

**AMENDMENT NO. 1**  
**TO INDENTURE OF LEASE**  
**NAVAJO UNITS 1, 2, 3**  
**BETWEEN**  
**THE NAVAJO NATION**  
**AND**  
**ARIZONA PUBLIC SERVICE COMPANY**  
**DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES**  
**NEVADA POWER COMPANY d/b/a NV Energy**  
**SALT RIVER PROJECT AGRICULTURAL**  
**IMPROVEMENT AND POWER DISTRICT**  
**TUCSON ELECTRIC POWER COMPANY**

**AMENDMENT NO. 1 TO INDENTURE OF LEASE**

This Amendment No. 1 (the “Amendment”) to the Indenture of Lease dated September 29, 1969 and continuing through December 22, 2019 (the “Lease”), is by and between the Navajo Nation (formerly known as the Navajo Tribe of Indians), acting through the Navajo Nation Council and its President, for and on behalf of the Navajo Nation (the Navajo Nation is referred to as “Lessor” or “Nation”), and Arizona Public Service Company (“Arizona”), Department of Water and Power of the City of Los Angeles (“Los Angeles”), Nevada Power Company d/b/a NV Energy (“Nevada”), Salt River Project Agricultural Improvement and Power District (“Salt River Project”), and Tucson Electric Power Company (formerly known as Tucson Gas & Electric Company) (“Tucson”) (collectively, together with their successors and assigns, referred to as “Lessees,” and each individually referred to a “Lessee”), and is approved by the Secretary of the U.S. Department of the Interior (“Secretary”) on this \_\_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”). The Navajo Nation and the Lessees are hereinafter collectively referred to as the “Parties”.

**RECITALS**

A. **WHEREAS**, pursuant to the Lease, the Lessees are operating an electrical generation facility commonly known as the Navajo Generating Station, sometimes referred to also as the “Navajo Generation Station” (or “NGS”), pursuant to the Lease;

B. **WHEREAS**, contemporaneously with their entry into this Amendment, the Parties are entering into a new lease relating to NGS and its related facilities (the “Extension

Lease”), effective simultaneously with the Effective Date hereof, to set forth, among other things, the rights and obligations of Lessees with respect to their removal and remediation duties with respect to NGS and related facilities following its closure (which may occur in parts) as an operating electric generation facility, in replacement of related provisions of the Lease; and

C. **WHEREAS**, the Parties consider this Amendment and the Extension Lease to be a collective package concerning the Parties’ relationship related to continued operation, removal and remediation of NGS and associated transmission lines.

**NOW, THEREFORE**, for valuable consideration, the receipt and adequacy of which are acknowledged, including without limitation the matters noted in the foregoing Recitals, the Parties agree as follows:

**1. DEFINITIONS.** Capitalized terms used but not defined herein (or otherwise referencing another instrument) have the meanings given those terms in the Lease, except as otherwise provided below. For purposes of this Amendment, “Navajo Nation” or “Nation” has the same meaning as “Navajo Tribe of Indians” or “Tribe” in the Lease.

**2. TERM.** This Amendment shall be effective, binding and enforceable as among all of the Parties upon the date that the Secretary has approved this Amendment (herein referred to as the “Effective Date”). This Amendment shall be submitted to the Secretary for approval immediately after it has been fully executed by the Parties. The Effective Date shall be set forth on page one (1) hereof upon the Secretary’s attached approval. This Amendment shall not affect the right of the Lessees to extend the Lease as provided in Section 6 of the Lease.

**3. RETIREMENT GUIDELINES.** Section 12(b) of the Lease is deleted and replaced with the following:

“Removal and restoration of the Navajo Generating Station and all related facilities and equipment of the Lessees located on Reservation Lands shall be governed exclusively by the Navajo Project Retirement Guidelines attached as Exhibit A (the “Retirement Guidelines”). Any other provision of the Lease that directly or indirectly addresses removal or restoration matters shall be similarly superseded in its entirety by the Retirement Guidelines.”

**4. NATION’S AGREEMENT NOT TO REGULATE LESSEES.** Section 16 of the Lease is replaced in its entirety with the following:

“(A) The Nation covenants that it will not, directly or indirectly, Regulate or attempt to Regulate the Lessees in the construction, maintenance, operation, removal, restoration, remediation, or monitoring of the Navajo Generating Station, any related facilities and equipment, and the transmission systems of the Lessees, or the construction, maintenance, operation, removal, restoration, remediation, or monitoring of the fuel transportation system of the Lessees or the Fuel Transporter.

(B) For purposes of this Lease, “Regulate” is defined as any act or process by the Nation, including any current or future law or regulation imposed by the Nation, that would seek to control by requirement, restriction, limitation, condition or prohibition the actions or inactions of Lessees in relation to this Lease or that would impose different or additional

requirements, restrictions, limitations, conditions or prohibitions beyond the terms of this Lease.

(C) For the purposes of this Section 16, “Lessees” includes the Lessees, their affiliates, subtenants, licensees, officers, employees, agents, contractors, subcontractors, successors and assigns.

(D) This agreement not to regulate is not a waiver of whatever rights the Nation may have to Regulate retail distribution of electricity on Reservation Lands. Nothing in this Agreement conveys to the Lessees, or any of them, any rights to engage in retail distribution of electricity on Reservation Lands.

(E) The provisions of this Section 16 shall survive any termination of this Lease or the expiration of the Lease’s term in perpetuity.”

**5. MINIMUM FUEL PURCHASE REVENUE.** A new section, Section 41, is hereby added to the Lease, which Section shall provide as follows:

“(A) Operations. The Nation acknowledges and agrees that Lessees, excluding Los Angeles (“Generation Lessees”)<sup>1</sup>, currently intend to operate the Navajo Generating Station through the remainder of the existing term of the Lease. The Nation further understands that the operation of the Navajo Generating Station will be based on operational considerations that the Generation Lessees, as operators of the Navajo Generating Station, consider appropriate under the circumstances. The Nation additionally acknowledges and agrees that the operation of the Navajo Generating Station may be subject to events of repair, casualty and other matters beyond the control of the Generation Lessees. While the operation of the plant through **December 22, 2019**, will be subject to certain discretionary matters arising out of and related to the retirement, demolition and removal of the Navajo Generating Station and related facilities and equipment of the Lessees located on Reservation Lands and restoration of the Reservation Lands that may impact coal fuel usage, the Generation Lessees agree to provide certain coal royalty revenues assurances.

(B) Royalty Assurance. The Generation Lessees, to induce the Nation to enter into this Amendment and the Extension Lease, have agreed to provide assurances of a minimum coal royalty payment due to the Nation. For the time period commencing on **January 1, 2018** and continuing through **December 22, 2019** (the “Royalty Assurance Period”), the Generation Lessees and the Nation have agreed that the estimated coal purchases from the Kayenta Mine for Navajo Generating Station operations will result in royalty payments due to the Nation under “Coal Mining Lease” 14-20-0603-8580 and “Coal Mining Lease” 14-20-0603-9910 (collectively, the “Coal Mining Leases”) of \$39,012,562.

(i) Total Royalty Payments. Total royalty payments shall include only those royalties, payments, and considerations that are paid, accrued, or owed by

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<sup>1</sup> Effective July 1, 2016, Los Angeles no longer has any generation entitlement related to NGS pursuant to a separate Asset Purchase and Sale Agreement with Salt River Project.

Peabody Western Coal Company or any successor to the Coal Mining Leases (“Peabody”) to the Nation under the “Coal Mining Leases,” but shall exclude contributions and payments for scholarships, coal bonus payments, and any royalties owed resulting from Lessees (including Los Angeles) contributions to the Settlement and Mutual Release Agreement by and between Lessees and Peabody (collectively, the “Total Royalty Payments”). Any calendar year reference to Total Royalty Payments shall be the Total Royalty Payments attributed to the specific calendar year.

- (ii) 2018 Assurance. In the event the calendar year 2018 Total Royalty Payments are less than \$20,801,171, the Nation may submit a request for the Generation Lessees to make a payment for 2018. Such payment shall be equal to \$20,801,171 minus the calendar year 2018 Total Royalty Payments.
- (iii) 2019 Assurance. In the event the calendar year 2019 Total Royalty Payments are less than \$18,211,391, the Nation may submit a request for the Generation Lessees to make a payment for 2019. Such payment shall be equal to \$18,211,391 minus the calendar year 2019 Total Royalty Payments.
- (iv) No Guaranty of Payment. Nothing herein shall constitute or be deemed a guaranty of payment by the Generation Lessees of Total Royalty Payments by Peabody to the Nation.

(C) Requests for payment under this Section shall be submitted in writing to the following:

If by mail:

FUELS MANAGER, SALT RIVER PROJECT  
Mail Station ISB661  
P.O. Box 52025  
Phoenix, AZ 85072-2025

If by electronic mail:

[FUELS@srpnet.com](mailto:FUELS@srpnet.com)

(D) Any requests for payment under this Section must be submitted by the Nation no later than sixty (60) days after December 31<sup>st</sup> of the preceding year. Generation Lessees will pay the amount due, if any, within thirty (30) business days after receipt of the Nation’s request, or as otherwise mutually agreed to in writing by the Nation and the Generation Lessees. The Generation Lessees shall pay the amount due within thirty (30) days of any such request for payment under this Section.

(E) Any payments made by the Generation Lessees pursuant to this Section, including any contributions or considerations to others for reasonably similar purposes, shall not be deemed to be royalties, royalty bearing, or subject to any additional taxes, fees, or interest that may otherwise be imposed or considered under the Coal Mining Leases.”

**6. NOTICES.**

A. Any notices, demands, requests or other communications to or upon any of the Parties, as provided for in this Amendment, or given or made in connection with this Amendment (hereinafter referred to as “Notices”), shall be in writing and shall be addressed to the Nation and Lessees as listed in Schedule 6 as attached.

B. All Notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission or e-mail, followed by surface mail. Notices shall be effective and shall be deemed delivered: if by personal delivery, on the date of delivery if during normal business hours; or if not, during normal business hours on the next business day following delivery; if by registered or certified mail, or by facsimile transmission or e-mail, followed by surface mail, on the next business day following actual delivery and receipt.

**7. EXECUTION IN COUNTERPARTS.** The Amendment may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the Parties to the aggregate counterparts had signed the same instrument. A signature page of any counterpart may be detached therefrom without impairing the legal effect of the other signature(s), if that signature page is attached to any other counterpart that is identical to the first except for having additional attached signature pages executed by other parties to this Amendment.

**8. ENTIRE AGREEMENT.**

A. This Amendment, the schedules, and the other documents referenced herein or attached hereto constitute the entire Amendment among the Parties, and replace and supersede any prior or contemporaneous agreements, drafts, amendments, correspondence, discussions or course of dealing, whether written or oral, in their entirety with respect to this subject matter.

B. The Parties acknowledge that they have not relied upon, and have no remedies with respect to, any representations or warranties, including pre-contractual representations or warranties, whether made innocently or negligently, other than those set forth in this Amendment.

C. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Amendment.

D. The Parties have participated jointly in negotiating this Amendment and have been represented by counsel. If a question of interpretation arises, this Amendment shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of this Amendment.

E. This Section 8 is not intended to exclude any Party’s liability for fraud.

**9. NO OTHER MODIFICATIONS.** Except as expressly modified by this Amendment, all of the terms and conditions of the Lease remain unmodified and in full force and effect. To the extent of any conflict or inconsistency between the terms of the Lease and this Amendment, the terms of this Amendment shall govern and control.

**10. NAVAJO NATION AUTHORIZATIONS; CONSENT TO WAIVER OF REGULATIONS OF THE SECRETARY OF INTERIOR.**

As authorized by Resolution #CJN-33-17 of the Navajo Nation Council dated June 29, 2017:

- (i) The Nation has approved this Amendment and is authorized to enter into this Amendment, in its entirety.
- (ii) The Nation affirmatively covenants that it will not, directly or indirectly, Regulate or attempt to Regulate the Lessees, as provided in Section 4 of this Amendment.
- (iii) The Nation gives its consent to the waiver by the Secretary, pursuant to 25 C.F.R. §1.2, of the application of the following regulations in Title 25, Code of Federal Regulations, Part 162: 162.014 (a)(2); and 162.014(b).

**11. RECITALS.** The Recitals are incorporated into this Amendment.

**12. EFFECTIVE DATE; VALIDITY.**

A. None of the Parties are bound or benefitted by this Amendment until all of the Parties have executed and delivered this Amendment and the Effective Date has occurred. Notwithstanding anything in this Amendment to the contrary, each Party that executes and delivers its signature on this Amendment prior to the Effective Date to one or more of the Parties will be deemed to have delivered this instrument in escrow.

B. This Amendment is void if it or the Extension Lease:

- (i) is not executed by the Nation on or before **July 1, 2017**, or
- (ii) is not executed by Nevada, Salt River Project, Tucson, and Arizona on or before **July 1, 2017**, or
- (iii) is not executed by Los Angeles on or before **December 1, 2017**, or
- (iv) the United States, in its capacity as a Navajo Project participant, has not consented to the execution of this Amendment and the Extension Lease by Salt River Project on its behalf on or before **December 1, 2017**, or
- (v) if the Secretary approval attached hereto and the consent of the United States as evidenced by \_\_\_\_\_ are not both executed and delivered by the Secretary and the United States to the Parties on or before **December 1, 2017**.

C. No modification of or amendment to this Amendment is valid or binding on the Parties until it is executed and delivered by all the Parties.

*[EXECUTION PAGES FOLLOW]*



**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first above written.

**LESSEES:**

**ARIZONA PUBLIC SERVICE COMPANY**

**ATTEST:**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

David A. Hansen

Its: Vice President, Fossil Generation

Date: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by David A. Hansen, the Vice President, Fossil Generation of Arizona Public Service Company, an Arizona corporation, on behalf of the company.

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_



**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first above written.

**DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES BY BOARD OF  
WATER AND POWER COMMISSIONERS**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

And: BARBARA E. MOSCHOS

Board Secretary \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first above written.

**SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

**ATTEST AND COUNTERSIGNED:**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Michael Hummel

Its: Deputy General Manager Resources & Finance

Date: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by Michael Hummel, the Deputy General Manager Resources & Finance of the Salt River Project Agricultural Improvement and Power District, on behalf of the district.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first above written.

**SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT FOR THE USE AND BENEFIT OF THE UNITED STATES**

**ATTEST AND COUNTERSIGNED:**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Michael Hummel

Its: Deputy General Manager Resources & Finance

Date: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by Michael Hummel, the Deputy General Manager Resources & Finance of the Salt River Project Agricultural Improvement and Power District, for the use and benefit of the United States.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_





**Exhibit A**

**Retirement Guidelines**

## Schedule 6

### Navajo Nation Addresses

Navajo Nation President  
Office of the President and Vice President  
P.O. Box 7440  
Window Rock, Navajo Nation (AZ) 86515

Navajo Nation Attorney General  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, Navajo Nation (AZ) 86515

Division Director  
Division of Natural Resources  
P.O. Box 9000  
Window Rock, Navajo Nation (AZ) 86515

Department Manager  
Navajo Land Department  
P.O. Box 2249  
Window Rock, Navajo Nation (AZ) 86515

Department Manager  
Minerals Department  
P.O. Box 1910  
Window Rock, Navajo Nation (AZ) 86515

Division Director  
Division of Economic Development  
P.O. Box 663  
Window Rock, Navajo Nation (AZ) 86515

Executive Director  
Navajo Nation Environmental Protection Agency  
P.O. Box 339  
Window Rock, Navajo Nation (AZ) 86515

## Lessee Addresses

### Arizona Public Service Company

David Hansen  
Vice President, Fossil Generation  
400 North 5th Street  
Phoenix, AZ 85004  
Ph. (602)250-4402  
[David.A.Hansen@aps.com](mailto:David.A.Hansen@aps.com)

### Los Angeles Department of Water and Power

Director of External Generation  
Bradford Packer  
Los Angeles Dept. of Water and Power (LADWP)  
111 N. Hope St., Room 921  
Los Angeles, CA 90012  
Ph. (213) 367-2227  
Email: [Brad.Packer@ladwp.com](mailto:Brad.Packer@ladwp.com)

With a copy to:

Engineer of External Generation  
Sam Mannan  
Los Angeles Dept. of Water and Power (LADWP)  
111 N. Hope St., Room 1263  
Los Angeles, CA 90012  
Ph. (213) 367-4984  
Email: [Sam.Mannan@ladwp.com](mailto:Sam.Mannan@ladwp.com)

### Nevada Power Company dba NV Energy

NV Energy  
Attn: General Counsel  
6226 W. Sahara Drive  
Las Vegas, NV 89416  
Email: [dcannon@nvenergy](mailto:dcannon@nvenergy)



Salt River Project Agricultural Improvement and Power District

Salt River Project Agricultural Improvement and Power District  
c/o Secretary  
1500 North Mill Avenue  
Tempe, AZ 85281  
Email: [\\$secoff@srpnet.com](mailto:$secoff@srpnet.com)

With a copy to:

Salt River Project Agricultural Improvement and Power District  
c/o Associate General Manager and Chief Legal Executive  
1500 North Mill Avenue  
Tempe, AZ 85281

Tucson Electric Power Company

Tucson Electric Power Company  
Attn: Mark Mansfield, Vice President  
88 E. Broadway Blvd., Mailstop HQE901  
Tucson, AZ 85701  
Ph. (520) 745-3232  
Email: [mmansfield@tep.com](mailto:mmansfield@tep.com)

With a copy to:

Tucson Electric Power Company  
Attn: Todd Hixon, General Counsel and Vice President  
88 E. Broadway Blvd., Mailstop HQE901  
Tucson, AZ 85701  
Ph. (520) 884-3667  
Email: [thixon@tep.com](mailto:thixon@tep.com)