

**ELECTRIC UTILITY BOARD AGENDA  
SPECIAL MEETING  
May 27, 2021  
12:00 P.M.**

**Via In-Person and Video/Teleconference  
Lubbock Power & Light**

**OPEN SESSION:  
Citizens Tower  
City Council Chambers  
1314 Avenue K  
Lubbock, Texas 79401**

**EXECUTIVE SESSION:  
Citizens Tower  
Conference Rooms 201A and 201B  
1314 Avenue K  
Lubbock, Texas 79401**

**The public may also listen to the meeting by calling any of the following numbers:**

**(346) 248 7799  
(669) 900 9128  
(253) 215 8782  
(301) 715 8592  
(312) 626 6799  
(646) 558 8656  
877 853 5247 (Toll Free)  
888 788 0099 (Toll Free)**

**Webinar link: <https://zoom.us/j/91256958281?pwd=VkIvdjNtajB0RzevMTMrUTY3Qy8wdz09>**

**Webinar ID: 912 5695 8281**

**Password: 054108**

***Pursuant to Executive Order of Governor Abbott, the Electric Utility Board will convene in-person and via video and/or teleconference***

1. Call to Order.
2. Public Comment. Public comment is an opportunity for the public to make comments and express a position on agenda items.
  - a. This period, of up to thirty minutes, is dedicated to public comment. Each member of the public will have three minutes to speak. Any member of the public that requires the assistance of a translator will have six minutes to speak. Comments must be limited to only those items posted on the Electric Utility Board agenda. Any member of the public wishing to speak shall sign up on the public comment sheet on the day of the Electric Utility Board Meeting. The Electric Utility Board shall follow the order of persons wishing to speak as listed on the sign-up sheet. If everyone who signed up to speak has been given an opportunity to speak and the thirty minutes designated for public comment has not been exhausted, the Electric Utility Board may, at its discretion, open the floor to anyone else

- wishing to address the Electric Utility Board, subject to all the same procedures and guidelines.
- b. Alternatively, any member of the public wishing to address the Electric Utility Board, regarding any matter posted on the Electric Utility Board Agenda, may submit a public comment by email at [lpccitizencomments@mylubbock.us](mailto:lpccitizencomments@mylubbock.us) beginning at the time this agenda is publicly posted and no later than 10:00 a.m. on May 27, 2021. Each comment will be read aloud for a period of time not to exceed three minutes, in accordance with the practices and procedures of the Electric Utility Board.

### **Executive Session**

3. Hold an executive session in accordance with V.T.C.A. Government Code § 551.086, to discuss and deliberate, on the following competitive matters of Lubbock Power & Light, reasonably related to the following categories:
- a) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
  - b) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
  - c) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
    - Discuss and deliberate purchased power matters.
  - d) risk management information, contracts, and strategies, including fuel hedging and storage;
  - e) plans, studies, proposals, and analyses for system improvements, additions, or sales (other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider);
  - f) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies.
4. Hold an executive session in accordance with V.T.C.A. Government Code § 551.071, seeking the advice of its legal counsel about pending or contemplated litigation or settlement offers and hold a consultation with the attorney on matters in which the duty of the attorney to the Electric Utility Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Texas Government Code: (i) legal issues regarding contract(s) herein listed on the agenda; (ii) power purchase agreements; (iii) legal issues regarding customer choice and Texas Utilities Code, Chapter 40; (iv) Federal Energy Regulatory Commission, Docket Nos. ER16-1341, EL17-2, and EL18-9, related to SPP attachment Z2; and (v) legal advice and counsel regarding matters identified in Section 3(a)-(f) of this Agenda.

*12:30 p.m. – Approximately - Following completion of the Executive Session, the Electric Utility Board will reconvene in open session to discuss the items listed below. It is anticipated that the open session will begin at 12:30 p.m. However, this is an approximation and the Board may begin the open session earlier or later depending on when the Executive Session is complete.*

**Open Session**

- 5. Consider a resolution authorizing and directing the Director of Electric Utilities to execute and file, for and on behalf of the City of Lubbock, acting by and through Lubbock Power & Light (“LP&L”), all pleadings, reports, studies or other filings at the Electric Reliability Council of Texas (“ERCOT”) and/or the Public Utility Commission of Texas (“PUC”) toward migration of the remaining portion of LP&L’s load to ERCOT, and to present testimony and otherwise provide support before ERCOT and/or the PUC related to same.
- 6. Consider a resolution authorizing the Chairman of the Electric Utility Board to execute that certain Settlement Agreement by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Southwestern Public Service Company, a New Mexico Corporation, regarding that certain Master Power Purchase and Sale Agreement (“Master Agreement”) dated as of November 12, 2009, and that certain Transaction Agreement of the same date entered into under the Master Agreement (the “Transaction Agreement”, and together with the Master Agreement and any other transactions entered into under the Master Agreement, the “PPA”), providing for an early termination of the PPA.
- 7. Consider a resolution authorizing the Director of Electric Utilities, or his designee, to execute that certain Supplement to Engagement Letter regarding the transfer of the unaffected load to the Electric Reliability Council of Texas by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Lloyd Gosselink Rochelle & Townsend, P.C.
- 8. Adjourn.

THE ELECTRIC UTILITY BOARD RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AS AUTHORIZED BY TEX. GOV’T CODE § 551.001, *ET. SEQ.* (THE TEXAS OPEN MEETINGS ACT) ON ANY ITEM ON ITS OPEN MEETING AGENDA OR TO RECONVENE IN A CONTINUATION OF THE EXECUTIVE SESSION ON THE EXECUTIVE SESSION ITEMS NOTED ABOVE, IN ACCORDANCE WITH THE TEXAS OPEN MEETINGS ACT, INCLUDING, WITHOUT LIMITATION §§ 551.071-551.086 OF THE TEXAS OPEN MEETINGS ACT.

Posted on the bulletin board outside the south entrance of Citizen’s Tower, 1314 Ave. K., Lubbock, Texas, on the 24<sup>th</sup> day of May 2021, at 10:00 A.M.

By: Beatrice Duenoz

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CITY OF LUBBOCK ELECTRIC UTILITY BOARD MEETINGS ARE AVAILABLE TO ALL PERSONS REGARDLESS OF DISABILITY. IF YOU REQUIRE SPECIAL ASSISTANCE, PLEASE CONTACT THE CITY SECRETARY AT 775-2026 OR WRITE P. O. BOX 2000, LUBBOCK, TEXAS 79457, AT LEAST 48 HOURS IN ADVANCE OF THE MEETING.  
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## Lubbock Power & Light

### Electric Utility Board

#### Agenda Item Summary

**Meeting Date:** May 27, 2021

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**Summary:**

Consider a resolution authorizing the Director of Electric Utilities, to execute or cause to be executed, any and all pleadings, reports, studies or other filings (collectively, the “Pleadings”) required by, or advisable to be filed with Electric Reliability Council of Texas (“ERCOT”) and/or the Public Utility Commission of Texas (“PUC”), and to file or cause to be filed the Pleadings, and to present testimony and otherwise provide support, within and before ERCOT and/or the PUC, in an effort to cause the migration of the Unaffected Load from Southwest Power Pool (“SPP”) to ERCOT.

**Background/Discussion/Fiscal Impact:**

On October 20, 2015, the EUB passed a resolution authorizing the migration of approximately 70% of LP&L’s load (the “Affected Load”) from SPP to ERCOT. Subsequent to the conclusion of regulatory processes at the PUC and ERCOT, migration of the Affected Load is now expected to be completed on or before June 1, 2021.

On January 11, 2018, the EUB passed a resolution directing the Director of Electric Utilities to conduct or prepare, or cause to be conducted or prepared, any and all necessary or advisable plans, evaluations and any other relevant activities surrounding customer choice allowed by Chapter 40 of the Texas Utilities Code, including without limitation, steps necessary to so implement customer choice. The EUB’s intent in this resolution was to provide customer choice to the Affected Load upon its integration with ERCOT, subject to both governing bodies approving such a future resolution providing for customer choice as required by Texas Utilities Code Section 40.051.

After significant study by Staff and others, it became clear that opt-in of only a portion of LP&L’s load to retail choice had practical limitations. Some customers would have retail choice while others would not, and practical implications for rates would be difficult. Further, communications with customers regarding retail choice would be difficult and confusing. Therefore, it is Staff’s recommendation that efforts be made to migrate all of LP&L’s load and customers to ERCOT to facilitate the opportunity for retail choice in a fair and equitable manner.

Following EUB approval, Staff will immediately begin the regulatory processes necessary to obtain regulatory approvals to migrate the remainder of LP&L’s load to ERCOT.

**Recommendation:**

Staff recommends approval of this resolution, or such alternative action as the EUB may deem appropriate.

## **RESOLUTION**

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WHEREAS, approximately 30% of the City of Lubbock and its municipally owned electric utility, Lubbock Power & Light (“LP&L”) is currently served with wholesale power delivered through the Southwest Power Pool Regional Transmission Organization (“SPP”);

WHEREAS, approximately 70% of LP&L’s load has been approved by the Public Utility Commission of Texas (“PUC”) to migrate to the Electric Reliability Council of Texas (“ERCOT”) and such migration is anticipated to be complete on or about June 1, 2021;

WHEREAS, the customers of LP&L would be best served by a migration of its remaining load (the “Unaffected Load”) from SPP to ERCOT;

WHEREAS, the migration of the Unaffected Load to ERCOT will require regulatory activities at ERCOT and before the PUC;

WHEREAS, the Electric Utility Board of the City of Lubbock desires that all regulatory activities be initiated and undertaken in an effort to cause the migration of the Unaffected Load to ERCOT; NOW, THEREFORE:

**BE IT RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:**

THAT the Electric Utility Board of the City of Lubbock hereby approves the migration of the Unaffected Load from SPP to ERCOT.

**BE IT FURTHER RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:**

THAT the Director of Electric Utilities BE and is hereby authorized and directed, for and on behalf of the City of Lubbock, acting by and through LP&L, to execute or cause to be executed, any and all pleadings, reports, studies or other or other filings (collectively, the “Pleadings”) required by, or advisable to be filed with, ERCOT and/or the PUC, and to file or cause to be filed the Pleadings, and to present testimony and otherwise provide support, within and before ERCOT and/or the PUC, in an effort to cause the migration of the Unaffected Load from SPP to ERCOT.

Passed by the Electric Utility Board this 27th day of May, 2021.

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Dan Odom, Chairman

ATTEST:

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Gwen Stafford, Board Secretary

APPROVED AS TO CONTENT:

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David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:

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Jenny Smith, LP&L General Counsel



## Lubbock Power & Light

### Electric Utility Board

#### Agenda Item Summary

**Meeting Date:** May 27, 2021

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**Summary:**

Consider a resolution authorizing the Chairman of the Electric Utility Board to execute that certain Settlement Agreement by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Southwestern Public Service Company, a New Mexico Corporation, regarding that certain Master Power Purchase and Sale Agreement (“Master Agreement”) dated as of November 12, 2009, and that certain Transaction Agreement of the same date entered into under the Master Agreement (the “Transaction Agreement”, and together with the Master Agreement and any other transactions entered into under the Master Agreement, the “PPA”), providing for an early termination of the PPA.

**Background/Discussion/Fiscal Impact:**

LP&L has received all necessary approvals to transfer a portion of its load (the Affected Load) from the Southwest Power Pool (SPP) to the Electric Reliability Council of Texas (ERCOT). The Affected Load accounts for approximately 70% of the electric load for LP&L. The portion of the load that is not currently transferring from SPP to ERCOT (Remaining Load) accounts for the remaining 30% of electric load, which is currently served with Partial Requirements Power Service (PRPS) from Southwestern Public Service Company (SPS).

On November 12, 2009, LP&L and SPS entered into a series of agreements (collectively the Purchased Power Agreement or PPA) pursuant to which LP&L agreed to purchase PRPS from SPS beginning on June 1, 2019 through May 31, 2044. Additionally, on March 21, 2017, LP&L and SPS entered into a Transmission Letter Agreement for transmission charges allocable to LP&L in connection with the PPA. The initial level of PRPS totaled 170MW beginning on June 1, 2019 with increases of 1.2% per year through 2044.

LP&L currently intends to seek all necessary approvals to transfer the Remaining Load from SPP to ERCOT. Therefore, the PRPS is necessary to serve the Remaining Load until the anticipated ERCOT integration date of June 1, 2023. Upon the integration of LP&L’s Remaining Load into ERCOT, LP&L will no longer need the PRPS; therefore, LP&L’s payment obligations under the PPA and Transmission Letter Agreement will become stranded costs of LP&L.

In anticipation of the full integration to ERCOT, LP&L and SPS have agreed to terminate the PPA and the Transmission Letter Agreement, and have identified May 31, 2023 as the current estimate of the Termination Date. Under the terms of the Settlement Agreement, LP&L intends to pay a lump sum, totaling \$77.5 million, to SPS as compensation for power- and transmission-related shifted costs under the PPA.

LP&L has also agreed to continue paying SPP charges that are assessed to SPS under the LP&L Network Integration Transmission Service (NITS) Agreement, for up to 24 months, that are attributable to service



to LP&L's load after LP&L departs the SPP system (because SPP uses lagging billing determinants for certain charges).

Additionally, LP&L has agreed that the Settlement Agreement will not become effective unless and until it is approved or accepted by the Federal Energy Regulatory Commission (FERC) and the Public Utility Commission of Texas (PUCT).

Following the termination date, the contractual relationship between LP&L and SPS will be limited to this Settlement Agreement and certain easements and crossing agreements necessary for the operation of each respective system. For clarity, the existing water use agreement and the existing franchise agreement pertaining to SPS' retail service territory in Lubbock will continue under the existing terms of each respective agreement.

Under the PPA, LP&L pays over \$17.0 million per year for capacity in SPP. With the 1.2 percent annual increase in service, in addition to inflationary impacts, the annual payments will grow well in excess of \$17 million per year into the future. The lump sum termination payment of \$77.5 million will be funded with long-term bonds, with an estimated annual payment totaling approximately \$4.1 million per year. Therefore, the termination of this agreement will trade an approximate \$17.0 million annual payment for a \$4.1 million annual payment. By reducing annual costs by approximately \$12.9 million per year, the average residential (Rate 1) customer will experience power cost savings in excess of 10 percent.

**Recommendation:**

Staff recommends authorizing execution of the Settlement Agreement with SPS, or such alternative action as the EUB may deem appropriate. The approval of this matter is subject to the EUB and City Council's approval of authority to execute the Settlement Agreement.

## RESOLUTION

WHEREAS, Lubbock Power & Light is the municipally owned electric utility of the City of Lubbock (“LP&L”);

WHEREAS, LP&L and Southwestern Public Service Company, a New Mexico corporation (“SPS”), are parties to that certain Master Power Purchase and Sale Agreement dated as of November 12, 2009 (the “Master Agreement”), and that certain Transaction Agreement of the same date entered into under the Master Agreement (the “Transaction Agreement”, and together with the Master Agreement and any other transactions entered into under the Master Agreement, the “PPA”), pursuant to which LP&L is purchasing 170 megawatts of Partial Requirements Power Service, as defined in the Transaction Agreement, from SPS;

WHEREAS, LP&L and SPS are also parties to that certain Letter Agreement entitled “Letter Agreement between SPS and LP&L re Future Costs under SPP NITSAs”, dated March 21, 2017 (the “Transmission Letter Agreement”), related to transmission charges allocable to LP&L in connection with the PPA;

WHEREAS, LP&L previously received all necessary approvals to transfer a portion of its load (the “Affected Load”) from the electric transmission system and market operated by the Southwest Power Pool, Inc. (such transmission system and market, “SPP”) to the electric transmission system and market operated by the Electric Reliability Council of Texas, Inc. (such transmission system and market, “ERCOT”) and is in the process of implementing the integration of such Affected Load into ERCOT;

WHEREAS, LP&L currently intends to seek all necessary approvals to transfer its entire remaining load (the “Remaining Load”) from SPP to ERCOT (the “Remaining Load Integration”);

WHEREAS, upon integration of LP&L’s Remaining Load into ERCOT, LP&L will no longer need the Partial Requirements Power Service being provided under the PPA; therefore, LP&L’s payment obligations under the PPA (including the obligations under the Transmission Letter Agreement related thereto) will be stranded costs of LP&L (as contemplated by Chapter 40 of the Texas Public Utility Regulatory Act) and the Parties have agreed to terminate the PPA and the Transmission Letter Agreement;

WHEREAS, LP&L and SPS have agreed to certain terms and conditions outlined in the attached Settlement Agreement to terminate the PPA and the Transmission Letter Agreement; NOW, THEREFORE,

**BE IT RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:**

THAT the Electric Utility Board of the City of Lubbock hereby approves that certain Settlement Agreement by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Southwestern Public Service Company, as attached hereto and incorporated herein as though set forth fully herein in detail, and approves and agrees to payment in the amount and methods described therein.

BE IT FURTHER RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:

THAT the Chairman of the Electric Utility Board is hereby authorized and directed to execute that certain Settlement Agreement by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Southwestern Public Service Company, as attached hereto and incorporated herein as though set forth fully herein in detail.

BE IT FURTHER RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:

THAT this resolution shall be null and void if the City Council of the City of Lubbock does not approve a similar resolution approving the Settlement Agreement by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Southwestern Public Service Company within thirty (30) days of this resolution.

Passed by the Electric Utility Board this 27th day of May, 2021.

\_\_\_\_\_  
Dan Odom, Chairman

ATTEST:

\_\_\_\_\_  
Gwen Stafford, Board Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:

\_\_\_\_\_  
Jenny Smith, LP&L General Counsel

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Chad Mills, Haynes and Boone, LLP, Outside Counsel

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (this “**Agreement**”) is made and entered into as of May 27, 2021 (the “**Execution Date**”), by and between the City of Lubbock, acting by and through Lubbock Power & Light (“**LP&L**”), and Southwestern Public Service Company, a New Mexico corporation (“**SPS**”). Each of LP&L and SPS may be referred to as a “**Party**” and together as the “**Parties**”.

WHEREAS, LP&L and SPS are parties to that certain Master Power Purchase and Sale Agreement dated as of November 12, 2009 (the “**Master Agreement**”), and that certain Transaction Agreement of the same date entered into under the Master Agreement (the “**Transaction Agreement**”, and together with the Master Agreement and any other transactions entered into under the Master Agreement, the “**PPA**”), pursuant to which LP&L is purchasing 170 megawatts of Partial Requirements Power Service, as defined in the Transaction Agreement, from SPS;

WHEREAS, LP&L and SPS intend to implement certain scheduling protocol changes in connection with the PPA, effective June 1, 2021, in a form substantially similar to the attached amendments in Exhibit 1, which is being attached for informational purposes only;

WHEREAS, LP&L and SPS are also parties to that certain Letter Agreement entitled “Letter Agreement between SPS and LP&L re Future Costs under SPP NITSAs”, dated March 21, 2017 (the “**Transmission Letter Agreement**”), related to transmission charges allocable to LP&L in connection with the PPA;

WHEREAS, LP&L previously received all necessary approvals to transfer a portion of its load (the “**Affected Load**”) from the electric transmission system and market operated by the Southwest Power Pool, Inc. (such transmission system and market, “**SPP**”) to the electric transmission system and market operated by the Electric Reliability Council of Texas, Inc. (such transmission system and market, “**ERCOT**”) and is in the process of implementing the integration of such Affected Load into ERCOT;

WHEREAS, LP&L currently intends to seek all necessary approvals to transfer its entire remaining load (the “**Remaining Load**”) from SPP to ERCOT (the “**Remaining Load Integration**”);

WHEREAS, upon integration of LP&L’s Remaining Load into ERCOT, LP&L will no longer need the Partial Requirements Power Service being provided under the PPA; therefore, LP&L’s payment obligations under the PPA (including the obligations under the Transmission Letter Agreement related thereto) will be stranded costs of LP&L (as contemplated by Chapter 40 of the Texas Public Utility Regulatory Act) and the Parties have agreed to terminate the PPA and the Transmission Letter Agreement in accordance with the terms of this Agreement;

WHEREAS, SPS has agreed to (a) support LP&L’s regulatory filings necessary for the Remaining Load Integration, and (b) make any and all necessary regulatory filings required to terminate the PPA early; and

WHEREAS, LP&L has agreed to make certain payments to SPS as set forth herein; and

NOW, THEREFORE, in consideration of the premises above, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **Section 1. Definitions**

“**Affected Load**” has the meaning specified in the recitals.

“**Affiliate**” means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, “control” of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

“**Agreement**” has the meaning specified in the preamble.

“**Annual Payment**” has the meaning specified in Section 2.1.

“**Asset Purchase Agreement**” means that certain Asset Purchase Agreement by and between SPS and the City of Lubbock dated as of November 12, 2009.

“**Business Day**” means any day other than (i) a Saturday or Sunday, and (ii) any other day on which commercial banks generally in the State of Texas are authorized or required by law to close.

“**ERCOT**” has the meaning specified in the recitals or any successor entity or entities thereto that operate(s) the independent system currently operated by ERCOT.

“**Execution Date**” has the meaning specified in the preamble.

“**FERC**” means the Federal Energy Regulatory Commission or any successor thereto.

“**Governmental Approval**” means any authorization, consent, approval, license or exemption of, registration or filing with, or report or notice to, any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“**Integration Approvals**” means all ERCOT, FERC, and PUCT approvals, in each case, to the extent that LP&L reasonably determines such approvals are necessary or appropriate for the Remaining Load Integration and for the implementation of the transactions contemplated by Section 2.5 of this Agreement.

**“Integration Date”** shall be defined as the first date that the Remaining Load is integrated into ERCOT, which date shall occur after all transmission facilities necessary to integrate the Remaining Load into ERCOT are operational, all necessary Integration Approvals have been received, and all other Governmental Approvals necessary for such integration have been received.

**“Integration Filings”** means all applications, comments, petitions or other filings made by the Parties to obtain the Integration Approvals, including any rehearing, reconsideration, or court review as may be reasonably necessary or appropriate.

**“Interest Rate”** means an annual rate of interest equal to the amounts provided in Texas Government Code § 2251.025.

**“Junior Lien Notes”** shall mean the notes of the City issued pursuant to Ordinance No. 2019 – 00046 adopted by the City Council of the City of Lubbock on April 23, 2019.

**“LP&L”** has the meaning specified in the preamble.

**“LP&L Load”** has the meaning set forth in the LP&L NITS Agreement.

**“LP&L NITS Agreement”** shall mean the service agreement for Network Integration Transmission Service between SPP and SPS, designated as SPP Seventh Revised Service Agreement No. 1139, as amended from time to time.

**“Lump Sum Payment”** has the meaning specified in Section 2.2.

**“Master Agreement”** has the meaning specified in the recitals.

**“Net Revenues”** has the meaning assigned to such term in the Senior Lien Bond Ordinance.

**“Party”** and **“Parties”** have the meaning specified in the preamble.

**“Payment Start Date”** means the later of (a) the 15<sup>th</sup> day of the first month that commences after the Termination Date, and (b) June 15, 2023.

**“Person”** means any natural person, corporation, limited liability company, partnership, trust, joint venture, company, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

**“PPA”** has the meaning specified in the recitals.

**“PUCT”** means the Public Utility Commission of Texas or any successor agency or agencies thereto that provides regulatory oversight of ERCOT or the electric power industry in Texas.

**“Remaining Load”** has the meaning specified in the recitals.

**“Remaining Load Integration”** has the meaning specified in the recitals.

**“Reserved Contracts”** has the meaning specified in Section 5.3.

“**Senior Lien Bond Ordinance**” shall mean Ordinance No. 2018 – 00073 adopted by the City Council of the City of Lubbock on June 28, 2018.

“**Senior Lien Bonds**” has the meaning assigned to the term “Bonds Similarly Secured” in the Senior Lien Bond Ordinance.

“**SPP**” has the meaning specified in the recitals.

“**SPP Charges**” shall mean all charges or credits applicable to the service provided under the LP&L NITS Agreement under SPP’s Open Access Transmission Tariff.

“**SPS**” has the meaning specified in the preamble.

“**Termination Date**” means the Integration Date, provided that if all necessary FERC approvals have been granted but the Integration Date has not occurred on or prior to May 31, 2023, the Termination Date shall be such date as selected by LP&L in its sole discretion upon thirty (30) days’ prior written notice to SPS.

“**Transaction Agreement**” has the meaning specified in the recitals.

“**Transmission Letter Agreement**” has the meaning specified in the recitals.

## **Section 2. Payment by LP&L; Termination.**

Section 2.1 Annual Payments. Not later than (a) the Payment Start Date and (b) each yearly anniversary of the Payment Start Date until, and including on, the fifth anniversary thereof, LP&L shall make a payment (the “**Annual Payment**”) to SPS in the amount of \$14,950,223, subject to adjustment pursuant to the applicable provisions of Section 2.3. If the due date for an Annual Payment does not fall on a Business Day, then the due date for such Annual Payment shall be the following Business Day. Late payments of any Annual Payment shall bear interest at the Interest Rate until paid.

Section 2.2 Lump Sum Option. LP&L may elect, in its sole discretion on the Payment Start Date, to prepay all Annual Payments by paying a lump sum (the “**Lump Sum Payment**”) in an amount equal to \$77,500,000, subject to adjustment pursuant to Section 2.3. After one or more Annual Payments have been made, LP&L may elect, on an anniversary of the Payment Start Date, to pay off the remaining Annual Payments in accordance with the Payoff Amount Table:

<b>Payoff Amount Table</b>	
On the first anniversary of the Payment Start Date, after one Annual Payment has been made to SPS:	\$66,459,138
On the second anniversary of the Payment Start Date, after two Annual Payments have been made to SPS:	\$54,728,223

On the third anniversary of the Payment Start Date, after three Annual Payments have been made to SPS:	\$42,264,125
On the fourth anniversary of the Payment Start Date, after four Annual Payments have been made to SPS:	\$29,021,021

Section 2.3 PPA Payment and Annual Payment Credits.

If the Termination Date occurs on or after March 1, 2023, and prior to May 31, 2023, then the Lump Sum Payment amount under Section 2.2 will be increased by \$61,000.00 for each day by which the Termination Date occurs prior to May 31, 2023. If, for any reason, the Termination Date occurs after May 31, 2023, then the Lump Sum Payment will be reduced by \$61,000.00 for each day by which the Termination Date occurs after May 31, 2023, but no reduction will apply for any day that occurs after December 31, 2023. If LP&L elects to use Annual Payments rather than a Lump Sum, then the total amount of any increases or reductions under this Section 2.3 shall be applied to the first Annual Payments that become due until exhausted.

Section 2.4 Limited Obligation; Pledge and Perfection of Pledge.

- (a) LP&L's payment obligations under Sections 2.1 and 2.5(c) of this Agreement are limited obligations of the City of Lubbock, payable from the Net Revenues and such obligations shall be junior and subordinate in rank and dignity to the Senior Lien Bonds and Junior Lien Notes. The payment obligations of Sections 2.1 and 2.5(c) do not constitute a prohibited indebtedness of the City of Lubbock and the Annual Payments shall never be payable out of funds raised or to be raised by taxation. Nothing in this provision excuses LP&L's payment obligations of Sections 2.1 and 2.5(c) under this Agreement, and the Parties expressly acknowledge that SPS's obligations under this Agreement are conditioned on satisfaction of LP&L's full payment obligations under Sections 2.1 and 2.5(c) of this Agreement.
- (b) To provide security for the payment of the payment obligations of Sections 2.1 and 2.5(c) (including principal and interest) under this Agreement, there is hereby pledged, subject to the provisions of the documents governing and evidencing the Senior Lien Bonds and the Junior Lien Notes, the Net Revenues, such pledge of Net Revenues, however, being junior and subordinate in rank and dignity to the lien and pledge securing the payment of the Senior Lien Bonds and the Junior Lien Notes, whether now in effect or arising hereinafter.
- (c) To the extent that Chapter 1208 of the Texas Government Code applies to the pledge of the Net Revenues granted by LP&L herein, such pledge is, therefore, valid, effective, and perfected. For the avoidance of doubt, to the extent that the pledge of the Net Revenues granted by LP&L is subject to the filing requirements of Chapter 9, as amended, of the Texas Business & Commerce Code, in order to



preserve to SPS the perfection of the security interest in this pledge, LP&L agrees to take such measures as are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9 and enable a filing to perfect the security interest in this pledge to occur, reflecting LP&L as debtor and SPS as creditor

- (d) To ensure the full and prompt payment under this Agreement, LP&L covenants and agrees that rates and charges for electric power and energy or transmission and distribution services afforded by the City of Lubbock's Electric Light and Power System are established and will be maintained to provide revenues sufficient at all times to timely pay:
- (i) all necessary and reasonable expenses of operating and maintaining the City of Lubbock's Electric Light and Power System;
  - (ii) the amounts required to make all payments and deposits in respect of the Senior Lien Bonds;
  - (iii) the amounts required to make all payments and deposits in respect of the Junior Lien Notes; and
  - (iv) all payment obligations under Sections 2.1 and 2.5(c) of this Agreement.
- (e) LP&L represents, warrants, and agrees that this Agreement, including LP&L's payment obligations under Sections 2.1 and 2.5(c) of this Agreement, is fully enforceable against LP&L and otherwise complies with applicable Texas law, including but not limited to the Texas Government Code and Article XI, Section 5 of the Texas Constitution. LP&L and the City of Lubbock waive any right to claim that this Agreement, including LP&L's payment obligations under Sections 2.1 and 2.5(c), is not enforceable under Texas law.

#### Section 2.5 Termination of PPA and Transmission Letter Agreement.

- (a) Upon acceptance by FERC of this Agreement, the PPA and Transmission Letter Agreement will terminate on the Termination Date without any further obligation or liability of either Party except as provided in Section 2.5(c) and Section 2.5(d). 88.92% of all payments by LP&L pursuant to Section 2.1 and/or Section 2.2, as adjusted by Section 2.3, constitutes compensation for power sales-related shifted costs under the PPA. 11.08% of all payments by LP&L pursuant to Section 2.1 and/or Section 2.2, as adjusted by Section 2.3, constitutes compensation for transmission-related shifted costs under the Transmission Letter Agreement.
- (b) SPS shall file tariff sheets in a form acceptable to LP&L to effectuate FERC's acceptance of the termination of the PPA and the Transmission Letter Agreement.
- (c) Pursuant to invoices issued under the PPA, SPS currently recovers SPP Charges that are assessed to SPS under the LP&L NITS Agreement and that are attributable to service to LP&L Load. Notwithstanding anything herein, SPS invoices to LP&L

shall include any and all SPP Charges incurred, apportioned, or assigned to SPS to serve LP&L Load under the LP&L NITS Agreement, including such SPP Charges (e.g., Schedule 1A, Schedule 11 and Attachment Z2, etc.) billed to SPS after LP&L departs the SPP system (e.g., because SPP uses lagging billing determinants for Schedules 1A and 11). For the avoidance of doubt, SPS shall continue to invoice LP&L for the SPP Charges described in this sub-section as they are charged or credited to SPS, notwithstanding the termination of the PPA on the Termination Date, until the time specified in Section 2.4(d) or in Section 2.4(e), as applicable. To the extent LP&L notifies SPS that LP&L believes any SPP Charges have been improperly calculated or charged under the LP&L NITS Agreement, the SPP tariff or applicable law, SPS shall cooperate with LP&L in resolving such issue, including, to the extent reasonably requested by LP&L, disputing the SPP Charges with SPP or assisting LP&L if LP&L initiates a proceeding with respect to such SPP Charges at FERC; provided, however, that LP&L shall be responsible for the litigation costs associated with such assistance provided by SPS.

- (d) Except as provided in Section 2.5(e), SPS shall invoice LP&L for all SPP Charges (charges and credits) described in Section 2.5(c) for twenty-four (24) months following the Termination Date. Any SPP Charges consisting of charges shall be due from LP&L to SPS and any SPP Charges consisting of credits shall be due from SPS to LP&L, in each case in a manner and pursuant to timing that would have applied absent the Termination Date. Unless the SPP Charges are those described in Section 2.5(e), LP&L shall have no further obligation or entitlement to pay or receive SPP Charges that are assessed or credited by SPP to SPS after the twenty-fourth (24<sup>th</sup>) month following the Termination Date.
- (e) Without prejudice to LP&L rights and SPS's obligations under the last sentence of Section 2.5(c), to the extent that SPP at any time bills or credits SPS for Attachment Z2 credit payments that are or were associated with SPS's service to LP&L under Transmission Service Reservations 77917219 or 84123608, SPS shall bill or credit LP&L for such costs or credits.

#### Section 2.6      Default.

- (a) In addition to all the rights and remedies provided by the laws of the State of Texas during the continuance of an Event of Default, SPS shall be entitled to enforce under applicable law its rights against the Net Revenues, including foreclosing on the pledge securing same, all in accordance with the applicable provisions of Chapter 9 of the Uniform Commercial Code as in effect in the State of Texas and other applicable Texas law. Upon the existence and during the continuance of an Event of Default, SPS shall be entitled to proceed to protect and enforce all rights to payment in full of all unpaid portions of the payment obligations under Sections 2.1 and 2.5(c) conferred hereunder by such appropriate judicial proceedings as it shall deem most effectual to protect and enforce any such rights, either by suit in equity or by action at law, or by a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring LP&L and its officers to observe and perform any payment, covenant, condition or obligation prescribed in this

Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, nor shall such delay or omission be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

- (b) An “Event of Default” means any of the following:
- (i) failure of LP&L to make any payment hereunder when due and such failure continues for a period of 60 days;
  - (ii) Failure of LP&L to perform in any material respect any of its other obligations hereunder and such failure continues for 60 days after notice by SPS to LP&L thereof; or
  - (iii) LP&L becomes a debtor in a proceeding under the United States Bankruptcy Code provided that, if that proceeding is an involuntary proceeding, that proceeding is not dismissed within 60 days of the date of its filing.
- (c) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity.

### **Section 3. Effectiveness and Regulatory Filings.**

Section 3.1 FERC Filing. The Parties acknowledge that, except as set forth in Section 3.3, this Agreement will not become effective unless and until it is approved or accepted by FERC. LP&L acknowledges that, once approved or accepted by FERC, this Agreement cannot be modified, abrogated, or set aside in any forum except FERC; provided that if FERC declines or refuses to exercise jurisdiction, then any judicial proceeding (excluding appeals of FERC orders) seeking to modify, abrogate, or set aside this Agreement shall be brought exclusively in any court of competent jurisdiction located in the State of Texas; provided further that, for the purposes of the immediately preceding clause, until such time as FERC declines or refuses jurisdiction, neither party shall present any argument or support any argument that FERC does not have jurisdiction over this Agreement. As soon as practicable after this Agreement is approved by the PUCT (or earlier if the Parties, acting reasonably, agree that an earlier filing is prudent), SPS, at its sole cost and expense, shall make all filings with FERC necessary to implement the transactions contemplated hereby. Prior to making such filings, SPS shall provide LP&L meaningful advance opportunity to review and provide comment on the filings. LP&L will keep such drafts confidential to the extent permitted by law and will support such filings at its own expense.

Section 3.2 PUCT Review. The Parties acknowledge that, except as set forth in Section 3.3, this Agreement will not become effective unless and until it is approved by the PUCT. The Parties agree to request approval of the Agreement from the PUCT as a part of Integration Approval. The Parties agree to reasonably cooperate and undertake all steps

necessary to obtain PUCT approval of the Agreement, including findings that the terms of the Annual Payment and Lump Sum Payment are in the public interest and a necessary part of the Remaining Load Integration. Each Party will be solely responsible for its respective costs associated with seeking PUCT approval.

Section 3.3 Initial Effectiveness and Termination. Notwithstanding the conditional effectiveness of this Agreement as set forth in Section 3.1 and Section 3.2, the following provisions of this Agreement are effective as of the Execution Date: Section 3, Section 4, Section 7, Section 8 and all definitions and references needed to interpret such provisions. If this Agreement has not become fully effective as set forth in Section 3.1 and Section 3.2 by December 31, 2025, or the Termination Date has not occurred on or prior to such date, then, unless the Parties agree (each in its sole discretion) to extend such deadline, this Agreement will terminate, any pending filing with FERC or the PUCT for approval of this Agreement will be withdrawn, and neither Party will have any remaining obligations under this Agreement after such date other than in respect of breaches of this Agreement that arose prior to such date.

Section 3.4 Integration Filing Support. At its sole cost and expense, SPS will support LP&L's Integration Filings and Integration Approval so long as the Integration Filings and Integration Approval are consistent with the terms of this Agreement. SPS's support shall include:

- (a) reasonably cooperating with LP&L in (i) the preparation of applications for and prosecution of all Integration Filings to be made by LP&L, including any rehearing, reconsideration, or court review as may be reasonably necessary or appropriate, and (ii) otherwise seeking or obtaining the Integration Approvals and approval of the Agreement;
- (b) not opposing, nor permitting any Affiliate to oppose, any Integration Filing made by LP&L or make any public statements opposing the Remaining Load Integration;
- (c) supporting all Integration Filings made by LP&L, as LP&L may reasonably request which shall include the statement that the settlement adequately protects SPS customers; and
- (d) provide LP&L such information as LP&L may reasonably request from time to time in order to prepare and prosecute the Integration Filings.

SPS shall have complete discretion to determine the content and manner of filing its pleadings, testimony, and any other filings it makes in support of the Integration Filings and Integration Approval; provided that SPS shall use best efforts to apprise LP&L of the content and scope of any such support prior to filing or submission.

Section 3.5 No Other Payments. SPS agrees that it will not seek, nor permit any Affiliate to seek, on behalf of itself or any customers, and SPS will not encourage or support any filings by third parties, at FERC, at the PUCT, in front of any other Governmental Authority or in any other forum, any exit payments, hold-harmless payments or any other payments in any way related to the termination of the PPA, the Remaining Load Integration,

or LP&L ceasing to purchase electricity that is transmitted in SPP or to purchase any other products or services from SPP and that SPS's sole compensation related thereto is LP&L's payment of the Annual Payments or the Lump Sum Payment, as applicable.

Section 3.6 Allocation of Payments. In all relevant Integration Filings, SPS and LP&L shall, in such filings, reflect that the Annual Payments or Lump Sum Payment will be allocated by SPS consistent with the relative shifted cost compensation percentages (transmission vs. power supply) described in Section 2.5(a).

Section 3.7 Modifications to Terms. If, in the course of preparing any Integration Filing or pursuing any Integration Approval, either Party reasonably determines, based on responses or input from any Governmental Authority (including non-binding input from staff of the PUCT), that modifications to the terms of this Agreement or the transactions contemplated hereby may be necessary in order to obtain an Integration Approval, then, upon request of such Party, the Parties will negotiate in good faith with respect to such modifications to the extent necessary to obtain Integration Approvals and approval of this Agreement, provided that neither Party is obligated to modify any such terms if such modification would either (a) require an additional payment from such Party, (b) reduce the amount of, or eliminate, any payment required under this Agreement, or (c) in the reasonable judgment of such Party, result in a material adverse impact on such Party.

#### **Section 4. SPS Rates.**

Following the Execution Date, SPS shall not submit any new rate filings at FERC that would alter LP&L's payment obligations under the PPA; provided that, the foregoing: (a) does not apply to annual updates of the formula rate under the PPA; (b) shall not prohibit SPS from continuing to seek acceptance for the rates it has previously filed at FERC or from submitting any filings at FERC necessary to implement the termination of the PPA pursuant to the terms of the Settlement Agreement; and (c) shall not prohibit SPS from seeking acceptance for rate changes in connection with changes in law or regulation, changes directed by FERC, or natural disasters or any *force majeure* event. With respect to the foregoing, "*force majeure*" means events beyond the reasonable control of SPS that cannot be anticipated as of the Execution Date and cannot be overcome by the exercise of reasonable efforts.

#### **Section 5. Other Contracts.**

Section 5.1 Other Contracts. The Parties intend that, following the Termination Date, the contractual relationship between the Parties be limited to this Agreement and certain easements and crossing agreements necessary for the operation of each Party's respective system; provided that the foregoing intent does not apply to the existing water use agreement between SPS and the City of Lubbock (which agreement was not entered into by and through LP&L) or to the franchise agreement pertaining to SPS's retail service territory in the City of Lubbock. Following the date hereof until December 31, 2022, the Parties will cooperate in good faith to: (i) identify any other contracts existing as of the Execution Date between the Parties that the Parties reasonably believe should not continue beyond the Termination Date; and (ii) take all reasonable and necessary steps to terminate any such contracts so identified and release any claims related thereto in a manner

consistent with Section 6 below. Neither Party will unreasonably withhold consent to the (a) termination of or (b) termination of and release of and from such contracts. In addition, following the date hereof until December 31, 2022, the Parties will cooperate in good faith to: (i) identify any real property described in Section 7.21 of the Asset Purchase Agreement or any other real property of LP&L where SPS equipment is lawfully located and for which a separate recorded easement does not exist; and (ii) negotiate separate easement agreements for such real property, which easement agreements shall be consistent with industry practice and shall address removal and restoration obligations for SPS property that ceases to be necessary for the operation of SPS's transmission system.

Section 5.2 Delegation of Authority. The Electric Utility Board and the City Council of the City of Lubbock hereby delegate authority to the Director of Electric Utilities, or his designee, to effectuate the requirements of Section 5.1.

Section 5.3 Reserved Contracts. Section 5.1 of this Agreement will not apply to, and will in no way effect any of the following ("**Reserved Contracts**"): (1) Section 2.3 of the Asset Purchase Agreement; (2) Section 2.4 of the Asset Purchase Agreement; and (3) the Amended and Restated Contract for Sale and Purchase of Treated Sewage Effluent Water, dated November 12, 2009, which was attached to the Asset Purchase Agreement as Exhibit F. The obligations of the Parties related to the foregoing Reserved Contracts is expressly reserved in this Agreement and shall survive the Termination Date. This Section 5.3 does not exclude the possibility that additional other contracts may, consistent with Section 5.1, continue after the Termination Date.

## **Section 6. Release.**

Effective as of the Termination Date, LP&L and SPS, hereby FULLY AND FINALLY RELEASE, ACQUIT, AND DISCHARGE each other and all of their related Affiliates, members, entities, officers, directors, elected officials, appointed officials, partners, agents, employees, successors, attorneys, shareholders, and insurers, of and from any and all claims, demands, and causes of action of whatsoever nature or character which either may now have or hereafter have against the other, arising out of or in any way connected to or related to the Asset Purchase Agreement, PPA, the termination of the PPA, LP&L ceasing to purchase electricity that is transmitted in SPP, and/or LP&L purchasing capacity or other products in SPP, in each case whether known or unknown, including by example, but not limited to, damages for breach of contract, common law claims, statutory penalties, administrative proceedings or charges, attorney's fees, costs, interest, and expense of any type whatsoever arising out of or in any way connected with or related to any of the foregoing. It is expressly agreed that all Parties intend this RELEASE to be as broad and comprehensive as possible so that each Party shall never be liable, directly or indirectly, to the other for any claims, demands, actions, or causes of action arising out of or in any way connected with or related to the Asset Purchase Agreement, the PPA, the termination of the PPA, and/or LP&L ceasing to purchase electricity that is transmitted in SPP, it being the Parties' express intention that the consideration stated herein fully and completely resolves any and all such claims and potential causes of action, whether asserted or unasserted. Notwithstanding the foregoing, except as otherwise provided in this Agreement, the obligations of the Parties expressly set forth in this Agreement shall survive the Termination Date. This Section 6 will not apply to, and will in no way effect the Reserved Contracts. The obligations of the Parties

related to the foregoing Reserved Contracts are expressly reserved in this Agreement and shall survive the Termination Date.

**Section 7. Representations and Warranties.**

As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:

- (a) it has all requisite power and authority, corporate or otherwise, to enter into, deliver and to perform its obligations under this Agreement and to carry out the terms and conditions hereof and the transactions contemplated hereby;
- (b) there is no litigation, action, suit, proceeding with service of process accomplished with respect to such Party or investigation pending or, to the best of such Party's knowledge, threatened, in each case before or by any Governmental Authority and, in each case, which could reasonably be anticipated to materially and adversely affect such Party's ability to perform its obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;
- (c) the execution, delivery and performance of this Agreement by such Party have been duly authorized by all necessary action on the part of such Party and its governing body and do not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;
- (d) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and by general principles of equity;
- (e) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any law, order, writ, judgment, decree or other legal or regulatory determination applicable to it;
- (f) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with,

or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets;

- (g) it is not aware of any claims, demands, and causes of actions of whatsoever nature that currently exist that would be released pursuant to Section 6 if the Termination Date occurred on the Execution Date;
- (h) to the best of the knowledge and belief of such Party, no Governmental Approval is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those Governmental Approvals that have been obtained, the Integration Approvals, approval or acceptance of this Agreement by FERC and the PUCT, and the associated approvals or acceptance by FERC to terminate the PPA; and
- (i) it enters this Agreement as a bona-fide, arms-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

## **Section 8. Miscellaneous Provisions.**

Section 8.1 Standard of Review. The Parties agree that the standard of review for changes proposed by a Party to the Settlement Agreement that are not agreed to by both Parties shall be the most stringent standard under the Mobile-Sierra doctrine. *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956). The standard of review for changes to the Settlement Agreement proposed by a non-Party or the Federal Energy Regulatory Commission acting *sua sponte* shall be the ordinary “just and reasonable” standard under the *Mobile-Sierra* doctrine.

Section 8.2 Governing Law; Jurisdiction; and Venue. EXCEPT IN THE EVENT OF A CONFLICT BETWEEN THE LAWS OF THE STATE OF TEXAS AND THE LAWS AND REGULATIONS OF THE UNITED STATES AND THE FEDERAL ENERGY REGULATORY COMMISSION, IN WHICH CASE SUCH FEDERAL LAW SHALL GOVERN, THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER STATE’S LAW.

Subject to and without limiting the provisions of Section 3.1, any disputes arising out of or related to this Agreement shall be brought either: (i) in a state or federal court of competent jurisdiction located in the State of Texas; or (ii) at FERC. Notwithstanding the foregoing, nothing herein shall limit either Party’s right to invoke FERC’s jurisdiction over any dispute arising out of or related to this Agreement or to appeal any FERC order related thereto in any U.S. court of appeals that would otherwise have jurisdiction over the appeal.



Section 8.3 Notices. Any notice, demand, statement, or request required or authorized by this Agreement to be given by one Party to the other Party (or to any third party) shall be in writing and shall either be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses specified in the attached Schedule 8.3 for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service); provided that, if a Party delivers a notice, demand or request by any means other than email transmission, such notice shall not be effective unless and until the Party also delivers a copy thereof to the other Party's email address specified in Schedule 8.3. Each Party shall have the right, upon ten (10) days' prior written notice to the other Party, to change its list of notice recipients and addresses in Schedule 8.3. The Electric Utility Board and the City Council of the City of Lubbock hereby delegate to the Director of Electric Utilities the authority to update Schedule 8.3 as provided herein.

Section 8.4 Entirety; Amendments. This Agreement, including the Exhibits, Schedules and attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein. No amendment, modification, supplement, or change hereto shall be enforceable unless reduced to writing, and duly executed by both Parties.

Section 8.5 No Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach or breaches shall be deemed a waiver of any other subsequent breach.

Section 8.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable law, so long as (1) the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party and (2) LP&L remains fully obligated to make all payments under Sections 2.1, 2.2, 2.3, and 2.5(c) of this Agreement.

Section 8.7 Costs. Each Party shall bear its own costs and expenses incurred in connection with the negotiation of this Agreement and the performance of such Party's duties and obligations hereunder.

Section 8.8 Schedules. Any and all Exhibits, Schedules, and attachments referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 8.9 Interpretation. References to “Sections,” “Schedules” and “Exhibits” shall be to Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest scope of such general statement, term or matter. Except where expressly provided otherwise, any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time in accordance with its terms and the terms hereof, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

Section 8.10 Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 8.11 Non-Boycott of Israel. SPS hereby warrants that it is in compliance with Chapter 2271, Subtitle F, Title 10 of the Texas Government Code by verifying that: (1) it does not boycott Israel and (2) it will not boycott Israel during the term of this Agreement.

Section 8.12 Amendment to Scheduling Protocol. The Parties agree to enter into an amendment to the scheduling protocol to the PPA promptly following the execution hereof, which amendment shall be substantially in the form attached hereto as Exhibit 1. The City Council of the City of Lubbock and the Electric Utility Board of the City of Lubbock hereby delegate authority to the Mayor of the City of Lubbock and the Chairman of the Electric Utility Board, respectively, to execute this amendment, substantially in the form attached hereto as Exhibit 1.

Section 8.13 Texas Public Information Act.

- (a) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and SPS agrees that the Agreement can be terminated if SPS knowingly or intentionally fails to comply with a requirement of that subchapter. The preceding sentence applies only to the extent that this Settlement Agreement is deemed by a court of competent jurisdiction or the Texas Attorney General to be a contract described by Section 552.371(a) of the Texas Government Code. No provision of this Settlement Agreement shall be deemed an agreement by the Parties that Subchapter J, Chapter 552 of the Texas Government Code applies to this Settlement Agreement.

- (b) To the extent Subchapter J, Chapter 552, Government Code applies to this Agreement, SPS agrees to: (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the Agreement that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the Agreement that is in the custody or possession of the entity; or (B) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body.

IN WITNESS WHEREOF, this Agreement has been executed, approved, and agreed to by the Parties hereto in multiple counterparts, each of which shall be deemed an original, on the date Execution Date by the Parties hereto by and through their undersigned duly authorized representatives.

*[Separate Signature Page(s) Attached]*

CITY OF LUBBOCK, a Texas Home Rule  
Municipal Corporation, acting through its City  
Council

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Becky Garza, City Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:

\_\_\_\_\_  
Jenny Smith, General Counsel

\_\_\_\_\_  
Chad Mills, Haynes and Boone, LLP, Outside Counsel

CITY OF LUBBOCK, acting through the  
Electric Utility Board of the City of Lubbock

\_\_\_\_\_  
DAN ODOM, CHAIRMAN

ATTEST:

\_\_\_\_\_  
Gwen Stafford, Board Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:

\_\_\_\_\_  
Jenny Smith, General Counsel

\_\_\_\_\_  
Chad Mills, Haynes and Boone, LLP, Outside Counsel

**SOUTHWESTERN PUBLIC SERVICE  
COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit 1**  
**Amendment to Scheduling Protocol**

[Attached]

## ATTACHMENT 3

### Amended and Restated Partial Requirements Power Service Agreement Scheduling Protocol

The City of Lubbock, Texas, a home rule municipal corporation organized under the laws of the State of Texas, acting by and through Lubbock Power & Light (the “Customer” or “LP&L”) and Southwestern Public Service Company (the “Company” or “SPS”), hereby enter into this Amended and Restated Partial Requirements Power Service Agreement Scheduling Protocol (the “Protocol”) on the 27th day of May, 2021. This Protocol supplements, forms part of, and is expressly subject to that certain Transaction Agreement for the sale of Partial Requirements Power Service (the “PRPS” or “Agreement”) executed by the Parties on the 12<sup>th</sup> day of November, 2009, which is on file with the Federal Energy Regulatory Commission (“FERC” or “Commission”) under the SPS designation Rate Schedule No.138. Each of SPS and LP&L may be referred to individually herein as a “Party” and, collectively, as the “Parties”.

The initial level of energy and capacity that SPS will sell to LP&L pursuant to the PRPS shall be 170 MW on June 1, 2019, and shall increase by one and a fifth percent (1.2%) each succeeding June 1, through the term of the Agreement (the “Contract Quantity”). The PRPS contains transaction scheduling provisions and terminology suited more toward operations within a bilateral or Energy Imbalance Market design as the transaction agreement was entered into prior to the inception of the Southwest Power Pool, Inc. (“SPP”) Integrated Marketplace (“IM”). The purpose of this Protocol is to memorialize an understanding between LP&L and SPS regarding Section 5 of the PRPS, “Scheduling”, as well as resulting charges, given present operations under the SPP IM. In the event of a conflict between this Protocol and the PRPS, the PRPS shall prevail.

#### 1) Load Scheduling and Market Settlements in the SPP IM.

Upon termination of that certain Capacity and Load Scheduling Service Protocol, entered into by SPS and LP&L on March 21, 2017, SPS will continue as the Load Responsible Entity, as defined in SPP’s Open Access Transmission Tariff (“OATT”), for LP&L, and as the Market Participant, as defined in the SPP OATT, bidding LP&L load into the SPP IM until May 31, 2022 (the “Load Scheduling and Market Settlements Period”). The Parties further agree to discuss prior to December 1, 2021 whether to extend the Load Scheduling and Market Settlements Period and, to the extent the Parties mutually agree, to modify this Protocol as necessary to extend the Load Scheduling and Market Settlements Period by no later than December 1, 2021. The remaining rights and obligations set forth in this Section 1 shall be limited to the duration of the Load Scheduling and Market Settlements Period unless specified otherwise. Notwithstanding anything herein, the Parties may mutually agree in writing to shorten this Load Scheduling and Market Settlements Period.

- a) **Resource Adequacy.** LP&L will be responsible to provide, or procure as necessary, sufficient capacity resources for SPS to meet the applicable SPP resource adequacy and planning reserve obligations for the LP&L loads within SPP that exceed the

Contract Quantity delivered to LP&L by SPS pursuant to the PRPS. SPS will not have any responsibility for any LP&L load located outside of SPP.

The PRPS provides LP&L with the Contract Quantity of capacity resources that can be used to satisfy the SPP resource adequacy and planning reserve obligations for LP&L loads within SPP. This capacity may be used by LP&L, in conjunction with other generation LP&L or their agent registers in the SPP IM<sup>1</sup> and other third-party agreements LP&L may secure in the future that would be recognized by SPP as a capacity resource, to meet the SPP resource adequacy and planning reserve obligations for the LP&L load served within SPP.

If LP&L or its agent has other generation or third-party purchased capacity resources that are to be used by SPS to meet LP&L's must-offer requirement for its load in the SPP IM, then LP&L or its agent must identify the asset for SPS, include and update the data repository maintained by the SPP Market Monitoring Unit, as defined in the SPP OATT, and take any other steps necessary so that these other LP&L capacity resources can be used by SPS, as necessary, to meet the SPP IM must-offer requirement. SPS will not be the Market Participant for LP&L's other generation or for any other third-party purchased capacity resources.

- b) Scheduling load in the SPP IM.** SPS will be the SPP Market Participant for LP&L and will bid LP&L load into the SPP IM as instructed by LP&L pursuant to the Protocol. SPS will timely submit demand bids on behalf of LP&L into the SPP IM.

LP&L must provide hourly demand bid schedules to SPS two (2) hours prior to the close of the SPP IM Day-Ahead ("DA") Market ("DA Market") on the last business day prior to the operating day for the volume of energy it intends for SPS to bid into the DA Market for the following day(s).<sup>2</sup> If LP&L fails to do so, SPS will carry forward the last demand bid schedule provided by LP&L and submit it to SPP for the next day(s). LP&L may request that SPS adjust demand bid schedules already provided to SPS up until two (2) hours prior to the close of the DA Market on the last calendar day prior to the operating day and SPS will use commercially reasonable efforts to make the adjustments for LP&L. SPS will confirm the adjusted demand bid schedule volumes submitted to SPP for LP&L.

- c) Charges for Load Scheduling and Market Settlements in the SPP IM.** All verified out-of-pocket costs reasonably incurred and paid by SPS to serve LP&L load in the SPP IM, including, but not limited to, charges related to participation in the DA Market and Real-Time ("RT") Market ("RT Market"), LP&L's pro-rata share of any SPP IM Ancillary Service charges and administrative fees, and, unless otherwise specified herein, LP&L's pro-rata share of any other charges and/or credits SPS incurs to serve LP&L's load in the SPP IM, shall be passed through to and paid by LP&L to SPS unless incurred as a result of SPS' negligence or willful misconduct.

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<sup>1</sup> Any such generators must adhere to and comply with SPP requirements, including SPP Planning Criteria Accredited Capability Test specifications.

<sup>2</sup> Currently this deadline shall be 7:30 AM Central Prevailing Time ("CPT") or 06:30 AM Mountain Prevailing Time ("MPT").



- (1) DA Market. SPS will charge LP&L for the volume cleared in the DA Market at a rate equal to the volumes cleared for each hour of each operating day multiplied by the DA Locational Marginal Price (“LMP”) at the Delivery Point for the same hour. SPS will also pass through LP&L’s pro-rata share of any other SPP IM charges and/or credits specific to the DA Market incurred by SPS on LP&L’s behalf, including but not limited to SPP IM Ancillary Service charges and administrative fees.
- (2) Real-time (“RT”) Market. Any deviations between the DA cleared energy volumes and the actual LP&L load for any period will be settled at the RT LMP. SPS will pass along the applicable RT charges to LP&L at a rate equal to the difference between the DA cleared load and the actual load for each period multiplied by the RT LMP at the Delivery Point.
  - a. As an example, if LP&L scheduled 150 MWh of load that cleared for an hour in the DA Market and the actual load for the period is 155 MWh, LP&L would be required to pay SPS for 150 MWh at the DA LMP at the Delivery Point and pay for 5 MWh at the RT LMP at the Delivery Point.
  - b. In another example, if LP&L scheduled 150 MWh of load that cleared for an hour in the DA Market and the actual load for the period is 145 MWh, LP&L would be required to pay SPS for 150 MWh at the DA LMP at the Delivery Point and would get a credit from SPS for 5 MWh at the RT LMP at the Delivery Point.

SPS will also pass through LP&L’s pro-rata share of any other SPP IM charges and/or credits specific to the RT Market incurred by SPS on LP&L’s behalf, including but not limited to SPP IM Ancillary Service charges and administrative fees.

- (3) Settlement Statements. SPS will issue settlement statements to LP&L that include the charges and/or credits applicable to SPS serving LP&L’s load as part of the billing process under the PRPS. Such settlement statements will reflect interim and final SPP IM settlements consistent with the updates described in the Wholesale Fuel Cost and Economic Purchased Power Adjustment Clause, which is Attachment 2 of the PRPS. This Section 1(c)(3) shall survive beyond the Load Scheduling and Market Settlements Period and the expiration or termination of this Protocol to the extent necessary to reflect final SPP IM settlements.

## **2) Partial Requirements Scheduling and Related Charges.**

SPS’s obligation to provide energy to LP&L shall be determined based on Bi-lateral Schedules (“BS”) from SPS to LP&L and confirmed by the Parties.

LP&L may schedule any quantity of the Contract Quantity during a 24-hour period, provided, however, that the smallest quantity scheduled by LP&L for any hour must be no less than 50% of the largest quantity scheduled for any hour during that same twenty-four hour period as a DA BS. LP&L may opt to utilize and schedule additional energy

either as DA or RT BS. The combination of BS schedules may not collectively exceed the Contract Quantity for any hour.

**a) PRPS Schedules.**

- (1) No later than the 22<sup>nd</sup> calendar day of each month SPS will provide LP&L a written good faith estimate of its system average fuel costs for the following month.
- (2) LP&L must inform SPS of its election to utilize a DA BS and its desired hourly energy no later than two (2) hours prior to the close of the SPP DA Market on the last calendar day prior to the operating day. Currently this deadline is 7:30 AM Central Prevailing Time (“CPT”) or 06:30 AM Mountain Prevailing Time (“MPT”). The DA BS volume may not be adjusted after the close of the SPP DA Market without mutual agreement of the Parties.
- (3) LP&L may submit a new RT BS energy schedule for any additional available energy not previously scheduled as a DA BS under the Agreement by notifying SPS of its additional desired hourly energy volume at least thirty (30) minutes prior to the operating hour. These RT BS schedule changes are limited to three (3) updates per twenty-four (24) hour operating day period. The RT BS volume may not be adjusted after thirty (30) minutes prior to the start of the operating hour without mutual agreement. The combined DA BS and RT BS scheduled volume may not exceed the energy available to LP&L under the Agreement.

**b) PRPS Charges.**

Charges for energy scheduled under each BS shall be based on scheduled volumes at the rates prescribed by the Agreement.

Because each BS is transacted outside the SPP IM and all LP&L load is separately settled in the SPP IM, each BS shall be offset by a separate BS from LP&L to SPS (each, an “Offsetting BS”) and the charge for this Offsetting BS, payable from SPS to LP&L, shall be calculated for each hour as follows:

- (1) For a DA BS, the hourly volume scheduled and confirmed for the hour between SPS and LP&L as a DA BS, multiplied by the DA LMP at the Delivery Point; and
- (2) For a RT BS, the hourly volume scheduled and confirmed by the parties for the hour between SPS and LP&L as a RT BS, multiplied by the DA LMP at the Delivery Point.

As charges for each Offsetting BS are based on the DA LMP and RT LMP published by SPP, such charges shall be subject to true-up if the relevant LMP is subsequently revised by SPP.

### 3) **Delivery Point.**

For purposes of this Protocol, as long as SPS remains the SPP customer under the SPP Network Integration Transmission Service Agreement (“NITSA”) on behalf of LP&L for LP&L’s load in SPP, the Delivery Point shall be “SPS\_SPS” or the commercial pricing node for SPS’s network load that contains LP&L’s load.

If LP&L requests that the NITSA be reassigned from SPS to LP&L, SPS will work with SPP to establish a generation Resource Hub representing SPS’s portfolio of capacity resources, and the Delivery Point shall become a new SPS generation Resource Hub in SPP for LP&L.

### 4) **Meter Data.**

Each Party will provide all meter data it has in its possession necessary to settle the energy sales under the PRPS, as described further under this Protocol.

### 5) **Congestion Rights.**

As long as SPS remains the SPP customer under the SPP NITSA on behalf of LP&L, SPS will allocate, by separate line item in monthly invoices, to LP&L its pro-rata share of SPS’s total net system Auction Revenue Rights (“ARR”) and Transmission Congestion Rights (“TCR”) charge type settlement charges/credits from SPP. The pro-rata share of ARR/TCRs allocated to LP&L will be based on the energy LP&L schedules under the PRPS divided by the SPS total net system load during the same period. SPS will not allocate LP&L any ARR and TCR charge type settlement charges/credits from SPP should the SPP NITSA be reassigned to LP&L.

For periods where SPS is not the SPP customer under the SPP NITSA on behalf of LP&L, no amounts shall be credited to LP&L for ARRs/TCRs under this Protocol.

### 6) **Term.**

The procedures and processes established herein shall remain in effect until such time as the PRPS terminates on its own or pursuant to that certain Settlement Agreement between SPS and LP&L dated May 27, 2021, at which time this Protocol shall also terminate, unless otherwise amended or terminated by mutual agreement of the Parties at an earlier date.

### 7) **General.**

All terms not otherwise defined herein shall have the meaning set out in the PRPS.

The services provided by the Parties to each other hereunder, and any agents thereto, will be provided consistent with Good Utility Practice and applicable protocols, tariffs, and business practices promulgated by SPP in furtherance of the SPP IM. Except as expressly provided therein, nothing in this Protocol, amends, modifies, or replaces any provisions of the PRPS (or any Service Schedule attached thereto).

This Protocol may be executed in multiple original counterparts and any counterpart hereof having attached thereto the signatures of the Parties hereto (whether on one page

or on separate pages) shall be deemed a fully executed original.

Southwestern Public Service Company,  
a New Mexico corporation

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

Name: John Welch

Title: Vice President, Commercial Operations

Xcel Energy Services Inc. as Agent for

Southwestern Public Service Company

The City of Lubbock, Texas, a home rule municipal corporation organized under the laws of  
the State of Texas

CITY OF LUBBOCK, TEXAS

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

*[signatures continued on next page]*

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
David McCalla, Director of Electric Utilities-LP&L

APPROVED AS TO FORM:

\_\_\_\_\_  
Jenny Smith, General Counsel-LP&L

\_\_\_\_\_  
Craig Enochs, Outside Legal Counsel

ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK, TEXAS

\_\_\_\_\_  
DAN ODOM, CHAIRMAN

ATTEST:

\_\_\_\_\_  
Gwen Stafford, Board Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
David McCalla, Director of Electric Utilities-LP&L

APPROVED AS TO FORM:

\_\_\_\_\_  
Jenny Smith, General Counsel-LP&L

\_\_\_\_\_  
Craig Enochs, Outside Legal Counsel

**Schedule 8.3**  
**Notice Information**

**[Attached]**

**City of Lubbock**

David McCalla  
Director of Electric Utilities  
Lubbock Power & Light  
1314 Avenue K.  
Lubbock, Texas 79401  
Tel: 806-775-2704  
Email: DMcCalla@mail.ci.lubbock.tx.us

**Southwest Public Service Company**

David Hudson  
President  
Southwestern Public Service Company  
790 S. Buchanan, Suite 700  
Amarillo, TX 79105  
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Email: David.Hudson@xcelenergy.com



## Lubbock Power & Light

### Electric Utility Board

#### Agenda Item Summary

**Meeting Date:** May 27, 2021

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**Summary:**

Consider a resolution authorizing the Director of Electric Utilities, or his designee, to execute that certain Supplement to Engagement Letter regarding the transfer of the unaffected load to the Electric Reliability Council of Texas by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Lloyd Gosselink Rochelle & Townsend, P.C.

**Background/Discussion:**

The Public Utility Commission (“PUC”) previously approved the migration of approximately 70% of LP&L’s load (the “Affected Load”) from the Southwest Power Pool (“SPP”) to the Electric Reliability Council of Texas (“ERCOT”) in a Final Order dated March 15, 2018, in PUC Docket Number 47576. LP&L intends to migrate the remaining portion of its load, approximately 30%, to ERCOT as well (the “Unaffected Load”). To migrate this Unaffected Load to ERCOT, LP&L will need to pursue additional regulatory proceedings.

The attorneys with Lloyd Gosselink Rochelle & Townsend, P.C. have extensive experience related to (i) ERCOT protocols, rules and procedures; (ii) PUC rules, regulations and procedures; and (iii) contested case proceedings before the PUC, and are highly qualified to prepare, file, and pursue this matter on behalf of LP&L. Moreover, they are the most efficient attorneys to handle this matter, given that the issues related to the Unaffected Load case will be related to the integration of LP&L’s Affected Load into ERCOT, where they have served as LP&L’s lead attorneys.

**Fiscal Impact:**

Lambeth Townsend will be the attorney in charge of the representation with an hourly rate of \$450. Cody Faulk, Jamie Mauldin, and Reid Barnes will also assist in the matter, with hourly rates of \$350, \$350, and \$265, respectively.

**Recommendation:**

Authorize execution of the engagement letter with Lloyd Gosselink Rochelle & Townsend, or such alternative action as the Electric Utility Board (EUB) may deem appropriate. This resolution is subject to approval of the EUB for the integration of the Unaffected Load into ERCOT.



**RESOLUTION**

WHEREAS, Lubbock Power & Light is the municipally owned electric utility of the City of Lubbock (“LP&L”);

WHEREAS, LP&L intends to migrate the remaining portion of its load (the “Unaffected Load”) into the Electric Reliability Council of Texas (“ERCOT”), and regulatory proceedings will be necessary to move the unaffected load from the Southwest Power Pool to ERCOT;

WHEREAS, the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. (“Lloyd Gosselink”) has extensive experience in Public Utility Commission of Texas and ERCOT proceedings and processes, and experience and knowledge of LP&L’s ERCOT integration processes for its Affected Load;

WHEREAS, LP&L desires to engage Lloyd Gosselink to represent it in proceedings regarding the Unaffected Load; NOW, THEREFORE:

BE IT RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:

THAT the Director of Electric Utilities BE and is hereby authorized and directed to execute for and on behalf of the City of Lubbock, acting by and through Lubbock Power & Light (“LP&L”), that certain Engagement Letter, by and between Lloyd Gosselink Rochelle & Townsend, P.C. and LP&L, as attached hereto and incorporated herein as though set forth fully herein in detail, and any documents related thereto.

BE IT FURTHER RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:

THAT this resolution shall be null and void and of no effect if the Electric Utility Board of the City of Lubbock does not approve a resolution authorizing the integration of LP&L’s Unaffected Load into ERCOT within thirty (30) days of this Resolution.

Passed by the Electric Utility Board this 27th day of May, 2021.

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Dan Odom, Chairman

ATTEST:

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Gwen Stafford, Board Secretary

APPROVED AS TO CONTENT:

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David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:

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Jenny Smith, LP&L General Counsel

Mr. Townsend's Direct Line: (512) 322-5830  
Email: ltownsend@lglawfirm.com

May 27, 2021

***VIA ELECTRONIC TRANSMISSION***

Mr. David McCalla  
The City of Lubbock,  
Acting By and Through Lubbock Power & Light  
1314 Avenue K, 5<sup>th</sup> Floor  
Lubbock, TX 79401

Re: Supplement to Engagement Letter – Transfer of Unaffected Load to the Electric Reliability Council of Texas (“ERCOT”);  
Billing File Number: 3693-8

Dear David:

We appreciate the confidence you have shown in us by recently requesting additional legal services from our firm. For various reasons, it is necessary for our firm to specifically enumerate those matters on which we are working. The purpose of this letter is to set forth our understanding of the legal services to be performed by us and is a Supplement to the original Engagement Letter. This letter confirms that Lloyd Gosselink Rochelle & Townsend, P.C. (“Lloyd Gosselink”) will represent the City of Lubbock, acting by and through Lubbock Power & Light (“LP&L”), regarding the transition of LP&L’s remaining electric load from the Southwest Power Pool to ERCOT (the “Matter”). Furthermore, this letter is our notice to you regarding our acceptance of this representation (the “Representation”).

**Terms of Engagement**

Our original Engagement Letter and the Additional Terms of Engagement attached thereto, dated February 16, 2016, set out the terms of our engagement in the Representation. This letter is expressly incorporated into that document. It is understood and agreed that our engagement is limited to the Representation, and our acceptance of this engagement does not imply any undertaking to provide legal services other than those set forth in the original Engagement Letter and all Supplements thereof.

**Personnel Who Will Be Working on the Matter**

I will be the attorney in charge of the Representation. Cody Faulk, Jamie Mauldin, Reid Barnes, and I will be working on the Matter. My hourly rate will be \$450, Cody’s hourly rate will be \$350, Jamie’s hourly rate will be \$350, and Reid’s hourly rate will be \$265. You may call, write, or e-mail me, Cody, Jamie, or Reid whenever you have any questions about the Representation. Other firm personnel, including firm lawyers and paralegals, will participate in the Representation if, in our judgment, their participation is necessary or appropriate.

**Conflicts of Interest**

Before accepting this Representation, we have undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest that would bar our firm from representing

May 18, 2021  
Page 2

you in the Matter. Based on the information available to us, we are not aware of any potential disqualification. We reviewed the issue of potential conflicts in accordance with the rules of professional responsibility adopted in Texas.

### **Texas Public Information Act**

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and Lloyd Gosselink agrees that the Agreement can be terminated if Lloyd Gosselink knowingly or intentionally fails to comply with a requirement of that subchapter.

To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Lloyd Gosselink agrees to: (1) preserve all contracting information related to the agreement as provided by the records retention requirements applicable to the governmental body for the duration of the agreement; (2) promptly provide to the governmental body any contracting information related to the agreement that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the agreement, either: (A) provide at no cost to the governmental body all contracting information related to the agreement that is in the custody or possession of the entity; or (B) preserve the contracting information related to the agreement as provided by the records retention requirements applicable to the governmental body.

To the extent any information is requested pursuant to the Public Information Act, Lloyd Gosselink and LP&L preserve all applicable arguments for exceptions to disclosure, including but not limited to, arguments related to attorney-client privilege and work-product.

### **Conclusion**

This letter is appended to, and made a part of, our original Engagement Letter and the Additional Terms of Engagement attached thereto, and together with all other Supplements constitute the entire terms of the engagement of Lloyd Gosselink Rochelle & Townsend, P.C. in the Representation. These written terms of engagement are not subject to any oral agreements or understandings, and they can be modified only by further written Supplement. Unless expressly stated in these terms of engagement, no obligation or undertaking shall be implied on the part of either you or Lloyd Gosselink Rochelle & Townsend, P.C. If you agree to these terms of engagement, please sign in the space provided below and return a scanned copy of the executed Supplement to Engagement Letter.

Yours truly,



Lambeth Townsend

RLT/hkj

cc: Jenny Smith

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David McCalla  
Director of Electric Utilities  
City of Lubbock, acting by and through Lubbock Power & Light