

2.1 Pursuant to 28 U.S.C. § 1391(a)(2) and 9 U.S.C. § 4, venue is appropriate in this judicial district because a substantial part of the events or omissions giving rise to LCRA's claims herein occurred in this judicial district, and LCRA may petition the United States District Court for an order to compel arbitration.

III. BACKGROUND

3.0 On December 18, 2009, LCRA and Papalote entered into a Power Purchase Agreement ("PPA"), which provides for the purchase by LCRA, and the sale by Papalote, of energy and related products produced at the Papalote Creek II Wind Project (the "Project") located in San Patricio County, Texas. The PPA commenced on December 18, 2009 and extends through September 28, 2008.

3.1 Section 3.1 of the PPA provides that "[i]n accordance with and subject to the provisions [of the PPA] . . . Buyer shall purchase and receive . . . all of the Project's capacity, Net Electricity, Ancillary Services and environmental credits . . . generated by the Project." In the event that LCRA purchases less than the Project's full output of energy, then Section 4.3 of the PPA sets forth a formula for calculating liquidated damages to be paid by LCRA.

3.2 A separate provision in the PPA, found in Section 9.3 and titled "Limitation on Damages for Certain Types of Failures," provides "Buyer's damages for failure to perform its material obligations under this Agreement shall likewise be limited in the aggregate to sixty million dollars (\$60,000,000)."

3.3 To date LCRA has made all purchases of energy in accordance with the PPA.

3.4 While LCRA has thus far purchased the full amount of energy produced by the Project, LCRA contends that in the event it reduces or ceases further purchases of energy then

Section 9.3 caps LCRA's obligation to pay damages under the PPA, including liquidated damages, at \$60 million.

3.5 Papalote disagrees with LCRA's contention that Section 9.3 caps LCRA's obligation to pay liquidated damages arising under the PPA at \$60 million.

3.6 Papalote contends that, regardless of the limitation of liability provision, LCRA remains liable to purchase and pay for the total amount of all energy generated by the Project over the full term of the contract.

3.7 In order to determine its performance obligations, LCRA needs to determine the extent of its potential liability for damages arising under the PPA in the event that it reduces or ceases further purchases of energy.

3.8 To that end the parties have had eleven telephone conferences and one in-person meeting to attempt to reach a mutual resolution of their competing interpretations of the PPA. On April 24, April 30, May 7, May 8, and May 18, senior executives of LCRA and Papalote held telephone conferences to discuss their competing interpretations of the liability cap and possible grounds for compromise. The parties continued their efforts on May 26, 2015, when senior executives of Papalote and its parent company, E.ON Climate & Renewables North America, LLC, traveled to LCRA's office in Austin to meet with senior officers of LCRA. Unable to reach a resolution, representatives of LCRA and Papalote conducted further telephone conferences on May 29, June 5, June 9, June 10, June 17 and June 18.

3.9 Despite the foregoing efforts, the parties have been unable to reach an agreement on the interpretation and application of the limitation of liability provision in Section 9.3 of the PPA, and the scope and extent of LCRA's financial responsibility under the contract.

3.10 As a result, LCRA has no choice but to submit this dispute to binding arbitration under Section 13.2 of the PPA in order to obtain certainty with respect to the interpretation of the contract provisions and LCRA's obligations thereunder.

3.11 Section 13.2 of the PPA states:

either party may submit any disputes arising under this Agreement, which cannot be resolved by the Parties to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") effective at the time of the dispute (the "AAA Rules") and the terms of this Section 13.2.

The PPA further provides that either party may initiate arbitration by delivering to the other a written notice requesting arbitration if they are unable to resolve the dispute within ten days after a meeting (in person or by telephone) among both parties' senior officers or executives.

3.12 On June 19, 2015, LCRA made written demand on Papalote for arbitration, a true and correct copy of which is attached hereto as **Exhibit A**. This demand was made well over ten days after the May 26 in-person meeting between senior executives for both parties.

3.13 All conditions precedent to LCRA's right to submit the instant dispute to arbitration have been satisfied or excused.

3.14 Papalote refuses to acknowledge that the arbitration procedure has been properly invoked and Papalote further refuses to follow the arbitration procedure outlined in Section 13 of the PPA.

IV. REQUEST FOR ORDER COMPELLING ARBITRATION

4.0 The PPA and the transactions underlying it and contemplated by it, including the purchase and sale of energy, constitute a "contract evidencing a transaction involving [interstate] commerce," and thus the contract falls within the scope of the Federal Arbitration Act, 9 U.S.C. § 2.

4.1 LCRA and Papalote entered into a valid and enforceable agreement to submit “any disputes arising under [the PPA]” to binding arbitration.

4.2 The instant dispute, which relates directly to LCRA’s performance of its payment obligations and satisfaction of LCRA’s financial responsibilities under the PPA, clearly arises under the PPA and thus falls within the scope of the agreement to arbitrate in Section 13.2.

4.3 LCRA has made written demand on Papalote to submit to arbitration.

4.4 Despite such demand, Papalote has refused to submit to arbitration.

4.5 Accordingly, LCRA hereby seeks an order from the Court directing the parties to proceed with arbitration pursuant to the procedures set forth in the PPA.

WHEREFORE, Plaintiff Lower Colorado River Authority prays for an order compelling Defendant Papalote Creek II, LLC f/k/a Papalote Creek Wind Farm II, LLC to binding arbitration pursuant to the terms of the contract between them, and for such other and further relief to which LCRA may be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Breck Harrison

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ATTORNEYS FOR PLAINTIFF LOWER
COLORADO RIVER AUTHORITY

CERTIFICATE OF SERVICE

This is to certify that on this 28th day of August 2015, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Benjamin L. Mesches
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
ben.mesches@haynesboone.com

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/s/ Breck Harrison

Breck Harrison

EXHIBIT A



June 19, 2015

Via UPS

Papalote Creek Wind Farm II, LLC
Attention: Dominic Serpe
Vice President, Energy Contracts & Regulatory Compliance
353 N. Clark Street
30th Floor
Chicago, Illinois 60654

Re: Notice of Arbitration pursuant to Article 13 of that certain Power Purchase Agreement ("PPA") dated December 18, 2009 between Papalote Creek Wind Farm II, LLC ("Papalote") and Lower Colorado River Authority ("LCRA").

Dear Sir/Madam:

Pursuant to Section 13.2 of the PPA, LCRA hereby initiates the arbitration process to resolve the dispute between LCRA and Papalote regarding LCRA's limitation of liability under the PPA and its impact on LCRA's performance obligations. Senior officers and executives of Papalote and LCRA met in person in an attempt to resolve the dispute but have been unable to reach an agreement.

LCRA intends to continue to fully perform its obligations under the PPA during this arbitration process.

LCRA is providing a copy of this notice to Sumitomo Mitsui Banking Corporation, as required pursuant to Section 5 of the Consent to Assignment dated March 19, 2013. We look forward to receiving your response pursuant to Section 13.2 of the PPA.

Very truly yours,

A handwritten signature in black ink, appearing to read "Phil Wilson", is written over a light blue horizontal line.

Phil Wilson
General Manager

cc: Sumitomo Mitsui Banking Corporation
277 Park Avenue
New York, New York 10172
Attn: Amena Nabi
Attn: Carl Morales