

A G E N D A
City of Aztec
SPECIAL CITY COMMISSION MEETING
June 20, 2016
201 W. Chaco, City Hall
7:00 a.m.

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. AGENDA APPROVAL

VI. BUSINESS ITEMS

- A. Purchase Power Contract Amendment #1
- B. Purchase Power Contract Amendment #2
- C. Consent to Collateral Assignment
- D. Solar Power Purchase Agreement
- E. Power Transmission Agreement between Farmington Electric Utility System and the City of Aztec

VII. ADJOURNMENT

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 334-7600 prior to the meeting so that arrangements can be made.

Note: A final agenda will be posted 24 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410

Staff Summary Report

MEETING DATE: 20 June 2016
AGENDA ITEM: VI. Business Item (A)
AGENDA TITLE: Purchase Power Contract Amendment #1

ACTION REQUESTED BY: Ken George, Electric Director
ACTION REQUESTED: Approval of Purchase Power Contract Amendment #1
SUMMARY BY: Ken George

PROJECT DESCRIPTION / FACTS

City Commission approved the Power Supply Agreement with Guzman Energy to provide power to the City of Aztec on 21 December 2015. This amendment is required in order to allow Guzman to recover the costs of Ancillary Services Schedules 5 & 6. These two Ancillary Services were previously going to be acquired by Aztec directly from WAPA.

The issue arose because WAPA (Western Area Power) requires a separate transaction (From the NITSA) for these services. Therefore, it is more efficient for Guzman to procure these services on Aztec's behalf and then to recover those costs from Aztec as part of the monthly billing process.

Amendment No. 1 defines the language by which this transaction is allowed to occur.

The City Attorney has reviewed these documents and found them to be sufficient.

The City Electric Utility attorney Ashley Wald, of Holland and Hart, has worked with the City throughout this process to ensure we are adequately represented and that the documents provided are sufficient.

Edwin Reyes and Edward Padilla of Enchantment Energy Consulting, LLC have continued to work with the City to ensure our Power Sales process is complete and thorough. Mr. Reyes will be in attendance for the Commission meeting.

SUPPORT DOCUMENTS: Amendment No. 1 to PSA

DEPARTMENT'S RECOMMENDED MOTION: Motion to approve Purchase Power Contract Amendment #1 between Guzman Energy LLC and the City of Aztec.

Staff Summary Report

MEETING DATE:	20 June 2016
AGENDA ITEM:	VI. Business Item (B)
AGENDA TITLE:	Purchase Power Contract Amendment #2

ACTION REQUESTED BY:	Ken George, Electric Director
ACTION REQUESTED:	Purchase Power Contract Amendment #2
SUMMARY BY:	Ken George

PROJECT DESCRIPTION / FACTS

Amendment No. 2 to the Power Sales agreement was initiated due to a change in the financing of the solar field by Guzman Energy.

In order to provide adequate lender protections under a project financed transaction, certain provisions must be included within the Power Sales Agreement to allow for the lender to step into the ownership position in the event of a project default. The Consent and Assignment Agreement and the Solar PPS are attached as vehicles to allow for the transfer of the project to the lender or successor and provide for continuation of service from the Solar Facility.

The City Attorney has reviewed these documents and found them to be sufficient.

The City Electric Utility attorney Ashley Wald, of Holland and Hart, has worked with the City throughout this process to ensure we are adequately represented and that the documents provided are sufficient.

Edwin Reyes and Edward Padilla of Enchantment Energy Consulting, LLC have continued to work with the City to ensure our Power Sales process is complete and thorough. Mr. Reyes will be in attendance for the Commission meeting.

SUPPORT DOCUMENTS: Amendment No. 2 to PSA

DEPARTMENT'S RECOMMENDED MOTION: Motion to approve Purchase Power Contract Amendment #2 between Guzman Energy LLC and the City of Aztec.

Staff Summary Report

MEETING DATE:	20 June 2016
AGENDA ITEM:	VI. Business Item (C)
AGENDA TITLE:	Consent to Collateral Assignment

ACTION REQUESTED BY:	Ken George
ACTION REQUESTED:	Approval of Consent to Collateral Assignment
SUMMARY BY:	Joshua W. Ray

PROJECT DESCRIPTION / FACTS

This item is paired with Business Item B.

In order to provide adequate lender protections under a project financed transaction, certain provisions must be included within the Power Sales Agreement to allow for the lender to step into the ownership position in the event of a project default. The Consent and Assignment Agreement and the Solar PPA are attached as vehicles to allow for the transfer of the project to the lender or successor and provide for continuation of service from the Solar Facility.

The Consent and Assignment Agreement is an agreement with the lender for the solar field project which enables them to make the solar project part of the lender's collateral for the loan.

The City Attorney has reviewed these documents and found them to be sufficient.

The City Electric Utility attorney Ashley Wald, of Holland and Hart, has worked with the City throughout this process to ensure we are adequately represented and that the documents provided are sufficient.

Edwin Reyes and Edward Padilla of Enchantment Energy Consulting, LLC have continued to work with the City to ensure our Power Sales process is complete and thorough. Mr. Reyes will be in attendance for the Commission meeting.

SUPPORT DOCUMENTS:	Consent and Assignment Agreement
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DEPARTMENT'S RECOMMENDED MOTION:	Motion to approve the Consent to Collateral Assignment.
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Staff Summary Report

MEETING DATE: 20 June 2016
AGENDA ITEM: VI. Business Item (D)
AGENDA TITLE: Solar Power Purchase Agreement

ACTION REQUESTED BY: Ken George
ACTION REQUESTED: Approval of the Solar Power Purchase Agreement
SUMMARY BY: Joshua W. Ray

PROJECT DESCRIPTION / FACTS

This Solar Power Purchase Agreement (PPA) is a separate PPA for the solar power. This agreement is recommended for approval by Commission but will not be an active agreement at this time.

The Amendment No. 2 adds a provision under which the lender for the Solar Project would take control of the Solar Project in the event of a Default of the Project Company. In the case where the lender takes control this new Solar Power Purchase Agreement (Solar PPA) would become effective for the purchase and sale of power delivered from the Solar Project. It will only become effective if the Project Company fails to perform its obligations to the lender (i.e. is delinquent on its debt repayment) and the lender steps into the Project Company's shoes. In this situation either the power sales agreement will have been terminated or there is a bankruptcy of the Project Company so that the lenders will need to have a direct buy/sell arrangement with the City for the solar power.

This agreement is based largely on the provisions of the original power sales agreement.

The City Attorney has reviewed these documents and found them to be sufficient.

The City Electric Utility attorney Ashley Wald, of Holland and Hart, has worked with the City throughout this process to ensure we are adequately represented and that the documents provided are sufficient.

Edwin Reyes and Edward Padilla of Enchantment Energy Consulting, LLC have continued to work with the City to ensure our Power Sales process is complete and thorough. Mr. Reyes will be in attendance for the Commission meeting.

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

SUPPORT DOCUMENTS: Solar PPA

DEPARTMENT'S RECOMMENDED MOTION: Motion to approve the Solar Power Purchase Agreement.

Staff Summary Report

MEETING DATE:	June 20, 2016
AGENDA ITEM:	VI. Business Item (E)
AGENDA TITLE:	Power Transmission Agreement between Farmington Electric Utility System and the City of Aztec

ACTION REQUESTED BY:	Ken George, Electric Director
ACTION REQUESTED:	Approval of a 90 Day Power Transmission Agreement Between Farmington Electric Utility System and the City of Aztec.
SUMMARY BY:	Ken George

PROJECT DESCRIPTION / FACTS (Leading Department)

City Staff has been in negotiations with Farmington Electric Utility System (FEUS) over the last 6 months working on a long term transmission agreement for FEUS to wheel power over their lines from Shiprock to Aztec. The current transmission agreement to deliver power from the Shiprock substation, owned and operated by Western Area Power (WAPA) to Aztec over FEUS's transmission system was through Public Service Company of New Mexico (PNM). Under the new purchase power agreement (PPA) with Guzman Energy, Aztec elected to hold the transmission agreement itself rather than having our power supplier negotiate the terms of the agreement.

To date we have not been able to come to terms on a long term agreement. FEUS and I have agreed with consent from City Commission to a 90 day agreement to allow time for more negotiations and hopefully a long term agreement. (KBG)

TECHNICAL INPUT (Supporting Departments)

See attached FEUS proposed transmission agreement.

SUPPORT DOCUMENTS: See attached MOU and Specifications

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve a 90 Day Transmission Agreement between Farmington Electric Utility System and the City of Aztec.

TEMPORARY
WHOLESALE TRANSMISSION SERVICE AGREEMENT
BETWEEN
FARMINGTON ELECTRIC UTILITY SYSTEM
AND
THE CITY OF AZTEC, NEW MEXICO

This Temporary Wholesale Transmission Service Agreement (“Agreement”) between the Farmington Electric Utility System (“FEUS”), which is owned by the City of Farmington, a New Mexico municipal corporation, and the City of Aztec (“Aztec”), a New Mexico municipal corporation, is made and entered into to be effective on July 1, 2016 ("Effective Date") and to terminate on September 30, 2016 (“Termination Date”). When referred to jointly, FEUS and Aztec shall be referred to as the “Parties” and may be referred to individually as a “Party”.

1. RECITALS

WHEREAS, FEUS owns and operates an electric system within the State of New Mexico and is engaged in the generation, transmission, distribution, purchase and the sale of power and energy; and,

WHEREAS, Aztec owns and operates an electric system in San Juan County within the State of New Mexico and is engaged in the distribution of power and energy; and,

WHEREAS, FEUS’s transmission system is interconnected with other utilities, including Aztec’s; and,

WHEREAS, Aztec has entered into a Power Sales Agreement with Guzman Energy LLC (“Guzman”), a Florida limited liability company, with a contract term of seven (7) years, commencing on July 1, 2016 at 12:00:00 a.m. and terminating on June 30, 2023 at 11:59:59 p.m., unless terminated earlier or extended beyond the term in accordance with their Power Sales Agreement; and,

WHEREAS, Aztec is a party to Contract No. 87-SLC0015 with the United States Department of the Interior (“WAPA Agreement”) for Firm Electric Service, dated March 13, 1969; and,

WHEREAS, Aztec has requested and FEUS has agreed, to deliver firm capacity and energy to Aztec at the City of Aztec Substation (“COA Lightplant Substation”) located at 402 South Light Plant Road, Aztec, New Mexico from deliveries of power and energy made by Guzman to FEUS at the Shiprock 115 kV Switching Station, the San Juan Substation (“Hogback Substation”), or at Other Points of Interconnection to the FEUS Transmission System; and,

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements hereafter set forth, the Parties agree as follows:

2. TERM

This Agreement shall become effective on July 1, 2016 and shall remain in full force and effect until September 30, 2016 unless replaced by another Agreement between the Parties during that period of time.

3. DEFINITIONS

- a. Ancillary Services consists of the following services: load following, energy imbalance, reactive power and voltage control, reserves and scheduling services.
- b. Aztec's Substation ("COA Lightplant Substation") means the point of interconnection where FEUS will deliver and Aztec will receive firm power and energy.
- c. Balancing Authority as defined by NERC means Western Area Power Administration ("WAPA"), the functional entity that integrates resource plans ahead of time, maintains load-interchange generation balance within a Balancing Authority Area and supports interconnection frequency in real time.
- d. Contract Capacity means the quantity of Firm Transmission Service identified in Exhibit A, which may be revised as herein provided.
- e. Effective Date has the meaning ascribed in the opening paragraph.
- f. Firm Transmission Service means reserved capacity on FEUS's transmission system available on demand and not subject to interruptions except as expressly set forth in Section 5. Firm Transmission Service is the highest quality (priority) of transmission service offered to customers.
- g. Force Majeure means such uncontrollable forces that render a Party wholly or partially unable to perform any of the obligations under this Agreement. Uncontrollable forces includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, lightning, epidemics, sabotage, blockades, insurrections, riots, washouts, landslides, mudslides, extreme cold or freezing weather, explosions, breakage, freezing of or accident to equipment, line or pipe, court order, or other delay or failure in performance as a result of action or inaction by any administrative or regulatory body or other public authority.
- h. Other Points of Interconnection means other points on FEUS's transmission system where Guzman and/or WAPA can deliver and FEUS can receive power and energy and Ancillary Services to be wheeled to the COA Lightplant Substation without jeopardizing the delivery of electricity to either Party's customers.
- i. San Juan 115 kV Substation ("Hogback Substation") means the point of interconnection where WAPA has firm rights and will deliver and FEUS, having firm rights, will receive the firm power and energy.
- j. Transformer Losses means those losses incurred in transforming capacity and energy from one voltage to another voltage expressed as a percentage.
- k. Transmission Losses means those losses incurred in transmitting power and energy from one point on the transmission system to another point on the transmission system expressed as a percentage.
- l. Western Area Power Administration means the current Balancing Authority providing Ancillary Services for FEUS and for Aztec.
- m. Wholesale Transmission Service Tariff means FEUS's current "Farmington Electric Utility System First Revised Rate No. 11 cancelling Original Rate No. 11 Wholesale Transmission Service" ("Rate No. 11") attached as Exhibit B which can be revised from time to time by Farmington.

4. FACILITIES

- a. FEUS shall own, operate and maintain certain transmission facilities connecting to the Hogback 115 kV Substation and connecting to the COA Lightplant Substation.
- b. Aztec owns, operates and maintains the COA Lightplant Substation delivery point at which deliveries will be made from FEUS to Aztec.

- c. FEUS has made application and obtained the required permitting from WAPA (Meter Application Agreement No. 15-RMR-2708) effective as of October 26, 2015.
- d. FEUS will install at its expense the WAPA owned SEL-735 meter at COA Lightplant Substation, which will adhere to and meet WAPA standards and requirements, in accordance with the WAPA Metering Point Relocation MOU between FEUS and Aztec. This WAPA meter will be used to meter the existing 69kV transmission line and, if necessary, a future 69 kV transmission line to be built by Aztec.
- e. FEUS will install, retain ownership, maintain, replace and have financial responsibility of the instrument transformers (CTs and PTs) and associated equipment.
- f. WAPA will be responsible for maintenance and repair necessary for proper and intended operation of the meter.
- g. If additional construction is required to render the WAPA meter a revenue meter in place of a delivery point meter, FEUS is not financially obligated to accommodate such construction.

5. FIRM TRANSMISSION SERVICE

- a. Firm Transmission Service is reserved capacity on FEUS's transmission system available on demand and not subject to interruptions except as expressly set forth in this Section 5.
- b. Commencing on the Effective Date, FEUS will accept up to Contract Capacity from Aztec at the Hogback 115 kV Substation or Other Interconnection Point to the FEUS transmission system and will simultaneously deliver such amounts of power and energy, minus applicable Transmission Losses and Transformer Losses pursuant to Sections 6 and 7, respectively, to the COA Lightplant Substation.
- c. FEUS shall supply continuous Firm Transmission Service, but does not warrant or guarantee that such transmission service shall be free from interruption or reductions for the following reasons:
 - i. Interruptions or reductions due to Force Majeure events pursuant to Section 18 herein;
 - ii. Interruptions or reductions due to action reasonably instituted by automatic or manual controls for the purpose of maintaining overall reliability and continuity of FEUS's transmission system or generation facilities;
 - iii. Interruptions or reductions due to system frequency, voltage, or harmonics outside normal operating limits which could compromise the integrity or stability of the electric system; or unstable operation of Aztec's system which jeopardizes FEUS's operation of its system or any part thereof;
 - iv. Interruptions or reductions which, in the reasonable opinion of FEUS are necessary for the purpose of maintenance, repair, replacement or installation of equipment. FEUS shall use best efforts to coordinate maintenance schedules with Aztec;
 - v. Interruptions or reductions that are necessary, in the reasonable opinion of FEUS, for the purpose of protecting the integrity and reliability of FEUS or its interconnected transmission system;
 - vi. Except as provided in Section 17 herein, FEUS shall not be liable to Aztec for any damages, including lost profits, resulting from any of the above interruptions or reductions. FEUS shall provide Aztec reasonable advance notice of any scheduled activities or conditions that will result in interruptions or reductions of transmission service. FEUS shall use reasonable efforts to expeditiously remove all causes of interruptions or reductions of Firm Transmission Service which are under its control.

- d. In the event of an interruption or reduction occurrence as described in Section 5.c above, Aztec shall be treated the same as FEUS's other customers with Firm Transmission Service.
- e. In the event of an interruption or reduction occurrence as described in Section 5.c above, Aztec agrees that it will curtail its schedules through FEUS and will comply with the Balancing Authority requirements.
- f. The Firm Transmission Service provided pursuant to this Agreement is applicable only for transmission to wholesale customers or generators.
- g. If Aztec requests transmission of capacity and energy in excess of the Contract Capacity, studies will be conducted by FEUS to ensure such additional power and energy can be delivered without jeopardy to FEUS's customers. Should such studies determine that the delivery of additional power and energy can be accomplished without any jeopardy, FEUS will deliver the increased capacity and energy from the Shiprock 115 kV Switching Station, the Hogback Substation, or at Other Points of Interconnection to the FEUS Transmission System to the COA Lightplant Substation when, as, and if the transmission capacity is available at the then existing Wholesale Transmission Service Tariff. The increased Contract Capacity will supersede the then existing Contract Capacity until superseded by another request at a later date, and will be documented by an amendment to this Agreement. Such requests will not be made more than one time per calendar year and will be made at least six months prior to the effective date of the desired revised Contract Capacity. If Aztec requests transmission of capacity and energy that is less than the current Contract Capacity, then Aztec will provide notice to FEUS by December 31st the new Contract Capacity, and the new Contract Capacity will become effective the following July 1st.
- h. In the event that during any calendar month the actual metered capacity exceeds the Contract Capacity less applicable Transmission Losses, the calculated kilowatt value will be rounded up to the nearest whole number and be invoiced pursuant to Section 12.d.

6. TRANSMISSION LOSS PROVISIONS

- a. Aztec shall pay FEUS for Transmission Losses in accordance with the prevailing Wholesale Transmission Service Tariff established Transmission Loss percentage, presently two percent (2%) of scheduled deliveries. Such losses may change from time to time as the Wholesale Transmission Service Tariff is modified.
- b. Since Aztec cannot deliver capacity and energy to replace losses to FEUS at the Shiprock 115 kV Switching Station, the Hogback Substation, or at Other Points of Interconnection concurrently with the scheduled delivery of power and energy to be transmitted to Aztec, Aztec will pay FEUS for such energy losses at two percent (2%) of the delivered energy measured at COA Lightplant Substation at the energy charge shown in FEUS's Bulk Power Service Tariff in effect at the time losses are incurred.

7. TRANSFORMER LOSS PROVISIONS

Aztec shall pay FEUS at the energy charge shown in FEUS's Bulk Power Service Tariff in effect at the time losses are incurred for any Transformer Losses for conversion from 115 kV to 69 kV for delivery to COA Lightplant Substation. Transformer Losses are established at four tenths of one percent (0.4%) of the delivered energy measured at COA Lightplant Substation for this Agreement and may be modified from time to time by FEUS as required.

8. SCHEDULING PROVISIONS

- a. The Parties recognize the obligations of the Balancing Authorities to perform certain energy accounting functions, to monitor transmission line loading and to take appropriate action in

emergency situations in accordance with prudent utility practice. The Parties also recognize that in order for FEUS's Balancing Authority to carry out these functions and obligations, FEUS's Balancing Authority must know at all times the amounts of energy scheduled on its transmission system. Aztec shall provide the Balancing Authority hourly information indicating the amount of power and energy to be scheduled into FEUS. During emergencies, the Parties will comply with requests for additional information to facilitate Balancing Authority Area operations.

- b. Aztec shall provide or cause to be provided to FEUS's Balancing Authority, a pre-schedule of transactions for each hour of the following day; or, if the next day is not a work day observed by the Balancing Authority, of the next work day and all intervening days.
- c. Such pre-schedules may thereafter be changed as agreed upon by the Balancing Authority.
- d. All schedules will be tagged by Guzman in accordance to NERC and WECC standards.

9. ACCOUNTING FOR POWER AND ENERGY DELIVERIES

- a. The accounting for Transmission Losses and Transformer Losses delivered to FEUS by Guzman at the Shiprock 115 kV Switching Station, the Hogback Substation, or at Other Points of Interconnection will be in accordance with the operating procedure to be developed between the Parties.
- b. Should another Point of Interconnection be used for Aztec's load into FEUS's transmission system and a cost is incurred by FEUS for Aztec's load, Aztec shall reimburse FEUS fully for all such costs and any other related costs.
- c. FEUS is not providing any Ancillary Service nor monthly accounting services except for applicable Transmission and Transformer Loss calculations for Aztec's Customer Load.

10. METERING

- a. WAPA
 - i. WAPA shall own, operate, maintain and repair its meter at COA Lightplant Substation.
 - ii. WAPA qualified personnel will have access to the Aztec metering point located in the COA Lightplant Substation for the purpose of obtaining electrical demand and energy information on a "read only" basis.
 - iii. Should a revenue meter be required in place of the WAPA delivery meter into the COA Lightplant Substation for metering the 69 kV transmission line and/or any future transmission lines built by Aztec to the COA Lightplant Substation, FEUS is not obligated to accommodate such construction.
- a. FEUS
 - i. FEUS will install, own, maintain, replace and have financial responsibility for the instrument transformers (CTs and PTs) and associated equipment.
 - ii. FEUS qualified personnel will have access to the Aztec metering point located in the COA Lightplant Substation for the purpose of obtaining electrical demand and energy information on a "read only" basis.
 - iii. FEUS agrees to become familiar with, abide by and meet WAPA's rules and regulations to include those outlined in the WAPA meter policy.
 - iv. FEUS agrees to immediately notify Aztec of any event, action or occurrence which will require notice to WAPA or requiring WAPA's guidance in meeting guidelines, or otherwise would have an impact on Aztec's ordinary course of business.

- b. Aztec
 - i. Aztec qualified personnel will have access to the Aztec metering point located in the COA Lightplant Substation for the purpose of obtaining electrical demand and energy information on a “read only” basis.
 - ii. Aztec agrees to become familiar with, abide by and meet WAPA’s rules and regulations to include those outlined in the WAPA meter policy.
 - iii. Aztec agrees to immediately notify FEUS of any event, action or occurrence which will require notice to WAPA or requiring WAPA’s guidance in meeting guidelines, or otherwise would have an impact on FEUS’s ordinary course of business.
- c. The meter(s) shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested or adjusted by the authorized representative of each Party. The purchasing entity (Aztec) shall be afforded reasonable opportunity to be present upon such occasions.
- d. Metering equipment shall be inspected or tested at least once each year by WAPA and Aztec and at any other reasonable time upon request by any Party, with notification to FEUS so that FEUS personnel can be on site to witness all meter inspections and tests. Any metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced. Should any meter fail to register the power and energy delivered during a period, such deliveries shall, for billing and payment purposes be estimated for such period by the operating representatives using the best information available.
- e. If any of the inspections or tests provided for herein discloses an error exceeding two percent (2%), a correction based upon the inaccuracy shall be made in the records of electric service furnished for the ninety (90) days previous to such test. Any correction in billing resulting from such correction in the meter records shall be made in the next monthly bill rendered, and such correction and related payment adjustment, when made, shall constitute full and final adjustment of any claim between the Parties hereto arising out of such inaccuracy of metering equipment.
- f. FEUS shall have the ability to remotely read the primary meter located at the COA Lightplant Substation on or about the first working day of each month. Kilowatt and kilowatt hour readings will be utilized to compute actual capacity and energy delivered and Transmission and Transformer Losses incurred for each calendar month.

11. REACTIVE POWER FLOWS

- a. FEUS and Aztec shall each provide the reactive power requirement for their respective system and loads and there shall be no transfer or flow of reactive kilovolt-amperes except when transfers of reactive kilovolt-amperes may be mutually advantageous and agreed upon from time to time by the operating representatives, or as required by FEUS’s system operator to support transmission line loading. Aztec shall provide such support as necessary, including adjustment of real power generation by their Balancing Authority, WAPA, or by installation of appropriate reactive power devices to accommodate reactive power requirements.
- b. Reactive power flow from FEUS to the Aztec Customer Load shall be minimized at all times. Should excessive reactive power flow from FEUS to Aztec’s Customer Load occur, Aztec will be responsible for the installation of equipment to ensure such flows are prevented.
- c. If such reactive power flow is not corrected within ninety (90) days to a minimum of ninety-eight percent (.98) power factor from the written notice being given by FEUS to Aztec or such additional time as warranted by circumstances, FEUS shall make the system improvements required to rectify the problem and Aztec shall pay for the cost of such improvements.

12. PAYMENT

- a. The rate for the Firm Transmission Service and the Transmission Loss percentage shall be as shown in the FEUS Wholesale Transmission Service Tariff attached as Exhibit B , which is subject to change; provided that the rate and loss factor can be reviewed by FEUS to reflect actual changes affecting transmission costs, including but not limited to actual changes in investment, operation and maintenance costs, replacement costs, insurance, ad valorem taxes, system capacity and usage.
- b. The Transmission energy and Transformation energy losses shall be at the energy charge shown in the FEUS Bulk Power Service Tariff attached as Exhibit C, which is subject to change.
- c. FEUS and Aztec operating representatives will attempt to resolve disputes related to billing. Should they be unable to do so, the Parties agree to discuss the dispute with FEUS's management who will attempt to resolve the problem in an expeditious manner.
- d. In the event that during any calendar month, the actual metered capacity exceeds the Contract Capacity, Aztec agrees to pay a penalty for that month equal to five (5) times the Wholesale Transmission Service Tariff rate times the Contract Capacity metered during that calendar month in excess of the Contract Capacity.

13. UPGRADES AND FACILITIES EXPANSION

The determination of a fair and reasonable allocation of transmission facilities expansion costs, if any, to Aztec as a firm transmission user shall be negotiated in good faith between the Parties using as a guideline the regulations, policies, decisions and opinions of the FERC. As soon as FEUS identifies a need for a capital improvement for its transmission facilities as part of its five year plan or at such time that the need is identified in FEUS's annual budget, FEUS shall give written notice of such planned expansion or upgrade of its transmission system. Such negotiations shall be concluded within one year of FEUS's notification to Aztec unless extended by mutual agreement. If the negotiations are not successfully completed within one (1) year or any extension thereof, Aztec may either: 1) seek a determination of a fair and reasonable allocation of transmission facilities costs, if any, from an independent engineering consultant qualified in such matters and agreed upon by the Parties; or 2) elect to terminate this Agreement upon ninety (90) days written notice without penalty or other liability other than paying for services rendered prior to the termination of the Agreement. If Aztec elects to seek a determination of a fair and reasonable allocation, FEUS will not proceed with construction of the planned expansion or upgrade until Aztec and FEUS agree to the allocation determined by the engineering consultant.

14. OPERATING REPRESENTATIVES

- a. Each Party shall notify the other Party within thirty (30) days after execution of this Agreement of its designated operating representatives.
- b. Each Party shall appoint two (2) operating representatives.
- c. Such designation may be changed from time to time by any Party by written notice to the other Party within thirty (30) days of the change.
- d. The operating representatives will be responsible for the accounting of power and energy transmitted by FEUS and received by Aztec and will also perform such other duties necessary to implement the terms and conditions of this Agreement.
- e. The operating representatives are not authorized to change any of the provisions of this Agreement.

- f. FEUS shall provide notice of Wholesale Transmission Service Tariff and Bulk Power Service Tariff revisions to the Aztec operating representatives at least sixty (60) days prior to the effective date of said revisions.

15. INVOICES AND PAYMENTS

- a. FEUS will invoice Aztec monthly for Firm Transmission Service and applicable losses associated with the receipt and delivery of capacity and energy for the benefit of Aztec's Customer Load.
- b. FEUS will submit the invoice to Aztec on or before the 10th day of each month for services rendered during the preceding month. Payments will be due and payable by Aztec thirty (30) days after the bill is received by Aztec. If Aztec fails to pay such invoice within said thirty (30) day period, FEUS may discontinue delivery of capacity and energy hereunder upon thirty (30) days written notice to Aztec; provided however, that Aztec may avoid having service discontinued by payment of the amount duly owed and specified in such notice by FEUS within said thirty (30) day notice period. Any unpaid past due amount shall accrue interest at the rate of 1 ¼% per month until paid.
- c. In the event of a disputed invoice, payment of the amount billed shall be made within the thirty (30) day period. Within six (6) months of the invoice due date, Aztec shall give notice of payments made and designated as disputed and shall provide a written description of the reasons therefore. FEUS shall advise Aztec of FEUS's response within thirty (30) days of the receipt of such notice. Any refunds resulting from the settlement of such disputed amounts shall include interest at the rate of 1 ¼ % per month during the period of such dispute. If a Party fails to notify the other Party of a dispute to an invoice within the six (6) months of the invoice due date, the invoice and payment shall be deemed to be correct and neither of the Parties shall be entitled to make any claim against the other Party.

16. ADMINISTRATION

- a. The administration of this Agreement shall be conducted by the operating representatives designated in Section 14 or their designees.
- b. As it pertains to equipment owned and operated by either Party, either Party assumes full responsibility for the adoption of necessary operating measures, safety procedures and the installation of such automatic protective equipment as may be required to prevent damage to the facilities or prevent accidental harm to personnel engaged in the construction, operation, maintenance, inspection, testing or removal of equipment pursuant to this Agreement and to others who may come in proximity thereto.

17. LIMITED IMDEMNIFICATION

Each Party agrees to hold harmless and indemnify the other Party, its agents and employees, from such other Party's cost of defending any claim, allegation or suit, including attorney's fees, brought by any third party to the extent that the claim, allegation or suit arises from the negligent act of the indemnifying Party, or its agents or employees performed pursuant to this Agreement.

18. FORCE MAJEURE

- a. Neither Aztec nor FEUS shall be liable for any failure to perform the obligations under this Agreement when such failure to perform is due to Force Majeure. Under the conditions of Force Majeure, the non-performing Party shall be excused from performance provided that:
 - i. Within one (1) week after the occurrence of the Force Majeure event, the non-performing Party shall give the other Party written notice describing the occurrence;

- ii. The suspension of performance shall be of no greater scope and of no longer duration than is commercially reasonable as a result of the Force Majeure event; and
 - iii. The non-performing Party uses commercially reasonable efforts to remedy its inability to perform.
- b. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.
- c. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interest.
- d. In the event the non-performing Party, after using its commercially reasonable efforts, is unable to remedy its inability to perform due to the Force Majeure event, either Party may terminate this Agreement by providing fifteen (15) days written notice except for any payment due for prior service provided or required pursuant to Section 26.
- e. Such causes of contingencies affecting the performance under the Agreement by either Aztec or FEUS shall not relieve it of liability in the event of its negligence or in the event of its failure to use reasonable efforts to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve either Party from its obligation to make payments of amounts then due in respect of power and energy delivered.

19. WAIVERS

Any waiver by a Party of its rights with respect to a default or with respect to any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay, short of the statutory period of limitations, in asserting or enforcing any right hereunder shall be deemed a waiver of such right. Any waiver at any time by either Party of its rights under this Agreement must be made in writing.

20. REMEDIES

Except as otherwise set forth in this Agreement, each Party, upon the other Party's failure to perform in accordance with the provisions of this Agreement, shall have the right to exercise any right or remedy that Party may have at law or in equity, injunctive relief and specific performance. Neither Party shall be liable under any theory of law for any indirect, consequential, incidental, punitive or exemplary damages.

21. AMENDMENTS

Unless otherwise specified herein, all modifications to this Agreement shall require written amendments executed by both Parties.

22. PREVIOUS COMMUNICATIONS

This Agreement contains the entire agreement and understanding between the Parties thereby merging and superseding all prior agreements and representations by the Parties.

23. SUCCESSORS AND ASSIGNS

Neither Party shall assign its rights or duties hereunder without the prior written approval of the other Party, which approval shall not unreasonably be withheld. This Agreement shall apply and shall be binding upon the successors and assigns of each of the Parties.

24. GOVERNING LAW

This Agreement shall be interpreted under the laws of the State of New Mexico.

25. SEVERABILITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with the requirements of any applicable law and the intent of the Parties to this Agreement.

26. DEFAULT AND CURE

Except as otherwise provided herein, in the event either Party fails to perform any obligation under this Agreement, the non-defaulting Party shall notify the other in writing, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within sixty (60) days after service of such notice, then, and only then, may the non-defaulting Party pursue its legal or equitable remedies.

27. NOTICES

Any formal notice provided for in this Agreement shall be delivered in person, sent by electronic mail, sent by U.S. mail or nationally recognized delivery service with a signature required upon receipt for either method, or faxed so long as sender calls the recipient to confirm receipt. Receipt of the notice shall be deemed as of the date on which the delivery is signed or fax receipt confirmed. Notices shall be sent to:

If to Aztec: Electric Director
 City of Aztec
 Electric Operations Center
 402 S. Light Plant Rd
 Aztec, NM 87410
 Phone: 505.334.7667
 Fax: 505.334.7684
 Email: kgeorge@aztecnm.gov

If to FEUS: Electric Utility Director
 Farmington Electric Utility System
 101 North Browning Parkway
 Farmington, NM 87401
 Phone: 505.599.1165
 Fax: 505.599.8323
 Email: rromero@fmtn.org

28. OPERATING PROCEDURES

The Parties will develop written operating procedures as needed for the implementation of this Agreement such as communications for interruptions, emergencies, loss reimbursement and any other matter agreed to by the Parties. Such operating procedures will be signed and dated by the operating representatives of the Parties.

29. CITY OBLIGATIONS LIMITED

Obligations by FEUS under this Agreement are obligations of the City of Farmington Electric Utility Enterprise Fund. Obligations of FEUS shall never constitute an obligation or indebtedness of the City of Farmington within the meaning of Article IX, Sections 12 or 13 of the Constitution of the State of New Mexico and shall never constitute a charge against the general credit or taxing power of the City of Farmington.

Likewise, obligations by Aztec under this Agreement are obligations of the City of Aztec Joint Utility Enterprise Fund. Obligations of Aztec shall never constitute an obligation or indebtedness of the City of Aztec within the meaning of Article IX, Sections 12 or 13 of the Constitution of the State of New Mexico and shall never constitute a charge against the general credit or taxing power of the City of Aztec.

IN WITNESS WHEREOF, the Parties hereto have executed and entered into this Agreement on the date first above written.

The City of Aztec

Farmington Electric Utility System

By: Ken George
Electric Director

By: Rodney Romero
Acting Electric Utility Director

EXHIBIT A
CONTRACT CAPACITY

Aztec Contract Capacity = 8 MW

Effective Date: July 1, 2016

EXHIBIT B

FARMINGTON ELECTRIC UTILITY SYSTEM FIRST REVISED RATE NO. 11 CANCELLING ORIGINAL RATE NO. 11

WHOLESALE TRANSMISSION SERVICE

APPLICABILITY:

Applicable to the wholesale transportation of electrical power and energy over the 69,000 and 115,000 voltage transmission networks of the Farmington Electric Utility System (FEUS); for deliveries between interconnection points with other electric utility transmission systems; or from an independent or qualifying facility to an interconnection point with other electric utility systems. Not applicable to any retail customer services.

AVAILABILITY:

The amount of wheeling capacity available is limited to the transfer capability of the FEUS transmission system minus the capacity required for firm load customers. Any incremental addition required as a result of wheeling requirements will be paid by the wheeling customer requesting the capacity.

RESERVED CAPACITY CHARGE:

The annual cost of \$24.60 per kW of reserved capacity shall be billed each month of the contract year at \$2.05 per month per kW of annual reserved capacity.

LOSSES:

Average transmission energy losses of 2% shall be deducted monthly from kW deliveries to the FEUS transmission system.

INTERCONNECTION AGREEMENT:

An agreement will be required prior to providing service under this rate. The agreement shall include requirements for annual reserve demand requests, interconnection standards, required telemetry, inadvertent interchange responsibility, emergency disconnection, and term provisions. A separate interconnection agreement will be required for each customer.

SPECIAL TAX AND ASSESSMENT ADJUSTMENT:

Billings under this schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of payments made in lieu of ad valorem taxes) payable by the Utility and levied or assessed by any governmental

authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any event incidental to the rendition of the service.

TERMS OF PAYMENT:

Bills are due and payable within fourteen (14) days of the billing date, are past due fifteen (15) days after bill is rendered, are delinquent twenty-five (25) days after the billing date, and service may be terminated for non-payment approximately thirty (30) days from the original due date of the bill subject to a first delinquent notice provided fourteen (14) days prior to disconnection of utility service and a last notice of termination mailed five (5) business days prior to termination of service. If there is a returned check from the customer or the customer is on a payment plan, the notice is hand delivered to the customer at least two (2) days prior to service termination.

Resolution Number: 2013-1492
Approved: October 8, 2013
Effective Date: November 1, 2013

EXHIBIT C

**FARMINGTON ELECTRIC UTILITY SYSTEM
SECOND REVISED RATE NO. 9
CANCELLING FIRST REVISED RATE NO. 9**

BULK POWER SERVICE

APPLICABILITY:

Applicable to electric service having a demand of at least 4,000 kW and receiving electrical service at 69,000 volts or higher. Service shall be supplied through one point of delivery and measured through one meter. Not applicable for standby, supplemental, or resale service.

TERRITORY:

All territories served by the Farmington Electric Utility System in San Juan County and Rio Arriba County.

MONTHLY RATE:

Customer Charge.....\$55.00 plus
Demand Charge.....\$ 8.25 per kW of Billing Demand
Energy Charge.....\$ 0.04300 per kWh

POWER FACTOR ADJUSTMENT:

The charges shall be increased by \$0.50 for each kilovar of reactive demand in excess of 0.33 times the kilowatt demand measured during the billing period. Demands in kilovars and kilowatts shall be determined to the nearest unit.

DETERMINATION OF BILLING DEMAND:

The Billing Demand shall be the higher of (a) the highest 15-minute integrated or thermal kilowatt demand measured during the billing period, or (b) 75% of the kilowatt demand measured during the preceding 11 months, (c) the amount specified in an Agreement for Service or (d) 4,000 kilowatts.

Off-Peak Service – For customers who pay all costs associated with installation of metering equipment specified by the System, the measured demand during the hours of 10:00 p.m. to 8:00 a.m., Monday through Friday, all day Saturday, Sunday, and the following holidays – New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas, shall be multiplied by a factor of 0.5 for billing purposes. Off-peak service to all customers shall be limited to 10,000 kilowatts.

Where highly fluctuating or intermittent loads which are impractical to determine properly (such as welding machines, electric furnaces, hoists, elevators, X-rays, and the like) are in operation by the customer, the System reserves the right to determine the demand in (a) above, by increasing the 15-minute measured maximum demand by an amount equal to 65% of the nameplate rated KVA capacity of the fluctuating equipment in operation by the customer.

MONTHLY MINIMUM:

The monthly minimum charged under this Schedule shall never be less than the Customer Charge plus the Billing Demand charge plus the tax adjustment.

POWER COST ADJUSTMENT:

The above rates include a base power supply cost and cost of service index of \$0.035 per kWh sold. The above rates shall be increased or decreased by \$0.0000001 per kWh for each \$0.0000001 by which the power supply cost and cost of service index varies from \$0.035 per kWh.

SPECIAL TAX AND ASSESSMENT ADJUSTMENT:

Billings under this Schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of payments made in lieu of ad valorem taxes) payable by the Utility and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any event incidental to the rendition of the service.

TERMS OF PAYMENT:

Bills are due and payable within fourteen (14) days of the billing date, are past due fifteen (15) days after bill is rendered, are delinquent twenty-five (25) days after the billing date, and service may be terminated for non-payment approximately thirty (30) days from the original due date of the bill subject to a first delinquent notice provided fourteen (14) days prior to disconnection of utility service and a last notice of termination mailed five (5) business days prior to termination of service. If there is a returned check from the customer or the customer is on a payment plan, the notice is hand delivered to the customer at least two (2) days prior to service termination.

TERMS AND CONDITIONS:

- A. Service under this Schedule is subject to the Rules and Regulations of the Farmington Electric Utility System.
- B. Service under this Schedule requires an Agreement for Service as determined by the Farmington Electric Utility System.
- C. Service available under this Schedule shall be three-phase, 60 hertz at 69,000 or 115,000 volts, subject to availability at the premises.

Resolution Number: 2013-1492
Approved: October 8, 2013
Effective Date: November 1, 2013