



TORRANCE COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2008-01

AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (HIGH LONESOME WIND PROJECT) SERIES 2008 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$195,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A WIND FARM FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Torrance County (the "County") is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the "State") created pursuant to Sections 4-30-1 and 4-30-2, NMSA 1978, as amended; and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 4-59-1 through 4-59-16, 1978 Compilation, as amended (the "Act"), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a

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County Clerk, Torrance County, NM

balanced and stable economy in the county to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, High Lonesome Wind Ranch, LLC (the "Company"), is a limited liability company organized under the laws of the State of Delaware and is a duly registered foreign limited liability company qualified to do business in the State of New Mexico; and

WHEREAS, the Company has requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation, and equipping, of a wind farm for the purpose of generating electricity (the "Project"). The County has been advised by the Company that, neither location approval nor a certificate of convenience and necessity are required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, the Company is in negotiations with an affiliate of Edison Mission Energy to acquire 100% of the membership interests in the Company; and

WHEREAS, the Company has advised the County that the Company intends to enter into a renewable energy purchase agreement with Arizona Public Service Company, an Arizona corporation, for the sale of power generated by the Project with a term which will extend through the final maturity of the Bond and will be sufficient to pay all Rent as defined in, and the Company's other obligations under, a Lease Agreement to be dated as of April 1, 2008 between the County and the Company (the "Lease"); and

WHEREAS, the Company has advised the County that the Company intends to enter into an interconnection agreement with Public Service Company of New Mexico ("PNM") for the transmission of the full output of the energy generated by the wind farm: and

WHEREAS, the Company has presented to the Torrance County Board of County Commissioners (the "Commission") a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bond (High Lonesome Wind Project), Series 2008 (the "Bond"), and (b) acquire certain supporting towers, nacelles, rotors and related equipment and property, and land leases related to the Project (collectively, the "Project Property"), located within a part of the County which is outside the corporate limits of any municipality in the County, to be used by the Company for the generation, transportation and delivery of electricity; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture of Trust to be dated as of April 1, 2008 (the "Indenture"), with the Purchaser and a Depository acceptable to the County and the Purchaser pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bond; and

WHEREAS, under the Company's proposal, the County and the Company would enter into the Lease, pursuant to which the Company will lease the Project Property from the County and the Company will make payments sufficient to pay the principal of and interest on the Bond and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents and to issue, execute and deliver the Bond pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bond in a principal amount not to exceed \$195,000,000 will be issued, sold and delivered by the County, in a private sale to High Lonesome Wind Ranch Investments,

LLC (the “Purchaser”), pursuant to a bond purchase agreement to be dated as of the initial date of delivery of the Bond, among the County, the Purchaser and the Company (the “Bond Purchase Agreement”); and

WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the Bond and to execute and deliver the Bond Documents, defined below, and other documents related thereto; and

WHEREAS, the County will enter into the following documents in connection with the issuance of the Bond:

1. Lease
2. Indenture
3. Bond Purchase Agreement
4. Bond

The Lease, Indenture, Bond Purchase Agreement and Bond are collectively referred to in the Bond Ordinance as the “Bond Documents”; and

WHEREAS, the County is authorized to issue the Bond under the Act and after having considered the Company’s proposal, has concluded that it is desirable at this time to authorize the issuance of the Bond to finance the Project and that the County’s issuance of the Bond will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Bond Counsel that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this

transaction inasmuch as the Bond is being sold in a private sale without participation of an underwriter; and

WHEREAS, there has been published in the *Albuquerque Journal*, a newspaper of general circulation in the County, public notice of the Commission's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the amount of the Bond to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the acquisition of the Project Property has been approved by the Estancia Municipal School District.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF TORRANCE COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bond be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered as relevant information presented to it relating to the Bond and the Project and hereby finds and determines that the issuance of the Bond pursuant to the Bond Ordinance to provide funds for the Project is necessary and advisable and in the interest of and will promote the use of the natural

resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

(1) The Bond will be issued for the purpose of financing the Project.

(2) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$195,000,000.

(3) The developer of the Project Property is the Company in which Edison Mission Energy, LLC or an affiliate thereof owns and intends to own a membership interest.

(4) The Project Property is located on Mesa de los Jumanos, approximately 9 miles south of Willard in the County which is outside the corporate limits of any municipality located in the County.

Section 3. BOND - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bond in a principal amount not to exceed \$195,000,000 and the use of the proceeds of the Bond to finance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed.

The sale of the Bond at par at a purchase price not to exceed \$195,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bond shall (i) be in the form and denomination and shall be numbered and dated as set forth in the

Indenture, (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in a principal amount not to exceed \$195,000,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

C. Execution. The Bond shall be signed by the presiding officer of the Board of County Commissioners of the County.

D. Interest Rate. The interest rate on the Bond shall not exceed 6% per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Lease shall include a provision that the Company pay the County payments in lieu of taxes ("PILOT Payments") for so long as the Bond is outstanding. The amount of the PILOT Payments shall be acceptable to the Commission and the Board of the Estancia Municipal School District. The Lease shall also include a "claw back" provision which requires the Company to pay the County a percentage of the amount of abated gross receipts taxes plus a percentage of the amount of abated ad valorem property taxes less the amount of the PILOT payments paid to the County if the Project is abandoned or decommissioned within a time period determined by the Commission.

The presiding officer of the Board of County Commissioners of the County is authorized to approve the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents.

The County Clerk is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bond, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The Presiding Officer of the Commission, the County Manager and other officers of the County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bond.

Section 5. DELIVERY OF BOND. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bond, the Bond shall be executed, authenticated and delivered to the Purchaser. The Bond shall not be valid for any purpose until the Bond has been properly authenticated as set forth in the Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the Indenture, and on and after the date on which the Bond is issued there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Bond, assuming issuance of the Bond as of April 1, 2008, in the maximum aggregate principal amount of \$195,000,000 and bearing a maximum interest rate of 6%, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2008	\$0.00	\$0.00	\$0.00
2009	\$18,200,000.00	\$6,500,000.00	\$11,700,000.00
2010	\$17,810,000.00	\$6,500,000.00	\$11,310,000.00
2011	\$17,420,000.00	\$6,500,000.00	\$10,920,000.00
2012	\$17,030,000.00	\$6,500,000.00	\$10,530,000.00
2013	\$16,640,000.00	\$6,500,000.00	\$10,140,000.00
2014	\$16,250,000.00	\$6,500,000.00	\$ 9,750,000.00
2015	\$15,860,000.00	\$6,500,000.00	\$ 9,360,000.00
2016	\$15,470,000.00	\$6,500,000.00	\$ 8,970,000.00
2017	\$15,080,000.00	\$6,500,000.00	\$ 8,580,000.00
2018	\$14,690,000.00	\$6,500,000.00	\$ 8,190,000.00
2019	\$14,300,000.00	\$6,500,000.00	\$ 7,800,000.00
2020	\$13,910,000.00	\$6,500,000.00	\$ 7,410,000.00
2021	\$13,520,000.00	\$6,500,000.00	\$ 7,020,000.00
2022	\$13,130,000.00	\$6,500,000.00	\$ 6,630,000.00
2023	\$12,740,000.00	\$6,500,000.00	\$ 6,240,000.00
2024	\$12,350,000.00	\$6,500,000.00	\$ 5,850,000.00
2025	\$11,960,000.00	\$6,500,000.00	\$ 5,460,000.00
2026	\$11,570,000.00	\$6,500,000.00	\$ 5,070,000.00
2027	\$11,180,000.00	\$6,500,000.00	\$ 4,680,000.00
2028	\$10,790,000.00	\$6,500,000.00	\$ 4,290,000.00
2029	\$10,400,000.00	\$6,500,000.00	\$ 3,900,000.00
2030	\$10,010,000.00	\$6,500,000.00	\$ 3,510,000.00
2031	\$ 9,620,000.00	\$6,500,000.00	\$ 3,120,000.00
2032	\$ 9,230,000.00	\$6,500,000.00	\$ 2,730,000.00
2033	\$ 8,840,000.00	\$6,500,000.00	\$ 2,340,000.00
2034	\$ 8,450,000.00	\$6,500,000.00	\$ 1,950,000.00
2035	\$ 8,060,000.00	\$6,500,000.00	\$ 1,560,000.00
2036	\$ 7,670,000.00	\$6,500,000.00	\$ 1,170,000.00
2037	\$ 7,280,000.00	\$6,500,000.00	\$ 780,000.00
2038	\$ 6,890,000.00	\$6,500,000.00	\$ 390,000.00

B. The Bond will bear interest at the Annual Long-Term Applicable Federal Rate for the month in which the Bond is issued for purposes of Section 1288(b) of the Internal Revenue Code.

C. The Bond may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease requires that the Company maintain the Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the Lease.

F. The Lease requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bond as principal and interest become due and to pay all Related Costs.

Section 8. LIMITED OBLIGATIONS. The Bond shall be a special limited obligation of the County, payable solely from the Base Rent (as defined in the Lease) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or in the Bond Documents or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the

application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bond or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Company, or to any third parties that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bond and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent New Mexico Statutes Annotated Section 56-7-1, 1978 Compilation, applies, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful

misconduct of the County or its Board of County Commissioners, or any official, employee or agent of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bond is issued, the Bond Ordinance shall be and remain irrepealable until the Bond, including interest, is fully paid, canceled and discharged or there has been defeasance of the Bond in accordance with the Indenture.

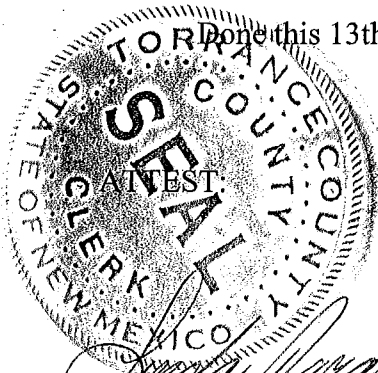
Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance is repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE.

This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the presiding officer of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this 13th day of March, 2008.



[Signature]
County Clerk

TORRANCE COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

By *[Signature]*
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

[Signature]
Dennis K. Wallin

Jama Frost, Commissioner Dist. I
Dito Chavez Dist. II