BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1670

COLUMBIA BASIN ELECTRIC COOPERATIVE, INC., Complainant, v. PACIFICORP dba PACIFIC POWER, NORTH HURLBURT WIND, LLC, SOUTH HURLBURT WIND, LLC, HORSESHOE BEND WIND, LLC and CAITHNESS SHEPHERDS FLAT, LLC, Defendants.	**OPPOSITION OF DEFENDANTS NORTH HURLBURT WIND, LLC, SOUTH HURLBURT WIND, LLC, HORSESHOE BEND WIND, LLC AND CAITHNESS SHEPHERDS FLAT, LLC TO COLUMBIA BASIN ELECTRIC COOPERATIVE'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

Defendants North Hurlburt Wind, LLC ("North Hurlburt"), South Hurlburt Wind, LLC ("South Hurlburt"), Horseshoe Bend Wind, LLC ("Horseshoe Bend") and Caithness Shepherds Flat, LLC ("Caithness" or "CSF") (collectively, the "Caithness Defendants") request the Oregon Public Utility Commission ("OPUC" or "Commission") deny, on all grounds, the motion of Complainant, Columbia Basin Electric Cooperative, Inc. ("Columbia Basin"), for summary judgment. In their own pending motion for summary determination, the Caithness Defendants demonstrate why every Columbia Basin claim must fail, as a matter of law. They incorporate those arguments herein, and use this response to rebut the specifics of Columbia Basin's motion. Five salient failings of Columbia Basin's motion warrant special focus in this response.

II. FIVE LEGAL FLAWS IN COLUMBIA BASIN'S SUMMARY JUDGMENT MOTION

First, Columbia Basin has never properly explained, either to defendants before its complaint was filed or now to the Commission in its motion, how it would – or even could – deliver back-up station power within its claimed territory and at 230-kV to any of the Caithness Defendants.[1] The record of this case contains Columbia Basin's admission that it has no 230-kV facilities or 230-kV customers anywhere on its limited system. The record also documents that Columbia Basin has only one household-voltage connection to a single Caithness Defendant – a 115/230-volt tap to the Shepherds Flat South maintenance building. The record does not contain

[1] Well after all parties had filed their respective motions for summary judgment, less than two business days before responses were due, and nearly a year after discovery commenced in this case, Columbia Basin sent "supplemental" responses to previous data requests that effectively attempt to rewrite its position over the past year. Such an attempt by the cooperative reflects not only a recognition by the cooperative of the fundamental flaws in its legal position, but also a disrespect for the Commission's established procedures and the rights of the other parties. This brief disregards those submissions as inappropriate, prejudicial and untimely and asks the Commission to do so as well. Parties to Commission proceedings should be held to the standards of practice set forth in its rules.

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any indication how Columbia Basin would intend to build 230-kV facilities within its claimed territory. Neither does the record contain any information from Columbia Basin about how it might hope to supply about 2 MW of back-up station power at some other voltage, assuming it were even possible and economically practicable to do so in the judgment of BPA (which would first have to agree to such a change under its LGIAs), and in the judgment of EFSC (which would first have to agree to such a change under its Site Certificates). In the absence of proper record information about its 230-kV intentions, Columbia Basin is asking the Commission for a declaration regarding a physical impossibility.

Alternatively, if Columbia Basin is not intending to build 230-kV transmission, it could only be trying to use the territorial-allocation order it received from the Commission in 1961 to obstruct others – asking the Commission to declare that electricity may not be *consumed* by end-users in its claimed territory, unless that electricity was delivered by Columbia Basin to that end-user within its claimed territory. This alternative would be for the purpose of blocking any end-user from consuming electricity, at 230-kV, anywhere in Columbia Basin's claimed territory, unless and until Columbia Basin added 230-kV facilities to its system. Such usage of a territorial-allocation order as a blocking device cannot be squared with ORS 758.400 – 758.465.

Moreover, if Columbia Basin hopes to use its territorial order as a blocking device, nothing it could aver would overcome the binding legal effect, under ORS 469.401, of three EFSC Site Certificates, each one specifying – since September 2009 – the interconnection of a wind resource, at 230-kV, in BPA's Slatt Substation, which is well within Pacific Power's Oregon service territory. Columbia Basin cannot fault EFSC (or BPA) because it never participated in the EFSC or BPA public proceedings about the 230-kV interconnections of Shepherds Flat North, Central and South at Slatt Substation. Each of these resources has already been built, and has been operating since 2011-12, in accordance with binding, legal directives from EFSC and BPA. Columbia Basin cannot un-ring the bell rung by EFSC and BPA in 2009.

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Second, Columbia Basin is wrong in asserting that the issue in this contested case is one of "first impression" with wide ranging significance. The vast majority of Columbia Basin's memorandum is dedicated to contested "facts" that, if nothing else, demonstrates the novelty of this case. Columbia Basin's theory is anything but common – and unlike the Caithness Defendants' motion, depends on resolution of disputed issues of material fact. By granting the respective motions of Caithness Defendants and Pacific Power, the Commission could dispose of the complaint in a way that had no widespread precedential effect. In contrast, Columbia Basin seeks a declaration that its 1961 territorial order either covers 230-kV back-up power that it is impossible for Columbia Basin to deliver in its claimed territory, or blocks consumption of back-up power within that territory until it becomes physically possible for Columbia Basin to do so. Summary judgment in favor of Columbia Basin could only create legal turmoil for utilities across Oregon and for energy developers subject to EFSC jurisdiction under ORS Chapter 469.

Third, Columbia Basin's "facts" section also inaccurately – and inappropriately – discusses settlement communications undertaken among the parties in 2013. Under Columbia Basin's express threat of filing an OPUC Complaint, the Caithness Defendants worked in good faith to find a resolution to the dispute. Columbia Basin's motion should not have addressed details of those negotiations or inaccurately attempted to blame the failure of those negotiations on the Caithness Defendants. Suffice it to say that the named parties attempted to reach a consensual settlement agreement, including meeting Caithness Defendants' understanding of the requirements on a contract under ORS 758.410 between PacifiCorp and Columbia Basin. That effort did not succeed. This Commission lacks the authority under ORS 758.410 to require any party to execute an agreement contrary to that party's determination of its best interests.

Fourth, turning to Columbia Basin's arguments, Columbia Basin's motion is most notable for the legal points it does not address. Columbia Basin's motion fails to explain or acknowledge that:

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- The Caithness Defendants, as "companies" that provide power from wind resources to a customer, are expressly exempt from the Territorial Allocation Law under ORS 758.450(2) and 758.450(4)(c). Columbia Basin misreads the statute as applying only to limited activities undertaken by these "companies." The statutory text, however, reflects that the companies themselves are exempt as members of a class of renewable energy providers favored as such by the Oregon Legislature.
- Regardless of their exemptions, the Caithness Defendants are simply consumers of back-up power, delivered to each wind resource owner at its own point of interconnection ("POI") by Pacific Power at Slatt Substation within Pacific Power's service territory. "*Utility service*" is completed by Pacific Power at Slatt Substation. No Caithness Defendant provides "*Utility service*" to anyone; they are just consumers.
- Regardless of their exemptions, every electric transmission facility comprising Shepherds Flat North, Central or South was constructed, and is now operated, in accordance with exacting, specific requirements of EFSC and BPA for the purpose of moving wind-generated energy to the BPA transmission system. These facilities have the additional benefit of allowing each resource owner to meet its consumptive, intermittent usage of back-up station power without the need to duplicate these facilities. None of these facilities constitute a "connected and interrelated distribution system."
- Columbia Basin does not, and cannot, provide "similar utility service," within the meaning of ORS 758.450, because it has no 230-kV transmission facility anywhere on its system, nor is there any reasonable likelihood that its system will ever include a 230-kV transmission facility.
- Columbia Basin's 1961 territorial-allocation order covers only utility service at a voltage of 69 kV or below. That order does not give Columbia Basin the right it purports to assert in this case.
- Columbia Basin failed to raise its Territorial Allocation Law concern in a timely manner. It provided no comment either to EFSC or to BPA in the public processes that preceded each of their determinations that Shepherds Flat North, Central and South were required to connect to the BPA transmission system at Slatt Substation. Since these determinations, the Caithness Defendants have invested billions of dollars in their wind resources, including an up-front $52 million payment to BPA to reimburse BPA's estimated cost of building Slatt Substation. Raising Columbia Basin's concerns now creates the risk of extreme financial prejudice for Caithness Defendants.

The success of Columbia Basin's summary judgment motion depends upon its ability to dispositively resolve *every one* of these issues in its favor. This it cannot do.

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Fifth and finally, Columbia Basin's motion is notable because of the necessary consequence of its legal position. Simply put, Columbia Basin asserts the exclusive right to serve customers who do not wish to be its members and to serve all such non-members anywhere within its claimed territory. If Columbia Basin were to prevail in taking that position, then it will thereby forfeit or waive its exemption from regulation by this Commission as a "public utility" under ORS Chapters 757 and 758 because it will thereupon be serving members of the public, instead of just members. This regulation would protect the Caithness Defendants against the discriminatory rates Columbia Basin has threatened to impose on South Hurlburt and Horseshoe Bend if Columbia Basin were to succeed in capturing them as unwilling customers. If Columbia Basin aspires to monopoly power over South Hurlburt and Horseshoe Bend, then it must submit to regulation as a "public utility."

III. RESPONSE TO FACTUAL ALLEGATIONS IN COLUMBIA BASIN'S MOTION

In contrast to the Caithness Defendants' summary determination motion, which depends on issues of law and uncontroverted facts, Columbia Basin's motion depends on resolution of complex factual allegations that are incomplete or disputed. These discrepancies alone are sufficient grounds to deny Columbia Basin's motion for summary judgment. In this section of their response, the Caithness Defendants identify the most significant factual discrepancies and inaccuracies in Columbia Basin's motion.

Columbia Basin's motion spends considerable pages in an attempt to describe the jointly owned facilities of the three wind projects. It asserts there is an inconsistency in the ownership of the "Shared Facilities," pointing to a summary description of the Shared Facilities Agreement contained in a cover letter to a Federal Energy Regulatory Commission ("FERC") filing. *See* CBEC Motion at 7-9.[2] The Shared Facilities Agreement, as filed, is controlling, not the cover letter. The agreement is consistent with the description provided in the Declaration of Jeffrey

[2] Columbia Basin did not include a copy of this agreement, even though it is contained in the same public FERC filing as the cover letter. *See* CBEC Motion at 7 n.7 (citing to public filing).

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Delgado submitted in Support of the Caithness Defendant's Motion for Summary Determination ("Delgado Declaration"). *See* Delgado Declaration Paragraphs 32, 39 and 46. If the cooperative had focused on the agreement, rather than the cover letter, its "discrepancy" would have disappeared.

Columbia Basin's motion also inaccurately describes the scope of the jointly owned facilities, repeatedly asserting that the "Three Wind Projects" jointly own all "the towers, footings, gu[ys], and operating and maintenance equipment for the power lines between the ring bus and each collector substation." Motion at 24; *see also id.* at 3, 9.[3] That is not accurate. Indeed, the copy of the Shared Facilities Agreement attached to Columbia Basin's motion rebuts the very proposition the cooperative attempts to make in the body of that pleading. *See* Kindley Declaration Ex. C, at Exhibit C-1. To name just a few inaccuracies: other than the optical power ground cable containing data and voice lines, there are no jointly owned facilities in Horseshoe

[3] Columbia Basin also contends that the description of jointly owned facilities within the Shared Assets Option Agreement is inconsistent with the controlling Shared Facilities Agreement (non-FERC) upon which it relies. In particular, Columbia Basin asserts there is a discrepancy regarding the ownership of the respective transmission lines connecting the South Hurlburt and Horseshoe Bend collector substations. Columbia Basin's claim is wrong on two fronts. First, the quoted portion of the Shared Assets Option Agreement is not an operative provision; it merely describes the referenced Shared Facilities Agreement, which remains the controlling document regarding ownership of the shared facilities. *See NW Pac. Indem. v. Junction City Water Dist.*, 295 Or 553, 558 (1983), *modified on other grounds*, 296 Or 365 (1984) ("Where a written instrument refers in specific terms to another writing, the other writing is a part of the contract"). As Columbia Basin concedes, the Shared Facilities Agreement (non-FERC) is "very careful" on this very point, excluding "the actual transmission cable or wires located between the ring bus and the" South Hurlburt and Horseshoe Bend collector substations. *See* CBEC Motion at 8. Second, Columbia Basin misinterprets the description within the Shared Assets Option Agreement itself, asserting that it describes the Shared Facilities Agreement as *including* transmission cables and "any other facilities used in connection with such facilities." *Id*. at 8-9. In fact, the option agreement describes the Shared Facilities Agreement as covering the "support mechanisms or other parts *supporting* . . . any transmission cables and other facilities used in connection with such facilities." *See Id*. In other words, the description only covers support facilities (such as guy wires), not the electrical lines themselves. Columbia Basin's strained interpretation would render the remainder of the detailed description superfluous, violating a fundamental rule of contract interpretation. ORS 42.230.

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Bend's territory; they are 100% owned by Horseshoe Bend. *See id.* Similarly, North Hurlburt has no ownership interest (other than the ground cable) in any of the shared facilities south of the shared ring bus. *See id.* The diagram included in the Delgado Declaration Exhibit 6 – provided in discovery, at Columbia Basin's request – makes these points, with reference to the Shared Facilities Agreement.[4]

Columbia Basin's facts section devotes substantial text to various other contracts involving the Caithness Defendants. Certain aspects are not in dispute. CSF is the sole member and manager of North Hurlburt, South Hurlburt, and Horseshoe Bend. The relevance is not apparent, however, and this proceeding is not the proper forum for challenging generally-accepted legal concepts of parent and subsidiary organizations. In any event, like every other business, the companies contract with others to perform services on their behalf. Those unremarkable facts do not change the ownership structure of the wind projects. Yet, Columbia Basin's motion suggests that the Territorial Allocation Law's application turns on peripheral facts such as the identity of the contractors the facility owners engage for accounting and management services, and the ownership of vehicles used by maintenance workers. *See* CBEC Motion at 4. Columbia Basin would mire the Commission in corporate minutia, potentially turning any contract into a possible Territorial Allocation Law contest. This certainly could not have been Legislature's intent in enacting ORS 758.450(4)(c) to exempt wind-energy companies from the Territorial Allocation Law.

In contrast, the Caithness Defendants maintain that all the material facts of this case are traceable to their respective EFSC Site Certificates, BPA LGIAs, their Shared Facilities Agreement, as filed with FERC, and the undisputed facts that their shared ring-bus, BPA's Slatt Substation and the two shared 230-kV lines that connect the ring-bus to Slatt are all located in

[4] Columbia Basin further asserts that the "jointly owned electrical facilities" include "land rights," such as easements and leases. CBEC Motion at 3. It's not clear how an easement could constitute an "electrical facilit[y]," and there is no support for such a claim to be found in ORS 758.400.

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Pacific Power's service territory. There is no evidence to even suggest that anything about Shepherds Flat North, Central or South was designed or constructed as part of any effort to avoid Columbia Basin. Instead, everything was done for the purpose of developing and operating each of these three wind resources in the most economical and environmentally sensitive manner practicable, in the controlling determinations of both EFSC and BPA. As noted repeatedly in the Delgado Declaration, Columbia Basin can point to no comment, criticism or other input it provided during the public EFSC and BPA proceedings concerning the development of the 230-kV interconnection requirements for each resource.

Columbia Basin's "facts" section is also replete with unsupported claims that really have no bearing on its motion. For example, Columbia Basin alleges, without support, that it "relied upon" discussions with Caithness representatives "to conclude it would provide utility service to the Shepherd[s] Flat[] project's load located in the Cooperative's territory." Motion at 13. The Motion then recounts hearsay notes that the cooperative's present counsel declares to be from a 2010 meeting that he did not attend. Moreover, neither his client nor the asserted non-party author of the notes has verified them. *See* Motion at 13-14 and Kindley Declaration Paragraph 10. The Motion similarly recounts the personal notes of a PacifiCorp employee from another 2010 meeting, this time in which no Columbia Basin representative was present. The motion relies so heavily on these notes that it places in quotes passages as if they were transcribed, verbatim statements made by non-party BPA staff. While some hearsay statements may be admissible in this proceeding, there can be little, if any, probative value in the attempted treatment, as fact, of hearsay statements attributed to third parties within notes that wholly lack any foundation or authentication.[5]

[5] The Motion continues with the (again, unsupported) claim that Columbia Basin "first learned of this [2010] meeting" during discovery this past year. Motion at 16. That assertion is surprising, given the correspondence between Caithness and Columbia Basin in 2012 (included in the Kindley Declaration) that describes the discussions Caithness had with BPA, Columbia Basin and PacifiCorp in 2010. *See* Kindley Declaration Ex. L at 2.

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Columbia Basin's Motion then turns to discussion of settlement matters from 2013.[6] At the request of Columbia Basin's former counsel in early 2013, the Caithness Defendants agreed to re-engage in discussions with Columbia Basin and PacifiCorp in an attempt to resolve the station power issue. *See* Declaration of John Cameron in Opposition to Columbia Basin's Motion for Summary Judgment ("Cameron Decl."), Paragraph 4. A few months later, Columbia Basin's counsel notified the parties that if no settlement was reached by mid-May, Columbia Basin would transfer the matter to litigation counsel for prosecution. Cameron Decl. Paragraph 5. The email to BPA on July 24, 2013, that Columbia Basin quotes was a part of the continuing attempt to resolve Columbia Basin's concerns amicably without litigation. For that reason alone, it should not be a part of these summary judgment proceedings.

More objectionable, however, is the motion's self-serving – and unsupported – assertion that settlement failed only because CSF "would not proceed [with settlement] because it would have to pay three demand charges instead of one." CBEC Motion at 21. That claim oversimplifies and mischaracterizes the discussions, the parties' positions, and the reasons why settlement was not achieved. *See* Cameron Decl. Paragraph No. 6. It is also improper to include in Columbia Basin's motion, as it places the Caithness Defendants in the position of having to justify their settlement position in order to respond to the proffered "evidence" – which is conjecture asserted as fact, and presented out of context. Evidence of such compromise negotiations should be excluded as both irrelevant and prejudicial.

[6] Such discussions may not technically qualify as "settlement discussions" under the Commission's rules, but the exclusion of evidence of compromise negotiations is grounded in both relevance and public policy. *See* Committee Commentary to OEC 408, ORS 40.190 ("The evidence can be considered irrelevant on the ground that an offer of compromise may stem as much from a desire for peace as from a sense of weakness.") Irrelevant (and prejudicial) evidence is inadmissible in contested case proceedings. ORS 183.450(1); OAR 860-001-0450.

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IV. COLUMBIA BASIN'S MOTION FAILS AS A MATTER OF LAW

As noted above, the Caithness Defendants incorporate by reference the arguments made in support of their Motion for Summary Determination. What follows are points of emphasis and additional arguments in response to Columbia Basin's motion.

A. The Caithness Defendants are exempt from ORS 758.450.

Columbia Basin's motion fails to accurately comprehend the language of ORS 758.450(4) in asserting that this statute, which expressly exempts from the Territorial Allocation Law's provisions "any corporation, company, individual or association of individuals providing heat, light, or power . . . (c) [f]rom solar or wind resources to any number of customers," does not apply to the Caithness Defendants. As explained in the Caithness Defendants' motion, the text is clear: the exemption applies not merely to certain *acts* of providing wind power to others (as Columbia Basin suggests), but rather to the *entities themselves*. Under Columbia Basin's overly narrow reading, these companies are exempt when they keep their aircraft warning beacons flashing when the winds are blowing, but not when back-up power is needed – at odd hours of the day or week when winds are low – to keep them flashing.

B. Caithness Defendants do not provide "utility service" under ORS 758.450.

1. The Caithness Defendants do not provide "service" through a "connected and interrelated distribution system."

As addressed in the Caithness Defendants' own motion, none of them provide "utility service" under the Territorial Allocation Law. Nothing in Columbia Basin's motion undermines that analysis.

In particular, the Caithness Defendants do not provide "service" to anyone – and certainly not *in* Columbia Basin's territory. "Service" must be distinguished from "consumption." Otherwise, a homeowner would be deemed to provide "utility service" whenever she turned on her television or home computer. The Caithness Defendants addressed both of these aspects in its summary determination briefing and will not repeat the points here. But there is one particular aspect of Columbia Basin's theory warranting further response. In Columbia Basin's

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view, as the parent "corporation," sole member and managing member of its three subsidiaries, CSF "retains ultimate control and management authority over," and "solely manages and controls" the subsidiaries' projects, CBEC motion at 12-13, which are "operate[d]" as "one unit," CBEC motion at 24, and in fact are treated as if they "are one – one customer, one load, and one capacity factor." CBEC Motion at 28. While the Caithness Defendants do not necessarily agree with Columbia Basin's various characterizations, it is interesting to note that, by lumping everyone together, the cooperative is describing only one user, a single consumer that certainly cannot be providing a "service" to anyone. No party has ever asserted that it is impermissible for a party to use its own facilities to obtain electric power for its consumption. *See Northwest Natural Gas Co. v. Oregon PUC*, 195 Or App 547, 557 (2004) ("[A]ll parties agree" it is permissible under the Territorial Allocation Law from an individual business to connect directly to the interstate pipeline for its own use).

Indeed, Columbia Basin's position is perhaps most starkly stated in its "Introduction," in which it asserts that the "utility service" at issue occurs at "the wind towers." CBEC Motion at 2.[7] Taken to its logical conclusion, that position means every end user – from the resident who turns on an upstairs light to an industrial wind project with multiple wind turbines – provides "utility service" to itself through the use of its own facilities. As discussed in the Caithness Defendant's Motion, "service" does not have such a meaning.

Nor is any "utility service" distributed "through a connected and interrelated distribution system." Columbia Basin asserts two arguments in this regard. The first is that the facilities "are not operated, managed or maintained separately." CBEC motion at 27-28. Whether a "distribution system" is "connected and interrelated" has nothing to do with who operates or performs maintenance on the system, as Columbia Basin asserts. That assertion conflates two

[7] This statement is also factually incorrect. Station power is consumed throughout each wind resource, commencing with line losses on the 230-kV lines that connect the resource to its POI within Slatt Substation and in each transmission line, breaker, transformer, meter, computer and other electrical apparatus comprising each resource. *See* Delgado Declaration Paragraphs 18, 59.

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unrelated concepts, without explanation. Columbia Basin's second argument is, as noted above, that PacifiCorp provides power as if the three projects "are one – one customer, one load, and one capacity factor." CBEC motion at 28. Such an argument only supports the Caithness Defendants' position: if there is only one customer, there can be no "distribution." And distribution through facilities that solely connect and interrelate to one customer begs the question of how such facilities are "connected and interrelated."

The Caithness Defendants' motion addresses in some detail the distinctions between the present case and the Court of Appeals' decision in *Northwest Natural Gas*, which are incorporated here without repeating. One aspect bears particular reemphasis, however, because of its omission from Columbia Basin's motion. The Court of Appeals found it significant that the unaffiliated gas consumers in *Northwest Natural* used joint facilities to "connect" to the interstate pipeline *within Northwest Natural's allocated territory*, rather than having separate, individual connections. *See* 195 Or App at 550-51, 559. Here, as required by BPA under the LGIAs, and by EFSC under the Site Certificates, and as contemplated under the FERC order, the point of interconnection ("POI") for each of the three wind projects is at Slatt Substation, *outside of* Columbia Basin's service territory. Columbia Basin provides no explanation of how the use of shared facilities outside of its allocated territory can form a basis for Columbia Basin's claim of reliance on *Northwest Natural Gas*. The fact is that the only shared electrical-conducting facilities used by the Caithness Defendants are outside of Columbia Basin's territory; the electrical lines in Columbia Basin's claimed territory are individually owned by South Hurlburt and Horseshoe Bend. *See* Delgado Decl. Paragraphs 32-33, 39-40, 46-47 and Ex. 6. As Columbia Basin's motion concedes, the Caithness Defendants were "very careful," excluding the electrical lines past the ring bus from the definition of shared facilities. CBEC motion at 8.

At bottom, the lines, breakers and other 230-kV facilities of any Caithness Defendant do not constitute a "connected and interrelated distribution system." Each affiliate's 230-kV facilities are simply part of a separate industrial facility, spread out of necessity over many acres,

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that produces power from the wind. They were built per EFSC and BPA requirements and are now used to move generated power to the BPA transmission system at Slatt Substation.[8] They can also be used to back-feed back-up station power, about 22 percent of the time when the winds die down, thereby eliminating the need for duplicative facilities for that purpose. They serve no other purpose. FERC ruled the facilities under its jurisdiction "are limited and discrete facilities that do not constitute an integrated transmission system …." *See* 135 FERC ¶ 61,251 (2011). Each EFSC Site Certificate includes the facilities as "Related or Supporting Facilities," which bespeaks their function as integral components of industrial facilities. To treat them otherwise is to make every commercial, industrial, or hospital facility with multiple buildings into a "connected and interrelated distribution system" – an unwarranted, but necessary, corollary that would have unintended consequences across Oregon.

2. Columbia Basin has not demonstrated that it does, or even could, provide any "similar utility service" under ORS 758.450.

Columbia Basin's motion is also notably silent on the issue of how it provides "similar utility service" – which it must prove in order for any other entity's alleged service to meet the definition of "utility service." ORS 758.400(3). As addressed in the Caithness Defendants' motion, Columbia Basin does not, and physically cannot, provide similar service.

Indeed, nowhere in its summary judgment pleading does Columbia Basin state where it would, or even could, deliver power – at 230-kV or any other voltage – to either of the back-up station power loads it claims an exclusive right to supply under the Territorial Allocation Law. This comes as no surprise because, in response to their discovery requests, the Caithness Defendants were previously told by Columbia Basin that it had not determined the location, delivery voltage(s), delivery point(s), or metering point(s) at which it might provide station power to Shepherds Flat Central. Delgado Declaration, Paragraph No. 77 (and supporting

[8] Contrast this to *Northwest Natural Gas*, 195 Or App at 550 ("the lateral pipelines have no functional value except as connected or related to the pipeline bypass.").

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exhibits cited therein). The same irresolution about delivery to Shepherds Flat South is apparent in the response addressed in Delgado Declaration, Paragraph No. 77. However, such determinations are necessary because "[t]he only CBEC line in the vicinity of any of the three facilities is the low-voltage radial line over which it serves the low-voltage, 120/240 [volt[9]] load of the Shepherds Flat South maintenance facility." *Id*., Paragraph No. 73.

Without any ability even to deliver back-up station power either to Shepherds Flat South or Shepherds Flat Central, Columbia Basin proposes an interpretation of the Territorial Allocation Law directly contrary to the law's stated purpose. Rather than serving the statutory purposes stated in ORS 758.405, Columbia Basin construes the law as creating an entitlement program for itself. Thus, instead of promoting "[t]he elimination and future prevention of duplication of utility facilities," ORS 758.405, Columbia Basin construes the Territorial Allocation Law to provide it with the exclusive right to construct transmission in its claimed territory, without regard to duplication of existing facilities. Or, if "Columbia Basin would not be interested in being in the transmission business," CBEC motion at 15, then no transmission may be constructed and no back-up station power provided. Under this view, BPA and EFSC acted unlawfully in directing the Caithness Business Entities to interconnect their three wind resources to BPA's Slatt Substation in the manner described in the Delgado Declaration, Paragraph Nos. 31-50, because it was "illegal" for the Caithness Business Entities to have constructed and to now operate the jointly owned facilities specified in each resource's LGIA and Site Certificate. CBEC motion at 32. In other words, Columbia Basin's alleged entitlement somehow supersedes BPA and EFSC authority.

[9] The Delgado Declaration includes a typographical error in Paragraph 73, mistakenly referring to the "low-voltage, 120/240-kV load of the Shepherds Flat South maintenance facility." As reflected in Paragraph 48 of the same declaration (and the reference to "low-voltage" in Paragraph 73 itself), the Shepherds Flat South maintenance facility is served by a 120/240 volt line – 1,000 times lower in voltage.

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Such assertions reflect not only an overreach but a disregard for binding law. As addressed in the Caithness Defendants' motion, the construction and operation of the facilities at issue were mandated by EFSC and BPA – and without objection by Columbia Basin. Those were public processes that Columbia Basin chose not to participate in, yet now seeks to change. Oregon law does not permit such changes – not by OPUC or any other agency. ORS 469.401(3).

Similarly, instead of promoting "efficient and economic use and development and … safety," ORS 758.405, Columbia Basin claims an entitlement to be as inefficient as it may desire by suggesting the construction of duplicative 230-kV transmission facilities at great cost (if it even decides to build anything at all) to supply a back-up station power load of only about 2 MW, at 22 percent load factor. Matters of "safety" are not even mentioned anywhere in Columbia Basin's motion, although the safe operation of facilities that connect both at Slatt Substation and at some other point yet to be determined by Columbia Basin certainly warrant very serious consideration.

Finally, instead of promoting "adequate and reasonable service to all territories and customers affected thereby," *id.*, Columbia Basin claims an entitlement to bar the consumption of electricity in its claimed territory that it does not sell. This is essentially a claim of right to impose a tax or toll on electricity consumption throughout Columbia Basin's claimed territory.

C. Neither Columbia Basin's 1961 territorial allocation order, issued by the Commission in Docket No. U-F-2308, nor applicable law support its claims of entitlement under the Territorial Allocation Law.

There are only two ways by which Columbia Basin may establish its territorial claims. One way is by contract with PacifiCorp, executed pursuant to ORS 758.410. However, Columbia Basin has no such contract. Declaration of Chuck Phinney In Support of PacifiCorp's Motion for Summary Determination, Paragraph No. 19. The second way is by order of the Commission, issued pursuant to ORS 758.435. Columbia Basin has such an order, issued by the Commissioner, as predecessor to the Commission, in 1961. That order is found in the record as Exhibit 1 to Columbia Basin's amended complaint. However, that order does not say as much as

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Columbia Basin claims. It is either silent or tentative on the issues of this case, which concern electricity supply at 230-kV.

In 1961, as now, the territory claimed by Columbia Basin was overwhelmingly rural, with very few electric consumers. Today, CBEC serves only 3,851 meters. Delgado Declaration Ex. 8 at 20. It is therefore no surprise that CBEC's order only mentions transmission and distribution lines at 69 kV, 22 kV, down to 7.2/12.5 kV. The order makes absolutely no mention of any voltage above 69 kV. It makes no mention of 115-kV, currently CBEC's top voltage, Delgado Declaration Exhibit No. 8 at 1, much less any line with a voltage of 230-kV. Simply put, the order does not even contemplate that CBEC might ever own or operate any 230-kV line in providing service to any customer. The only reasonable conclusion to draw is that the Commissioner's 1961 order grants Columbia Basin territorial rights regarding service *only up to* the 69-kV service it could then provide. It would be unreasonable to conclude that this order covers 230-kV service because the record of the proceeding contains no information about 230-kv voltage lines or even any indication that the cooperative asked for 230-kV coverage in its application to the Commissioner.

The soundness of this conclusion is reinforced by the rest of this 1961 order, which is tentative in its conclusions and subject to reopening. For example, on page 7 of the 1961 order, the Commissioner stated:

> As to the Northeast Unserved Area, the witness was of the opinion that it could be readily and easily served by Applicant by extensions thereof when required loads would not exceed 500 KW. Loads of 500 KW and under would be within easy capacity of Applicant or by minor modification of facilities. *Larger loads would warrant analysis of each load separately together with the precise point of delivery.* [Emphasis supplied.]

Again on page 8 of that order, the Commissioner noted the importance of cost-minimization, but then hesitated, reserving judgment in ruling:

> Larger loads would warrant analysis of each load separately and in consideration of its precise location in order to shade costs.

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These determinations reflect a wait-and-see attitude about the need to decide later, when actual facts arise about "larger loads," whether Columbia Basin or some other entity could serve that load more efficiently and economically. Thus, the most that can be reasonably concluded from this order is that Columbia Basin was granted territorial rights regarding small loads that could be supplied at voltages of 69-kV or less, but that supply to "larger loads," certainly those supplied at above 69-kV, would be subject to later determination after the facts became known.

A common Oregon driver's license does not entitle the holder to drive an 18-wheeler through the streets of Salem. To the same end, Columbia Basin's 1961 order allocating territory for service at or below 69-kV does not automatically entitle the cooperative to block consumption of power at 230-kV unless Columbia Basin itself supplies this power.

The most Columbia Basin could say about its 1961 allocation order is that it is ambiguous as to its scope because it never mentions any voltage above 69-kV. That ambiguity should be construed against the entity that applied for the order, Columbia Basin. That order indicates that the cooperative's application covered voltages up to 69 kV, but no higher. Construing the ambiguity about 230-kV against Columbia Basin still provides it with a territorial allocation regarding every end-user it can actually serve from its present system. Construing the ambiguity against the cooperative only prevents it from harassing end-users it cannot even supply with 230-kV service from any line on its system.

The 1961 order is an administrative determination of the Commission, issued in the exercise of its regulatory powers for the purposes specified in ORS 758.405. It is up to the Commission to interpret its own order, and nothing in that order stands in the way of Commission rulings in favor of the Caithness Defendants and in favor of PacifiCorp.

D. Columbia Basin's belated effort to block the use of facilities already constructed seeks relief that neither Commission nor court can provide.

The BPA LGIA and the EFSC Site Certificate for each of Shepherds Flat North, Central and South are binding agreements that specify a single point of interconnection for each

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resource, at 230-kV, in Slatt Substation, which is indisputably within PacifiCorp's service territory. Each wind resource was built – and operated since 2011/2012 – in compliance with those federal and state agreements. If the cooperative had a problem with any of this, the time for it to have acted was before the resources were constructed and interconnected at Slatt Substation – certainly given the open, public processes that accompanied BPA's decision to interconnect the resources to its system and the EFSC siting decisions. Legally, it's too late now.

If Columbia Basin were to prevail, a declaration is not self-enforcing. It would have to seek injunctive relief, but not before this Commission, which lacks the power of injunctive relief. But, assuming a judicial forum, whom would it seek to enjoin?

Columbia Basin could not use a Commission order to enjoin EFSC from enforcing each wind resource's 230-kV interconnection as "related supporting facilities" under the Site Certificates. Under ORS 469.401(3), EFSC decisions control other state agency determinations, not the other way around. Viewed in that light, Columbia Basin's complaint is just an improper collateral attack on the Site Certificates.

It could not enjoin BPA to cease performing its LGIAs. Neither could it enjoin BPA to amend those LGIAs to allow a second, yet-to-be-determined, 230-kV point of interconnection somewhere in Columbia Basin's claimed territory (even if somehow possible at an economically rational cost and in a safe and reliable manner). Injunctive relief does not lie against the federal government under well-established federal constitutional principles. Neither could Columbia Basin use a state declaration to enjoin any Caithness Defendant from performing its LGIA because that would create safety and reliability problems for both the BPA transmission system and for the wind resources themselves – also violations of the EFSC Site Certificates.

Finally, Columbia Basin could not enjoin PacifiCorp from delivering back-up station power to Shepherds Flat North, Central and South within its service territory, at Slatt Substation. PacifiCorp's service territory was established under ORS 758.400-758.475, and its exclusive

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right – and obligation – to deliver power in that territory is certainly no less than the right alleged by Columbia Basin for itself in this case.

All three wind resources were sited, constructed and are now operated in compliance with all applicable laws, as administered by BPA and EFSC in open, public processes. Columbia Basin had the same opportunities as any member of the public to comment or criticize, before the Caithness Defendants invested billions to construct those facilities.

V. THE COMMISSION IS STATUTORILY REQUIRED TO PROTECT ALL OREGON END-USERS OF ELECTRICITY FROM EXPLOITATION BY PUBLIC UTILITIES, INCLUDING THE PROTECTION OF SOUTH HURLBURT AND HORSESHOE BEND FROM EXPLOITATION BY COLUMBIA BASIN, WHICH IS ACTING AS A "PUBLIC UTILITY."

A. Overview of PUC's sole statutory mission

The general powers of the Oregon PUC are spelled out in ORS 756.040, making it inescapably clear that the PUC's role is to serve as the State's consumer-protection agency on behalf of end-users of electric, gas, water and telecommunication services in Oregon:

> In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, *the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction.* In respect thereof the commission shall make use of the jurisdiction and powers of the office *to protect such customers, and the public generally,* from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates. … [Emphasis supplied.]

By its express terms, Oregon law allows no exceptions regarding any statutory provision entrusted by the Legislature to the Oregon PUC for implementation. All end-users of electricity have the statutory right to Commission protection, up to the limits of its regulatory authority.

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B. By reason of its own attempted actions, CBEC is subject to Oregon PUC jurisdiction over "Public Utilities" under ORS Chapter 757, and both South Hurlburt and Horseshoe Bend, as end-users of electricity, are correspondingly entitled to protection under ORS Chapters 757 and 758.

The Oregon PUC's specific consumer-protective powers, exercised on behalf of end-users of electricity, are set forth in ORS Chapter 757 and 758. These statutes subject to PUC regulation any "public utility," a term broadly defined by ORS 757.005(1)(a)(A) to include:

> Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

As defined by this statute, "public utility" is sufficiently broad to include an electric cooperative, such as Columbia Basin. However, over the years, several Oregon Attorney General opinions have construed this definition to exclude cooperatives that provide service only to end-users that choose to become a "member" of that cooperative:

> The relevant words are "to or for public." It is generally accepted that a cooperative which renders a utility service to its members only is not rendering service "to or for the public." It is not a public utility.
>
> The converse is likewise generally accepted. *A cooperative which renders utility service to persons who are not members or holds itself out as willing serve the public generally is a public utility.*
>
> The determination of whether a cooperative is in fact serving the public generally or holding itself out as willing to serve the public generally is a question of fact to be determined in each instance by the commissioner. … [Emphasis supplied; citations omitted.]

Opinion of Attorney General Robert Thornton to Public Utility Commissioner Sam Haley, Opinion No. 6263, 33 Or Op Atty Gen 188, 189 (March 21, 1967); *see also, e.g.*, Opinion of Attorney General George Neuner to Public Utility Commissioner George Flagg, 22 Or Opp Atty Gen. 329, 330 (November 21, 1945) ("The test of a true public utility is whether it holds itself out as willing to serve the general public. The factor of profit is not controlling.").

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The facts of this case make it clear that the "converse" proposition stated in Attorney General Opinion 6263, and quoted above, applies here. In trying to force itself on non-members everywhere within its claimed service territory, Columbia Basin is acting as a "public utility."

First, no Caithness defendant wishes to become a "member" of Columbia Basin for purposes of station power. "Neither Horseshoe Bend nor South Hurlburt desire to become, and are actively opposed in becoming, a 'member' of CBEC regarding any back-up, station power service to either of their facilities." Delgado Declaration Paragraph No. 84.

Second, Columbia Basin's response to North Hurlburt's Data Request No. 14 leaves no doubt that CBEC seeks to serve more than just its "members." It demands to supply any and all electricity consumed in its claimed territory, regardless of whether an end-user is a cooperative "member."

> [Caithness Defendant] Data Request No. 14:
>
> Please explain why the Cooperative would seek to compel utility service upon an end user of electricity that does not want to become a "member" of the Cooperative, as that quoted term is used by the Cooperative.
>
> [CBEC] Response to Data Request No. 14:
>
> The requested information is not commensurate to the needs of this case, vague, ambiguous, and not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following: *To ensure the integrity of its exclusive service territory*. [Emphasis supplied.]

Columbia Basin's admission is documented in Cameron Declaration Exhibit No. 1, and part of the record in this case. Thus, Columbia Basin is holding itself out as the only electric supplier of right everywhere in its claimed territory – whether or not it even has any facilities with which to provide 230-kV service.

This very issue about whether a cooperative with an allocated service territory is a statutory "public utility" was treated by the Attorney General in Attorney General Opinion

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No. 6263, discussed above. Among the questions posed by the Public Utility Commissioner for formal legal opinion was a fourth question about the legal status of the following cooperative:

> "4) A cooperative which has been allocated an area pursuant to the provisions of [former] ORS 757.605 et seq. [now ORS 758.400 et seq.], and is by reason of that allocation the only available supplier of the utility service which it renders in the area allocated and has stated on the record in the allocation proceeding that it would serve all persons in the area requesting service whether or not they are members of cooperative."

The Attorney General formally answered as follows:

> The application by a cooperative for allocation of territory is an application to become the only supplier of the utility service in the territory requested. ORS 757.605 through 757.690. It has purpose similar to the issuance of a certificate of convenience and necessity. Granting a certificate of convenience and necessity to a cooperative allocating territory to it is a dedication of its facilities to a public use. *This fourth circumstance constitutes holding out to serve the public general and would render the cooperative a public utility. To construe the allocation stated otherwise would raise a serious constitutional question.* [emphasis supplied, citations omitted.]

33 Or Op Atty Gen at 190. These Attorney General opinions are dispositive before this Commission about the legal status of a cooperative as a "public utility" under Oregon law. ORS 180.060(6) provides that the Attorney General controls state legal affairs: "The Attorney General shall, when requested, perform all legal services for the state or any department or officer of the state."

That legal service is "requested" whenever a legal opinion, like Opinion No. 6263, is requested from the Attorney General. *See also* ORS 180.060(2). The Attorney General's authority grants her the final say on all legal matters for executive branch agencies: "Under the authority conferred by ORS 180.060, it is my personal responsibility as the state's chief law officer to bring finality and resolution to the legal position of the Executive Branch of state government." Or Op Atty Gen OP-5774 at 1 (May 15, 1985); *see also* Opinion No. 8181, 45 Op Atty Gen 98, 103 (Nov. 4, 1986) ("the Attorney General, not the agency, is responsible for interpreting the statute in the first instance"); Or Op Atty Gen OP-6490 at 6 (March 17, 1994)

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(an "agency's construction of the statute should be considered, but the interpretation of legislative policy as expressed in the words of a statute is a question of law that may be determined by the Attorney General"). This position is reinforced by *Frohnmayer v. SAIF*, 294 Or 570 (1983), which rejected a state agency's attempt to prosecute an action through its own counsel without the Attorney General's consent.

Columbia Basin would thus be required by law to be treated as a "public utility" under ORS 757.005 if it were to capture the back-up station power loads of Horseshoe Bend or South Hurlburt.[10] Columbia Basin's actions to force South Hurlburt and Horseshoe Bend to accept station power, against their express wishes, while denying them service under its published non-discriminatory rates, cannot go un-remedied under Oregon law.[11] Accordingly, if Columbia Basin were to prevail on its motion, a necessary and inescapable corollary to that determination would be that Columbia Basin has forfeited or waived its exemption from regulation as a "public utility" under ORS Chapters 757 and 758 because of (1) its provision of service to non-members, and (2) because of its claim of right to serve all consumers of electricity, both members and non-members alike, within an exclusive service territory. Indeed, South Hurlburt and Horseshoe Bend, as consumers, would have the legal right to insist that the Commission regulate the discriminatory rates and practices of Columbia Basin.

The Commission need never reach this issue if it accepts any of the Caithness Defendants' reasons why this case should be decided against Columbia Basin. However, if it does reach this issue, the Caithness Defendants maintain that the Commission cannot lawfully deny South Hurlburt and Horseshoe Bend its protection against discrimination by Plaintiff Columbia Basin, acting as a statutory "public utility."

---

[10] The Caithness Defendants do not address whether Columbia Basin has already forfeited or waived its exemption from the obligations of a "public utility" by obtaining its territorial-allocation order in 1961. It is not clear that they would have standing to do so, if they themselves were not facing the threat of punitive, discriminatory treatment by Columbia Basin.

[11] Revenues from non-members could also adversely affect Columbia Basin's tax-exempt status.

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VI. CONCLUSION

For the reasons addressed above and in their prior briefing, the Caithness Defendants ask this Commission to deny Columbia Basin's motion for summary judgment.

DATED this 21st day of October, 2014.

DAVIS WRIGHT TREMAINE LLP

By /s/ Derek D. Green

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CERTIFICATE OF FILING AND SERVICE

Docket No. UM 1670

I hereby certify that on the date given below the original and five true and correct copies of the foregoing **OPPOSITION OF DEFENDANTS NORTH HURLBURT WIND, LLC, SOUTH HURLBURT WIND, LLC, HORSESHOE BEND WIND, LLC AND CAITHNESS SHEPHERDS FLAT, LLC TO COLUMBIA BASIN ELECTRIC COOPERATIVE'S MOTION FOR SUMMARY JUDGMENT** were sent by email and first-class mail to:

Public Utility Commission of Oregon
3930 Fairview Industrial Drive SE
PO Box 1088
Salem, OR 97308-1088
E-mail: puc.filingcenter@state.or.us

On the same date, a true and correct copy of the foregoing document was sent to the following parties by electronic mail as indicated on the attached Service List.

DATED this 21st day of October, 2014.

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BEFORE THE

PUBLIC UTILITY COMMISION OF OREGON

UM 1670

COLUMBIA BASIN ELECTRIC COOPERATIVE, INC., Complainant, v. PACIFICORP, dba Pacific Power, NORTH HURLBURT WIND, LLC, SOUTH HURLBURT WIND, LLC, HORSESHOE BEND WIND, LLC, and CAITHNESS SHEPHERDS FLAT, LLC, Defendants.	**DECLARATION OF JOHN A. CAMERON IN SUPPORT OF CAITHNESS DEFENDANTS' OPPOSITION TO COLUMBIA BASIN ELECTRIC COOPERATIVE'S MOTION FOR SUMMARY JUDGMENT**

I, John A. Cameron, under penalty of perjury, declare as follows:

1. I am one of the attorneys representing defendants North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC and Caithness Shepherds Flat, LLC (the "Caithness Defendants") in this matter.

2. This declaration is filed in support of the Caithness Defendants' response to Columbia Basin Electric Cooperative's ("CBEC") Motion for Summary Judgment.

3. Attached hereto as Cameron Exhibit 1 is a true and correct copy of CBEC's response to a data request submitted by North Hurlburt Wind, LLC in this matter.

4. In February of 2013, CBEC's counsel at that time contacted me about CBEC's station service issue with respect to PacifiCorp and two of the Caithness Defendants. He stated that CBEC intended to file a complaint against PacifiCorp before the Oregon Public Utility Commission, unless a mutually agreeable resolution of his client's issue could be reached.

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5. The parties commenced discussions in a good faith attempt to resolve the dispute, understanding that the parties had differing interpretations of the legal issues involved. In late April of 2013, CBEC's counsel informed me that if the parties did not reach a settlement through an inter-utility agreement by the middle of May, CBEC would transfer the matter to litigation counsel for prosecution. The parties continued to attempt to reach resolution under this threat of litigation, including the later confirmation by CBEC's manager at the time, Jerry Healy, that he had instructed CBEC's present counsel to prepare a OPUC complaint for filing if a settlement was not reached.

6. CBEC's Motion for Summary Judgment inaccurately blames the parties' failure to reach a resolution on the Caithness Defendants. The Caithness Defendants could just as accurately state that the failure to reach a resolution was CBEC's fault because CBEC rejected the Caithness Defendants' attempts at reasonable compromise. The only unbiased conclusion to be drawn is that CBEC, PacifiCorp and Caithness engaged in the settlement discussions requested by CBEC's former counsel, but failed to reach closure on any agreement.

DATED this 21st day of October, 2014.

/s/ John A. Cameron
John A. Cameron

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UM 1670/Columbia Basin Electric Cooperative
November 26, 2013
CBEC Responses to North Hurlburt Wind Data Requests

Data Request No. 14:

14. Please explain why the Cooperative would seek to compel utility service upon an end-user of electricity that does not want to become a "member" of the Cooperative, as that quoted term is used by the Cooperative.

Response to Data Request No. 14:

The requested information is not commensurate to the needs of this case, vague, ambiguous, and not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

To ensure the integrity of its exclusive service territory.

CERTIFICATE OF FILING AND SERVICE

Docket No. UM 1670

I hereby certify that on the date given below the original and five true and correct copies of the foregoing **DECLARATION OF JOHN A. CAMERON IN SUPPORT OF CAITHNESS DEFENDANTS' RESPONSE TO COLUMBIA BASIN ELECTRIC COOPERATIVE'S MOTION FOR SUMMARY JUDGMENT** were sent by email and first-class mail to:

Public Utility Commission of Oregon
3930 Fairview Industrial Drive SE
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On the same date, a true and correct copy of the foregoing document was sent to the following parties by electronic mail as indicated on the attached Service List.

DATED this 21st day of October, 2014.

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