

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Limited Waiver of the Tohono O'odham Utility Authority's Sovereign Immunity for the Purpose of Enabling Participation in the Box Canyon Resale Agreement between Southwest Public Power Agency, Inc. and Participants)

RESOLUTION NO. 22-183

- 1 **WHEREAS,** the Tohono O'odham Nation ("Nation") is a federally recognized Indian tribe,
2 organized pursuant to Section 16 of the Indian Reorganization Act of June 18,
3 1934 (48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over its members,
4 its enterprises, and its lands; and
- 5 **WHEREAS,** the Constitution of the Tohono O'odham Nation vests the Legislative Council with
6 the authority to "authorize, charter and regulate public or private corporations
7 and associations whether organized for profit, or for non-profit or charitable
8 purposes" and "to promote, protect and provide for public health, peace, morals,
9 education and general welfare of the Tohono O'odham Nation and its members"
10 (Constitution, Article VI, Section 1(e) and Section 1(c)(2)); and
- 11 **WHEREAS,** the Second Restated Plan of Operation of the Tohono O'odham Utility Authority
12 ("TOUA Plan of Operation"), codified at 24 Tohono O'odham Code Chapter 1, was
13 adopted by Legislative Council Resolution No. 91-175; and
- 14 **WHEREAS,** TOUA's purposes, as stated in the TOUA Plan of Operation, include furnishing
15 electric services within the Tohono O'odham Nation; and
- 16 **WHEREAS,** TOUA does not presently generate electricity and all electricity supplied to TOUA
17 customers must be purchased through purchase power agreements; and
- 18 **WHEREAS,** the stated powers of the TOUA Management Board include, among other powers,
19 the power to make "contracts or commitments necessary to the functioning of
20 [TOUA]," and the TOUA Plan of Operation authorizes the Management Board, in
21 its discretion, to submit contracts to the Legislative Council for approval or
22 ratification (TOUA Plan of Operation, Section 7.A.3. and Section 7.A.12.); and
- 23 **WHEREAS,** TOUA is presently a member of the Southwest Public Power Agency, Inc. ("SPPA"),
24 and SPPA has negotiated and is willing to enter into a Power Purchase Agreement
25 ("PPA") between BOCA BN, LLC and Southwest Public Power Agency, Inc., pursuant
26 to which SPPA will purchase capacity and energy that SPPA may resell to SPPA
27 Participants pursuant to a separate agreement; and
- 28 **WHEREAS,** TOUA continues to require energy to supply to its customers, and it is in TOUA's
29 best interest to obtain certain quantities of capacity and energy for a set period
30 and at set rates and, therefore, TOUA desires to become a SPPA Participant party
31 to the multi-party Box Canyon Resale Agreement between Southwest Public

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- 1 **Power Agency, Inc. and Participants (the "Agreement"), pursuant to which SPPA**
2 **will resell to the participating SPPA Participants the energy purchased under the**
3 **PPA; and**
- 4 **WHEREAS, the Agreement contains confidential business information and the parties have**
5 **agreed to treat the Agreement as confidential, and the Agreement has been**
6 **shared only among the Agreement parties' respective attorneys and/or discussed**
7 **in closed meetings where attorneys are present; and**
- 8 **WHEREAS, SPPA requires that all tribes and tribal parties to the Agreement agree to**
9 **irrevocably waive sovereign immunity for the purposes of any action or**
10 **arbitration (i) arising out of or pertaining to the Agreement, (ii) enforcing**
11 **arbitration under the Agreement, and (iii) enforcing any arbitration award**
12 **rendered in an arbitration pursuant to the Agreement, as explained in Article Ten**
13 **of the Agreement; and**
- 14 **WHEREAS, the Agreement also includes a mutual indemnification agreement between the**
15 **Seller and TOUA in Article Eight of the Agreement; and**
- 16 **WHEREAS, the Nation's sovereign immunity extends to TOUA, a Nation's enterprise, which**
17 **requires an express waiver by the Legislative Council; and**
- 18 **WHEREAS, the Legislative Commerce Committee has reviewed the Agreement, and**
19 **recommends that it is in the best interests of the Nation to approve a limited**
20 **waiver of TOUA's sovereign immunity so that TOUA may enter into the Agreement**
21 **with the SPPA.**
- 22 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:**
- 23 **1. Recognizes, approves, and will maintain the confidential nature of the**
24 **Agreement; and**
- 25 **2. Approves a limited waiver of sovereign immunity of the TOUA in favor of**
26 **Southwest Public Power Agency, Inc., so that TOUA may enter into the Box**
27 **Canyon Resale Agreement between Southwest Public Power Agency, Inc. and**
28 **Participants, and such limited waiver must be consistent and in accordance**
29 **with, and subject to the limitations of, the provisions of the Agreement,**
30 **provided that nothing in this resolution shall be construed as a waiver of the**
31 **Nation's sovereign immunity.**
- 32

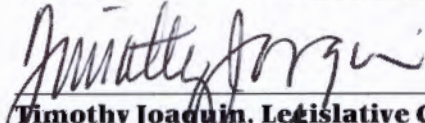
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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 13TH day of MAY, 2022 at a meeting at which a quorum was present with a vote of 2,661.5 FOR; -0- AGAINST; 556.5[03] NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by, Article VI, Section 1(e) and Section 1(c)(2) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.984).

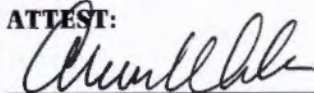
TOHONO O'ODHAM LEGISLATIVE COUNCIL



Timothy Joaquin, Legislative Chairman

17 day of May, 2022

ATTEST:

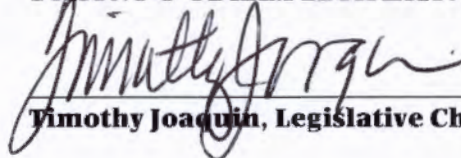


Evonne Wilson, Legislative Secretary

15 day of May, 2022

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 17 day of May, 2022 at 6:49 o'clock, a.m., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



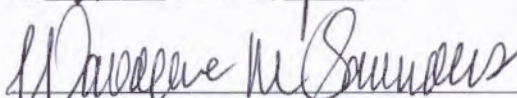
Timothy Joaquin, Legislative Chairman

APPROVED

on the 17th day of May, 2022

DISAPPROVED

at 3:03 o'clock, p.m.



NED NORRIS, JR., CHAIRMAN

TOHONO O'ODHAM NATION

RESOLUTION NO. 22-183

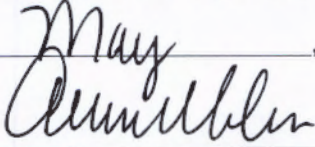
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Returned to the Legislative Secretary on the 17 day of

May, 2022, at 3:47 o'clock, p.m.



Evonne Wilson, Legislative Secretary

ACTION: APPROVING A LIMITED WAIVER OF THE TOHONO O'ODHAM UTILITY AUTHORITY'S SOVEREIGN IMMUNITY FOR THE PURPOSE OF ENABLING PARTICIPATION IN THE BOX CANYON RESALE AGREEMENT BETWEEN SOUTHWEST PUBLIC POWER AGENCY, INC. AND PARTICIPANTS

MOVED: COUNCILWOMAN JANICE FELIX

SECOND: COUNCILMAN LOUIS R. LOPEZ

DATE: MAY 13, 2022

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X		X	
SELLS 556.5	1. ARTHUR WILSON ()	278.25			X	X
	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25			X	
SCHUK TOAK 190.5	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25	X			
	2. DELISA M. RAMON (Sharon A. Francisco)	95.25	X			
SAN XAVIER 242.6	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3	X			
	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eller)	121.9	X			
	2. ROGER MANUEL (Christina Andrews)	121.9	X			
PISINEMO 232.7	1. MARIETTA MARTIN ()	116.35	X			X
	2. EDWARD D. MANUEL (Monica Morgan)	116.35	X			
HICKIWAN 216.6	1. LOUIS R. LOPEZ ()	108.3	X			
	2. DELMA M. GARCIA ()	108.3	X			
GU VO 270.7	1. GRACE MANUEL ()	135.35	X			
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ()	139.25	X		X	
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X			
CHUKUT KUK 351.6	1. MARLAKAY HENRY (Billman Lopez)	175.8	X			X
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Absent) (Frances G. Antone) (Present)	194.45	X			X
	2. LEANDER MASE (Francine Schooling)	194.45	X			
TOTAL		3,218.0	2,661.5	-0-	556.5 [03]	[04]