

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE is executed this 18th day of May 2022, by and between Continental Divide Electric Cooperative, Inc. (CDEC), and the City of Gallup, New Mexico (the City) (collectively, the Parties) (this “Agreement”).

RECITALS

- A. CDEC and the City are parties to a Power Purchase Agreement executed on March 25, 2014, as amended (PPA) under which CDEC supplies wholesale power to the City, and provides certain scheduling and forecasting services to the City.
- B. On June 30, 2021, the City declared CDEC to be in default under the PPA, asserting a continuing failure to comply with its forecasting, planning, and scheduling obligations under the PPA.
- C. On November 23, 2021, CDEC initiated an action in New Mexico’s Thirteenth Judicial District Court (Case No. D-1333-CV-2021-00218) against the City, asserting claims for breach of contract and injunctive relief. CDEC later dismissed that action and refiled Case No. D-1113-CV-2022-00029 in the Eleventh Judicial District Court (the two actions will collectively be referred to as, the Litigation).
- D. The parties have reached a resolution of the issues raised in the Litigation and those alleged defaults under the PPA as described in the City’s June 30, 2021 default letter.

AGREEMENT

- 1. Within ten business days of the execution date of this Agreement, CDEC shall pay the City the sum of \$355,000 to resolve the alleged default under the PPA.
- 2. The Parties agree to fulfill the term of the PPA, which is due to expire on June 30, 2025, with the modifications specified in this Agreement.

3. The City will assume all forecasting responsibilities previously performed by CDEC under the PPA no later than May 26, 2022 (for prescheduling for May 28 and May 29) or such other date in May 2022 mutually agreed to and CDEC will have no obligation to provide any forecasting responsibilities under the PPA commencing on the date of the City's assumption of those responsibilities, and for the remainder of the term of the PPA. Upon the date of the City's assumption of those responsibilities, CDEC will cease charging the City for forecasting services. CDEC agrees to pro-rate its final invoice for forecasting service to reflect the actual number of days it performed such service.
4. The Parties agree that the following Operating Procedures relevant to the City's assumption of forecasting responsibilities will apply:
 - a. *Forecasts Required* – The City will provide CDEC's Transmission Scheduling Agent, Tri-State Generation and Transmission Association, Inc. (Tri-State), the following Near-Term forecasts: next scheduling days(s) (as determined by the WECC Pre-Scheduling Calendar), weekly, and any other forecasts required by Tri-State in order to comply with any Transmission Provider, balancing authority (BA) or organized market requirements. The current requirement from the Public Service Company of New Mexico (PNM) BA is to send forecasts for the next 7 calendar days (7-Day Forecast) each day which also covers the pre-scheduling forecast requirements. Tri-State requires up to 7 days after receiving the first next scheduling day(s) forecast (or sample file format) before Tri-State's system can be updated to use any City provided forecasts for scheduling purposes. During such up to 7 calendar day time, Tri-State will use the forecasts it creates, and thereafter, the default forecast as described below.

- b. *Format and Method of Providing Schedule:* Unless otherwise agreed by Tri-State, the forecasts provided to Tri-State must be sent to a Tri-State secured FTP site prior to 6:00 AM MPT, for which Tri-State will provide the City credentials for. Forecasts cannot be provided by e-mail. Forecasts must be in a .csv or .xml file with fields to include date/time in hour ending and in MPT and the forecasted value as a whole number. Other fields may be included as mutually agreed upon by Tri-State and the City.
- i. *For example:* For the May 28 and 29, 2022 scheduling day, the forecast for May 28 and 29, 2022 must be provided to a Tri-State secured FTP site prior to 6:00 AM MPT on May 26, 2022. For the May 30 and 31, 2022 scheduling day, the forecast for May 30 and 31, 2022 must be provided to a Tri-State secured FTP site prior to 6:00 AM MPT on May 27, 2022.
- c. *Default Forecasts* – In the event the City does not provide a forecast for any next scheduling day(s) or fails to commence providing next scheduling day(s) forecasts by May 31, 2022, Tri-State will utilize the previous day’s SCADA meter values (or the latest SCADA meter values that Tri-State was able to retrieve from such meters) as a “default” forecast for the next scheduling day(s). SCADA meter values means the hourly integrated meter data as recorded by Tri-State's SCADA system for the summation of the City of Gallup’s metered load from all of its substations. In addition, Tri-State will also use such previous day’s SCADA meter values as the forecast for each day in the 7-Day Forecast that Tri-State provides each day to the PNM BA.

- i. *7-Day Forecast Default Example:* If the City does not provide a 7-Day Forecast by 6:00AM MPT on May 24, 2022 for the 7-day time period of May 25-May 31, 2022 and assuming a May 26 forecasting assumption date for prescheduling for May 28 and May 29, Tri-State will use its current forecasts for May 25-May 27, 2022 and the May 23, 2022 SCADA meter values for May 28-May 31, 2022. If the City does not provide a 7-Day Forecast by 6:00AM MPT on May 25, 2022 for the 7-day time period of May 26-June 1, 2022 and assuming a May 26 forecasting assumption date for prescheduling for May 28 and May 29, Tri-State will use its current forecasts for May 26-May 27, 2022 and the May 24, 2022 SCADA meter values for each of May 28-June 1, 2022.
- ii. *Pre-Schedule Forecast Default Examples:* If the City does not provide a next scheduling days forecast for May 28-May 29, 2022 prior to 6:00 AM MPT on May 26, 2022 and assuming a May 26 forecasting assumption date for prescheduling for May 28 and May 29, the May 25, 2022 SCADA meter values will be used for May 28-May 29, 2022. If the City does not provide a next scheduling day forecast for May 30, -May 31, 2022 prior to 6:00 AM MPT on May 27, 2022 and assuming a May 26 forecasting assumption date for prescheduling for May 28 and May 29, the May 26, 2022 SCADA meter values will be used for May 30-May 31, 2022.

5. The City and CDEC will use reasonable efforts to update the Operating Procedures between the City in connection with its and Tri-State, dated August 14, 2014 (Operating Procedures) consistent with the Operating Procedures indicated in Paragraph 4.

6. CDEC and the City agree to cooperate with each other in the City assuming all forecasting responsibilities performed by CDEC under the PPA; provided that in no event will such cooperation require CDEC to continue performing such forecasting responsibilities beyond May 2022. Without limiting the generality of the foregoing, each Party agrees to, promptly upon request of the other Party, provide and/or execute customary documents as may reasonably be requested by such Party in connection with the City assuming all forecasting responsibilities performed by CDEC under the PPA.
7. The City will continue to be responsible for obtaining energy imbalance services and paying for any energy imbalance charges in accordance with the PPA, which are billed to the City pursuant to the City's agreement with the BA, PNM.
8. CDEC releases and forever discharges the City, its employees, contractors, agents, attorneys, representatives, successors, assigns, and their insurers, from any and all past, present, or future claims and demands, whether legal or equitable, common law or statutory, that CDEC has, claims to have, asserted in the Litigation, or could have asserted in the Litigation up to and including the date of this Agreement.
9. The City releases and forever discharges CDEC, its affiliated companies, Tri-State, its and their employees, contractors, agents, attorneys, representatives, successors, assigns, and their insurers from any and all past, present, or future claims and demands, whether legal or equitable, common law or statutory, concerning defaults under the PPA up to and including the date the City assumes all forecasting responsibilities performed by CDEC under the PPA.

10. Within ten business days of the execution date of this Agreement, Counsel for CDEC shall prepare a Joint Motion to Dismiss with Prejudice its claim against the City, and accompanying Order, which the parties agree will be filed in the Litigation.
11. This Agreement has been approved by the Gallup City Council, CDEC Board of Trustees, and Tri-State.
12. CDEC takes no position on the tax consequences of the settlement, and the City assumes all tax liability associated with the payment made by CDEC.
13. This Agreement does not constitute an admission of liability on the party of either the City or CDEC, but rather, represents a compromise settlement of disputed claims.
14. The terms of this Agreement are contractual and not a mere recital.
15. If any provision of this Agreement and is deemed invalid or unenforceable for any reason, such a determination will not affect the validity or enforceability of the remaining portions and provisions of this Agreement.
16. This Agreement shall be construed in accordance with the internal laws of the State of New Mexico.
17. The Parties agree to bear their own attorneys' fees and costs.
18. This Agreement constitutes the entire agreement of the parties with respect to settlement of the Litigation and existing disputes related to the PPA. All prior agreements, understandings, negotiations, or discussions, whether oral or written, are merged herein. All terms not otherwise defined in this Agreement have the meaning set forth in the PPA.
19. This Agreement may be executed in counterparts, and a copy of this Agreement shall be as valid and enforceable as the original.

20. This Agreement shall not be admissible into evidence in any proceeding, except in an action to enforce the terms of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.

Robert E. Castillo

By: _____

Date: 5-18-2022

STATE OF NEW MEXICO)
) ss.
COUNTY OF Libola)

The foregoing Settlement Agreement and Release was acknowledged before me on this ___ day of 18 2022, by Robert E. Castillo.

Rosanne Apodaca
Notary Public
My commission expires: July 1, 2025



OFFICIAL SEAL
ROSANNE APODACA
NOTARY PUBLIC STATE OF NEW MEXICO

My Commission Expires: July 1, 2025

CITY OF GALLUP

By: _____

Date: _____

STATE OF NEW MEXICO)
) ss.
COUNTY OF _____)

The foregoing Settlement Agreement and Release was acknowledged before me on this ___ day of _____ 2022, by _____.

Notary Public
My commission expires: _____