

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO**

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IN THE MATTER OF THE APPLICATION )  
OF PUBLIC SERVICE COMPANY OF )  
COLORADO FOR APPROVAL OF THE )  
600 MW RUSH CREEK WIND PROJECT )  
PURSUANT TO RULE 3660(H), A )  
CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY FOR )  
THE RUSH CREEK WIND FARM, AND A )  
CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY FOR )  
THE 345 KV RUSH CREEK TO MISSILE )  
SITE GENERATION TIE )  
TRANSMISSION LINE AND )  
ASSOCIATED FINDINGS OF NOISE )  
AND MAGNETIC FIELD )  
REASONABLENESS. )

PROCEEDING NO. 16A-0117E

IN THE MATTER OF THE PETITION OF )  
PUBLIC SERVICE COMPANY OF )  
COLORADO FOR A VARIANCE OF THE )  
CONSTRUCTION SCHEDULE FOR THE )  
PAWNEE TO DANIELS PARK 345 KV )  
TRANSMISSION PROJECT. )

PROCEEDING NO. 16V-0314E

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**NON-UNANIMOUS SETTLEMENT AGREEMENT**

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**INTRODUCTION**

Public Service Company of Colorado ("Public Service" or "Company"), Trial Staff of the Colorado Public Utilities Commission ("Staff"); the Colorado Office of Consumer Counsel ("OCC"); the Colorado Energy Office ("CEO"); Tri-State Generation and

Colorado PUC E-Files System

Transmission Association, Inc. ("Tri-State");<sup>1</sup> CF&I Steel, L.P./Evraz ("Evraz"); Interwest Energy Alliance ("Interwest"); Colorado Energy Consumers ("CEC"); Southwest Generation Operating Company, LLC ("SWGen"); Western Resource Advocates ("WRA"), Rocky Mountain Environmental Labor Coalition ("RMELC") and Colorado Building and Construction Trades Council, AFL-CIO ("CBCTC") (jointly, "RMELC/CBCTC"); the Colorado Independent Energy Association ("CIEA"); the City of Boulder ("Boulder"); and the City and County of Denver ("Denver") (collectively the "Settling Parties"), hereby enter into this Settlement Agreement ("Agreement") to resolve all issues that have been raised in this proceeding.

In addition to the 14 Settling Parties, three other parties have intervened in this proceeding but have not joined in the Settlement Agreement. Non-joining parties who intervened and do not oppose the Agreement are: Climax Molybdenum Company, ("Climax"); Holy Cross Electric Association, Inc., Yampa Valley Electric Association, Inc., Intermountain Rural Electric Association, and Grand Valley Rural Power Lines, Inc. (collectively, "Joint Cooperatives");<sup>2</sup> and Sustainable Power Group, LLC ("sPower"). Non-joining parties who intervened and oppose the Agreement are a group of ratepayers known as the Ratepayers Coalition.

## **BACKGROUND**

### **Rush Creek Wind Project**

On May 13, 2016, Public Service filed its Verified Application for Approval of the 600 MW Rush Creek Wind Project pursuant to Rule 3660(h), a Certificate of Public

<sup>1</sup> Tri-State supports the resolution of the transmission planning issues in this proceeding, but takes no position on the remaining provisions of the Settlement Agreement.

<sup>2</sup> The Joint Cooperatives do not oppose the Settlement Agreement and may join the Settlement Agreement pending further discussion by and among its respective members.

Convenience and Necessity for the Rush Creek Wind Farm, and a Certificate of Public Convenience and Necessity for the 345 kV Rush Creek to Missile Site Generation Tie Transmission Line and Associated Findings of Noise and Magnetic Field Reasonableness ("Rush Creek Application"), along with the Direct Testimony of eleven witnesses, commencing Proceeding No. 16A-0117E. The Rush Creek Application also included a report from the Independent Evaluator ("IE"), Leidos, as required by Rule 3660(h)(V).<sup>3</sup>

In the Rush Creek Application, the Company sought approval to develop, own, and operate a new 600 MW nameplate capacity wind facility<sup>4</sup> located in eastern Colorado ("Rush Creek Wind Project" or "Project"), comprised of the Rush Creek I and II sites. The Company also requested two Certificates of Public Convenience and Necessity ("CPCN"): (1) to construct and operate Rush Creek I and II, and (2) to construct and operate a 345 kV generation intertie ("Gen-Tie") to interconnect the Rush Creek Wind Project to the grid.

Rush Creek I wind generation facility is rated at 400 MW and sited on approximately 75,000 acres southeast of Limon, Colorado. Rush Creek II wind generation facility is rated at 200 MW and will be constructed on approximately 41,000

<sup>3</sup> Rush Creek Application, Attachment 1, at 2 ("We conclude that the Project as proposed by PSCo, is reasonably likely to be developed, constructed, and operated at a lower levelized cost than the projects from which PSCo is currently purchasing energy.")

<sup>4</sup> On March 11, 2016, Staff petitioned the Commission for a Declaratory Order in Proceeding No. 16D-0168E determining the amount of new eligible energy resources an investor-owned utility (such as Public Service) shall be allowed to develop and own as utility-rate based property without being required to comply with certain competitive bidding requirements. Rule 3660(h) implements § 40-2-124(1)(f)(I), C.R.S. On April 15, 2016, the Commission adopted Decision No. C16-0362, declaring in Ordering ¶ 1 "that 'twenty-five percent of the total new eligible energy resources' as of 'March 27, 2007' means the cumulative of all eligible energy resources that were not in existence prior to March 27, 2007, and should therefore be calculated as a cumulative percentage of eligible energy resources the utility acquires after March 27, 2007..."

acres east of Hugo, Colorado. Collectively across both sites, the Project will install 300 wind turbines with a capacity of 2 MW each.

In order to deliver power generated at Rush Creek I and II to the grid, Public Service will also construct (1) a 345 kV Gen-Tie interconnecting the new facilities to the Company's existing Missile Site Substation ("Missile Site"), and (2) a 345 kV transmission switching station at Rush Creek I. In the Rush Creek Application, the Company requested that the Commission make specific findings with respect to the reasonableness of the noise and magnetic field levels projected to result from operating the Gen-Tie.

Public Service estimates that the total cost of the Project will be \$1.036 billion: this equates to \$1,727 per kW on a total construction cost basis, and less than \$0.03 per kWh on a levelized cost of energy ("LCOE") basis.<sup>5</sup>

In addition to the development, construction, ownership, and operation of the Rush Creek Wind Project, the Company also requested approval of its cost recovery proposal, the baseline for future net economic benefits calculations under Rule 3660(g), and four (4) studies in support of the Rush Creek Application.

#### Pawnee-Daniels Project

On March 28, 2014, Public Service filed its Application for a Certificate of Public Convenience and Necessity for the Pawnee to Daniels Park 345 kV Transmission Project, and for Specific Findings with Respect to EMF and Noise ("Pawnee-Daniels Application") along with the Direct Testimony of five witnesses, commencing Proceeding No. 14A-0287E. In the Pawnee-Daniels Application, the Company requested

<sup>5</sup> The total Project cost of \$1727/kW contained in the Company's Application does not include the AFUDC cost. However, the AFUDC cost has been included in Section IV – Rush Creek Cost Cap.



Commission approval to construct a transmission project consisting of approximately 115 miles of new 345 kV transmission originating at the Pawnee Station near Brush, Colorado, and terminating at the Daniels Park Substation, north of Castle Pines, Colorado ("Pawnee-Daniels Project"). The Pawnee-Daniels Project also included a new Smoky Hill – Daniels Park 345 kV circuit and a new Harvest Mile substation.

By Recommended Decision No. R14-1405, the Administrative Law Judge ("ALJ") assigned to the case granted the CPCN with the condition that construction not begin prior to May 1, 2020. The Commission adopted that recommendation in Decision No. C15-0316 on March 11, 2015.

On April 29, 2016, Public Service filed its Verified Petition for Variance of Commission Decision for Accelerated Construction Schedule ("Petition"), commencing Proceeding No. 16V-0314E ("Pawnee-Daniels Variance"). In this Petition the Company requested that the Commission provide a variance from Decisions R14-1405 and C15-0316 to allow the Pawnee-Daniels Project to begin construction in 2017 with an in-service date of October 2019 to help accommodate the generation output of the Rush Creek Wind Project.

On May 18, 2016, OCC filed a motion to consolidate the Pawnee-Daniels Variance, Proceeding No. 16V-0314E, with the Rush Creek Wind Project, Proceeding No. 16A-0117E.<sup>6</sup> By Decision No. C16-0458-I adopted on May 26, 2016, the Commission granted OCC's motion and consolidated the two proceedings.<sup>7</sup> The Commission also set an intervention deadline of June 1, 2016 for both proceedings.

<sup>6</sup> OCC is an intervenor by right.

<sup>7</sup> The Commission also granted the consolidation in the Rush Creek Wind Project Proceeding No. 16A-0117E by Decision No. C16-0548-I adopted on June 15, 2016.

Consolidated Rush Creek Wind Project and Pawnee-Daniels Variance Proceedings

By Decision No. C16-0548-I adopted June 15, 2016 in the consolidated proceedings, the Commission acknowledged the interventions by right of Staff, OCC, and CEO. It also granted the permissive interventions of CEC, Interwest, the Joint Cooperatives, Boulder, Tri-State, Climax, CF&I/Evraz, CIEA, the Ratepayers Coalition, Denver, RMELC/CBCTC, sPower, SWGen, and WRA.<sup>8</sup>

On July 5, 2016, NextEra Energy Resources filed a limited motion to intervene out of time, which the Commission granted by Decision No. C16-0662-I effective July 15, 2016.<sup>9</sup> Invenergy, previously granted *amicus curiae* status in Decision No. C16-0548-I on June 15, moved for limited intervention out of time on July 12. On July 15, Solar Star also moved for a limited intervention out of time. The ALJ granted Invenergy and Solar Star's interventions in Decision No. R16-0692 on July 22, 2016. On July 29, the IE, Leidos moved for a limited intervention, which the ALJ granted in Decision No. R16-0731-I on August 5, 2016.

The Commission set the procedural schedule in Decision No. C16-0548-I adopted on June 15, 2016. The schedule included Answer Testimony filed by July 27, 2016; Rebuttal Testimony and Cross-Answer Testimony filed by August 22, 2016; prehearing motions filed by August 29, 2016; responses to prehearing motions by September 1, 2016; a prehearing conference on September 2, 2016; hearings from September 7 to 9, 2016; and post-hearing statements of position by September 19, 2016.

<sup>8</sup> The Commission granted Invenergy *amicus curiae* status in the same decision.

<sup>9</sup> The Commission also referred the consolidated proceedings to an ALJ in this decision.

Also in Decision No. C16-0548-I, the Commission ordered Public Service to file an Amended Application and Direct Testimony to remove its request for the Commission to establish a baseline and methodology to determine the potential level of net economic benefits for a potential future request under Rule 3660(g).<sup>10</sup> The Company filed the Amended Application on July 8, 2016 together with the supplemental Direct Testimony of two of the original eleven witnesses.

Nine parties filed Answer Testimony on July 27: WRA, RMELC/CBCTC, OCC, Tri-State, Staff, CEO, sPower, CIEA, and SWGen. The Ratepayers Coalition filed a motion for extension of time to file their Answer Testimony on July 29, and filed the testimony the same day; the Commission granted the motion after the fact by Decision No. C16-0748-I. Public Service filed Rebuttal Testimony on August 22, and three parties filed Cross-Answer Testimony on the same date: Tri-State, CIEA, and WRA.

The Parties began settlement negotiations on August 26, 2016, and the Settling Parties reached a settlement in principle on August 31, 2016. The Settlement Agreement filed here represents the comprehensive agreements of all Settling Parties to resolve the issues in these consolidated proceedings.

## **SETTLEMENT TERMS AND CONDITIONS**

### **I. RUSH CREEK WIND PROJECT**

The Settling Parties agree that the Commission should grant the Rush Creek Application filed pursuant to § 40-5-101 and § 40-2-124, C.R.S., and Rules 3002(a)(III), 3002(b), 3002(c), 3102, 3206, and 3660(h) of the Commission's Rules, and that the granting of the Application is within the public interest, consistent with the agreements below.

<sup>10</sup> Originally in the Rush Creek Application in Proceeding No. 16A-0117E.



## **II. RUSH CREEK I AND II**

The Settling Parties agree that the Commission should grant the Rush Creek Application filed pursuant to Rule 3660(h) and grant an unconditional CPCN for Rush Creek I and II consistent with the agreements below.

### **A. IN-SERVICE DATE**

In its direct case, the Company proposed an in-service date of October 31, 2018.<sup>11</sup> The Settling Parties agree that Rush Creek I and II should be placed in service by October 31, 2018.

### **B. USEFUL LIFE**

The Company proposed a useful life of 25 years for Rush Creek I and II in its direct case.<sup>12</sup> The Settling Parties agree that the useful life for Rush Creek I and II should be set at 25 years.

### **C. PERFORMANCE METRIC**

Given the 25-year useful life of Rush Creek I and II, the Settling Parties agree that a performance metric ("Performance Metric") shall be used with regard to the Project to alleviate performance concerns expressed by certain Parties in the outer years of the useful life. The generation performance of Rush Creek I and II as compared to the Performance Metric will be provided annually to the Commission in this proceeding each year on or before June 1 of each year that the Rush Creek Wind Project is in-service. The Settling Parties agree that the Company will implement a Performance Metric to assess the generation performance for years thirteen through twenty-five (2031 – 2043) of the Project, which may affect recovery of the revenue

<sup>11</sup> Rush Creek Application, at 17 (filed May 13, 2016); Amended Direct Testimony of Alice K. Jackson, at 15:1-4 (filed July 8, 2016).

<sup>12</sup> Amended Direct Testimony of Alice K. Jackson, at 105:24-26 (filed July 8, 2016).



requirement during years sixteen through twenty-five as detailed below and as depicted in Attachment A - Performance Metric Description. In addition, the Performance Metric may affect the calculation of the sharing of capital cost savings during years thirteen through twenty-five as discussed later in this Settlement Agreement in Section IV.

The Performance Metric will function as follows. For the first five years that Rush Creek I and II is in-service, the Company will measure the actual wind speed at the facility site as well as the electrical production output from the facility and the resulting power curve for the facility. The measured wind speed data and electrical production during the first five years will be utilized to establish the Initial 5-year Farm Production. The Settling Parties have agreed upon an approach for establishing the Initial 5-Year Farm Production, and this approach is described in Attachment A – Performance Metric Description. An annual Baseline Performance Metric shall be calculated so that the Initial 5-Year Farm Production is degraded by 0.78% annually from year 1 through year 25.

The Performance Metric also includes a Reasonability Limit, calculated as follows. In direct testimony the Company showed that its Strategist modeling of the Rush Creek Wind Project resulted in \$443 million of customer savings on a Net Present Value basis. In answer testimony, Staff modeled more restrictive assumptions that demonstrated that even under more restrictive scenarios, the Rush Creek Wind Project still resulted in customer savings. This more restrictive modeling result is used to establish a Reasonability Limit for the Performance Metric, such that, if the Performance Metric falls above the Reasonability Limit, the Reasonability Limit governs. An

illustrative Performance Metric and Reasonability Limit is reflected in Attachment A - Performance Metric Description.<sup>13</sup>

Beginning in year sixteen (2034) and ending in year twenty-five (2043) of the Project, if the actual normalized annual MWh production (i.e., wind-level normalized) in any year of the Project is less than the Performance Metric and the Reasonability Limit for the same year, then the Company will bear the burden to show that the revenue requirement recovery above that of production levels is justified.

In each year during years sixteen through twenty-five of the Project, the revenue requirement for that year is tied to the outcome of this evaluation. If the annual MWh production of Rush Creek I and II as normalized in any of those years meets or exceeds the Performance Metric or Reasonability Limit, whichever is less, the Company shall recover the entire revenue requirement for that year. If the annual MWh production of Rush Creek I and II as normalized in any of those years is below that of the Performance Metric and the Reasonability Limit, the Company shall recover pro-rata the revenue requirement based on the percentage of actual production compared to the Performance Metric or Reasonability Limit, whichever is less. For example, if in year 2040, the Performance Metric is 2,000 GWh, and the actual cumulative MWh production after being normalized is 1,500 GWh, this represents 75% of the Performance Metric. In this example, the Company shall receive 75% of the revenue requirement for the year 2040, and the Company shall have the burden of proof for any revenue requirement recovery above 75% and up to 100%.

<sup>13</sup> Although all parties have agreed to the approach used for establishing the Performance Metric, technical details regarding the implementation of the Performance Metric will be worked out and agreed upon by Staff and Public Service and filed in this proceeding no later than December 2, 2016.

The Settling Parties acknowledge that in the event that other entities interconnect to the Gen-Tie the measurement point or the line losses associated with the measurement point may need to be adjusted so that the measurement continues on an equivalent basis.

#### **D. BEST VALUE EMPLOYMENT METRICS**

In its direct case and as reiterated on its rebuttal case, the Company intends to comply with Rule 3102(f) with regard to best value employment metrics ("BVEM"). Furthermore, the Settling Parties agree that, in awarding the contracts for the Rush Creek I and II Balance of Plant ("BOP") and Rush Creek Gen-Tie, Public Service shall consider on a qualitative basis the factors that affect employment and the long-term economic viability of the Colorado communities identified as BVEM pursuant to § 40-2-129, C.R.S., the Colorado Renewable Energy Portfolio Standard (HB10-10 1001), as amended by the Keep Jobs in Colorado Act of 2013 (HB13-1292), as well as by Commission Rules set forth at Rule 3102(e) and Rule 3102(f) for CPCN applications to ensure that these projects provide economic benefits to Colorado and the local community.

#### **III. RUSH CREEK GEN-TIE**

The Settling Parties agree that the Commission should grant an unconditional CPCN for the Rush Creek Gen-Tie consistent with the agreements below. The Settling Parties further agree that the Commission should find that the noise and magnetic field levels projected to result from operating the Gen-Tie are reasonable pursuant to Rule 3102 and Rule 3206.<sup>14</sup>

<sup>14</sup> Rush Creek Application, at 7 (filed May 13, 2016); Direct Testimony of Brad D. Cozad, at 14:1 – 30:5 (filed May 13, 2016).

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**A. TRANSMISSION CLASSIFICATION**

The Settling Parties agree that the Rush Creek Gen-Tie shall be designated as "transmission serving generation" pursuant to FERC Guidelines. Entities seeking transmission service across the Gen-Tie will be subject to the Company's open-access transmission tariff ("OATT") rates for Wholesale services, until such time as the Gen-Tie becomes a network transmission resource.

**B. TREATMENT IN ERP PHASE II**

The Company will make the Gen-Tie available for other entities to interconnect to the Company's transmission system at the Missile Site substation once the Gen-Tie reaches commercial operation. Parties submitting proposals into any competitive generation resource acquisition process, including but not limited to Phase II ERP requests for proposals ("RFPs"), that utilize the Gen-Tie will not be allocated any costs detailed in section 9.9.2 of the Large Generator Interconnection Agreement ("LGIA") for usage of the Gen-Tie in the evaluation of their proposal, so long as they sell the entire output of the connected generator to Public Service.

In the event that such a proposal is selected and the party awarded a Power Purchase Agreement ("PPA") enters into a LGIA interconnecting its project to the Gen-Tie, an agreement will be structured to offset the payment that the party delivering energy to Public Service must make for use of Gen-Tie pursuant to the Company's OATT with reciprocal payments made coincident between Public Service and the contracting IPP. This agreement will be separate from the PPA for any capacity and energy from the resource and shall remain in effect as long as and to the extent that (1) the party is selling the entire output of the project to Public Service; and (2) to the extent



that the Gen-Tie is not interconnected as a network resource. This agreement would terminate at the same time as the OATT payment for use of the transmission line also terminates. The Gen-Tie will also be available for interconnection by other generators when the purchase of the generation of such generators is a third-party, and not Public Service, pursuant to the terms of the Company's OATT.

To provide greater detail, the Settling Parties agree that Public Service will develop a draft addendum or exhibit to its OATT that will set forth how the Company will develop the charge for interconnecting customers selling power to a third-party off taker. It is understood that the charge will be designed to cover cost components permitted by FERC to be included in the development of a directly assigned facilities charge, including, but not necessarily limited to, a return on the net book value of the asset, depreciation expense, O&M expenses, and taxes. The Company's return will be the same as reflected in the Company's OATT formula rate, and will be subject to modification over time.

Public Service may propose to develop a stated rate or a formula rate. Stated rates will be subject to change by making appropriate filings under Sections 205 and 206 of the Federal Power Act. If a formula rate, the rates will change automatically, per the formula, but consistent with the Company's other formulas, Public Service would file update filings with FERC. The formula rate will be subject to change by making appropriate filings under Sections 205 and 206 of the Federal Power Act. The Company recognizes that there is a preference to develop the Facilities Charge for the Gen-Tie as a formula rate, and will if feasible develop the rate on that basis.

Public Service will endeavor to have its draft rate available to CIEA and other interested parties within ninety (90) days of an order approving this Settlement Agreement. Public Service will confer with the CIEA and other interested parties and will consider modifications proposed by CIEA to achieve consensus on a filing that would be unopposed to the FERC. Notwithstanding that, it is understood that the Company reserves the right to file its proposed addendum or schedule with the FERC without modification, and CIEA and interested parties retain the right to oppose or seek modification of this filing if consensus is not reached.

The Settling Parties agree that this filing approach will satisfy open-access requirements. Any rates will be effective until the Gen-Tie becomes a network resource.

#### **C. LOSSES**

The Settling Parties agree that Rush Creek Gen-Tie line losses will be averaged and applied to all interconnected parties on the Rush Creek Gen-Tie.

#### **D. FURTHER STUDY**

The Company will take a leadership role in a Colorado Coordinated Planning Group ("CCPG") Task Force (or Sub-Group) to analyze the costs and benefits of alternative proposals to potentially integrate the Gen-Tie as a network transmission facility. The alternatives to be studied must be reviewed and determined to be a reasonable networking alternative to be evaluated by the CCPG Task Force. The Company commits that it will offer staff and computing resources from its Transmission Planning group, will use its best efforts to publish the CCPG report after stakeholder comment no later than 12 months after the settlement is filed with the Commission.

If the CCPG Task Force studies identify benefits associated with alternatives that integrate the Rush Creek Gen-Tie line as a network facility, and which alternatives address identified present or future needs, Public Service will initiate conversations with other transmission providers and stakeholders (as defined in Rule 3627) concerning the identified alternatives. Such discussions will include, but are not limited to, the interest in constructing an identified alternative, potential financial responsibilities associated with the alternative, the timing of a CPCN application to the extent a CPCN is required, and the proposed in-service date for the alternative. Notwithstanding the results of the CCPG Task Force studies or the outcome of such discussions, Public Service will include in its February 2018 filing under Rule 3627 the CCPG Task Force study results, a summary of the subsequent discussions, and a presentation of Public Service's position with respect to moving forward with any of the identified alternatives.

#### **E. RUSH CREEK COST RECOVERY**

The Company in its direct case presented cost recovery of the Rush Creek Wind Project through the Electric Commodity Adjustment ("ECA") and Renewable Energy Standard Adjustment ("RESA") until such time as the Company files a base rate case following the commercial operation date of the Project.<sup>15</sup> The Settling Parties agree that the cost recovery approach proposed by the Company in its direct case is appropriate and should be approved by the Commission. Reporting of this cost recovery (i.e., the amounts recovered through the ECA and RESA until the Project is placed in base rates) will occur through Appendix E of each annual RES Compliance Report. Parties have the right, as is provided in the procedures to review the annual RES Compliance Reports, to

<sup>15</sup> See, e.g., Amended Direct Testimony of Alice K. Jackson, at 73:2 – 100:20 (filed July 8, 2016).

participate in that review process. In addition, the jurisdictional cost allocation will be based on an energy allocator for the Rush Creek Wind Project.

#### IV. RUSH CREEK COST CAP

Due to the unique circumstances of a Rule 3660(h) approval, as well as the expedited timeframe in which this project has been reviewed, the Settling Parties agree to institute a hard cost cap for the cost of the Rush Creek I and II and Gen-Tie CPCNs with a sharing of capital cost savings between customers and the Company if capital costs are less than \$1.0958 billion (inclusive of AFUDC). The Settling Parties further agree that the hard cost cap includes the costs in the table below but will be evaluated on a total basis and not based upon the individual cost components of the Rush Creek Wind Project.

	<i>Plant</i>	<i>AFUDC</i>	<i>Total</i>
Rush Creek I and II	\$ 915,000,000	\$ 52,147,229	\$ 967,147,229
Rush Creek Gen-Tie	\$ 114,916,000	\$ 6,908,070	\$ 121,824,070
Network Trans	\$ 6,491,000	\$ 337,141	\$ 6,828,141
<b>Total Project Cost</b>	<b>\$ 1,036,407,000</b>	<b>\$ 59,392,440</b>	<b>\$ 1,095,799,440</b>

The Settling Parties agree that, as part of the implementation of the hard cost cap, a sharing of any savings will be instituted as follows. For each \$10 million in capital cost savings for the construction of the Project, i.e., total capital costs less than the overall cost cap of \$1.0958 billion, the parties agree that the Company and the customers will share the capital cost savings, with 82.5% retained by customers, and 17.5% retained by the Company. Attachment B to the Settlement Agreement details the annual capital cost sharing that will be provided to the Company dependent on the initial capital cost savings. This Attachment B schedule is designed such that the shape of



the sharing is reflective of the savings that customers would see over time, with a larger dollar level in the earlier years and a smaller dollar level in the latter years. It is also designed such that Customers retain 82.5% of the Net Present Value of the savings over the life of the project. The capital cost sharing will be reflected in the ECA after the level of capital cost savings is determined.

Notwithstanding the foregoing, the Settling Parties agree that the Performance Metric shall apply with regard to the sharing of any capital cost savings in Years 13 through 25. Specifically, in the event that during Years 13 through 25 the Company has not met the lower of the Performance Metric or the Reasonability Limit for a particular year, the Company's share of the capital cost savings would be reduced proportionally by the percentage that the Company missed the Performance Metric for that year. For example, if in Year 17 the Performance Metric is 2,000 GWh, and the Company's actual production was 1,800 GWh (i.e., 10% below the metric), the Company's share of the capital cost savings would be reduced by 10%.

#### **V. REASONABLE COST FINDING**

The Settling Parties agree that the Rush Creek Wind Project satisfies the reasonable cost standard in § 40-2-124(1)(f)(I), C.R.S., and Rule 3660(h) applicable to utility ownership of up to 25 percent of the total new eligible energy resources acquired after March 27, 2007.

#### **VI. NET ECONOMIC BENEFIT**

The Settling Parties agree that the Company will forego any claim, at this time or any time in the future, to file for or receive a net economic benefit associated with the Rush Creek Wind Project under Rule 3660(g).

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**VII. PAWNEE-DANIELS PARK**

The Settling Parties agree that the Company's request to accelerate the in-service date for the Pawnee-Daniels Park Project to October 2019 is within the public interest and that the Company's Petition for Variance should be granted by the Commission. No costs associated with this transmission project will be allocated to the Rush Creek Wind Project or taken into account to determine if the Project meets the reasonable cost standard. No costs associated with Pawnee-Daniels Park Project will be assigned to ERP bids that propose to interconnect to the Rush Creek Gen-Tie. As detailed in Decision No. R14-1405 in Proceeding No. 14A-0287E, the Company will file semi-annual status reports, including costs incurred as compared to the Company's budget. The Company will file an estimate "revised to plus or minus 10 percent prior to commencement of construction" in this proceeding, i.e., Proceeding No. 16V-0134E. The Company will file this cost estimate with the Commission within 30 days of receiving the final cost estimate and prior to commencing construction of the Pawnee-Daniels Park Project.

**VIII. STUDIES AND OTHER POSTING ISSUES**

The Settling Parties agree that the four studies filed in this proceeding with regard to the Rush Creek Wind Project shall be evaluated and decided upon in the ERP proceeding (Proceeding No. 16A-0396E). These studies include (1) Coal Cycling Cost, (2) Flex Reserve Adequacy, (3) Effective Load Carrying Capacity, and (4) Wind Integration. In addition, the Settling Parties agree that the Company shall post the Available Transfer Capability ("ATC") of the Rush Creek Gen-Tie on its OASIS site as may be required by the FERC's requirements to post transmission information on the

Company's OASIS. The Company agrees to, at a minimum, identify the location of posting of the ATC information for the Gen-Tie and the template agreement associated with interconnection to the Gen-Tie, if materially different than its *pro forma* LGIA, with sufficient time for parties to evaluate prior to the submission deadline for the receipt of bids pursuant to its next Phase II ERP process.

#### **IX. MISCELLANEOUS**

The Settling Parties agree that sPower may file a pleading in the ERP proceeding (Proceeding No. 16A-0396E) seeking to adjudicate whether the Commission's ERP rules are PURPA-compliant by October 14, 2016. This pleading will state with specificity the issues that sPower proposes to be addressed and its position on those issues with any legal support. This filing shall also propose a procedure whereby Public Service and other interested parties will have until December 9, 2016 to respond to sPower's pleading.

While the Settling Parties may not oppose this pleading on the basis that it is outside of the scope of Proceeding No. 16A-0396E, any party may oppose the pleading on any other basis, including, without limitation, that the pleading requests relief that can only be granted in a rulemaking or some other proceeding and that the existing Commission PURPA-implementation rules are appropriate.

Given that sPower may be raising PURPA compliance issues that affect parties other than Public Service or other parties in the ERP proceeding, the Settling Parties believe that responses to the sPower pleading should be permitted by any entity.



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## GENERAL PROVISIONS

1. The Settling Parties understand and agree that this Settlement Agreement represents a negotiated resolution of all issues that the Settling Parties either raised or could have raised in this proceeding. The Settling Parties understand that the Commission's approval of this Settlement Agreement shall constitute a determination that the Settlement Agreement represents a just, equitable, and reasonable resolution of these issues. Accordingly, the Settling Parties state that reaching resolution of these issues in this proceeding through this negotiated Settlement Agreement is in the public interest and that the results of the compromises and agreements reflected in the Settlement Agreement are just, reasonable, and in the public interest.

2. The Settling Parties agree to join in a motion that requests that the Commission approve this Settlement Agreement, and to support the Settlement Agreement in any subsequent pleadings or filings. Each Settling Party further agrees that in the event that it sponsors a witness to address the Settlement Agreement at any hearing that the Commission may hold to address it, the Settling Party's witness will testify in support of the Settlement Agreement and all of the terms and conditions of the Settlement Agreement. The Settling Parties agree to reasonably seek approval of this Settlement Agreement before the Commission against challenges that may be made by non-executing parties.

3. The Settling Parties agree that all their pre-filed testimony and exhibits shall be admitted into evidence in this proceeding without cross examination by the Settling Parties.

4. Except as expressly stated herein, nothing in this Settlement Agreement shall resolve any principle or establish any precedent or settled practice.



5. Nothing in this Settlement Agreement shall constitute an admission by any Settling Party of the correctness or general applicability of any principle, or any claim, defense, rule, or interpretation of law, allegation of fact, regulatory policy, or other principle underlying or thought to underlie this Settlement Agreement or any of its provisions in this or any other proceeding. As a consequence, no Settling Party in any future negotiations or proceedings whatsoever (other than any proceeding involving the honoring, enforcing, or construing of this Settlement Agreement in those proceedings specified in this Settlement Agreement, and only to the extent, so specified) shall be bound or prejudiced by any provision of this Settlement Agreement.

6. The discussions among the Settling Parties that have produced this Settlement Agreement have been conducted with the understanding, pursuant to Colorado law, that all offers of settlement, and discussions relating thereto, are and shall be privileged and shall be without prejudice to the position of any of the Settling Parties and are not to be used in any manner in connection with this or any other proceeding.

7. This Settlement Agreement shall not become effective until the issuance of a final Commission Decision approving the Settlement Agreement, which Decision does not contain any modification of the terms and conditions of this Settlement Agreement that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party shall have the right to withdraw from this Agreement and proceed to hearing on the issues that may be appropriately raised by that Settling Party in this proceeding. The withdrawing Settling Party shall notify the Commission and the Settling Parties to this Agreement by e-mail within three business days of the Commission modification that the party is

withdrawing from the Settlement Agreement and that the party desires to proceed to hearing; the e-mail notice shall designate the precise issue or issues on which the party desires to proceed to hearing (the "Hearing Notice").

8. The withdrawal of a Settling Party shall not automatically terminate this Agreement as to any other party. However, within three business days of the date of the Hearing Notice from the first withdrawing party, all Settling Parties shall confer to arrive at a comprehensive list of issues that shall proceed to hearing and a list of issues that remain settled as a result of the first party's withdrawal from this Settlement Agreement. Within five business days of the date of the Hearing Notice, the Settling Parties shall file with the Commission a formal notice containing the list of issues that shall proceed to hearing and those issues that remain settled together with a proposed procedural schedule. The Settling Parties who proceed to hearing shall have and be entitled to exercise all rights with respect to the issues that are heard that they would have had in the absence of this Settlement Agreement.

9. All Parties have had the opportunity to participate in the drafting of this Settlement Agreement and the term sheet upon which it was based. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

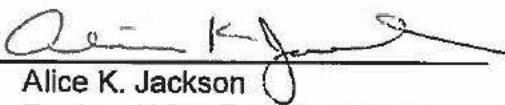
10. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Settlement Agreement with respect to the issues addressed by this Agreement.

Dated this 2nd day of September, 2016.

Agreed on behalf of:

PUBLIC SERVICE COMPANY  
OF COLORADO

By:



Alice K. Jackson  
Regional Vice President, Rates and  
Regulatory Affairs

Approved as to Form:

By:



William M. Dudley  
Lead Assistant General Counsel

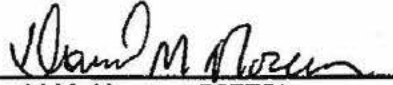
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*Approved as to Form.*

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Agree on behalf of:

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Colorado Office of Consumer Counsel

Cynthia H. Coffman  
Colorado Attorney General

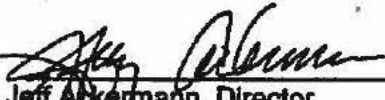
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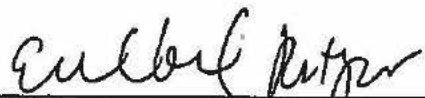
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**ATTORNEYS FOR  
TRI-STATE GENERATION AND  
TRANSMISSION ASSOCIATION, INC.**

**Signature page for settlement in proceeding Nos. 16A-0117E and 16V-0314E**

---

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By:



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*Attorneys for CF&I Steel L.P.*



INTERWEST ENERGY ALLIANCE

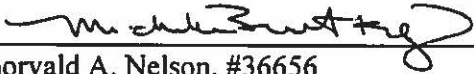
By: Sarah Cottrell Propst  
Sarah Cottrell Propst  
Executive Director  
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s/ 

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Emanuel T. Cocian, #36562

Nikolas S. Stoffel, #44815

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ATTORNEYS FOR COLORADO  
ENERGY CONSUMERS

DATED this 2d day of September, 2016.

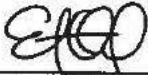
FOR SOUTHWEST GENERATION  
OPERATING COMPANY, LLC

A handwritten signature in black ink, appearing to read "John Putnam", is written over a horizontal line.

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WESTERN RESOURCE ADVOCATES

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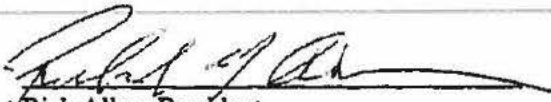


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**COLORADO BUILDING AND CONSTRUCTION TRADES  
COUNCIL, AFL-CIO (CBCTC)**

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**ROCKY MOUNTAIN ENVIRONMENTAL LABOR COALITION (RMELC)**

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**COLORADO BUILDING AND CONSTRUCTION TRADES  
COUNCIL, AFL-CIO (CBCTC)**

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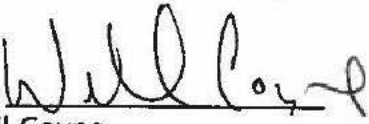
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**ATTORNEYS FOR RMELC/CBCTC**

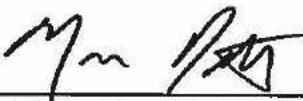
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---

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**DIETZE AND DAVIS, P.C.**

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---

CITY OF BOULDER

/s/ Debra S. Kalish

Debra S. Kalish, #18858

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City of Boulder

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Agreed on behalf of the  
City and County of Denver



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# Colorado PUC E-Fileings System

PROCEEDING NO. 16A-0117E - SETTLEMENT AGREEMENT ATTACHMENT B  
Capital Cost Savings Sharing

Millions of Dollars	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
Saved																										
\$10-19.9	87,277	360,853	378,754	298,989	277,177	251,915	231,580	226,109	214,441	202,609	190,609	178,498	166,281	153,951	141,487	128,886	116,125	103,167	89,979	76,519	62,733	48,541	33,840	18,444	2,025	-
\$20-29.9	134,553	799,706	657,503	587,577	546,755	509,830	475,159	452,218	428,881	405,205	381,218	356,996	332,564	307,903	282,975	257,771	232,250	206,333	179,958	151,038	125,466	97,087	67,680	36,888	4,050	-
\$30-39.9	201,830	1,108,569	906,263	806,966	820,132	755,746	712,739	678,326	641,322	607,808	571,827	535,495	498,850	461,854	424,462	386,857	348,174	309,500	268,936	225,558	188,198	145,630	101,519	55,332	6,075	-
\$40-49.9	208,107	1,479,413	1,315,078	1,195,955	1,091,509	1,007,661	950,319	904,435	857,763	810,413	762,436	713,991	665,133	615,805	565,950	515,543	464,499	412,667	359,915	306,077	250,931	194,174	135,359	73,776	8,100	-
\$50-59.9	336,384	1,849,286	1,643,777	1,494,943	1,366,887	1,259,576	1,187,899	1,130,544	1,072,204	1,013,013	953,045	892,491	831,416	769,757	707,417	644,429	580,824	515,833	449,894	382,596	313,664	242,717	168,199	92,320	10,125	-
\$60-69.9	403,640	2,219,119	1,972,576	1,793,932	1,640,764	1,511,491	1,425,478	1,356,663	1,286,644	1,215,616	1,144,654	1,070,989	997,699	923,708	848,925	773,314	696,749	619,003	539,873	459,115	376,397	291,260	203,039	130,664	12,151	-
\$70-79.9	470,917	2,588,972	2,301,281	2,092,921	1,911,641	1,762,407	1,641,058	1,542,781	1,451,085	1,358,219	1,264,263	1,169,467	1,063,982	957,699	850,412	732,000	617,872	503,000	429,852	345,675	259,130	169,804	93,879	29,108	14,176	-
\$80-89.9	538,214	2,958,826	2,630,025	2,391,909	2,187,078	2,015,322	1,903,638	1,808,870	1,715,526	1,620,821	1,524,871	1,427,988	1,330,266	1,231,611	1,131,900	1,031,086	928,998	825,184	719,830	612,154	503,882	388,347	270,718	147,552	16,201	-
\$90-90.0	606,490	3,378,679	2,958,790	2,600,898	2,400,396	2,267,237	2,136,118	2,034,979	1,929,966	1,823,424	1,715,482	1,606,484	1,496,549	1,385,562	1,273,387	1,159,972	1,045,123	928,500	809,809	688,673	564,595	438,890	304,554	181,998	18,276	-

Proceeding No. 16A-0117E - SETTLEMENT AGREEMENT -- CORRECTED ATTACHMENT A

**Rush Creek Year 13-25 Performance Metric<sup>1</sup>**

1. Establish the "Initial 5-Year Farm Production" (ISFP)
  - a. Collect actual 8760 hourly Wind & Generation data from the Rush Creek wind farm for years 1-5 post COD.
    - i. Wind speed data to be collected using meteorological data from each farm
    - ii. Generation data to be collected at the low side of the GSU at each farm
  - b. Eliminate hourly data associated with
    - i. Periods when Rush Creek wind was curtailed due to system bottoming or transmission limitations for example
    - ii. Erroneous or bad data
  - c. Using the wind speed and generation data from 1b above, develop an "Initial Empirical Power Curve" (IEPC) for the Rush Creek Wind farm
  - d. Using the wind speed data from 1b above, develop a "Nominal Wind Speed Distribution" (NWSD) for the farm. Populate column B of Figure 1 with the NWSD
  - e. Calculate the ISFP value in GWh by taking the IEPC and multiplying it times the Nominal Wind Speed Distribution (NWSD). See Figure 1 cell D45 for an example calculation of the resulting ISFP.
2. Establish the Performance Metric
  - a. Starting in year 1, degrade the ISFP from ~~1d~~1e above at -0.78% annually to year 25.
  - b. Compare the degraded ISFP GWh values from 2a above to 2,311 GWh degrading at -0.78% annually starting in year 6 and continuing to year 25.
  - c. The lesser curve from the comparison in 2b sets the Performance Metric for years 13-25. See Figure 2 for example.
3. Determine Year 13 Farm Production
  - a. Collect actual 8760 hourly Wind & Generation data from the Rush Creek wind farm for year 13 post COD
    - i. Wind speed data to be collected using meteorological data from each farm
    - ii. Generation data to be collected at the low side of the GSU at each farm
  - b. Eliminate hourly data same as 1b above.
  - c. Develop a Year 13 Empirical Power Curve for the Rush Creek Wind farm using the data from 3b above.
  - d. Calculate the Year 13 Farm Production in GWh by taking the Year 13 Empirical Power Curve and multiplying it times the NWSD. See Figure 3 cell F45 for example calculation of the resulting Year 13 Farm Production.
4. Check Year 13 Farm Degradation

<sup>1</sup> As noted in the Settlement Agreement, the Settling Parties agree that the Company will implement a Performance Metric to assess the generation performance for years thirteen through twenty-five (2031 – 2043) of the Project, which may affect recovery of the revenue requirement during years sixteen through twenty-five (2034-2043). In addition, the Performance Metric may affect the calculation of the sharing of capital cost savings during years thirteen through twenty-five.

**Proceeding No. 16A-0117E - SETTLEMENT AGREEMENT — CORRECTED ATTACHMENT A**

- a. Compare the Year 13 Farm Production GWh from 3d above with the Performance Metric for year 13.
5. Repeat Steps 3 and 4 above for each year beyond year 13 to year 25.

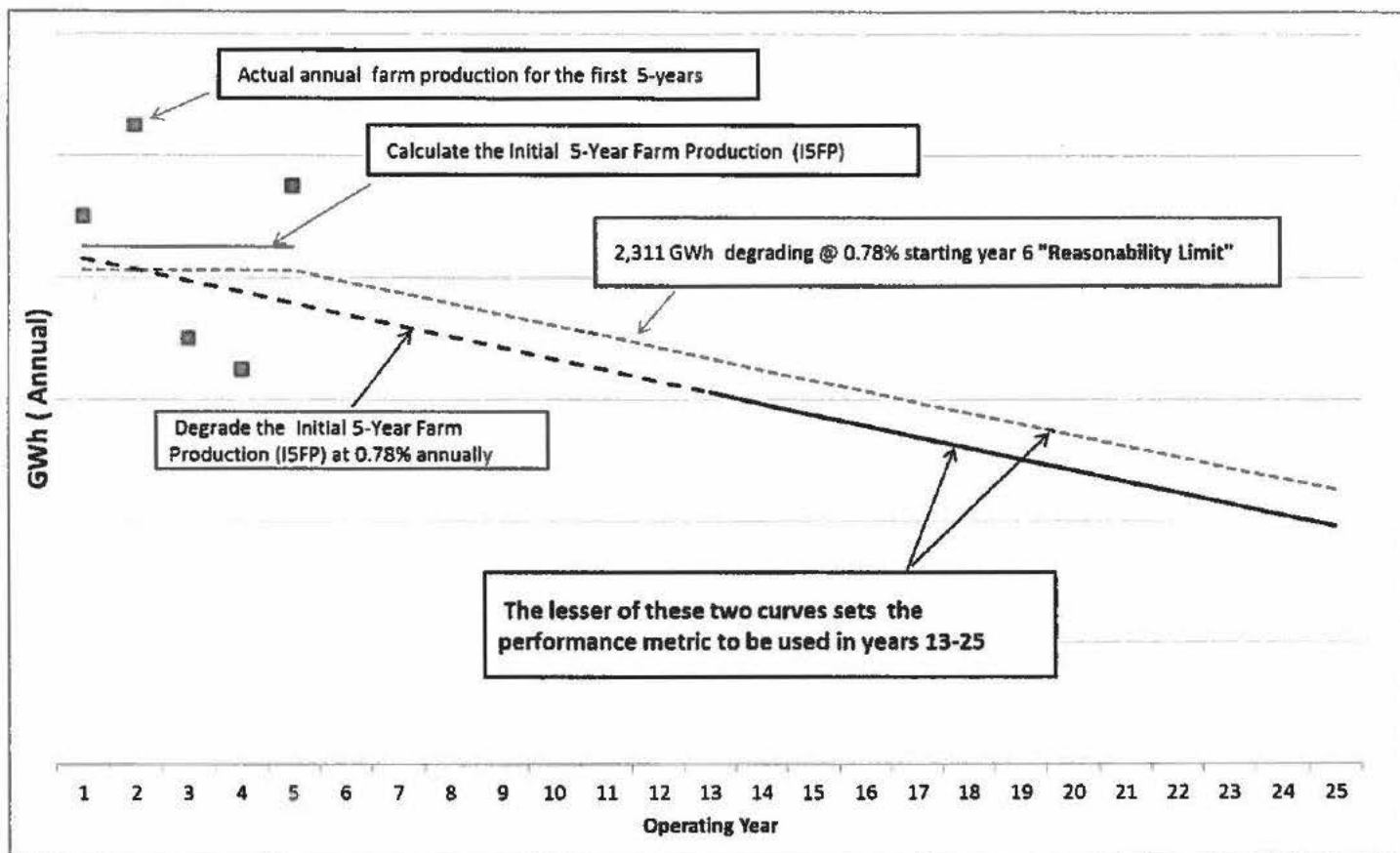
Figure 1

(Illustration only)

1	A	B	C	D	E	F
2	Wind Speed Bin [m/s]	Nominal Wind Speed Distribution (NWSD) [hours/year]	Initial Empirical Power Curve (IEPC)	Initial 5-Year Farm Production (kWh) [B x C]	Year 13 Empirical Power Curve	Year 13 Farm Production (kWh) [B x E]
3	-	1.30				
4	0.50	16.40	-	-		
5	1.00	42.30	-	-		
6	1.50	74.00	-	-		
7	2.00	109.30	-	-		
8	2.50	147.10	-	-		
9	3.00	186.10	5,980	1,112,878		
10	3.50	225.20	16,100	3,625,720		
11	4.00	263.20	28,980	7,627,536		
12	4.50	299.20	44,620	13,350,304		
13	5.00	332.20	62,790	20,858,838		
14	5.50	361.40	84,870	30,672,018		
15	6.00	386.10	107,640	41,559,804		
16	6.50	405.60	140,070	56,812,392		
17	7.00	419.50	177,790	74,582,905		
18	7.50	427.70	220,110	94,141,047		
19	8.00	430.10	267,260	114,948,526		
20	8.50	426.80	317,400	135,466,320		
21	9.00	418.20	368,000	153,897,600		
22	9.50	404.60	412,850	167,039,110		
23	10.00	386.80	441,600	170,810,880		
24	10.50	365.40	454,250	165,982,950		
25	11.00	341.00	458,390	156,310,990		
26	11.50	314.60	459,540	144,571,284		
27	12.00	286.90	460,000	131,974,000		
28	12.50	258.70	460,000	119,002,000		
29	13.00	230.50	460,000	106,030,000		
30	13.50	203.10	460,000	93,426,000		
31	14.00	176.90	460,000	81,374,000		
32	14.50	152.30	460,000	70,058,000		
33	15.00	129.60	460,000	59,616,000		
34	15.50	109.10	460,000	50,186,000		
35	16.00	90.70	460,000	41,722,000		
36	16.50	74.60	460,000	34,316,000		
37	17.00	60.60	460,000	27,876,000		
38	17.50	48.70	460,000	22,402,000		
39	18.00	38.60	460,000	17,756,000		
40	18.50	30.30	460,000	13,938,000		
41	19.00	23.50	460,000	10,810,000		
42	19.50	18.00	460,000	8,280,000		
43	20.00	13.60	460,000	6,256,000		
44	>20	36.00	-			
				ISFP		
45	Annual Total KWh ==>			2,448,393,102		



Figure 2  
(Illustration only)



Note: In the example above, the Initial 5-Year Farm Production degraded at -.78% annually falls below the 2,311 GWh level degraded at -.78%. In the event the Initial 5-Year Farm Production degraded at -.78% annually falls above the 2,311 GWh level degraded at -.78%, the lesser curve (i.e., the 2,311 curve) would set the performance metric.

Proceeding No. 16A-0117E - SETTLEMENT AGREEMENT – **CORRECTED ATTACHMENT A**

Figure 3

(Illustration only)

1	A	B	C	D	E	F
2	Wind Speed Bin [m/s]	Nominal Wind Speed Distribution (NWSD) [hours/year]	Initial Empirical Power Curve (IEPC)	Initial 5-Year Farm Production (kWh) [B x C]	Year 13 Empirical Power Curve	Year 13 Farm Production (kWh) [B x E]
3	-	1.30				
4	0.50	16.40	-	-		
5	1.00	42.30	-	-		
6	1.50	74.00	-	-		
7	2.00	109.30	-	-		
8	2.50	147.10	-	-		
9	3.00	186.10	5,980	1,112,878	5,382	1,001,590
10	3.50	225.20	16,100	3,625,720	14,490	3,263,148
11	4.00	263.20	28,980	7,627,536	26,082	6,864,782
12	4.50	299.20	44,620	13,350,304	40,158	12,015,274
13	5.00	332.20	62,790	20,858,838	56,511	18,772,954
14	5.50	361.40	84,870	30,672,018	76,383	27,604,816
15	6.00	386.10	107,640	41,559,804	96,876	37,403,824
16	6.50	405.60	140,070	56,812,392	126,063	51,131,153
17	7.00	419.50	177,790	74,582,905	160,011	67,124,615
18	7.50	427.70	220,110	94,141,047	198,099	84,726,942
19	8.00	430.10	267,260	114,948,526	240,534	103,453,673
20	8.50	426.80	317,400	135,466,320	285,660	121,919,688
21	9.00	418.20	368,000	153,897,600	331,200	138,507,840
22	9.50	404.60	412,850	167,039,110	371,565	150,335,199
23	10.00	386.80	441,600	170,810,880	397,440	153,729,792
24	10.50	365.40	454,250	165,982,950	408,825	149,384,655
25	11.00	341.00	458,390	156,310,990	412,551	140,679,891
26	11.50	314.60	459,540	144,571,284	413,586	130,114,156
27	12.00	286.90	460,000	131,974,000	414,000	118,776,600
28	12.50	258.70	460,000	119,002,000	414,000	107,101,800
29	13.00	230.50	460,000	106,030,000	414,000	95,427,000
30	13.50	203.10	460,000	93,426,000	414,000	84,083,400
31	14.00	176.90	460,000	81,374,000	414,000	73,236,600
32	14.50	152.30	460,000	70,058,000	414,000	63,052,200
33	15.00	129.60	460,000	59,616,000	414,000	53,654,400
34	15.50	109.10	460,000	50,186,000	414,000	45,167,400
35	16.00	90.70	460,000	41,722,000	414,000	37,549,800
36	16.50	74.60	460,000	34,316,000	414,000	30,884,400
37	17.00	60.60	460,000	27,876,000	414,000	25,088,400
38	17.50	48.70	460,000	22,402,000	414,000	20,161,800
39	18.00	38.60	460,000	17,756,000	414,000	15,980,400
40	18.50	30.30	460,000	13,938,000	414,000	12,544,200
41	19.00	23.50	460,000	10,810,000	414,000	9,729,000
42	19.50	18.00	460,000	8,280,000	414,000	7,452,000
43	20.00	13.60	460,000	6,256,000	414,000	5,630,400
44	>20	36.00	-			
45	Annual Total kWh ==>			ISFP 2,448,393,102		2,203,553,792