

TORRANCE COUNTY, NEW MEXICO
RESOLUTION NO. 2019-11

A RESOLUTION RELATING TO THE PROPOSED INDUSTRIAL REVENUE BONDS ENTITLED TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (HIGH LONESOME MESA WIND, LLC PROJECT), SERIES 2019; DECLARING THE INTENT OF TORRANCE COUNTY TO ISSUE SUCH INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$75,000,000 IN CONNECTION WITH A PROPOSED PROJECT LOCATED WITHIN THE BOUNDARIES OF TORRANCE COUNTY FOR THE PURPOSE OF INDUCING NEXTERA ENERGY RESOURCES, LLC TO DEVELOP THE PROJECT SITE AND TO CONSTRUCT AND INSTALL THE PROJECT; AND DIRECTING THE COUNTY CLERK TO PUBLISH NOTICE OF INTENT TO CONSIDER AN ORDINANCE AUTHORIZING ISSUANCE AND SALE OF THE BONDS IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY.

WHEREAS, the New Mexico legislature has passed the "County Industrial Revenue Bond Act" (the "Act"), Sections 4-59-1 to 4-59-16 inclusive, NMSA 1978, as amended, which authorizes Torrance County, New Mexico (the "County") to issue industrial revenue bonds and to acquire projects as defined in the Act; and

WHEREAS, the County desires to promote industry and develop trade by inducing manufacturing, industrial and commercial enterprises to locate in the County promoting the agricultural products and natural resources of the County and to secure and maintain a balanced and stable economy in the County and to promote public health, safety, security, and the general welfare of the citizens of the County; and

WHEREAS, NextEra Energy Resources, LLC, a Delaware limited liability company, has made a proposal to the County (the "Proposal") whereby the County will acquire, from High Lonesome Mesa Wind, LLC, a limited liability company formed by NextEra Energy Resources, LLC and authorized to do business in New Mexico (the "Company"), wind energy generation equipment to be installed for the purpose of repowering the 2008 High Lonesome Wind Project located in the County which will constitute an industrial development project (the "Project"); and

WHEREAS, the County's issuance of industrial revenue bonds (the "2019 Bonds") to finance the Project will constitute one of the inducements whereby the Company will determine to proceed with the Project; and

WHEREAS, the Board of County Commissioners (the "Commission") of the County constitutes the governing body of the County within the meaning of the Act; and

WHEREAS, the Project has been considered by the Commission and the Commission has concluded that the Project will promote the health, safety, security, and general welfare of the citizens of the County, and the Commission desires to indicate its intent to consider proceeding with the issuance of the 2019 Bonds for the financing of the Project; and

WHEREAS, concurrently with the issuance of the 2019 Bonds, the Company will enter into an installment sale, lease or other financing agreement with the County under which the County will acquire the Project and which will provide for the payment of installments, lease rentals or other payments by the Company from the revenues generated by the Project or other funds of the Company sufficient to pay the debt service on the 2019 Bonds, subject to the prior adoption by the Commission of an ordinance approving such agreements and authorizing issuance of the 2019 Bonds (the "Bond Ordinance"); and

WHEREAS, the County and the Company understand that the adoption of this Resolution shall not obligate the County to issue the 2019 Bonds except in full compliance with the terms of the Bond Ordinance to be considered for adoption by the Commission prior to the issuance of the 2019 Bonds and with the terms of the related bond documents, which shall be in forms satisfactory to the County; and

WHEREAS, Section 4-37-7 NMSA 1978 requires that publication of the title and a general summary of the subject matter of any proposed ordinance be made in a newspaper of general circulation within the County at least two weeks prior to the meeting of the Board of County Commissioners at which the ordinance is proposed for final passage.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF TORRANCE COUNTY, NEW MEXICO:

Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the Commission and the officers and employees of the County, related to the Proposal, the acquisition of the Project, and the sale and issuance of the 2019 Bonds therefor, be and the same hereby are, ratified, approved and confirmed.

Section 2. The Commission has been informed as follows.

A. High Lonesome Mesa Wind Project, a wind energy electric generation facility, originally constructed in 2008 in an unincorporated area of Torrance County (the "Original Project"), was financed, in part, through the issuance of the Torrance County, New Mexico Taxable Industrial Revenue Bond (High Lonesome Wind Project) Series 2008 in the principal amount of up to \$195,000,000 (the "2008 Bond"). In connection with the 2019 Bonds, the Project will consist of the replacement, refurbishment and material modification of Original Project's wind turbines with new rotors atop existing 80 meter towers. The wind turbines will not receive a capacity uprate from repowering,

and the nameplate capacity of the facility will not change from its original capacity of 100 megawatts.

B. The Company has proposed, and the County understands, that the 2008 Bond will remain outstanding after the 2019 Bonds have been issued.

C. The Project will not involve acquisition of additional land or relocation of towers.

D. The Project will utilize the existing Willard Switchyard substation, which is located in the County.

E. The developer and operator of the Project will be the Company, or permitted successors or assignees.

F. The development, installation and operation of the Project will continue to be subject to land-use regulations of, and approval by, the County.

G. The Company will make all necessary arrangements with the proposed bond purchaser for the purchase of the 2019 Bonds and the County shall have no responsibility to make such arrangements.

H. The Company has agreed to pay or reimburse the County for all costs of legal counsel, including independent bond counsel, and financial advisors of the County directly related to adoption of this Resolution, consideration and adoption of the Bond Ordinance and issuance of the 2019 Bonds. The Company has agreed to such payment or reimbursement irrespective of whether the 2019 Bonds are issued.

I. As provided in the Proposal, the Project will enable the replacement of worn-out or otherwise obsolete wind generating equipment that was installed in connection with the Original Project financed with the 2008 Bond. The Project property to be financed with proceeds of the 2019 Bonds shall not include any of the Original Project property, and the issuance of the 2019 Bonds shall not result in any of the Original Project property being exempt from ad valorem taxation for more than 30 years.

J. In connection with the Original Project, High Lonesome Mesa, LLC, the lessor of the Original Project (the "Original Company"), is obligated to make payments in lieu of taxes equal to equal to \$325,000 per year for the first ten (10) years; \$500,000 per year for each of the following ten (10) years; and \$600,000 per year for the remainder of the term of the 2008 Bonds (the "Original PILOT"), which is shared between the County and the Estancia Municipal School District, Estancia, New Mexico.

K. As provided in the Proposal, a new PILOT equal to \$5,200 per megawatt of generating capacity of the Project will supersede and replace the Original PILOT for each year in which the 2019 Bonds are outstanding.

Section 3. In order to promote the health, safety, security and general welfare of the citizens of the County, it is the Commission's intent to take all necessary and advisable steps to consider and, if appropriate, to effect the issuance of the 2019 Bonds in an aggregate principal amount up to \$75,000,000 in order to defray part or all of the costs of the Project located within the County. The 2019 Bonds are to be entitled substantially as follows: "Torrance County, New Mexico Taxable Industrial Revenue Bonds (High Lonesome Mesa Wind, LLC Project), Series 2019," provided, however, that the Bond Ordinance may authorize a different title and series designation for the 2019 Bonds. This expression of the Commission's intent is subject to the provisions of Section 6 of this Resolution and conditioned upon the issuance of the 2019 Bonds on or before December 31, 2021, or by such other deadline for issuance of the 2019 Bonds as may be provided by the Bond Ordinance or the documents executed and delivered in connection with issuance of the 2019 Bonds.

Section 4. The 2019 Bonds shall be payable from the revenues of the Project or other moneys payable by the Company with respect thereto, and shall not constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the Constitution or statutes of the State of New Mexico. In addition, if the 2019 Bonds are issued, the Company shall indemnify and hold harmless the County, the Commission and their respective officers, employees, designated representatives and agents (collectively, the "Indemnified Persons") from and against any liability to the Company or to any third parties that may be asserted against the County, the Commission or other Indemnified Persons with respect to the County's ownership of or leasehold interest in the Project or the issuance of the Bonds. Nothing contained in this Resolution or in any other instrument shall be considered as obligating the County to any pecuniary liability or a charge upon the general credit of the County or against its taxing power, it being understood that no costs are to be borne by the County and that all costs incurred by the County in connection with the Bonds are to be promptly reimbursed by the Company. The County's adoption of this Resolution shall not be deemed a conclusion or expression of approval by the County or any Indemnified Person of the Company or the Project.

Section 5. The Company, as agent for the County, will acquire the Project. For this purpose, by adoption of this Resolution, the County authorizes the Company to act as agent for the County for the purchase of "wind generation equipment" and "related equipment", as such terms are defined in Section 7-9-54.3 NMSA 1978. For other tangible personal property relating to the Project, the County will cooperate with the Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates ("Certificates") that have been properly executed for acquisition of tangible personal property relating to the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall not use the Certificates other than for such things as may be permitted by law, if any, nor shall the Company use such Certificates after the completion of the Project. Prior to the use of such Certificates by the Company as agent for the County, the County Manager and the Company will agree to certain procedures regarding the use of the Certificates and protection of the County from any unpaid taxes determined to be due to the Taxation and Revenue Department. No costs, expenses or other monetary relief will be recoverable from the County by vendors of wind generation equipment.

In connection with this Resolution, the Commission has been informed that the Company has expressed its understanding that a failure or refusal of the Commission, however arising, to adopt the Bond Ordinance will have the effect of voiding any benefits to the Company under the Act, including voiding the Certificates issued to the Company for capital equipment purchases and making such purchases subject to whatever tax would be due if such Certificates had not been issued.

Section 6. The County Commissioners and other appropriate County officials and employees are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution; provided, however, the issuance of the 2019 Bonds and the execution and delivery of any documents to which the County is a party in connection therewith shall be subject to the approval and authorization of the Commission pursuant to the Bond Ordinance, adopted following public notice of the Commission's intent to adopt such Bond Ordinance at least fourteen days prior to the consideration of the Bond Ordinance by the Commission at a public meeting, such public notice to specify the time, date and place of the Commission's public hearing on the Bond Ordinance and the meeting at which the Bond Ordinance will be considered. In particular, no provision of this Resolution shall in any way obligate the County or any other person to issue the 2019 Bonds or any other bonds, or to in any way finance the Project; and the County retains full and complete discretion with respect thereto.

Section 7. If the 2019 Bonds are issued by the County, the documentation evidencing the obligations of the Company shall provide that the Company shall make annual payments in lieu of taxes to the County and to Estancia Municipal School District for so long as the 2019 Bonds are outstanding.

Section 8. This Resolution shall not give rise to a pecuniary liability of the County and shall not give rise to a charge against its general credit or taxing powers.

Section 9. The County Clerk is hereby directed, in accordance with Section 4-37-7 NMSA 1978, as amended, to publish in the *Edgewood Independent* and the *Albuquerque Journal*, newspapers of general circulation within the County, a title and general summary of the ordinance relating to and authorizing issuance of the 2019 Bonds at least two weeks prior to the meeting at which the County Commission will consider such ordinance. The County Clerk may undertake such publication upon her own initiative, following consultation with the County Manager and receipt by the County of a draft Bond Ordinance and any necessary documents related thereto.

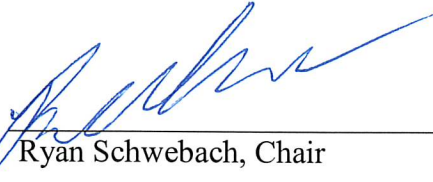
Section 10. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; provided, however, this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Section 12. This Resolution shall take effect immediately upon its adoption and approval by the Commission.

PASSED, ADOPTED, SIGNED AND APPROVED this 27th day of February, 2019.

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

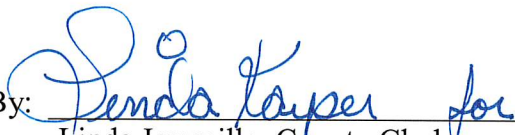
By: 
Ryan Schwebach, Chair

By: _____
Kevin McCall, Member

By: 
Javier Sanchez, Member

[SEAL]

ATTEST:

By: 
Linda Jaramillo, County Clerk

