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August 16, 2024

VIA EMAIL

Ms. Maria D. Robinson
Director, Grid Deployment Office
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0350

Re: Application of Energia Sierra Juarez U.S., LLC for Authority to Transmit Electric Energy to Mexico

Dear Ms. Robinson:

Enclosed for filing is the Application of Energia Sierra Juarez U.S., LLC ("Applicant") for Authority to Transmit Electric Energy to Mexico and related exhibits ("Application"). Applicant has electronically paid the filing fee of \$500.00 via Pay.gov for this Application, as required by 10 C.F.R. § 205.309, with the associated payment confirmation attached hereto.

If you have any questions regarding the Application, or if you require additional information, please contact the undersigned by email at jharrison@sempraglobal.com or by phone at (619) 696-4350.

Respectfully submitted,

/s/ Jerrod L. Harrison

Jerrod L. Harrison
Assistant General Counsel
Semptra Infrastructure

On behalf of Energia Sierra Juarez U.S., LLC

Enclosures

cc: Federal Energy Regulatory Commission

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
GRID DEPLOYMENT OFFICE**

ENERGIA SIERRA JUAREZ U.S., LLC

)

Docket No. EA_____

**APPLICATION OF ENERGIA SIERRA JUAREZ U.S., LLC
FOR AUTHORIZATION TO TRANSMIT ELECTRICITY TO MEXICO**

Pursuant to Section 202(e) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a(e), and Subpart W of Part 205 of the U.S. Department of Energy’s (“DOE”) regulations, 10 C.F.R. §§ 205.300, *et seq.*, Energia Sierra Juarez U.S., LLC (“ESJ US” or “Applicant”) hereby files this application (“Application”) for authority to transmit electric energy from the United States to Mexico. In support of this Application, Applicant respectfully states as follows:

I. DESCRIPTION OF APPLICANT AND BACKGROUND FOR REQUEST

Applicant is a power marketer that will sell power from a nominally-rated 300 MW wind generation facility (the “Cimarron Wind Facility”) currently under development by its corporate parent, Energía Sierra Juárez, S. de R.L. de C.V. (“ESJ”), to be located in northern Mexico. Upon commercial operation, the Cimarron Wind Facility will be interconnected to the United States electric grid via a double-circuit 230 kV radial generator-tie line (“ESJ Gen-Tie”) owned and operated by Applicant’s wholly-owned subsidiary, Energia Sierra Juarez U.S. Transmission, LLC (“ESJ Transmission”). ESJ Transmission has been issued Presidential Permit PP-334, dated August 31, 2012, by DOE’s Grid Deployment Office for the construction, operation, maintenance and connection of the ESJ Gen-Tie, which has been constructed and is currently in operation. ESJ Transmission has also been issued Presidential Permit PP-334-1, dated October 5, 2023, by DOE’s Grid Deployment Office, which amends Presidential Permit PP-334, to increase the maximum authorized rate of transmission across the approved facilities by 300 MW, from 400 MW to 700

MW (collectively, such Presidential Permits PP-334 and PP-334-1 the “ESJ Transmission Presidential Permits”).

As further discussed below, Applicant’s request for authority to transmit electric energy from the United States to Mexico is limited to the delivery of *de minimis* station power to the Cimarron Wind Facility over the ESJ Gen-Tie. Applicant anticipates that the maximum amount of electric energy exported for this purpose will not exceed an instantaneous transmission rate of 4 MW or an annual transmission rate of approximately 3 GWh per year. Applicant’s request herein does not seek authority to export electric energy to Mexico on facilities other than the ESJ Gen-Tie.

Applicant, ESJ Transmission, and ESJ are all wholly-owned subsidiaries of Sempra Infrastructure Partners, LP (“SI Partners”), which in turn is indirectly majority owned and controlled by Sempra, a publicly traded utility holding company based in San Diego, California.¹ Sempra provides, through various subsidiaries and affiliates, a wide spectrum of electric, natural gas, and energy-related products and services to a diverse range of customers.²

Applicant will sell energy, capacity and/or ancillary services into the CAISO balancing authority area (“BAA”) from the Cimarron Wind Facility, which is currently under construction. Upon completion, the Cimarron Wind Facility will be capable of producing approximately 308.5 MW, with 4 MW of auxiliary load and anticipated losses of 7.9 MW between the Cimarron Wind Facility and the relevant point of interconnection, resulting in a maximum net output of 300 MW,

¹ Sempra indirectly owns Applicant via Sempra’s 70% direct ownership of SI Partners. KKR Pinnacle Investor L.P. (“KKR Pinnacle”) owns 20% ownership interest in SI Partners, which in turn is indirectly wholly-owned by funds and investment vehicles managed and/or advised by one or more subsidiaries of KKR. Black Silverback ZC, a wholly owned indirect subsidiary of the Abu Dhabi Investment Authority, owns the remaining 10% ownership interest in SI Partners.

² Sempra also wholly owns San Diego Gas & Electric Co. (“SDG&E”), a franchised public utility that owns transmission facilities and is a Participating Transmission Owner (“PTO”) in the market operated by the California Independent System Operator Corp. (“CAISO”), which has an open access transmission tariff (“OATT”) and wholesale distribution tariff on file with the Federal Energy Regulatory Commission (“FERC”). *See generally*, FERC Docket Nos. ER10-1391 and ER10-1629.

the entirety of which will be sold by Applicant to an unaffiliated third party buyer, City of Santa Clara d/b/a Silicon Valley Power, pursuant to a long-term, power purchase agreement (“PPA”).

Applicant has received blanket authority from FERC to sell energy, capacity and/or ancillary services at market-based rates (“Market-Based Rate Tariff”),³ and is not a franchised public utility with captive retail customers. The Cimarron Wind Facility will be directly connected via the ESJ Gen-Tie to the East County (“ECO”) Substation, which is within the CAISO BAA. Generator interconnection service for the Cimarron Wind Facility will be provided under the CAISO OATT, pursuant to a CAISO *pro forma* Large Generator Interconnection Agreement (“LGIA”) for Queue Position #1660 entered into as of December 21, 2023.

Due to the cross-border nature of the Cimarron Wind Facility, with portions of the interconnection facilities located both in the United States as well as in Mexico, certain tax, permitting and other considerations dictated that the ownership of the Cimarron Wind Facility be bifurcated between U.S. and Mexican entities. Applicant’s corporate parent, ESJ, is developing the Cimarron Wind Facility, to be situated south of the U.S.-Mexico border near the town of La Rumorosa, Baja California Norte, Mexico. The generator interconnection facilities located in Mexico will consist of 46 Vestas V163 wind turbines (rated at 5.3 MVA each) and 18 Vestas V162 wind turbines (rated at 7.5 MVA each) and associated pad-mounted transformers, a collector substation located approximately 20 miles south of the U.S.-Mexico border, and associated interconnection facilities consisting primarily of the ESJ Gen-Tie extending approximately 20 miles northward from the collector substation to the U.S.-Mexico border.

At the point where the ESJ Gen-Tie crosses the U.S.-Mexico border, ownership of the 230 kV generation tie-line changes to ESJ Transmission. Pursuant to the ESJ Transmission Presidential

³ *Energia Sierra Juarez U.S., LLC*, FERC Docket No. ER12-1470-000 (Letter Orders issued June 7, 2012 and Sept. 25, 2012).

Permits, ESJ Transmission will continue to own the ESJ Gen-Tie starting from the point at which the ESJ Gen-Tie crosses the U.S.-Mexico border then extending for a distance of less than one mile to the point at which the ESJ Gen-Tie connects to the CAISO-controlled grid at the ECO Substation, which has been constructed and is currently in operation.⁴ Applicant will utilize the ESJ Gen-Tie owned by ESJ Transmission to deliver the output of the Cimarron Wind Facility to the SDG&E grid at the ECO Substation, which is the PPA delivery point.

The Cimarron Wind Facility will have electrical machinery and ancillary equipment necessary for its operation that requires a small amount of electrical power 24 hours a day. When the Cimarron Wind Facility is in operation, which will be the vast majority of hours during any given year, this station power will be self-provided by the on-site wind generation at the facility. However, on the occasions when the Cimarron Wind Facility is not operating, the station use power will be fed back to the Cimarron Wind Facility from the CAISO BAA via the ECO Substation using the ESJ Gen-Tie utilized for delivery of the Cimarron Wind Facility's output—hence the need for the limited export authority requested in this Application.

Because Applicant's request is limited to use of the ESJ Gen-Tie owned by ESJ Transmission (Applicant's wholly-owned subsidiary), Applicant requests that the term of the authorization granted pursuant to this Application extend for a period commensurate with the ESJ Transmission Presidential Permits issued for the ESJ Gen-Tie (including Presidential Permit PP-334-1). The grant of export authority to Applicant for the requested term is consistent with previous electricity export authorizations issued by DOE under materially identical circumstances. In EA-402, DOE authorized Applicant to transmit electric energy from the United States to Mexico in

⁴ The ECO Substation is located in San Diego County, where the line interconnects with the Imperial Valley-Miguel segment of the Southwest Powerlink and is owned and operated by SDG&E as part of its PTO facilities subject to the functional control by CAISO.

order to deliver *de minimis* station power to a nominally-rated 156 MW wind generation facility over the ESJ Gen-Tie, for a term not to extend beyond the date of termination of the associated Presidential Permit PP-334. In EA-235-A, DOE granted similar export authorization to Sempra Generation associated with the station power requirements of its affiliated Termoelectrica de Mexicali combined cycle plant, which is located in Baja California near Mexicali, but which is electrically connected to the CAISO-controlled grid at the Imperial Valley Substation via a generator tie line owned by Sempra Generation's affiliate, Termoelectrica U.S., LLC, the holder of Presidential Permit PP-235. The export authorization in EA-235-A was also for a term not to extend beyond the date of termination of the associated Presidential Permit (Presidential Permit PP-235). Accordingly, Applicant requests consistent treatment of its request in this Application, whereby its export authorization to deliver *de minimis* station power to the Cimarron Wind Facility would be valid for a term not to extend beyond the date of termination of the associated ESJ Transmission Presidential Permits (including Presidential Permit PP-334-1).⁵

II. INFORMATION REQUIRED PURSUANT TO 10 C.F.R SECTION § 205.302

a. Exact legal name of Applicant:

Energia Sierra Juarez U.S., LLC

b. Exact legal name of all partners:

None. The upstream corporate ownership of Applicant is described in Part I of this Application.

⁵ Applicant's request for authorization under this Application qualifies for a categorical exclusion under DOE's regulations implementing the National Environmental Policy Act of 1969 ("NEPA"), inasmuch as Applicant's request for export authority is limited to the use of the ESJ Gen-Tie, for which a Presidential Permit has been issued. DOE has previously assessed the impact that the issuance of Presidential Permit PP-334 (as amended by Presidential Permit PP-334-1) for the ESJ Gen-Tie would have on the environment pursuant to NEPA. This assessment is documented in the *Environmental Impact Statement for the Energia Sierra Juarez U.S. Transmission Line Project* (DOE/EIS-0414), in the Record of Decision (ROD) issued on August 13, 2012 for Presidential Permit PP-334, and in the amended ROD issued on October 5, 2023 for Presidential Permit PP-334-1 (to reflect the increased maximum authorized capacity of transmission).

c. Name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed:

Jerrold L. Harrison
Assistant General Counsel
Sempra Infrastructure
488 8th Avenue, HQ12
San Diego, CA 92101
(619) 696-4350
jharrison@sempraglobal.com

and

Katy Wilson
Director – Business Development
Sempra Infrastructure
488 8th Avenue
San Diego, CA 92101
(619) 405-3497
kwilson@sempraglobal.com

d. State of territory under the laws of which the Applicant is organized or incorporated, or authorized to operate. If the Applicant is authorized to operate in more than one state, all pertinent facts shall be included:

Applicant is a Delaware limited liability company, organized on June 11, 2007, and authorized to operate in the State of California.

e. Name and address of any known Federal, State, or local government agency which may have any jurisdiction over the action to be taken in the application and a brief description of that authority:

Pursuant to FPA Section 202(e) DOE's Grid Deployment Office is the sole government entity with jurisdiction over the proposed export of electric energy to Mexico described in this Application. No other known Federal, State or local government entity or agency has jurisdiction over the proposed exports described in this Application.

f. Description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities:

As described in more detail in Part I of this Application, Applicant seeks authorization to export electric energy to Mexico solely over the ESJ Gen-Tie, an authorized international electric transmission facility pursuant to the ESJ Transmission Presidential Permits, owned and operated by Applicant's wholly-owned subsidiary, ESJ Transmission. Applicant does not seek authorization for exports to Mexico over any other international electric transmission facilities.

g. Technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the Applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of the electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation:

As discussed in Part I, Applicant's request for authorization to export electric energy to Mexico is solely related to the station use requirements of the Cimarron Wind Facility, which will be operational during the vast majority of the hours during the year, when the Cimarron Wind Facility will self-supply the power for its station use. Only when the Cimarron Wind Facility is not operational will exports be required in order to meet the *de minimis* station use requirements of the Cimarron Wind Facility. Based on this limited usage, Applicant anticipates that the maximum amount of electric energy exported for this purpose will not exceed an instantaneous transmission rate of 4 MW or an annual rate of approximately 3 GWh per year.

Applicant submits that the *de minimis* export authorization being requested would clearly not impair the sufficiency of electric supply, nor would it impede or tend to impede regional coordination of electric utility planning or operation. In previous orders, DOE has endorsed a flexible approach for evaluating reliability issues associated with proposed export transactions. DOE has relied on the existing technical analyses available for international transmission facilities

when considering applications from power marketers and other similar entities seeking to use those facilities. Applicant requests that DOE apply this standard to the instant Application, where the authorization sought by Applicant is limited to exports on the ESJ Gen-Tie, for which DOE has issued the ESJ Transmission Presidential Permits, and in so doing DOE reached the conclusion that the 700 MW to be generated from the broader ESJ wind project that the Cimarron Wind Facility is a component of would not adversely impact the reliability of the U.S. electric power supply system. Beyond the limited and discrete ESJ Gen-Tie facilities described herein, no other cross-border transmission facilities are implicated in Applicant's request.

As noted in Part I of this Application, DOE has previously issued electricity export authorizations under materially identical circumstances. In EA-402, DOE authorized Applicant to transmit electric energy from the United States to Mexico in order to deliver *de minimis* station power to a nominally-rated 156 MW wind generation facility over the ESJ Gen-Tie, for a term not to extend beyond the date of termination of the associated Presidential Permit PP-334. In EA-235-A, DOE similarly granted export authorization associated with the 12 MW station power requirements of the Termoelectrica de Mexicali combined cycle plant, which is located in Baja California near Mexicali, but which is electrically connected to the CAISO-controlled grid at the Imperial Valley Substation, also for a term not to extend beyond the date of termination of the associated Presidential Permit PP-235. As in EA-402 and EA-235, the electric power that Applicant plans to export will be surplus energy obtained in wholesale markets, and any such export transactions will be completed using CAISO's procedures and/or market structures, as coordinated with all relevant parties as required pursuant to the LGIA, applicable market rules implemented by the CAISO, and reliability standards implemented by the North American Electric Reliability

Corporation (“NERC”) and the Western Electric Reliability Council (“WECC”).⁶ Therefore, Applicant’s export transactions will not adversely impact native load customers or other market participants, and will not compromise transmission system security or reliability. Under these circumstances, the *de minimis* exports proposed herein will not impair the sufficiency of power in the United States, nor will the transactions impede the coordinated use of transmission facilities.

- h. The original application shall be signed and verified under oath by an officer of the application having knowledge of the matters set forth therein:**

The verification is included in Attachment A to the Application.

III. EXHIBITS REQUIRED BY 10 C.F.R. § 205.303

In compliance with 10 C.F.R. § 205.303, the following Exhibits are attached to this Application:

- a. Exhibit A. A copy of the agreement or proposed agreement under which the electricity is to be transmitted including a listing of the terms and conditions. If this agreement contains proprietary information that should not be released to the general public, the applicant must identify such data and include a statement explaining why proprietary treatment is appropriate.**

A copy of the Facilities Agreement between Applicant and ESJ Transmission is attached as Exhibit A.

- b. Exhibit B. A showing, including a signed opinion of counsel that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and State Laws.**

Please see opinion of counsel attached hereto as Exhibit B.

⁶ Applicant notes that upon commercial operation, the Cimarron Wind Facility will be a registered Generator Owner/Generator Operator, subject to oversight by NERC or any successor Electric Reliability Organization certified by FERC pursuant to Section 215 of the FPA, and WECC or any successor Regional Entity with delegated authority within the geographic region of the project. As such, Applicant and the Cimarron Wind Facility will be required to abide by applicable NERC requirements (including mandatory Reliability Standards for the Bulk-Power System), in connection with its operations and transactions, which will further ensure that reliability of the Bulk-Power System is maintained. DOE has consistently found that NERC’s FERC-approved comprehensive enforcement mechanism ensures that Bulk-Power System owners, operators, and users has a strong incentive to both maintain system resources and prevent reliability problems that could result from movement of electric supplies through export. That remains the case here.

- c. Exhibit C. A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.**

Applicant seeks authorization to export electric energy to Mexico solely over the ESJ Gen-Tie, an authorized international electric transmission facility pursuant to the ESJ Transmission Presidential Permits, and owned and operated by Applicant's wholly-owned subsidiary, ESJ Transmission. The ESJ Gen-Tie is a limited and discrete radial facility that does not comprise an integrated transmission system. Additional information regarding the ESJ Gen-Tie is provided in the submittals of ESJ Transmission in DOE's PP-334 and PP-334-1 proceedings, which resulted in the issuance of the ESJ Transmission Presidential Permits. Applicant does not seek authorization for exports to Mexico over any other international electric transmission facilities.

- d. Exhibit D. If an applicant resides or has its principal office outside the United States, such an applicant shall designate, by irrevocable power of attorney, an agent residing within the United States. A verified copy of such power of attorney shall be furnished with the application.**

Not applicable.

- e. Exhibit E. A statement of any corporate relationship or existing contract between the applicant and any other person, corporation, or foreign government, which in any way relates to the control or fixing of rates for the purchase, sale or transmission of electric energy.**

Applicant's Market-Based Rate Tariff, providing authority to sell energy, capacity and ancillary services at market-based rates, is described in Part I of this Application. The full output from the Cimarron Wind Facility will be sold pursuant to a long-term PPA with the City of Santa Clara d/b/a Silicon Valley Power, an unaffiliated third party.

- f. Exhibit F. An explanation of the methodology (Operating Procedures) to inform neighboring electric utilities in the United States of the available capacity and energy which may be in excess of the applicant's requirements before the delivering of such capacity to the foreign purchaser. Approved firm export, diversity exchange and emergency exports are exempted from this requirement. Those**

materials required by this section which have been filed previously with the ERA may be incorporated by reference.

Not applicable. Applicant is a power marketer, and is not a franchised public utility with captive retail customers. Applicant's request for authority to transmit electric energy from the United States to Mexico is limited to the delivery of intermittent and *de minimis* station power to the Cimarron Wind Facility over the ESJ Gen-Tie. The ESJ Gen-Tie is a limited and discrete radial transmission facility that does not form part of an integrated transmission grid. Applicant's request is limited to an instantaneous transmission rate of 4 MW or an annual rate of approximately 3 GWh per year. Applicant's request herein does not seek authority to export electric energy to Mexico on facilities other than the ESJ Gen-Tie. As discussed above, electric power that Applicant plans to export will be surplus energy obtained in wholesale markets within CAISO, and any such export transactions will be completed using CAISO's procedures and/or market structures, and coordinated with all relevant parties as required pursuant to the LGIA, applicable market rules implemented by the CAISO, and reliability standards implemented by NERC and WECC.

IV. CONCLUSION

In consideration of the foregoing, Applicant respectfully requests approval of this Application for authorization to export electrical energy to Mexico in an amount not to exceed an instantaneous transmission rate of 4 MW or an annual rate of approximately 3 GWh per year, for a period not to extend beyond the date of termination of the associated ESJ Transmission Presidential Permits.

Respectfully submitted,

/s/ Jerrod L. Harrison
Jerrod L. Harrison
Assistant General Counsel
Semptra Infrastructure


On behalf of Energia Sierra Juarez U.S., LLC

August 16, 2024

Attachment A

VERIFICATION

The undersigned, being duly sworn, deposes and says that: she is the Chief Business Officer Low Carbon Solutions and Senior Vice President of Energia Sierra Juarez U.S., LLC ("ESJ US"), and has the authority to verify the foregoing Application on behalf of ESJ US; she has read said Application; and to the best of her knowledge, information, and belief, all of the statements contained therein with respect to ESJ US are true and correct.



Emily C. Shults

SUBSCRIBED AND SWORN to before me on this 15 day of August, 2024 by Emily C. Shults proved to me on the basis of satisfactory evidence to be the person who appeared before me.



Notary Public
My commission expires:

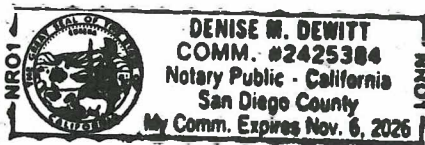


EXHIBIT A – FACILITIES AGREEMENT

Execution

SECOND AMENDED AND RESTATED FACILITIES AGREEMENT

by and between

ENERGIA SIERRA JUAREZ U.S. TRANSMISSION, LLC

and

ENERGIA SIERRA JUAREZ U.S., LLC

**March 26, 2014, first amended and restated on February 10, 2020, and further amended
and restated as of May 30, 2024**

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Exhibit A: Form of Shared Facilities and Common Ownership Agreement

SECOND AMENDED AND RESTATED FACILITIES AGREEMENT

THIS SECOND AMENDED AND RESTATED FACILITIES AGREEMENT (this “Agreement”) is made and entered into as of May 30, 2024 (the “Effective Date”), by and between ENERGIA SIERRA JUAREZ U.S. TRANSMISSION, LLC, a Delaware limited liability company (the “Transmission Company”) and ENERGIA SIERRA JUAREZ U.S., LLC, a Delaware limited liability company (the “Member”); each also a “Party” and collectively, the “Parties”.

RECITALS

A. The Member owns 100% of the issued and outstanding membership interests in the Transmission Company.

B. Energía Sierra Juarez, S. de R.L. de C.V., a Mexican *sociedad de responsabilidad limitada de capital variable* (“ESJ MX”) and certain of its Affiliates (i) has constructed, owns and operates a wind power project named “Energía Sierra Juarez 1” with a nameplate capacity of approximately 155 MW (“ESJ 1”), located along the easterly ridge lines of the Sierra de Juarez mountains near the Baja California, Mexico town of La Rumorosa, including the portion of the Gen-Tie Line that is located in Mexico, (ii) has constructed, owns and operates a wind power project named “Energía Sierra Juarez 2” with a nameplate capacity of approximately 108 MW (“ESJ 2”), and (iii) are developing an expansion to add approximately 319 MW of additional nameplate capacity (the “Expansion”), to ESJ 1 and ESJ 2 (ESJ 1 and ESJ 2, together with the Expansion, being the “ESJ Wind Project”).

C. The Member has entered into that certain Cross-Border Power Purchase Agreement, dated as of March 26, 2014 (as amended, modified, or supplemented from time to time, the “Cross-Border PPA for ESJ 1”) by and between the Member as buyer and ESJ MX as seller, pursuant to which the Member will purchase electric energy, capacity attributes, green attributes and other ancillary products, services or attributes generated by or associated with ESJ 1 at the United States-Mexico border.

D. The Member has entered into that certain Cross-Border RAM Power Purchase Agreement, dated as of January 29, 2021 (as amended, modified, or supplemented from time to time, (the “Cross-Border PPA for ESJ 2”) by and between the Member as buyer and ESJ MX as seller, pursuant to which the Member will purchase electric energy, capacity attributes, green attributes and other ancillary products, services or attributes generated by or associated with ESJ 2 at the United States-Mexico border.

E. The Member has entered into that certain Cross-Border Power Purchase Agreement, dated as of February 20, 2024 (as amended, modified, or supplemented from time to time, the “Expansion Cross-Border PPA”) by and between the Member as buyer and ESJ MX as seller, pursuant to which the Member will purchase electric energy, capacity attributes, green attributes and other ancillary products, services or attributes generated by or associated with the Expansion at the United States-Mexico border.

F. The Member has also entered into that certain Power Purchase Agreement dated as of April 6, 2011, as amended by that certain First Amendment to Power Purchase Agreement dated as of September 14, 2011, that certain Second Amendment to Power Purchase Agreement dated

as of November 30, 2011, that certain Third Amendment to Power Purchase Agreement dated as of April 6, 2012, that certain Fourth Amendment to Power Purchase Agreement dated as of July 31, 2012, that certain Fifth Amendment to Power Purchase Agreement dated as of October 11, 2012 and that certain Sixth Amendment to Power Purchase Agreement dated as of February 12, 2013 (as further amended, modified, or supplemented from time to time, the “ESJ 1 SDG&E PPA”) by and between San Diego Gas & Electric Company (“SDG&E Power Purchaser”) as buyer and the Member as seller, pursuant to which the Member will sell electric energy, capacity attributes, green attributes and other ancillary products, services or attributes from ESJ 1 to SDG&E Power Purchaser at the East County Substation.

G. Energia Sierra Juarez 2 U.S., LLC (“ESJ 2 US”) entered into that certain Power Purchase Agreement, dated as of November 16, 2017, as amended by that certain First Amendment to Power Purchase Agreement dated as of January 23, 2019, that certain Second Amendment to Power Purchase Agreement dated July 19, 2019, by and between SDG&E Power Purchaser as buyer and ESJ 2 US as seller and assigned by ESJ 2 US to the Member through the Assignment Agreement dated as of March 15, 2019, that certain Third Amendment to Power Purchase Agreement dated February 20, 2020, that certain Fourth Amendment to Power Purchase Agreement dated April 3, 2020 and that certain Fifth Amendment to Power Purchase Agreement dated June 12, 2020, (as further amended, modified, or supplemented from time to time, the “ESJ 2 SDG&E PPA”) by and between SDG&E Power Purchaser as buyer and the Member as seller, pursuant to which the Member will sell electric energy, capacity attributes, green attributes and other ancillary products, services or attributes from ESJ 2 to SDG&E Power Purchaser at the East County Substation.

H. The Member has also entered into that certain Renewable Energy Purchase and Sale Agreement dated as of October 18, 2022, as amended by that certain First Amendment to certain Renewable Energy Purchase and Sale Agreement dated as of January 9, 2024 (as further amended, modified, or supplemented from time to time, the “Expansion PPA”), by and between the City of Santa Clara (d/b/a Silicon Valley Power) (“SVP Power Purchaser”) as buyer and the Member as seller, pursuant to which the Member will sell electric energy, capacity attributes, green attributes and other ancillary products, services or attributes from the Expansion to SVP Power Purchaser at the East County Substation.

I. The Transmission Company has constructed the portion of the Gen-Tie Line and related facilities that are located in the United States, which the Member desires to use to transmit electricity to the Power Purchasers from the ESJ Wind Project.

J. The Parties entered into that certain Facilities Agreement, dated as of March 26, 2014 (the “Initial Facilities Agreement”) for the purposes of transmitting electricity from ESJ 1 to the SDG&E Power Purchaser upon the terms and subject to the conditions set forth therein.

K. The Parties entered into that certain amended and restated facilities agreement, dated February 10, 2020 (the “First Amended and Restated Facilities Agreement”) for the purpose of transmitting electricity from ESJ 2 to the SDG&E Power Purchaser upon the terms and subject to the conditions set forth therein.

L. The Parties desire to enter into a second amended and restated facilities agreement to amend and restate the First Amended and Restated Facilities Agreement in its entirety, to include the Expansion, upon the terms and subject to the terms and conditions set forth herein.

M. The Transmission Company has agreed to permit the Member to use such facilities to transmit electricity to the Power Purchasers from the ESJ Wind Project, and the Transmission Company has agreed to undertake certain obligations in connection therewith, pursuant to the terms of this Agreement.

N. Upon execution of this Agreement, the Parties desire that this Agreement to amend and restate the First Amended and Restated Facilities Agreement in its entirety and desire that the First Amended and Restated Facilities Agreement be deemed so amended and restated.

NOW, THEREFORE, in consideration of the foregoing and the agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto amend and restate the First Amended and Restated Facilities Agreement in its entirety and agree as follows:

ARTICLE I DEFINITIONS

1.1 Certain Definitions. Capitalized words and phrases used herein shall have the following meanings, or the meanings given in the Sections of this Agreement in which they are defined, unless the text expressly or by necessary implication requires otherwise.

(a) “Affiliate” means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person.

(b) “Agreement” has the meaning given in the preamble to this Agreement.

(c) “Construction Contract” means the Engineering, Procurement and Construction Agreement, dated on or about March 24, 2014, by and between Transmission Company and ANEMO Energy, S. de R.L. de C.V., and any other contract entered into from time to time by Transmission Company and/or its Affiliates for the engineering, procurement and construction of the Physical Facilities, in each case, as amended from time to time.

(d) “Control”, “Controlled by”, and “under common Control with”, with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or member or partnership interests, by contract or otherwise.

(e) “Cross-Border PPA for ESJ 1” has the meaning given in the recitals to this Agreement.

(f) “Cross-Border PPA for ESJ 2” has the meaning given in the recitals to this Agreement.

(g) “Default Rate” means a rate per annum equal to the lesser of (i) a varying rate per annum equal to the sum of (A) the prime rate as published in *The Wall Street Journal*, with adjustments in that varying rate to be made on the same date as any change in that rate is so published, plus (B) two percent (2%) per annum, and (ii) the maximum rate permitted by Law.

(h) “East County Substation” means the “East County Substation” owned by SDG&E.

(i) “Effective Date” has the meaning given in the preamble to this Agreement.

(j) “Environmental Laws” means, collectively, any and all Laws pertaining to pollution or protection of health, safety or environment, including Laws (both statutory and common law) relating to actual or threatened emissions, discharges, or releases of pollutants, raw materials, products, contaminants, or hazardous or toxic materials or wastes into ambient air, surface water, groundwater, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or hazardous or toxic materials or wastes, and including all Environmental Permits and agreements and duties issued under or imposed by such Laws

(k) “Environmental Permits” means, collectively, all licenses, permits and other authorizations or registrations required under any and all Laws pertaining to pollution or protection of health, safety or environment, including Laws (both statutory and common law) relating to actual or threatened emissions, discharges, or releases of pollutants, raw materials, products, contaminants, or hazardous or toxic materials or wastes into ambient air, surface water, groundwater, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or hazardous or toxic materials or wastes.

(l) “ESJ MX” has the meaning given in the recitals to this Agreement.

(m) “ESJ Wind Project” has the meaning given in the recitals to this Agreement.

(n) “ESJ 1” has the meaning given in the recitals to this Agreement.

(o) “ESJ 1 SDG&E PPA” has the meaning given in the recitals to this Agreement.

(p) “ESJ 2” has the meaning given in the recitals to this Agreement.

(q) “ESJ 2 SDG&E PPA” has the meaning given in the recitals to this Agreement.

(r) “ESJ 2 US” has the meaning given in the recitals to this Agreement.

- (s) “Event of Default” has the meaning given in Section 2.14.
- (t) “Expansion” has the meaning given in the recitals to this Agreement.
- (u) “Expansion Cross-Border PPA” has the meaning given in the recitals to this Agreement.
- (v) “Expansion PPA” has the meaning given in the recitals to this Agreement.
- (w) “Expenses” means all expenses incurred by or on behalf of Transmission Company in connection with the ownership, or operation and maintenance of the Facilities, including without limitation:
 - (i) All fees and expenses or other amounts payable under the O&M Agreements, the other Service Contracts and the other Project Agreements.
 - (ii) Operating period insurance, including under any blanket policy purchased by or behalf of the Transmission Company.
 - (iii) Property and other taxes assessed or allocated to the Facilities.
 - (iv) The costs of Licenses and Permits and, including without limitation, any fees charged by the FERC or other governmental entity.
- (x) “Facilities” means, collectively, the Physical Facilities, the Licenses and Permits, and the Real Property Documents.
- (y) “FERC” means the Federal Energy Regulatory Commission or any successor agency.
- (z) “First Amended and Restated Facilities Agreement” has the meaning given in the recitals to this Agreement.
- (aa) “Financing Entity” means any and all lenders providing senior or subordinated construction, interim or long-term debt financing or refinancing for the purchase, installation or operation of all or any portion of the ESJ Wind Project or any agent or trustee acting for the benefit thereof.
- (bb) “Force Majeure” means acts of God or any other casualty or occurrence, condition, event or circumstance of any kind or nature not reasonably within the excused Party’s control and which could not have been avoided by reasonable measures, including strikes, slowdowns or labor difficulties (other than any such action by or in relation to any person providing services under a Service Contract), fires, flood, earthquakes, explosions or other hazards, acts of public enemies, riots, civil commotions, or insurrection. Force Majeure expressly does not include any delay in performing or failure of performance of any contractual provision by a Party (except to the extent caused by a Force Majeure event); or economic hardship.

(cc) “Gen-Tie Line” means the 230 kV generation-tie power line, Support Structures and associated fixtures, equipment and facilities owned, operated and maintained in the United States by the Transmission Company and in Mexico by ESJ MX or its successor in interest.

(dd) “Initial Facilities Agreement” has the meaning given in the recitals to this Agreement.

(ee) “Interconnection Agreement for ESJ 1 and ESJ 2” means that certain Standard Large Generator Interconnection Agreement (LGIA) dated as of October 26, 2011, as amended by that certain First Amendment to Interconnection Agreement for ESJ 1 and ESJ 2 dated April 30, 2014, that certain Second Amendment to Interconnection Agreement for ESJ 1 and ESJ 2 dated February 2, 2015, that certain Third Amendment to Interconnection Agreement for ESJ 1 and ESJ 2 dated April 22, 2020, and that certain Fourth Amendment to Interconnection Agreement for ESJ 1 and ESJ 2 dated December 11, 2023, by and among the Transmission Company, ESJ MX, SDG&E and California Independent System Operator Corporation relating to the ESJ Wind Project (Queue No. 159A), as amended, modified or supplemented from time to time.

(ff) “Interconnection Agreement for Expansion” means that certain Standard Large Generator Interconnection Agreement (LGIA) dated as of December 23, 2023, by and among the Transmission Company, ESJ MX, SDG&E and California Independent System Operator Corporation relating to the ESJ Wind Project (Queue No. 1660), as amended, modified or supplemented from time to time.

(gg) “Laws” means all applicable laws, statutes, ordinances, rules, regulations, decrees, orders, permits, requirements, judgments, decisions and injunctions issued by any governmental authority, including laws relating to health, safety and the environment.

(hh) “Licenses and Permits” means, collectively, the governmental licenses, permits, approvals and authorizations, whether federal, state or local, or domestic or foreign, including Environmental Permits, relating to the Physical Facilities.

(ii) “Member” has the meaning given in the preamble to this Agreement.

(jj) “MW” means a megawatt or megawatts, as the context may require.

(kk) “O&M Agreement” means (i) that certain Operations and Maintenance Agreement dated as June 9, 2014, between, *inter alia*, Transmission Company and Operator and (ii) any operations and maintenance agreement entered into from time to time between the Operator, or any other operator, and the Transmission Company and/or its Affiliates, in each case, as amended from time to time.

(ll) “Operator” means Servicios ESJ, S. de R.L. de C.V., and also means any other Person that may be engaged by the Transmission Company under any O&M Agreement to operate and/or maintain the Physical Facilities from time to time.

(mm) “Party” and “Parties” have the meanings given in the preamble to this Agreement.

(nn) “Permitted Liens” means, with respect to the Transmission Company, liens and other encumbrances (i) for inchoate mechanics' and materialmen's liens for construction in progress and workmen's, repairmen's, warehousemen's and carriers' liens arising in the ordinary course of business, (ii) for taxes not yet payable or being contested in good faith by appropriate proceedings provided that applicable law permits the non-payment of such taxes during such contest and such potential tax liabilities are fully covered by adequate reserves in accordance with GAAP, (iii) incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance, social security and other employment-related governmental rules and that do not (and could not reasonably be expected to) in the aggregate materially impair the financial condition of the Transmission Company or the use or disposition of the Facilities, (iv) arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and the payment of which (A) is fully covered by adequate reserves in accordance with GAAP, bonds or other security acceptable to the Transmission Company or (B) is fully covered by insurance, (v) deposits or pledges to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, in each case in the ordinary course of its business and (v) liens in favor of the Financing Entities.

(oo) “Person” means any individual or entity, and the heirs, personal representatives, successors and assigns of such individual or entity where the context so permits.

(pp) “Physical Facilities” means the portion of the Gen-Tie Line and those Support Structures and the fixtures, equipment and facilities which, in each case, are owned by the Transmission Company from time to time.

(qq) “Power Purchasers” means the SDG&E Power Purchaser under the ESJ 1 SDG&E PPA or ESJ 2 SDG&E PPA and SVP Power Purchaser under the Expansion PPA.

(rr) “Project Agreements” means, collectively, the Service Contracts, the Construction Contracts and all other agreements entered into from time to time by or on behalf of the Transmission Company and/or ESJ MX and/or its Affiliates relating to the development, construction, ownership, administration, maintenance or operation and/or operation of the Facilities, in each case, as amended from time to time.

(ss) “Project Controlled Assets” means any of the assets comprising the ESJ Wind Project (including the ESJ Wind Project's transformers), the corresponding Project Lands and agreements and contractual arrangements related to the ESJ Wind Project, including the Cross-Border ESJ 1 PPA, the Cross-Border ESJ 2 PPA, Expansion Cross-Border PPA, the Interconnection Agreement for ESJ1 and ESJ 2, the Interconnection Agreement for Expansion, the ESJ 1 SDG&E PPA, ESJ 2 SDG&E PPA, and the Expansion PPA. For the avoidance of doubt, the Project Controlled Assets shall exclude the Facilities.

(tt) “Project Lands” means the lands on which the ESJ Wind Project is located.

(uu) “Prudent Industry Practice” means those practices, methods, equipment, specifications, and standards of manufacture, care, skill, safety, performance, dependability, efficiency, economy and diligence, as the same may change from time to time, as are commonly used and generally recognized in respect of the design, development, construction, maintenance, financing and operation of energy transmission facilities of comparable type and complexity and having geographical attributes similar to the transmission assets at issue, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered prudent practice and would be intended to accomplish the result intended at a reasonable cost and consistent with applicable Laws, reliability, safety and expedition. “Prudent Industry Practice” does not necessarily mean the best practice, method, or standard of care, skill, safety and diligence in all cases, but is instead intended to encompass a range of acceptable practices, methods, and standards.

(vv) “Real Property” means the lands in the State of California on which the Physical Facilities are located, and any other real property to which the Transmission Company has rights pursuant to the Real Property Documents.

(ww) “Real Property Documents” means, collectively, all deeds, easements, option agreements, leases, subordination agreements and other real property agreements, in each case entered into by the Transmission Company, which create or evidence any real property interests relating to or underlying the Physical Facilities.

(xx) “SDG&E” means San Diego Gas & Electric Company, a California corporation.

(yy) “SDG&E Power Purchaser” means SDG&E, or any other entity purchasing electricity generated by either ESJ 1 or ESJ 2 from Member.

(zz) “Sempra Infrastructure Partners, LP,” means a Delaware limited partnership.

(aaa) “Service Contracts” means, collectively, (i) the O&M Agreements, (ii) that certain Project Administration Agreement dated as of June 9, 2014, between, *inter alia*, the Transmission Company and the Servicios ESJ, S. de R.L. de C.V., (iii) that certain Construction Management Agreement dated as of June 9, 2014, between, *inter alia*, the Transmission Company and the Servicios ESJ, S. de R.L. de C.V., and (iv) any other operations and maintenance agreement, project administration agreement and/or construction management agreement entered into from time to time by the Transmission Company and/or ESJ MX and/or its Affiliates in relation to the Facilities; in each case, as amended from time to time.

(bbb) “Shared Facilities and Common Ownership Agreement” means an agreement substantially in the form of Exhibit A hereto.

(ccc) “Support Structures” means the set of three tubular steel poles and their foundations to which the Gen-Tie Line owned by the Transmission Company is affixed, and any and all poles, foundations and other support structures constructed from time to time owned in the United States by the Transmission Company and in Mexico by ESJ MX or its successor in interest.

(ddd) “SVP Power Purchaser” means the City of Santa Clara (d/b/a Silicon Valley Power, or any other entity purchasing electricity generated by the Expansion from Member.

(eee) “The City of Santa Clara” or “SVP” means Silicon Valley Power, a chartered California municipal corporation.

(fff) “Transfer” means, with respect to any asset, the sale, assignment, transfer, pledge, encumbrance, transfer, pledge, or other disposition of, either voluntarily, by operation of law or otherwise, or such asset.

(ggg) “Transmission Company” has the meaning given in the preamble to this Agreement.

ARTICLE II FACILITIES AGREEMENTS

2.1 Use of Facilities.

(a) All rights and obligations under the Initial Facilities Agreement shall, as of the Effective Date, be amended and restated in their entirety by the rights and obligations of the Parties pursuant to this Agreement.

(b) Unless otherwise required by Law, the Physical Facilities shall be held and used to permit the transmission of electricity generated by the ESJ Wind Project from the United States-Mexico border to the East County Substation in accordance with Section 2.3. Notwithstanding the foregoing, the Physical Facilities may also be used to permit the transmission of electricity to the East County Substation from generating projects owned in whole or part by an Affiliate of Infraestructura Energetica Nova, S.A.P.I. de C.V., or Sempra Infrastructure Partners, LP, and to deliver electricity from a provider of back-up, backfeed or maintenance power to the same, subject to prior satisfaction or waiver by Member of the following conditions: (a) in the case of the first such project, the owner of such other project, Transmission Company and Member shall have executed and delivered a Shared Facilities and Common Ownership Agreement, (b) in the case of projects following the first such project, the owner of such other project shall have executed and delivered a joinder to such executed Shared Facilities and Common Ownership Agreement binding itself to the terms and conditions thereof as if originally party thereto, and (c) each condition set forth in Section 5.3 of the Shared Facilities and Common Ownership Agreement has been satisfied (including payment by the owner of such other project of all amounts required thereby), and each such condition is hereby incorporated herein by reference.

2.2 Design/Capacity of Physical Facilities.

(a) The Transmission Company shall design the Physical Facilities to permit acceptance of electric power from the portion of the Gen-Tie Line located in Mexico. The Transmission Company and the Member shall jointly design, configure and update or upgrade, as applicable, the Gen-Tie Line to be able to transmit electric power from the United States-Mexico border to the East County Substation. The Transmission Company shall design the Physical Facilities installed at the East County Substation to be able to interconnect the Gen-Tie Line into the East County Substation.

(b) The Transmission Company shall upon written request therefor provide the Member with copies of the designs, plans and specifications for the Physical Facilities for the Member's review and comment, but the Transmission Company retains the right to make all final design decisions with respect to such designs, plans and specifications in its sole discretion, in each case consistent with Prudent Industry Practice and the terms and conditions of this Agreement.

2.3 Right to Transmit Electricity. The Physical Facilities shall be connected to the ESJ Wind Project at the United States-Mexico border via the portion of the Gen-Tie Line located in Mexico, in accordance with the provisions of the Construction Contract. The Member shall have the right to utilize the Physical Facilities to deliver or receive electrical energy from the ESJ Wind Project at the United States-Mexico border to the East County Substation in accordance with the terms of this Agreement. Other than the obligation to pay expenses pursuant to Section 2.4, there shall be no charge to the Member to transmit electricity using the Facilities.

2.4 Expenses. As consideration for its rights hereunder, the Member shall pay all Expenses incurred by the Transmission Company. All amounts owed by the Member shall be due and payable within thirty (30) days of receipt of invoices from the Transmission Company documenting such amounts. All amounts not paid when due shall bear interest at the Default Rate. For the avoidance of doubt, the Member and its Power Purchaser under the ESJ 1 SDG&E PPA, ESJ 2 SDG&E PPA and Expansion PPA shall allocate among themselves and be responsible for all line losses, and not Transmission Company.

2.5 Indemnity. The Member shall indemnify, defend and hold harmless the Transmission Company from and against any and all losses, damages, liabilities, claims, judgments, liens, penalties, costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees, which may be imposed upon or incurred by the Transmission Company or asserted against the Transmission Company by any third person or entity in connection with the this Agreement, the use of the Physical Facilities, the construction or operation and maintenance of the Facilities, the Interconnection Agreement for ESJ 1 and ESJ 2, the Interconnection Agreement for Expansion or the ESJ Wind Project.

2.6 Environmental Compliance. The Member shall, and shall cause its Affiliates to, with respect to the Facilities and the Project Controlled Assets, comply with all Environmental Laws in all material respects and be responsible for all investigations, studies, clean up, corrective action or response or remedial action required by any governmental authority now

or hereafter authorized to regulate environmental or other matters or by any consent decree or court or administrative order now or hereafter applicable to the Member's use, operation or ownership of the Facilities or the Project Controlled Assets.

2.7 No Waste or Nuisance; Maintenance; No Interference. The Member shall not use or permit the use of the Facilities in any manner that would create waste or nuisance, or that would increase the rate, or jeopardize the issuance or maintenance, of any insurance policy relating to the Facilities, nor otherwise conduct or cause to be conducted operations on the Real Property which would have similar effects on, or otherwise damage or interfere with, the Facilities.

2.8 Liens; Sales. The Member shall not cause or permit any lien or encumbrance to be levied against or attached to the Facilities, except for Permitted Liens.

2.9 Operation and Management. The Transmission Company shall cause the Facilities to be operated and maintained in accordance with Prudent Industry Practice (which includes repair and replacement of the Physical Facilities and maintenance of access ways), and may engage one or more persons or contractors to do the same.

2.10 Events of Default; Default. If a Party shall fail to perform its obligations hereunder in any material respect, then such failure shall not constitute a default hereunder unless such Party shall have failed to cure such default within (a) five (5) days after receipt of written notice of a payment default, (b) the period of time for cure provided in the Interconnection Agreement for ESJ 1 and ESJ 2 and Interconnection Agreement for Expansion with respect to a default in performance of the Interconnection Agreement for ESJ 1 and ESJ 2 and Interconnection Agreement for Expansion, or (c) thirty (30) days after such Party has received written notice of any other default from the non-defaulting Party; provided, however, that if the nature of the defaulted obligation or obligations described in this clause (c) is such that more than thirty (30) days are required, in the exercise of commercially reasonable diligence, for performance of such obligation(s), then such Party shall not be in default if it commences such performance within such thirty (30) day period and thereafter continuously pursues the same to completion with commercially reasonable diligence, such extended period not to exceed ninety (90) days, including the initial cure period. Failure to comply with the cure periods set forth above shall result in an "Event of Default".

2.11 Remedies. In addition to all other remedies permitted by Law or under this Agreement (all of which shall be cumulative), following an Event of Default, the non-defaulting Party and its lenders or other interest holders shall be entitled following an Event of Default to perform the obligations of the defaulting Party, and the defaulting Party shall reimburse the performing Party for any expenses which it incurred in rendering the performance, plus interest at the Default Rate.

2.12 Equitable Relief. The Parties agree that damages may be an inadequate remedy for a breach by the Transmission Company or the Member of its respective obligations under this Agreement, and that each Party shall be entitled to seek injunctive and other equitable relief, including specific performance, against the other Party to prevent or eliminate such default.

2.13 Effect of Force Majeure. If, because of an event of Force Majeure, either Party is unable to carry out its obligations under this Agreement (excluding obligations to pay money), and if such Party promptly gives the other Party written notice of such Force Majeure in detail, specifying the nature, extent and expected duration of such Force Majeure, the obligations and liabilities of the Party giving such notice and the corresponding obligations and liabilities of the other Party shall be temporarily suspended to the extent made necessary by and during the continuance of such Force Majeure. Any disabling effects of such Force Majeure shall be eliminated as soon as and to the extent reasonably practicable by the Party claiming Force Majeure.

ARTICLE III TRANSFERABILITY

3.1 General Restriction. No Party may Transfer its interest in this Agreement without the consent of the other Party; provided, however, no consent of the Transmission Company shall be required in connection with the Transfer of this Agreement by the Member when made together with a Transfer of all or substantially all of the Project Controlled Assets owned by the Member; provided that the new owner shall be assigned and shall assume the Member's interest in this Agreement to the extent of the interest transferred as a condition to the assignment, in whole or in part according to whether the Transfer was total or partial. The Member may collaterally assign its interest in this Agreement to one or more Financing Entities or Power Purchasers, provided that the ESJ Wind Project Controlled Assets owned by the Member are collaterally assigned concurrently therewith. In addition, in connection with the financing of the ESJ Wind Project, the Transmission Company shall upon the reasonable request of the Member provide customary estoppels and consents in favor of any Financing Entity or the Power Purchaser, including rights of step-in with respect to the Member's obligations under this Agreement and rights to concurrent notice of default.

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Amendments; Additional Users. Except as specifically provided herein, this Agreement shall not be amended except by the written agreement of the Parties.

4.2 Term. This Agreement shall be in effect until the earlier of (a) the date that the Facilities are no longer in existence, (b) the date that Member delivers notice to Transmission Company that it is terminating this Agreement due to the fact that the Facilities are no longer required to transmit energy from its ESJ Wind Project to the East County Substation and (c) the date that any Shared Facilities and Common Ownership Agreement is executed in accordance with Section 2.1.

4.3 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by telecopy to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to such address as the Parties shall advise one another from time to time in writing.

4.4 Choice of Law. This Agreement shall in all respects be governed by and construed and enforced in accordance with the internal laws of the State of New York.

4.5 Entire Agreement. This Agreement sets forth the complete understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior discussions, agreements, and undertakings relating to the subject matter hereof.

4.6 Interpretation. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of articles and sections in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement. All references in this Agreement to articles, sections, subsections or paragraphs shall refer to articles, sections, subsections and paragraphs of this Agreement, unless specific reference is made to the articles, sections or other subdivisions of another document or instrument. The word “including” shall mean “including without limitation”. This Agreement shall not be interpreted in favor of either Party by virtue of said Party not having prepared this Agreement. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not affect or impair the continuing enforceability or validity of any other part, all of which shall survive and be valid and enforceable.

4.7 Waiver. No consent or waiver, express or implied by either Party hereto, to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of either Party hereto to complain of any act or failure to act of the other Party, or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of such Party of its rights hereunder.

4.8 No Third Party Beneficiaries. This Agreement and the terms and provisions hereof are solely and exclusively for the benefit of the Parties hereto. No third party may rely on any of the provisions herein contained or lay claim to any of the rights of the Parties hereto.

4.9 Counterparts; Facsimile / Electronic Signatures. This Agreement may be executed in counterparts each of which when so executed and delivered shall be deemed to be an original and all of which together shall constitute one instrument. Facsimile signatures and electronic signatures (in .pdf or similar format) shall be binding upon the Parties hereto with the same force and effect as original signatures.

4.10 Further Assurances. Upon the reasonable request of either Party at any time after the Effective Date, the other Party shall forthwith execute and deliver such further instruments of assignment, transfer, conveyance, endorsement, direction or authorization and other documents as the requesting Party or its or their counsel may reasonably request in order to effectuate the purposes of this Agreement. Each Party agrees to cooperate fully with the other Party in assisting it to comply with the terms of this Agreement, including, but not limited to, assistance in obtaining consents, waivers, authorizations, orders, and/or approvals of third parties. Notwithstanding the foregoing, no Party shall be required to make any substantial payment or incur any material economic burden pursuant to this Section

4.10, except for a payment otherwise required of it. Each Party agrees to cooperate with the reasonable requests of any Financing Entity in conjunction with the financing of the Facilities and the Project.


4.11 FERC Acceptance The Parties acknowledge and agree that (a) this Agreement will be publicly available through its filing with FERC for acceptance under Section 205 of the Federal Power Act; and (b) any subsequent amendments to this Agreement must be accepted by FERC, and the effectiveness of such amendments will be contingent on such FERC acceptance. Subject to the terms and conditions set forth herein, the Parties agree to execute and deliver all documents reasonably necessary for this Agreement to comply with FERC requirements. The Parties agree to seek appropriate waivers from FERC associated with any OATT, OASIS, Standards of Conduct, or other regulatory requirements that may otherwise apply to the Facilities and for which FERC customarily grants waivers.

4.12 OATT Filing. In the event that Transmission Company is required by FERC to provide the services of this Agreement pursuant to an open access transmission tariff (OATT), Transmission Company shall file an OATT that preserves, to the maximum extent possible, the terms of this Agreement and the priority of the Member to the available capacity of the Gen-Tie Line.


[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the A&R Effective Date.

**ENERGIA SIERRA JUAREZ U.S.
TRANSMISSION, LLC**
**By: Energia Sierra Juarez U.S., LLC, its Sole
Member**

DocuSigned by:

By: FGF424880211466...
Name: Tania Ortiz Mena Lopez Negrete
Title: President

ENERGIA SIERRA JUAREZ U.S., LLC

DocuSigned by:

By: D8F115278A3D4D8
Name: Emily C. Shults
Title: Chief Business Officer- Low Carbon Solutions
and Senior Vice President

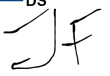
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EXHIBIT A
TO FACILITIES AGREEMENT

FORM OF SHARED FACILITIES AND COMMON OWNERSHIP AGREEMENT

SHARED FACILITIES AND COMMON OWNERSHIP AGREEMENT

Dated as of

[●]

among

**ENERGIA SIERRA JUAREZ U.S., LLC,
a Delaware limited liability company,**

EACH NEW OWNER FROM TIME TO TIME PARTY HERETO,

and

**ENERGIA SIERRA JUAREZ U.S. TRANSMISSION, LLC,
a Delaware limited liability company**

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SHARED FACILITIES AND COMMON OWNERSHIP AGREEMENT

This SHARED FACILITIES AND COMMON OWNERSHIP AGREEMENT (**Agreement**), dated as of [●], (the **Effective Date**), is entered into by and among (1) ENERGIA SIERRA JUAREZ U.S., LLC, a Delaware limited liability company (**ESJ US**), as a Member, (2) each New Member from time to time party hereto, and (3) ENERGIA SIERRA JUAREZ U.S. TRANSMISSION, LLC, a Delaware limited liability company, as owner and manager of the Shared Facilities (the **Transmission Company**).

ESJ US and each New Member are sometimes referred to individually as **Member** or collectively as **Members**, and the Members and the Transmission Company are sometimes referred to individually as a **Party** or collectively as **Parties**, which terms shall include their permitted successors, assignees or nominees, as the context requires.

WHEREAS:

- (A) Energía Sierra Juarez, S. de R.L. de C.V., an affiliate of ESJ US, (i) has constructed, owns and operates an approximately 155 MW wind power generating facility named “Energía Sierra Juarez 1” (**ESJ 1**), (ii) has constructed, owns and operates an approximately 108 MW wind power generating facility named “Energía Sierra Juarez 2” (**ESJ 2**), located in the Sierra de Juarez mountains in Baja California, Mexico and (iii) is developing, and currently expects to construct, own and operate, an approximately 319 MW wind power generating facility, (the **Expansion**) (collectively, the **ESJ Wind Project**).
- (B) The Transmission Company has constructed a generation tie line (the **Gen-Tie Line**) comprised of a set of three tubular steel poles and their foundations (**Support Structures**) to which a 230 kV circuit and related equipment, structures and facilities (including an optical protection ground wire (**OPGW**)) are attached (such Support Structures collectively, the **Gen-Tie Support Structure**), for use initially by the ESJ Wind Project over and across certain real property described in Exhibit A.
- (C) One or more New Members may from time to time develop, construct, own and operate Interconnecting Projects adjacent to or in the vicinity of the Gen-Tie Line and may desire to utilize the Gen-Tie Support Structures and related equipment, structures and facilities for the delivery of electricity subject to the conditions set forth herein.
- (D) The Parties desire to set forth herein (i) each Member's individual and common rights and obligations with respect to the Membership Interests and the shared Gen-Tie Support Structures and additions thereto, and (ii) the obligations of the Transmission Company to provide or cause to be provided maintenance services with respect to the shared Gen-Tie Support Structures and other Shared Facilities.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. DEFINITIONS

1.1 Certain Definitions

As used in this Agreement, the following capitalized terms shall have the meanings set forth below:

Affiliate means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person.

Agreement has the meaning set forth in the Preamble.

Attaching Member has the meaning set forth in Section 2.2(c)(ii).

Billing Month has the meaning set forth in Section 4.4(a).

Business Day means a day other than Saturday, Sunday or a day on which banks are authorized to be closed for business in the State of California or in Mexico.

CAISO means the California Independent System Operator Corporation, or any successor thereof.

Code means the Internal Revenue Code of 1986, as amended.

Control, Controlled by, and under common Control with, with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or member or partnership interests, by contract or otherwise.

Construction Contract means the Engineering, Procurement and Construction Agreement, dated on or about March 24, 2014, by and between Transmission Company and ANEMO Energy, S. de R.L. de C.V., and any other contract entered into from time to time by Transmission Company and/or its Affiliates for the engineering, procurement and construction of the Shared Facilities, in each case, as amended from time to time.

Default Rate per annum equal to the lesser of (i) a varying rate per annum equal to the sum of (A) the prime rate as published in *The Wall Street Journal*, with adjustments in that varying rate to be made on the same date as any change in that rate is so published, plus (B) two percent (2%) per annum, and (ii) the maximum rate permitted by applicable Law.

Effective Date has the meaning set forth in the Preamble.

East County Substation means the "East County Substation" owned by SDG&E.

Emergency means any unplanned event or circumstance that results in the failure or threat of failure of the Shared Facilities, which failure would prevent or may prevent the ability of any Member to fully utilize its Separate Facilities.

ESJ US has the meaning set forth in the Preamble.

ESJ 1 has the meaning set forth in the Recitals.

ESJ 2 has the meaning set forth in the Recitals.

ESJ Wind Project has the meaning set forth in the Recitals.

Event of Default has the meaning set forth in Section 8.1.

Expansion has the meaning set forth in the Recitals.

FERC means the Federal Energy Regulatory Commission.

Financing Documents means those documents governing a Member's relationship with a Secured Party.

Force Majeure means acts of God or any other casualty or occurrence, condition, event or circumstance of any kind or nature not reasonably within the excused Party's control and which could not have been avoided by reasonable measures, including strikes, slowdowns or labor difficulties (other than any such action by or in relation to any person providing services under a Service Contract), fires, flood, earthquakes, explosions or other hazards, acts of public enemies, riots, civil commotions, or insurrection. Force Majeure expressly does not include any delay in performing or failure of performance of any contractual provision by a Party (except to the extent caused by a Force Majeure event); or economic hardship.

Gen-Tie Line has the meaning set forth in the Recitals.

Gen-Tie Support Structure has the meaning set forth in the Recitals.

Governmental Authority means the government of any federal, state, municipal, or other political subdivision in which the Shared Facilities are located, and any other government or political subdivision thereof exercising jurisdiction over (a) the Shared Facilities Land Rights or Shared Facilities, or (b) with respect to their rights and obligations hereunder, any Party; in each case including all agencies and instrumentalities of such governments and political subdivisions.

Hazardous Materials means any chemical, substance, emission or material now or hereafter deemed by any Governmental Authority to be a "regulated substance," "hazardous material," "hazardous waste," "hazardous constituent," "hazardous substance," "toxic substance," "radioactive substance," "pesticide" or any similar classification, including by reason of deleterious properties, ignitability, corrosivity, reactivity, carcinogenicity or reproductive toxicity.

Indebtedness means, without duplication, (a) indebtedness created, issued or incurred by the Transmission Company for borrowed money (whether by loan or the issuance and sale of debt securities or the sale of property of the Transmission Company to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such property of the Transmission Company), (b) obligations of the Transmission Company to pay the deferred purchase or acquisition price for any property of the Transmission Company after six (6) months from the date of acquisition, except for trade receivables payable arising in the ordinary course of business, (c) any indebtedness of others secured by a lien or other encumbrance on any property of the Transmission Company, whether or not the respective indebtedness so secured has been assumed by the Transmission Company (except for Permitted Liens), (d) obligations of the Transmission Company in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of the Transmission Company, (e) obligations of the Transmission Company in respect of surety bonds or similar instruments, (f) the obligations of the Transmission Company to pay rent or other amounts under a lease of (or other agreement conveying the right to use) any property of the Transmission Company to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of the Transmission Company under generally accepted accounting principles applied on a consistent basis (including Statement of Financial Accounting Standards No. 13 of the Financial Accounting Standards Board), (g) indebtedness of others in any manner guaranteed by the Transmission Company or for which the Transmission Company is or may become contingently liable or any other guarantee, (h) accrued obligations in respect of interest rate hedges, (i) all obligations of the Transmission Company to pay a specified purchase price for goods or services whether or not delivered or accepted, i.e., take-or-pay and similar obligations and (j) all unconditional obligations of the Transmission Company to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of the

Transmission Company or any warrants, rights or options to acquire such capital stock or other equity interests.

Indemnitees shall have meaning set forth in Section 11.1.

Interconnecting Project means any facility for the generation of electric power that interconnects to the East County Substation by means of the Shared Facilities.

Investment means, for the Transmission Company: (a) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership, membership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding thirty (30) days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; and (c) the entering into of any guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

Land Rights Documents means, collectively, the Shared Facilities Land Rights Documents and the Separate Facilities Land Rights Documents.

Laws has the meaning set forth in Section 5.1(c).

Liabilities means suits, actions, liabilities, investigations, legal proceedings, claims, demands, losses, costs and expenses of whatsoever kind or character (including attorneys' fees and expenses).

Member and **Members** has the meaning set forth in the Preamble.

Membership Interest means the membership interest of a Member in the Transmission Company.

Net Lost Profits means gross revenues and production tax credits lost due to a relevant disconnection or curtailment less the amount of the related operations, administration and maintenance costs and expenses, and other costs and expenses avoided due to such disconnection or curtailment.

New Member means a legal entity (other than ESJ US) that is an Affiliate of Infraestructura Energética Nova, S.A.P.I. de C.V., or Semptra Infrastructure Partners, LP, in each case which becomes an equity holder of an Interconnecting Project and an equity holder of Transmission Company pursuant to Section 5.3.

New Member Contribution means, as to any New Member, such amounts in immediately available U.S. dollars as would be necessary so that immediately following all such contribution(s) each Member (including the New Member) has contributed to the Transmission Company or paid as New Member Purchase Prices, in the aggregate, a portion of the Project Costs equal to its Share.

New Member Purchase Price means, as to each transferring Member, such amount in immediately available U.S. dollars, pro rata to its Share immediately prior to the transfer of any Membership Interests to New Member, as would be necessary so that immediately following all such transfers each Member

(including the New Member) has paid or contributed as a New Member Contribution in the aggregate a portion of the Project Costs equal to its Share.

Non-Pledging Member has the meaning set forth in Section 7.5(b).

Party has the meaning set forth in the Preamble.

Permitted Indebtedness means (i) trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of the Transmission Company's business so long as such trade accounts payable are payable within thirty (30) days of the date the respective goods are delivered or the respective services are rendered and are not more than sixty (60) days past due, (ii) purchase money or lease obligations to the extent incurred in the ordinary course of business to finance items of equipment not comprising an integral part of the Shared Facilities, provided that the aggregate principal amount and the capitalized portion of such obligations do not at any time exceed US\$50,000 (or the equivalent thereof in other currencies) and (iii) any guarantee or any other credit support instrument that the Transmission Company is required to issue, cause to be issued, maintain or obtain in support of its obligations under any agreement to construct, procure or develop the Shared Facilities.

Permitted Liens means, with respect to the Transmission Company, liens and other encumbrances (i) for inchoate mechanics' and materialmen's liens for construction in progress and workmen's, repairmen's, warehousemen's and carriers' liens arising in the ordinary course of business, (ii) for taxes not yet payable or being contested in good faith by appropriate proceedings provided that applicable law permits the non-payment of such taxes during such contest and such potential tax liabilities are fully covered by adequate reserve in accordance with GAAP, (iii) incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance, social security and other employment-related governmental rules and that do not (and could not reasonably be expected to) in the aggregate materially impair the financial condition of the Transmission Company or the use or disposition of the Shared Facilities, the Shared Facilities Land Rights, the Separate Facilities or the Membership Interests of any Member, (iv) arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and the payment of which (A) is fully covered by adequate reserves in accordance with GAAP, bonds or other security acceptable to the Transmission Company or (B) is fully covered by insurance, and (v) deposits or pledges to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, in each case in the ordinary course of its business.

Person means any person, entity and/or agency.

Pledging Member has the meaning set forth in Section 7.5(b).

Project Costs means all costs and expenditures of the Transmission Company or its shareholders incurred to acquire, construct, procure and develop the Shared Facilities (including all underlying real estate rights).

Prudent Industry Practice means those practices, methods, equipment, specifications, and standards of manufacture, care, skill, safety, performance, dependability, efficiency, economy and diligence, as the same may change from time to time, as are commonly used and generally recognized in respect of the design, development, construction, maintenance, financing and operation of energy transmission facilities of comparable type and complexity and having geographical attributes similar to the transmission assets at issue, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered prudent practice and would be intended to accomplish the result intended at a reasonable cost and consistent with applicable Laws, reliability, safety and expedition. "Prudent Industry

Practice” does not necessarily mean the best practice, method, or standard of care, skill, safety and diligence in all cases, but is instead intended to encompass a range of acceptable practices, methods, and standards.

SDG&E means San Diego Gas & Electric Company, a California corporation, or any successor thereof.

Secured Party means, with respect to any Member, the agent or lead bank, lending institution(s) or other financial institution(s) under a loan agreement, hedge agreement or other financing instrument with such Member secured by any of the Shared Facilities, the Separate Facilities, or all or a portion of such Member's Membership Interest; *provided, however*, that any such agent, lead bank, lending institution or other financial institution shall not be deemed a "Secured Party" entitled to the rights accruing to a Secured Party hereunder until such party gives written notice to every other Member and the Transmission Company along with an address for receipt of notices.

Sempre Infrastructure Partners, LP, means a Delaware limited partnership.

Separate Facilities means each Member's respective facilities and equipment (other than the Shared Facilities) which are required to transmit energy from its Interconnecting Project and interconnect such Interconnecting Project to the East County Substation that are installed, maintained, and operated by such Member in accordance with the terms of Section 2.2(c) below.

Separate Facilities Land Rights Documents means, collectively, those instruments granting a Member the right to construct, install, operate and maintain its Separate Facilities thereon.

Service Contracts means, collectively, means, collectively, (i) Operations and Maintenance Agreement dated as June 9, 2014, between, inter alia, Transmission Company and Operator (ii) that certain Project Administration Agreement dated as of June 9, 2014, between, inter alia, the Transmission Company and the Servicios ESJ, S. de R.L. de C.V., (iii) that certain Construction Management Agreement dated as of June 9, 2014, between, inter alia, the Transmission Company and the Servicios ESJ, S. de R.L. de C.V., and (iv) any other operations and maintenance agreement, project administration agreement and/or construction management agreement entered into from time to time by the Transmission Company and/or ESJ MX and/or its Affiliates in relation to the Facilities; in each case, as amended from time to time.

Share means, with respect to each Member, the proportion that the nameplate capacity of the Interconnecting Project of such Member bears to the nameplate capacity of the Interconnecting Projects of all Members, expressed as a percentage.

Shared Facilities has the meaning set forth in Section 2.1.

Shared Facilities Land Rights means the real property upon, over or under which the Shared Facilities are located.

Shared Facilities Land Rights Documents means, collectively, those instruments granting the Transmission Company the right to construct, install, operate and maintain the Shared Facilities thereon.

Support Structures means tubular steel poles and their foundations.

Surrendering Member has the meaning set forth in Section 7.7.

Term means the term of this Agreement, which commences on the Effective Date and continues in effect until the earlier of the date on which a single Member remains party thereto or this Agreement is terminated by mutual agreement of all of the Members, in the case of the latter with the consent of the then-existing Secured Parties thereto.

Transferring Party has the meaning set forth in Section 7.1.

Transmission Company has the meaning set forth in the Preamble.

1.2 Other Definitions

Other capitalized terms defined elsewhere in this Agreement shall have the meanings ascribed to them herein.

1.3 Construction

In construing this Agreement:

- (a) The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires.
- (b) The terms "include," "includes" and "including," as used herein, are without limitation.
- (c) This Agreement shall be construed equally as between and against the Parties hereto, and shall not be construed against one Party because it drafted this Agreement.
- (d) Captions, headings and titles used herein are for convenience of reference only and do not affect the meaning or intent hereof.

2. MEMBERSHIP AND USE OF SHARED FACILITIES

2.1 Shared Facilities

As used in this Agreement, the term **Shared Facilities** shall mean those Gen-Tie Support Structures and the fixtures, equipment and facilities associated therewith, which are owned by the Transmission Company and the Shared Facilities Land Rights; *provided, however*, the Shared Facilities shall not include the Separate Facilities.

2.2 Membership and Use of Shared Facilities

Subject to the terms and conditions of this Agreement, the ownership and use of the Shared Facilities shall be as follows:

(a) Membership

The Shared Facilities are owned by the Transmission Company, of which each Member is and shall remain a member according to its Membership Interest, subject to the provisions of Sections 5.3 and 7. Each Member's Share shall be reallocated from time to time to the extent necessary to reflect (i) the closing of a conveyance of the equity of Transmission Company to a New Member, (ii) the termination of a Member's Share under this Agreement, and (iii) the addition of a New Member.

(b) **Statement of Intent**

The ownership of the Shared Facilities is not organized with the intention or expectation of producing revenue or making a profit from the use of the Shared Facilities but merely as an ownership form through which the Members can accomplish their purpose of owning and making the Shared Facilities available for the use of the Members in connection with their respective, separate Interconnecting Projects. At no time shall the Shared Facilities be used by any person other than a Member, except as otherwise may be required by Law and except with respect to the Transmission Company as provided in this Agreement. Subject to the rights of each Member under Section 7, in the event of the possible sale or other disposition of its Membership Interest in the Transmission Company, or in the event all or a portion of the Shared Facilities is or are removed from service, the Members do not expect to receive any material amount of revenue from the Shared Facilities.

(c) **Use of Shared Facilities Land Rights, Shared Facilities and Separate Facilities**

Except to the extent otherwise agreed in writing by the Members, each Member shall use the Shared Facilities Land Rights and Shared Facilities solely for the purpose of (x) interconnecting its Interconnecting Project to the East County Substation and delivering energy thereto through the use of the Shared Facilities and (y) enabling such Member and its managers, employees, contractors, agents and representatives to install, maintain and operate its Separate Facilities at the sole cost and expense of the Member of such Separate Facilities.

- (i) In installing, operating, using and maintaining such Separate Facilities and otherwise in using the Shared Facilities, each Member shall (A) generally cooperate in good faith to accommodate the other Members' uses of the Shared Facilities in connection with each other's Interconnecting Projects as contemplated by this Agreement, (B) cooperate with the other Member(s) in terms of making all reasonable efforts to coordinate the scheduling of installation, maintenance and other activities related to its Separate Facilities at mutually agreeable times (including (1) providing at least thirty (30) days' prior written notice to the other Member(s) of commencement of any planned maintenance or repair activities related to its Separate Facilities together with a reasonably detailed description thereof, and (2) for unplanned maintenance or repair activities related to its Separate Facilities, providing notice to the other Member(s) promptly upon discovery of the need for such activities), (C) comply with any written safety and operating requirements of the Transmission Company when accessing and performing work that may impact the Shared Facilities, and (D) otherwise conduct such activities so as not to unreasonably interfere with each other Member's use of the Shared Facilities or such other Member's Separate Facilities or Interconnecting Projects.
- (ii) Any Member desiring to attach, install or replace Separate Facilities onto any Shared Facilities (the **Attaching Member**) shall provide to the other Members and the Transmission Company for their review, no later than ninety (90) days prior to such attachment, installation or replacement, (A) a detailed preliminary design for such attachment, installation or replacement, (B) a detailed execution plan for such attachment, installation or replacement, (C) a good faith schedule for the commencement and completion of such attachment, installation or replacement work and (D) a true, correct and complete copy of a large generator interconnection agreement (LGIA) as to which CAISO and SDG&E are parties, duly executed and in full force and effect, in respect of such attachment, installation or replacement, all in accordance with applicable law or as

required by CAISO. No Attaching Member shall perform such attachment, installation or replacement work without first obtaining each other Member's prior consent to such work, which consent shall not be unreasonably withheld, conditioned or delayed. The Attaching Member shall use its best efforts to minimize any outages of the Shared Facilities or another Member's Separate Facilities required in connection with such attachment, installation or replacement work, and to the extent any such outages are required, such outages shall take place during hours that minimize the economic impact to such other Member. Promptly following completion of such attachment, installation or replacement work, the Attaching Member shall provide as-built drawings to the other Members and the Transmission Company accurately depicting such completed work.

- (iii) No Member will use or permit the use of the Shared Facilities, the Shared Facilities Land Rights or such Member's Interconnecting Project in any manner that would create waste or nuisance, or that would jeopardize the issuance or maintenance of any insurance policy relating to the Shared Facilities, the Shared Facilities Land Rights or another Member's Interconnecting Project or Separate Facilities, or violate any applicable Law as to the Shared Facilities, the Shared Facilities Land Rights or another Member's Interconnecting Project or Separate Facilities.
- (iv) Each Member agrees to indemnify and hold harmless each other Member and such other Member's Indemnitees from and against all Liabilities incurred or suffered by such other Member or such other Member's Indemnitees as a result of such Member's installation, maintenance or repair activities related to such Member's Separate Facilities or use of the Shared Facilities. If any Member's acts or omissions result in the other Member(s) experiencing revenue losses as a result of any forced outage, scheduled outage or other interruption or reduction of deliveries of electrical power from such other Member's Interconnecting Project, such Member shall promptly reimburse the harmed Member(s) for all reasonable, documented Net Lost Profits accruing during the period of such disruption arising from such acts or omissions, it being hereby agreed that payment of the Net Lost Profits shall be the harmed Member's sole and exclusive remedy with respect to loss of revenue and other consequential damages due to the period of disruption. The Parties agree that the actual consequential damages arising due to such period of disruption would be difficult to compute and that the methodology for determining such damages set forth above is a good faith and reasonable estimate of the calculations utilized to determine the actual consequential damages that would be suffered.
- (v) The transmission line that forms part of the Shared Facilities has been designed to be a double circuit transmission line that would afford each Interconnecting Project certain redundancy benefits. However, if each Member shall agree in writing, such transmission line may be utilized as two separate single circuit transmission lines, and this Agreement shall be amended as required to reflect such use. If any Member so requests, all Members shall confer as to such matter and any Member may request that the Transmission Company commission a study from an engineering firm of national repute as to the benefits that may be afforded, and any potential detriments, to each Member if such Shared Facilities were utilized as two single circuit transmission lines, and the costs therefor shall be borne by the requesting Member.

(d) **Permits; Real Property Rights**

Each Member shall be solely responsible for obtaining and maintaining all third-party and governmental permits, licenses, and real property rights necessary to permit such Member's construction, installation, operation and maintenance of its Separate Facilities and its access to and use of the Shared Facilities. Upon the request from time to time of the Transmission Company or another Member, each Member shall furnish copies of all such permits, licenses and evidence of such rights to such requesting party.

3. MAINTENANCE OF SHARED FACILITIES

3.1 Maintenance of Shared Facilities

During the term of this Agreement, the Transmission Company shall be responsible for maintaining (or providing for the maintenance of) the Shared Facilities in accordance with Section 4.1 of this Agreement, which maintenance shall include repair and replacement of Support Structures comprising the Shared Facilities and maintenance of access ways. Such services, and all other obligations of Transmission Company under this Agreement, may be performed on behalf of the Transmission Company by one or more persons or contractors. Each Member has reviewed the terms of each of the Service Contracts and is in agreement with the terms thereof.

3.2 Warranty Claims

The Transmission Company shall exercise its rights under the contractor and vendor warranties with respect to the Shared Facilities, including under the Construction Contract. The Transmission Company shall (a) monitor and upon request therefor report to the Members concerning the remaining terms of any warranties on Shared Facilities, (b) perform such inspections as are reasonable to ensure that any final warranty work is not required prior to the expiration of any such warranty, and (c) prepare and prosecute warranty claims if reasonably necessary to enforce any such warranties. The Transmission Company shall be primarily responsible for administering the prosecution of the warranty claims requirements under this Section 3.2, and each of the Members shall cooperate with the other with respect to such warranty claims to the extent necessary. All expenses incurred by the Transmission Company in pursuing such warranty claims shall be allocated to the Members subject to reimbursement by each Member in accordance with its Share.

3.3 Removal of Shared Facilities

No Member shall remove, replace or materially alter any material portion of the Shared Facilities without the prior written consent of the other Members.

3.4 Access to the Shared Facilities

Each Member and any Secured Party of such Member (including their respective agents, representatives, advisors, consultants and contractors) shall have access to the Shared Facilities for (a) maintenance of such Member's Separate Facilities, (b) maintenance of such Shared Facilities not performed by the Transmission Company in the time permitted pursuant to this Agreement, (c) maintenance or repair of the Shared Facilities in the event of an Emergency and the failure or unavailability of the Transmission Company or its representatives to respond timely to such Emergency, and (d) maintenance or repair of another Member's Separate Facilities in the event of an Emergency and the failure or unavailability of such other Member or its representatives to respond timely to such Emergency, *provided* that any Member

or its Secured Party engaging in any such inspection, maintenance or repair shall comply with the Land Rights Documents and, except to the extent arising from an Emergency, indemnify, defend and hold harmless the other Members from all third-party claims resulting directly from such inspection, maintenance or repair. Notwithstanding the preceding sentence, except in the event of an Emergency, each Member or its Secured Party shall give the Transmission Company prior written notice of its intent to enter upon the Shared Facilities Land Rights, and such Member or its Secured Party shall follow all written safety and security procedures adopted by the Transmission Company and the applicable grantor with respect to the Shared Facilities Land Rights and the Shared Facilities.

3.5 Limitations on Activities Not Expressly Permitted under this Agreement

Except as required by applicable Laws or expressly permitted under this Agreement, without the prior written consent of the Members, which shall not be unreasonably withheld, conditioned or delayed, neither any of the Members nor the Transmission Company may (a) use, maintain, construct, install, alter, improve or remove any of the Shared Facilities in any manner, (b) conduct or perform any activity or operation on the Shared Facilities Land Rights that is not directly related to a Member's use, operation, maintenance, alteration, improvement or removal of its Interconnecting Project, (c) grant to any third party any lease or license or permit to use the Shared Facilities, or (d) grant to any third party any easement, right-of-way, servitude or other interest or estate in the Shared Facilities Land Rights or any lien, encumbrance, covenant or restriction on the Shared Facilities Land Rights other than as provided in Section 7.

4. SHARED FACILITIES MANAGEMENT

4.1 Authority of Transmission Company

Subject to Section 4.2, the Transmission Company shall, and shall be authorized to do the following on behalf of each of the Members:

- (a) maintain (or provide and contract with a third party for the maintenance of) the Shared Facilities in accordance with Prudent Industry Practice, applicable Laws, and this Agreement. In connection with such maintenance, the Transmission Company is authorized, in accordance with the following provisions, to direct the Members to interrupt or reduce deliveries of electrical power when necessary only if the Transmission Company determines, in its reasonable discretion, that interruption or reduction is necessary due to an Emergency. With respect to any such interruption or reduction of deliveries of electrical power, and without the consent of the Members to do otherwise, the Transmission Company shall limit the length of any such interruption or curtailment to that time strictly necessary to correct the problem. Curtailment shall be borne by the Members in accordance with their Shares. Each Member shall promptly effect such curtailment of delivery as the Transmission Company shall direct pursuant to this Section 4.1(a) upon notice from the Transmission Company, which notice shall be reasonable under the circumstances;
- (b) repair any Member's Separate Facilities if the failure to make such repair is causing an Emergency. In connection with such repair, the Transmission Company shall have the rights to interrupt or reduce deliveries of electrical power in the same manner as provided in Section 4.1(a) above;
- (c) after the end of the use of the Shared Facilities by all Members, remove and dispose of the Shared Facilities and restore the site on which the Shared Facilities are located, in accordance with the

Land Rights Documents and applicable Laws (or provide and contract with a third party for such removal and restoration);

- (d) maintain books and records related to the Shared Facilities in accordance with generally accepted accounting principles and all requirements applicable to the Transmission Company or to the Shared Facilities, if any, of the Federal Energy Regulatory Commission and make such books and records available to any Member upon the request of such Member during the Transmission Company's regular business hours;
- (e) procure policies of insurance pursuant to Section 6.1;
- (f) take all actions as are required to maintain the Shared Facilities Land Rights to the extent within the Transmission Company's rights and reasonable ability to do so;
- (g) perform, in accordance with Prudent Industry Practice, such other duties as may be agreed upon by the Members;
- (h) execute such contracts and other documents as are necessary or appropriate to carry out the duties enumerated in this Agreement; and
- (i) upon the request of any Member, promptly provide to such Member a statement, in such detail as may be reasonably requested by such Member, of the amounts payable or reimbursable by such Member pursuant to Section 4.3.

The Members shall not participate or interfere in any way in the management of the Shared Facilities or the Shared Facilities Land Rights by the Transmission Company except as expressly otherwise provided in this Agreement.

4.2 Limitation on Authority

The Transmission Company shall *not*, without the approval of all of the Members:

- (a) create or cause to be created any lien on any of the Shared Facilities except for Permitted Liens in connection with the Transmission Company's services hereunder;
- (b) perform or omit to perform any act, which performance or omission would cause any person to reasonably believe that the Transmission Company is a partner of the other Members or authorized to bind such Members, except as expressly provided herein;
- (c) except in the case of an Emergency, remove, replace or materially alter any substantial portion of the Shared Facilities or any Support Structure comprising the Shared Facilities;
- (d) except in the case of an Emergency, make any repairs or perform any maintenance on any Member's Separate Facilities; or
- (e) sell, assign, mortgage, convey or otherwise dispose of all or any material portion of the Shared Facilities (other than due to obsolescence or upon winding up hereunder).

4.3 Shared Expenses

Each Member shall pay the Transmission Company such Member's Share of all costs, expenses and liabilities relating to the carrying out of the duties and obligations of the Transmission Company pursuant to this Agreement (including, without limitation, (i) the salaries, wages and related indirect and overhead costs properly allocable to the Shared Facilities for the Transmission Company's personnel who perform the duties and obligations of the Transmission Company pursuant to this Agreement, if any, (ii) any amount paid or payable by the Transmission Company under any Service Contract, or under any replacement therefor or any other agreement related to the performance of the duties and obligations of the Transmission Company pursuant to this Agreement and (iii) all indirect and direct out-of-pocket expenses incurred by the Transmission Company (including the payment of taxes relating to the Shared Facilities or the Transmission Company), either pursuant to a direct invoice delivered by the Transmission Company in accordance with Section 4.4 or as a reimbursement of such expenses and liabilities advanced by the Transmission Company and invoiced in accordance with the terms of Section 4.4 (collectively, the **Shared Expenses**). The Members understand and agree that the obligations to pay the Shared Expenses under this Agreement constitute the sole source of funds of the Transmission Company and are required to ensure their continued mutual interest of owning and making the Shared Facilities available for the use of the Members in connection with their respective, separate Interconnecting Projects, and covenant to each other Member that it will timely and fully make each such payment to the Transmission Company when and in the amount due. Notwithstanding the foregoing, any costs, claims, loss or other liability arising from the actions or inactions of a Member in violation or breach of the covenants in this Agreement shall be the sole responsibility of such Member.

4.4 Invoicing; Late Payments

The invoicing and payment of any reimbursement pursuant to Section 4.3 shall be as follows:

- (a) No later than the twentieth (20th) day of each calendar month of the Term (**Billing Month**), the Transmission Company shall send a reasonably detailed invoice to each Member setting forth its Share of the applicable Shared Expenses incurred under Section 4.3 for the immediately preceding calendar month (pro-rated for partial months). Payment of the undisputed portion of the invoice will be due and payable within fifteen (15) days from receipt of such invoice, or the first Business Day following such day if such day is not a Business Day. Any undisputed payment that is delinquent shall bear interest at the Default Rate. The payment of interest unaccompanied by payment of the delinquent payment shall not excuse or cure any default or delay in such undisputed payment. In the event interest accrues on any undisputed payment that is delinquent, the Transmission Company shall reflect such amount in each subsequent invoice.
- (b) If a Member disputes the correctness of any invoice, it shall (i) nevertheless pay the undisputed portion of the net amount of such invoice (but shall not be required to pay the disputed amount) and (ii) concurrently with payment of the undisputed portion, notify the Transmission Company of the disputed amount with a reasonably detailed explanation of the dispute. Any disputed amount ultimately determined to be due (and any overpayment) shall bear interest at the Default Rate from the date such amount was required to have been made until paid (or from the date of payment until the date of refund in the case of overpayments).

4.5 Audit; Inspection

- (a) **Audit**

The Transmission Company shall make available during regular business hours, for inspection and audit by each of the Members, all books and records of the Transmission Company evidencing the amounts contained in each statement provided to such Member pursuant to Section 4.4(a). The books and records relevant to each statement shall be retained by the Transmission Company for no less than two (2) calendar years after the delivery date of the applicable statement, but not less than the period provided for by the FERC regulations applicable to the Transmission Company or with respect to the Shared Facilities regarding maintenance of books and records, if any, and such books and records shall be made available by the Transmission Company for inspection and audit by each of the Members during the Transmission Company's regular business hours at the Transmission Company's office. The costs and expenses of any inspection or audit requested by a Member shall be borne by the Member requesting such inspection or audit. Each Member shall have the right to conduct such audits with respect to any statement for up to two (2) years following receipt of such statement.

(b) Inspection

The Transmission Company also shall permit any Member to inspect the Shared Facilities during regular business hours, provided that such Member arranges such inspection with the Transmission Company and complies with the safety requirements reasonably imposed by the Transmission Company.

4.6 Indemnification; Prosecution of Claims

(a) Indemnification of Transmission Company

To the fullest extent permitted by Law, each Party (other than the Transmission Company) shall jointly and severally, defend, indemnify and hold harmless the Transmission Company and all of its officers, directors, employees, agents, partners, shareholders and representatives, from and against any and all Liabilities arising out of (i) the acts (or failures to act) of any such Party or its officers, directors, employees, agents, members and representatives, hereunder or (ii) the acts of the Transmission Company pursuant to its authority under this Agreement. The Transmission Company, its owners, officers, directors and employees shall not be liable to such other Parties or any third party for any obligation, liability, or commitment incurred by or on behalf of the Parties in accordance with the provisions of this Agreement. Notwithstanding this Section 4.6(a), the Transmission Company, its officers, directors and employees shall not be entitled to indemnification hereunder (A) to the extent any Liabilities results from breach of this Agreement or from the Transmission Company's gross negligence, bad faith, recklessness or willful misconduct, or (B) to the extent such indemnification relates to Separate Facilities, by the Parties not owning any share of such Separate Facilities. If any Member pays amounts in excess of its Share, it shall be entitled to contribution from each other Member in accordance with such Member's Share.

(b) Prosecution by Transmission Company; Limitation of Liability

Transmission Company shall prosecute warranty claims under the Construction Contract in accordance with the provisions of Section 3.2. In addition, Transmission Company shall prosecute indemnities and other payments to which it may be entitled under the Construction Contract or the Service Agreements or any other contractual arrangement. Transmission Company shall apportion recoveries from such prosecution of remedies *first* to repair or replace the Shared Facilities as may be required by Prudent Industry Practice and *second* to the Members in accordance with their pro rata share of losses related to the event or breach to which such recovery is related. The Members acknowledge and agree that Transmission Company receives no income or profit from the Members' use of the Shared Facilities to transmit energy to the East County Substation and that the continued existence and viability of Transmission Company is in the interests of all and each Member. As such, Transmission Company shall

in no event be liable to any Member beyond the obligation to apportion recoveries to the Members in accordance with this Section 4.6(b). Each Party (other than the Transmission Company) waives and covenants not to bring any claims against Transmission Company, even if gross negligence, bad faith, recklessness, or willful misconduct is alleged.

5. COVENANTS

5.1 Covenants of Parties

(a) Land Rights Documents

Each Member shall perform its respective obligations in compliance with the terms and conditions of the Land Right Documents. In addition, no Member shall cause a breach under the Separate Facilities Land Rights Documents of any other Member. No Member shall enter into, modify or amend, or consent to the entering into, modification or amendment, of any Separate Facilities Land Right Documents in any manner that would currently or prospectively, interfere with the construction, installation, maintenance, or operation of the Shared Facilities or another Member's Separate Facilities without the prior written approval of all of the Members.

(b) Taxes

The Transmission Company shall pay, when due, all real and personal property taxes and assessments, general or special, levied against or in connection with the Transmission Company, the Shared Facilities and/or operations pursuant to this Agreement, subject to its right to contest by appropriate legal proceedings the validity or applicability of any such taxes and assessments. The Members shall reimburse the Transmission Company for the same, as a Shared Expense.

(c) Compliance with Law

Each Member shall, at its sole cost and expense, promptly comply in all material respects with all applicable laws, statutes, ordinances, rules, regulations, decrees, orders, permits, requirements, judgments, decisions and injunctions issued by any governmental authority, including laws relating to health, safety and the environment (collectively, **Laws**) and with all covenants, conditions and restrictions in effect during the term of this Agreement or any part thereof regulating the use of the Shared Facilities, its Separate Facilities and/or the Land Rights Documents.

(d) Conduct of Activities

Each Member shall (i) conduct its operations and activities with respect to its Separate Facilities and the Land Rights Documents in accordance with Prudent Industry Practices, and (ii) keep its Separate Facilities in good condition and repair, in good and efficient working order and in a safe condition. No Member shall conduct its operations or activities, or use or permit the use of the lands burdened by the Shared Facility Lands Rights, or any part thereof, in any manner that will damage such lands, or any part thereof.

(e) Cooperation

Subject to other terms of this Agreement, each Member shall reasonably cooperate with the other Member(s) and the Transmission Company in all other matters necessary for the Members to realize their full use of the Shared Facilities and Shared Facilities Land Rights.

(f) Financing Cooperation

Upon reasonable request of a Member, each other Party will reasonably cooperate in the financing or refinancing of such requesting Member's Interconnecting Project, including the execution of estoppels, consents for the benefit of the Secured Parties and other similar commercially reasonable agreements as may be reasonably requested by the requesting Member and its Secured Parties (provided that such Party shall not be obligated to execute any estoppels or consents that materially increase such Party's obligations or materially diminish such Party's rights thereunder), in the making of any filings required by such requesting Member for regulatory compliance or requirement of any Governmental Authority, and in the operation and maintenance of such requesting Member's Interconnecting Project, all solely at the expense of the requesting Member. The Transmission Company agrees to cooperate with each Member in the negotiation and, upon the Transmission Company's approval, execution of any reasonable amendment or addition to this Agreement required by any Secured Party, which does not result in a material adverse change in the Transmission Company's rights or obligations hereunder, provided, that all of the Transmission Company's reasonable costs in connection therewith shall be reimbursable costs hereunder (including the reasonable fees and disbursements of the Transmission Company's attorneys) payable by the requesting Member.

(g) Voting

Unless agreed otherwise by all Members, each Member shall at all times vote its Membership Interests in such manner so as to give effect to the provisions of this Agreement.

(h) Transmission Company Covenants

The Transmission Company shall not:

- (i) directly or indirectly create, incur, assume, suffer to exist or otherwise be or become liable with respect to any Indebtedness except Permitted Indebtedness;
- (ii) create or cause to be created or suffer to exist any lien on or encumbrance over or with respect to any of the Shared Facilities or Shared Facilities Land Rights except for Permitted Liens;
- (iii) engage in any business other than the development, construction, testing, management, maintenance and operation of the Shared Facilities as contemplated by this Agreement;
- (iv) become a general or limited partner in any partnership, a joint venturer in any joint venture or a member or shareholder in any limited liability company or any other Person, or otherwise form or acquire any subsidiaries;
- (v) merge into or consolidate with any other Person, liquidate or dissolve itself (or suffer any liquidation or dissolution);
- (vi) except as otherwise expressly permitted or contemplated by this Agreement, directly or indirectly enter into any new transaction or new series of transactions with or for the benefit of an Affiliate without the prior written consent of all the Members;
- (vii) make any Investments; or
- (viii) purchase or acquire any assets other than assets in the ordinary course of business reasonably required in connection with the operation of the Shared Facilities.

5.2 Member's Responsibilities to Transmission Company

The Members shall do all of the following:

- (a) provide the Transmission Company with all material information, including, but not limited to permits, agreements, data, notices and documents for the Shared Facilities that is reasonably required for the Transmission Company to perform its obligations under this Agreement;
- (b) examine all material documents submitted by the Transmission Company and render any necessary decisions pertaining thereto promptly;
- (c) promptly make material decisions required under this Agreement or any other agreement that the Transmission Company may be requested to administer hereunder and respond to all reasonable requests from the Transmission Company for approval hereunder;
- (d) promptly execute and deliver such evidence of the Transmission Company's authority hereunder as may be reasonably required by third parties; and
- (e) except where the same are being disputed in good faith, promptly make all payments and incur all expenditures required in connection with the Shared Facilities in accordance with this Agreement.

5.3 Admission of New Members

Except as set forth in, and subject to Section 7, the admission of any New Member under this Agreement shall require that the sum of the nameplate capacity of the Interconnecting Project of New Member and the nameplate capacity of the Interconnecting Projects of all Members not exceed 1,200 MW if the Shared Facilities are to be utilized as a double circuit or 2,400 MW if the Shared Facilities are to be utilized as two single circuits. In addition, such admission shall require either (i) (A) the transfer by each Member, pro rata to its respective Share, of Membership Interests to New Member and (B) payment by New Member to each such Member of the New Member Purchase Price payable thereto such that each Member has paid or contributed as a New Member Contribution in the aggregate a portion of the Project Costs equal to its Share or (ii) the issuance of Membership Interests from Transmission Company to New Member in exchange for the New Member Contribution, in each case such that each Member (including the New Member) immediately following such transfer or issuance holds a proportion of Membership Interests that equals the proportion of the nameplate capacity of the Interconnecting Project of such Member to the nameplate capacity of the Interconnecting Projects of all Members. The Members, the New Member and the Transmission Company shall effect the foregoing transaction in such manner as permitted by the Financing Documents and so as to minimize applicable taxes. Following the addition of any New Member, the Transmission Company shall re-calculate each Member's Share hereunder and provide notice thereof to each Member (including the New Member).

6. INSURANCE

6.1 Coverages

The Transmission Company and the Members shall procure at the earliest practicable time and thereafter maintain in effect at all times hereinafter such insurance policies and coverages from such insurance companies as may be required to comply with Prudent Industry Practice at their own cost and expense (except that some or all of the insurance described therein may, with the approval of the Members, be

procured and maintained by the Transmission Company or one or more of the owners for the other Parties (or any combination of them) at the cost and expense of the Members in proportion to their Shares).

6.2 Self-Insurance

The insurance coverage requirements of Section 6.1(a) above may be self-insured to the extent allowable by statute.

6.3 Primary Coverage

Any Commercial General Liability and commercial excess liability insurance obtained by or on behalf of a Member shall be primary as respects any Liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by such other Party shall be excess of and noncontributing with insurance afforded by such Commercial General Liability or commercial excess liability insurance. Such Commercial General Liability and commercial excess liability insurance shall provide for claims by one insured against another such that, except for the limits of insurance, such insurance shall apply separately to each insured against whom a claim is made or suit is brought.

6.4 Additional Insured; Waiver of Subrogation

Each Party and its parent company and each of their respective Affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns shall be named as an additional insured or a loss payee, as applicable, on (a) any property insurance obtained pursuant to Section 6.1(a), and (b) any commercial general liability insurance obtained pursuant to Section 6.1(a) with respect to the indemnities given in this Agreement. Each policy of insurance maintained by the Parties above, except workers compensation insurance, shall contain a waiver of subrogation in favor of the other Parties and its parent company and each of their respective Affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns.

6.5 Evidence; Claims

A certificate of all policies of insurance procured by the Transmission Company or any Member pursuant to Section 6.1(a) shall be provided to any Member upon such Member's written request, and such certificate shall evidence that the Member requesting the certificate is named as an additional insured party or loss payee with respect to the property and liability insurance policies in accordance with Section 6.1(a). The Transmission Company shall notify each Member in writing of (a) the assertion of any claim for bodily injury or property damage in excess of twenty-five thousand dollars (\$25,000) or greater related to the Shared Facilities promptly following the Transmission Company's knowledge of any such assertion and (b) the Transmission Company's knowledge of the occurrence of an event likely, in the reasonable determination of the Transmission Company, to result in the assertion of such a claim promptly following any such occurrence. If any loss, damage or impairment to the Shared Facilities occurs, the proceeds of any insurance policy with respect thereto shall be applied to repair, replace or restore the Shared Facilities to their prior condition.

7. TRANSFER OF INTERESTS; LIENS

7.1 Restrictions on Transfer

No Member shall sell, assign or otherwise transfer all or any of its Membership Interest without (i) assigning or transferring such interest in this Agreement to the same assignee, such that such Member's

Membership Interest in the Transmission Company is not separated in ownership from its rights and interests under this Agreement, and (ii) obtaining the prior written consent of the other Members, which consent shall not be unreasonably withheld, conditioned or delayed by the other Members, except that such consent shall not be required for a sale, assignment or transfer by a Member (a **Transferring Party**) in the following circumstances:

- (a) if the purchaser, assignee or transferee is an entity with which the Transferring Party has consolidated with or into which the Transferring Party has merged or an Affiliate which owns a Interconnecting Project or any portion of a Interconnecting Project (and the transfer of the Membership Interest is for use of the Shared Facilities in connection with such Affiliate's Interconnecting Project or portion of such Interconnecting Project) and such purchaser, assignee, lessee or assignee shall have agreed in writing for the benefit of the other Members to assume the performance and observance of all of the future obligations of such Transferring Party under this Agreement; *provided* that the non-transferring Member may require as a condition of any such transfer such approvals from FERC or any other entity as may be required by Laws or contract (if any); *provided further* that the sum of the nameplate capacity of the Interconnecting Project and the nameplate capacity of the Interconnecting Projects of all Members not exceed 1200 MW if the Shared Facilities are to be utilized as a double circuit or 2400 MW if the Shared Facilities are to be utilized as two single circuits;
- (b) in connection with the transfer of all or a portion of such Member's right, title and interest in any Interconnecting Project or substantially all or any material portion of any Interconnecting Project, if the acquirer shall have agreed in writing for the benefit of the other Member(s) to unconditionally assume the performance and observance of all of the future obligations of such Transferring Party under this Agreement; *provided* that the non-assigning or non-transferring Member may require as a condition of any such transfer such approvals from FERC or any other entity as may be required by Laws or contract (if any); or
- (c) in connection with a pledge, collateral assignment, encumbrance, grant of a security interest or assignment to a Secured Party as set forth in Section 7.5.

7.2 Transfer Requirements

Any sale, assignment or transfer permitted pursuant to Section 7.1 above (a) shall relieve a Member of any future obligation under this Agreement with respect to that portion of such Member's rights subject to such sale, assignment or transfer so long as the transferee agrees in writing to assume all such obligations, and (b) shall relieve a Member of any past obligation under this Agreement with respect to that portion of such Member's rights subject to such sale, assignment or transfer, but only to the extent consented to in writing by the other Member(s). Any attempted or purported sale, assignment or other transfer of any interest in the Shared Facilities or this Agreement made other than in accordance with this Section 7 either voluntarily or by operation of Law shall be void and of no force or effect. The Transferring Party shall notify each other Party of any proposed transfer of all or any of its Membership Interest or other rights or interests in or to the Shared Facilities, or in, to or under this Agreement no later than thirty (30) days prior to the effective date of such proposed transfer, except that if the Transferring Party is a Member and such transfer would require upgrades or modifications to the Shared Facilities, such notice, along with similar documentation and information under Section 2.2(c)(ii) for such upgrades or modifications, shall be provided no later than ninety (90) days prior to the effective date of such proposed transfer.

7.3 Obligations Regarding Liens

Except Permitted Liens, no Member shall, directly or indirectly, create, incur, or permit to exist any lien or encumbrance on the Shared Facilities including but not limited to taxes (other than for taxes not yet due), judgments, construction work, repair and restoration, or materials furnished. If any such lien or encumbrance attaches or a Member receives notice of any such lien or encumbrance, the Member whose actual or alleged act or omission resulted in such lien or encumbrance shall cause such lien or encumbrance to be released and removed of record within fifteen (15) days of such attachment or notice, unless (a) such Member (i) in good faith contests or disputes the claim or claims of the lienholders and the validity of such liens or encumbrances, (ii) promptly commences legal action to remove such lien or encumbrance and (iii) furnishes to the Member(s) a bond or other security acceptable to each Member in an amount sufficient to discharge all such contested liens or encumbrances and (b) during such period the lienholders' proceedings are stayed. In the event of a violation of this Section 7.3 that is not released and removed within fifteen (15) days after the offending Member receives notice of the recordation of such a lien or encumbrance, and the offending Member does not meet the requirements set forth in clauses (a) and (b) above, the other Member(s) shall be entitled to remove or cause the removal of such liens or encumbrances and to be reimbursed by the offending Member for all costs and expenses incurred in removing such liens or encumbrances.

7.4 Succession as "Member"

Any permitted purchaser, assignee or transferee (other than a collateral assignee pursuant to a lien securing an obligation to a Secured Party prior to foreclosure thereon) shall be considered a "Member" for purposes of this Agreement on the effective date of the conveyance of the applicable Membership Interest to such purchaser, assignee or transferee.

7.5 Right to Encumber

- (a) The Transmission Company and each Member specifically agree that (i) any Member may at any time pledge, collaterally assign, encumber, grant a security interest in or, in the case of a lease financing, assign, its own Membership Interest of the Transmission Company and in its rights under this Agreement to any Secured Party and (ii) any Secured Party may exercise its rights under its agreement with the pledging Member or the Transmission Company, including foreclosing, receiving, transferring, conveying or assigning such pledged Membership Interest, in each case without obtaining the consent of the other Members or the Transmission Company; *provided* that such Secured Party cures all payment defaults of any defaulting Member. The Transmission Company and each Member also agree that it shall, at any time and from time to time during the term of this Agreement, after receipt of a written request by another Member, execute and deliver to each other Member and that Member's Secured Parties, as designated in such request, such estoppel certificates and consents as may be reasonably requested thereby.
- (b) Notwithstanding any other provision of this Agreement, should a Member pledge, collaterally assign, encumber, grant a security interest in or assign its Membership Interest and its rights under this Agreement as provided in Section 7.5(a) above, the Parties expressly agree between themselves and for the benefit of any Secured Party that (i) upon the occurrence of a default by a Member hereunder, the non-defaulting Member declaring the default shall also provide written notice to the Secured Parties of the defaulting Member (of which the Parties have notice) of such default (and accept such Secured Parties' cure of such default), (ii) each Secured Party (of which the Parties have notice) shall have the same period after receipt of a notice of default to cure, or cause to be cured, the default described therein, as is given to the defaulting Member, plus, in each

instance, the following additional time periods: (A) thirty (30) days in the event of any monetary default; and (B) one hundred twenty (120) days in the event of any non-monetary default and (iii) in case of the conveyance, transfer, assignment or foreclosure of the pledged Share or termination of this Agreement or a Member's interest in this Agreement as a result of any default under this Agreement or any agreement with any Secured Party or the bankruptcy, insolvency or appointment of a receiver in bankruptcy for a Member (the **Pledging Member**), (1) the other Members (the **Non-Pledging Members**) shall, if applicable, give prompt notice of such conveyance, transfer, assignment, foreclosure or termination to the Secured Parties of the Pledging Member of which the Parties have notice and (2) the Non-Pledging Members shall, upon written request of the first priority Secured Party of the Pledging Member, made within thirty (30) days after such written notice to such Secured Party, enter into a new shared facilities agreement with such Secured Party, or its designee or assignee, on the same terms and conditions as this Agreement, or to the extent only the Pledging Member's interest is terminated, permit the Pledging Member's Secured Party or its designee or assignee to join in this Agreement as a new Member in place of the Pledging Member, within thirty (30) days after the receipt of such request. Any such new shared facilities agreement shall be effective as of the date of the termination of this Agreement by reason of default by the Pledging Member, upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new shared facilities agreement, the Secured Parties, or their designees or assignees, of the Pledging Member shall (x) pay the Non-Pledging Members any amounts which are due the Non-Pledging Members from the Pledging Member under the terms of this Agreement, (y) pay the Transmission Company any and all amounts which would have been due from the Pledging Member under this Agreement (had this Agreement not been so conveyed, transferred, assigned or terminated), and (z) agree in writing to perform or cause to be performed all of the other covenants and agreements set forth in this Agreement to be performed by the Pledging Member to the extent they accrue following the execution and delivery of the new Agreement. A Secured Party shall only be liable under this Agreement to the extent of its interest in the Pledging Member's assets. For the avoidance of doubt, and subject to Section 7.1, the assignment of a Pledging Member's interest to its Secured Parties (or their successors or assigns) shall not require the prior consent of the other Member(s), nor be subject to any other conditions or requirements of this Agreement in the case of foreclosure by such Secured Party.

7.6 Assignment by the Transmission Company

The Transmission Company may not assign, pledge or otherwise transfer its obligations under this Agreement without the prior written consent of all of the Members. Notwithstanding the foregoing, nothing in this Agreement shall prevent the Transmission Company from causing a third party to perform the services to be performed by it hereunder, including pursuant to the Services Contracts.

7.7 Abandonment or Decommissioning of an Interconnecting Project

Any Member who wishes to abandon and decommission its Interconnecting Project may elect to convey its Membership Interest and assign its rights hereunder to the other Members in accordance with their respective Shares (calculated without reference to the Membership Interest of the surrendering Member in either the numerator or the denominator) without any obligation of the other Members or the Transmission Company to provide any consideration therefor, and, thereupon, to cease to have any right, title or interest in the Transmission Company or its Membership Interest (such Member, a **Surrendering Member**). The Surrendering Member must (a) deliver all instruments of transfer as may be necessary or appropriate to effect the conveyance of its Membership Interest and assignment of its rights hereunder to, and which are reasonably satisfactory to, the remaining Member(s), (b) deliver to each other Member

copies of approvals from FERC or any other entity as may be required by Laws or contract (if any), (c) assign and convey to the remaining Member(s) of all its rights under this Agreement, *provided, however*, that any such surrender of an encumbered Membership Interest may only be surrendered with the written consent of each Secured Party that holds a security interest in such Membership Interest and a release of such Secured Party's security interest being provided by such Secured Party and (d) cure all Member Events of Default then existing. The Surrendering Member shall remain fully responsible for, and shall pay its Share of, all Shared Expenses of such Surrendering Member through the effective date of its surrender of its Membership Interest and all costs, including reasonable attorneys' fees, incurred by any of the Parties in obtaining required approvals of such surrender. No surrender of a Member's Membership Interest shall relieve the Surrendering Member of any of its obligations under this Agreement or any other agreement entered into pursuant to this Agreement, or its obligations hereunder with respect to its Separate Facilities, unless expressly provided for in this Agreement, or in a writing among the Members.

8. DEFAULT AND REMEDIES

8.1 Events of Default

A Party shall be in material default of its obligations under this Agreement upon the occurrence of one or more of the following (an **Event of Default**):

- (a) any failure of such Party to pay any amounts due under this Agreement, and such failure continues for more than five (5) days following any other Party's notice to such Party of such non-payment;
- (b) any purported transfer or assignment of this Agreement by such Party in contravention of the requirements of Section 7;
- (c) any other breach, default or failure of performance by such Party (that is not otherwise covered as a separate Event of Default) of any of its obligations, covenants, representations or warranties which is not cured within thirty (30) days following the other Party's notice to such Party of such breach, default or failure and which breach, default or failure to perform materially interferes with the use of the Shared Facilities or of the relevant Interconnecting Project by the non-defaulting Member;
- (d) such Party makes an assignment for the benefit of creditors, files a petition in bankruptcy, voluntarily takes advantage of any bankruptcy or insolvency Laws or is adjudicated bankrupt or judicially insolvent, in each case, immediately upon such occurrence or, if a petition or an answer is filed proposing the adjudication of such Party as bankrupt, when such Party shall consent to the filing thereof or sixty (60) days after the filing thereof unless the same shall have been discharged, opposed, or denied prior thereto;
- (e) any breach by a Member of an obligation in the Land Rights Documents or any Financing Document to which such Member is a party or by which it is bound that affects the rights of any of the other Members under this Agreement or the Transmission Company's ability to perform under this Agreement, and such breach is not cured within fifteen (15) days following the other Party's notice to such Member of such breach and which breach materially interferes with the use of the Shared Facilities or of the relevant Interconnecting Project by the non-defaulting Member(s); and
- (f) failure by such Party to either obtain or maintain the insurance policies in accordance with Section 6.

8.2 Remedies

Upon the occurrence of an Event of Default, the non-defaulting Party may, after due inquiry that an Event of Default has occurred and is continuing, exercise any and all rights and remedies which the non-defaulting Party might otherwise have at Law or in equity (including the right to sue for damages, including damages arising from lost revenues under the non-defaulting Party's power purchase agreement). In addition, upon written notice from each other Member, the defaulting Party shall lose any and all rights to use the Shared Facilities for such time as the Event of Default is continuing. Further:

- (a) where a Member is the defaulting Party, any other Member may cure such Event of Default of such defaulting Member by making or tendering the required payment or performance, and permitting the defaulting Member to continue attaching its Separate Facilities to the Shared Facilities; *provided* that any such amounts paid by the curing Member shall be treated as a demand loan to the defaulting Member, which loan shall accrue interest until repaid in full at the Default Rate; and
- (b) where a Member is the defaulting Party, the Transmission Company shall have the right to discontinue the use by such Member of the Shared Facilities (including removing such Member's Separate Facilities from the Shared Facilities) and, in connection with any vote or other deliberation among the non-defaulting Members in respect of such discontinuance, such defaulting Member shall recuse itself, and its vote shall not be required, or considered, in connection therewith; *provided* that such Member shall be permitted to resume such use promptly when and if (i) the Event of Default is cured, and (ii) any and all damage suffered and incurred by the non-defaulting Parties has been compensated.

8.3 Equitable Remedies

The Parties agree that damages may be an inadequate remedy for an Event of Default, and that the non-defaulting Party shall be entitled to seek injunctive and other equitable relief, including specific performance, against the defaulting Party to prevent or eliminate such Event of Default.

8.4 Remedies Cumulative

All of the remedies available pursuant to this Section 8 are cumulative and non-exclusive, and the exercise of any one remedy at any one time shall not constitute the waiver of any other remedy at a later or different time; provided, however, that all available remedies shall be subject to the limitations on liability provided for pursuant to this Agreement.

8.5 Separate Defaults

Each act or omission to act that constitutes an Event of Default shall be treated as a separate default under this Section 8.

9. DISPUTE RESOLUTION

9.1 Disputes

Unless stated otherwise herein, all Disputes shall be resolved in accordance with the dispute resolution procedures set forth in Exhibit B. Notwithstanding the foregoing, (a) the Parties may at any time seek injunctive or equitable relief or specific performance from a court of competent jurisdiction and (b)

nothing herein shall prevent a Party from defending or pursuing any claim in a court or other proceeding against a third party that has been initiated by such third party.

9.2 Waiver of Jury Trial

EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS WHICH IT MAY HAVE TO A JURY TRIAL WITH RESPECT TO ANY SUIT, LEGAL ACTION OR PROCEEDING BROUGHT BY OR AGAINST IT OR ANY OF ITS AFFILIATES RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10. REPRESENTATIONS AND WARRANTIES

10.1 General

Each Party represents and warrants for the benefit of the other Party:

- (a) it is an entity, duly organized and existing in good standing under the laws of the state of its formation, qualified to do business in the State of California, and has the requisite power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorized and constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms; each person signing this Agreement on its behalf is duly and validly authorized to do so, and the execution and delivery of this Agreement and performance of its obligations hereunder will not require the approval of any Governmental Authority or further consent of any other person or entity and will not contravene, conflict with or result in the breach or violation of any document to which it is bound or of any Law;
- (c) it possesses all requisite power and authority to perform this Agreement and to carry out the transactions contemplated herein; and
- (d) no suit, action or arbitration, or legal, administrative or other proceeding is pending or, to its knowledge, threatened against it that would affect the validity or enforceability of this Agreement or the ability of it to fulfill its obligations and commitments hereunder.

10.2 As-Is, Where-Is

Each Member accepts the Shared Facilities as-is, where is, with all faults, whether patent or latent. No Party makes any warranty of any kind, express or implied, with respect to the Shared Facilities.

10.3 Disclaimer

THE REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS AGREEMENT ARE EXCLUSIVE, AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WILL APPLY TO THE SUBJECT MATTER OF THIS AGREEMENT.

11. INDEMNITIES; LIMITATION ON DAMAGES

11.1 Member Indemnity

Each Member, for and on behalf of itself and its agents, successors and assigns, shall defend, indemnify and hold harmless each other Party and each other Party's directors, officers, partners, members, Affiliates, employees, agents, successors and assigns (collectively, including the other Party, the **Indemnitees**), from and against any and all Liabilities, to the extent they are both (a) either (i) a result of the breach of this Agreement, failure to comply in any material respect with applicable Law, or the negligent acts or omissions, bad faith, gross negligence, or willful misconduct of the indemnifying Member and its directors, officers, partners, members, Affiliates, employees, agents, successors and assigns, in connection with the indemnifying Member's Interconnecting Project or the performance of the indemnifying Member's duties and obligations under this Agreement or under any other agreement to which such indemnifying Member may be a party, including, without limitation, any breach or default under any such agreement, except to the extent caused by another Party or another Party's Indemnitee's gross negligence or willful misconduct, (ii) a result of outages or curtailment on the Shared Facilities proximately caused by the indemnifying Member utilizing the Shared Facilities other than in accordance with the provisions hereof, or (iii) a result of any Hazardous Materials spilled, generated, released or introduced into or on the site of the Shared Facilities or its Interconnecting Project; and (b) not otherwise covered and paid under the insurance required by Section 6.

11.2 Joint Causation

To the extent any indemnitor hereunder is obligated under this Section 11 to indemnify or hold harmless any indemnitee hereunder for liabilities in any situation where there is joint or concurring causation by such indemnitee, such indemnity obligation shall be construed as providing for the application of comparative negligence/fault principles to allocate liability as between the applicable indemnitor and indemnitee.

11.3 Waiver of Consequential Damages

EACH PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT WITH RESPECT TO NET LOST PROFITS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, AND EXCEPT IN CASES OF FRAUD OR WILLFUL MISCONDUCT, NO PARTY SHALL BE LIABLE HEREUNDER TO ANY OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF THAT PARTY, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. EXCEPT AS EXPRESSLY STATED OTHERWISE IN THIS AGREEMENT, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

12. NOTICES

12.1 Form of Notices

All notices or other communications required or permitted by this Agreement shall be in writing. All notices and payments shall be sent to the Parties at the addresses provided below, or to the address each New Member provides at the time it becomes party to this Agreement:

To ESJ US:

Energia Sierra Juarez U.S., LLC
c/o Infraestructura Energetica Nova, S.A.P.I. de C.V.
Torre New York Life
Av. Paseo de la Reforma 342, Floor 24
Juarez, Cuauhtemoc 06600
Mexico City, Mexico

To the Transmission Company:

Energia Sierra Juarez U.S. Transmission, LLC
c/o Infraestructura Energetica Nova, S.A.P.I. de C.V.
Torre New York Life
Av. Paseo de la Reforma 342, Floor 24
Juarez, Cuauhtemoc 06600
Mexico City, Mexico

All notices will be deemed delivered (a) when presented personally, (b) one Business Day after being delivered to a national courier service for overnight delivery, addressed to the receiving Party at the address specified the above (or such other address as the receiving Party may have specified by notice delivered to United States Party at its address specified above), or (c) five days after being deposited in a United States Postal Service receptacle, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party at the address specified above (or such other address as such the receiving Party may have specified by notice delivered to the delivering Party at its address specified above). Either Party may change the address to which notices and communications are be sent by giving notice as required by this Section 12.1.

13. MISCELLANEOUS

13.1 Several Obligations; Relationship of Parties

The duties, obligations and liabilities of the Parties under this Agreement are intended to be several and not joint or collective, and no Party shall be jointly and severally liable for the acts, omissions or obligations of any other Party. Nothing contained in this Agreement shall be construed to create an association, joint venture, or partnership, or impose a partnership duty, obligation or liability, among the Parties. No Party shall have a right or power to bind any other Party without its express written consent, except as expressly otherwise provided in this Agreement.

13.2 Regulatory Approvals and Assurances

If any Member, after consultation with the other Member(s), reasonably concludes that it is required to submit this Agreement for review, approval, acceptance for filing, permission to become effective or other authorization by the FERC or by any other entity having the right to review and approve this Agreement, the other Member(s) shall cooperate as reasonably requested in connection with such filing. If FERC or any other entity has regulatory jurisdiction over this Agreement, it shall become effective as of the date on which any required FERC or other required filing has approved, accepted for filing or permitted to become effective without change or new condition (except for any change or new condition that is acceptable to each Member). If no filing is required, this Agreement shall become effective immediately upon execution by all Members.

13.3 Force Majeure

If, because of an event of Force Majeure, either Party is unable to carry out its obligations under this Agreement (excluding obligations to pay money), and if such Party promptly gives the other Party written notice of such Force Majeure in detail, specifying the nature, extent and expected duration of such Force Majeure, the obligations and liabilities of the Party giving such notice and the corresponding obligations and liabilities of the other Party shall be temporarily suspended to the extent made necessary by and during the continuance of such Force Majeure. Curtailment shall be borne by the Members in accordance with their Shares. Any disabling effects of such Force Majeure shall be eliminated as soon as and to the extent reasonably practicable by the Party claiming Force Majeure.

13.4 Estoppel Certificates

Upon the request of a Member, any other Member, upon not less than ten (10) business days' written notice, shall, if true, provide a written certificate stating that (a) this Agreement is in full force and effect and has not been modified or amended (or if modified or amended, stating so), and (b) to the actual knowledge of the certifying Member, there are no defaults under this Agreement and no events that, with notice or the passage of time or both, could become a default (or if there are defaults, describing them in reasonable detail). The requesting Member, and any purchaser, investor or lender with respect to such Member's portion of the Shared Facilities, shall be entitled to rely on the truthfulness of the statements made by the certifying Member in such certificate. The failure of the non-requesting Party to deliver any such certificate within such time shall be conclusive upon such non-requesting Party that (i) this Agreement and the rights granted hereunder are in full force and effect and have not been modified and (ii) there are no uncured defaults hereunder.

13.5 Waiver of Right to Partition or Termination

The Parties each acknowledge and agree that it would be prejudicial to the interests of the Parties under this Agreement if any Member were to seek partition or any other type of division of the Shared Facilities, or to file an action for such partition or division. Partition of Shared Facilities would result in substantial and irreparable damage to the Members, and is likely to interfere with a Member's ability to operate and maintain its respective Interconnecting Project. Therefore, in consideration of such fact and for other good and valuable consideration, each of the Parties hereby waive and relinquish any and all rights that it may have to seek a partition or any other type of division of the Shared Facilities. The Parties are relying upon this waiver to their detriment in expending substantial funds to construct the Shared Facilities and other improvements, and all Parties agree that each party shall be estopped from denying the validity or enforceability of the foregoing waiver.

13.6 Entire Agreement/Amendments

This Agreement constitutes the entire agreement of the Parties with regard to its subject matter. This Agreement and the consents and other rights created by it shall not be modified or amended except in a writing signed by the Parties.

13.7 Further Assurances

The Parties agree to cooperate in executing any additional agreements or amendments reasonably needed by the Parties for their business purposes in connection with the carrying out of this Agreement so long as they do not adversely affect the rights of the other Parties or violate the terms and spirit of this Agreement.

13.8 Partial Invalidity

Should any provision of this Agreement be held, in a final and non-appealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the Term be for longer periods than the longest periods permitted by applicable Law.

13.9 Approvals

No consent or approval required by this Agreement shall be unreasonably withheld or delayed. Unless a longer or shorter time is specified, all consents and approvals required of either Party shall be given or refused in writing within ten (10) Business Days after receipt of the request for consent or approval. Any delay of a requested consent or approval longer than ten (10) Business Days shall be deemed consent and an approval. Consents and approvals shall not be unreasonably withheld except in instances where this Agreement specifically permits a Party to act in its sole discretion. Any action requiring the consent, agreement or approval of the Members or otherwise of multiple Parties shall require the unanimous consent, agreement or approval of such Members or multiple Parties.

13.10 Cooperation

Each Party shall reasonably support and cooperate with each other Party in the conduct of its operations and the exercise of its rights hereunder, and in carrying out and otherwise giving full force and effect to the purpose and intent of this Agreement, including in a Party's efforts to obtain from any Governmental Authority or any other Person any permit, entitlement, approval, authorization or other rights necessary or convenient in connection with its operations and/or the exercise of its rights hereunder; and each Party shall, without demanding additional consideration therefor, promptly execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument that is reasonably requested by any other Party or any Governmental Authority in connection therewith.

13.11 Third Party Beneficiaries

Except with respect to the rights of Secured Parties as set forth herein, the covenants contained herein are made solely for the benefit of the Parties hereto, and shall not be construed as benefiting any Person that is not a Party to this Agreement.

13.12 Entire Agreement; Multiple Counterparts

This Agreement, including the Exhibits and Schedules attached hereto (all of which are incorporated herein by this reference), contains the entire agreement between the Parties hereto in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, are merged herein and superseded hereby. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same Agreement.

13.13 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any choice of law provisions thereof that would cause the application of the laws of any jurisdiction other than the State of New York. In connection with the enforcement of any arbitration award under Section 9.1 above, the Parties mutually consent to the jurisdiction of the courts of the State of California and of the Federal District Courts, District of Southern California, and hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in such California or federal court. Each Party irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Party at its address specified in Section 12.1. Each Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section shall affect the right of any Party to serve legal process in any other manner permitted by law or affect the right of such Party to bring any action or proceeding against the other Parties or their property in the courts of any other jurisdiction. The Parties further agree that any process directed to either of them in any litigation involving this Agreement may be served outside the State of New York with the same force and effect as if service had been made within the State of New York. To the extent any Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, such Party hereby irrevocably waives (to the fullest extent permitted by law) such immunity in respect of its obligations under this Agreement.

13.14 Confidentiality

Each Party recognizes that, in connection with this Agreement, it may become privy to nonpublic information regarding the financial condition, operations and prospects of the other Parties hereto. Each Party agrees to keep all nonpublic information regarding each other Party strictly confidential, and to use all such information solely in order to effectuate or monitor the purpose of this Agreement; provided that each Party may provide confidential information (a) to its employees, agents, attorneys, accountants, consultants and Affiliates who have a need to know such information in order to negotiate, effectuate, evaluate or monitor this Agreement, (b) to its external auditors and to any Governmental Authority having jurisdiction over such Party, (c) to any Secured Party (or potential Secured Party) or representative of such Secured Party (or potential Secured Party), so long as such Secured Party or potential Secured Party or representative has agreed to keep such information confidential and (d) to any permitted transferee of, or prospective permitted transferee of, any of its rights or obligations under this Agreement, so long as such Person is subject to an agreement containing provisions substantially the same as those of this Section 13.14; provided, further, that such information is identified as confidential nonpublic information; and provided, further, that confidential information does not include information: (i) once it becomes publicly available without breach of this Agreement, (ii) that is rightfully obtained by a Party from another source without a duty of confidentiality or (iii) that is independently developed or ascertained by a Party. In the event that any of the Parties to this Agreement or any of the employees, agents or Affiliates of such Parties

are requested pursuant to, or required by, applicable Law, regulation or legal process to disclose any of the nonpublic information, such Party will, to the extent permitted by Law, promptly notify any affected Party prior to any such disclosure so that such Party may seek a protective order or other appropriate remedy or, in such Party's sole discretion, waive compliance with the terms of this Section 13.14. In the event that no such protective order or other remedy is obtained, or that such Party waives compliance with the terms of this Section 13.14, the Party required to disclose such nonpublic information or its employees, agents or Affiliates will furnish only that portion of the nonpublic information that it is advised by counsel is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the nonpublic information.

13.15 OATT Filing

In the event that Transmission Company is required by FERC to provide the services of this Agreement pursuant to an open access transmission tariff (OATT), Transmission Company shall file an OATT that preserves, to the maximum extent possible, the terms of this Agreement and the priority of Member(s), based on the Share of each, to the available capacity of the Gen-Tie Line.

[SIGNATURES PAGES FOLLOW]

IN WITNESS WHEREOF, the Members and the Transmission Company have executed this Agreement as of the Effective Date.

ESJ US:

ENERGIA SIERRA JUAREZ U.S., LLC
By: Energía Sierra Juárez, S. de R.L. de C.V., its
Sole Member

By: _____
Name: _____
Title: _____

Transmission Company:

ENERGIA SIERRA JUAREZ U.S.
TRANSMISSION, LLC
By: Energia Sierra Juarez U.S. , LLC, its Sole
Member
By: Energía Sierra Juárez, S. de R.L. de C.V., its
Sole Member

By: _____
Name: _____
Title: _____

New Party:

[●]

By: _____
Name: _____
Title: _____

EXHIBIT A

SHARED FACILITIES LAND RIGHTS

1. Real property conveyed by that certain Grant Deed, dated as of May 26, 2009, executed by Mary F. Czubernat, as Trustee of the Eugene and Mary Czubernat Family Trust under Declaration of Trust dated July 24, 1997, in favor of Energia Sierra Juarez U.S. Transmission, LLC, which was recorded in the Official Records of the San Diego County Recorder's Office on August 10, 2009 as Document Number 2009-0445208
2. Reciprocal Road Easement Agreement dated as of January 23, 2013, by and between San Diego Gas & Electric Company and Energia Sierra Juarez U.S. Transmission, LLC

EXHIBIT B

DISPUTE RESOLUTION PROVISIONS

1. Applicability

Unless stated otherwise herein, all Disputes between one or more Parties (“Dispute Parties”) shall be resolved in accordance with the dispute resolution procedures set forth in this Exhibit B. Notwithstanding the foregoing, (a) the Parties may at any time seek injunctive or equitable relief from a court of competent jurisdiction and (b) nothing herein shall prevent a Party from defending or pursuing any claim in a court or other proceeding against a third party that has been initiated by such third party. As used in this Exhibit B, "Parties" shall refer to the disputing Parties, and "Party" shall refer to one or the other of the disputing Parties, as applicable.

2. Negotiations By Senior Management

Any Dispute shall first be referred to executive officers of the Parties that are designated by the Dispute Parties as their designated representatives for negotiations (“Executive Officer Negotiations”). If the Dispute Parties fail to resolve the Dispute through Executive Officer Negotiations within a reasonable period of time, not exceeding thirty (30) days after the applicable Notice, then a Dispute Party who wishes to pursue resolution of the Dispute shall initiate mediation to be followed, if necessary, by binding arbitration as set forth in this Exhibit B.

3. Mediation

- a) If a Dispute is not resolved by the negotiations described in Section 2 above, any Dispute Party may initiate mediation through the International Chamber of Commerce’s (“ICC”) International Centre for Amicable Dispute Resolution (“Centre”). Mediation shall be governed by the Centre’s Amicable Dispute Resolution Rules (“ADR Rules”) in effect at the time the Dispute arises. The mediation shall be attended by representatives of the Dispute Parties. Representatives the Dispute Parties attending the mediation shall have sufficient authority to resolve the Dispute during the mediation session or have ready access to persons with such authority.
- b) Unless the Dispute Parties otherwise agree, the mediation shall be conducted by a neutral party and in accordance with the ADR Rules. The mediation shall be conducted in San Diego, California, and the Dispute Parties shall endeavor to conduct the mediation within thirty (30) days after the notice initiating mediation is delivered, unless a different time is agreed to by the Dispute Parties. The costs of the neutral party and ICC shall be shared equally by the Dispute Parties.
- c) Completion of the negotiations and mediation is a condition precedent to the initiation of arbitration and no Dispute shall be brought either separately or together with other claims or disputes, whether as an independent claim, alternative basis for relief, separate element of damage, additional remedy or otherwise unless such Dispute first has been the subject of negotiations and mediation. Notwithstanding the foregoing, arbitration or litigation may be initiated before completion of mediation if necessary, and only to the extent necessary, to preserve a Dispute Party’s rights or to avoid irreparable harm pending resolution of the Dispute, but any such proceedings shall be limited to such purposes until such mediation is completed.

4. Arbitration

- a) All Disputes that are not settled pursuant to Sections 2 or 3 shall be decided by binding arbitration in accordance with the ICC Rules then-pertaining ("ICC Rules"), except as otherwise provided herein. If there is a conflict between the provisions of this Agreement and the provisions of the ICC Rules, the provisions of this Agreement shall prevail. Notwithstanding anything in the ICC Rules to the contrary, the arbitrators shall apply the governing law specified in this Agreement. This agreement to arbitrate shall be specifically enforceable. Any award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable Law.
- b) Written notice of the demand for arbitration shall be filed with the other Dispute Party or Dispute Parties and with the ICC International Court of Arbitration ("Court of Arbitration"). Any demand for arbitration shall be made prior to the time for which legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
- c) The arbitration shall be conducted by a panel of three (3) neutral and impartial arbitrators selected in accordance with the process and with the qualifications set forth in this section.
- d) At least two (2) of the arbitrators, including the chairperson, shall be retired judges with experience with construction disputes or attorneys with at least fifteen (15) years of legal experience in the engineering and construction industry. A non-lawyer arbitrator, if any, shall have at least twenty (20) years of experience in the engineering and construction industry and shall be trained and have served as an arbitrator. All arbitrators shall be fluent in English.
- e) Within twelve (12) days after a demand for arbitration is filed with the Court of Arbitration, the Dispute Parties shall endeavor to mutually agree on the selection of three (3) arbitrators. Unless otherwise agreed, each Dispute Party shall propose in writing five (5) arbitrators to the other Dispute Parties and such lists, with accompanying biographical information and conflict disclosure information equivalent to that provided per the ICC Rules, shall be exchanged within three (3) days of filing of the arbitration demand. Within three (3) business days of the exchange of lists, each Dispute Party shall indicate in writing whether one (1) arbitrator from the other Dispute Party's list is acceptable. If two (2) arbitrators have been agreed upon by the Dispute Parties with the requisite qualifications (including at least one of who is an attorney or retired judge), then the two (2) appointed arbitrators shall select a third arbitrator to serve as the chairperson with the requisite qualifications. In the event that the two (2) Dispute Party identified arbitrators do not select the third arbitrator within the remaining time to constitute the panel, the Court of Arbitration shall appoint a third arbitrator meeting the specified qualifications. In the event a panel is not constituted within the time frame set forth herein, then the process set forth in subsection (f) below shall apply for selecting the arbitrators.
- f) If the arbitration panel has not been constituted in accordance with the procedure and within the time frame set forth in subsection (e), then the Court of Arbitration shall provide the Dispute Parties with the names of fifteen (15) arbitrators from the Court of Arbitration's panel of arbitrators, each of whom shall not be employed by or otherwise affiliated with any Dispute Party. Each Dispute Party shall then have the right to remove three (3) arbitrators from such panel, all at such Dispute Party's sole discretion. Such removal shall be made by Notice to the other Dispute Parties and to the Court of Arbitration within five (5) Business Days after the Court of Arbitration has delivered its initial list of fifteen (15) arbitrators. After such removal by each Dispute Party, the Court of Arbitration shall choose three (3) arbitrators from the remaining arbitrators in such list to preside over the dispute between the Dispute Parties, with the qualifications, including for the chairperson, set forth by this Exhibit B. In the event it is necessary, Court of Arbitration shall repeat the process in this paragraph to ensure such qualifications are satisfied.

- g) The arbitration shall be conducted expeditiously in an effort to conclude all proceedings, including the hearing, within 180 days after filing of the demand for arbitration or as soon thereafter as reasonably practicable. The arbitration of all Disputes shall be held in San Diego, California and shall be conducted solely in the English language. A Dispute Party producing, submitting or offering any document, which is not in the English language must also provide a certified English translation at its sole expense. In any arbitration proceeding, the Dispute Parties agree that discovery shall be permitted to the full extent permitted by the rules of civil procedure in effect in the State of New York and that additional discovery may be permitted as established under the applicable ICC rules. The arbitrators do not have the authority to appoint or retain any expert witnesses or consultants for any purpose unless agreed to by the Dispute Parties. The arbitrators must render a reasoned award in writing.
- h) Each Dispute Party shall bear its own costs, expenses and attorneys' fees associated with the Dispute resolution process and the arbitrators shall not have authority to allocate the costs or expenses of the arbitration, including the arbitrators' fees, to any Dispute Party.
- i) Arbitration proceedings under this Agreement may be consolidated with other arbitration proceedings pending between the Dispute Parties or arbitration proceedings pending between other parties if the arbitration proceedings arise from the same transaction or relate to the same subject matter and the agreements for arbitration provide for arbitration under the auspices of the ICC. Consolidation will be by an order of the arbitrator in any of the pending cases if the agreements for each of the arbitrations to be consolidated give the arbitrator such power (and this Agreement does so), or the Dispute Parties may apply to any court of competent jurisdiction for such an order.
- j) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 13.14 of this Agreement.

EXHIBIT B – LEGAL OPINION

LEGAL OPINION

The following opinion is given in support of the foregoing Application of Energia Sierra Juarez U.S., LLC for Authorization to Transmit Electric Energy to Mexico.

1. Energia Sierra Juarez U.S., LLC is a duly incorporated and validly existing limited liability company, which is in good standing under the laws of the State of Delaware.
2. Energia Sierra Juarez U.S., LLC has the corporate capacity to act in the manner described in the Application.
3. To the best of my knowledge and belief, Energia Sierra Juarez U.S., LLC has complied with or is in the process of complying with all Federal and State laws regarding the matters contemplated in the Application.

/s/ Jerrod L. Harrison

Jerrod L. Harrison
Assistant General Counsel
Semptra Infrastructure
488 8th Avenue, HQ12
San Diego CA 92101

Dated: August 16, 2024

FILING FEE RECEIPT



Receipt

Tracking Information

Pay.gov Tracking ID: 27GUMNOU

Agency Tracking ID: 76804820358

Form Name: U.S. Department of Energy General Collections

Application Name: DOE General Collections Form

Payment Information

Payment Type: Debit or credit card

Payment Amount: \$500.00

Transaction Date: 08/16/2024 01:09:22 PM EDT

Payment Date: 08/16/2024

Payment Type : Other

Bill Number:

PO Number :

WFO Number:

Other : Application of Energia Sierra Juarez U.S., LLC for Authority to Transmit Electric Energy to Mexico

Comments:

Account Information

Cardholder Name: Arminda Malanche

Card Type: American Express

Card Number: *****2004