list-style-type: none">(xiv) financing cooperation;(xv) limitation of Provider's rights and obligations to those of transmission provider;(xvi) payment and invoicing;(xvii) miscellaneous provisions as to limitation of liability, exclusive remedies, entire agreement, severability, notices, waiver, confidentiality, binding effect, relationship of the parties and construction, counterparts, survival, amendments and no recourse; and(xviii) such other matters as mutually agreed to by the parties.
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Attachment 1 to Exhibit B

CUSTOMER TERMS

1. <i>Customer:</i>	[_____] (“ <u>Customer</u> ”).
2. <i>Contracted Capacity:</i>	[_____] MW (the “ <u>Contracted Capacity</u> ”); <u>provided, however,</u> that, if the firm transmission transfer capability of the Transmission Facilities is below the aggregate contracted capacity for the Transmission Facilities, then the Contracted Capacity will be reduced pro rata, based on the ratio of the Contracted Capacity to the aggregate contracted capacity, such that the aggregate contracted capacity for the Transmission Facilities will be reduced equal to the firm transmission transfer capability of the Transmission Facilities.
3. <i>Customer Delivery Point:</i>	[to reference the applicable Delivery Point under the TSA, which shall be either the (i) Second Delivery Point only or (ii) Second Delivery Point and Third Delivery Point] (the “ <u>Customer Delivery Point</u> ”). The Customer Delivery Point may be modified by mutual agreement of the parties.
4. <i>Initial Term of Service:</i>	[_____] (the “ <u>Initial Term of Service</u> ” and with any Renewal Term, the “ <u>Term of Service</u> ”).
5. <i>Monthly Transmission Rate:</i>	<p>The monthly rate for transmission service under the Transmission Services Agreement shall be comprised of a fixed capacity rate (\$/kW-Month) (the “<u>Fixed Rate</u>”) and a variable rate (\$/kW-Month) (the “<u>Variable Rate</u>”). Indicative rates for the Fixed Rate and Variable Rate are set forth in <u>Exhibit D</u>.</p> <p>The Fixed Rate is based on Provider’s good faith estimate as of the Effective Date of the capital expenditures and other costs and expenses to be incurred by Provider in connection with the development, engineering, design, procurement, installation, construction and financing of the Transmission Facilities (the “<u>Capital Expenditures</u>”). The Fixed Rate shall be adjusted as of the Phase 1 Completion Date and as of the Commercial Operation Date in accordance with the methodology and process set forth in Attachment 2 to <u>Exhibit B</u>. In addition, during the period following the tenth (10th) anniversary of the Commercial Operation Date, Provider may, but is not obligated to, adjust the Fixed Rate for (i) changes in Federal tax law applicable to the Transmission Facilities such as the availability of an investment tax credit, (ii) changes in long-term financing rates, or (iii) the recovery of unforeseen capital expenditures required to maintain the reliability of the Transmission Facilities or as required to comply with regulatory requirements of an agency with jurisdiction over the Transmission Facilities; provided that changes to the Fixed Rate after the tenth (10th) anniversary of</p>

	<p>the Commercial Operation Date shall be subject to a cap of one and [_____] in the aggregate.</p> <p>Changes to the Fixed Rate as of the Phase 1 Completion Date and as of the Commercial Operation Date shall be subject to a cap of [_____] in the aggregate. If the adjustment to the Fixed Rate as of the Phase 1 Completion Date or the Commercial Operation Date would result in an increase of the Fixed Rate by more than [_____] in the aggregate, Provider shall have the right to terminate the Transmission Services Agreement by delivering written notice to Customer within thirty (30) days after the determination of any such Fixed Rate increase, unless (i) Customer agrees to pay the Fixed Rate, as adjusted or (ii) the Parties otherwise mutually agree. Upon any termination by Provider pursuant to this Section, Provider shall release or return to Customer the Credit Support.</p> <p>The Variable Rate for the initial year after the Commercial Operation Date is based on Provider’s good faith estimate of the Variable Expenses for such year as set forth in Attachment 2. The Variable Rate shall be adjusted (i) no later than sixty (60) days prior to the Commercial Operation Date to reflect any updates to such estimated Variable Expenses and (ii) within thirty (30) days after the end of the first year after the Commercial Operation Date and the end of each subsequent year thereafter in accordance with the methodology set forth in Attachment 2. Changes to the Variable Rate after the initial year after the Commercial Operation Date shall be subject to an annual cap of [_____] and a cap of [_____] in the aggregate.</p> <p>“<u>Variable Expenses</u>” means (i) the costs and expenses reasonably incurred by Provider to operate and maintain the Transmission Facilities, including administrative and general costs, transmission right of way payments, and HVDC terminal staffing and contracting costs; (ii) any taxes owed by Provider, including property, sales and use taxes incurred by Provider with respect to the Transmission Facilities, but excluding income taxes owed by Provider and (iii) any insurance costs incurred by Provider with respect to the Transmission Facilities.</p>
<p>6. <i>Customer’s Required Credit Support Amount:</i></p>	<p>An amount equal to the below:</p> <p><u>Prior to the Commercial Operation Date:</u> an amount equal to the Termination Payment under the Customer Agreement, as adjusted.</p>

	<p>After the Commercial Operation Date: <i>[to be an amount equal to two (2) years of revenue under the Transmission Services Agreement, plus one (1) month of revenue for each year of the Initial Term of Service beyond twenty (20) years; provided that if Customer does not elect to extend the Term of Service, the Required Credit Support Amount for the last year of the Term of Service shall be reduced to one (1) year of revenue under the Transmission Services Agreement.]</i></p>
<p>7. <i>Termination Payment</i></p>	<p>Prior to the Commercial Operation Date: an amount equal to the Termination Payment under the Customer Agreement, as adjusted.</p> <p>After the Commercial Operation Date:</p> <p><i>[to be negotiated in the Transmission Services Agreement]</i></p>

Attachment 2 to Exhibit B

ADJUSTMENT TO FIXED RATE AND VARIABLE RATE

Fixed Rate Adjustments:

The estimated Capital Expenditures as of the Effective Date are set forth in Exhibit D to this Agreement (“Capital Expenditures Estimate”). The Capital Expenditures Estimate shall be updated at the Phase 1 Completion Date (“Phase 1 Updated Capital Expenditure Estimate”) and the Commercial Operation Date (“COD Capital Expenditures Estimate”). Subject to the Meet and Confer provisions set forth herein, the Fixed Rate will be adjusted as of the Phase 1 Completion Date to account for the differences between the Capital Expenditures Estimate and the Phase 1 Updated Capital Expenditures Estimate and again as of the Commercial Operation Date to account for differences in the Phase 1 Updated Capital Expenditures Estimate and the COD Capital Expenditures Estimate. The adjusted Fixed Rate will be calculated by increasing or decreasing, as applicable, the then-current Fixed Rate by [_____] for each [_____] difference in the applicable Capital Expenditures estimates (prorated for any fractions of a percent). Changes to the Fixed Rate for differences between the Capital Expenditures Estimate and the Phase 1 Updated Capital Expenditures Estimate as of the Phase 1 Completion Date, and for differences between the Phase 1 Updated Capital Expenditures Estimate and the COD Capital Expenditures Estimate as of the Commercial Operation Date, shall be subject to a cap of [_____] in the aggregate.

Variable Rate Adjustments:

The estimated Variable Expenses as of the Effective Date for the initial year after the Commercial Operation Date are set forth in Exhibit D (the “Variable Expense Estimate”). No later than sixty (60) days prior to the Commercial Operation Date, Provider shall notify Customer of the updated Variable Expense Estimate and provide Customer with supporting documentation for any increase in the estimated Variable Expenses (the “Updated Variable Expense Estimate”) and, subject to the Meet and Confer provisions set forth herein, the Variable Rate as of the Effective Date shall be adjusted by increasing or decreasing, as applicable, the Variable Rate as of the Effective Date by the percentage difference between the Variable Expense Estimate and the Updated Variable Expense Estimate.

The “Variable Expense Budget” shall mean (i) for the first year after the Commercial Operation Date, the Updated Variable Expense Estimate and (ii) for each subsequent year thereafter, the estimated Variable Expenses for such year. At the end of each year after the Commercial Operation Date, Provider shall notify Customer of (a) the difference between the actual Variable Expenses and the applicable Variable Expense Budget for such year (such Variable Expense Budget, the “Current Variable Expense Budget” and such difference, the “Variable Expense Difference”) and (b) the Variable Expense Budget for the following year (such Variable Expense Budget, the “Updated Variable Expense Budget”). Subject to the Meet and Confer provisions set forth herein, the Variable Rate for the following year shall be adjusted by increasing or decreasing, as applicable, the then-current Variable Rate by the percentage difference between (a) the applicable Current Variable Expense Budget and (b) (1) the applicable Updated Variable Expense Budget plus or minus (2) the Variable Expense Difference; provided that following the initial year after

the Commercial Operation Date, the Variable Rate shall not be increased by more than [_____] in any given year and more than [_____] in the aggregate.

Meet and Confer

Prior to any proposed Fixed Rate or Variable Rate adjustment and prior to setting each Variable Expense Budget for each year, Provider shall provide its proposal for the Variable Expense Budget and the adjustment to the Fixed Rate and Variable Rate, as applicable, with supporting documentation sufficient to allow Customer to evaluate Provider's proposal. Customer shall have no less than fifteen (15) days to review the proposal (the "Review Period") and supporting materials, during which time Customer shall have the right to request further documentation. Provider shall respond to Customer's reasonable requests for supporting materials in a timely fashion. Following the Review Period, the Parties shall meet and confer for a period not less than thirty (30) days to address any Customer concerns, following which period, Provider may set the Variable Expense Budget and implement the rate increase as agreed by the Parties or as otherwise allowed pursuant to the annual and aggregate limitations set forth above.

Exhibit C

Credit Support Summary Chart

Type	Start	End	Amount
<u>Customer Deposit</u> (Letter of Credit or Cash)	No later than five (5) Business Days after the Effective Date of Customer Agreement	The date on which the Credit Support is posted five (5) Business Day before the expected Phase 2 Completion Date)	See <u>Exhibit D</u> .
<u>Customer Agreement Credit Support</u> Letter of Credit, Guaranty from Creditworthy Person, proceeds of Letter of Credit or other form reasonably acceptable to Provider)	No later than five (5) Business Days before the expected Phase 2 Completion Date.	The earlier of execution of the Transmission Services Agreement or the termination of the Customer Agreement for Customer default after the Phase 2 Completion Date pursuant to Section 2.2(b)(iii) of the Customer Agreement.	The Termination Payment as set forth in <u>Exhibit D</u> , as adjusted at Phase 1 Completion Date.
<u>Transmission Services Agreement Credit Support</u> (Letter of Credit, Guaranty from Creditworthy Person, proceeds of Letter of Credit or other form reasonably acceptable to Provider)	Execution of the Transmission Services Agreement	End of Term of Service	<p><i>Prior to the Commercial Operation Date:</i> The Termination Payment as set forth in <u>Exhibit D</u>, as adjusted at Phase 1 Completion Date.</p> <p><i>After the Commercial Operation Date:</i> [to be an amount equal to two (2) years of revenue under the Transmission Services Agreement, plus one (1) month of revenue for each year of the Initial Term of Service beyond twenty (20) years; provided that if Customer does not elect to extend the Term of Service, the Required Credit Support Amount for the last year of the Term of Service shall be reduced to one (1) year of revenue under the Transmission Services Agreement.]</p>

Exhibit D

Monthly Transmission Rate, Customer Deposit and Termination Payment Amounts

See Attached.

Exhibit D

Monthly Transmission Rate, Customer Deposit and Termination Payment Amounts

Customer	Contracted Capacity (MW)	Customer Delivery Point	Initial Term of Service	Capital Expenditures		Variable Expense	Monthly Transmission Rate (\$/KW-Month)			Customer Deposit	Termination Payment ²
				Transmission Facilities	Estimate ¹		Estimate ¹	Fixed	Variable		
				See Exhibit B - Form of TSA, Item 3							

or

Customer	Contracted Capacity (MW)	Customer Delivery Point	Initial Term of Service	Capital Expenditures Estimate		Variable Expense	Monthly Transmission Rate (\$/KW-Month)			Customer Deposit	Termination Payment ²
				Transmission Facilities	Estimate ¹		Estimate ¹	Fixed	Variable		
				See Exhibit B - Form of TSA , Item 3							

Notes

1 Estimate as of Effective Date of the Customer Agreement.

2 The Termination Payment is estimated as [_____] of the Capital Expenditure Estimate as of the Effective Date. The Termination Payment will be adjusted at the Phase 1 Completion Date.

CUSTOMER AGREEMENT

This CUSTOMER AGREEMENT (this “Agreement”), dated as of [_____] (the “Effective Date”), is made and entered into by and between TransWest Express LLC, a Delaware limited liability company (“Provider”), and [_____] (“Customer”). Provider and Customer are hereinafter sometimes also referred to individually as a “Party” and collectively as the “Parties.”

W I T N E S S E T H:

WHEREAS, Provider intends to develop, construct, own, operate, and maintain the TransWest Express Transmission Project, a 732-mile high-voltage transmission system consisting of (i) a 405-mile, 3,000 MW, 500kV HVDC transmission line from a point of receipt (the “Point of Receipt”) located near Sinclair, Wyoming to a delivery point (the “First Delivery Point”) located near Delta, Utah; (ii) a 278-mile, 1,500 MW, 500 kV HVAC transmission line from the First Delivery Point to a delivery point (the “Second Delivery Point”) located at the Crystal Substation located north of Las Vegas, Nevada; and (iii) a 49-mile, 1,500 MW, 500kV HVAC transmission line from the Second Delivery Point to a delivery point (the “Third Delivery Point”) located in the Eldorado Valley near Boulder City, Nevada;

WHEREAS, *[to describe customer purpose, such as: Customer is developing electric generating facilities for the purpose of selling electric energy for resale and has expressed interest in receiving Firm Point-to-Point Transmission Service (as defined below) for transmission capacity for [_____] MW of generation from Provider (or a designated Provider Affiliate (as defined below)) from the Point of Receipt to the First Delivery Point];* and

WHEREAS, the Parties desire to set forth the terms under which the Parties will enter into an agreement (the “Transmission Services Agreement”) pursuant to which (1) Provider (or a designated Provider Affiliate) will construct, own, operate, and maintain the Transmission Facilities and (2) Customer will receive the Firm Point-to-Point Transmission Service.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1. Definitions. As used herein, the following terms shall have the following respective meanings:

“Affiliate” means, with respect to a specified Person, any other Person that directly or indirectly Controls, is Controlled by or is under common Control with the specified Person.

“Agreement” has the meaning provided in the preamble to this Agreement.

“Applicable Law” means any duly promulgated federal, state or local law, regulation, rule, ordinance, code, decree, judgment, directive or judicial or administrative order, permit or other duly authorized and valid action of any Governmental Authority, including any binding interpretation of any of the foregoing by any Governmental Authority, which is applicable to a Person, its property or a transaction.

“Business Day” means any day except Saturday, Sunday or any other day on which the Federal Reserve member banks are required or authorized to close for business.

“Capital Expenditures” has the meaning set forth in Attachment 1 to Exhibit B.

“Capital Expenditures Estimate” has the meaning set forth in Attachment 2 to Exhibit B.

“Confidential Information” has the meaning provided in Section 6.10(a).

“Contracted Capacity” means [_____] MW, as such may be adjusted in accordance with the terms hereof.

“Commercial Operation Date” means the date on which the Transmission Facilities have been completed, tested, and are synchronized with the transmission facilities with which they connect.

“Control” (including its correlative meanings “Controlled by” and “under common Control with”) means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the specified Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or Applicable Law or otherwise.

“Creditworthy Person” has the meaning provided in Exhibit A hereto.

“Credit Support” has the meaning provided in Exhibit A hereto.

“Customer” has the meaning provided in the preamble to this Agreement.

“Customer Deposit” has the meaning provided in Section 4.1.

“Customer Project” means the [_____] generation project known as [_____] under development by Customer in [_____].

“Customer’s Guarantor” means, if applicable, the Person providing a Guaranty pursuant to the terms of Exhibit A hereto.

“Delivery Point” means the First Delivery Point.

“Development Failure” means the Phase 2 Completion Date has not occurred by the Phase 2 Completion Date Deadline, as such may be extended pursuant to Section 4.10.

“Effective Date” has the meaning provided in the preamble to this Agreement.

“Electric Reliability Organization” means any organization responsible for ensuring the reliable operation of the electric grid impacted by the Transmission Facilities.

“FERC” means the Federal Energy Regulatory Commission, or any successor regulatory agency that administers the Federal Power Act.

“Financial Closing” means the date on which Provider has satisfied all of the conditions precedent in its financing agreement for the initial funding of the costs and expenses incurred in connection with the development, design, engineering, procurement, construction, commissioning, start-up, and commencement of commercial operation of the Transmission Facilities.

“Firm Point-to-Point Transmission Service” means the reservation and transmission of capacity and energy on the Transmission Facilities on a firm basis from the Point of Receipt to the Delivery Point in an amount up to the Contracted Capacity.

“First Delivery Point” has the meaning provided in the recitals to this Agreement.

“Fixed Rate” has the meaning set forth in Attachment 1 to Exhibit B.

“Force Majeure Event” means any event that is not in the reasonable control of the Party affected and with the exercise of due diligence could not reasonably be prevented, avoided or removed by such Party, which causes the Party claiming that a Force Majeure Event occurred to be delayed, in whole or in part, or unable, using commercially reasonable efforts, to partially or wholly perform its obligations under this Agreement, including, natural disasters, acts of God, events such as earthquake, flood, hurricane, tornado, snowstorm, landslide, avalanches, hazardous fog, drought, fire, lightning, hail, ice and ice storms, dust storms, and volcanic activity, outbreaks, epidemics, pandemics (including COVID 19 and any variant thereof), war (whether declared or undeclared) or other armed conflict, riot, explosions, civil disturbance, sabotage, vandalism, strikes, lockouts or other labor disputes (except for strikes, lockouts or labor disputes isolated to the Party claiming a Force Majeure Event), trade embargo, terrorism or threats of terrorism, blockades, closing of or congestion in any railway, railhead, harbor, dock, port, canal or area adjunct thereto, action or inaction of any Governmental Authority (including any failure or delay in receiving, issuing, or renewing any Governmental Approval), changes in any Governmental Approval or the conditions imposed thereunder, any material legislative, judicial or administrative change in any Applicable Law existing as of the Effective Date, any material change in the enforcement, interpretation or application of any Applicable Law, existing as of the Effective Date, the enactment of any Applicable Law on or after the Effective Date, and action or inaction in connection with the requirements from an Electric Reliability Organization applicable to the Transmission Facilities.

“GAAP” means United States generally accepted accounting principles, consistently applied and as in effect from time to time.

“Governmental Approval” means any authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, waiver, exemption, filing, variance, claim, order, judgment, or decree by a Governmental Authority.

“Governmental Authority” means any government or agency or other political subdivision thereof, including any state or municipality, or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, regulatory, public or statutory instrumentality, authority, body, agency, commission, department, board, bureau or entity exercising judicial, executive, legislative, administrative or regulatory functions, any court or arbitrator with authority to bind a party at law, and shall include, to the extent exercising powers delegated by any Governmental Authority acting under Applicable Law, any electric reliability organization or regional transmission organization. For avoidance of doubt, Governmental Authority includes FERC and the North American Electric Reliability Corporation, including its Regional Entities.

“International Financial Reporting Standards” means the accounting standards and interpretations adopted by the International Accounting Standards Board.

“Initial Cure Period” has the meaning provided in Section 2.2(b).

“Initial Term of Service” has the meaning provided in Attachment 1 of Exhibit B.

“Letter of Credit” has the meaning provided in Exhibit A.

“Material Credit Default” has the meaning provided in Section 2(b) of Exhibit A hereto.

“Monthly Transmission Rate” means the monthly transmission rate for Firm Point-to-Point Transmission Service.

“MW” means megawatt.

“OATT” means the Open Access Transmission Tariff for the Transmission Facilities.

“Offtake Development Milestone” means that Customer has secured offtake commitments (via a power purchase agreement, hedge or similar financial commitment) for a portion of the generating capacity of the Customer Project, or has otherwise obtained financial commitments, sufficient to allow Provider to achieve Financial Closing.

“Parties” and “Party” have the meanings provided in the preamble to this Agreement.

“Person” means any legal person, including any natural person, domestic or foreign corporation, limited liability company, general or limited partnership, joint venture, association, joint stock company, business trust, estate, trust, enterprise, unincorporated organization, any Governmental Authority, or any other legal or commercial entity.

“Phase 1 Completion Date” means the date on which Provider has notified Customer pursuant to Section 4.4(a) that Provider has (i) executed all interconnection agreements needed for the Transmission Facilities, (ii) obtained all Governmental Approvals required to develop and construct the Transmission Facilities, (iii) obtained all Governmental Approvals required to provide Firm Point-to-Point Transmission Service from the Point of Receipt to the Delivery Points, except approval of the OATT and the Transmission Service Agreement from the FERC, (iv) acquired all real property rights required to develop, construct, operate, and maintain the Transmission Facilities, (v) entered into definitive agreements, in form and substance satisfactory

to Provider, in its sole discretion, for the engineering, procurement and construction of the Transmission Facilities, (vi) executed customer agreements for an aggregate contracted capacity of not less than the estimated capacity of the Transmission Facilities, and (vii) provided Customer with the Phase 1 Updated Capital Expenditure Estimate and the amount of the adjusted Termination Payment.

“Phase 1 Updated Capital Expenditure Estimate” has the meaning set forth in Attachment 2 to Exhibit B.

“Phase 2 Completion Date” means the date on which Provider has notified Customer pursuant to Section 4.4(a) that Provider has achieved Financial Closing and issued full notice to proceed under one or more material agreement(s) for the engineering, procurement and construction of the Transmission Facilities.

“Phase 2 Completion Date Deadline” means December 31, 2023, as such date may be extended pursuant to Section 4.10.

“Point of Receipt” has the meaning provided in the recitals to this Agreement.

“Provider” has the meaning provided in the preamble to this Agreement.

“Provider Affiliate” means an Affiliate of Provider that will own the Transmission Facilities or that will have a demonstrable right to control the Transmission Facilities sufficient to discharge its obligations under this Agreement and the Transmission Services Agreement.

“Review Period” has the meaning set forth in Attachment 2 to Exhibit B.

“Second Delivery Point” has the meaning provided in the recitals to this Agreement.

“Subsidiary” means, with respect to a specified Person, any other Person that directly or indirectly is Controlled by the specified Person.

“Term” has the meaning provided in Section 2.1.

“Term Sheet” has the meaning provided in Section 3.1.

“Termination Payment” is an amount equal to [_____] of the Capital Expenditures Estimate and is set forth in Exhibit D. The Termination Payment shall be adjusted at the Phase 1 Completion Date by the percentage increase or decrease in the Phase I Updated Capital Expenditures Estimate compared to the Capital Expenditures Estimate.

“Third Delivery Point” has the meaning provided in the recitals to this Agreement.

“Transmission Facilities” means the transmission facilities described in the first recital to this Agreement from the Point of Receipt to the Delivery Point.

“Transmission Services Agreement” has the meaning provided in the recitals to this Agreement.

“WAPA” means the Western Area Power Administration.

Section 1.2. Interpretation. In this Agreement, unless the context otherwise requires, the following rules shall apply to the usage of terms:

Section 1.2.1. Singular; Plural; Gender; Corollary Meaning. The singular shall include the plural and vice versa, and any pronoun shall include the corresponding masculine, feminine and neuter forms. If a term is defined as one part of speech (such as a noun), then it shall have a corresponding meaning when used as another part of speech (such as a verb).

Section 1.2.2. Coordinating Conjunctions. The word “or” shall have the inclusive meaning represented by the phrase “and/or.”

Section 1.2.3. Self-Reference. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

Section 1.2.4. Inclusive References. The words “include,” “includes,” and “including” when used in this Agreement shall be deemed to be followed by “without limitation” or “but not limited to,” whether or not they are in fact followed by such words or words of like import.

Section 1.2.5. Incorporation by Reference. Any reference in this Agreement to an “Article,” “Section” or other subdivision or to an “Exhibit” or other schedule or attachment shall be references to an article, section or other subdivision of, or to an exhibit, schedule or attachment to, this Agreement, unless otherwise stated, and all such Articles, Sections, and Exhibits are incorporated into this Agreement by reference (all of which comprise part of one and the same agreement with equal force and effect).

Section 1.2.6. Subsequent Acts. In the event any index or publication referenced in this Agreement ceases to be published or a concept defined by reference to any such index or publication ceases to exist, each such reference shall be deemed to be a reference to a successor or alternate index, publication or concept reasonably agreed to by the Parties. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and as in effect from time to time.

Section 1.2.7. Inclusive of Permitted Successors. Unless otherwise expressly stated, references to any Person also include its permitted successors and assigns.

Section 1.2.8. Time Computation. In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

Section 1.2.9. Business Days. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken under this Agreement on or by a day that is not a Business Day, such action

may be validly taken on or by the next day that is a Business Day, and in the case of payments (including refunds of payments), no interest shall accrue on the amount due; provided that such payment is made in full on the next day that is a Business Day.

Section 1.2.10. Regulatory Approvals. Any Governmental Approval shall be deemed to have been obtained upon issuance, even if such Governmental Approval is subject to appeal or rehearing.

Section 1.2.11. Currency. All references to prices, values or monetary amounts referred to in this Agreement shall be paid in United States currency, unless expressly provided otherwise.

Section 1.2.12. Headings. The captions of the Articles and Sections of this Agreement are solely for convenience and shall not be deemed a part of this Agreement for the purpose of construing the meaning of this Agreement or for any other purpose.

ARTICLE 2

TERM

Section 2.1. Effective Date; Term. This Agreement will become effective beginning on the Effective Date. The term of this Agreement (“Term”) shall begin on the Effective Date and shall end, unless earlier terminated or extended in accordance with its terms, on the date on which Provider or a Provider Affiliate, on the one hand, and Customer, on the other hand, execute the Transmission Services Agreement.

Section 2.2. Termination.

(a) Either Party may terminate this Agreement upon the occurrence of a Development Failure, except that the terminating Party shall not be entitled to terminate this Agreement to the extent the Development Failure arises out of, with respect to Customer, any act or omission of Customer or Customer’s breach of the terms of this Agreement, and with respect to Provider, Provider’s breach of this Agreement. Upon such termination, neither Party will have any liability to the other Party, and, for the avoidance of doubt, no amounts shall be payable by either Party, except that Provider shall promptly (but in any event within ten (10) days after such termination) return to Customer the Customer Deposit.

(b) In the event of any default by a Party under Section 4.6 that is not cured within thirty (30) days after the defaulting Party’s receipt of written notice of such default (the “Initial Cure Period”), the non-defaulting Party, as its sole and exclusive remedy, may terminate this Agreement; provided, that Initial Cure Period shall be extended for up to an additional sixty (60) days to the extent that a cure of the default cannot be completed within such thirty (30) days and the defaulting Party has initiated a cure during such thirty (30) days. In addition, Provider may terminate this Agreement if a Material Credit Default has occurred or if Customer fails to post or maintain Credit Support in accordance with this Agreement and such failure has not been cured within ten (10) Business Days after such failure. Upon any such termination under this Section 2.2(b):

(i) if the defaulting Party is Provider, then neither Party will have any liability to the other Party, and, for the avoidance of doubt, no amounts shall be payable by either Party, except that Provider shall promptly (but in any event within ten (10) days after such termination) return to Customer the Customer Deposit;

(ii) if the defaulting Party is Customer and this Agreement is terminated at any time prior to the Phase 2 Completion Date, then Provider shall be entitled to the Customer Deposit and shall retain the Customer Deposit if the Customer Deposit is in the form of a cash deposit, and draw down on and retain the proceeds from the Letter of Credit if the Customer Deposit is in the form of a Letter of Credit; and

(iii) if the defaulting Party is Customer and this Agreement is terminated on or after the Phase 2 Completion Date, Customer shall pay Provider the applicable Termination Payment and Provider shall be entitled to draw down on the Credit Support to the extent of Customer's Termination Payment obligation.

(c) In addition to the termination rights set forth in Section 2.2(a) and Section 2.2(b), Provider will have the right to terminate this Agreement (i) if Customer fails to achieve the Offtake Development Milestone on or before [_____] and Provider shall be entitled to the Customer Deposit and shall retain the Customer Deposit if the Customer Deposit is in the form of a cash deposit, and draw down on and retain the proceeds from the Letter of Credit if the Customer Deposit is in the form of a Letter of Credit or (ii) in accordance with Section 4.4(b).

(d) In addition to the specific termination rights set forth above, this Agreement may be terminated at any time upon the mutual written agreement of the Parties. Upon such termination, each Party will have such liability, if any, to the other Party as then mutually agreed by the Parties.

(e) The Parties acknowledge and agree that the payment of the Termination Payment and/or the reimbursement, draw down, or retention of the Customer Deposit, as applicable, pursuant to this Section 2.2 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind. The Parties further acknowledge and agree that the damages for the termination of this Agreement are difficult or impossible to determine and that the remedies provided for under this Section 2.2 constitute a reasonable approximation of the harm or loss to the receiving Party as a result of such termination.

Section 2.3. Effect of Termination. Except for those provisions that expressly survive termination of this Agreement pursuant to Section 6.14, upon expiration or other termination of this Agreement pursuant to its terms, each of the Parties will be released from all of its obligations, other than any accrued but unpaid payment obligations.

ARTICLE 3

TRANSMISSION SERVICES AGREEMENT

Section 3.1. Transmission Services Agreement. Set forth on Exhibit B hereto is a summary of certain terms and conditions (the "Term Sheet") that the Parties intend to serve as the basis for a Transmission Services Agreement to be executed by Provider or a Provider Affiliate,

on the one hand, and Customer, on the other hand, for Firm Point-to-Point Transmission Service. In addition to the terms and conditions in the Term Sheet, the Transmission Services Agreement shall incorporate the terms of the OATT. The Parties shall endeavor in good faith, using commercially reasonable efforts, to negotiate and agree upon the form of such Transmission Services Agreement as soon as practical after the Effective Date, but in no event later than [_____], which shall have terms and conditions that substantially adhere to the Term Sheet and that achieve, as nearly as practicable, the commercial intent of the Parties as of the Effective Date; provided that the Parties acknowledge that such terms and conditions will be updated as necessary based on the circumstances and arrangements for the provision of Firm Point-to-Point Transmission Service prevalent or proposed at the time of such negotiations.

Section 3.2. Transmission Service Agreement Subject to Parties Agreement. Notwithstanding Section 3.1, the Parties acknowledge and agree that, unless and until (a) an agreed form of such Transmission Services Agreement has been negotiated by the Parties pursuant to Section 3.1, and (b) (i) the Phase 2 Completion Date has occurred and (ii) Provider has received approval of the OATT and the Transmission Services Agreement negotiated by the Parties from the FERC, neither Party shall be under any legal obligation to execute and deliver the Transmission Services Agreement. Unless this Agreement is earlier terminated in accordance with its terms, the Parties shall execute and deliver the agreed upon form of Transmission Services Agreement within ten (10) Business Days after the later to occur of (x) the date Provider has received approval of the OATT from the FERC and (y) the date Provider has received approval of the Transmission Services Agreement negotiated by the Parties from the FERC.

ARTICLE 4

OBLIGATIONS OF THE PARTIES

Section 4.1. Customer Deposit. No later than five (5) Business Days after the Effective Date, Customer shall either (x) pay to Provider a cash deposit (to be held pursuant to an agreement in form and substance satisfactory to Provider in its sole discretion) or (y) provide to Provider a Letter of Credit, in each case, in an amount equal to the amount set forth in Exhibit D (the “Customer Deposit”). Except as provided in Section 2.2(a), Section 2.2(b)(i), Section 4.3(a) and Section 4.4(b), the Customer Deposit shall not be refundable. The Customer Deposit may be applied to the Credit Support required to be provided under this Agreement or returned to Customer when Customer provides the Credit Support, as elected by Customer.

Section 4.2. Credit Support. The rights and obligations of the Parties under this Agreement with respect to Credit Support are set forth on Exhibit A hereto and a summary of certain of the Credit Support requirements is set forth on Exhibit C hereto.

Section 4.3. Development Efforts.

(a) Provider shall proceed in good faith, using commercially reasonable efforts to satisfy the requirements of both the Phase 1 Completion Date and the Phase 2 Completion Date, including (i) filing applications for all Governmental Approvals required to develop and construct the Transmission Facilities in a timely fashion and taking such other actions as are reasonably required to obtain such Governmental Approvals and (ii) taking all such other actions

as are reasonably required to develop and construct the Transmission Facilities. Should Provider fail to act in good faith using commercially reasonable efforts as required by this Section 4.3(a), and Customer terminates this Agreement under Section 2.2(a), then, as Customer's sole and exclusive remedy, and Provider's sole and exclusive liability for such failure, Provider shall return to Customer an amount equal to one hundred and ten percent (110%) of any Customer Deposit held as of the date of termination by Provider.

(b) Commencing upon the Effective Date and continuing throughout the Term of this Agreement, Provider shall provide progress reports on a quarterly basis in a form reasonably satisfactory to Customer. The progress reports shall describe the status of the development, major equipment procurement and construction of the Transmission Facilities as of the end of the preceding quarter, including (a) a description of the progress of development and construction; (b) an explanation of any material changes in the development and construction schedule; and (c) an estimate of the Commercial Operation Date. Customer shall have the right to monitor the construction, start-up and testing of the Transmission Facilities during normal business operating hours, and Provider shall comply with all reasonable requests of Customer with respect to the monitoring of such events; provided, however, that Customer shall provide Provider with reasonable advance written notice of any such monitoring requests, shall not unreasonably interfere with or disrupt the activities of the Provider and shall comply with all site and safety rules applicable to the areas on which construction work is being performed.

(c) Customer shall proceed in good faith, using commercially reasonable efforts to achieve the Offtake Development Milestone by the date set forth in Section 2.2(c). In addition, commencing on the Effective Date and continuing throughout the Term of this Agreement, Customer shall provide to Provider progress reports on a quarterly basis in a form reasonably satisfactory to Provider, which shall include the status of Customer's progress toward achievement of the Offtake Development Milestone, development, construction and financing of the Customer Project, Customer's status with respect to interconnection to the Transmission Facilities, and any other information relevant to Customer's completion of items required for Customer to commence use of transmission service on the Transmission Facilities.

(d) Each Party covenants to the other Party that it will (i) not interfere with or obstruct the receipt of any Governmental Approvals required to develop and construct the Transmission Facilities, (ii) use commercially reasonable efforts to support and cooperate with the other Party in order for that Party to obtain any Governmental Approvals required to develop and construct their respective facilities, and (iii) not otherwise interfere with or obstruct the siting and development of the Party's facilities.

(e) Each Party agrees to (i) cooperate with the other Party in responding to or complying with the reasonable requirements or reasonable requests of any financing party, including due diligence activities required prior to obtaining financing and providing existing data, reports, and other documents related to such Party, to the Transmission Facilities, or the Customer Project that are in such Party's possession if reasonably requested by a financing party; (ii) permit access to the Transmission Facilities or the Customer Project, as applicable, to any independent engineer of a financing party, as reasonably requested by such financing party; (iii) provide reasonable assistance to the other Party in complying with the reporting requirements set forth in any financing agreements of the financing parties required to be prepared by such Party, (iv)

deliver to the financing parties of the other Party any required estoppel certificates, consents or other documents as reasonably required by the financing parties; and (v) cooperate with the other Party's counsel in providing such information and documentation as may be reasonably necessary for such Party's counsel to prepare any legal opinions required in connection with the closing of any financing with any financing party.

Section 4.4. Development Progress.

(a) Provider shall promptly notify Customer following the (i) Phase 1 Completion Date, (ii) Phase 2 Completion Date, and (iii) the date or dates on which Provider obtains FERC approval for the OATT and the Transmission Services Agreement. Provider shall promptly notify Customer of the occurrence or non-occurrence of any event, change, effect, or development of any kind which would or could reasonably be expected to result in an inability to achieve the Phase 1 Completion Date or the Phase 2 Completion Date.

(b) The Fixed Rate shall be adjusted as of the Phase 1 Completion Date and as of the Commercial Operation Date in accordance with the methodology and process set forth in Attachment 2 to Exhibit B. If the adjustment to the Fixed Rate as of the Phase 1 Completion Date or as of the Commercial Operation Date would result in an increase to the Fixed Rate by more than [_____] in the aggregate, Provider shall have the right to terminate this Agreement by delivering written notice to Customer within thirty (30) days after the determination of any such Fixed Rate increase, unless (i) Customer agrees to pay the Fixed Rate, as adjusted or (ii) the Parties otherwise mutually agree. Upon any termination by Provider pursuant to this Section, Provider shall release or return to Customer the Customer Deposit or any Credit Support that has been provided by Customer.

(c) Customer shall promptly notify Provider of the occurrence or non-occurrence of any event, change, effect, or development of any kind which would or could reasonably be expected to result in an inability to achieve the Offtake Development Milestone by the date set forth in Section 2.2(c) or an inability to construct and finance the Customer Project.

Section 4.5. Further Assurances. Each Party hereby covenants to take such further actions as may be reasonably required to perform under this Agreement and to consummate the transactions contemplated hereby, and each Party hereby covenants to cooperate in good faith with each other to use commercially reasonable efforts to accommodate any reasonable requests by the other Party in connection with this Agreement. In addition, notwithstanding anything in this Agreement to the contrary, if Customer, exercising good faith and reasonable judgment, believes that a potential material counterparty in an offtake commitment arrangement will require a definition of force majeure in such offtake commitment arrangement that differs in any significant meaning from the definition of Force Majeure in this Agreement, then Provider shall negotiate with Customer in good faith such amendments to the definition of the term Force Majeure set forth

herein to reflect the commercial terms deemed necessary to secure such offtake commitment arrangement.

Section 4.6. Mutual Covenants.

(a) Provider shall not (and shall cause its directors, officers, Affiliates, employees and other agents and representatives not to) enter into binding transmission services agreements for an aggregate contracted capacity using the Transmission Facilities that, together with the Contracted Capacity, exceeds the aggregate capacity of the Transmission Facilities.

(b) Customer shall not (and shall cause its directors, officers, Affiliates, employees and other agents and representatives not to) enter into any contract, agreement, arrangement or commitment to procure transmission or interconnection service across alternate transmission facilities that are competitive with the Transmission Facilities or that would otherwise be reasonably expected to replace or substitute all or any portion of the Firm Point-to-Point Transmission Service offered to Customer hereunder.

Section 4.7. Financial Statements; Evidence of Creditworthiness.

(a) Customer shall provide Provider with either (i) if available, the most recent audited financial statements of Customer and, if applicable, Customer's Guarantor, prepared in accordance with International Financial Reporting Standards or GAAP, as applicable, as soon as practical after each calendar year, but in any event within ten (10) days after the date on which such Person releases its financial statements to the public as required under Applicable Law, or (ii) if the financial statements described in clause (i) are not available, then other evidence of Customer and, if applicable, Customer's Guarantor, showing that Customer or Customer's Guarantor is a Creditworthy Person or otherwise has creditworthiness reasonably acceptable to Provider upon Provider's reasonable request. Reasonable evidence of Customer's creditworthiness shall include a letter verifying Customer's financial condition signed by Customer's auditor, and if applicable, reasonable evidence of Customer's Guarantor's creditworthiness shall include a letter verifying Customer's Guarantor's financial condition signed by Customer's Guarantor's auditor.

(b) All financial information made available under this Section 4.7, if not publicly available, shall be subject to Section 6.10.

Section 4.8. Reserved.

Section 4.9. Reserved.

Section 4.10. Force Majeure Event. Neither Party will have any liability or be considered to be in breach or default of its obligations under this Agreement to the extent that performance of such obligations or its efforts to cure are delayed or prevented, directly or indirectly, due to a Force Majeure Event; provided that (i) the affected Party shall give the other Party written notice describing the particulars of the occurrence, with written notice given promptly after the occurrence of the event and in no event more than five (5) days after the affected Party becomes aware that such occurrence is a Force Majeure Event; (ii) the suspension of the performance shall be of no greater scope and of no longer duration than is reasonably required by the event; (iii) the

affected Party shall use all reasonable efforts to continue to perform its obligations in this Agreement unaffected by the Force Majeure Event; and (iv) the affected Party shall promptly resume performance when it is able to resume performance of the affected obligations. The Phase 2 Completion Date Deadline shall be extended for a period of time as may be reasonably required based on the actual delay caused by the Force Majeure Event. Any failure of the affected Party to provide written notice of a Force Majeure Event within the above referenced five (5) day period shall not waive, prejudice or otherwise affect such Party's right to relief under this Section 4.10.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

Section 5.1. Representations and Warranties of Provider. Provider hereby represents and warrants that all of the statements contained in this Section 5.1 are true and correct as of the Effective Date.

(a) Provider is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Provider has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(c) Assuming due authorization, execution and delivery by Customer, this Agreement is a legal, valid and binding obligation of Provider enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and by general equitable principles (regardless of whether considered in a proceeding in equity or at law).

(d) The execution and delivery by Provider of this Agreement, and the compliance by Provider with any of the terms and provisions hereof, do not and will not (i) conflict with, breach or contravene the provisions of the governing documents of Provider or any contractual obligation of Provider, (ii) result in a condition or event that constitutes an event of default (or that, upon notice or lapse of time or both, would constitute an event of default or give rise to any right of termination, cancellation or acceleration by any counterparty) under any material contractual obligation of Provider or (iii) violate any Applicable Law with respect to Provider or the Transmission Facilities.

(e) There is no claim, action, proceeding or investigation pending or, to Provider's knowledge, threatened against or relating to Provider or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which claim, action, proceeding or investigation, individually or in the aggregate, has resulted in or would reasonably be expected to have a material adverse effect on Provider's ability to consummate the transactions contemplated by this Agreement.

(f) Provider has not violated any Applicable Law, the effect of which, individually or in the aggregate, has resulted in or would reasonably be expected to have a material

adverse effect on Provider's ability to consummate the transactions contemplated by this Agreement.

(g) Except for those Governmental Approvals not yet required to be obtained that Provider anticipates will be obtained in the ordinary course of business, no consent or approval of, or filing with or notice to, any Governmental Authority or other Person is required in connection with the authorization, execution and delivery by Provider of this Agreement, or the performance by Provider of its obligations hereunder.

Section 5.2. Representations and Warranties of Customer. Customer hereby represents and warrants that all of the statements contained in this Section 5.2 are true and correct as of the Effective Date.

(a) Customer is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Customer has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(c) Assuming due authorization, execution and delivery by Provider, this Agreement is a legal, valid and binding obligation of Customer enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and by general equitable principles (regardless of whether considered in a proceeding in equity or at law).

(d) The execution and delivery by Customer of this Agreement, and the compliance by Customer with any of the terms and provisions hereof, do not and will not (i) conflict with, breach or contravene the provisions of the governing documents of Customer or any contractual obligation of Customer, (ii) result in a condition or event that constitutes an event of default (or that, upon notice or lapse of time or both, would constitute an event of default or give rise to any right of termination, cancellation or acceleration by any counterparty) under any material contractual obligation of Customer or (iii) violate any Applicable Law with respect to Customer.

(e) There is no claim, action, proceeding or investigation pending or, to Customer's knowledge, threatened against or relating to Customer or its Affiliates before any court, arbitrator or Governmental Authority, or any judgment, decree or order of any court, arbitrator or Governmental Authority, which claim, action, proceeding or investigation, individually or in the aggregate, has resulted in or would reasonably be expected to have a material adverse effect on Customer's ability to consummate the transactions contemplated by this Agreement.

(f) Customer has not violated any Applicable Law, the effect of which, individually or in the aggregate, has resulted in or would reasonably be expected to have a material adverse effect on Customer's ability to consummate the transactions contemplated by this Agreement.

(g) No consent or approval of, or filing with or notice to, any Governmental Authority or other Person is required in connection with the authorization, execution and delivery by Customer of this Agreement, or the performance by Customer of its obligations hereunder.

ARTICLE 6

MISCELLANEOUS

Section 6.1. Limitation of Liability. No Party (or its Affiliates or its or their respective officers, directors, employees, agents, equity holders or representatives) shall, under any circumstance, be liable to any other Party (or its Affiliates or its or their respective officers, directors, employees, agents, equity holders and representatives) for any indirect, exemplary, consequential or punitive damages claimed by such other Party under the terms or due to any breach of this Agreement, except (a) to the extent any such damages arise out of such Party's (or its Affiliates or its or their respective officers, directors, employees, agents, equity holders or representatives) (i) gross negligence or willful misconduct or (ii) breach of Section 6.10, or (b) with respect to the payment of the Termination Payment, the reimbursement, draw down, or retention of the Customer Deposit pursuant to Section 2.2, or the payment required by Section 4.3(a).

Section 6.2. Exclusive Remedies. The express remedies and measure of damages provided in this Agreement satisfy the essential purposes hereof and shall be the sole and exclusive remedies of the respective Parties, and a Party's liability shall be limited as set forth in such provisions. All other remedies or damages at law are hereby waived.

Section 6.3. Expenses. Each of the Parties shall each bear its own expenses (including attorneys' fees) incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated hereby and the consummation of the transactions contemplated hereby and thereby.

Section 6.4. Assignment. No Party shall assign its rights, interests or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Provider may, without the consent of Customer, assign its rights, interests or obligations under this Agreement to a Provider Affiliate.

Section 6.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

Section 6.6. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties in respect of the subject matter hereof and supersedes all prior

negotiations, understandings and writings between the Parties in respect of the subject matter hereof.

Section 6.7. Severability. The invalidity or enforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 6.8. Notices. All notices, requests and other communications hereunder shall be in writing (regardless of whether the applicable provision expressly requires a writing) and shall be deemed to have been given if (i) personally delivered, (ii) mailed, first class, registered or certified mail, postage prepaid, (iii) delivered by overnight courier, or (iv) delivered by electronic mail to the address or email address set forth below, and shall be deemed delivered, given, and received when actually received or rejected, as reflected by the postal return receipt or courier's receipt in the case of overnight mail or courier, and, in the case of electronic mail, upon delivery thereof. The Parties may update this Section 6.8, from time to time, to designate other persons, addresses or offices, or to change persons, addresses or offices, to which notices shall be delivered by delivering notice to the other Party in accordance with this Agreement.

(a) If to Provider:

TransWest Express LLC
555 17th Street, Suite 2400
Denver, CO 80202
Attention: David F. Smith
Email: David.Smith@tac-denver.com

with a copy to:

TransWest Express LLC
555 17th Street, Suite 2400
Denver, CO 80202
Attention: Lisa A. Christian
Email: Lisa.Christian@tac-denver.com

(b) If to Customer:

[_____]]
[_____]]
[_____]]
Attention: [_____]]
Email: [_____]]

with a copy to:

[_____]]
[_____]]
[_____]]

Attention: [_____]
Email: [_____]

Section 6.9. Waiver. No (a) failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, (b) partial exercise by any Party of any of its rights under this Agreement or (c) course of dealing among the Parties shall constitute a waiver of the rights of any Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such instrument shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

Section 6.10. Confidentiality.

(a) No Party shall disclose to a third party (x) the terms and conditions of this Agreement, (y) any information delivered to it under this Agreement or (z) any confidential or non-public information regarding the other Party or its Affiliates (collectively, "Confidential Information") (other than to the Party's Affiliates or its or their respective employees, lenders or potential lenders or other investors or potential investors, investment committees, counsel, accountants or advisors who have a need to know such information and have agreed to keep such Confidential Information confidential), except as approved for release or disclosure by the other Party or to comply with Applicable Law or the requirements of a Governmental Authority. Each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure of Confidential Information. The receiving Party shall be liable to the disclosing Party for any use or disclosure of Confidential Information by any of the receiving Party's Affiliates or its or their respective employees, lenders or potential lenders or other investors or potential investors, investment committees, counsel, accountants or advisors other than in accordance with and pursuant to the terms and conditions of this Agreement. The Parties are entitled to all remedies at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. "Confidential Information" shall not include the following information:

(i) Information that at the time of disclosure or thereafter is generally available to, or known by, the public other than as a result of a disclosure by the receiving Party or its representatives in violation of this Agreement;

(ii) Information provided to the receiving Party on a non-confidential basis from Persons not bound to keep such information confidential; and

(iii) Information that was otherwise independently acquired or developed by the receiving Party without reference to the Confidential Information of the disclosing Party or otherwise violating its obligations under this Agreement.

(b) The Parties acknowledge and agree that the transactions contemplated by this Agreement and any access or information provided hereunder shall be subject to Section 6.10(a).

(c) The Parties acknowledge and agree that any press release or other public statement that addresses specific commercial terms of this Agreement shall be mutually

agreed upon by the Parties. Notwithstanding anything to the contrary in this Section 6.10, Provider may (i) disclose (including by press release) without the consent of Customer (A) the identity of Customer as a recipient of Firm Point-to-Point Transmission Service over the Transmission Facilities, (B) the Initial Term of Service and (C) the Contracted Capacity and (ii) use this Agreement as the basis for precedent or customer agreements or transmission service agreements with other Persons, but only after Customer has been given a reasonable opportunity by Provider to redact those portions of the Agreement that customer reasonably determines are confidential, proprietary or commercially sensitive to Customer.

Section 6.11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, legal representatives and assigns.

Section 6.12. Relationship of the Parties; Construction. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party pursuant to this Agreement. This Agreement shall be considered for all purposes as having been prepared through the mutual efforts of the Parties and shall not be construed against one Party or another as a result of the preparation, substitution, submission or other event of the negotiation, drafting or execution of this Agreement.

Section 6.13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if each of the Parties had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

Section 6.14. Survival. The provisions of Section 2.2, Section 2.3 and this Article 6 shall survive the expiration or earlier termination of this Agreement.

Section 6.15. Amendments. This Agreement may be changed or modified or terminated only by an instrument in writing duly executed by each of the Parties.

Section 6.16. No Recourse. No past, present or future director, officer, manager, employee, member, stockholder, partner, incorporator or Affiliate of any Party or any of its Affiliates shall have any liability for any obligations of such Party under this Agreement or for any claim based on, in respect of, or by reason of such obligations or their creation.

[Remainder of Page Intentionally Left Blank]

The Parties have executed this Agreement as of the Effective Date.

TransWest Express LLC

By: _____

Name: Roxane J. Perruso

Title: Executive Vice President and Chief Operating Officer

[Customer]

By: _____

Name: [_____]

Title: [_____]

Exhibit A

CREDIT SUPPORT

Section 1. Definitions. Capitalized terms in this Exhibit A have the meanings set forth in Section 1.1 of the Agreement. In addition, the following terms shall have the following respective meanings:

“Credit Support” means:

- (a) a Letter of Credit;
- (b) a Guaranty from a Creditworthy Person;
- (c) proceeds of a Letter of Credit drawn by Provider pursuant to the Agreement (to the extent not used for the purpose of paying amounts owing to Provider under the Agreement); or
- (d) any other form of credit support reasonably acceptable to Provider;

in each case of clauses (a) through (d), individually or in the aggregate, such that the total amount thereof is equal to the Required Credit Support Amount.

“Creditworthy Person” means any Person (a)(i) with a long-term credit rating (corporate or long-term senior unsecured debt) of (A) (1) “Baa1” or higher from Moody’s or (2) “BBB+” or higher from S&P or (B) if rated by both Moody’s and S&P, both clauses (A)(1) and (A)(2), and (ii) with a Net Worth set forth in its most recent audited financial statements or as verified in a letter signed by the auditor who audited such financial statements of between \$350,000,000 and \$1,000,000,000, which amount will be determined based on negotiated Agreement terms, or (b) if not rated by either Moody’s or S&P, with a Net Worth set forth in its most recent audited financial statements or as verified in a letter signed by the auditor who audited such financial statements of between \$700,000,000 and \$2,000,000,000, which amount will be determined based on negotiated Agreement terms.

“Guaranty” means a guaranty in form and substance reasonably acceptable to Provider.

“Letter of Credit” means an irrevocable standby letter of credit in form and substance reasonably acceptable to Provider and that satisfies the requirements of Section 4 of this Exhibit A.

“Material Credit Default” has the meaning provided in Section 2(b) of this Exhibit A.

“Material Credit Event” means, if applicable, (a) Customer’s Guarantor is not a Creditworthy Person; and (b) Customer has not provided or converted or caused to be provided or converted Credit Support as required hereunder.

“Moody’s” means Moody’s Investor Services, a Delaware corporation, and its successors and assigns.

“Net Worth” means, with respect to a Person, all shareholders’ equity in such Person and its subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Outstanding Credit Support” has the meaning provided in Section 5(a) of this Exhibit A.

“Qualified Bank” means a U.S. commercial bank or a foreign bank approved in advance by Provider with a U.S. branch, with such bank having (a) a credit rating on its senior unsecured debt of (i)(A) “A3” or higher from Moody’s or (B) “A-” or higher from S&P or (ii) if rated by both Moody’s and S&P, both clauses (i)(A) and (i)(B), and (b) a Net Worth of at least One Billion Dollars (\$1,000,000,000).

“Required Credit Support Amount” means, from the period commencing on the Phase 2 Completion Date and continuing through the end of the Term of this Agreement, an amount equal to the Termination Payment, as may be adjusted.

“S&P” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., a New York corporation, and its successors and assigns.

Section 2. Customer’s Credit Support.

(a) Customer’s Credit Support. No later than five (5) Business Days prior to the Phase 2 Completion Date, Customer agrees to provide Credit Support, or cause Credit Support to be provided, to Provider. Customer shall maintain Credit Support without any requirement for replenishment until the end of the Term of this Agreement; provided that if this Agreement is terminated for a Customer default under Section 2.2(b)(iii), then any Credit Support shall remain in effect until Provider has been paid the Termination Payment pursuant to Section 2.2(b)(iii).

(b) Notice of Material Credit Event. Customer shall notify Provider in writing of the occurrence of any event that, with notice or the passage of time or both, would constitute a Material Credit Event, which notice shall be given by Customer within five (5) Business Days after the occurrence of such event. If there shall occur a Material Credit Event, and such Material Credit Event is not cured within three (3) Business Days after the date of written notice thereof from Provider to Customer, then a “Material Credit Default” shall be deemed to have occurred without further notice or opportunity for cure; provided that if the Credit Support is a Letter of Credit, a Material Credit Default shall be cured by Provider liquidating the Credit Support and holding any resulting cash.

Section 3. Provider’s Credit Support. Provider shall have no obligation to provide, and Customer shall have no right to request, performance assurances from, or on behalf of, Provider.

Section 4. Letter of Credit Requirements.

- (a) Any Letter of Credit hereunder shall:
- (i) be issued by a Qualified Bank;
 - (ii) name Provider as the beneficiary;

(iii) be governed by the International Standby Practices;

(iii) only be issued by a foreign bank with a U.S. branch if Customer has received prior written approval of same from Provider and shall permit Provider to present for payment to the U.S. branch;

(iv) be issued for a minimum term of three hundred sixty-five (365) days;

(v) include a provision for at least thirty (30) days' advance written notice to Provider of any expiration or earlier termination of the Letter of Credit so as to allow Provider sufficient time to exercise its rights under such Letter of Credit if Customer fails to extend the Letter of Credit or replace the Letter of Credit with alternative Credit Support in a form permitted hereunder;

(vi) automatically renew without written amendment for one (1) year;

(vii) permit Provider to draw up to the then current available amount as defined in the Letter of Credit for the purpose of paying any and all amounts owing to Provider under the Agreement; and

(viii) permit Provider to draw the entire available amount thereunder to hold as cash collateral for any and all amounts due and owing to Provider under the Agreement if (A) the Letter of Credit will expire in fewer than thirty (30) days and (B) Customer has not extended the Letter of Credit or replaced the Letter of Credit with alternative Credit Support in a form permitted hereunder.

(b) Customer shall cooperate with Provider, at Provider's cost and expense, in causing the Letter of Credit to be amended, amended and restated, or replaced in the event Provider's interests under the Agreement are transferred to a permitted assignee or a successor-in-interest.

Section 5. Substitution, Return and Handling of Credit Support.

(a) Election to Change Form of Credit Support. Customer shall have the right, at any time and from time to time, to replace any or all of the Credit Support provided by Customer (the "Outstanding Credit Support") with alternative Credit Support in a form permitted hereunder, whereupon Provider shall cooperate with Customer, at Customer's cost and expense, in obtaining the concurrent release, termination or return (as many as may be applicable) of the Outstanding Credit Support in favor of or held by Provider.

(b) Return of Original Credit Support Documents. Provider shall return to Customer all original Letters of Credit, Guaranties or other Credit Support documents, and all amendments, extensions and other related documents, promptly after the termination, cancellation or replacement thereof.

(c) Handling of Cash Collateral. If any cash collateral is expected to be or is received by Provider pursuant to the Agreement, whether following a Letter of Credit drawing contemplated by this Exhibit A or otherwise, the Parties shall cooperate to cause such cash collateral to be delivered to Provider as soon as practicable. Provider shall hold cash in an interest-bearing account

that is segregated from the general funds held by Provider for other purposes. Applicable interest on such cash collateral shall be calculated in accordance with the methodology specified for interest on refunds in the FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) (2021).

(d) Security Interest. Customer hereby pledges to Provider, as security for its obligations under the Agreement, and grants to Provider a first priority continuing security interest in, lien on and right of set-off against all cash collateral received by Provider pursuant to this Agreement. Upon a return of cash collateral by Provider to Customer, the security interest and lien granted hereunder on that cash collateral will be immediately released without any further action by either party.

Section 6. Credit Support Not a Limit. Notwithstanding any other provision of this Exhibit A, Credit Support contemplated by this Exhibit A constitutes security for, but is not a limitation of, Customer's obligations under this Exhibit A and the Agreement.

Section 7. Credit Support Draw. Provider agrees that draws on Credit Support shall only be made following a failure to pay by Customer within five (5) Business Days after receiving written notice from Provider. In addition to any other remedy available to it, Provider may, before or after termination of the Agreement, draw on the Credit Support in such amounts as are necessary to recover amounts due and owing to Provider pursuant to the Agreement, including any compensation for damages for Customer's failure to perform under the Agreement. Provider may, in its sole discretion, draw all or any part of amounts due and owing to it and not paid as required in the Agreement from any form of security to the extent available pursuant to this Exhibit A, and from all such forms, and in any sequence as Provider may select. Any failure to draw on the Credit Support or other security for any damages or other amounts due to Provider shall not prejudice Provider's rights to recover such damages or amounts in any other manner.

Section 8. Credit Support Conversion. If a Letter of Credit issuer is no longer a Qualified Bank, then, within two (2) Business Days after the earlier of (a) the date of written notice thereof from Provider to Customer and (b) the date Customer obtains knowledge thereof, Customer shall be required to convert the Letter of Credit provided by such issuer into a form of Credit Support permitted hereunder. If a Guaranty is in place and the Person providing such Guaranty is no longer a Creditworthy Person, then, within two (2) Business Days after such rating action, Customer shall be required to convert the Guaranty provided by such Person into a form of Credit Support permitted hereunder.

Exhibit B

TERM SHEET FOR A TRANSMISSION SERVICES AGREEMENT

FOR THE

TRANSWEST EXPRESS TRANSMISSION PROJECT

This Indicative Term Sheet for a Transmission Services Agreement for the TransWest Express Transmission Project (this “Term Sheet”) is non-binding on the parties and is intended to describe, in summary, certain terms and conditions that would be elaborated in any eventual Transmission Services Agreement entered into between Provider (as defined below) and Customer (as defined below). Except as expressly provided in the Customer Agreement, unless and until a definitive Transmission Services Agreement has been executed by Provider and Customer, (1) no contract or agreement providing for a Transmission Services Agreement shall be deemed to exist between Provider and Customer and (2) no party will be under any legal obligation of any kind whatsoever with respect to a Transmission Services Agreement. Unless otherwise defined in this Term Sheet, capitalized terms in this Term Sheet have the meanings set forth in the Customer Agreement.

1. <i>Transmission Owner:</i>	TransWest Express LLC, a Delaware limited liability company (“ <u>Provider</u> ”).
2. <i>Customer:</i>	See Attachment 1.
3. <i>Transmission Facilities:</i>	“ <u>Transmission Facilities</u> ” means the TransWest Express Transmission Project, a 405-mile, 3,000 MW, 500kV HVDC transmission line and all related facilities from a point of receipt (the “ <u>Point of Receipt</u> ”) located near Sinclair, Wyoming to a delivery point (the “ <u>First Delivery Point</u> ”) located near Delta, Utah. The Transmission Facilities will be developed, constructed, owned, operated, and maintained by Provider. The target commercial operation date of the Transmission Facilities is December 31, 2026.
4. <i>Contracted Capacity:</i>	See Attachment 1.
5. <i>Firm Point-to-Point Transmission Service:</i>	“ <u>Firm Point-to-Point Transmission Service</u> ” means the reservation and transmission of capacity and energy on the Transmission Facilities on a firm basis from the Point of Receipt to the Customer Delivery Point (see Attachment 1) in an amount up to the Contracted Capacity.
6. <i>Initial Term of Service:</i>	See Attachment 1.
7. <i>Point of Receipt:</i>	A point located near Sinclair, Wyoming (the “ <u>Point of Receipt</u> ”). The Point of Receipt may be modified by mutual agreement of the parties.
8. <i>Monthly Transmission Rate:</i>	See Attachment 1.
9. <i>Renewal Term:</i>	Not less than one (1) year prior to termination of the Transmission Services Agreement, Customer may request to extend the Term of

	<p>Service of the Transmission Services Agreement for a minimum of five (5) years (such period, the “<u>Renewal Term</u>”) at a rate to be mutually agreed by the parties.</p> <p>If there is a competing request from another customer for firm transmission services at the end of the Initial Term of Service for a length not less than the Renewal Term, then Customer shall have a right of first refusal consistent with FERC’s pro forma OATT.</p>
<i>10. Losses under the Transmission Services Agreement:</i>	<p>Customer’s obligations with respect to losses shall be established under the Transmission Services Agreement, as calculated pursuant to the OATT. Losses will be settled physically in the time interval set forth in the Transmission Services Agreement. The calculation of losses shall be subject to further discussion by the Parties upon Provider’s preparation of the OATT. The Parties anticipate that the OATT shall include a fixed amount of estimated losses for the first year of the Transmission Facilities’ operation, with a calculation and true-up based on actual measured losses in the years that follow.</p>
<i>11. Ancillary Services:</i>	<p>Customer shall be entitled to its pro rata share, based on the ratio of the Contracted Capacity to the capacity of the Transmission Facilities, of all revenues received (net of any costs incurred by Provider to realize such revenue) in respect of any ancillary services (however defined) with respect to the Transmission Facilities, including any black-start service, var support, voltage support, frequency regulation and any spinning reserve.</p> <p>Customer shall be responsible for obtaining all ancillary services required to facilitate transactions associated with the Transmission Services Agreement from Provider or another entity. The provision of and the charges for Ancillary Services shall be subject to further discussion by the Parties upon Provider’s preparation of the OATT.</p>
<i>12. Credit Support:</i>	<p>Customer shall provide and maintain credit support at all times during the Term of Service of the Transmission Services Agreement. The general terms governing credit support in the Transmission Services Agreement shall be consistent with the terms set forth in Exhibit A to the Customer Agreement, except that the Required Credit Support Amount shall be as set forth in Attachment 1.</p>
<i>13. Representations and Warranties:</i>	<p>Each party will make customary representations and warranties for transactions of this nature that will address the following matters: due organization, valid existence and good standing; due authorization; enforceability; no violation of, or conflict with, organizational documents, applicable laws or material contracts; no outstanding litigation or other proceedings that would affect such party’s ability to enter into and perform its obligations under</p>

	the Transmission Services Agreement; compliance with applicable laws; and governmental approvals.
<i>14. Assignment:</i>	Neither party may assign its rights or obligations under the Transmission Services Agreement without the prior written consent of the other party (not to be unreasonably withheld, delayed or conditioned); <u>provided, however</u> , that at any time, and from time to time, Provider may assign Transmission Services Agreement in whole to one or more Provider Affiliates, with notice to, but without the prior written consent of, Customer.
<i>15. Governing Law:</i>	Colorado
<i>16. Costs and Expenses:</i>	Each party will bear its own costs and expenses in drafting and negotiating the Transmission Services Agreement and in obtaining all Governmental Approvals required thereby unless otherwise provided in the Transmission Services Agreement.
<i>17. Other Provisions:</i>	<p>The Transmission Services Agreement will also contain customary provisions for transactions of this nature relating to the following matters:</p> <ul style="list-style-type: none"> (i) definitions and rules of interpretation; (ii) conditions precedent to the obligations of each party; (iii) development, construction and financing milestones for Customer Project and progress reporting; (iv) operation and maintenance of the Transmission Facilities; (v) metering; (vi) termination payment due from Customer for early termination of the Transmission Services Agreement (see Attachment 1); (vii) outages on the Transmission Facilities and allocation of outages among customers; (viii) expected availability and operating reliability of the Transmission Facilities; (ix) change in law or regulation; (x) defaults and remedies; (xi) indemnification; (xii) force majeure; (xiii) further assurances; (xiv) financing cooperation; (xv) limitation of Provider’s rights and obligations to those of transmission provider; (xvi) payment and invoicing; (xvii) miscellaneous provisions as to limitation of liability, exclusive remedies, entire agreement, severability, notices, waiver, confidentiality, binding effect, relationship of the parties and construction, counterparts, survival, amendments and no recourse; and (xviii) such other matters as mutually agreed to by the parties.

Attachment 1 to Exhibit B

CUSTOMER TERMS

1. <i>Customer:</i>	[_____] (“ <u>Customer</u> ”).
2. <i>Contracted Capacity:</i>	[_____]MW (the “ <u>Contracted Capacity</u> ”); <u>provided</u> , <u>however</u> , that, if the firm transmission transfer capability of the Transmission Facilities is below the aggregate contracted capacity for the Transmission Facilities, then the Contracted Capacity will be reduced pro rata, based on the ratio of the Contracted Capacity to the aggregate contracted capacity, such that the aggregate contracted capacity for the Transmission Facilities will be reduced equal to the firm transmission transfer capability of the Transmission Facilities.
3. <i>Customer Delivery Point:</i>	[to reference the applicable Delivery Point under the TSA, which shall be either the (i) Second Delivery Point only or (ii) Second Delivery Point and Third Delivery Point] (the “ <u>Customer Delivery Point</u> ”). The Customer Delivery Point may be modified by mutual agreement of the parties.
4. <i>Initial Term of Service:</i>	[_____] (the “ <u>Initial Term of Service</u> ” and with any Renewal Term, the “ <u>Term of Service</u> ”).
5. <i>Monthly Transmission Rate:</i>	<p>The monthly rate for transmission service under the Transmission Services Agreement shall be comprised of a fixed capacity rate (\$/kW-Month) (the “<u>Fixed Rate</u>”) and a variable rate (\$/kW-Month) (the “<u>Variable Rate</u>”). Indicative rates for the Fixed Rate and Variable Rate are set forth in <u>Exhibit D</u>.</p> <p>The Fixed Rate is based on Provider’s good faith estimate as of the Effective Date of the capital expenditures and other costs and expenses to be incurred by Provider in connection with the development, engineering, design, procurement, installation, construction and financing of the Transmission Facilities (the “<u>Capital Expenditures</u>”). The Fixed Rate shall be adjusted as of the Phase 1 Completion Date and as of the Commercial Operation Date in accordance with the methodology and process set forth in Attachment 2 to <u>Exhibit B</u>. In addition, during the period following the tenth (10th) anniversary of the Commercial Operation Date, Provider may, but is not obligated to, adjust the Fixed Rate for (i) changes in Federal tax law applicable to the Transmission Facilities such as the availability of an investment tax credit, (ii) changes in long-term financing rates, or (iii) the recovery of unforeseen capital expenditures required to maintain the reliability of the Transmission Facilities or as required to comply with regulatory requirements of an agency with jurisdiction over the Transmission Facilities; provided that changes to the Fixed Rate after the tenth (10th) anniversary of</p>

	<p>the Commercial Operation Date shall be subject to a cap of one and [_____] in the aggregate.</p> <p>Changes to the Fixed Rate as of the Phase 1 Completion Date and as of the Commercial Operation Date shall be subject to a cap of [_____] in the aggregate. If the adjustment to the Fixed Rate as of the Phase 1 Completion Date or the Commercial Operation Date would result in an increase of the Fixed Rate by more than [_____] in the aggregate, Provider shall have the right to terminate the Transmission Services Agreement by delivering written notice to Customer within thirty (30) days after the determination of any such Fixed Rate increase, unless (i) Customer agrees to pay the Fixed Rate, as adjusted or (ii) the Parties otherwise mutually agree. Upon any termination by Provider pursuant to this Section, Provider shall release or return to Customer the Credit Support.</p> <p>The Variable Rate for the initial year after the Commercial Operation Date is based on Provider’s good faith estimate of the Variable Expenses for such year as set forth in Attachment 2. The Variable Rate shall be adjusted (i) no later than sixty (60) days prior to the Commercial Operation Date to reflect any updates to such estimated Variable Expenses and (ii) within thirty (30) days after the end of the first year after the Commercial Operation Date and the end of each subsequent year thereafter in accordance with the methodology set forth in Attachment 2. Changes to the Variable Rate after the initial year after the Commercial Operation Date shall be subject to an annual cap of [_____] and a cap of [_____] in the aggregate.</p> <p>“<u>Variable Expenses</u>” means (i) the costs and expenses reasonably incurred by Provider to operate and maintain the Transmission Facilities, including administrative and general costs, transmission right of way payments, and HVDC terminal staffing and contracting costs; (ii) any taxes owed by Provider, including property, sales and use taxes incurred by Provider with respect to the Transmission Facilities, but excluding income taxes owed by Provider and (iii) any insurance costs incurred by Provider with respect to the Transmission Facilities.</p>
<p>6. <i>Customer’s Required Credit Support Amount:</i></p>	<p>An amount equal to the below:</p> <p><u>Prior to the Commercial Operation Date:</u> an amount equal to the Termination Payment under the Customer Agreement, as adjusted.</p>

	<p>After the Commercial Operation Date: <i>[to be an amount equal to two (2) years of revenue under the Transmission Services Agreement, plus one (1) month of revenue for each year of the Initial Term of Service beyond twenty (20) years; provided that if Customer does not elect to extend the Term of Service, the Required Credit Support Amount for the last year of the Term of Service shall be reduced to one (1) year of revenue under the Transmission Services Agreement.]</i></p>
<p>7. <i>Termination Payment</i></p>	<p>Prior to the Commercial Operation Date: an amount equal to the Termination Payment under the Customer Agreement, as adjusted.</p> <p>After the Commercial Operation Date:</p> <p><i>[to be negotiated in the Transmission Services Agreement]</i></p>

Attachment 2 to Exhibit B

ADJUSTMENT TO FIXED RATE AND VARIABLE RATE

Fixed Rate Adjustments:

The estimated Capital Expenditures as of the Effective Date are set forth in Exhibit D to this Agreement (“Capital Expenditures Estimate”). The Capital Expenditures Estimate shall be updated at the Phase 1 Completion Date (“Phase 1 Updated Capital Expenditure Estimate”) and the Commercial Operation Date (“COD Capital Expenditures Estimate”). Subject to the Meet and Confer provisions set forth herein, the Fixed Rate will be adjusted as of the Phase 1 Completion Date to account for the differences between the Capital Expenditures Estimate and the Phase 1 Updated Capital Expenditures Estimate and again as of the Commercial Operation Date to account for differences in the Phase 1 Updated Capital Expenditures Estimate and the COD Capital Expenditures Estimate. The adjusted Fixed Rate will be calculated by increasing or decreasing, as applicable, the then-current Fixed Rate by [_____] for each [_____] difference in the applicable Capital Expenditures estimates (prorated for any fractions of a percent). Changes to the Fixed Rate for differences between the Capital Expenditures Estimate and the Phase 1 Updated Capital Expenditures Estimate as of the Phase 1 Completion Date, and for differences between the Phase 1 Updated Capital Expenditures Estimate and the COD Capital Expenditures Estimate as of the Commercial Operation Date, shall be subject to a cap of [_____] in the aggregate.

Variable Rate Adjustments:

The estimated Variable Expenses as of the Effective Date for the initial year after the Commercial Operation Date are set forth in Exhibit D (the “Variable Expense Estimate”). No later than sixty (60) days prior to the Commercial Operation Date, Provider shall notify Customer of the updated Variable Expense Estimate and provide Customer with supporting documentation for any increase in the estimated Variable Expenses (the “Updated Variable Expense Estimate”) and, subject to the Meet and Confer provisions set forth herein, the Variable Rate as of the Effective Date shall be adjusted by increasing or decreasing, as applicable, the Variable Rate as of the Effective Date by the percentage difference between the Variable Expense Estimate and the Updated Variable Expense Estimate.

The “Variable Expense Budget” shall mean (i) for the first year after the Commercial Operation Date, the Updated Variable Expense Estimate and (ii) for each subsequent year thereafter, the estimated Variable Expenses for such year. At the end of each year after the Commercial Operation Date, Provider shall notify Customer of (a) the difference between the actual Variable Expenses and the applicable Variable Expense Budget for such year (such Variable Expense Budget, the “Current Variable Expense Budget” and such difference, the “Variable Expense Difference”) and (b) the Variable Expense Budget for the following year (such Variable Expense Budget, the “Updated Variable Expense Budget”). Subject to the Meet and Confer provisions set forth herein, the Variable Rate for the following year shall be adjusted by increasing or decreasing, as applicable, the then-current Variable Rate by the percentage difference between (a) the applicable Current Variable Expense Budget and (b) (1) the applicable Updated Variable Expense Budget plus or minus (2) the Variable Expense Difference; provided that following the initial year after

the Commercial Operation Date, the Variable Rate shall not be increased by more than [_____] in any given year and more than [_____] in the aggregate.

Meet and Confer

Prior to any proposed Fixed Rate or Variable Rate adjustment and prior to setting each Variable Expense Budget for each year, Provider shall provide its proposal for the Variable Expense Budget and the adjustment to the Fixed Rate and Variable Rate, as applicable, with supporting documentation sufficient to allow Customer to evaluate Provider's proposal. Customer shall have no less than fifteen (15) days to review the proposal (the "Review Period") and supporting materials, during which time Customer shall have the right to request further documentation. Provider shall respond to Customer's reasonable requests for supporting materials in a timely fashion. Following the Review Period, the Parties shall meet and confer for a period not less than thirty (30) days to address any Customer concerns, following which period, Provider may set the Variable Expense Budget and implement the rate increase as agreed by the Parties or as otherwise allowed pursuant to the annual and aggregate limitations set forth above.

Exhibit C

Credit Support Summary Chart

Type	Start	End	Amount
<u>Customer Deposit</u> (Letter of Credit or Cash)	No later than five (5) Business Days after the Effective Date of Customer Agreement	The date on which the Credit Support is posted five (5) Business Day before the expected Phase 2 Completion Date)	See <u>Exhibit D</u> .
<u>Customer Agreement Credit Support</u> Letter of Credit, Guaranty from Creditworthy Person, proceeds of Letter of Credit or other form reasonably acceptable to Provider)	No later than five (5) Business Days before the expected Phase 2 Completion Date.	The earlier of execution of the Transmission Services Agreement or the termination of the Customer Agreement for Customer default after the Phase 2 Completion Date pursuant to Section 2.2(b)(iii) of the Customer Agreement.	The Termination Payment as set forth in <u>Exhibit D</u> , as adjusted at Phase 1 Completion Date.
<u>Transmission Services Agreement Credit Support</u> (Letter of Credit, Guaranty from Creditworthy Person, proceeds of Letter of Credit or other form reasonably acceptable to Provider)	Execution of the Transmission Services Agreement	End of Term of Service	<p><i>Prior to the Commercial Operation Date:</i> The Termination Payment as set forth in <u>Exhibit D</u>, as adjusted at Phase 1 Completion Date.</p> <p><i>After the Commercial Operation Date:</i> [to be an amount equal to two (2) years of revenue under the Transmission Services Agreement, plus one (1) month of revenue for each year of the Initial Term of Service beyond twenty (20) years; provided that if Customer does not elect to extend the Term of Service, the Required Credit Support Amount for the last year of the Term of Service shall be reduced to one (1) year of revenue under the Transmission Services Agreement.]</p>

Exhibit D

Monthly Transmission Rate, Customer Deposit and Termination Payment Amounts

See Attached.

Exhibit D

Monthly Transmission Rate, Customer Deposit and Termination Payment Amounts

Customer	Contracted Capacity (MW)	Customer Delivery Point	Initial Term of Service	Capital Expenditures		Variable Expense Estimate ¹	Monthly Transmission Rate (\$/KW-Month)			Customer Deposit	Termination Payment ²
				Transmission Facilities	Estimate ¹		Fixed	Variable	Total		
				See Exhibit B - Form of TSA , Item 3							

Notes

1 Estimate as of Effective Date of the Customer Agreement.

2 The Termination Payment is estimated as [_____] of the Capital Expenditure Estimate as of the Effective Date. The Termination Payment will be adjusted at the Phase 1 Completion Date.

Appendix D

TransWest Express LLC Draft TO Tariff

TransWest Express LLC

Transmission Owner Tariff

[DATE]

Draft

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Appendix V Notices.....

1. **Preamble.** The Participating TO's services and applicable rates and charges for transmission access over the CAISO Controlled Grid and the terms and conditions for transmission expansion and interconnection are set forth in this TO Tariff and the CAISO Tariff. TransWest Express LLC offers long-term transmission service to subscribers at negotiated rates and offers other transmission service as provided in this TO Tariff, the Transmission Control Agreement ("TCA"), and the CAISO Tariff, as applicable. For purposes of this TO Tariff and the TCA, TransWest Express LLC is a Non-Load-Serving Participating TO and has no End-Use Customers.

1.1 **Transmission Service for Long-Term Subscribers.** Long-term transmission service over the Project for one or more years is provided by TransWest Express LLC, following an open solicitation pursuant to FERC's Policy Statement, *Allocation of Capacity on New Merchant Transmission Projects and New Cost-based, Participant-Funded Transmission*, 142 FERC ¶ 61,038 (2013). FERC accepted the results of the initial open season in *TransWest Express LLC*, Docket No. ER21-645-000 (letter order issued Feb. 16, 2022).

1.1.1 **Procedures For Obtaining Long-Term Service.** The procedures for obtaining long-term firm transmission service are set forth in Appendix [II].

1.1.2 **Subscriber Encumbrance.** Transmission capacity reserved for long-term subscribers constitutes a Subscriber Encumbrance under the TCA.

1.1.3 **Long-term Subscriber Rights.** Long-term Subscribers may reassign their capacity pursuant to the provisions set forth in Appendix [III]. TransWest Express LLC will inform the CAISO of such reassignments under the CAISO tariff provisions for changes to TRTC instructions.

1.2 **Other Transmission Service.** Transmission service, other than long-term subscriber service, over the Project is provided under the TCA and the CAISO Tariff. The applicable Subscriber Wheeling Charge shall be paid to the CAISO pursuant to the TCA and the CAISO Tariff.

2. **Effective Date.** This TO Tariff is effective on the date on which the Project is placed into service under the Operational Control of the CAISO, and shall continue to be effective, as amended from time to time, so long as TransWest Express LLC is a party to the TCA.

2.1 Termination. This TO Tariff may be terminated by TransWest Express LLC upon such advance notice consistent with the TCA and with such authorization as FERC may require.

3. TO Definitions. Certain capitalized terms used in this TO Tariff shall have the meanings set out below unless otherwise stated or the context otherwise requires. Capitalized terms used in this TO Tariff and not defined below shall have the meanings set out in the TCA or CAISO Tariff as it may be amended from time to time.

3.1 TransWest Express LLC. TransWest Express LLC is the Participating TO under this TO Tariff.

3.2 Completed Application Date. The date on which a party submits an Interconnection Application that satisfies the requirements of a Completed Interconnection Application, if applicable.

3.3 Completed Interconnection Application. An Interconnection Application that satisfies all of the information and other requirements of the information requirements as specified by the CAISO and posted on the CAISO website, if applicable.

3.4 Direct Assignment Facilities. Facilities or portions of facilities that are owned by the Participating TO necessary to physically and electrically interconnect a particular party requesting interconnection under this TO Tariff to the CAISO Controlled Grid at the point of interconnection. Direct Assignment Facilities shall be specified in the Interconnection Agreement that governs Interconnection service to such party and shall be subject to FERC approval.

3.5 Project. The TWE Project is a 732-mile high-voltage transmission system consisting of three linked segments that include: (i) a 405-mile, 3,000 MW HVDC transmission line and all related facilities between a Wyoming Terminal located near Sinclair, Wyoming and a Utah Terminal located near Delta, Utah; (ii) a 278-mile, 1,500 MW, 500 kV HVAC transmission line and all related facilities between the Utah Terminal and a new interconnection substation on DesertLink's Harry Allen to Eldorado 500kV line and the Crystal North 500 kV Substation located northeast of Las Vegas, Nevada ("DesertLink /Crystal Substations"); and (iii) a 49-mile, 1,500 MW, 500kV HVAC transmission line and all related facilities between the DesertLink/Crystal substations and the jointly-owned Eldorado 500kV substation located in the Eldorado Valley near Boulder City, Nevada.

3.6 Regulatory Authority. FERC.

- 3.7 TO Tariff.** This Transmission Owner Tariff, as it may be amended or superseded.
- 3.8 Subscriber Wheeling Charge.** The wheeling charge for transmission service over the Project that is paid to the CAISO pursuant to the TCA and CAISO tariff.
- 4. Eligibility.** Transmission service over a Participating TO's system shall be provided only to Eligible Customers.
- 5. Charges and Transmission Rates.**
- 5.1 Wheeling Charge.** The Subscriber Wheeling Charge applicable to the Project shall be determined by TransWest Express LLC, as approved by FERC, and set forth in the TCA. Other Wheeling Access Charges may be assessed by the CAISO for use of the CAISO controlled grid that consist of a Regional Wheeling Access Charge and, if applicable, a Local Wheeling Access Charge. The Regional Wheeling Access Charge, if applicable, a Local Wheeling Access Charge is set forth in the CAISO Tariff.
- 5.2 Transmission System Rights.** TransWest Express LLC owns the TSRs with respect to the Project.
- 5.3 Long-Term Transmission Rates.** The long-term transmission service subscriber rates are negotiated and paid directly to TransWest outside of the CAISO's settlement systems.
- 6. Ancillary Services - Applicability and Charges.** Ancillary Services are needed to maintain reliability within the CAISO Controlled Grid. If any Ancillary Services are required, TransWest Express LLC will not provide such services directly to the transmission customer and the transmission customer will be required to meet any such requirement in accordance with the CAISO Tariff.
- 7. Billing and Payment.**
- 7.1** The CAISO, in accordance with the CAISO Tariff, shall pay the Participating TO, among other things, all applicable Wheeling Charge revenues in connection with the Project as defined in the TCA.
- 7.2** TransWest Express LLC shall directly bill a long-term transmission subscriber for service in accordance with the terms of its long-term transmission contractual agreement.

8. Obligation to Interconnect or Construct Transmission Expansions and Facility Upgrades. Unless TransWest Express LLC is the lead Participating TO with respect to an Interconnection, the provisions of Section 8 of this TO Tariff, and its subparts, shall have no application to the Project or any other Regional Transmission Facilities, Local Transmission Facilities, or Entitlements turned over to the CAISO's Operational Control by TransWest Express LLC, and the corresponding provisions of the lead Participating TO's TO Tariff shall govern.

8.1 Participating TO Obligation to Interconnect. The Participating TO shall, at the request of a third party, interconnect its system to wholesale Generating Facility or Load of such third party, or modify an existing wholesale Interconnection. Interconnections under this TO Tariff shall be available to entities eligible to request Interconnection consistent with the provisions of Section 210(a) of the FPA. Such interconnection shall be governed by the CAISO Tariff.

8.1.1 Interconnection to Transmission System. Interconnection must be consistent with Good Utility Practice, in conformance with all Applicable Reliability Criteria, all applicable statutes, regulations, and CAISO reliability criteria for the CAISO Controlled Grid. The Participating TO will not accommodate the Interconnection if doing so would impair systems reliability, or would otherwise impair the ability of the Participating TO to honor its Encumbrances existing as of the time an entity submits its Interconnection Application. The Participating TO shall identify any such adverse effect on its Encumbrances in the Interconnection Study. To the extent the Participating TO determines that the Interconnection will have an adverse effect on Encumbrances, the party requesting Interconnection shall mitigate such adverse effect.

8.1.2 Costs Associated with Interconnection. Each party requesting Interconnection shall pay the costs of planning, installing, owning, operating, and maintaining any Direct Assignment Facilities and, if applicable, any Reliability Upgrades required to provide the requested Interconnection, except as provided in Appendix DD of the CAISO Tariff. In addition, such party shall implement all existing operating procedures necessary to safely and reliability interconnect such party's Generating Facility or wholesale Load to the facilities of the Participating TO and to ensure the CAISO Controlled Grid's conformance with the CAISO Grid Planning Criteria, and shall bear all costs of implementing such operating procedures, except as provided in Appendix DD of the CAISO Tariff. Any additional costs associated with accommodating the Interconnection shall be allocated in accordance with the cost responsibility methodology set forth in the CAISO Tariff for transmission expansions or upgrades.

- 8.1.3 Interconnection Agreement.** Pursuant to Section 13 of Appendix DD of the CAISO Tariff, the Participating TO will tender to CAISO and such party an Interconnection Agreement. The Interconnection Agreement will include, without limitation, cost responsibilities and payment provisions for any engineering, equipment, and construction, ownership, operation and maintenance costs for any Direct Assignment Facilities, any Reliability Upgrades, any Delivery Upgrades, if applicable, and for any other mitigation measures consistent with the CAISO Tariff. The Interconnection Agreement will set forth a payment schedule that enables the Participating TO to recover its costs consistent with the CAISO Tariff. If the applicant elects not to execute the Interconnection Agreement and does not request the Participating TO to file an unexecuted Interconnection Agreement, its Interconnection Agreement shall be deemed withdrawn, to maintain its queue position, the applicant must timely comply with the Interconnection requirements of Appendix DD of the CAISO Tariff and Sections 8.1 and 10 of this TO Tariff.
- 8.1.4 Due Diligence to Construct.** The Participating TO shall use due diligence to construct, within a reasonable time, any Direct Assignment Facilities and any Network Upgrades that it is obligated to construct pursuant to this TO Tariff and Section 24 and Appendix DD of the CAISO Tariff. The Participating TO's obligation to build will be subject to: (1) its ability, after making a good faith effort, to obtain any necessary approvals and property rights under applicable federal, state, and local laws; (2) the presence of a cost recovery mechanism with cost responsibility assigned in accordance with the CAISO Tariff or applicable FERC precedent; and (3) a signed Interconnection Agreement, Engineering and Procurement Agreement, or, by mutual agreement of the parties, FERC acceptance for filing of an unexecuted Interconnection Agreement.
- 8.1.5 Energization.** The Participating TO shall not be obligated to energize, nor shall the applicant or wholesale load be entitled to have its Interconnection to the CAISO Controlled Grid energized, unless and until an Interconnection Agreement has been executed, or filed at FERC pursuant to Section 8.1.3, and become effective and such applicant or wholesale load has demonstrated to the CAISO's reasonable satisfaction that it has complied with all of the requirements of the CAISO Tariff and the requirements of this TO Tariff.
- 8.1.6 Coordination with CAISO on Interconnection Requests.** The Participating TO shall coordinate with the CAISO, pursuant to the provisions of the TCA and CAISO Tariff.

8.2 Participating TO Obligation to Construct Transmission Expansions or Facility Upgrades. The Participating TO shall be obligated to build transmission additions and facility upgrades where the Participating TO is obligated to construct or expand facilities in accordance with and subject to the limitations under Section 24 of the CAISO Tariff and this TO Tariff.

8.2.1 Obligation to Construct. A Participating TO shall not be obligated to construct or expand transmission facilities or system upgrades unless and until the conditions stated in Section 9.2.1 hereof have been satisfied.

8.3 Request for FERC Deference Regarding Need Determination. It is intended that FERC grant substantial deference to the factual determinations of the CAISO, (including the CAISO's ADR Procedures), the CPUC, WECC, or RTG coordinated planning processes as to the need for or construction of a facility, the need for full cost recovery, and the allocation of costs.

9. Expansion Process. Unless TransWest Express LLC is the lead Participating TO with respect to a required system expansion, the provisions of Section 9 of this TO Tariff, and its subparts, shall have no application to the Project or any other Regional Transmission Facilities, Local Transmission Facilities, or Entitlements turned over to the CAISO's operational control by TransWest Express LLC and the corresponding provisions of the lead Participating TO's TO Tariff shall govern.

9.1 Determination of Facilities. A Participating TO shall perform a study in accordance with the Section where (1) the Participating TO is obligated to construct or expand facilities in accordance with Section 24 and Appendix DD of the CAISO Tariff and this TO Tariff; or (2) a Market Participant agrees to pay the costs of the study and provides an Interconnection Request consistent with the requirements of Appendix DD of the CAISO Tariff.

9.1.1 Payment of Phase I and Phase II Cost.

9.1.1.1 Interconnection Customer to Pay for Interconnection Study. Where an Interconnection Study and the need for the transmission addition or upgrade has not been established in accordance with the procedures established herein and the CAISO Tariff, the Interconnection Customer shall pay the cost of the Facilities Study.

9.1.1.2 Project Sponsor or Project Proponent to Pay for Interconnection Study. Where the facilities to be added or upgraded have been determined to be needed in accordance with the procedures established herein, the Project Sponsor, Project Proponent, or the CAISO requesting the study shall pay in

advance the reasonable cost of the Interconnection Study. When the Participating TO is the Project Sponsor in accordance with the CAISO Tariff, the costs of the Interconnection Study shall be recovered through its transmission rates.

9.1.1.3 Principal Beneficiaries to Pay for Interconnection Study.

Where the facilities to be added or upgraded have been determined to be needed and the principal beneficiaries have been identified by the CAISO or CAISO ADR Procedures in accordance with the CAISO Tariff the Project Sponsor and the identified principal beneficiaries shall pay the reasonable cost of the Interconnection Study, in such proportions as may be agreed, or, failing agreement, as determined in accordance with the CAISO ADR Procedures.

9.1.2 Payment Procedure. Where an Interconnection Study is being conducted pursuant to this TO Tariff, the Participating TO shall, within thirty days of the receipt of all reasonably required information, tender to the Interconnection Customer, Project Sponsor, Project Proponent, CAISO, or identified principal beneficiaries, as the case may be, an Interconnection Study Agreement that defines the scope, content, assumptions, and terms of reference for such study, the estimated time required to complete it, and such other provisions as the parties may reasonably require and pursuant to which such Interconnection Customer, Project Sponsor, Project Proponent, the CAISO, or identified principal beneficiaries agree to reimburse the Participating TO the reasonable cost of performing the required Interconnection Study. If the Interconnection Customer, Project Sponsor, Project Proponent, the CAISO, or identified principal beneficiaries, as the case may be, agree to the terms of the Interconnection Study Agreement, they shall execute the Interconnection Study Agreement and return it to the Participating TO within ten Business Days. Alternatively, if the Interconnection Customer, Project Sponsor, Project Proponent, the CAISO, or identified principal beneficiaries, as the case may be, request the Participating TO to proceed with the Interconnection Study and commit to abide by the terms, conditions, and cost assignments ultimately determined under the CAISO ADR Procedures, including any determination by FERC or appeal of a FERC determination in accordance with that process, the Participating TO shall promptly proceed with the Interconnection Study, and the parties shall submit the disputed terms for resolution under the CAISO's ADR Procedures.

9.1.3 Interconnection Study Procedures. Where an Interconnection Study is being conducted pursuant to the CAISO Tariff, on terms and conditions for such studies shall be in accordance with the CAISO Tariff, including Appendix DD.

9.2 Obligation to Build.

9.2.1 Due Diligence to Construct. Subject to Section 9.3.3 of this TO Tariff, the Participating TO shall use due diligence to construct, within a reasonable time, additions or upgrades to its transmission system that it is obligated to construct pursuant to the CAISO Tariff and this TO Tariff.

9.2.2 Delay in Construction or Expansion. If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Participating TO shall promptly notify the CAISO with regard to facilities determined to be needed. The Participating TO also shall make available to such Project Sponsor, Parties to the Generator Interconnection Agreement, and the CAISO, as the case may be, studies and work papers related to the cause and extent of the delay and the Participating TO's ability to complete the new facilities, including all information that is in the possession of the Participating TO that is circumstances which have arisen and evaluate any options available. The Participating TO also shall make available to such Project Sponsor, Parties to the Generator Interconnection Agreement, and the CAISO, as the case may be, studies and work papers related to the cause and extent of the delay and the Participating TO's ability to complete the new facilities, including all information that is in the possession of the Participating TO that is reasonably needed to evaluate the alternatives.

9.2.2.1 Alternatives to the Original Facility Additions. If the review process of Section 9.2.2 determines that one or more alternatives exist to the originally planned construction project, the Participating TO shall present such alternatives for consideration to the Project Sponsor, Parties to the Generator Interconnection Agreement, and the CAISO, as the case may be. In the event the Participating TO concludes that no reasonable alternative exists to the originally planned addition or upgrade and the Project Sponsor or Parties to the Generator Interconnection Agreement or the CAISO disagree, the dispute shall be resolved pursuant to the CAISO ADR Procedure.

9.2.2.2 Refund Obligation for Unfinished Facility Additions. If the Participating TO and the Project Sponsor, the CAISO, or Parties to the Generator Interconnection Agreement, as the case may be, mutually agree that no other reasonable alternatives exist, the obligation to construct the requested additions or upgrades shall terminate and any deposit not yet applied toward the expended project costs shall be returned with interest pursuant to FERC Regulation 35.19(a)(2)(iii). However, the Project Sponsor and any identified principal beneficiaries, as the case may be, shall be responsible for all costs prudently incurred

by the Participating TO through the time the construction was suspended.

9.3 Provisions Relating to Transmission Construction on the System of Other TOs.

9.3.1 Responsibility for Third Party Additions. A Participating TO shall not be responsible for making arrangements for any engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Participating TO will undertake reasonable efforts through the coordinated planning process to assist in making such arrangements, including, without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

9.3.2 Coordination of Third-Party System Additions. Where transmission additions or upgrades being built pursuant to the CAISO Tariff require additions or upgrades on other systems, to the extent consistent with Section 9.3.3 of this TO Tariff, the Participating TO shall coordinate construction on its own system with the construction required by others. The Participating TO, after consultation with the CAISO, the Project Sponsor, as the case may be, may defer construction if the new transmission facilities on another system cannot be completed in a timely manner. The Participating TO shall notify such Project Sponsor, and the CAISO, in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of the new facilities. Such Project Sponsor, or the CAISO may challenge the decision in accordance with the CAISO ADR Procedure.

10. Interconnection Process. Unless TransWest Express LLC is the lead Participating TO with respect to a requested interconnection, the provisions of Section 10 of this TO Tariff, and its subparts, shall have no application to the Project or any other Regional Transmission Facilities, Local Transmission Facilities, or Entitlements turned over to the CAISO's Operational Control by TransWest Express LLC and the corresponding provisions of the lead Participating TO's TO Tariff shall govern. All requests for interconnection with the Project or any other Regional Transmission Facilities, Local Transmission Facilities, or Entitlements turned over to the CAISO's operational control by TransWest Express LLC shall be directed to the lead Participating TO, with notice of the request provided to TransWest Express LLC.

10.1 Applicability. All requests for Interconnection directly to the CAISO Controlled Grid from parties eligible to request such Interconnection consistent with Section

210(a) of the FPA shall be processed pursuant to the CAISO Open Access Transmission Tariff.

11. Uncontrollable Forces and Indemnification

11.1 Procedures to Follow of Uncontrollable Force Occurs. In the event of the occurrence of an Uncontrollable Force which prevents a Party from performing any of its obligations under this TO Tariff, such Party shall (i) immediately notify the other Parties in writing of the occurrence of such Uncontrollable Force, (ii) not be entitled to suspend performance in any greater or longer duration that is required by the Uncontrollable Force, (iii) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance hereunder, (iv) keep the other Parties apprised of such efforts on a continual basis and (v) provide written notice of the resumption of performance hereunder. Notwithstanding any of the foregoing, the settlement of any strike, lockout, or labor dispute constituting an Uncontrollable Force shall be within the sole discretion of the Party to this TO Tariff involved in such strike, lockout, or labor dispute, and the requirement that a Party must use its best efforts to remedy the cause of the Uncontrollable Force and mitigate its effects and resume full performance hereunder shall not apply to strikes, lockouts, or labor disputes. No Party will be considered in default as to any obligation under this TO Tariff if prevented from fulfilling the obligation due to the occurrence of an Uncontrollable Force.

11.2 Indemnification. A Market Participant shall at all times indemnify, defend, and save the Participating TO harmless from any and all damages, losses, claims, (including claims and actions relating to injury or to death of any person or damage to property), demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Participating TO's performance of its obligations under this TO Tariff on behalf of a Market Participant, except in cases of negligence or intentional wrongdoing by the Participating TO.

12. Regulatory Filings. Nothing contained herein shall be construed as affecting, in any way, the right of any electric utility (as defined by the Federal Power Act), Participating TO furnishing services in accordance with this TO Tariff, CAISO Tariff or any tariff and rate schedule which results from or incorporates this TO Tariff, unilaterally to make application to FERC as it deems necessary and appropriate to recover its Transmission Revenue Requirements, or for a change in its rates, including changes in rate methodology, or for a change in designation of transmission facilities to be placed under the CAISO's control, in each case under Section 205 of the FPA and pursuant to the FERC's Rules and Regulations promulgated thereunder. Nothing contained herein shall be construed as affecting in any way the ability of any Eligible Customer receiving services in accordance with this TO Tariff to exercise its rights under the Federal

Power Act and pursuant to the FERC's rules and regulations promulgated thereunder.

- 12.1 Open Access.** For purposes of the Stranded Cost Recovery available under Order Nos. 888 and 888-A, this Tariff, combined with the CAISO Tariff and wholesale distribution access tariff, if any, shall be considered an open access tariff under FERC Order Nos. 888 and 888-A.
- 13. Creditworthiness.** The TransWest Express LLC creditworthiness requirements are set forth in Appendix IV.
- 14. Disputes.** Except as limited below or as otherwise limited by law, the CAISO ADR procedures shall apply to all disputes between parties which arise under this TO Tariff or under or in respect of the proposed terms and conditions of a Facilities Study Agreement, System Impact Study Agreement or Expedited Service Agreement. The CAISO ADR Procedures set forth in Section 13 of the CAISO Tariff shall not apply to disputes as to whether rates and charges set forth in this TO Tariff (other than charges for studies) are just and reasonable under the FPA.
- 15. Intentionally Omitted**
- 16. Miscellaneous.**
 - 16.1 Notices.** Any notice, demand, or request in accordance with this TO Tariff, unless otherwise provided in this TO Tariff, shall be in writing and shall be deemed properly served, given, or made: (i) upon delivery if delivered in person, (ii) five days after deposit in the mail if sent by first class United States mail, postage prepaid, (iii) upon receipt of confirmation by return electronic facsimile if sent by facsimile, or (iv) upon Party at the address set forth in Appendix V. Any Party may at any time, by notice to the other Parties, change the designation or address of the person specified in Appendix V to receive notice on its behalf. Any notice of a routine character in connection with service under this TO Tariff or in connection with operation of facilities shall be given in such a manner as the Parties may determine from time to time, unless otherwise provided in this TO Tariff
 - 16.2 Waiver.** Any waiver at any time by any Party of its rights with respect to any default under this TO Tariff, or with respect to any other matter arising in connection with this TO Tariff, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this TO Tariff. Any delay short of the statutory period of limitations in asserting or enforcing any right shall not constitute or be deemed a waiver.

16.3 Confidentiality.

16.3.1 Maintaining Confidentiality If Not for Public Disclosure. The Participating TO shall maintain the confidentiality of all of the documents, data, and information provided to it by any other Party that such Party may designate as confidential, provided, however, that the information will not be held confidential by the receiving Party if (1) the designating Party is required to provide such information for public disclosure pursuant to this TO Tariff or applicable regulatory requirements, or (2) the information becomes available to the public on a non-confidential basis (other than from the receiving Party).

16.3.2 Disclosure of Confidential Information. Notwithstanding anything in this Section 16.3.2 to the contrary, if any Party is required by applicable laws or regulations, or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section 16.3.2, the Party may disclose such information; provided, however, that as soon as such Party learns of the disclosure requirement and prior to making such disclosure, such Party shall notify the affected Party or Parties of the requirement and the terms thereof. The affected Party or Parties may, at their sole discretion and own costs, direct any challenge to or defense against the disclosure requirement and the disclosing Party shall cooperate with such affected Party or Parties to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The disclosing Party shall cooperate with the affected Parties to obtain proprietary or confidential treatment of confidential information by the person to whom such information is disclosed prior to any such disclosure.

16.4 TO Tariff Supersedes Existing Tariffs. This TO Tariff, together with the TCA and CAISO Tariff, supersedes any pre-existing open access transmission tariff of the Participating TO.

16.5 Titles. The captions and headings in this TO Tariff are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the rates, terms, and conditions of this TO Tariff.

16.6 Severability. If any term, covenant, or condition of this TO Tariff or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest, by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to

the maximum extent permitted by law, and all other terms, covenants, and conditions of this TO Tariff and their application shall not be affected thereby but shall remain in force and effect. The Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination, unless a court or governmental agency of competent jurisdiction holds that such provisions are not severable from all other provisions of this TO Tariff.

- 16.7 Preservation of Obligations.** Upon termination of this TO Tariff, all unsatisfied obligations of each Party shall be preserved until satisfied.
- 16.8 Governing Law.** This TO Tariff shall be interpreted, governed by, and construed under the laws of the State of California, without regard to the principles of conflict of laws thereof, or the laws of the United States, as applicable, as if executed and to be performed wholly within the State of California.
- 16.9 Appendices Incorporated.** The several appendices to this TO Tariff, as may be revised from time to time, are attached to this TO Tariff and are incorporated by reference as if fully set forth herein.
- 16.10 Conflict with CAISO Tariff.** If a Market Participant identifies a conflict between the TO Tariff and the CAISO Tariff, the Participating TO and the Market Participant shall make good-faith efforts to resolve the conflict. If the parties are unable to informally resolve that conflict, the Parties may use the CAISO ADR Procedures to resolve it as set forth in Section 14 of this Tariff.
- 16.11 Conflicting Dispatch and Operating Instructions.** In the event a Market Participant receives conflicting dispatch or operating instructions from the CAISO and one or more Participating TO(s), if human safety would not knowingly be neither jeopardized nor electric facilities subject to damage while the Market Participant seeks to reconcile the conflict with the appropriate CAISO and Participating TO employees before acting, the Market Participant should attempt a reconciliation. Otherwise, the Market Participant shall adhere to CAISO Tariff provision 4.2 and follow the CAISO's instructions. In no event shall a Market Participant be required to follow dispatch or operating instructions from the CAISO if following those instructions would knowingly jeopardize human safety.

APPENDIX I

SUBSCRIBER WHEELING CHARGE

Effective ____ xx, 202x

1. The Subscriber Wheeling Charge shall be \$ ____/MWH__ for the rate year beginning January 1, 202x for use of the TransWest Express LLC facilities by non-subscribers **[NTD: need to agree on definitions for types of customers and conform terms]** consistent with the TCA.
2. All of TransWest Express LLC facilities placed under the CAISO's Operation Control are related to Regional Facilities as defined in the TCA and CAISO Tariff.

APPENDIX II

**PROCEDURE FOR OBTAINING LONG-TERM FIRM
TRANSMISSION SERVICE**

Draft

APPENDIX III

PROCESS FOR REASSIGNING LONG-TERM SUBSCRIBER RIGHTS

Draft

APPENDIX IV
CREDITWORTHINESS REQUIREMENTS

Draft

APPENDIX V

NOTICES

Designated Representative:

Alternative Representative:

Draft