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QUAY COUNTY, NEW MEXICO

ORDINANCE NO. 33

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE QUAY COUNTY, NEW MEXICO INDUSTRIAL REVENUE BOND (CAPROCK WIND PROJECT) SERIES 2004 IN A PRINCIPAL AMOUNT NOT TO EXCEED \$95,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF AN INDUSTRIAL DEVELOPMENT PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AND PURCHASE AGREEMENT, AN INDENTURE, A BOND PURCHASE AGREEMENT, THE BOND AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Quay County (the "County"), State of New Mexico (the "State"), is a legally and regularly created, established, organized and existing subdivision of the State; and

WHEREAS, pursuant to Chapter 4, Article 59 (the "County Industrial Revenue Bond Act"), New Mexico Statutes Annotated, 1978 Compilation, as amended ("NMSA 1978"), the County is authorized to issue industrial revenue bonds and to use the proceeds of such bonds to acquire industrial development projects to be located within the County (but outside of the boundary of any incorporated municipality) for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State and promoting a sound and proper balance in the State between agriculture, commerce and industry; and

WHEREAS, Caprock Wind LP, a Texas limited partnership, has presented the County Board of Commissioners (the "Board") a proposal pursuant to which the County would (a) issue its Industrial Revenue Bond (Caprock Wind Project) Series 2004 (the "Bond"), and (b) acquire fee, leasehold or other ownership interests in approximately 16,000 acres of land and related easement rights (the "Realty") located within the County south and southwest of San Jon, New Mexico, and buildings, structures, other improvements and furnishings, fixtures and equipment (collectively, the "Improvements") in connection with the construction and establishment of an approximately 80-megawatt wind-powered electric generating facility (the "Project") within the County; and

WHEREAS, the Project will qualify as a "project" within the meaning of the County Industrial Revenue Bond Act by reason of the fact that the Project's production will be sold on the wholesale market, and not to the public at retail, and the Project will not constitute public utility plant, property or facilities as defined in the New Mexico Public Utility Act; and

WHEREAS, under the Proposal Caprock Wind LP or an affiliate or assignee (the "Company") will enter into a Lease and Purchase Agreement (the "Lease") between the County and the Company and dated the issuance date of the Bond (the "Closing Date"), pursuant to which the Company will lease and purchase the Realty and the Improvements (collectively, the "Project Property") from the County; and

WHEREAS, pursuant to the provisions of the Lease, the Company will make payments to the Purchaser, defined below, sufficient to pay the principal of, redemption premium, if any, and interest on the Bond and to pay all other obligations incurred pursuant to the provisions of the Lease, the Indenture, defined below, and this Bond Ordinance (this "Ordinance"); and

WHEREAS, the proceeds of the Bond shall be used for the purpose of financing the acquisition, construction and installation of the Project Property; and

WHEREAS, the County is authorized to enter into the Bond Documents, defined below, and other related documents and to issue the Bond pursuant to the laws of the State (including the County Industrial Revenue Bond Act), the Constitution of the State and this Ordinance (collectively, the "Act") and pursuant to an Indenture (the "Indenture") dated the Closing Date among the County, the Purchaser, and the depository identified in the Indenture (the "Depository"); and

WHEREAS, pursuant to Section 4-59-4.1 NMSA 1978, the County has given notice of the Bond and the Project to the County Assessor and to the City of Tucumcari, the largest municipality within the County; and

WHEREAS, after having considered the Proposal, the Board has concluded that the economic and other benefits to the County will be substantial and that it is desirable and necessary at this time to authorize the issuance of the Bond and that the County's issuance of the Bond will constitute a valid public purpose under the Act; and

WHEREAS, the Bond, in principal amount not to exceed \$95,000,000, will be issued, sold and delivered by the County pursuant to the Act; and

WHEREAS, the Company shall cause an affiliate of the Company or its corporate parent, to be subsequently specified (the "Purchaser"), to purchase the Bond at a private sale pursuant to the terms of a proposed Bond Purchase Agreement to be entered into among the Purchaser, the County and the Company (the "Bond Purchase Agreement"); and

WHEREAS, the County has been advised by the Company that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction because the Bond is being sold in a private sale without participation of an underwriter; and

WHEREAS, the County has authorized and the Company has caused to be published in the Quay County Sun, a newspaper of general circulation in the County, public notice of the Board's intention to adopt this Ordinance, which notice contained certain information concerning the ownership, purpose, general location and nature of the Project Property and the maximum amount of the Bond, which notice was published in conformance with legal requirements; and

WHEREAS, there have been filed with the County Clerk and presented to the Board the forms of the Indenture, the Lease and the Bond Purchase Agreement (the Lease, the Indenture and the Bond Purchase Agreement are collectively referred to as the "Bond Documents").

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**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF QUAY COUNTY, THE GOVERNING BODY OF THE COUNTY:**

Section 1. Ratification. All actions not inconsistent with the provisions of this Ordinance previously taken by the Board and the officials of the County directed toward the sale and issuance of the Bond and the acquisition, lease and sale of the Project Property, including, without limitation, the publication of notice as set forth above, are approved and ratified.

Section 2. Approval of Proposal. The Proposal is hereby approved in all respects.

Section 3. The Project. The County shall acquire the Project Property by deed and other instruments, as appropriate, and shall lease and sell the Project Property to the Company for use in connection with the operation of the Project. The Project Property shall be located within the corporate limits of the County.

Section 4. Authorization and Approval of Bond. To finance the cost of the acquisition, construction and installation of the Project Property, the County hereby authorizes the issuance and sale of an industrial revenue bond to be designated "Quay County, New Mexico Industrial Revenue Bond (Caprock Wind Project) Series 2004" in a principal amount not to exceed \$95,000,000. The County shall finance the acquisition, construction and installation of the Project Property by depositing or causing the deposit of the proceeds of the sale of the Bond with the Depository in accordance with the Indenture.

Section 5. Form and Terms of Bond. The Bond shall be issued in registered form, without coupons, and shall be dated and sold subject to the terms and conditions of the Indenture and the Bond Purchase Agreement. The Bond shall mature on the anniversary in 2034 of the Closing Date (the "Maturity Date"), and the entire principal amount of the Bond shall be payable in one payment on the Maturity Date. The Bond shall bear interest at the rate or rates stated in the Indenture; provided that the maximum interest rate to be borne by the Bond shall not exceed 12% per annum (the "Maximum Interest Rate"). Interest on principal amounts outstanding under the Bond shall be payable on each anniversary of the Closing Date while the Bond is outstanding, including the Maturity Date. The Bond shall be in substantially the form provided in the Indenture, shall be dated the date of delivery to the Purchaser, and shall be subject to such other terms and conditions, including but not limited to mandatory or optional redemption, as are provided in the Indenture; provided that the final payment of principal plus accrued interest on the Bond shall be due no later than the Maturity Date. The Bond may be issued as one or more individual bonds of the same series, as requested by the Purchaser. The sale of the Bond on the terms set forth in the Bond Purchase Agreement is hereby approved.

Section 6. Findings Regarding Payment of Interest and Principal and Other Matters. The Board makes the following determinations and findings in accordance with the Act:

(A) The amounts necessary in each year to pay the principal and installments of interest on the Bond, assuming funding of the maximum principal amount of the Bond upon issuance and the Maximum Interest Rate of 12%, will be no more than the following:

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| <u>Annual Calendar<br/>Period to and<br/>Including the<br/>Anniversary of the<br/>Closing<br/>Date Occurring in</u> | <u>Principal Payments<br/>Required in<br/>Such Period</u> | <u>Maximum Interest<br/>for Such Period</u> | <u>Total Debt Service<br/>Required</u> |
|---|---|---|--|
| 2005  | \$-0-   | \$11,400,000                                | \$11,400,000                           |
| 2006  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2007  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2008  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2009  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2010  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2011  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2012  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2013  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2014  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2015  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2016  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2017  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2018  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2019  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2020  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2021  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2022  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2023  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2024  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2025  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2026  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2027  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2028  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2029  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2030  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2031  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2032  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2033  | -0-   | 11,400,000                                  | 11,400,000                             |
| 2034  | \$95,000,000  | \$11,400,000                                | \$106,400,000                          |

(B) The terms under which the Project Property is leased shall provide that the Company shall maintain the Project Property and carry all property insurance (or self-insure) with respect to the Project Property.

(C) The rentals payable under the Lease shall be at least sufficient to pay the amounts set forth in paragraph (A) of this Section 6, and otherwise to render the financing of the acquisition of the Project Property entirely self-liquidating.

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(D) The amount necessary to be paid each year into any reserve fund used to retire the Bond or maintain the Project Property is zero.

Section 7. Approval of Documents; Authorization of Officers. The Board approves the forms, terms and provisions of the Indenture, the Bond, the Lease and the Bond Purchase Agreement, and the County shall enter into such documents substantially in the forms of each of such documents presented at the meeting at which this Ordinance was adopted, with only such changes as are approved by the Chairman or the Acting Chairman (whose signature thereon shall be evidence of his or her approval) or such other changes as may be approved by supplemental resolution of the Board, provided that such changes are not inconsistent with this Ordinance. The Board authorizes the Chairman, the Acting Chairman and the County Clerk to execute and deliver such documents and the Bond at a rate not to exceed the Maximum Interest Rate.

Section 8. Actions to be Taken. The officers of the County shall take such action as is reasonably required by the Indenture to effectuate its provisions and for carrying out other transactions as contemplated by this Ordinance, the Indenture, the Lease and the Bond Purchase Agreement, including without limitation the execution and delivery of any closing documents conforming to the Bond Purchase Agreement to be delivered in connection with the sale and delivery of the Bond.

Section 9. Limited Obligation. The Bond shall be a special limited obligation of the County, payable solely as defined in 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 any pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in this Ordinance, the Bond, the Bond Documents or any other instrument pertaining to the Bond or the Project 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 power; nor shall the breach of any agreement contained in this Ordinance, the Bond, the Bond Documents, or any other instrument pertaining to the Bond or the Project 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. Under the County Industrial Revenue Bond Act, the County has no power to, and shall not, pay out of its general funds or otherwise contribute to the payment of any part of the costs of acquisition, construction, or installation of the Project Property. The County shall not operate the Project Property as a business or in any manner except as lessor of the Project Property pursuant to the County Industrial Revenue Bond Act.

Section 10. Approval of PILOT Payments. The Board specifically approves the provisions of Section 6.11 of the Lease relating to payments to the County in lieu of taxes totaling \$134,000 annually, as provided in such Section 6.11. The Board further approves the provisions of Sections 6.12, 6.13 and 6.14 of the Lease pertaining to payments in lieu of taxes to be made by the Company to the San Jon School District and the Tucumcari School District,

pursuant to Section 4-59-4(A)(2) NMSA 1978, and to Mesalands Community College, in the annual amounts of \$86,000, \$3,600, and \$3,600, respectively, as provided in such Sections 6.12, 6.13 and 6.14.

Section 11. Bond Ordinance Irrepealable. After the Bond is issued, this Ordinance shall be and remain irrepealable until the Bond and the interest thereon shall have been duly paid, cancelled and discharged or there has been a defeasance of the Bond in accordance with the Indenture.

Section 12. Severability. If any section, paragraph, clause or provision of this Ordinance 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 Ordinance.

Section 13. Repealer. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 14. Recording; Authentication; Publication; Effective Date. By reason of the fact that it is necessary for the County and the Company to proceed to take all actions necessary as soon as possible to the consummation of the purpose of this Ordinance, immediately upon its final passage and approval this Ordinance shall be recorded in the ordinance book of the County, kept for that purpose, and shall be there authenticated by the signature of the Chairman or Acting Chairman and the County Clerk or her designee. A notice of adoption of this Ordinance, including the title and a general summary of the subject matter of this Ordinance, shall be published once in substantially the following form in a newspaper which maintains an office in, and is of general circulation in, the County.

(Form of Summary of Ordinance for Publication)

QUAY COUNTY, NEW MEXICO

Notice of Adoption of Ordinance

Notice is hereby given of the title and a general summary of the subject matter contained in Ordinance No. 33, duly adopted and approved by the Board of Commissioners of Quay County, New Mexico on November 24, 2003, relating to the authorization and issuance of the County's Industrial Revenue Bond (Caprock Wind Project) Series 2004 (the "Bond"). Complete copies of the Ordinance are available for public inspection during normal and regular business hours of the County Clerk at the Quay County Courthouse, 300 South Third Street, Tucumcari, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE QUAY COUNTY, NEW MEXICO INDUSTRIAL REVENUE BOND (CAPROCK WIND PROJECT) SERIES 2004 IN A PRINCIPAL AMOUNT NOT TO EXCEED \$95,000,000 TO PROVIDE FUNDS TO

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FINANCE THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF AN INDUSTRIAL DEVELOPMENT PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AND PURCHASE AGREEMENT, AN INDENTURE, A BOND PURCHASE AGREEMENT, THE BOND AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The following is a general summary of the subject matter contained in the Ordinance.

The recitals state that the County is authorized under the New Mexico County Industrial Revenue Bond Act (the "Act") to issue industrial revenue bonds to acquire industrial development projects in the County; that Caprock Wind, LP, a Texas limited partnership (the "Company") has delivered a proposal (the "Proposal") that the County issue the Bond to finance the acquisition, construction and installation by the County of certain property (the "Project Property") comprising an approximately 80-megawatt wind-powered electrical generating facility located south and southwest of San Jon, New Mexico, whose output will be sold on the unregulated power market and that will not be a public utility; that the Project Property would be leased and sold to the Company under a certain Lease and Purchase Agreement between the County and the Company (the "Lease"); that the Bond would be issued pursuant to the provisions of an Indenture among the County, the bond purchaser (the "Purchaser"), and a trust depository; that the Bond would be sold to the Purchaser pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement", and together with the Bond, the Lease and the Indenture, the "Bond Documents") between the County, the Company and the Purchaser; that the Board has concluded that the benefits to the County of issuing the Bond are substantial and that the issuance of the Bond will constitute a valid public purpose under the Act; and that notice of the Board's intention to consider adoption of the Ordinance was published in conformance with legal requirements.

Sections 1 through 3 ratify previous action taken in connection with the issuance of the Bond; approve the Proposal; authorize the acquisition, lease and sale of the Project Property; and provide that the Project Property shall be located within the County.

Sections 4 through 6 authorize the issuance of the Bond in a principal amount not to exceed \$95,000,000; approve the form and terms of the Bond; provide that the Bond shall mature on the anniversary of the issuance date of the Bond in 2034 and shall bear interest as provided in the Indenture, but not at a rate exceeding 12%; provide that other details of the Bond shall be provided in the Indenture; approve the sale of the Bond on the terms set forth in the Bond Purchase Agreement; and make certain findings and determinations pursuant to the Act, including the maximum annual amounts necessary for debt service on the Bond, that the Company shall maintain the Project Property and carry all property insurance (or self-insure), that the rentals under the Lease shall be sufficient to pay all debt service on the Bond, and that no reserve fund will be necessary to retire the Bond or to maintain the Project Property.

Sections 7 through 9 approve the forms of the Bond Documents; authorize and direct County officials to execute and deliver the Bond Documents; authorize County officials to execute and deliver other documents and to take such other actions as are reasonably necessary

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to effectuate the Ordinance; provide that the Bond shall be a special limited obligation of the County, payable solely as provided in the Indenture; state that the Bond shall never constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the New Mexico constitution; and provide that the Bond shall never give rise to a pecuniary liability of the County or a charge against the County's general credit or taxing power.

Sections 10 through 14 approve the provisions of the Lease requiring the payment by the Company of certain payments in lieu of taxes; provide that the Ordinance shall be irrevocable while the Bond is outstanding; provide severability and repealer provisions; direct the authentication and recording of the Ordinance; and provide for the publication of notice of the adoption of the Ordinance.

This notice constitutes compliance with the Public Securities Limitation of Action Act, Sections 6-14-4 to 6-14-7 NMSA 1978.

(End of Form of Summary for Publication)

Passed, Approved, Signed and Adopted this 24th day of November, 2003.

*Jose E. Madril*  
Chairman

ATTEST:  
*Jeanette Maddaford*  
County Clerk  
(SEAL)



STATE OF NEW MEXICO | SS  
COUNTY OF QUAY |  
I hereby certify that this instrument was  
for record at 4:30 o'clock P.M.  
and  
duly  
recorded  
book 107  
130-137 page of the re-  
JAN 13 2004  
*Jeanette Maddaford* County Clerk  
Dec.