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October 6, 2014

Via Email and US Mail

Public Utility Commission of Oregon
3930 Fairview Industrial Drive SE
PO Box 1088
Salem, OR 97308-1088

Re: Columbia Basin Electric Cooperative, Inc. v. PacifiCorp and North Hurlburt Wind, LLC, et. al
Docket No. UM 1670

Dear Sir/Madam:

Enclosed is the original plus one copy of the Caithness Defendants' Motion for Summary Determination together with the supporting Declaration of Derek Green and Declaration of Jeffrey Delgado.

Exhibits 4, 6 and a portion of Exhibit 8 to the Delgado Declaration are being filed under seal, pursuant to the Protective Order in this case. Copies of the sealed materials are being mailed to the Commission and counsel for the parties (including intervenors).

Please contact me if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP

Derek D. Green

Enclosures
cc: UM 1670 Service List

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.	**MOTION FOR SUMMARY DETERMINATION OF DEFENDANTS NORTH HURLBURT WIND, LLC, SOUTH HURLBURT WIND, LCC, HORSESHOE BEND WIND, LLC AND CAITHNESS SHEPHERDS FLAT, LLC**

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MOTION

Pursuant to OAR 860-001-0420 and the Procedural Order issued on August 18, 2014 in this matter, 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") (all four, collectively, the "Caithness Defendants") move for summary determination denying all claims of Complainant Columbia Basin Electric Cooperative, Inc. ("Columbia Basin") directed at the Caithness Defendants in Columbia Basin's Amended Complaint, filed over a year ago before the Oregon Public Utility Commission ("OPUC" or the "Commission"). This motion is supported by the memorandum of law below, the Declarations of Jeffrey Delgado and Derek Green filed concurrently, and the case file.

MEMORANDUM OF LAW

I. INTRODUCTION AND EXECUTIVE SUMMARY

This case turns on a several straightforward legal questions. The answer advanced by the Caithness Defendants to any of these questions resolves this case in their favor.

First, are Caithness and its three subsidiaries, which own affiliated wind-energy facilities that supply solely wind-energy to a customer, exempt from the Territorial Allocation Law, ORS 758.400 to 758.465, because ORS 758.450(4)(c) expressly excludes companies that provide power "[f]rom solar or wind resources to any number of customers" from the law's provisions?

The answer to this first question is yes. It is undisputed that this case concerns companies that provide power "from wind resources" at wholesale. This exemption was enacted by the Oregon Legislature to encourage renewable energy development by entities like the Caithness Defendants. The exemption applies not only to the activities undertaken by wind energy providers, but also to the providers themselves – "to any corporation, company,

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individual or association" providing power from wind resources. ORS 758.450(4).[1] *See* Section VI.A.1, *infra*.

Second, if the Caithness Defendants are *not* exempt from the Territorial Allocation Law, does that law prohibit South Hurlburt and Horseshoe Bend, owners of affiliated wind-energy facilities that typically self-supply their own power, from backing-up their own self-supplies with power from defendant PacifiCorp, dba Pacific Power ("PacifiCorp"), delivered to them at 230-kV within *PacifiCorp's exclusive Oregon service territory* during times when the winds are becalmed, and self-transporting that power over their own internal 230-kV lines for consumption by electrical motors, computers, battery chargers and other electrical equipment used in operating their own wind-energy facilities, simply because some of that equipment is located in Columbia Basin's claimed service territory, but all of that equipment is electrically isolated from any Columbia Basin transmission line?

The answer to this second question is no. The Commission can reach that answer based solely on the language of the law itself, which only prohibits unapproved persons from providing "utility service" within or into an allocated territory. Neither South Hurlburt nor Horseshoe Bend (or any other Caithness Defendant) provides "utility service." Instead, Horseshoe Bend and South Hurlburt simply consume, as end-users, the high-voltage, back-up power they purchase from PacifiCorp, delivered to them at 230-kV within PacifiCorp's territory, for their own, exclusive end-use when local winds are becalmed. Neither of them do anything more with that back-up power. Nothing in the Territorial Allocation Law prohibits such consumption by an end-user. *See* Section IV.A.2(a), *infra*.

Third, regardless of the answer to the other questions before the Commission, assuming *arguendo* that any "utility service" is found to be involved in this case, is it a "similar utility

[1] *See also* the proviso at the beginning of ORS 758.450(2): "Except as provided in subsection (4) of this section."

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service" to one provided by Columbia Basin, which has admitted that it does not own or operate any 230-kV transmission facility?

The answer to this third question is no. The respective wind-energy facilities of Horseshoe Bend and South Hurlburt each receive back-up station power from PacifiCorp, delivered in PacifiCorp's service territory, at the 230-kV voltage for which each facility was designed, permitted, constructed, operated and connected to the transmission system of Bonneville Power Administration ("BPA"). Columbia Basin does not and cannot provide power at 230-kV anywhere in its claimed territory because its few transmission facilities are all 115-kV or below. In Columbia Basin's own words, "Columbia Basin Electric Cooperative's system does not include any 230 kV lines, substations, or other facilities at this time." Delgado Declaration Exhibit No. 8 at 2 (CBEC response to Caithness Data Request No. 4). In other words, Columbia Basin does not provide, and cannot provide except at great incremental expense, a "similar utility service" in its claimed territory. *See* Section IV.A.2(b), *infra*.

Summary determination in favor of the other two Caithness Defendants, North Hurlburt and Caithness, is the inescapably correct outcome as well. As a third wind generator, North Hurlburt is also exempt from ORS 758.400 to 758.465 under ORS 758.450(4)(c). Moreover, North Hurlburt is an improper party to this proceeding. Its project's boundaries are entirely within PacifiCorp's service territory, it owns no electrical facilities in Columbia Basin's territory, and does not provide utility service to the other projects. CSF likewise does not provide utility service in or into Columbia Basin's territory. CSF is simply the owner of the North Hurlburt, South Hurlburt and Horseshoe Bend entities. CSF does not own any electrical facilities. It merely provides administrative services to its affiliates, including the function of billing facilitator for the back-up station power delivered to each affiliate by PacifiCorp, *in PacifiCorp's service territory* for their individual consumption. If Columbia Basin were to allege any greater role than administration for CSF, then it would have to accept the legal consequence that CSF would also be exempt from ORS 758.400 to 758.465 under ORS 758.450(4)(c). Accordingly,

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summary determination in favor of all Caithness Defendants is proper. *See* Section IV.A.1 and 2, *infra*.

Columbia Basin's position, in contrast, necessitates an alternative interpretation of the law that is not only inconsistent with the statutory text, but is also fundamentally at odds with the law's express statutory purpose. The Legislature declared the purpose of the Territorial Allocation Law to be to prevent duplication of utility facilities and promote efficient and economic use and development of utility services, while providing adequate and reasonable services to all territories and customers. That legislatively-expressed purpose provides context for the statute and must be considered in interpreting the law. Columbia Basin's interpretation would undoubtedly flout this purpose, requiring not only the creation of additional utility facilities at exorbitant cost, but also conceivably requiring a single customer like South Hurlburt to connect to two separate utility providers, for the same project, solely because one utility believes it has a monopolistic right to so demand. That position finds no support in the Territorial Allocation Law or common sense. Given that all wind and solar projects require back-up power, Columbia Basin's interpretation would also confine the geographical reach of any such project to the boundary of any one utility's service territory. That outcome cannot possibly be consistent with the Legislature's intent to prevent duplication of facilities. *See* Section IV.A.2(d), *infra*.

This Commission need go no further to resolve this case. If the Commission were to adopt Columbia Basin's interpretation, however, it would need to also address a host of other issues that prevent Columbia Basin from prevailing on its claims. The first is that Columbia Basin brought this complaint too late. Back in 2010, before any construction had commenced, the Caithness Defendants were instructed by BPA to discuss back-up power arrangements with both PacifiCorp and Columbia Basin. BPA made this a precondition to its agreement to interconnect their wind resources to its transmission system. In the Caithness Defendant's discussions with Columbia Basin, Columbia Basin never explained how it could serve any

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230-kV load within its claimed territory, and never specified the rate it would seek to impose for that service. It simply made clear that it would not allow the use of any of its existing rates, and intended to impose a discriminatorily higher rate instead. As reflected in the record here, those same uncertainties persist to this day.

Also before any construction had commenced, Columbia Basin was on notice of the Energy Facility Siting Council ("EFSC") proceedings in which the Caithness Defendants were required to identify the location and means for interconnecting their wind resources to the BPA transmission system. The location selected by BPA, a new BPA "Slatt Substation," is within the PacifiCorp service territory. Indeed, the plans for wind development projects in the specified areas were publicly disseminated in 2006. Despite having full knowledge of the proposed wind projects in their territory, Columbia Basin never raised a public objection to the wind projects' development plans, passively sitting by while the Caithness Defendants spent billions of dollars on wind facilities and the new BPA interconnection. After the construction of all those facilities, it belatedly asserts a claim that effectively would require the construction of *additional* facilities after environmental review, at extraordinary cost, in direct opposition to the Territorial Allocation Law's stated policy of avoiding duplication of facilities, and outside of this Commission's legal authority to require.

Columbia Basin's prejudicial conduct should not be condoned. In fact, to the extent that Columbia Basin's complaint would result in the need to alter the facility Site Certificates issued by EFSC, and the BPA interconnection agreements implemented under federal law, it cannot be condoned as a matter of law. *See* Section IV.B-D, *infra*.

At bottom, Columbia Basin's request for relief before this Commission suffers from an inescapable flaw. Over a year after it filed its complaint and despite receiving extensive, detailed information about the Caithness Defendants' operations based on an asserted need to build its case, Columbia Basin has declined to explain where it would or even could deliver back-up power at 230-kV anywhere within its claimed territory, or what facilities it would have to

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construct in order to make such delivery. What it has stated, however, is that if it finds a way to force a sale to any Caithness Party, it will refuse to apply any of its generally applicable rates, instead choosing to discriminate against these particular end-users by "likely" applying a much higher rate that it refused to explain in response to discovery requests.

The Caithness Defendants believe that the reason Columbia Basin has declined to provide the requested information is clear: Columbia Basin *has no ability* to serve the projects at issue unless either of two events occur: (1) new interconnection facilities are built, at extraordinary cost, or (2) Columbia Basin backs-up the projects through Slatt Substation, which is located in PacifiCorp's exclusive service territory. Neither event is consistent with the Territorial Allocation Law. The only other aspect of Columbia Basin's position that is clear is that if it were somehow to prevail, it would materially increase costs to some or all of the Caithness Defendants.

Those are the realities of this case – realities that Columbia Basin very well knew before it filed this complaint over a year ago. The Caithness Defendants are not in violation of the Territorial Allocation Law (and by extension, any PUC exclusive territory order), and in any event, Columbia Basin is unable to provide any reasonable solution as to how it would provide the necessary service.

II. FACTUAL BACKGROUND

The concurrently-filed Delgado Declaration provides a comprehensive description of the wind resources' development, design, the EFSC siting processes and obligations, the BPA interconnection processes and obligations and resource operations. The Caithness Defendants incorporate that description herein without repeating the detail. A summary is as follows:

A. The Caithness Defendants

North Hurlburt, South Hurlburt and Horseshoe Bend each owns and operates a separate wind energy generation facility in north-central Oregon, pursuant to a separate site certificate granted each of them by the Oregon Energy Facility Siting Council ("EFSC"). None of these

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entities sells electric energy at retail or engages in any other activities that would subject them to the jurisdiction of the Commission under ORS Chapter 756, 757 or 758. Instead, each of them is an Exempt Wholesale Generator ("EWG")[2] under the Federal Power Act, as administered by the Federal Energy Regulatory Commission ("FERC"), meaning that none sells power at retail to anyone. Notice of the FERC order acknowledging the EWG status of each of North Hurlburt, South Hurlburt and Horseshoe Bend is entitled: "Notice of Effectiveness of Exempt Wholesale Generator Status" (Nov. 16, 2009), and may be found at 74 F.R. 61144 (Nov. 23, 2009). Each of them is also expressly excluded from the definition of "public utility" under ORS 757.005(1)(b)(C)(iii). *See* Delgado Decl. ¶¶ 3-6.

Caithness is the corporate parent of all three of these resource-ownership entities. *Id*. at ¶ 7.

B. The Three Site Certificates

Shepherds Flat North Site Certificate. North Hurlburt owns and operates the Shepherds Flat North wind energy facility under an EFSC site certificate dated September 11, 2009, as amended on March 12, 2010. Of relevance to this proceeding is the following passage from the Shepherds Flat North site certificate:

> The facility includes a collector substation. The facility includes a 230-kV transmission line between the substation and the interconnection site. *The interconnection site is located at the Bonneville Power Administration Slatt Switching Station*.

See Delgado Decl. ¶¶ 26, 28 and Ex. 5 at 4 (EFSC, First Amended Site Certificate for Shepherds Flat North (March 12, 2010) (emphasis supplied).[3] Shepherds Flat North has "an average electric generating capacity of up to 106 megawatts and a peak generating capacity of not more than 318 megawatts that produces power from wind energy." *Id*. at 3.

[2] A FERC-regulated entity, established under the federal Energy Policy Act of 1992.

[3] Also available at http://www.oregon.gov/energy/Siting/Pages/SFN.aspx.

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Shepherds Flat Central Site Certificate. South Hurlburt owns and operates the Shepherds Flat Central wind energy facility under an EFSC site certificate, also originally dated September 11, 2009, and also as amended on March 12, 2010. The EFSC site certificate designates the same, co-located interconnection site for Shepherds Flat Central: "The interconnection site is located at the Bonneville Power Administration Slatt Switching Station." *See* Delgado Decl. ¶ 28 and Ex. 5 at 8 (EFSC, First Amended Site Certificate for Shepherds Flat Central) (March 12, 2010) (emphasis supplied).[4] Shepherds Flat Central has "an average electric generating capacity of up to 97 megawatts and a peak generating capacity of not more than 290 megawatts that produces power from wind energy." *Id*. at 7.

Shepherds Flat South Site Certificate. Horseshoe Bend owns and operates the Shepherds Flat South wind energy facility under an EFSC site certificate, also originally dated September 11, 2009, and also as amended on March 12, 2010. The EFSC site certificate designates the same, co-located interconnection site for Shepherds Flat South: "The interconnection site is located at the Bonneville Power Administration Slatt Switching Station." Delgado Ex. 5 at 12 (EFSC, First Amended Site Certificate for Shepherds Flat South (March 12, 2010) (emphasis supplied).[5] Shepherds Flat South has "an average electric generating capacity of up to 97 megawatts and a peak generating capacity of not more than 290 megawatts that produces power from wind energy." *Id*. at 11.

As they are legally required under ORS Chapter 469, North Hurlburt, South Hurlburt and Horseshoe Bend each constructed and operates its own wind energy facility in accordance with its EFSC site certificate. Delgado Decl. ¶ 27. Of pertinence here, each facility is interconnected to the Bonneville Power Administration ("BPA") transmission system, at 230-kV, within BPA's Slatt Substation. *Id*.

[4] Also available at http://www.oregon.gov/energy/Siting/Pages/SFC.aspx.

[5] Also available at http://www.oregon.gov/energy/Siting/Pages/SFS.aspx.

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C. The Interconnection of Each Wind Resource Within BPA's New Slatt Substation

At the time wind energy development was proposed at the Shepherds Flat sites, before any EFSC site certificate was issued, there was no electrical substation and no 230-kV transmission line in existence that might interconnect any projects of these sizes to the BPA transmission system. No such facilities existed in the service territories of either Pacific Power or the Cooperative. BPA had to construct new facilities, which it did adjacent to its existing Slatt Switching Station. BPA called its new substation "Slatt Substation," which contains a new 500/230-kV transformer that allows electrical output from each of the three wind energy facilities to be stepped up from the 230-kV voltage specified in each facility's EFSC site certificate to the 500-kV voltage of the BPA transmission system in this area. Delgado Decl. ¶¶ 8-12. The BPA environmental assessment of Slatt Substation was published in the Federal Register, 75 F.R. 64296 (October 19, 2010). "To provide the interconnection, BPA is in the process of expanding its Slatt Substation to accommodate a 230-kilovolt (kV) yard and will provide transmission access for up to 846 MW from the Wind Project to the BPA 500-kV transmission system." *Id*., at 64297 (footnote omitted).

It is undisputed in this case that Slatt Substation is physically located within the exclusive retail service territory of Pacific Power.

D. The Lack of Other Electrical Interconnections and Transmission Lines

The rural area occupied by the three wind energy facilities has no significant electrical loads. It is undisputed in this case that there are no 230-kV transmission facilities in the area owned by the Cooperative, other than part of the Shepherds Flat South internal 230-kV line that connects only to Slatt Substation and is electrically isolated from Columbia Basin. Indeed, the Cooperative neither owns nor operates any 230-kV transmission line or other facility with which it might connect to this Shepherds Flat South internal 230-kV line. *See* Delgado Decl. ¶¶ 73-74.

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E. The Station-Service Requirements of the Wind Energy Generation Facilities

This case concerns the "station-service" requirements of the wind energy facilities. Station service relates to the power consumed by the operation of pumps, heaters, battery chargers, electrical control equipment, motors, and computers, and associate electrical losses, in a power plant. It is a parasitic, consumptive load. *See* Delgado Decl. ¶¶ 58-62. Power plants have at least nominal station-service power requirements even when they are not in production. Individually, the station-service requirements of each of these three wind-energy facilities is under 2 MW. *See* Delgado Decl. ¶ 61. North Hurlburt, South Hurlburt and Horseshoe Bend each self-supply their own station-service requirements. At times when the winds are particularly low (which varies across the land area occupied by the three wind resources), however, each project may have an intermittent need to supplement its own station power supply with external supplies. In other words, each resource owner/operator must keep its computers running and its navigational warning beacons flashing even when the local winds are becalmed. *See* Delgado Decl. ¶ 62.

By design in accordance with both EFSC and BPA requirements, the only Point of Interconnection ("POI") at which any resource can take delivery of externally supplied station power is Slatt Substation, the same 230-kV POI at which each resource owner delivers the electrical output of its wind resource to BPA for delivery to the long-term energy customer of each resource. There is no other 230-kV transmission line or substation through which power might flow, either into or out of any of these resources. The revenue metering for each facility has the bi-directional capability, allowing the discrete measurement of both the outgoing wind energy delivered, at 230-kV, into the BPA transmission system at Slatt Substation, and the incoming station-service power, also at 230-kV, and also delivered at Slatt Substation. All of

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this is covered in each resource owner/operator's individual Large Generator Interconnection Agreement ("LGIA") with BPA.[6] *See* Delgado Decl. ¶¶ 18, 31-32, 38-39, 45-46, 63-67.

As required by BPA's design specifications under each LGIA, all three resources are connected into Slatt Substation via a single 230-kV ring-bus, and two 230-kV connector lines, which North Hurlburt, South Hurlburt and Horseshoe Bend hold in common. Delgado Decl. ¶¶ 32, 39, 46. Caithness has no ownership interest in these 230-kV facilities under the LGIAs or any other agreement. *See* Delgado Decl. ¶ 69.

F. The External, Intermittent Back-Up Supply Of Station Power to each of the Three Wind Energy Facilities within Slatt Substation

North Hurlburt, South Hurlburt and Horseshoe Bend each back-up their self-supply of station power with intermittent external supplies, delivered to them via their respective 230-kV POIs within Slatt Substation. From there, exclusively by means of their jointly and individually owned project facilities, they consume this power in satisfying their respective station-power requirements, inverse to the ebb and flow of local winds across the lands occupied by their individual wind resources. BPA is prohibited by statute from selling power at retail. *See* Delgado Decl. ¶¶ 60-66. Pacific Power is the back-up supplier because delivery is made within Slatt Substation, physically located within Pacific Power's exclusive retail service territory. *See* Declaration of Chuck Phinney in Support of PacifiCorp's Motion for Summary Determination (Phinney Decl.) ¶ 7.

This arrangement with Pacific Power has met the station-service power needs of all three facilities since their completions more than two years ago. Under this arrangement, North Hurlburt, South Hurlburt and Horseshoe Bend each take delivery from PacifiCorp at their respective 230-kV points of interconnection within Slatt Substation. Delgado Decl. ¶ 67.

[6] BPA's LGIA is standardized, based on a FERC prototype agreement. *See* BPA Open Access Transmission Tariff, Attachment L: Standard Large Generator Interconnection Procedures (LGIP), Appendix 6, "Standard Large Generator Interconnection Agreement." This document may be found at: www.bpa.gov/transmission/Doing%20Business/Tariff/Pages/default.aspx.

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PacifiCorp has agreed to aggregate the demands of all three resources for billing purposes under a single Schedule 47 retail contract. Aggregation of demand is economically advantageous to all three resource owners. Delgado Decl. ¶ 68.

Caithness, acting as billing facilitator for its three affiliates, is the signatory on the agreement with PacifiCorp and receives the monthly bill. The bill is divided up, in accordance with Pacific Power's Schedule 47 rates with aggregated demand charges and pro rata divisions among its affiliates, with each resource's individual energy charged to its individual owner, *with no mark-up to Caithness*. Caithness performs this administrative role solely for its three affiliates. *See* Delgado Decl. ¶¶ 68-70.

G. Locations of the Three Facilities

The (confidential) map and diagram attached as Exhibit 6 to the Delgado Declaration depicts the location of the three facilities. The Slatt Substation interconnection point, transmission lines and ring-bus for all three projects are located in Pacific Power's service territory.[7] The entire Shepherds Flat North facility (owned by North Hurlburt) also is entirely within Pacific Power's exclusive service territory. Shepherds Flat Central (owned by South Hurlburt) has facilities in both Pacific Power's and CBEC's territories. Shepherds Flat Central's interconnection point, collector substation, transmission line and a significant number of its turbines are located in Pacific Power's service territory, while some of the turbines are located in the territory claimed by CBEC. However, every one of Shepherds Flat Central's turbines is electrically isolated from the Cooperative, which has no means of serving them from any facility within its claimed territory. Shepherds Flat South (owned by Horseshoe Bend) similarly has facilities in both Pacific Power's and CBEC's territories. Its interconnection point and a portion

[7] In response to a data request, Columbia Basin identified the border between PacifiCorp and Columbia Basin's territory as is relevant to this proceeding. *See* Delgado Declaration Exhibit 8 at 45-46 (confidential).

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of its transmission line are within Pacific Power's territory, while its collector substation, turbines and the remaining section of the transmission line are within CBEC's claimed territory. As with Shepherds Flat Central, every one of Shepherds Flat South's turbines is electrically isolated from the Cooperative. *See* Delgado Decl. ¶¶ 43, 50 and Ex. 6.

H. Dealings With Columbia Basin

Columbia Basin has no way of providing 230-kV back-up station power to any of the three wind resources from anywhere in its claimed territory because it neither owns nor operates any 230-kV facilities anywhere in that territory. However, it seeks to prevent PacifiCorp from supplying back-up power for delivery to each wind resource within PacifiCorp service territory, at Slatt Substation.

During discovery Columbia Basin refused to specify how or where it would make such 230-kV delivery to any Caithness Defendant. It did, however, acknowledge that "Columbia Basin Electric Cooperative's system does not include any 230 kV lines, substations, or other facilities at this time." Delgado Ex. 8 at 2 (CBEC response to NHW Data Request No. 4). When asked where, and at what voltage it could make such delivery, it responded: "Columbia Basin has not done this analysis as the analysis depends on the outcome of this proceeding." *Id.* at 5 (CBEC response to NHW Data Request No. 8(a)).[8]

It is important to bear in mind that the station power requirements of all three wind resources combined is under 5 MW, meaning that the individual station power load of each wind resource is less than 2 MW. Due to the intermittent need to augment each resource's internal self-supply, the load factor of back-up station power is only about 22 percent. Delgado Decl. ¶¶ 61-62. It is intuitively obvious that no one could justify, either economically or

[8] After providing Columbia Basin with extensive and detailed information about the three wind projects in response to Columbia Basin's data requests, the Caithness Defendants renewed their request for Columbia Basin to provide information about how it even *could* provide the requisite service to South Hurlburt and Horseshoe Bend. Columbia Basin again refused to provide such information, asserting it was not available. *See* Delgado Ex. 8 at 22-25.

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environmentally, construction of new 230-kV lines, transformers or substations that would be necessary to serve this small load.

Although Columbia Basin has been circumspect about it during discovery, it may be that it hopes to invade PacifiCorp's exclusive service territory by attempting to sell power at retail at Slatt Substation. However, as addressed further below, this would violate ORS 758.400 – 758.465, at least in the absence of an agreement between Columbia Basin and PacifiCorp executed in accordance with ORS 758.410. No such agreement exists. *See* Phinney Decl. ¶ 19.

These facts matter to the Caithness Defendants because Columbia Basin previously indicated that it would deny service under its generally applicable rates, instead imposing a much higher and discriminatory rate. Although in discovery Columbia Basin still refuses to specify the particulars of the discriminatory charges it envisions, the Caithness Defendants used the limited information actually provided earlier to determine that Columbia Basin intends to increase their costs by as much as $100,000 per year, $3,000,000 over the economic lives of their respective wind resources. Delgado Declaration ¶¶ 81-82. Columbia Basin would also deny them the economic benefits of demand aggregation for billing purposes, as now allowed by PacifiCorp. Neither South Hurlburt nor Horseshoe Bend intend to allow themselves to be subjected to such exploitation by becoming a Cooperative member regarding any station power load. *Id*. ¶ 84.

III. LEGAL STANDARD

Summary determination is appropriate where there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. ORCP 47C; see OAR 860-001-0000(1) (applying ORCPs to contested cases).

IV. ARGUMENT

A. The Caithness Defendants are not in violation of the Territorial Allocation Law.

The premise of Columbia Basin's complaint is that the defendants are in violation of the Territorial Allocation Law (and, by extension, the exclusive territory orders of the Commission that were adopted pursuant to that law). Accordingly, this case begins with an analysis of the

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law's requirements. Interpreting the meaning of a statute requires, first and foremost, "examining the text of the statute *in context*, along with any relevant legislative history." *Oregon Cable Telecomms. Ass'n v. Dept. of Revenue*, 237 Or App 628, 634 (2010) (citing *State v. Gaines*, 346 Or 160 (2009)) (emphasis added). That analysis confirms that the Caithness Defendants are not in violation of the law or the Commission's orders for two reasons. First, they are expressly exempt from the law as providers of wind resources. And second, even if the exemption did not apply to them the Caithness Defendants cannot be in violation of the law because they are not providing utility service.

1. Each of the Caithness Defendants Is Exempted from the Territorial Allocation Law Under the Express Language of ORS 758.450(2) and 758.450(4)(c).

ORS 758.450 describes the activities restricted under the Territorial Allocation Law. However, that statute contains clear exceptions and exemptions, one of which applies here. To set the stage, ORS 758.450(2) begins with the following proviso: "except as provided in subsection (4) of this section." This "subsection (4)" is codified as ORS 758.450(4) and provides as follows:

> (4) The provisions of ORS 758.400 to 758.475 do not apply to any corporation, company, individual or association of individuals providing heat, light or power:
> . . .
> (c) From solar or wind resources to any number of customers;

Under the plain language of this statute, the Caithness Defendants are exempt from the Territorial Allocation Law. North Hurlburt, South Hurlburt and Horseshoe Bend provide power from wind resources to a customer – that is their entire business model. Delgado Decl. ¶6. CSF is simply their parent company, but it too was established for the purpose of developing and managing wind resources that provide power to customers. Delgado Decl. ¶ 7. Accordingly, under the plain language of the proviso in ORS 758.450(2)), and the exemption specified in ORS 758.450(4)(c), the Territorial Allocation Law has no applicability to this case.

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That result is consistent with the Legislature's creation of the exemption, which was to provide a "lift" to solar and wind development. *See* Green Declaration Ex. 1. The Legislature intended to promote the development of wind and solar energy, and enactment of ORS 758.450(4)(c) was one of the ways it achieved that objective. [9]

It is important to note that wind energy corporations, companies, individuals and associations of individuals are all exempted as entities under this statute. This exemption covers all their activities relating to wind or solar energy. If the Legislature had wanted to limit the ORS 758.450(4)(c) exemption to only certain activities, instead of this broad language, it would have done so with a more limited wording of that provision. However, it chose instead to provide the Caithness Defendants, and other wind and solar companies, a very broad exemption that bars the Cooperative's complaint. Each Caithness Defendant is exempt from the Territorial Allocation Law.

Thus, when North Hurlburt, South Hurlburt and Horseshoe Bend followed the BPA and EFSC requirements by building the commonly owned ring bus and 230-kV lines connecting that ring bus to BPA at Slatt Substation, as described in Delgado Declaration, they were acting as exempt companies under ORS 758.450(4)(c). Similarly, when all four Caithness Defendants arranged the economically beneficial aggregation of demands, for billing purposes, under a single station-power, back-up agreement with Pacific Power, as described in Delgado Declaration ¶ 68, they were also acting as exempt companies under ORS 758.450(4)(c).

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[9] Another legislative "lift" is the exclusion of wind-power and solar companies from the definition of "public utility" under ORS 757.005(1)(b)(C)(iii).

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2. Even Aside from their Exemption under ORS 758.450(4)(c), the Caithness Defendants are in Compliance with the Territorial Allocation Law because they do not provide "utility service."

a. In the context of ORS 758.400, the Caithness Defendants do not provide "service" to another, and do not distribute electricity through a "connected and interrelated distribution system."

Columbia Basin asserts that the defendants are in violation of ORS 758.450(2), which provides that in a service territory allocated to a particular person – except, importantly, as otherwise provided in the statute – no other person "shall offer, construct or extend utility service in or into an allocated service territory." "Utility service" is a defined term in ORS 758.400, which provides:

> As used in ORS 758.015 and 758.400 to 758.475 *unless the context requires otherwise*:
>
> (3) "Utility service" means *service* provided by any equipment, plant or facility for the *distribution* of electricity to users or the distribution of natural or manufactured gas to consumers *through a connected and interrelated distribution system*. "Utility service" does not include service provided through or by the use of any equipment, plant or facilities for the production or transmission of electricity or gas which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person *providing a similar utility service*.

ORS 758.400(3) (emphases added).

There are three notable aspects of this definition. To begin, the definition itself emphasizes the *requirement* of assessing context in determining whether something meets the definitions of providing "utility service." As addressed below, that context plays a key role in the analysis here.

Second, "utility service" is defined in terms of "service provided . . . to users." Accordingly, to be providing electrical "utility service" under the statute, a party must be providing service *to others* (plural) who use the electricity. The action of obtaining electricity for one's own purposes, and then consuming that electricity, is not "utility service." Otherwise, everyone would be deemed to be providing utility service merely by turning on a television or computer, or by flicking on a light switch.

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Third, the statutory definition of "utility service" refers to "distribution of electricity . . . through a connected and interrelated distribution system." Like "service," "distribution" and "connected and interrelated" are undefined terms that together produce a variety of dictionary meanings. *See, e.g., Webster's Third New Int'l Dictionary* at 480, 660, 1182 and 2075 (1961). What is clear, however, is the Legislature's decision to include the limiting phrase "through a connected and interrelated distribution system" reflects the intent to narrow the law's application to the act of disseminating electricity to others, solely through an integrated distribution grid, rather than through an isolated system that does not serve other entities or form an integrated transmission system. Notably, this concept finds a parallel in federal energy regulation, in which limited and discrete facilities are often exempted from Open Access Transmission Tariff requirements. Here, FERC has already determined that the facilities at issue are "limited and discrete facilities that do not constitute an integrated transmission system." *See* 135 FERC ¶ 61,251 (Delgado Ex. 7 at 6); Delgado Decl. ¶¶ 33, 40, 47. Were it otherwise, then every Oregon mill, factory and hospital with multiple buildings on the same site would be deemed to operate a "connected and interrelated distribution system" as it moved electricity between its own buildings for its own consumption within them.

Combined, these definitions compel the conclusion that none of the Caithness Defendants are providing utility service, and certainly do not offer, construct or extend "utility service" in or into Columbia Basin's allocated territory. There is no dispute that PacifiCorp provides electrical service to facilities jointly owned by the three wind projects at a point of interconnection at the Slatt substation, which is located entirely within PacifiCorp's exclusive service territory. After delivery from PacifiCorp, the wind projects transmit the electricity over their own, internal 230-kV facilities to their individually-owned substations for consumption whenever local winds are inadequate to meet the needs of their individually-owned project electrical machines, computers and lighting. *See* Delgado Decl. ¶¶ 31-32, 38-39, 45-46, 62-70; Phinney Decl. ¶ 7.

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This arrangement does not fit the meaning of "utility service" for two separate reasons. First, the arrangement does not contemplate providing a service *to* anyone: the three wind projects simply use facilities either individually or jointly owned, solely among themselves, to transport electricity for their own end-use, just as contemplated under their individual Site Certificates and their individual LGIAs with BPA. They are not providing *service to* anyone.

Second, the arrangement does not provide "distribution of electricity to users . . . through a connected and interrelated distribution system." Rather, the wind projects merely transport electricity through internally-controlled facilities for their own individual end-use. Even if the projects' acquisition and use of electricity were to be considered "distribution," it would not be distribution through a "connected and interrelated distribution system." There can be no issue of material fact that the mechanism by which they obtain electricity is used solely for their own internal purposes. Indeed, as noted above, FERC has ruled that the same facilities at issue "are limited and discrete facilities that do not constitute an integrated transmission system." *See* Delgado Decl. ¶¶ 33, 40, 47.

b. In the context of ORS 758.400, the Caithness Defendants do not provide "utility service" in an area allocated to another person providing a similar utility service.

Moreover, even if the Caithness Defendants could otherwise fit within the first sentence definition of providing "utility service" in ORS 758.400, the statute's second sentence negates any such conclusion. That sentence reads:

> "Utility service" does not include service provided through or by the use of any equipment, plant or facilities for the production or transmission of electricity or gas which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person *providing a similar utility service.*

ORS 758.400(3) (emphasis added). "Similar" utility service is not defined in the statute. But it is common practice to distinguish between the provision of high and low voltage electricity. *See* Delgado Decl. ¶ 48 (discussing low voltage service requirements). The reason is that the different utility services require different infrastructures. Service at 230 kilovolts is distinctly

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different from service at 120/240 volts. Any attempt to serve a 230-kV load at 120/240 volts, or vice versa, would have catastrophic consequences for both utility and end-user. Reading these two disparate services as "similar" is to improperly read the word "similar" right out of the statute despite it having been put there by the Oregon Legislature. *See Brown v. Hackney*, 228 Or App 441, 448 (2009) ("That construct would conflict with legislative directives that the office of the judge is to interpret statutes so as to give meaning to every word and that we shall not omit what has been inserted.").

The facts of this case reflect these differences. By design, reflecting BPA and EFSC requirements, the station power required by the wind projects must travel along the same 230-kV transmission lines that are used to transport the wind projects' energy output to the BPA transmission grid, to be delivered at one point of interconnection at Slatt Substation. Delgado Decl. ¶ 63. Columbia Basin simply does not have the facilities necessary to supply such power, and has repeatedly acknowledged this fact. Delgado Decl. ¶¶ 73-74. Indeed, Columbia Basin has no 230-kV transmission facilities on its entire system. Delgado Dec. ¶¶ 73-74. It simply does not have the facilities necessary to do so, and there is no other provider of a similar service in its territory.

In contrast Columbia Basin *does* have the facilities necessary to provide low-voltage retail power, and in fact does provide this form of "utility service" to Horseshoe Bend: by means of a standard 120/240-volt connection, Columbia Basin provides low-voltage power to the Shepherds Flat South maintenance building. Delgado Decl. ¶ 48. Such service is of an entirely different nature than that required for station power, as reflected in this case. In short, Columbia Basin is not providing a "similar utility service."

c. The case law interpreting the Territorial Allocation Law does not support Columbia Basin's position.

Based on its Complaint, Columbia Basin is likely to rely on *Northwest Natural Gas Co. v. Public Utility Comm'n*, 195 Or App 547 (2004), in which the Court of Appeals addressed a

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similar – but notably different – issue. There, unaffiliated consumers had jointly constructed a "condominium" pipeline for the express, singular purpose of "bypassing" Northwest Natural's distribution mains and obtaining gas service from an interstate pipeline running through Northwest Natural's allocated territory. They intended to cease the service that Northwest Natural had been providing each of them. The bypass pipeline connected to the interstate pipeline within the allocated territory, and had its delivery tap points with the various consumers within that same allocated territory. *See id.* at 550-51. Although the OPUC recognized that such an arrangement was consistent with the purpose of the Territorial Allocation Law, the Court of Appeals ordered remand for further consideration, holding that OPUC's interpretation did not adequately consider whether the consumers were covered entities providing utility service under the statute's definitions. *Id*. at 556-59. The case settled after remand, so the ultimate disposition was never considered again by the court. *See In The Matter of Northwest Natural Gas Co.*, DR 23, Order No 06-038 (Or PUC Jan 30, 2006).

Most notable about this opinion are the facts that distinguish it from the present case. Those distinctions are many; all are compelling.

First, and foremost, is the glaring distinction that *Northwest Natural Gas Co.* did not involve any company exempted from the Territorial Allocation Law under ORS 758.450(4)(c). As the court observed in its opinion,

> ORS 758.450(4) establishes four exceptions to the prohibition, none of which applies to this case.

195 Or App at 551 n. 2. This case is different because ORS 758.450(4) does apply to exempt the Caithness Defendants. *See* Section IV.A.1, *supra*. Thus, Columbia Basin cannot satisfy this Commission's four-part conjunctive test of proving a violation of the Territorial Allocation Law, as that test was summarized by the Court of Appeals in *Northwest Natural Gas Co.*:

> … there are four elements to prove a violation of ORS 758.450:(1) the entity must be a ''person'' or ''persons'' as defined in ORS 758.400(2); (2) the arrangement must involve ''utility service'' as defined in ORS 758.400(3); (3) the utility

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> service must be in an allocated territory; *and* (4) none of the exemptions in ORS 758.450(4) can apply.

195 Or App at 553 (emphasis supplied). Regardless of whatever else Columbia Basin may claim, it cannot satisfy the fourth prong of this conjunctive test.

Second, the court observed that no party disputed that a business could connect directly with the interstate pipeline for its own needs without running afoul of the Territorial Allocation Law, provided it did not do so together with an unaffiliated entity. 195 Or App at 557. Here, Columbia Basin's own pleading reflects that North Hurlburt, South Hurlburt and Horseshoe Bend are all subsidiaries of CSF, the contract counterparty of PacifiCorp. *See* Am. Compl. Ex. 2 at 3; Delgado Decl. ¶¶ 7, 68. There is no dispute that the electricity provided by PacifiCorp is used solely for the internal needs of the three Caithness wind projects of the affiliated entities. The Territorial Allocation Law does not apply to such internal usage.[10]

Even if the three subsidiary companies of CSF were considered unaffiliated users of electricity under the Territorial Allocation Law, the result would be the same. As the court explained, it is the "physical act of distribution to more than one user of electricity . . . that constitutes utility service." 195 Or App at 558. Here, there was no "physical act of distribution to more than one user" within Columbia Basin's territory. Instead, each wind project obtains back-up electricity from PacifiCorp within PacifiCorp's territory, not in the territory claimed by the Cooperative. Each wind resource then transmits that power for its own end-use consumption. All of North Hurlburt's electricity is consumed within PacifiCorp's territory, begging the question of why it is a named party. Delgado Decl. ¶¶31-33. From the jointly owned ring-bus in

[10] The contrast with *Northwest Natural* is all the more evident in the court's description of the "condominium bypass" at issue there: "an arrangement that requires separate entities join together to create a different entity, which owns the bypass pipeline and jointly administers it, appointing one or more of its members for that purpose." 195 Or App at 557. Here, the record evidence is undisputed that the owners of the three wind projects own the shared facilities, and are all subsidiaries of CSF. There is no formation of a separate association by non-affiliated businesses here.

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PacifiCorp's territory, South Hurlburt transmits electricity from its individually owned electrical line to its individually owned substation, which too is located in PacifiCorp's service territory. South Hurlburt then individually transmits that back-up electricity within its own project, for its project's own consumption when local winds are low. *See* Delgado Decl. ¶¶ 38-40. Likewise, from the jointly owned ring-bus in PacifiCorp's territory, Horseshoe Bend transmits electricity from its individually owned electrical line that begins in PacifiCorp's territory to its individually owned substation in Columbia Basin's territory, for use in its project's own purposes. *See* Delgado Decl. ¶¶ 45-47.

Third, in *Northwest Natural Gas Co.,* the court seemed concerned "[t]he PUC found that it was likely that the owner of one of the bypass pipelines would offer service on these conditions to five other nearby industrial customers of Northwest." 195 Or App at 551 n.1. This case is different. North Hurlburt, South Hurlburt and Horseshoe Bend do not believe they could "offer service" to such non-affiliated customers without first obtaining amendments to their respective Site Certificates by EFSC. If North Hurlburt, South Hurlburt or Horseshoe Bend ever sought such an amendment, Columbia Basin could raise its concerns with EFSC.

Fourth, it is also significant and indisputable that the acquisition of back-up electricity by the Caithness defendants does not occur in Columbia Basin's claimed territory. Compare *Northwest Natural Gas Co.,* 195 Or App at 550-51 ("[t]he condominium bypass distribution system is located within [Northwest's] allocated territory and in an area served by distribution facilities owned and operated by [Northwest].'') Instead, back-up power for each of the three wind resources is delivered to them in Pacific Power's service territory, at Slatt Substation.

That fact rebuts any comparison that Columbia Basin may otherwise attempt to draw to the *Northwest Natural* decision, which contemplated non-affiliated consumers acquiring gas from an interstate pipeline *within* Northwest Natural's service territory. In contrast here, the three wind projects obtain the electricity outside of Columbia Basin's territory. One (North Hurlburt) does not consume any electricity at all in Columbia Basin's territory. The other two

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transmit the energy for their own individual projects through their own individually owned electrical lines. While some of the support facilities within Columbia Basin's territory are jointly owned between Horseshoe Bend and South Hurlburt – by design and as mandated by their EFSC site certificates and FERC approved shared facilities agreement – all electrical lines in Columbia Basin's territory are individually owned. *See* Delgado Decl. ¶¶ 32, 39. Such a process is permissible, as contemplated by the Court of Appeals. 195 Or App at 557.[11]

No facilities were constructed or operated for the purpose of bypassing anyone; instead, they were explicitly required by BPA as a condition of being connected to the BPA transmission system, and by EFSC in each of their individual Site Certificates. Receiving back-up station power is not the sole purpose of these facilities, which also move wind power to the BPA transmission system at Slatt Substation. *Compare Northwest Natural Gas Co*, 195 Or App at 550 ("The lateral pipelines have no functional value except as connected or related to the bypass pipeline."). Moreover, the three wind resources, and their intermittent needs for back-up station power, are brand new. No load ever supplied by Columbia Basin has been "bypassed" under the arrangement that supplies each of them with back-up station power. *See* Delgado Decl. ¶ 55.

Finally, it is worth noting that this case does not involve Columbia Basin's "offer of discounted rates." 195 Or App at 549. Far from it, Columbia Basin has refused to apply its generally applicable rates to any back-up load it captures. Instead, it would likely impose much higher rates that could increase the Caithness Defendants' costs by $100,000 per year or more. Delgado Decl., Paragraph No. 82.

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[11] The court in *Northwest Natural* also declined to address whether the condominium bypass pipeline fit the definition of "connected and interrelated distribution system," as required to fit within the definition of "utility service." 195 Or App at 559-60.

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d. The Territorial Allocation Law's stated Legislative Policy is consistent with the position of the Caithness Defendants.

In *Northwest Natural*, the Court of Appeals faulted the OPUC's reliance on the law's stated purpose in determining its meaning, criticizing the OPUC's reliance "on the policy issues that it discusses in the guise of considering the statutory context." 195 Or App at 559 n.6; *see also* 195 Or App at 557 (recognizing statutory policy can provide context to a statute's meaning, but does not inform the "ordinary meaning" of words in a statute). More recent appellate authority calls that criticism into doubt. A policy statement enacted into law provides context for interpretation of the law. *Havi Group LP v. Fyock*, 204 Or App 558, 564 (2006) ("Included in pertinent context are statements of statutory policy.") Indeed, here, the statutory definition *expressly requires* that the context be considered in interpreting the definition of utility service, prefacing the definition with the phrase, "unless the context requires otherwise." ORS 758.400.

To define the "utility service" in ORS 758.450 to prevent three subsidiary wind projects from using their own facilities to obtain electricity *outside of the allocated territory at issue* for their own internal use is not supported by the context of the statute read as a whole. The law includes the stated legislative policy:

> The elimination and *future prevention of duplication of utility facilities* is a matter of statewide concern; and in order to *promote the efficient and economic use and development and the safety of operation of utility services* while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility services.

ORS 758.405 (emphases added).

This stated policy forms the context within which the text of ORS 758.450 and ORS 758.400 must be construed. Columbia Basin's reading of the Territorial Allocation Law turns this purpose on its head. Columbia Basin's interpretation would require either unreasonable or inadequate service to South Hurlburt and Horseshoe Bend, requiring costly new facilities for service through Columbia Basin. It would require duplication of utility facilities to provide that service, at additional cost and less efficiency. Moreover, it would require interpreting the

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statutory definition of "similar utility service" to encompass types of service not even offered in the allocated territory – such as the high voltage 230-kV electricity mandated by the wind projects' regulatory and contractual obligations.

The more reasonable interpretation, as required by the law's context, is that "utility service" as used in ORS 758.450 does not include the acquisition of electricity by affiliated entities outside of the allocated territory solely for their own internal use. That interpretation is consistent with the statutorily-declared policy of preventing duplication of utility facilities and the promotion of efficient and economic use and development of utility service. The more reasonable interpretation further requires interpreting Columbia Basin, whose "electrical transmission and distribution system" contains no 230-kV transmission facilities and no high voltage transmission lines of any voltage in the vicinity of either Shepherds Flat Central or Shepherds Flat South, *see* Delgado Decl. ¶¶73-74, and which has consistently refused to confirm on record the details of the rate and other charges it would impose for such a service, is not "providing a similar utility service."

B. Columbia Basin's Complaint is Barred because it is Untimely.

Separately, Columbia Basin's complaint should be dismissed because it simply comes too late. The time and opportunity for Columbia Basin to raise their concerns was years ago. Their delay has been prejudicial to the Caithness Defendants.

Representatives for what have become the Caithness Defendants engaged in discussions with Columbia Basin no later than 2010 regarding station service power. Indeed, Columbia Basin's manager wrote in 2012 that he had discussions about station service power regarding the proposed wind projects as far back as 2002, and "many times" in the decade that followed. Delgado Decl. ¶ 83 and Ex. 11 at 4. At the time, Columbia Basin informed Caithness that Columbia Basin did not have a retail electric rate for serving any portion of the wind projects, and did not expect to have one for more than a year. Delgado Decl. ¶ 79 and Ex. 11 at 2.

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PacifiCorp, in contrast, had a rate and took the position that it had the right to provide station service for all Caithness-related projects. Delgado Decl. ¶ 68. When Caithness informed Columbia Basin of this fact, Columbia Basin stated that it expected to challenge that position through the PUC. Delgado Decl. ¶ 83 and Ex. 2. But Columbia Basin failed to do so. Caithness thus went ahead in April, 2011 with entering into a contract with PacifiCorp for the station power needs. *Id.*

Columbia Basin did not initiate this complaint until August 2013, more than three years after being put on notice of the issue. Columbia Basin's conduct is thus subject to the laches doctrine, which has three elements: "(1) the plaintiff must delay asserting his claim for an unreasonable length of time (2) with full knowledge of all relevant facts, (3) resulting in such substantial prejudice to the defendant that it would be inequitable for the court to grant relief." *Rise v. Steckel*, 59 Or App 675, 684 (1982).

All three elements are met here. No later than 2010, Columbia Basin knew the parties' general positions. At any time, it could have sought a declaratory ruling by this Commission. ORS 756.450. It had all the requisite knowledge necessary to get the fundamental legal issue decided by the Commission at that time. Yet it decided to wait an additional three years before filing this complaint.

That delay has been unreasonable and prejudicial to the Caithness Defendants. The Caithness Defendants proceeded with their business operations on the assumption that the issue of station power was resolved, and are now faced with much more costly proceedings and the loss of control over confidential and proprietary business information. Columbia Basin has used this case to demand access to vast amounts of confidential and sensitive data that would not have been available to it (because it didn't exist) if Columbia Basin had sought the Commission's guidance in 2010. In particular, Columbia Basin has acquired multiple years of usage and financial data from the three wind projects and a large array of commercially sensitive agreements. The extensive discovery has turned this case into a very expensive litigation matter

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for the Caithness Defendants that simply would not have happened if Columbia Basin had raised the issue earlier.

Columbia Basin's delay in raising the issue now before the commission is all the more prejudicial because Columbia Basin stood by silently while the EFSC and BPA proceedings established the method and location for the wind projects' interconnection. Since 2006, when the predecessor to the Caithness Defendants filed a notice of intent for the development of what became the three wind projects, it has been a matter of public record where the projects intended to interconnect to the BPA transmission system: next to Slatt switching station. *See* Green Declaration Exhibit 2. For years, and at considerable expense, Caithness navigated the interconnection process with BPA, on the one hand, and siting of the project through EFSC. Delgado Decl. ¶¶ 19-29. Those proceedings established the method and location for interconnection as well as the specific outline for the siting of all the requisite transmission facilities.

Those processes were public, with multiple opportunities for public comment. Delgado Decl. ¶¶13-16, 28-29. Yet Columbia Basin never commented. Despite knowing that the proposed interconnection point for all three projects was in PacifiCorp's territory, over the use of new facilities as they exist today, pursuant to the EFSC siting certificates, and despite having conversations (according to Columbia Basin's own manager) about station power for the project(s) since 2002, Columbia Basin failed to raise the issue in the official proceedings. Nor did it raise the issue then with this Commission. Instead, it remained silent as the Caithness Defendants and BPA spent billions of dollars siting and constructing facilities that Columbia Basin lately claims are inadequate. Such conduct is prejudicial and should not be condoned.

C. Columbia Basin's Complaint is an Impermissible Collateral Attack on EFSC Jurisdiction.

Columbia Basin's position further serves as an impermissible collateral attack on the EFSC proceedings. As noted, the Caithness Defendants obtained site certificates specifying how

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and where interconnection will occur. The certificate holders built the wind projects in accordance with those requirements – as required by law. Columbia Basin's complaint seeks to undermine that regulatory mandate.

ORS 469.401(3) provides:

> Subject to the conditions set forth in the site certificate or amended site certificate, any certificate or amended certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the facility.

Absent an agreement with PacifiCorp allowing Columbia Basin to offer service in its territory, Columbia Basin has no means of servicing Horseshoe Bend's or South Hurlburt's high-voltage station service needs through the existing facilities approved through the EFSC proceeding.[12] In other words, Columbia Basin's position would require the modification of the site certificates for those two projects in order to enable the construction of new facilities in Columbia Basin's territory. Not only is such a position economically wasteful and directly at odds with the stated purpose of the Territorial Allocation Law, it is also not something this Commission has jurisdiction to order. The site, construction and operation of the sited facilities as specified in the Site Certificates are all in accordance with Oregon law and now binding on the Commission.

D. In any event, OPUC lacks statutory authority to enjoin end-user business activities or to abrogate Caithness' contract with PacifiCorp

Finally, even if this Commission were to agree with Columbia Basin's interpretation of the Territorial Allocation Law and that the Caithness Defendants are not exempt from the law, that Columbia Basin's complaint is not untimely, and that the complaint does not constitute an impermissible attack on EFSC jurisdiction, the relief available is quite limited. As argued by PacifiCorp (and incorporated here), this Commission lacks authority to award Columbia Basin

[12] PacifiCorp's motion for summary determination addresses Columbia Basin's lack of ability to serve the projects through Slatt Substation. The Caithness Defendants adopt that argument herein.

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damages or to enjoin the business activities of the end-users, such as the Caithness Defendants. See ORS 758.465. To the extent Columbia Basin seeks such relief, it must be denied.

V. CONCLUSION

The Commission's overarching statutory mission is consumer-protection, in balance with the rights of utility owners and investors. In this case, Columbia Basin's existing customers and its owner/members are the same. Granting the Caithness Defendants' motion will paradoxically benefit all of them by removing any incentive for Columbia Basin's management to waste their money on the costly construction of new, duplicative transmission facilities in seeking to capture an unwilling, intermittent back-up load of less than 2 MW and about 22-percent load factor.

For all the foregoing reasons, the Caithness Defendants request this Commission grant it summary determination on all of Columbia Basin's claims.

DATED this 6th day of October, 2014.

DAVIS WRIGHT TREMAINE LLP

By: _____

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Of Attorneys for Defendants North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC and Caithness Shepherds Flat, LLC

CERTIFICATE OF FILING AND SERVICE

Docket No. UM 1670

I hereby certify that on the date given below the original and one true and correct copy(ies) of the foregoing **MOTION FOR SUMMARY DETERMINATION OF DEFENDANTS NORTH HURLBURT WIND, LLC, SOUTH HURLBURT WIND, LCC, HORSESHOE BEND WIND, LLC AND CAITHNESS SHEPHERDS FLAT, LLC** 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 at the contact information as indicated on the attached Service List as follows:

☒ by electronic mail on the date set forth below; and/or

☐ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said party's last-known address and deposited in the U.S. Mail at Portland, Oregon on the date set forth below.

DATED this 6th day of October, 2014.

DAVIS WRIGHT TREMAINE LLP

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Of Attorneys for Defendants North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC and Caithness Shepherds Flat, LLC

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UM 1670
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BEFORE THE

PUBLIC UTILITY COMMISION OF OREGON

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.	Case No. UM1670 **DECLARATION OF JEFFREY DELGADO**

I, Jeffrey Delgado, under penalty of perjury under the laws of the State of Oregon, declare as follows:

1. I have over 20 years of experience in the management and operations of electric generating plants, steam facilities and transmission lines. My business address is: 565 5th Avenue, 29th Floor, New York, NY 10017. I serve as business manager for Caithness Shepherds Flat, LLC ("Caithness") and its subsidiaries. Through my professional capacity, I have acquired knowledge of the facts stated in this declaration.

2. This Declaration was prepared to provide factual support of the Joint Motion for Summary Determination filed in Oregon Public Utility Commission ("Oregon PUC" or "Commission") Docket UM1670 by Caithness, North Hurlburt Wind, LLC ("North Hurlburt"), South Hurlburt Wind, LLC ("South Hurlburt") and Horseshoe Bend Wind, LLC ("Horseshoe Bend") (collectively, the "Caithness Business Entities"). In preparing this Declaration, it was my intention to provide a narrative addressing all facts relevant to disposition of this case. Each

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subject area of facts covered in this Declaration is delineated under a separate descriptive heading.

A. THE CAITHNESS BUSINESS ENTITIES

3. **North Hurlburt** is a Delaware limited liability company, authorized to do business in the State of Oregon. It owns 100 percent of the "Shepherds Flat North" wind-energy facility, located in Gilliam County, Oregon. North Hurlburt owns and operates Shepherds Flat North for the purpose of providing power from its wind resource to its long-term customer. North Hurlburt is the exclusive holder of the "Shepherds Flat North Site Certificate," a binding agreement with the Oregon Energy Facility Siting Council ("EFSC"), issued by EFSC pursuant to ORS Chapter 469 on September 11, 2009. The Shepherds Flat North Site Certificate comprehensively governs all aspects of the design, construction, operation and ultimate decommissioning of Shepherds Flat North. North Hurlburt is the sole taxpayer of record regarding all tangible and intangible assets comprising Shepherds Flat North.

4. **South Hurlburt** is also a Delaware limited liability company, authorized to do business in the State of Oregon. It owns and operates 100 percent of the "Shepherds Flat Central" wind-energy facility, located in Gilliam and Morrow Counties, Oregon. South Hurlburt owns and operates Shepherds Flat Central for the purpose of providing power from its wind resource to its long-term customer. South Hurlburt is the exclusive holder of the "Shepherds Flat Central Site Certificate," a binding agreement with EFSC, also issued by EFSC pursuant to ORS Chapter 469 on September 11, 2009. The Shepherds Flat Central Site Certificate comprehensively governs all aspects of the design, construction, operation and ultimate decommissioning of Shepherds Flat Central. South Hurlburt is the sole taxpayer of record regarding all tangible and intangible assets comprising Shepherds Flat Central.

5. **Horseshoe Bend** is also a Delaware limited liability company, authorized to do business in the State of Oregon. It owns 100 percent of the "Shepherds Flat South" wind-energy facility, located in Gilliam and Morrow Counties, Oregon. Horseshoe Bend owns and operates

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Shepherds Flat South for the purpose of providing power from its wind resource to its long-term customer. Horseshoe Bend is the exclusive holder of the "Shepherds Flat South Site Certificate," a binding agreement with EFSC, also issued by EFSC pursuant to ORS Chapter 469 on September 11, 2009. The Shepherds Flat South Site Certificate comprehensively governs all aspects of the design, construction, operation and ultimate decommissioning of Shepherds Flat Central. Horseshoe Bend is the sole taxpayer of record regarding all tangible and intangible assets comprising Shepherds Flat South.

6. Neither North Hurlburt, South Hurlburt nor Horseshoe Bend sell electric energy at retail or engage in any other activities that would subject any of them to the jurisdiction of the Commission under ORS Chapter 756, 757 or 758. Each of them is a company that provides power to a single customer from a wind resource under contract, and therefore excluded from the definition of "public utility" under ORS 757.005(1)(b)(C)(iii). Each of them is an Exempt Wholesale Generator ("EWG")[1] under the Federal Power Act, as administered by the Federal Energy Regulatory Commission ("FERC"). The FERC order confirming the EWG status of each of North Hurlburt, South Hurlburt and Horseshoe Bend is entitled: "Notice of Effectiveness of Exempt Wholesale Generator Status" (Nov. 16, 2009), and may be found at 74 F.R. 61144 (Nov. 23, 2009).[2]

7. Each of North Hurlburt, South Hurlburt and Horseshoe Bend is a wholly owned subsidiary of Caithness, a Delaware limited liability company, authorized to do business in the State of Oregon. Caithness was organized to develop wind resources in North Central Oregon for the purpose of providing wind-generated power and associated renewable energy certificates ("RECs") to customers, and provides that service through its three operating subsidiaries. Caithness owns its three affiliated companies, but has no direct ownership or control of any

[1] A FERC-regulated wholesale-sale entity, established under the federal Energy Policy Act of 1992. *See* 18 C.F.R. §366.1 (definition of "Exempt Wholesale Generator") and §366.7.

[2] This FERC issuance is attached as Delgado Declaration Exhibit No. 1.

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power or transmission asset comprising any of Shepherds Flat North, Shepherds Flat Central, or Shepherds Flat South. Specifically, Caithness does not have any independent right to utilize any transmission facility, interconnection facility, substation, ring bus, breaker, or point of interconnection to, from, or regarding any of these wind energy facilities. For all purposes relevant here, Caithness serves as a billing facilitator by dividing up the monthly aggregated-demand invoice from Defendant PacifiCorp among its three affiliates. This facilitator role could be provided by any CPA firm.

B. THE NEW 500/230-KV SLATT SUBSTATION BUILT AND OWNED BY BPA

8. At the time wind-energy development was envisioned for the area where Shepherds Flat North, Central and South are located, there was no electrical infrastructure in existence with which to interconnect any wind energy facility to the only extra-high voltage transmission system in that area, which is owned and operated by Bonneville Power Administration ("BPA"). BPA's transmission system in the area was, and continues to be, limited to several 500-kV lines. There was no substation in existence through which power might be transformed to, or from, 230-kV (which is the design interconnection voltage for each of the three wind-energy facilities under its separate EFSC Site Certificate). BPA's existing infrastructure was limited to a 500-kV switching station, known as the "Slatt Switching Station." The Slatt Switching Station connects BPA's several 500-kV transmission lines and allows BPA to switch power flows between these 500-kV lines, but did not include any transformation equipment before development of Shepherds Flat North, Central and South.

9. Under BPA's Open Access Transmission Tariff ("OATT"), anyone intending to transmit power across BPA's transmission system may request an interconnection for the purpose of interconnecting an energy resource to that system (an "interconnection request") and transmitting power from the facility over that system (a "transmission-service request").

10. An interconnection request was made to BPA by Lifeline Renewable Energy, Inc. ("Lifeline"), as predecessor in interest to each of North Hurlburt, South Hurlburt and Horseshoe

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Bend, regarding proposed wind energy generation facilities within a 21,000-acre area of Gilliam and Morrow Counties, Oregon. Lifeline also made a corresponding transmission-service request to BPA. Upon receipt of the interconnection request, BPA conducted engineering and engineering-economic studies, at Lifeline's expense, to determine the best plan of interconnection. BPA also determined the availability of firm transmission service on its system regarding Lifeline's transmission-service request.

11. Lifeline's wind-energy interests, including rights pertaining to its interconnection request and transmission request to BPA, were subsequently transferred to Caithness.

12. BPA's study concluded that construction of a new 500/230-kV "Slatt Substation," adjacent to its existing 500-kV Slatt Switching Station, was the only economically feasible interconnection that it could make available for the purpose of connecting a major new wind-energy facility (like each of Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South) to its transmission system. BPA determined that there was no economically feasible alternative interconnection, and BPA did not offer any alternative to any of the Caithness Business Entities.

13. In 2008, BPA conducted a public process, including meetings and opportunities for public comment. Although some public comments were received, none concerned the location of BPA's proposed interconnection at its new Slatt Substation. Specifically, Plaintiff Columbia Basin Electric Cooperative ("CBEC") did not submit any comment to BPA regarding BPA's proposed plan to interconnect the wind-energy facilities of the Caithness Business Entities solely at a soon-to-be constructed Slatt Substation. On July 18, 2008, BPA issued its Record of Decision, which is publicly available on the BPA website and provides:

> BPA has decided to offer contract terms through a LGIA [Large Generator Interconnection Agreement] for interconnection of the Shepherds Flat Wind Project into the FCRTS [Federal Columbia River Transmission System] at Slatt Substation in Gilliam County, Oregon. The LGIA provides for interconnection of the Wind Project with the FCRTS, the operation of the Wind Project in the BPA Control Area (including control area services such as generation imbalance service), and the maintenance of reliability of the FCRTS and interconnected

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> systems. As described above, BPA has considered both the economic and environmental consequences of taking action to integrate power from the Wind Project into the FCRTS.[3]

A copy of this BPA Record of Decision is attached as Delgado Declaration Exhibit No. 2 (quoted portion on page 29). An announcement and summary of the Record of Decision was published in the Federal Register at 73 F.R. 43730 (July 28, 2008). BPA included a map of the wind-energy facilities as Figure 1 in its record of decision. As required under the National Environmental Policy Act ("NEPA"), BPA conducted two, successive environmental reviews of its plan to construct Slatt Substation for the purpose of connecting each of Shepherds Flat North, Central and South to its transmission system.

14. In 2010, BPA updated its environmental analysis once EFSC had issued separate site certificates for Shepherds Flat North, Central and South. Again, BPA sought public comment on its proposal to construct Slatt Substation for the purpose of connecting the wind energy facilities of the Caithness Business Entities. Again, CBEC did not submit any comment on BPA's intention to connect the facilities at Slatt Substation. On September 24, 2010, BPA issued its Revised Record of Decision, published at 75 F.R. 64296 (October 19, 2008).

15. Following completion of these environmental reviews and opportunities for public comments, BPA offered to construct Slatt Substation and connect to its transmission system the wind-energy facilities that now comprise Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South. Slatt Substation includes a new 500/230-kV transformer and associated equipment, thereby allowing each of Shepherds Flat North, Central and South to connect to the BPA transmission system at a voltage of 230-kV.

16. The total installed cost of Slatt Substation was estimated at $52 million, for which the Caithness Business Entities were required to fund BPA's costs, up-front, under the terms of

[3] BPA originally offered Caithness a single LGIA. However, that was replaced with three LGIAs, one for each of the three wind energy facilities.

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BPA's OATT. All terms and conditions of each interconnection are specified in three separate BPA LGIAs, one for each of the three wind facilities.

17. BPA's Slatt Substation is located within Defendant Pacific Power's Oregon retail service territory, according to Pacific Power.

18. Pursuant to each of the three LGIAs, the respective outflows and inflows of power from, and to, each wind resource are measured by BPA, by means of bi-directional revenue meters installed, owned and operated by BPA (two meters for each project). These BPA meters determine (1) the amount of wind power generated at each facility for sale under each facility's power sale agreement (and the corresponding number of RECs received by the customer), (2) the corresponding amounts of BPA transmission service utilized to transmit this renewable energy output from each resource to the customer, and (3) the amounts of power acquired at Slatt Substation to back-up each facility's self-supply of station power. Under each LGIA, all meter readings are adjusted by BPA for losses back to Slatt Substation, the 230-kV Point-of-Interconnection ("POI") to the BPA system for each wind facility. These are the only revenue meters for the three wind resources.

C. THE LARGE GENERATOR INTERCONNECTION AGREEMENTS

19. The LGIA is the standardized form of interconnection agreement specified in BPA's OATT; it is based on a *pro forma* model prescribed by FERC. Details of a particular interconnection are contained in exhibits to the LGIA.

20. North Hurlburt has an LGIA to connect its 265-MW Shepherds Flat North facility at its 230-kV POI with BPA within Slatt Substation. South Hurlburt has a separate LGIA to connect its 290-MW Shepherds Flat Central facility at its 230-kV POI with BPA within Slatt Substation. Horseshoe Bend has a separate LGIA to connect its 290-MW Shepherds Flat South facility at its 230-kV POI with BPA within Slatt Substation.

21. Under their individual LGIAs, each of the three owners bore a *pro rata* share of BPA's up-front estimated $52 million cost of construction. The economic necessity of sharing

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the burden of this prepayment, coupled with the absence of viable interconnection alternatives, determined the necessity of interconnecting each of the three wind energy facilities to the BPA transmission system, at a voltage of 230-kV, within BPA's new Slatt Substation.

22. Each of the three LGIAs extends for the economic life of the wind resource covered by it. Excerpts from each LGIA, showing the 230-kV POI for the relevant wind energy facility within Slatt Substation, are contained in Delgado Exhibit No. 3.

23. Delgado Exhibit No.4 is the schematic map included by BPA, identically, in each of the three LGIAs. This is the design that BPA required each of North Hurlburt, South Hurlburt and Horseshoe Bend to follow in interconnecting their respective wind resources to the BPA transmission system within Slatt Substation. The schematic contained in Delgado Exhibit No. 4 addresses both BPA's substation facilities and the facilities constructed, owned and operated by each wind facility. Under the LGIAs, each wind facility is required to connect to BPA at a voltage of 230-kV within Slatt Substation by means of two, jointly owned 230-kV transmission lines, connecting to a jointly owned 230-kV ring-bus, connecting in turn to three individually owned 230-kV transmission lines (each one individually, and not jointly, owned by each separate resource) that connects each wind resource to the ring-bus. BPA's specification of two, 230-kV transmission lines (instead of six) and a single 230-kV ring bus (instead of three) necessitated that these facilities be owned in common by North Hurlburt, South Hurlburt and Horseshoe Bend, thereby ensuring that each facility has its own direct, 230-kV connection to its own POI within Slatt Substation.

24. Each LGIA specifies the exact design, cost and locational requirements demanded by BPA for interconnection of each wind resource to the BPA transmission system. In order to connect to BPA's transmission system, each owner was required to accept BPA's requirements. If any of the facility owners had deviated from those BPA requirements, it would have been in breach of its LGIA and its POI interconnection would have been jeopardized.

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25. Construction of Slatt Substation was completed by BPA in 2011, at a physical location in Gilliam County, Oregon. It is undisputed that Slatt Substation is located within the exclusive Oregon retail service territory of Pacific Power. Thus, the respective POIs within Slatt Substation provided by BPA to each of Shepherds Flat North, Central and South are located within Pacific Power's service territory. The two 230-kV transmission lines and ring-bus, required by BPA and owned in common by the three resource owners (Paragraph No. 23 above), are also located within Pacific Power's Oregon retail service territory.

D. THE THREE SEPARATE SITE CERTIFICATES

26. Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South are each separately certificated by the Oregon Energy Facility Siting Council ("EFSC") under separate Site Certificates, each one executed by EFSC and the relevant entity in September 2009.[4] The EFSC process ran concurrently with BPA's interconnection process. EFSC and BPA coordinated their respective environmental reviews, and each of these governmental agencies focused on Slatt Substation as the point of interconnection for each of the three wind facilities.

27. Each wind facility has been designed, constructed and operated in accordance with its Site Certificate, as required under ORS 469.300, *et seq*. Among its many provisions, each Site Certificate calls for each wind energy facility to be connected to the BPA transmission system at a 230-kV POI within BPA's Slatt Substation (referenced in each Site Certificate as "Slatt Switching Station"). Excerpts from each Site Certificate, as amended, showing the specified interconnection for each facility, are contained in Delgado Declaration Exhibit No. 5. Had any of the three facility owners deviated from the POI specified in its Site Certificate in the design and construction of its facility, it would have been in violation of Oregon law.

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[4] EFSC originally issued Caithness a single Site Certificate. However, that was replaced with three Site Certificates, one for each of the three wind energy facilities, with different owners, so that each facility could be separately financed, constructed and operated, with its own separate decommissioning bond.

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28. Prior to issuance of the three Site Certificates in September of 2009, multiple rounds of notice, hearings and comment were conducted in accordance with OAR Chapter 345. Public comment opportunities included the opportunity to comment on provisions in the draft Site Certificate that call for the interconnection of each of the three facilities to the BPA transmission system within the Slatt Substation to be built by BPA under the three LGIAs. The EFSC Site Certificates for each of the three facilities contain the following design, construction and operational requirement:

> The facility includes a collector substation. The facility includes a 230-kV transmission line between the substation and the interconnection site. The interconnection site is located at the Bonneville Power Administration Slatt Switching Station.

29. This identical specification is found on page 3 of each Site Certificate. *See* Delgado Declaration Exhibit No. 5. During the course of EFSC proceedings there is no record of CBEC providing comments to EFSC, either pro or con, regarding the transmission design, transmission-ownership arrangements or Slatt-Substation interconnection under consideration by EFSC during the siting proceedings for Shepherds Flat North, Central, or South.

E. SHEPHERDS FLAT NORTH

30. Shepherds Flat North is a wind-energy facility comprised of 106 turbines with an installed generating capacity of 265 MW, located in Gilliam County, Oregon. One hundred percent of the electricity generated by Shepherds Flat North is renewable energy from the wind.

31. In accordance with its individual Site Certificate and its individual LGIA, the only electrical connection between the wind turbines, electrical transmission equipment and other facilities comprising Shepherds Flat North and the BPA transmission system exists at North Hurlburt's 230-kV POI with BPA within BPA's Slatt Substation, which is within Pacific Power's Oregon retail service territory.

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32. Specifically, Shepherds Flat North connects directly to its POI within Slatt Substation via a single 230-kV "generator tie line"[5] extending northward from a 230/34.5-kV "collector substation,"[6] located in the midst of the project's 106 wind turbines. This Shepherds Flat North 230-kV generator tie line connects to a five-breaker, 230-kV ring bus, located near Slatt Substation. The Shepherds Flat North 230/34.5-kV collector substation and the Shepherds Flat North 230-kV generator tie line are owned individually by North Hurlburt. From the ring bus, power from Shepherds Flat North flows further north on two additional 230-kV lines into North Hurlburt's 230-kV POI within BPA's Slatt Substation, as specified in North Hurlburt's LGIA.[7] The ring bus and the two, 230-kV connector lines are owned in common with South Hurlburt and Horseshoe Bend, pursuant to their "Shared Facilities Agreement," dated as of December 14, 2010.[8] Through the facilities described herein, North Hurlburt jointly or individually owns and operates all the facilities by which it connects Shepherds Flat North directly to the BPA transmission system, at its POI within BPA's Slatt Substation. The equipment and facilities described in this Paragraph No. 32 are depicted in the schematic map included in this declaration as Delgado Exhibit No. 6. This Shared Facilities Agreement was filed with FERC by the three wind facility owners and accepted by FERC in 2011.[9] Plaintiff CBEC never intervened or otherwise commented to FERC, either pro or con, about this Shared Facilities Agreement.

33. All lines, transformers and breakers described in Paragraph No. 30 are "Related or Supporting Facilities" of Shepherds Flat North, covered under the EFSC Site Certificate issued

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[5] The term used by FERC to describe this line. *See* 2011 FERC Order cited in n. 7, paragraph 13.

[6] A wind-energy term of art used in each of the relevant EFSC Site Certificates.

[7] *See* Delgado Declaration Exhibit Nos. 3 and 4.

[8] *See* Section H ("The Shared Facilities Agreement"), paragraph nos. 51-57, below.

[9] "Order Accepting Shared Facilities Agreement and Granting Request for Waivers," issued in Docket Nos. ER11-3381-000, ER11-3382-000 and ER11-3383-000, 135 FERC ¶ 61,251 (2011). *See* Delgado Declaration Exhibit No. 7.

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to North Hurlburt for that facility. They are used exclusively by North Hurlburt to move electrical output from that facility to its POI within Slatt Substation, and to facilitate consumption of power to back-up the self-supply of station-power, and for no other purpose. Except for its 230-kV connection to BPA's transmission system at its POI within Slatt Substation, all such lines, transformers and breakers are operated in electrical isolation from any other electric transmission or distribution system. FERC has ruled they "are limited and discrete facilities that do not constitute an integrated transmission system ...." *See* 135 FERC ¶ 61,251 (2011) (previously referenced Delgado Declaration Exhibit No. 7).

34. The only other electrical interconnection to any other electrical equipment within Shepherds Flat North is the 120/240-volt service (household voltage) by which Pacific Power provides low-voltage retail power to the Shepherds Flat North maintenance building. However, it would not have been electrically feasible to use this low-voltage connection to transmit power from, or to, the wind turbines and other high-voltage equipment comprising Shepherds Flat North, which are all electrically isolated from this low-voltage connection and the maintenance building it supplies. The Shepherds Flat North maintenance building is located within Pacific Power's Oregon retail service territory, and it receives this low-voltage service pursuant to a retail arrangement between North Hurlburt and Pacific Power.

35. Except for the transmission facilities described in Paragraph Nos. 31 through 34, I am not aware of any other transmission facility, at any voltage, that could be used to interconnect any electric-consuming or electric-production equipment comprising Shepherds Flat North to BPA or to any utility.

36. It is not disputed that Shepherds Flat North is located entirely within Pacific Power's Oregon retail service territory.

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F. SHEPHERDS FLAT CENTRAL

37. Shepherds Flat Central is a wind-energy facility comprised of 116 turbines with an installed generating capacity of 290 MW, located in Gilliam and Morrow Counties, Oregon. One hundred percent of the electricity generated by Shepherds Flat Central is renewable energy generated from the wind.

38. In accordance with its individual Site Certificate and its individual LGIA, the only electrical connection between the wind turbines comprising Shepherds Flat Central and the BPA transmission system exists at South Hurlburt's 230-kV POI with BPA within BPA's Slatt Substation, which is within Pacific Power's Oregon retail service territory.

39. Specifically, Shepherds Flat Central connects directly to its POI within Slatt Substation via a second, discrete 230-kV "generator tie line"[10] also extending northward from a second, discrete 230/34.5-kV "collector substation," this one located in the midst of Shepherds Flat Central's 116 wind turbines. This 230-kV generator tie line connects to the same ring bus described in paragraph No. 32. The Shepherds Flat Central collector substation and the Shepherds Flat Central 230-kV generator tie line are individually owned by South Hurlburt. From the ring bus, power from Shepherds Flat Central flows on the same two, commonly owned 230-kV lines, described in Paragraph No. 32, to South Hurlburt's own POI within BPA's Slatt Substation. Through the facilities described herein, South Hurlburt jointly or individually owns and operates all the facilities by which it connects Shepherds Flat Central directly to the BPA transmission system at its POI within Slatt Substation, as specified in South Hurlburt's own LGIA. The equipment and facilities described in this Paragraph No. 39 are also depicted in the schematic map included in this declaration as previously referenced Delgado Declaration Exhibit No. 6. South Hurlburt is also party to the Shared Facilities Agreement described above in Paragraph No. 32. South Hurlburt joined the other two facility owners in filing that agreement

[10] *See* n. 1 above.

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with FERC, as accepted by FERC in 2011.[11] Plaintiff CBEC never intervened or otherwise commented to FERC, either pro or con, about this Shared Facilities Agreement or about the interconnection of Shepherds Flat Central to BPA at Slatt Substation.

40. All lines, transformers and breakers described in Paragraph No. 39 are "Related or Supporting Facilities" of the Shepherds Flat Central wind energy facility, covered under the EFSC Site Certificate issued to South Hurlburt for that facility. They are used exclusively by South Hurlburt to move electrical output from that facility to its POI within Slatt Substation, and to facilitate consumption of power to satisfy station-power needs, and for no other purpose. Except for its connection to the BPA transmission system at its POI within Slatt Substation, all such lines, transformers and breakers are operated in electrical isolation from all other electric transmission and distribution systems. These facilities also "are limited and discrete facilities that do not constitute an integrated transmission system …." *See* FERC Order, quoted above in Paragraph No. 33.

41. The only other electrical interconnection to any other electrical equipment within Shepherds Flat Central is the 120/240-volt service (household voltage) by which Pacific Power provides low-voltage retail power to the separate Shepherds Flat Central maintenance building. However, it would not have been electrically feasible to use this low-voltage connection to transmit power from, or to, the wind turbines and other high-voltage equipment comprising Shepherds Flat Central, which are all electrically isolated from Pacific Power's low-voltage connection and the maintenance building it supplies. The Shepherds Flat Central maintenance building is located within Pacific Power's Oregon retail service territory, and it receives low-voltage service pursuant to a retail arrangement between South Hurlburt and Pacific Power.

42. Except for the transmission facilities described in Paragraph Nos. 38 through 41, I am not aware of any other transmission line, at any voltage, that could be used to interconnect

[11] FERC citation provided in n.9 above. *See* Delgado Declaration Exhibit No. 7.

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any electric-consuming or electric-production equipment comprising Shepherds Flat Central to BPA or to any utility.

43. It is not disputed that a significant portion of Shepherds Flat Central is located within Pacific Power's Oregon retail service territory, including its collector substation. However, CBEC maintains that some of the wind turbines comprising Shepherds Flat Central are located within its claimed service territory, although all such turbines are electrically isolated from any CBEC transmission line. CBEC has no 230-kV transmission line anywhere in its system with which it could connect to Shepherds Flat Central. In a data request, CBEC admitted that its system is comprised exclusively of a few lines at voltages of 115-kV and below. Delgado Declaration Exhibit No. 8 at 1-2.

G. SHEPHERDS FLAT SOUTH

44. Shepherds Flat South is a wind-energy facility also comprised of 116 turbines and also with an installed generating capacity of 290 MW, located in Gilliam and Morrow Counties, Oregon. One hundred percent of the electricity generated by Shepherds Flat South is renewable energy generated by the wind.

45. In accordance with its individual Site Certificate and its individual LGIA, the only electrical connection between the wind turbines comprising Shepherds Flat South and the BPA transmission system exists at Horseshoe Bend's own 230-kV POI with BPA within BPA's Slatt Substation, which is within Pacific Power's Oregon retail service territory.

46. Specifically, Shepherds Flat South connects directly to its POI within Slatt Substation via a third, discrete 230-kV generator tie line[12] extending northward from a third, discrete 230/34.5-kV "collector substation," this one located in the midst of Shepherds Flat South's 116 wind turbines. This separate 230-kV generator tie line connects to the same ring bus described in paragraph No. 32. From the ring bus, power from Shepherds Flat South flows along

[12] *See* n. 4 above.

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the two, commonly owned 230-kV lines, also described in Paragraph No. 32, to Horseshoe Bend's own POI within Slatt Substation. Through the facilities described herein, Horseshoe Bend jointly or individually owns and operates all the transmission facilities by which it connects Shepherds Flat South directly to the BPA transmission system at its POI within BPA's Slatt Substation. The equipment and facilities described in this Paragraph No. 46 are also depicted in the schematic map included in this declaration as previously referenced Delgado Declaration Exhibit No. 6. Horseshoe Bend is also party to the Shared Facilities Agreement described above in Paragraph No. 32. Horseshoe Bend joined the other two facility owners in filing that agreement with FERC, as accepted by FERC in 2011.[13] Plaintiff CBEC never intervened or otherwise commented to FERC, either pro or con, about this Shared Facilities Agreement or about the interconnection of Shepherds Flat South to BPA at Slatt Substation.

47. All lines, transformers and breakers described in Paragraph No. 46 are "Related or Supporting Facilities" of the Shepherds Flat South wind energy facility, covered under the EFSC Site Certificate issued to Horseshoe Bend for that facility. They are used exclusively by Horseshoe Bend to move electrical output from that facility to its POI within Slatt Substation, and to facilitate consumption of power to satisfy station-power needs, and for no other purpose. Except for its connection to the BPA transmission system at its POI within Slatt Substation, all such lines, transformers and breakers are operated in electrical isolation from all other electric transmission and distribution systems. FERC has held that they, too, "are limited and discrete facilities that do not constitute an integrated transmission system …." *See* FERC Order, quoted above in Paragraph No. 33.

48. The only other electrical interconnection to any other electrical equipment within Shepherds Flat South is the 120/240-volt service (household voltage) by which CBEC provides low-voltage retail power to the Shepherds Flat South maintenance building. However, it would not have been, nor would it be now, electrically feasible to use this low-voltage connection to

[13] FERC citation provided in n. 9 above. *See* Delgado Declaration Exhibit No. 7.

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transmit power from, or to, the wind turbines and other high-voltage equipment comprising Shepherds Flat South, which are all electrically isolated from CBEC's low-voltage connection and the maintenance building it supplies. The Shepherds Flat South maintenance building is located within CBEC's claimed territory, and CBEC provides 120/240-volt service. CBEC has a low-voltage line accessible to this Shepherds Flat South maintenance building. Horseshoe Bend applied for, and receives, power from CBEC with which to supply this isolated, low-voltage load pursuant to a separate retail service arrangement between Horseshoe Bend and CBEC.

49. Except for the transmission facilities described in Paragraph Nos. 45 through 48, I am not aware of any other transmission line, at any voltage, that could be used to interconnect any electric-consuming or electric-production equipment comprising Shepherds Flat Central to BPA or to any utility.

50. It is not disputed that some of Shepherds Flat South's electrical equipment is located within Pacific Power's Oregon retail service territory. However, CBEC claims the turbines are located within its Oregon service territory, although all such turbines are electrically isolated from any CBEC transmission line. CBEC has no 230-kV transmission line anywhere in its small system with which it could connect to Shepherds Flat South. In a data request, CBEC admitted that its system is comprised exclusively of lines at voltages of 115-kV and below. *See* previously referenced Delgado Declaration Exhibit No. 8 at 1.

H. THE SHARED FACILITIES AGREEMENT

51. Because BPA, under each of the three LGIAs, and EFSC, under each of the three Site Certificates, require that North Hurlburt, South Hurlburt and Horseshoe Bend have certain common facilities, it became necessary for these entities to develop a "Shared Facilities Agreement" to provide for such sharing. Facilities covered by the Shared Facilities Agreement serve the purpose of avoiding the cost and environmental effects of duplicative facilities – considerations of importance both to EFSC, under ORS Chapter 469, and to BPA, under NEPA. The shared facilities reduce the total cost of each facility, while minimizing the environmental

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footprint and the utilization of farm land, of material concern to EFSC during the site certification processes.

52. The common-ownership arrangement covered by the Shared Facilities Agreement is contemplated under identical language in the Site Certificate of each facility:

> Companion amendment requests were submitted to the Council by North Hurlburt Wind LLC for Shepherds Flat North (SFN) and by South Hurlburt Wind LLC for SFC. The 230-kV interconnection lines for SFN, SFC and SFS would be jointly owned by the certificate holders for the three facilities, and the power from the three facilities would be carried on the same lines. Contracts among the three certificate holders or with a third party would address transmission line maintenance. All three facilities would use the same transmission line corridor. Use of the alternative route would eliminate the need for the interconnection line to cross an existing high-voltage power line and a County road within the SFN site.

EFSC Final Order, In the Matter of the Request for Amendment #1 of the Site Certificate for Shepherds Flat South, p. 3, lines 10-17 (March 12, 2010) (Delgado Declaration Exhibit No. 9). The arrangement facilitated by Shared Facilities Agreement is thus expressly required by the Site Certificate for each of the three facilities.

53. In compliance with their individual Site Certificates, their individual LGIAs and their Shared Facilities Agreement, each of the three entities identified in Paragraph Nos. 3, 4 and 5 above has ownership of, control over, and operational responsibility for, all facilities described regarding its individual wind facility. All operations and control are conducted individually by the owner (including its contractors) in the normal course of wind energy facility operation, except for activities covered under the Shared Facilities Agreement, as accepted by FERC. [14]

54. Neither BPA nor Pacific Power is a party to the Shared Facilities Agreement.

55. None of the facilities described in the Shared Facilities Agreement were designed or constructed for the purpose of by-passing any retail-serving utility. Instead, all such facilities comprise the best engineering, environmental and land-use design for interconnecting each of the

[14] *See* n. 4 above.

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three wind energy facilities to the BPA transmission system, at the lowest cost, least environmental effect, and lowest utilization of farm land, as required both by EFSC and by BPA.

56. None of the wind energy facility owners may deviate from the 230-kV transmission design specified in its Site Certificate without EFSC approval. Neither could they so deviate without violating their respective LGIAs with BPA. All such facilities have been constructed, and became operational as each of the three wind energy facilities commenced production of renewable energy in 2011 or early 2012.

57. There are two versions of the Shared Facilities Agreement. One version, filed with FERC, deals with matters within FERC's jurisdiction under the Federal Power Act. A second, longer version deals with all matters relevant to shared facilities, including facilities that do not conduct electricity and are thus outside FERC jurisdiction. The former version covers a subset of topics covered by the latter version. This approach was followed in order to better safeguard proprietary information of the contracting parties.

I. Station Power for the Wind Energy Facilities

58. Each of the three wind facilities has a "station power" load. Like any electromechanical or computer application, electricity is consumed in the operation of the facility. For a wind-energy facility, station power is used for running cooling systems, control mechanisms, lighting and emergency equipment within individual wind-turbine assemblies. Station-power load diminishes when turbines are not rotating due to lack of wind, but a portion of that load remains even when the wind is completely becalmed. For example, in order to maintain safe and reliable operations in accordance with contractual and regulatory requirements, even during lulls in the wind, each resource operator must continue consuming electricity to:

- maintain electronic SCADA (supervisory control and data acquisition) communication with BPA transmission schedulers and operators, so that BPA can know, in real-time, the amounts of wind-power output it is actually transmitting and the amounts of "imbalance" energy (+ or -) it must furnish in order to balance scheduled energy production with actual energy production on its system,

- maintain electronic communication with its energy customer so that the customer can know, in real-time, the amounts of wind-power output it is receiving,

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- continue to operate battery chargers and electrical motors on-site to keep all resource components safe and functional, so that turbines can resume or increase renewable energy production the moment wind speeds increase for any and all turbines,
- maintain lighting to ensure the safety of operating and maintenance personnel, and
- operate aircraft warning beacons atop all turbines, in accordance with Federal Aviation Administration regulations and the EFSC Site Certificate.

Thus, station power is vital to the safe and reliable operation of any wind resource. Because of the intermittent nature of wind-generation, a back-up source of station power is part and parcel of the production of power from wind resources for sale to customers.

59. In accordance with their individual EFSC Site Certificates and individual LGIAs, Shepherds Flat North, Central and South are each operated as a separate, total facility. Station-power consumption could be anywhere from Slatt Substation to a pump or computer within an individual turbine assembly. Total station-power consumption for each facility is measured, in aggregate, using the same BPA bidirectional meters also used to measure the aggregate, wholesale electrical output of that facility. Each of the three facilities consumes all, or at least some, of its station power within Pacific Power's Oregon retail service territory, starting with consumption on its side of its POI within Slatt Substation.

60. In accordance with their individual EFSC Site Certificates, Shepherds Flat North, Central and South are each designed and operated to self-supply its station-power requirements with renewable wind energy. On average over the course of a year, the three projects self-supply approximately 78 percent of their collective station-power needs. The Caithness Business Entities routinely explore operational, computer-software and design changes that might increase this self-supply percentage above 78 percent with 100-percent being the ideal.

61. To better understand self-supply, it is important to note that the total aggregate station-power requirements of all three wind-energy facilities is only about 5 MW – well less than 2 MW per resource. This small number should be compared to the installed capacities of the three wind resources, as specified in their respective Site Certificates: 265 MW (North), 290

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MW (Central), and 290 MW (South). About 78 percent of the time on average, each resource generates more than enough energy to self-generate its own station-power needs, with the rest delivered into the BPA transmission system at Slatt Substation for sale to its customer.

62. However, as anyone with knowledge of wind or solar generation is aware, these renewable resources are "intermittent." There are times when local winds are so becalmed that self-generation of consumptive, station-power needs requires an external back-up. Because winds are intermittent, the back-up is also intermittent, consuming small amounts of energy (KWh) per unit of demand (KW). Corresponding to the 78-percent self-supply, the back-up load has a load factor of approximately 22 percent. To the extent the Caithness Business Entities are successful in increasing its percentage of self-supply, this back-up load factor is expected to diminish below 22 percent.

63. It is standard practice in the wind-energy industry to receive back-up station power by use of the same transmission/interconnection facilities with which project output is delivered to the electrical grid. This has the benefits of lower cost and lower environmental impact. Externally supplied station power flows inward along project 230-kV transmission facilities, reverse to the outflow of project output. Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South were each designed to rely on this configuration. The point of delivery for externally supplied station power to each wind resource is the same direct 230-kV POI within BPA's Slatt Substation at which output from each project flows into the BPA transmission system. Each wind facility's EFSC Site Certificate, and each facility's LGIA, contemplates this delivery arrangement, at Slatt Substation, for back-up station power.

64. BPA's Slatt Substation is the only facility through which Shepherds Flat North, Shepherds Flat Central, or Shepherds Flat South could receive externally supplied station power. Delivery of externally provided station power via any other newly constructed facility would necessarily involve the duplication of existing transmission and substation facilities, the redesign and significant reconstruction of one or more of the three wind energy facilities, and then only

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after amendment to the relevant Site Certificates and LGIAs – assuming BPA and EFSC would even be willing to consider such an economically and environmentally unsupportable change.

65. For all three wind energy resources, the consumption of back-up station power commences immediately upon receipt of station power at their respective POIs within Slatt Substation and within Pacific Power's Oregon retail service territory.

66. BPA is prohibited by law from serving retail loads. Prior to offering any LGIA, BPA directed the representatives of the Caithness Business Entities to discuss back-up station power with two utilities that provide retail service in the vicinity: Pacific Power and CBEC.

J. 230-kV Station Power Service from Pacific Power at Slatt Substation

67. The delivery point at which each of the three wind energy facilities receives externally supplied station power is at its own, direct POI within Slatt Substation. From its POI, externally supplied station power is used by each owner, solely for its own consumption, solely by means of the facilities it owns and operates, both individually and under the Shared Facilities Agreement described above.

68. Prior to the construction of any of the three wind energy facilities, representatives of the Caithness Business Entities followed the BPA directive, mentioned in Paragraph No. 66, by making inquiry to Pacific Power about back-up station power. They were informed by Pacific Power of its belief that it had the right under Oregon law to serve the back-up, station-power needs of all three facilities because utility delivery to each of the three wind facilities was completed within Pacific Power's exclusive Oregon service territory, at Slatt Substation. Pacific Power offered to apply its published Schedule 47 rate. At the customers' request, Pacific Power further offered to aggregate the back-up loads of all three Projects for billing demand purposes, thereby allowing the three facilities to optimize their utilization of back-up capacity. This back-up load aggregation benefits all three wind energy facilities by allowing them to utilize demand (MW) more efficiently across the station-power energy consumption of all three facilities combined. These back-up arrangements were subsequently committed to a contract between

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Pacific Power and Caithness, which acts as billing facilitator on behalf of its three subsidiaries: North Hurlburt, South Hurlburt and Horseshoe Bend. The execution date of this Caithness/Pacific Power contract is April 15, 2011. A copy is attached to the summary judgment materials provided by Pacific Power under seal.

69. Although Caithness is signatory the Pacific Power contract, Caithness neither owns nor operates any facilities for the production, transmission, distribution, or consumption of electric power. It has no ability to take delivery of any power from Pacific Power, which power is delivered directly to North Hurlburt, South Hurlburt and Horseshoe Bend at their respective POIs within Slatt Substation, as specified in their individual LGIAs. Caithness is not a party to those LGIAs.

70. Acting as billing facilitator each month, Caithness forwards the Pacific Power station-power invoice to each affiliate, without profit or mark-up, among the three wind energy facilities. It allocates the single, aggregated Pacific Power Schedule 47 demand charge among the three facilities, and assigns the Schedule 47 energy charges according to each wind facility's actual consumption of back-up energy delivered to it by Pacific Power at its POI. This is strictly an accounting function. As noted above, the total aggregated monthly back-up, station-power demand for all three wind energy facilities averages only approximately 5 MW. Each wind facility is responsible for about one-third of that total, less than 1.8 MW, with a load factor of approximately 22 percent.

71. Caithness is not a party to any of the three 120/240-volt arrangements to supply each wind resource's maintenance building. That is because there is no demand-aggregation for billing purposes under any of these low-voltage arrangements. With no aggregated demand charge to allocate among the three owners, there is no billing-facilitator role for Caithness to play, as it does under the Slatt Substation power purchase agreement with Pacific Power.

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K. CBEC's LACK OF 230-kV TRANSMISSION FACILITIES AND ITS REFUSAL TO SUPPLY BACK-UP POWER AT ITS PUBLISHED TARIFF RATES

72. Before executing the agreement with Pacific Power described in Paragraph No. 69 above, representatives of the Caithness Business Entities also followed the BPA directive, mentioned in Paragraph No. 66 above, by meeting with Plaintiff CBEC about back-up station power. The meeting was requested, as directed by BPA, despite the fact that none of the three wind energy resources takes delivery of any back-up station power within the service territory claimed by the Cooperative.

73. Based on the meeting with CBEC, the Caithness Business Entities understood that CBEC had no 230-kV transmission facilities on its system and no high-voltage transmission lines of any voltage in the vicinity of either Shepherds Flat Central or Shepherds Flat South. The 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-kV load of the Shepherds Flat South maintenance facility. *See* Paragraph No. 48 above.

74. The Caithness defendants have subsequently confirmed through data requests that CBEC serves 3,851 meters, of which 80.4 percent are residential loads. Delgado Declaration Exhibit No. 8 at 21 (CBEC response to NHW Data Request No. 22). The "electrical transmission and distribution system" of CBEC is limited to 115-kV. Delgado Declaration Exhibit No. 8 at 1 (CBEC response to NHW Data Request No. 3). CBEC has no 230-kV transmission lines. "Columbia Basin Electric Cooperative's system does not include any 230 kV lines, substations, or other facilities at this time." Delgado Declaration Exhibit No. 8 at 2 (CBEC response to NHW Data Request No. 4).

75. Also based on the meeting described in Paragraph No. 72, the Caithness Business Entities understood that CBEC hoped to deliver station power to Shepherds Flat Central and Shepherds Flat South within Pacific Power's Oregon retail service territory, at Slatt Substation. However, it was the Caithness Business Entities' understanding that CBEC did not have any agreement with Pacific Power by which CBEC might lawfully make such deliveries. The

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Caithness defendants have subsequently confirmed through Pacific Power that the Cooperative does not have any agreement with Pacific Power by which Pacific Power has consented to allow the Cooperative to make any retail delivery at Slatt Substation, which is within Pacific Power's exclusive Oregon retail service territory.

76. The electric substations at which CBEC receives wholesale power from BPA exclude Slatt Substation, the sole POI for each of Shepherds Flat North, Central and South. Delgado Declaration Exhibit No. 8 at 3, 4 (CBEC response to NHW Data Request Nos. 6 and 7).

77. CBEC has 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 Exhibit No. 8 at 5-6, 8, 22-23, 26-29 (CBEC response to NHW Data Request Nos. 8(a), 8(b) and 8(d) and Caithness Data Request Nos. 1 and 2.a). CBEC has not identified any agreement that would allow it to use any meters, owned by any third party, by which to measure station power. *Id.* at 9, 30 (CBEC response to NHW Data Request Nos. 8(e) and Caithness Data Request No. 2.a).

78. CBEC has not determined the location, delivery voltage(s), delivery point(s), or metering point(s) at which it might provide station power to Shepherds Flat South. Delgado Declaration Exhibit No. 8 at 10-11, 13, 24-25, 30-34 (CBEC response to Caithness Data Request Nos. 9(a), 9(b) and 9(d) and Caithness Data Request Nos. 1 and 2.b). CBEC has not determined the capital cost it might incur in arranging to provide station power to Shepherds Flat Central. *Id.* at 12, 33 (CBEC response to NHW Data Request No. 9(c) and Caithness Data Request No. 2.b). CBEC has not identified any agreement that would allow it to use any meters, owned by any third party, by which to measure station power. *Id.* at 14, 35 (CBEC response to NHW Data Request No. 9(e) and Caithness Data Request No. 2.b).

79. Also based on the meeting described in Paragraph No. 72, the Caithness Business Entities understood that CBEC did not intend to serve any such station-power load at any of its published rates, but would instead insist on applying a higher rate that it had yet to develop.

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CBEC's published rates are contained on its website and included as Delgado Declaration Exhibit No. 10. CBEC would discriminate against Shepherds Flat South and Shepherds Flat Central by singling them out for a much higher rate, based on the "Tier 2" wholesale rate then under development by BPA for its preference-power customers, such as CBEC. On top of this Tier 2 CBEC would also intend to add a mark-up and other unspecified charges.

80. In response to data requests, CBEC initially refused to provide the Caithness defendants with detailed information about the rate to which it would hope to subject South Hurlburt and Horseshoe Bend. Delgado Declaration Exhibit No. 8 at 16-19 (CBEC's response to NHW's Data Request Nos. 15, 16, 18 and 19). As shown in this exhibit, CBEC's identical response to each data request seeking rate information is the following: "Columbia Basin Electric Cooperative has not conducted the requested analysis." CBEC has since provided conflicting information as to what rate and charges would, or could, apply. Delgado Declaration Exhibit No. 8 at 37-42 (CBEC's response to Caithness Data Request No. 2d-2.g).

81. Subsequent to the meeting described in Paragraph No. 72, CBEC informed South Hurlburt and Horseshoe Bend that it would not allow them to aggregate their loads in the manner Pacific Power does under the Caithness/Pacific Power Agreement. This refusal was reiterated by CBEC during discovery. Delgado Declaration Exhibit 8 at 44 (CBEC's response to NHW's Request For Admission No. 6).

82. While the back-up, station-power requirements of the three facilities are quite small, the high Tier 2 demand charges, mark-ups and other unspecified charges that CBEC would hope impose could increase annual costs of the Caithness Business Entities by an estimated $100,000 per year. This equates to an additional $3 million over the lives of the facilities. Any more refined estimate in not possible because, as explained above in Paragraph No. 80, "Columbia Basin Electric Cooperative has not conducted the requested analysis" to specify the charges it hopes to impose on South Hurlburt and Horseshoe Bend, both directly and through loss of aggregated-demand billing.

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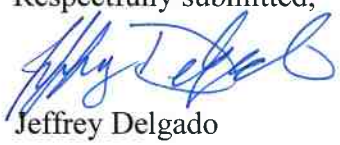
83. In July 2012, the Caithness Business Entities renewed their inquiry about station power to CBEC at the request of Morrow County, Oregon. Delgado Declaration Exhibit 11. Caithness consulted with Pacific Power, CBEC and BPA about a possible consensual agreement under ORS 758.410 that would have allowed CBEC to deliver power in Pacific Power's service territory, at Slatt Substation, to Shepherds Flat South. However, no agreement was reached.

84. Neither South Hurlburt nor Horseshoe Bend will willingly allow themselves to be economically exploited by CBEC in raising their operating costs by as much as $3 million over the economic lives of their respective wind-energy facilities. 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.

DATED this 6th day of October, 2014.

Respectfully submitted,



Jeffrey Delgado

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the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The Apex Expansion proposed facilities include: (1) Approximately 28 miles of 36-inch-diameter pipeline to be constructed in an unlooped portion of Kern River's existing mainline system across the Wasatch Mountains in northern Utah, in Morgan, Davis and Salt Lake counties, (2) three additional 16,000 ISO-rated horsepower (hp) compressor units to be installed at existing compressor stations: Coyote Creek in Uinta County, Wyoming; Elberta in Utah County, Utah; and Dry Lake in Clark County, Nevada; (3) restaging of three existing boost compressors, one at each of three existing compressor stations: Coyote Creek, Elberta and Dry Lake; (4) replacement of a boost compressor at Kern River's existing Fillmore compressor station in Millard County, Utah; and (5) the new Milford Compressor Station with a single unit 30,000 ISO-rated hp compressor to be constructed in Beaver County, Utah. The proposed facilities will add a net 78,000 ISO-rated hp to the Kern River system.

The estimated total cost of the proposed 2010 Expansion is $373 million, which will be financed with a combination of internally generated funds and new debt. Kern River proposes to charge incremental transportation rates and fuel reimbursement charges to Apex Expansion shippers.

Any questions regarding this application should be directed to Michael Loeffler, Senior Director, Certificates and External Affairs, Apex Expansion Project, Kern River Gas Transmission Company, MidAmerican Energy Pipeline Group, 1111 South 103rd Street, Omaha, Nebraska 68124, or (402) 398–7103.

On March 13, 2009, the Commission staff granted Kern River's request to utilize the National Environmental Policy Act (NEPA) Pre-Filling Process and assigned Docket Number PF09–7–000 to staff activities involving the Apex Expansion. Now, as of the filing Kern River's application on November 2, 2009, the NEPA Pre-Filling Process for this project has ended. From this time forward, Kern River's proceeding will be conducted in Docket No. CP10–14–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: December 7, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28017 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EG09–76–000; EG09–80–000; EG09–81–000; EG09–82–000; EG09–83–000; EG09–84–000; EG09–85–000; EG09–86–000; EG09–87–000; EG09–88–000; EG09–89–000]

Sollunar Energy, Inc.; Fowler Ridge II Wind Farm LLC; St. Clair Power, L.P.; North Hurlburt Wind, LLC; South Hurlburt Wind, LLC; Horseshoe Bend Wind, LLC; Ashtabula Wind II, LLC; Elk City Wind, LLC; FPL Energy Stateline II, Inc.; FPL Energy Illinois Wind, LLC; Silver Sage Windpower, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

November 16, 2009.

Take notice that during the month of October 2009, the status of the above-captioned entities as Exempt Wholesale Generators became effective by

operation of the Commission's regulations at 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28013 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–2–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Elk City Storage Expansion Project and Request for Comments on Environmental Issues

November 16, 2009.

The Federal Energy Regulatory Commission (FERC or Commission) is in the process of preparing an environmental assessment (EA) on the environmental impacts of the Elk City Storage Expansion Project (Project) proposed by Southern Star Central Gas Pipeline, Inc. (Southern Star). Southern Star has proposed to construct and operate a new natural gas compressor station in Montgomery County, Kansas, and amend the current operational plan for the existing natural gas storage field.

The Notice of Intent (NOI) explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help determine which issues will be evaluated in the EA. Please note that the scoping period for this Project will close on December 14, 2009.

Comments on the Project may be submitted in written form or electronically, as described below. This NOI is being sent to Federal, State, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors and other interested parties; and local libraries and newspapers. We [1] encourage government representatives to notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Southern Star proposes to construct a compressor station adjacent to an existing Southern Star dehydration plant and install two 450-foot, 30-inch diameter pipelines connecting the proposed compressor station with the existing dehydration plant. The compressor station will be approximately 5.5 acres and the pipeline construction corridor will be 100-foot-wide. A new pond will be constructed south of the compressor station to replace the existing pond that will be filled during construction of the compressor station.

A location map depicting the proposed facilities is attached to this NOI as Appendix 1.[2]

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as results of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources.
- Aquatic resources Vegetation and wildlife.
- Threatened and endangered species.
- Land use, recreation, and visual resources.
- Cultural resources.
- Socioeconomics.
- Air quality and noise.
- Reliability and safety.
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on our previous experience with similar projects in the region. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses specific to the Project.

- Potential noise and vibration impacts from compressor station.
- Air quality impacts from the compressor station.
- Wetland and waterbody impacts.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before December 14, 2009.

Comments on the proposed Project can be submitted to the FERC in written form. For your convenience, there are three methods which you can use to submit your written comments to the Commission. In all instances please reference the Project docket number (CP10–2–000) with your submission. The three methods are:

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called *"Documents and Filings"*. A Quick Comment is an easy method for

[1] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[2] The appendices referenced in this notice are not printed in the **Federal Register**, but they are being provided to all those who receive this notice in the mail. Copies of the NOI can be obtained from the Commission's Web site at the "eLibrary" link, Commission's Public Reference Room, or by calling (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice.

United States Department of Energy **Bonneville Power Administration**

Record of Decision for the Electrical Interconnection of the Shepherds Flat Wind Energy Project July 2008

INTRODUCTION

The Bonneville Power Administration (BPA) has decided to offer contract terms for interconnection of up to 846 megawatts (MW) of power to be generated by the proposed Shepherds Flat Wind Energy Project (Wind Project) into the Federal Columbia River Transmission System (FCRTS). Caithness Shepherds Flat, LLC (CSF) proposes to construct and operate the proposed Wind Project and has requested interconnection to the FCRTS. The Wind Project will be interconnected at BPA's existing Slatt Substation in Gilliam County, Oregon. To provide the interconnection, BPA will expand BPA's existing Slatt Substation to accommodate a 230-kilovolt (kV) yard and will provide transmission access for up to 846 MW from the Wind Project to BPA's 500-kV transmission system.

BPA's decision to offer terms to interconnect the Wind Project is consistent with BPA's Business Plan Final Environmental Impact Statement (BP EIS) (DOE/EIS-0183, June 1995), and the Business Plan Record of Decision (BP ROD, August 15, 1995). This decision thus is tiered to the BP ROD.

BACKGROUND

BPA is a federal agency that owns and operates the majority of the high-voltage electric transmission system in the Pacific Northwest. This system is known as the FCRTS. BPA has adopted an Open Access Transmission Tariff (Tariff) for the FCRTS, consistent with the Federal Energy Regulatory Commission's (FERC) *pro forma* open access tariff.[1] Under BPA's tariff, BPA offers transmission interconnection to the FCRTS to all eligible customers on a first-come, first-served basis, with this offer subject to an environmental review under the National Environmental Policy Act (NEPA).

For all requests for interconnection of generating facilities that exceed 20 MW, BPA chooses to act consistently with FERC's Order 2003, Standardization of Large Generator Interconnection Agreement and Procedures, and Order 661, Interconnection for Wind Energy, as adopted by BPA and incorporated, with FERC approval, into BPA's Tariff. Order 2003 established the

[1] Although BPA is generally not subject to FERC's jurisdiction, BPA follows the open access tariff as a matter of national policy. This course of action demonstrates BPA's commitment to non-discriminatory access to its transmission system and ensures that BPA will receive reciprocal and non-discriminatory access to the transmission systems of utilities that are subject to FERC's jurisdiction.

Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA), which provide a uniform process for offering interconnection to any generating facilities exceeding 20 MW. Order 661 contains additional standardized processes and technical requirements specific to interconnection of wind generators. BPA has adopted its LGIP and LGIA as Attachment L to its Tariff.

In its Order 2003 Tariff filing, BPA included provisions in its LGIP to reflect BPA's obligation to complete an environmental review under NEPA of a proposed large generator interconnection before deciding whether to offer a final LGIA to the party requesting interconnection.

In 2004, CSF submitted a generator interconnection request to BPA to interconnect its proposed Wind Project to the FCRTS. Consistent with its Tariff, including the LGIP, BPA must respond to this interconnection request and comply with its NEPA responsibilities.

RELATIONSHIP TO BUSINESS PLAN EIS

In response to a need for a sound policy to guide its business direction under changing market conditions, BPA explored six alternative plans of action in its BP EIS. The six alternatives were: Status Quo (No Action), BPA Influence, Market-Driven, Maximize Financial Returns, Minimal BPA, and Short-Term Marketing. The BP EIS examined each of these six alternatives as they relate to meeting the regional electric energy need in the dynamic West Coast energy market. The analysis focused on the relationships among BPA, the utility market, and the affected environment and evaluated transmission as well as generation, comparing BPA actions and those of other energy suppliers in the region in meeting that need (BP EIS, Section 1.7).

In the BP ROD, the BPA Administrator selected the Market-Driven Alternative. Although the Status Quo and the BPA Influence Alternatives were the environmentally preferred alternatives, the differences among alternatives in total environmental impacts were relatively small. Other business aspects, including loads and rates, showed greater variation among the alternatives. BPA's ability to meet its public and financial responsibilities would be weakened under the environmentally preferred alternatives. The Market-Driven Alternative strikes a balance between marketing and environmental concerns, including those for transmission-related actions. It is also designed to help BPA ensure the financial strength necessary to maintain a high level of support for public service benefits, such as energy conservation and fish and wildlife mitigation and recovery activities.

The BP EIS was intended to support a number of decisions (BP EIS, Section 1.4.2), including contract terms BPA will offer for transmission interconnection services. The BP EIS and BP ROD documented a strategy for making these subsequent decisions (BP EIS, Figure 1.4-1 and BP ROD, Figure 3, page 15).

BPA's decision to offer terms for interconnecting the Wind Project is one of these subsequent decisions and the subject of this ROD. BPA reviewed the BP EIS to ensure that offering contract terms for interconnecting the Wind Project was adequately covered within its scope and that it was appropriate to issue a record of decision tiered to the BP ROD. This ROD for the Wind Project, which summarizes and incorporates information from the BP EIS, demonstrates this decision is within the scope of the BP EIS and BP ROD.

This ROD describes the specific project and environmental information applicable to this decision to offer contract terms for transmission interconnection of the Wind Project with reference to appropriate sections of the BP EIS and BP ROD. This ROD references information that was incorporated by reference into the BP EIS from BPA's Resource Programs (RP) EIS (DOE/EIS-0162, February 1993). The RP EIS contains an analysis of environmental effects and mitigation for wind projects and associated transmission.

This ROD also summarizes and references Wind Project information from the following sources:

- Application for a Site Certificate for the Shepherds Flat Wind Farm, Prepared for the Oregon Energy Facility Siting Council. Amended February 2007. Caithness Shepherds Flat, LLC.
- Draft Proposed Order Before the Energy Facility Siting Council (EFSC) of the State of Oregon in the Matter of the Application for a Site Certificate for the Shepherds Flat Wind Farm. Oregon Department of Energy. April 7, 2008.
- Proposed Order Before the Energy Facility Siting Council (EFSC) of the State of Oregon in the Matter of the Application for a Site Certificate for the Shepherds Flat Wind Farm. Oregon Department of Energy. June 11, 2008.

PROJECT DESCRIPTION

BPA Interconnection Facilities

To provide interconnection services for the Wind Project, BPA will expand BPA's existing Slatt Substation by approximately 4 acres on the eastern side of the substation. The expansion will consist of a 230-kV yard located immediately adjacent to the existing substation. The area will be cleared and graded. A layer of gravel will be placed on the area. A transformer and other electrical equipment will be placed in the yard. Some of the equipment will be on concrete pads. A set of transmission line terminal structures will be built within the yard to bring conductors from the Wind Project transmission line (constructed by Shepherds Flat) into the 230-kV yard. The interconnection also will require new electrical equipment in the existing Slatt Substation area. An existing access road will be used for construction. The new yard will be fenced to provide security and safety.

Shepherds Flat Wind Farm Project

CSF is proposing to construct and operate a wind power facility that will generate up to 909 MW.[2] The Wind Project will be constructed in north-central Oregon in Gilliam and

[2] Although CSF has applied for certification of a 909-MW facility from Oregon EFSC, CSF has requested interconnection of only 846 MW from BPA under Open Access Same-time Information System (OASIS) Generation Interconnection (GI) request numbers 118 (750 MW) and 291 (96 MW). If CSF should seek interconnection of additional megawatts, it would be through a new request under the Open Access Transmission Tariff. BPA would review any such request under NEPA and prepare any necessary NEPA documentation before making a decision regarding the request.

Morrow counties south of the Columbia River and Interstate 84 (Figure 1). The proposed project area is divided into northern and southern sections. Each section has different topography, land use and habitats. The northern area is about 15,580 acres of private property used for grazing. The southern area is about 16,520 acres of private property mostly cultivated and planted in dryland wheat. About 1,718 acres are enrolled in the Conservation Reserve Program.

The facility will contain up to 303 wind turbine generators, with a nameplate generating capacity of from 454.5 to 909 MW, depending on the type of turbine selected. Four turbine types are being considered. The wind turbines will range from 397 to 492 feet tall, depending on the type chosen. EFSC's Proposed Order indicates that CSF will be allowed to modify its project layout as the project is implemented due to micrositing for environmental concerns and other factors, so long as CSF conforms to the binding conditions imposed through the EFSC Order.

In addition to the wind turbines, facility components include the following:

- Six meteorological towers
- An interconnected electrical system
- Two project substations
- A communications system
- Fifty-seven miles of new project access roads
- Two field workshops.

Turbine Foundations

Turbine foundations will be excavated to a depth of approximately 32 feet (as conditions and turbine type warrant). Excavation for the foundation will be required at each turbine site, and blasting may be required in some locations. The turbine foundation (or "pad") will total approximately 1,187 square feet, with an additional 495 square feet of access road parking area. A portion of the excavated material may be used as fill for road and site grading, and the remaining material will either be stockpiled at the turbine site for backfill while the concrete foundations are poured and cured or hauled off-site for disposal. The stockpiled material will be covered, and the surrounding area will be protected with fences, hay bales, and other barriers to contain sediment flow. Once the foundation has cured, the excavated material will be used as backfill around the foundation, leaving the exposed foundation at the surface only slightly larger than the diameter of the tower base. A 10-foot "skirt" surrounding each turbine will be formed by clearing any debris and vegetation, compacting and sterilizing the soil, and applying a layer of washed crushed rock to reduce step and touch hazard. Some turbine models will require a small step-up transformer at the base of the tower on a separate foundation.

Towers

The tower of the wind turbine supports the nacelle and the rotor. The total height of each tower, to the hub of the rotor blades, is from 262 to 344 feet. Towers are made of heavy rolled steel and are fabricated off-site. The towers are conical with their diameter increasing towards the bottom

for strength. Each of three to four tower sections includes flanges on both ends, which are bolted together on-site. The towers feature a locked entry door just above ground level, and house internal control and communication electronics. An internal maintenance access ladder with safety platforms provides entry to the nacelle. The towers are smooth, with no avian perch opportunities, are white in color, and have a non-reflective finish.

Nacelles and Generators

The nacelle, located at the top of the tower, houses the key operating components of the wind turbine, including the gearbox and the electrical generator that transforms motion into electricity. Each turbine is equipped with a yaw system, which uses electrical motors to turn the nacelles and rotors into the wind. The yaw mechanism is operated by an electrical controller, which receives the wind direction from an anemometer mounted atop the nacelle. The anemometer constantly checks the wind speed and direction, and sends signals to a pitch actuator to adjust the angle of the blades to capture the energy from the wind in the most efficient manner. Some turbine types may also have the step-up transformer in the nacelle. Service personnel enter the nacelles from the tower.

Rotors

Each wind turbine has three rotor blades, each constructed of one piece of fiberglass or fiberglass composite. Blades are from 135 to 157 feet long. Ground clearance of the blades, when the tips are closest to the ground, is from 82 to 196 feet. Blades are finished with a smooth white outer surface. At the peak of energy production, the blades will turn at about 17 – 22 rotations per minute (rpm). Blades and nacelles are fabricated off-site and shipped to the project location. Blades will be attached to the nacelle on the ground and raised, with the nacelle, into position with a crane. Should adjustments be required, blades can be temporarily removed from the turbine and rotated or replaced.

Meteorological Towers

There will be six permanent, un-guyed, 236 to 263 foot meteorological towers (weather stations) located within the facility site. Anemometers located at different heights on the towers will relay information back to control centers via the communication system. Meteorological towers have a concrete foundation: a 30-foot by 30-foot by 2-foot concrete pad is poured at a depth of approximately 5.5 feet; three 30 inch diameter concrete pedestals are affixed to the pad and rise to approximately 6 inches above ground level. The meteorological tower is then affixed to the three point pedestal.

Electrical System

Wind turbines generate low voltage electricity (from 575 to 4,160 volts depending on the technology selected). Low-voltage underground conductors carry the power from the base of the wind turbine tower to its associated step-up transformer. The step-up transformer raises the voltage to 34.5 kV. A medium-voltage (34.5-kV) collector system connects the step-up transformers and then carries the electricity to one of two facility substations where transformers will raise the voltage once more (to 230 kV) for transmission to the interconnect point. Some types of wind turbines have the step-up transformer in the nacelle. Other types have the step-up transformer mounted on a concrete pad measuring 8 feet by 8 feet by 8 inches thick installed

7 feet from the base of the turbine. The top of the finished pad will be at ground level, and a washed crushed rock skirt three feet wide will be installed around the pad.

Collector System

Approximately 158 miles of collector system runs will be required to connect the step-up transformers to the facility substations. Each collector system run is made up of 3 individual conductors plus a grounding or bonding cable. Approximately 65 miles of collector system runs will be installed underground in a trench of a depth of three to four feet. The trench will generally run along the edge of project roads. About 38 miles of collector system runs will be installed overhead. Approximately 10 miles of these overhead runs will be "understrung" on the 230-kV high-voltage lines discussed below. The remaining 28 miles of collector cable overhead runs will be installed on power poles.

Project Substations

Two project substations, one each in the north and south sections of the Wind Project, will receive the collector cables. The substations support transformers that will raise the 34.5-kV electricity to 230-kV. The finished size of each project substation will be 500 feet by 200 feet (2.3 acres), and each will be fenced and locked. The area within the substations will be cleared of all vegetation, and the soil will be compacted, sterilized, and covered with washed crushed rock to reduce step and touch hazards.

High-Voltage 230-kV Transmission

The 230-kV electricity at the south substation will be transmitted to the north substation via 13 miles of high-voltage H-type power poles. The 230-kV electricity at the north substation will be transmitted to the interconnection point at BPA's expanded Slatt Substation via 4 miles of high-voltage H-type power poles. All transmission corridors are located within lands zoned for exclusive farm use.

Communication System

Each wind turbine contains computerized monitors connected to one of two central host computers — one located in each of the field workshops. The supervisory control and data acquisition (SCADA) programs operating on the central computer systems monitor energy production, internal and external temperatures, wind speed and direction, and equipment condition for each wind turbine. Automatic wind turbine shutdown in the event of a mechanical fault is also controlled by the SCADA system. The SCADA system will be connected to the wind turbines and meteorological towers with fiber optic communications lines. Approximately 120 miles of these communications lines will run either underground or overhead, parallel to the low- and medium-voltage power collection conductors. Where underground, communications lines are placed in the same trench as collection conductors; where overhead, communications lines run on the same power poles as the transmission system; communications lines are run to the meteorological towers in separate trenches. These trenches will be similar in size and configuration to the trenches used for the collector system.

Project Roads

Approximately 57 miles of new road will be required to serve each turbine string, connect the turbine strings, and connect to existing roads. Thirty miles of existing ranch and farm roads will also be incorporated into the road network. Existing 10-foot wide roads will be expanded to 18 feet; new roads will be finished at 18 feet wide. During construction, 10-foot wide temporary roads will parallel project roads. Collector conductors and communications cables will be trenched in these temporary roads and the surface will be compacted to provide for crane movement. Permanent roads will have a compacted base of native soil, and gravel 4 to 6 inches deep.

Field Workshops

Two field workshops are proposed on-site—one each in the north and south. The northern building is planned to be 125 feet by 50 feet, and the southern building is planned to be 84 feet by 50 feet. Both buildings will be metal clad, insulated structures with a 75-foot skirt of crushed stone. Both workshops will have an adjacent fenced lay-down area of 200 feet by 75 feet, and a 20,000 gallon water tank for fire fighting and back-up water. CSF proposes wells and septic tanks for both sites. The workshop footprint will be used for lay-down and secure storage during facility construction.

Construction Employment and Schedule

During construction, about 250 workers will be employed. CSF will construct the Wind Project over the next three years. CSF expects that Wind Project construction will be completed and the Wind Project will be fully operational in 2011.

Termination of Plant

The wind facility is expected to have a useful life of at least 25 to 30 years, and its lifespan could be further extended through facility replacement. Upon eventual termination the wind facility will be decommissioned and the site restored to a non-hazardous condition suitable for agricultural use.

PUBLIC PROCESS AND CONSIDERATION OF COMMENTS

Consistent with BPA's strategy for tiering appropriate subsequent decisions to the BP ROD, a public process was conducted for the Wind Project and BPA's proposed interconnection of the Wind Project into BPA's transmission system. Oregon EFSC reviews of the Wind Project also provided opportunities for public comment. These opportunities included the following:

In November 2007, EFSC declared the site certificate application for the Shepherds Flat Wind Farm to be complete. EFSC issued public notice and notice to reviewing agencies and requested comment on the completed application by January 10, 2008. EFSC received comments from seven agencies and 10 individuals[3]. Comments were made concerning a number of issues,

[3] Oregon EFSC. Shepherds Flat Wind Farm Draft Proposed Order, Attachment D.

including state and local government permitting requirements, the need for dust and noxious weed control, potential visual, cultural resources, noise, shadow flicker, and water quality impacts, and potential impacts to plants and wildlife (particularly avian) species.

EFSC issued its Draft Proposed Order for the Shepherds Flat Wind Farm on April 7, 2008 for public review. EFSC held a public hearing on May 8, 2008, in Arlington, Oregon. EFSC received comments from four agencies and five individuals[4]. Comments were made concerning issues such as potential soil, visual, wildlife, and wildlife habitat impacts, the need for noxious weed control, and potential impacts to residents and military training routes in the area.

BPA also provided opportunity for public comment. On October 5, 2006, BPA sent written notice to adjacent property owners and interested parties describing the proposed interconnection of the Wind Project into the FCRTS at Slatt Substation. The notice requested comments on the proposal by November 10, 2006. BPA posted information about the interconnection request at http://www.efw.bpa.gov/environmental_services/Document_Library/ShepherdsFlatWindFarm/ and in BPA's monthly information periodical, the "BPA Journal." Five comment letters were received during the open comment period about the following issues:

- Impacts to the Washington ground squirrel at the substation site
- Need for noxious weeds surveys
- Visual impacts to local residents
- Impacts to the Oregon Trail
- Impacts to the natural environment and bunchgrass sage
- Impacts to birds and bird flight patterns
- Impacts to curlew nesting on Rhea Lane/Road by Arlington; long-billed curlew birds' safety
- Impacts of large-scale wind energy development on wildlife and wildlife habitat in the Columbia Plateau region including cumulative impacts to birds and bats
- A suggestion that BPA fund research to address cumulative effects of wind energy development on the region.

On October 25, 2006, BPA held a public meeting in Arlington, Oregon to receive comments and address questions. No comments were made at the meeting.

ENVIRONMENTAL ANALYSIS

Consistent with the BP ROD, the BP EIS was reviewed to determine whether offering terms to interconnect the Wind Project is adequately covered within its scope. The BP EIS alternatives analyzed a range of marketing actions and response strategies to maintain a market-driven approach. The BP EIS showed that environmental impacts are determined by the responses to BPA's marketing actions, rather than by the actions themselves. These market responses include

[4] Oregon EFSC. Shepherds Flat Wind Farm Proposed Order, Attachment E.

resource development, resource operation, transmission development and operation, and consumer behavior.

BPA's BP EIS described generating resource types, their generic environmental effects on a per-average-MW (per-aMW) basis, and potential mitigation. The discussion of generic environmental impacts of renewable energy resource development, including wind, is provided in Section 4.3.1 of the BP EIS. The RP EIS also described the environmental effects and potential mitigation associated with the construction or upgrade of transmission facilities to integrate the resources with the existing transmission system (Section 3.5). The per-aMW impacts for wind projects (RP EIS, Table 3-19) were incorporated and updated in the BP EIS (Table 4.3-1). The BP EIS contains an analysis of generic environmental impacts, including resource development and operation (Section 4.3.1) and transmission development and operation (Section 4.3.2).

The Market-Driven Alternative anticipated unbundling of products and services, constructing transmission facilities for requests for non-federal power transmission, and providing transmission access to wholesale power producers (Section 2.2.3). The BP EIS also noted that, under the Market-Driven Alternative, new transmission would depend more on generator and other customer requests than on new resource development by BPA (Section 4.2.3.2). Finally, the BP EIS identified the associated need to enhance transmission facilities (Section 4.2.4.1) as one consequence of all resource development. One example would be customer requests for new transmission line and substation facilities for interconnection of generation resources.

In light of the analyses contained in the BP EIS and RP EIS, interconnection of the Wind Project falls within the scope of the BP EIS. Site-specific impacts that would result from the Wind Project are of the type and magnitude reported in the BP EIS and the RP EIS. The following discussion describes the environmental impacts that would result from the substation expansion and the Wind Project, and provides additional information on potential cumulative impacts.

BPA Interconnection Facilities Impacts

Land Use and Recreation

The Slatt Substation expansion site is entirely within an area owned by BPA. The site is relatively level to gently rolling, and sparsely vegetated with grass and rabbitbrush. The site appears to have been heavily grazed in the recent past. There is no recreational use. This type of land is abundant in the region. Current land use will be changed on the 4 acres for the expanded substation yard from open space to transmission facility, and the expanded area, like the existing substation, will be fenced.

Geology and Soils

Gilliam County is mainly within the Columbia Plateau physiographic province. Most of the county is a plain that was covered by molten basalt and then uplifted. The basalt in the floor of the plain is overlain by wind-deposited silt. The surface layer of soil in the substation expansion area is dark brown or very dark grayish brown silt loam. The subsoil is dark brown or brown gravelly silt loam. The upper part of the substratum is dark brown or brown very gravelly silt loam, and the lower part of the substratum to a depth of 60 inches or more is brown, calcareous

extremely gravelly silt loam. The soils are used mainly for range. They are also used as wildlife habitat.

The expansion area will be graded and leveled, and crushed rock fill materials will be added to form the substation pad. No water is present on or near the site, but BPA will require site-specific erosion and sediment controls (Best Management Practices [BMP]) be used for soil stabilization, and to prevent hazardous material and petroleum product releases. Spill notification procedures will be in place. During construction, any spills or leaks of hydraulic fluid or oil from construction equipment will be cleaned up to prevent spills from reaching the soil or groundwater and causing contamination. To reduce disturbance to soils and vegetation, vehicle use will be restricted to access roads and immediate work areas. Access road drainage structures shall be kept functional and the road surface will be maintained to minimize erosion, run-off, and sedimentation.

Vegetation

The substation expansion site is in an arid to semi-arid region with low precipitation, hot, dry summers and cold winters. The area has been grazed by sheep in the recent past. The area is sparsely vegetated with native and non-native grasses and rabbitbrush. No trees or large shrubs are present.

Construction of the substation expansion will permanently remove about 4 acres of vegetation. No vegetation will be allowed to grow on the substation's permanent rock surface. BPA will manage any vegetation on the substation site in accordance with BPA's Transmission System Vegetation Management Program Environmental Impact Statement (DOE/EIS-0285, 2000).

Wetlands and Water Resources

The substation expansion site's windswept ridge top location is at a high elevation and has no water present. No wetlands or waterways are located in or near the project area.

Fish and Wildlife

No aquatic or riparian habitats occur at the site and no fish are present. Some wildlife uses the area. During a field survey, a number of small animal burrows were found, but no terrestrial wildlife was observed. Several raptors were observed flying over the project area. Small numbers of upland animals that may now occupy or pass through the site, such as mice, rabbits, ground squirrels, fox, coyote, mule and blacktailed deer, will be displaced temporarily during construction. Nearby populations will also be temporarily disturbed during construction. Any animals or birds that range through the area during construction may also be disturbed and will likely avoid the area. Wildlife that may have occupied the area will be displaced.

Threatened and Endangered Species

BPA completed a site assessment to determine the potential impacts to listed species from the expansion project. No fish species will be impacted because the project will not involve work in or around water. BPA obtained an updated species list from the U.S. Fish and Wildlife Service prior to a site visit. No federal, endangered, threatened or proposed species are known to occupy

the habitat at the expansion site. The only potential habitat listed was for the Washington ground squirrel (*Spermophilus washingtonii*), a candidate for listing under the federal Endangered Species Act. A survey of the project site[5] found that no Washington ground squirrels were present on or near the site and that follow-up surveys were unnecessary. Based on this information, BPA has made a determination of no effect to federally-listed species.

Historic/Archeological Resources

Under Section 106 of the National Historic Preservation Act, BPA consulted with the Oregon State Historic Preservation Office (SHPO), and the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Reservation, the Burns Paiute Tribe, the Nez Perce Tribe, and the Confederated Tribes of the Colville Reservation on potential effects to cultural resources and historic properties.

A pedestrian survey of a portion of the site was conducted in January 2006. No cultural resources were identified during the survey. Given the degree of disturbance caused by the initial substation development, it is unlikely that any intact cultural resources are located within the Area of Potential Effect (APE). On June 15, 2006, the Oregon SHPO concurred with the delineated APE. No concerns or comments were received from consulted tribes. In May 2008, BPA submitted a letter to the aforementioned tribes and SHPO describing how the project would have no effect upon cultural resources in a small substation expansion area not originally considered during the initial consultation. BPA received concurrence from the SHPO on May 27, 2008. No comments were received from the tribes.

If any cultural resources are uncovered during construction, work will immediately cease and BPA and state archeologists will be notified to ensure proper procedures are implemented to protect the site until it is properly assessed.

Visual Resources

The substation expansion will be constructed next to the existing Slatt Substation. Traffic numbers on local roads are low. No residences are within sight distance of the site. The substation expansion will not greatly alter existing visual resources in the area because it will be an extension of the existing substation and will sit under existing 500-kV lines.

Noise

Intermittent noise will be generated at the site during construction. Construction will be limited to daytime hours. This noise will be temporary and will cease once construction is complete. The substation expansion will generate noise (akin to a low frequency electrical hum) from the operation of the transformer, but this continuing noise level will not be any greater than the noise already generated by the existing substation. Brief, loud bursts of noise, similar to a gunshot, sometimes occur when circuit breakers operate. These occurrences are infrequent. The

[5] Site surveyed with Russ Morgan of the Oregon Department of Fish and Wildlife. March 16, 2006.

substation will comply with federal and Oregon state noise standards. No residences or other sensitive noise receptors are located near the substation site.

Public Health and Safety

During construction, BPA will use standard construction safety procedures to reduce the risk of fire. BPA requires that the construction contractor develop an emergency response plan that includes responding to a potential accidental fire during construction. BPA will also use standard industry traffic controls to inform motorists and manage traffic during construction activities. All equipment fueling operations will use pumps and funnels and absorbent pads. A supply of absorbent materials will be maintained on-site in the event of a spill. Response measures and procedures will be put in place in case of an accidental release of petroleum products and/or hazardous substances. BPA's Pollution Prevention & Abatement (PPA) Program will create an environmental requirements document that will guide construction personnel. A member of the PPA staff is assigned to the project, and will be notified immediately in the event of any hazardous material spill. The substation will be surrounded by a fence to provide security and prevent the public from entering a dangerous area.

Socioeconomics and Public Services

No increase in public services is anticipated from the construction and operation of the substation expansion because of its small size and lack of need for services. During construction, the presence of about 15 workers will cause a small, short-term economic benefit to the local community as the workers patronize local businesses.

Air Quality

Temporary amounts of dust will be created by earth moving activities during construction. BPA requires that the construction contractor develop and implement a suitable dust abatement plan to control and minimize dust. BMPs will be used to control dust, including using water for dust control, proper storage of disturbed soils, minimizing the amount of disturbed soil at any given time, and restoration seeding of disturbed areas. No water will be withdrawn from any stream, ditch or water body in the project area unless approved. Construction and maintenance vehicles and equipment will be in good running condition, minimizing emissions.

Wind Project Impacts

The following summary of environmental impacts is based on information in the Application for a Site Certificate for the Shepherds Flats Wind Farm and EFSC's Proposed Order for the project.

Land Use and Recreation

The proposed Wind Project is in north-central Oregon, immediately south of the Columbia River on private land in Gilliam and Morrow counties. The project area has a northern and a southern section. The northern area is grazed; none is tilled. Most of the southern area is cultivated and planted in dryland wheat. All existing land uses will continue to occur in and around the turbines and other facilities during construction and operations.

About 135.9 acres in Gilliam County and about 43.5 acres in Morrow County will be removed from production for the wind turbines and associated facilities. There are no designated recreational facilities or activities on the project site. The land is posted to prevent trespass and hunting. There will be no impacts to recreation from the project.

Transportation

Construction of project roads, facilities and collection and communication lines will occur at about the same time, using individual vehicles for multiple tasks. During construction, construction, delivery and personal vehicles will make about 25 to 50 round trips daily. Most heavy equipment will be delivered via Interstate 84, and most vehicles will exit I-84 at Arlington. About 30 miles of existing public and private roads will be used for the project. About 57 miles of new private roads will be constructed.

Traffic in Arlington will be disrupted, particularly during the delivery of towers and rotors. During facility operation, two to four daily round trips to and from the project site are expected. On an as-needed basis, maintenance vehicles will travel to and from the turbines on the project site; most of this vehicle traffic will be on private roads.

Geology and Soils

The facility site contains two areas with very different characteristics and use, primarily a consequence of soil depth. The northern area of the site is situated south of the Columbia River, and some sections within the site boundary contain portions of the bluffs along the river. The upland area is characterized by shallow soils used primarily for sheep grazing. Areas of bare sand, exposed rock, and soil left bare due to wildfires are also frequently encountered. Within or near the site boundary in the northern area also lie portions of Willow Creek Valley and Eightmile Canyon.

Land in the southern area of the proposed facility has deeper soils and is largely devoted to the cultivation of dryland wheat. Fourmile Canyon passes through the southern area, and Willow Creek Valley lies to the east. Fourmile Canyon (an offshoot of Eightmile Canyon) also has an ephemeral stream.

During construction, the temporary disturbance width of project access roads may be up to 100 feet. Standard construction practices include water application as necessary to reduce wind-blown soil loss. The disturbance area outside the finished width is not graveled, but rather formed from a compacted base of native soil. When the construction phase is complete, these areas will be plowed and planted by the landowner as appropriate. Project access roads interconnect with each other and are available for use by both project staff and the landowner, limiting soil damage caused by cross-field driving.

The proposed project will have no impacts that will result in loss of soil, excessive erosion, or alteration of local geology.

Vegetation

The project area contains grazed and ungrazed shrub-steppe and native plant communities. There are also isolated juniper trees, riparian areas, and crop and rangeland. Cheatgrass,

bluegrass species, fescue species, crested wheatgrass, and intermediate wheatgrass are common grass species. Other dominant plants include yarrow, lupine and arrowleaf balsamroot. No federal- or state-listed plant species were found during field surveys of the project area.

Construction activities will temporarily impact up to 180 acres and permanently impact up to 184 acres. After construction all disturbed areas, except the areas needed for permanent facilities, will be restored with native grasses and shrubs or will be managed as cropland or rangeland.

A 435-acre parcel of land just outside the project areas has been identified that will have approximately 166 acres of habitat restored to mitigate for the Wind Project's impacts to plant and wildlife habitats. Restoration activities on those 166 acres of habitat mitigation area will include the elimination of livestock grazing, weed control, fire control, erosion control, and habitat protection.

Wetlands and Water Resources

Fourmile Canyon contains an intermittent creek. Willow Creek, a perennial stream that sits just outside the project boundary to the east, will not be affected by construction of the Wind Project or the interconnection facilities. Some small springs have been developed into stock-watering ponds or altered to flow into stock-water troughs. A number of ephemeral drainages are located within the project area. Only ephemeral drainages will be affected by the proposed project, as some of the new and existing roads will cross them. The project is not within a 100-year floodplain. Wetland surveys were conducted for the project and no wetlands were identified that will be impacted by the project. Groundwater is found in porous zones in underlying basalt. Water from existing wells will be used for dust suppression during construction.

Construction could locally increase storm runoff and expose some soils to erosion, but since most of the project is located in an upland area far away from wetlands or streams, wetlands and water resources are not likely to be affected. The Wind Project will follow a Stormwater Pollution Prevention Plan to reduce any potential impacts to wetlands and water resources.

Fish and Wildlife

Fish

There are no perennial streams in the areas planned for wind turbines. Willow Creek is to the east of the wind turbine strings. According to anecdotal evidence, Willow Creek supported Summer steelhead, and is designated as Essential Fish Habitat (EFH) for Chinook salmon. However, steelhead are not currently present due to downstream passage obstructions and low flow problems. Resident redband trout are known to occur in the more suitable reaches and headwater tributaries of Willow Creek. Riparian vegetation in the Willow Creek drainage is estimated at less than 25 percent of historic levels. Willow shrubs and cottonwood trees are limited.

No work is planned within Willow Creek. Runoff from roads and wind farm facilities will be controlled with BMPs and are not expected to contribute to sediment or pollutant loading of

Willow Creek. Any fish present in Willow Creek are not expected to be affected by the proposed project.

Terrestrial Wildlife

Terrestrial wildlife species that may be found in the area include mule deer, antelope, white- and black-tailed jackrabbits, badgers, coyotes, porcupines, marmots, pocket gophers, ground squirrels, rabbits, voles, mice and other small animals.

Impacts to wildlife will be mostly local and temporary due to construction disturbance. Construction activities will tend to displace those wildlife species in and around the construction sites, but will not result in permanent displacement over time in those areas where temporary disturbance will take place. Temporary disturbance to wildlife habitat will total a maximum of 180 acres.

The Oregon Department of Fish and Wildlife's Willow Creek Wildlife Area and the BLM's Horn Butte Tract (designated as an Area of Critical Environmental Concern) are within 2 miles of the proposed facility site. However, no construction is proposed in or near these areas, so no wildlife or habitat in these areas will be affected.

Permanent impacts to wildlife habitat will total approximately 184 acres. The majority of the disturbed area (both temporary and permanent) includes grasslands and agricultural areas, with minor amounts of shrub-steppe. Thus, the majority of impacts will be to grassland species such as squirrels, mice and other small mammals.

Impacts to wildlife and wildlife habitat will be mitigated by the restoration of an adjacent 435-acre parcel of land containing shrub-steppe and other habitat that is currently degraded.

Avian Species

Avian use studies identified over 60 species of birds within the wind project boundaries during site surveys. Common birds found in the project area include horned lark, Western meadowlark, blackbirds, ravens, crows, red - tailed hawk, Swainson 's hawk and other birds.

Using a regional (Northwest) fatality estimate range of 0.9 to 2.9 (average of 1.9) avian deaths/MW/year, the range of potential fatalities for the 909 MW Wind Project could be between 818 and 2,636 birds per year, likely averaging approximately 1,727 birds per year. Using deaths/MW may overestimate expected fatality numbers for the Wind Project depending on which turbines are used. Most of the mortality data collected to date is from wind farms that use 1.5 MW turbines. If the Wind Project uses 3.0 MW turbines, each turbine, although producing double the power output of the 1.5 MW units, is not likely to cause double the number of bird fatalities because the rotor-swept area is not twice as big.

Raptors

The area surveyed within 2 miles of the project boundaries contained six active red-tailed hawks nests, one Swainson's hawk nest, one golden eagle nest, and two great horned owl nests.

Raptor mortality at the Wind Project is expected to be low to moderate given relative moderate raptor use of the site, and the documented low raptor mortality observed at other new wind projects using similar turbines in the U.S., outside of California. The regional raptor mortality ranges from of 0 to 0.14 fatalities/MW/year (average of 0.05). Based on monitoring results of other regional projects and raptor use documented at the project site in 2005, estimates of raptor mortality for the Wind Project may range between 0 and 127 raptors per year, likely averaging about 45. Most fatalities of diurnal raptors will likely consist of red-tailed hawks and American kestrels.

Mitigation measures to reduce impacts to raptors will be taken if fatality monitoring (which is reported to ODFW) exceeds a threshold of concern (0.09 fatalities/MW, 0.06 for raptor species of special concern), and will be determined based on the species affected, the location where they are affected, and other variables agreed to by ODFW and the wind farm owner.

Passerines

Based on results of other regional projects, and estimates of passerine fatalities observed at other newer generation wind power projects in the western United States, an approximate range of 563 to 1,818 songbird fatalities per year (average of 1,190) or 0.62 to 2.0 fatalities/MW/year is predicted for the Wind Project. The largest number of fatalities will likely be horned larks, a common grassland songbird frequently detected during the surveys. Western meadowlarks may also collide with turbines. Impacts to individual western meadowlarks will likely be related to vehicular activity on-site. These ground-nesting species spend a considerable amount of time on the ground and could be struck by vehicles on occasion. Various swallow species may occasionally interact with turbines and night-migrating golden-crowned kinglets may collide with turbines. No other species (day or night-time migrant or resident nester) is anticipated to make up a large proportion of the fatalities, based on the patterns of results of other regional studies for projects that are operating in a native habitat/agricultural environment.

Waterfowl

The project area is sometimes used by Canada geese, especially during the winter period as they forage in grain fields. Some waterfowl mortality may occur from the project, but based on available data from other projects, the numbers are expected to be very low.

The only shorebird observed in the turbine development area of the Wind Project was long-billed curlew, a State Sensitive species. No long-billed curlew collision fatalities have been found at any existing wind projects, though some wind projects have been constructed at sites where long-billed curlews were recorded during baseline avian-use studies. Use by curlews at the Wind Project site is higher in the northern portion of the site, so some collisions could occur in that area. While long-billed curlews may be at risk for collision with turbines whenever they occur in the project area, they may be at increased risk during pair formation, when they are performing their aerial displays.

Curlews are also known to be susceptible to human disturbance during the breeding season, which can result in nest abandonment or disruption of important parental behaviors such as brooding chicks. Loss of suitable habitat may reduce social behaviors or reduce nesting

opportunities. Construction activity will be avoided within 0.5 miles of long-billed curlew nesting habitat during the nesting season, including areas within the Horn Butte Wildlife Area.

Operational noise generated by the turbines is not expected to be a significant source of disturbance to nesting long-billed curlews or to other nesting avian species. With mitigation, impacts to long-billed curlews is expected to be low.

Other Birds

Some upland gamebird mortality has been documented at wind projects. It is not clear if these mortalities were caused by turbine towers or blades. Also, there are likely some collisions with project vehicles traveling through the project. Based on habitat present, results from other regional wind projects, and the presence of a few gamebirds (primarily pheasants) during the project baseline surveys, there is potential for mortality of some upland gamebirds to occur. The occurrence, however, is expected to be infrequent.

The presence of wind turbines may alter the landscape so that wildlife habitat use patterns are altered, thereby displacing wildlife away from project facilities. Recent grassland bird study results suggest there are relatively small-scale impacts of the wind facility on grassland passerines. Grassland species as a whole appear not be have been impacted through loss of habitat in the studied areas, and habitat mitigation is providing suitable habitat over time to compensate for the project footprint habitat impacts.

Bats

The primary impact to bats will be collision mortality. Available evidence indicates that this will be confined primarily to migratory species. Bat mortality estimates have been made for existing wind projects in the Pacific Northwest, where they have ranged from 0.63 to 2.46 (average 1.43) bats/MW/year (with the same caveat discussed under the avian impacts section regarding the use of 3.0 MW turbines). Most bat fatalities were hoary bats and silver-haired bats. Most mortality has occurred from mid-summer through early fall, coinciding with the fall migration period.

There is little potential foraging habitat and limited roosting habitat for bats in the vicinity of the Wind Project. No aquatic habitat is present onsite for bats to drink or forage for insects over open water. Only five species of bats are likely to be resident in the area and they are unlikely to be affected by construction of the turbines. The turbine locations are open arid environments that are often windy. Open surface water ponds and pools (bat foraging and drinking sites) will not be impacted during the construction or operation of the project and no deciduous trees or snags (bat roosting habitat) will be impacted. Therefore, construction of the project will not result in the loss or degradation of bat habitat in the project area.

Using the regional per MW per year range, bat mortality during operation of the Wind Project is expected to range from 572 to 2,236 (average 1,299) bat fatalities for the 909-MW project. Species composition will likely be similar to that at other wind projects, with silver-haired and hoary bats comprising most of the fatalities.

Based on knowledge gained from monitoring at other wind projects in the region, it is expected that two bat species (the hoary bat and the silver-haired bat) have the potential to migrate through the area. Although bat inventories and studies are almost non-existent in the general area, based on all available information, no threatened or endangered bats are likely to occur. No state

sensitive status bat species have been documented within and near the Wind Project area; only the silver-haired bat (sensitive-undetermined status) is likely to occur due to its potential migratory movements through the general area. Risk of turbine collision for this species is high based on results available for adjacent wind projects.

State and Federal Threatened and Endangered Species

The following species with federal or state status are listed for Gilliam and Morrow counties:

Species	Federal Status	State Status
Greater Sage Grouse (*Centrocercus urophasianus*)	Candidate	State Sensitive - Vulnerable
Bald Eagle (*Haliaeetus leucocephalus*)	none	Threatened
Washington ground squirrel (*Spermophilus washingtoni*)	Candidate	Endangered
Canada Lynx (*Lynx canadensis*)	Threatened	none
Gray Wolf (*Canis lupus*)	Endangered	Endangered
Grizzly Bear (*Ursus arctos horribilis*)	Threatened	none
Chinook Salmon (*Oncorhynchus tshawytscha*)	Threatened	Threatened
Steelhead (*Oncorhynchus mykiss*)	Threatened	State Sensitive - Vulnerable
Sockeye Salmon (*Oncorhynchus nerka*)	Endangered	none

Sage Grouse

The historic distribution of the greater sage grouse includes Gilliam County, however there are no records of current detections in either Morrow or Gilliam counties and there were no observations of this species recorded during the on-site wildlife surveys. Suitable habitat for the species includes foothills, plains and mountain slopes where sagebrush is present. Little suitable habitat exists within the site boundary. The Wind Project is unlikely to have an effect on sage grouse, because habitat for the species is lacking in the project area, and no sage grouse have been observed in or near the project area.

Bald Eagle

Bald eagles winter along the Columbia River north of the project area. The eagles concentrate their foraging and roosting in areas along or close to the Columbia River, but they scavenge on carrion and small mammals in the upland areas. Only one observation was recorded during the on-site wildlife surveys.

To mitigate any risk to bald eagles from wire strikes and electrocution, most of the facility collector lines will be placed underground. All aboveground transmission line structures will be designed in accordance with the Avian Power Line Interaction Committee (APLIC) guidelines to reduce the risks of wire strikes and electrocution. Meteorological towers will be non-guyed structures to eliminate the risk of avian collision with guy-wires, and turbine towers will be smooth tubular structures rather than lattice towers to avoid creating perching opportunities. For turbine types having pad-mounted step-up transformers, the transformer cabinets at each turbine will be designed to avoid creation of artificial habitat for raptor prey.

Standardized fatality searches of turbine tower areas and ongoing monitoring of all facility structures will take place after construction. CSF will report any bald eagle fatalities attributable to collision with wind turbines or other facility structures to the Oregon EFSC and Department of

Fish and Wildlife. Additional mitigation may be required if the fatality rate for raptor species including bald eagles exceeds a level of concern. Based on the limited use of the facility site by bald eagles and the proposed mitigation measures, the project is unlikely to cause more than isolated bald eagle fatalities.

Washington Ground Squirrel

The Washington ground squirrel (WGS) was abundant in sagebrush and native bunchgrass habitat throughout the Columbia plateau, including Gilliam and Morrow counties, but has declined significantly. The current range of the WGS is unknown, but is generally thought to be greatly reduced from the historic range, largely due to agricultural and grazing activities and other development that have fragmented and disturbed native vegetation. The squirrel occupies burrow systems requiring deep soils with high silt content. In Oregon, these conditions are predominantly found in Warden soils. Suitable deep soil is present in the southern project area. Except in areas too steep to cultivate, the deeper soils in the southern project area are cultivated for dryland wheat, making these areas unavailable for WGS habitat. Soil depth in the northern project area is generally too shallow to provide suitable habitat.

WGS occur within the analysis area. On-site wildlife surveys in 2002-2004 found no signs of WGS activity within the area searched. A biologist observed a WGS colony off-site but near the site boundary. This colony was used as a reference site to help identify WGS burrow characteristics during the rest of the survey. Systematic surveys for WGS were conducted in 2007. The survey included all areas of suitable soil for WGS burrows within the site boundary and a 1,000-foot buffer outside the site boundary (a total area of approximately 26 square miles). The surveyors identified five WGS sites in addition to the reference site. Four of the five sites, as well as the reference site, are outside the Wind Project boundary. All but one of the sites (including the reference site) lie well outside the site boundary and outside the 1,000-foot buffer area. These sites were not within the survey area and were observed incidentally. The surveyors found one WGS colony complex in the survey area, consisting of three areas of burrow entrances. Only one of the burrow entrance areas lies within the site boundary, and the larger portion of the complex lies outside the site boundary. The surveyors observed two individuals and fewer than ten burrow entrances within the site boundary.

In March 2008, the proposed transmission line corridor along Fourmile Canyon Road was moved to land not previously surveyed for WGS. A supplemental survey was conducted within a search area that included the proposed corridor plus a 1,000-foot buffer outside the site boundary. The supplemental survey followed the same protocol as the 2007 survey described above. No WGS or WGS burrows were observed.

All WGS habitat will be avoided during construction and operation of the proposed Wind Project and no construction will take place within 1,000 feet of squirrel habitat when the squirrels are active (generally between early March and the end of May). The status of the WGS colony within the site boundary will be assessed beginning in the first WGS activity period after construction begins and annually thereafter through the second year after the facility becomes commercially operational.

Soil conditions and physical constraints from current land uses make it unlikely that the existing WGS colony will expand farther into the Wind Project site. With the mitigation measures, the proposed Wind Project will have no effect on WGS.

Canada Lynx, Gray Wolf, and Grizzly Bear

Although the historic distribution of these three species includes Gilliam and Morrow counties, they are now extremely rare or non-existent within Oregon. There are no recent recorded detections of these species in either Morrow or Gilliam counties, and these species were not observed during on-site wildlife surveys. Because these species are not present in or near the project area, the Wind Project will have no effect on these species.

Fish

Three listed fish species in the analysis area are anadromous species that travel the Columbia River north of the facility site. The fish may be present in Morrow and Gilliam counties, but there are no perennial streams within the site boundary that can support these species. Facility construction will not consume water from any streams that function as habitat for these species. The project will have no effect on listed salmon and steelhead.

Historic/Archeological Resources

Cultural resources were discovered during a survey of the project area at one location in the northern section. This site consisted of an extensive lithic scatter with artifacts. These resources will be avoided during construction and operation. If impacts cannot be avoided, treatment plans will be developed to minimize and mitigate the adverse effects to these resources. If a cultural resource is discovered during construction, the construction activity will cease in the vicinity of the site and the state and affected tribes will be notified.

Visual Resources

Wind energy facilities have no emissions to affect visibility during facility operation. During construction, dust suppression measures will reduce the potential for visible dust clouds.

Wind turbine towers will be visible from some locations within protected areas. Three of the identified protected areas are associated with the John Day River and are more than 17 miles west of the project site. The John Day Federal Wild and Scenic River and the John Day State Scenic Waterway are managed, in part, for outstanding scenic quality. The visual impact analysis shows that the proposed wind turbines will not be visible from viewpoints on the river. The John Day Wildlife Refuge is not managed for scenic views, but is protected because it provides wildlife habitat. The proposed project will not have a significant adverse visual impact on the John Day Federal Wild and Scenic River, the John Day State Scenic Waterway or the John Day Wildlife Refuge.

The Willow Creek Wildlife Area and the Horn Butte Wildlife Area are within 2 miles of the proposed facility site. Turbines will be visible from these areas. Turbines might be visible from locations within the Umatilla National Wildlife Refuge, but from a distance of more than 17 miles. These three protected areas are protected because they provide wildlife habitat. They

are not protected or managed for scenic views. Although parts of the project might be visible from the Willow Creek Wildlife Area, the Horn Butte Wildlife Area and the Umatilla National Wildlife Refuge, the visual impact of the impact of the facility will not result in a significant adverse impact to these protected areas.

The current project area includes portions of the Oregon Trail, some parts of which have wagon ruts still visible. The initial project proposed would have impacted the Oregon Trail, but the Wind Project now proposed will avoid disturbing the Trail by having no project facilities, access roads or work areas sited on the identified rutted remnants of the Oregon Trail. No project facilities, access roads or work areas will be sited on undeveloped land where the trail alignment is marked by existing Oregon-California Trail Association markers. CSF will provide pre-construction photographic documentation of the presumed Oregon Trail alignments within the site boundary.

Noise

Temporary construction noise will occur from building access roads, wind turbines, substations, and transmission lines.

Permanent noise will occur from operation of the wind turbines themselves; the turbine blades passing through the air and the gear box and generator located in the nacelle. Noise from the blade is reduced with an aerodynamic blade and materials that provide a smooth finish on the blades. To mitigate noise from the gear box and generator, these components are totally enclosed and insulated in the nacelle. Noise will be generated on an intermittent basis depending on wind velocity and duration.

Overall, wind turbines are typically quiet, but the noise generated by wind turbines is likely to be the most noticeable at low wind speeds (8 to 12 miles per hour [mph]). Wind turbine noise tends to be masked by other background sources (i.e., the sound generated by the wind) at higher wind speeds.

New noise sources on sites that have not previously been used for commercial or industrial purposes have a limit on the allowable increase over existing ambient noise levels. Generally, sources on new sites may not increase the noise levels by more than 10 dBA (decibels on the A-weighted scale) unless the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located. This effectively allows for a noise level of no more than 36 dBA (26 dBA background + 10 dBA increase) at noise sensitive properties. Wind turbines and transformers can cause noise that may exceed the noise limit and would require mitigation.

Because of the recommended conditions required by EFSC, the proposed facility will comply with the applicable state noise control regulations.

Public Health and Safety

Fire risk from construction activities include dry vegetation coming in contact with an ignition source, such as catalytic converters on vehicle exhaust systems, smoking by construction

personnel, use of explosives, electrical arcing, and use of welding equipment. There is a small risk of accidental fire or explosion during operation and maintenance as a result of careless smoking practices, catalytic converters coming in contact with dry plant material, or a turbine mechanical failure. The site could also be impacted by range fires that originate off site, or from lightning. Most of the electrical connection system will be buried, minimizing the potential for fire. However, the overhead transmission line could, in unusual circumstances, cause a fire from a broken electrical cable or sagging of the line into vegetation during periods of very hot weather. The appropriate maintenance of vegetation within the transmission line corridor and line voltage regulation will minimize this potential impact.

Fuel and lubricating oils from construction vehicles and equipment are potential sources of hazardous material that could accidentally leak or spill during construction, operation and maintenance. Potential spills or leaks could occur during refueling or equipment maintenance, but could also occur from equipment failure or an accident. Some turbine components also include lubricating oils and coolants that could be released if a component containing these materials was damaged during construction. Mineral oil used in turbine transformers and at the substations could also be accidentally released by damage caused during transport or installation.

Electromagnetic fields (EMF) are produced when electricity flows through a conducting material or is used by an electrical device or appliance. In particular, magnetic fields are the result of electrons moving through a conductor or electrical device and electric fields are a result of the force (voltage) that drives the electrical current. EMF will be associated with the turbines, turbine transformers, the underground collection system, the substations, and the overhead transmission lines. Although there have been numerous studies on the potential health effects from EMF, the studies remain inconclusive showing no or weak associations with effects on health.[6]

Socioeconomics and Public Services

The project will not increase the need for public services. There will be no significant increase in permanent population as a result of construction and operation of the project. During construction most workers will permanently or temporarily reside in the local area (approximately 250 workers over the course of construction). Operation will not require a large number of people (about 35 permanent full-time employees). The project will not result in a significant increased need for public services, including fire and police protection. The number of people expected to need temporary lodging or permanent housing will be small enough that adequate housing, and other lodging, will be available.

The Wind Project will have a net economic benefit to the landowners participating in the project because wind lease payments to landowners will provide a supplementary source of income that

[6] Minnesota Department of Health, [undated]. Electric and Magnetic Fields, Frequently Asked Questions, Web site: http://www.health.state.mn.us/divs/eh/radiation/emf/#risks, accessed December 5, 2005.

National Institute of Health Sciences and the National Institute of Health. June 2002. EMF Electric and Magnetic Fields Associated with the Use of Electric Power. Web site: http://www.doh.wa.gov/ehp/rp/xray/emf202.pdf, assessed December 5, 2005.

will help farmers retain their farms when farm prices reduce other sources of farm income. A substantial increase in the Morrow and Gilliam counties' tax bases will provide benefits to all county residents. Indirect economic benefits will accrue to businesses in the area from construction workers purchasing goods and services.

Air Quality

Air quality in the area is generally good, with windblown dust the only pollutant typically found.

Fugitive dust emissions will result from dust entrained during project site preparation including road building, on-site travel on unpaved surfaces, and soil disrupting operations. Wind erosion of disturbed areas will also contribute to fugitive dust.

Construction activities also temporarily generate small amounts of carbon monoxide (CO). Heavy trucks and construction equipment powered by gasoline and diesel engines will generate CO from exhaust emissions. If construction traffic were to delay or reduce the speed of other vehicles in the area, CO emissions from traffic would increase slightly. CO emissions will be temporary and limited to the immediate area surrounding the construction site.

Wind farms help off-set the production of air pollutants and greenhouse gasses by replacing a small percentage of energy that otherwise would have to be generated, presumably, by traditional, 'dirtier' energy sources such as a gas or coal fired turbines. The proposed construction time varies and the project may be completed in phases. Overall, air quality impacts will be low because impacts will occur in the short term in a localized area, during construction only, with very unlikely health and safety risks.

When the Wind Project is operational, minimal emissions from any source are expected.

Cumulative Impacts

The BP EIS and RP EIS provide an analysis of potential cumulative impacts resulting from development of generation resources and transmission facilities in the region. Many other wind projects have been built and are reasonably certain to be built in the region. According to the cumulative impacts analysis prepared for the project,[7] approximately 4,060 MW of wind power is proposed in the Columbia Basin within 60 miles of the project area and is reasonably certain to be built. This figure and analysis area is used in the following sections discussing cumulative impacts. Other projects are in the early planning phases and may or may not be constructed, thus there is no reasonable certainty that they will be constructed.

[7] Caithness Shepherds Flat, LLC. Application for a Site Certificate for the Shepherds Flat Wind Farm, Prepared for the Oregon Energy Facility Siting Council. Amended February 2007, and supporting documents.

Land Use and Recreation

Overall, wind projects and associated facilities, including substations, have relatively little direct impact on land use because the footprint of the facilities is small even if they occur across large areas. Additionally, wind projects tend to reinforce the existing agricultural land uses (the primary land uses in most areas proposed for wind energy). Wind projects are compatible with all types of agriculture, which can occur around most wind project facilities. Wind lease payments provide a supplemental source of income for farmers, helping them weather the uncertainties of agricultural yields and prices.

Local land use regulations in Gilliam and Morrow counties require county land use approval prior to construction of additional facilities. Oregon EFSC requires that projects over a certain size apply for a site certificate. These permitting processes are designed to prevent incompatible uses and the degradation of farmland. The potential for cumulative impacts will be substantially minimized by these regulations.

Wind projects and associated facilities have little direct impact to recreation in agricultural areas. Any private hunting opportunities allowed by landowners could continue after construction and during turbine operation. Some vandalism of facilities may occur. For this project, and other wind projects, mitigation has been required to avoid impacts to established recreation sites.

Geology and Soils and Flood Hazards

Construction of energy projects close together could increase the flooding and erosion potential in flood-prone areas as a result of the decrease in soil storage area. Additional wind projects and associated facilities needed in the future could increase the potential for erosion, but standard control and containment measures would limit permanent impact.

Vegetation and Wildlife

Terrestrial Wildlife

The current and proposed wind projects near the analysis area will have low impacts to non-avian terrestrial species because much of area is under agricultural cultivation and disturbance to these species occurs regularly. Additional fragmentation and reduction will be offset by mitigation (low-quality habitat restoration, or conservation easements). Likewise, operation of these facilities is not expected to adversely affect most terrestrial species.

Birds

Annual avian mortality estimates at six recently constructed wind farms in the Columbia Plateau Ecoregion ranged from 0.9 to 2.9 birds per MW, averaging 1.9 avian deaths/MW/year. All constructed, planned, and under construction wind projects within 60 miles and including CSF's Wind Project would contribute about 4,060 MW of power. Assuming that mortality rates are representative of the region, new wind power generation could cause between approximately 3,650 and 11,775 and on average 7,715 avian deaths per year in the region.

Raptors

At modern wind power projects in the Columbia Plateau Ecoregion, raptor mortality has been low, ranging from 0 to 0.14 raptor fatalities per MW per year. An added 4,060 MW of capacity in the region could result in between 0 and 568, and on average about 200 raptor deaths per year.

Red-tailed hawk and American kestrel account for more than 69 percent of the raptor fatalities recorded at the regional wind projects studied. Assuming this trend holds true for all proposed wind projects in the Columbia Plateau, it would be expected that on average 70 red-tailed hawk and 70 American kestrels would be killed each year. Approximately 18 red tail and kestrel fatalities would occur during the breeding season. An estimate of the breeding population in the Columbia Plateau based on the long-term average data is approximately 6,820 breeding red-tailed hawks and 6,288 breeding American kestrels. The impact to the breeding population would represent approximately 0.26 percent and 0.28 percent respectively, which is likely to be below background mortality for these species and is not considered to have an effect on regional populations. The other species of raptors have been impacted far less and would represent a much smaller number of fatalities.

Passerines

Passerines have been the most abundant avian fatality at wind projects studied (approximately 69 percent of all avian fatalities). Both migrant and resident passerine fatalities have been observed, with migrants generally making up 20-30 percent of the avian fatalities. Assuming that 69 percent of all bird mortality would be passerine fatalities between approximately 2,518 and 8,125 and on average 5,323 passerine deaths per year in the region would occur. Some impacts are expected for nocturnal migrating species; however, impacts are not expected to be great for the Columbia Plateau Ecoregion. Estimates for nocturnal migrant mortality at the regional wind projects have ranged from 0.27 to 0.73 per MW per year or approximately 1,090 to 2,960 nocturnal migrant fatalities for the 4,060 MW of wind power expected to be constructed. Passerine species most common to the project sites will likely be most at risk, including horned lark and western meadowlark. Horned larks represent approximately 35 percent of the avian fatalities in the Columbia Plateau Ecoregion at wind projects.

Local populations of horned larks are difficult to define because of the vast amount of suitable habitat for this species in the Columbia Plateau. However, based on existing breeding bird surveys, the breeding horned lark population in the Columbia Plateau is calculated to be approximately 127,500 horned larks. If it is further assumed that the 2,715 horned lark fatalities are spread equally over the year, then roughly one-quarter of these (approximately 679) would be during the breeding season. This represents approximately 0.5 percent of the breeding horned larks and is not considered high enough to affect population dynamics. It is likely that other background mortality of breeding horned larks is greater than this estimate. Similar calculations for other passerine species indicate that impacts to these species would be minor and unlikely to have any population effects.

In general for wind projects in the Columbia Plateau, approximately 25 percent of the fatalities have been considered migrants spread over many species. The most common migrant fatality (9 percent) was golden-crowned kinglet. Golden-crowned kinglets are typically associated with

treed or wooded habitats during the breeding season so it is assumed that many of the impacted individuals were from surrounding, more mountainous ecoregions or populations farther north (e.g., Canada). As with horned lark, estimating the potential population size from which these birds came requires a number of assumptions. However, while it is unknown, it is possible that the individual fatalities came from multiple populations in surrounding or more northern ecoregions, thus diluting the impacts on any one population. Other potential migrant species were found in lower numbers. Cumulatively the impacts to migrants would be spread over a much larger population base and are not considered to have population effects.

Upland Gamebirds

For projects in the Columbia Plateau Ecoregion, upland gamebirds have composed a higher percentage of avian fatalities than in other regions of the U.S., approximately 18 percent of all avian fatalities. Three introduced species, ring-necked pheasant, chukar, and gray (Hungarian) partridge, are the most commonly found non-passerine fatalities. Estimates for upland gamebird mortality in the Columbia Plateau Ecoregion have varied from 0.27 to 0.47 per MW per year, or between 1,090 and 1,910 upland gamebird fatalities per year. The upland gamebird species most commonly impacted, (ring-necked pheasant, gray partridge, and chukar) are introduced species common in mixed agricultural native grass/steppe habitats. There is generally low concern over impacts to upland gamebirds. These species are regulated by state agencies as game species. Impacts from wind farms to these species are not expected to have population level effects given the vast amounts of suitable habitat and other impacts to these species (i.e., hunting).

Bats

Results of fatality monitoring for the Columbia Plateau Ecoregion wind projects indicate mortality ranges of approximately 0.63 to 2.46 bats per MW per year. Based on these results, and considering the similarities in the characteristics of the project areas and other regional projects, a conservative estimate of total bat mortality would be between 2,550 and 9,990 bats per year, assuming 4,060 MW of wind power is constructed.

Only four species of bat fatalities have been documented for six wind projects monitored in the Columbia Plateau Ecoregion (silver-haired bat, hoary bat, little brown bat, and big brown bat) The species at highest risk appear to be foliage dwelling (forest, trees) fall migratory species. The annual period when most bat fatalities occur is in August and September. Hoary and silver-haired bats are widespread across North America and breed into the boreal forests regions of Canada and migrate south to winter in the southern U.S., Mexico, and potentially farther south in Central America.

Unlike for birds, there is little information available about populations of bat species. Bat mortality in the Columbia Plateau Ecoregion would involve primarily silver-haired and hoary bats, and no impacts to threatened or endangered bat species are anticipated. Hoary bat and silver-haired bats are widely distributed in North America. In general, mortality levels on the order of 1-2 bats per turbine or per MW are thought to be on individuals and not significant to populations, however, cumulative effects may have greater consequences for long-lived low-fecundity species such as bats. Unlike many avian species that may have multiple clutches of multiple young per year, hoary bats and silver-haired bats likely only raise one or two young per

other construction projects. State and county approvals have required large setbacks from public roads and residences to reduce the potential risks to the public from wind projects.

Socioeconomics and Housing

Wind lease payments to farmers provide a supplementary source of income that helps farmers retain their farms when farm prices or weather reduce other sources of farm income.

Additional development would provide tax revenue to local governments.

New wind generation projects would create temporary effects on housing. Because these effects would be temporary and may occur during separate time periods, accumulation of impacts related to project construction would be minor.

Public Services and Utilities

Cumulative impacts on public services and utilities would be largely dependent on facility siting. Emergency services would have a higher demand with the additional facilities to cover. However, this additional demand could be offset by additional tax revenue.

Air Quality

Air quality issues associated with wind energy are limited to construction emissions, which could be minimized by the use of reasonable controls on all projects.

Transportation

If two or more wind projects are built at the same time in an area where the construction traffic uses the same road network, the construction-related traffic would have a cumulative effect. These effects would be temporary. To minimize them during construction, the projects involved could investigate coordinating delivery schedules and routes, use of shared resources to minimize trips, and coordinating construction schedules to address any temporary constraints on traffic flow that develop.

MITIGATION

Specific resource mitigation conditions to avoid or minimize environmental harm from the Wind Project were identified through the Oregon Department of Energy and EFSC facility siting process and are incorporated here by reference.

PUBLIC AVAILABILITY

This ROD will be available to all interested parties and affected persons and agencies. It is being sent to all stakeholders who requested a copy. Copies of the BP EIS, BP ROD and additional copies of this Shepherds Flat Wind Project ROD are available from BPA's Public Information Center, P.O. Box 3621, Portland, Oregon, 97208-3621. Copies of these documents may also be obtained by using BPA's nationwide toll-free document request line: 1-800-622-4520, or by accessing BPA's Web site: www.efw.bpa.gov.

year and only breed once per year. Bats tend to live longer than birds, however, and may have a long breeding lifespan. The impact of the loss of breeding individuals to populations such as these is generally unknown, but may have greater consequences.

Since it is most likely breeding populations from surrounding mountainous/forested ecoregions or from more northern areas (e.g., Canada) that are affected at the Columbia Plateau wind projects during the fall migration, the dynamics of these populations would need to be known to predict population effects. If these populations are large and stable the level of impact is not expected to be significant. However, if population trends are decreasing, the added impact from wind development may continue to cause population declines. This information is generally unknown and future study is needed before the significance of the impacts can be estimated.

Wetlands and Water Resources

Wetland, water quality, and water use impacts related to new wind generation projects would be temporary and minor, and subject to further regulatory approvals. Wind projects can be located to avoid these resources.

Historic and Cultural Resources

Cumulative effects on cultural resources are associated with construction activities and permanent land use change through development of new wind generation projects. Because the developments are likely to be dispersed throughout many counties, the impacts are not likely to be concentrated, so loss of cultural artifacts from an entire cultural source is unlikely. Wind projects can be located to avoid these resources.

Visual Resources

Additional turbine installation would increase the number of areas from which turbines would be visible. Because future wind energy development would likely occur in rural areas of Gilliam and Morrow counties and surrounding counties, visual impacts of wind energy would be experienced by residents of these rural areas. Turbines would also be visible to people traveling through the counties on public roads near the wind project areas. The significance of the visual changes varies according to the location of the wind projects and the perceptions of the viewers (some viewers find that wind energy projects add a positive element to the visual environment, while others disagree).

Noise

Significant noise issues associated with wind generation projects are limited to the construction period of the project. No operational impacts are anticipated other than the sound of the blades when the turbines are operating and intermittent noise associated with substation operations. State and county approvals have required large setbacks for turbines from residences or noise easements, and these measures reduce the impact of operational noise from individual turbines.

Public Health and Safety

Any potential risks to the health and safety of workers or the general public associated with the construction, operation, and maintenance of wind projects would be incidental and comparable to

CONCLUSION

BPA has decided to offer contract terms through a LGIA for interconnection of the Shepherds Flat Wind Project into the FCRTS at Slatt Substation in Gilliam County, Oregon. The LGIA provides for interconnection of the Wind Project with the FCRTS, the operation of the Wind Project in the BPA Control Area (including control area services such as generation imbalance service), and the maintenance of reliability of the FCRTS and interconnected systems. As described above, BPA has considered both the economic and environmental consequences of taking action to integrate power from the Wind Project into the FCRTS. This decision is:

- within the scope of environmental consequences examined in the BP EIS;
- in accordance with BPA's Open Access Transmission Tariff and associated LGIP; and
- in accordance with BPA's statutory authority to make available to all utilities any capacity in this system determined in excess to that required by the United States (16 U.S.C. 838d).

BPA will take measures to ensure the continuing safe, reliable operation of the FCRTS. This ROD identifies all practicable means to avoid or minimize environmental harm that might be caused by the integration of the Wind Project into the FCRTS.

BPA contracts providing for integration of power from the Wind Project into the FCRTS at Slatt Substation will include terms requiring that all pending permits be approved before the contract is implemented. BPA contracts will also include appropriate provisions for remediation of oil or other hazardous substances associated with construction and operation of related electrical facilities in a manner consistent with applicable federal, state, and local laws.

Issued in Portland, Oregon.

/s/Stephen J. Wright	*July 18, 2008*
Stephen J. Wright Administrator and Chief Executive Officer	Date

CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER
UM 1670: N. Hurlburt's Response to CBEC Data Request No. 4 Attachment

AUTHENTICATED Contract No. 11TX-15240

STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

NORTH HURLBURT WIND, LLC

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CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER
UM 1670: N. Hurlburt's Response to CBEC Data Request No. 4 Attachment

APPENDIX A
INTERCONNECTION FACILITIES, NETWORK UPGRADES AND DISTRIBUTION UPGRADES FOR 265 MW NORTH HURLBURT WIND, LLC'S NORTH HURLBURT WIND PROJECT

1. TRANSMISSION PROVIDER INTERCONNECTION FACILITIES

The Transmission Provider Interconnection Facilities include:

(a) Meters, control hardware, remedial action scheme and associated data collection equipment, communications equipment, and telemetry at Interconnection Customer's 230 kV Ringbus Substation and 230/34.5 kV North Substation collector substation associated with the Generating Facility; and

(b) Equipment to limit wind generation output of the Generating Facility, including trip control of the generation power circuit breaker(s) at Interconnection Customer's North Substation collector substation.

2. NETWORK UPGRADES

The Network Upgrades include:

(a) A new 500/230 kV transformer, four 500 kV power circuit breakers and associated disconnect switches, a new 230 kV four power circuit breaker ring bus, shunt capacitors (2 by 86.4 MVAr), instrument transformers, protective relaying, remedial action scheme equipment, communications equipment, and controls at Transmission Provider's Slatt substation;

(b) Power System Control, remedial action schemes, protective relaying, communications and telemetry at various locations at and beyond the Point of Interconnection; and

(c) Facilities and installation and implementation of the remedial action scheme(s) at or beyond Slatt Substation.

(d) As of the Effective Date of this Agreement, the Network Upgrades identified in Appendix A, Section 2, are not subject to any tax gross-up to Transmission Provider under the Internal Revenue Code.

3. TEMPORARY NETWORK UPGRADES AND TRANSMISSION PROVIDER'S INTERCONNECTION FACILITIES

None.

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UM 1670: N. Hurlburt's Response to CBEC Data Request No. 4 Attachment

4. INTERCONNECTION CUSTOMER'S INTERCONNECTION FACILITIES

The Interconnection Customer's Interconnection Facilities include:

(a) Interconnection Customer's North Substation collector substation, containing the necessary step up transformer(s) and associated equipment which connects the step up transformer(s) to the Generating Facility;

(b) Metering accuracy current transformers and potential transformers at Interconnection Customer's North Substation collector substations;

(c) Interconnection Customer's 230 kV Ringbus Substation; and

(d) Reactive power equipment, including controller, to meet Transmission Provider's requirements for reactive power support, as defined in Appendix C section 5(f) of this Agreement. At a minimum, Interconnection Customer must meet the dynamic reactive requirement by incorporating a combination of a dynamic reactive compensation system paired with external shunt capacitors at the 34.5 kV substations to meet power factor correction requirements as defined in Appendix C section 5(f). The master controller of the dynamic reactive compensation system will manage switching of the external shunt capacitor banks and provide voltage regulation.

5. AFFECTED SYSTEM NETWORK UPGRADES
None.

6. STAND ALONE NETWORK UPGRADES
None.

7. POINT OF INTERCONNECTION AND CHANGE OF OWNERSHIP
The Point of Interconnection is the point where Interconnection Customer's 230 kV transmission lines connect to the dead-end structures located inside Transmission Provider's Slatt 230 kV substation, further depicted in Appendix A, Attachment 2. This point is also the Point of Change of Ownership.

8. DISTRIBUTION UPGRADES
None.

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UM 1670: N. Hurlburt's Response to CBEC Data Request No. 5 Attachment

AUTHENTICATED Contract No. 11TX-15241

STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

SOUTH HURLBURT WIND, LLC

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UM 1670: N. Hurlburt's Response to CBEC Data Request No. 5 Attachment

APPENDIX A
INTERCONNECTION FACILITIES, NETWORK UPGRADES AND DISTRIBUTION UPGRADES FOR 290 MW SOUTH HURLBURT WIND, LLC'S SOUTH HURLBURT WIND PROJECT

1. TRANSMISSION PROVIDER INTERCONNECTION FACILITIES

The Transmission Provider Interconnection Facilities include:

(a) Meters, control hardware, remedial action scheme and associated data collection equipment, communications equipment, and telemetry at Interconnection Customer's 230/34.5 kV Central Substation collector substation associated with the Generating Facility; and

(b) Equipment to limit wind generation output of the Generating Facility, including trip control of the generation power circuit breaker(s) at Interconnection Customer's Central Substation collector substation.

2. NETWORK UPGRADES

The Network Upgrades include:

(a) A new 500/230 kV transformer, four 500 kV power circuit breakers and associated disconnect switches, a new 230 kV four power circuit breaker ring bus, shunt capacitors (2 by 86.4 MVAr), instrument transformers, protective relaying, remedial action scheme equipment, communications equipment, and controls at Transmission Provider's Slatt substation;

(b) Power System Control, remedial action schemes, protective relaying, communications and telemetry at various locations at and beyond the Point of Interconnection; and

(c) Facilities and installation and implementation of the remedial action scheme(s) at or beyond Slatt Substation.

(d) As of the Effective Date of this Agreement, the Network Upgrades identified in Appendix A, Section 2, are not subject to any tax gross-up to Transmission Provider under the Internal Revenue Code.

3. TEMPORARY NETWORK UPGRADES AND TRANSMISSION PROVIDER'S INTERCONNECTION FACILITIES

None.

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UM 1670: N. Hurlburt's Response to CBEC Data Request No. 5 Attachment

4. INTERCONNECTION CUSTOMER'S INTERCONNECTION FACILITIES

The Interconnection Customer's Interconnection Facilities include:

(a) Interconnection Customer's Central Substation collector substation, containing the necessary step up transformer(s) and associated equipment which connects the step up transformer(s) to the Generating Facility;

(b) Metering accuracy current transformers and potential transformers at Interconnection Customer's Central Substation collector substation;

(c) Reactive power equipment, including controller, to meet Transmission Provider's requirements for reactive power support, as defined in Appendix C section 5(f) of this Agreement. At a minimum, Interconnection Customer must meet the dynamic reactive requirement by incorporating a combination of a dynamic reactive compensation system paired with external shunt capacitors at the 34.5 kV substations to meet power factor correction requirements as defined in Appendix C section 5(f). The master controller of the dynamic reactive compensation system will manage switching of the external shunt capacitor banks and provide voltage regulation.

5. AFFECTED SYSTEM NETWORK UPGRADES
None.

6. STAND ALONE NETWORK UPGRADES
None.

7. POINT OF INTERCONNECTION AND CHANGE OF OWNERSHIP
The Point of Interconnection is the point where Interconnection Customer's 230 kV transmission lines connect to the dead-end structures located inside Transmission Provider's Slatt 230 kV substation, further depicted in Appendix A, Attachment 2. This point is also the Point of Change of Ownership.

8. DISTRIBUTION UPGRADES
None.

9. DUTIES OF TRANSMISSION PROVIDER

The Transmission Provider shall:

(a) Design, procure, and construct all Network Upgrades identified in this Appendix A;

(b) Coordinate testing and energization of Interconnection Customer's Interconnection Facilities and Generating Facility with Transmission Provider's Transmission System;

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UM 1670: N. Hurlburt's Response to CBEC Data Request No. 6 Attachment

AUTHENTICATED Contract No. 11TX-15242

STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

acting by and through the

BONNEVILLE POWER ADMINISTRATION

and

HORSESHOE BEND WIND, LLC

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UM 1670: N. Hurlburt's Response to CBEC Data Request No. 6 Attachment

APPENDIX A
INTERCONNECTION FACILITIES, NETWORK UPGRADES AND DISTRIBUTION UPGRADES FOR 291 MW HORSESHOE BEND WIND, LLC'S HORSESHOE BEND WIND PROJECT

1. TRANSMISSION PROVIDER INTERCONNECTION FACILITIES

The Transmission Provider Interconnection Facilities include:

(a) Meters, control hardware, remedial action scheme and associated data collection equipment, communications equipment, and telemetry at Interconnection Customer's 230/34.5 kV South Substation collector substation associated with the Generating Facility; and

(b) Equipment to limit wind generation output of the Generating Facility, including trip control of the generation power circuit breaker(s) at Interconnection Customer's South Substation collector substation.

2. NETWORK UPGRADES

The Network Upgrades include:

(a) A new 500/230 kV transformer, four 500 kV power circuit breakers and associated disconnect switches, a new 230 kV four power circuit breaker ring bus, shunt capacitors (2 by 86.4 MVAr), instrument transformers, protective relaying, remedial action scheme equipment, communications equipment, and controls at Transmission Provider's Slatt substation;

(b) Power System Control, remedial action schemes, protective relaying, communications and telemetry at various locations at and beyond the Point of Interconnection; and

(c) Facilities and installation and implementation of the remedial action scheme(s) at or beyond Slatt Substation.

(d) As of the Effective Date of this Agreement, the Network Upgrades identified in Appendix A, Section 2, are not subject to any tax gross-up to Transmission Provider under the Internal Revenue Code.

3. TEMPORARY NETWORK UPGRADES AND TRANSMISSION PROVIDER'S INTERCONNECTION FACILITIES

None.

CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER
UM 1670: N. Hurlburt's Response to CBEC Data Request No. 6 Attachment

4. INTERCONNECTION CUSTOMER'S INTERCONNECTION FACILITIES

The Interconnection Customer's Interconnection Facilities include:

(a) Interconnection Customer's South Substation collector substation, containing the necessary step up transformer(s) and associated equipment which connects the step up transformer(s) to the Generating Facility;

(b) Metering accuracy current transformers and potential transformers at Interconnection Customer's South Substation collector substation;

(c) Reactive power equipment, including controller, to meet Transmission Provider's requirements for reactive power support, as defined in Appendix C section 5(f) of this Agreement. At a minimum, Interconnection Customer must meet the dynamic reactive requirement by incorporating a combination of a dynamic reactive compensation system paired with external shunt capacitors at the 34.5 kV substations to meet power factor correction requirements as defined in Appendix C section 5(f). The master controller of the dynamic reactive compensation system will manage switching of the external shunt capacitor banks and provide voltage regulation.

5. AFFECTED SYSTEM NETWORK UPGRADES
None.

6. STAND ALONE NETWORK UPGRADES
None.

7. POINT OF INTERCONNECTION AND CHANGE OF OWNERSHIP
The Point of Interconnection is the point where Interconnection Customer's 230 kV transmission lines connect to the dead-end structures located inside Transmission Provider's Slatt 230 kV substation, further depicted in Appendix A, Attachment 2. This point is also the Point of Change of Ownership.

8. DISTRIBUTION UPGRADES
None.

9. DUTIES OF TRANSMISSION PROVIDER

The Transmission Provider shall:

(a) Design, procure, and construct all Network Upgrades identified in this Appendix A;

(b) Coordinate testing and energization of Interconnection Customer's Interconnection Facilities and Generating Facility with Transmission Provider's Transmission System;

DELGADO EXHIBIT 4
SUBMITTED UNDER SEAL

ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

First Amended Site Certificate
for
Shepherds Flat North

March 12, 2010

The Oregon Energy Facility Siting Council

FIRST AMENDED SITE CERTIFICATE FOR SHEPHERDS FLAT NORTH

I. INTRODUCTION

The Oregon Energy Facility Siting Council (Council) issues this site certificate for Shepherds Flat North (the facility) in the manner authorized under ORS Chapter 469. This site certificate is a binding agreement between the State of Oregon (State), acting through the Council, and North Hurlburt Wind, LLC (certificate holder) authorizing the certificate holder to construct and operate the facility in Gilliam County, Oregon. [Amendment #1 for the Shepherds Flat Wind Farm (SFWF)]

The findings of fact, reasoning and conclusions of law underlying the terms and conditions of this site certificate are set forth in the following documents, incorporated herein by this reference: (a) the Council's *Final Order on the Application for the Shepherds Flat Wind Farm* issued on July 25, 2008, (b) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, and (c) the *Final Order on Amendment #1*. In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order of priority: (1) this First Amended Site Certificate, (2) the *Final Order on Amendment #1*, (3) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, (4) the *Final Order on the Application for the Shepherds Flat Wind Farm* and (5) the record of the proceedings that led to the Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm and to the *Final Order on Amendment #1*. [Amendment #1 (SFWF); Amendment #1]

[Text added by Amendment #1 (SFWF) was removed by Amendment #1.].

The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this site certificate, except where otherwise stated or where the context clearly indicates otherwise.

II. SITE CERTIFICATION

1. To the extent authorized by state law and subject to the conditions set forth herein, the State authorizes the certificate holder to construct, operate and retire a wind energy facility, together with certain related or supporting facilities, at the site in Gilliam County, Oregon, as described in Section III of this site certificate. ORS 469.401(1). [Amendment #1 (SFWF)]
2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in effect on the date that termination is sought or until the site certificate is revoked under ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that revocation is ordered. ORS 469.401(1).
3. This site certificate does not address, and is not binding with respect to, matters that were not addressed in the Council's Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm and in the *Final Order on Amendment #1*. Such matters include, but are not limited to: building code compliance, wage, hour and other labor regulations, local government fees and charges and other design or operational issues that do not relate to siting the facility (ORS 469.401(4)) and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council. 469.503(3). [Amendment #1 (SFWF); Amendment #1]

4. Both the State and the certificate holder shall abide by local ordinances, state law and the rules of the Council in effect on the date this site certificate is executed. ORS 469.401(2). In addition, upon a clear showing of a significant threat to public health, safety or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules. ORS 469.401(2).

5. For a permit, license or other approval addressed in and governed by this site certificate, the certificate holder shall comply with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules. ORS 469.401(2).

6. Subject to the conditions herein, this site certificate binds the State and all counties, cities and political subdivisions in Oregon as to the approval of the site and the construction, operation and retirement of the facility as to matters that are addressed in and governed by this site certificate. ORS 469.401(3).

7. Each affected state agency, county, city and political subdivision in Oregon with authority to issue a permit, license or other approval addressed in or governed by this site certificate shall, upon submission of the proper application and payment of the proper fees, but without hearings or other proceedings, issue such permit, license or other approval subject only to conditions set forth in this site certificate. ORS 469.401(3).

8. After issuance of this site certificate, each state agency or local government agency that issues a permit, license or other approval for the facility shall continue to exercise enforcement authority over such permit, license or other approval. ORS 469.401(3).

9. After issuance of this site certificate, the Council shall have continuing authority over the site and may inspect, or direct the Oregon Department of Energy (Department) to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of this site certificate. ORS 469.430.

III. DESCRIPTION

1. The Facility

(a) The Energy Facility

The energy facility is an electric power generating facility with an average electric generating capacity of up to 106 megawatts and a peak generating capacity of not more than 318 megawatts that produces power from wind energy. The facility consists of not more than 106 wind turbines. The energy facility is described further in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*. [Amendment #1 (SFWF); Amendment #1]

(b) Related or Supporting Facilities

The facility includes the following related or supporting facilities described below and in greater detail in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*:

- Power Collection System
- Collector Substation

- Meteorological towers
- Field workshop
- Control system
- Access roads
- Additional construction areas

[Amendment #1 (SFWF); Amendment #1]

Power Collection System

A power collection system operating at 34.5 kilovolts (kV) transports power from each turbine to a collector substation. The collection system is installed underground at a depth of at least three feet.[Amendment #1]

Collector Substations and Interconnection

The facility includes a collector substation. The facility includes a 230-kV transmission line between the substation and the interconnection site. The interconnection site is located at the Bonneville Power Administration Slatt Switching Station. [Amendment #1 (SFWF)]

Meteorological Towers

The facility includes two permanent meteorological (met) towers. [Amendment #1 (SFWF)]

Field Workshop

The facility includes a field workshop. Including fenced areas, the field workshop occupies about 1.6 acres. [Amendment #1 (SFWF)]

Control System

A fiber optic communications network links the control panels within each wind turbine to a host computer located in the field workshop. Supervisory, Control and Data Acquisition (SCADA) systems at the field workshop collect operating and performance data from the turbines and the facility's met towers. [Amendment #1 (SFWF)]

Access Roads

The facility includes up to 31 miles of new roads that provide access to the turbine strings. The access roads connect to graveled turbine turnouts at the base of each turbine. [Amendment #1 (SFWF)]

Temporary Construction Areas

During construction, the facility includes temporary laydown areas used to stage construction and store supplies and equipment. The facility includes construction crane paths to move construction cranes between turbine strings.

2. Location of the Facility

The facility is located in Gilliam County south of Interstate Highway 84 and east of Arlington, Oregon, between State Highways 19 and 74. The facility is located entirely on private land subject to long-term wind energy leases. [Amendment #1 (SFWF)]

IV. CONDITIONS REQUIRED BY COUNCIL RULES

This section lists conditions required by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific Conditions), OAR 345-027-0028

ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

First Amended Site Certificate
for
Shepherds Flat Central

March 12, 2010

The Oregon Energy Facility Siting Council

FIRST AMENDED SITE CERTIFICATE FOR SHEPHERDS FLAT CENTRAL

I. INTRODUCTION

The Oregon Energy Facility Siting Council (Council) issues this site certificate for the Shepherds Flat Central (the facility) in the manner authorized under ORS Chapter 469. This site certificate is a binding agreement between the State of Oregon (State), acting through the Council, and South Hurlburt Wind, LLC (certificate holder) authorizing the certificate holder to construct and operate the facility in Gilliam County and Morrow County, Oregon. [Amendment #1 for the Shepherds Flat Wind Farm (SFWF)]

The findings of fact, reasoning and conclusions of law underlying the terms and conditions of this site certificate are set forth in the following documents, incorporated herein by this reference: (a) the Council's *Final Order on the Application for the Shepherds Flat Wind Farm* issued on July 25, 2008, (b) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, and (c) the *Final Order on Amendment #1*. In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order of priority: (1) this First Amended Site Certificate, (2) the *Final Order on Amendment #1*, (3) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, (4) the *Final Order on the Application for the Shepherds Flat Wind Farm* and (5) the record of the proceedings that led to the Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm and to the *Final Order on Amendment #1*. [Amendment #1 (SFWF); Amendment #1]

[Text added by Amendment #1* (SFWF) was removed by Amendment #1].

The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this site certificate, except where otherwise stated or where the context clearly indicates otherwise.

II. SITE CERTIFICATION

1. To the extent authorized by state law and subject to the conditions set forth herein, the State authorizes the certificate holder to construct, operate and retire a wind energy facility, together with certain related or supporting facilities, at the site in Gilliam County and Morrow County, Oregon, as described in Section III of this site certificate. ORS 469.401(1).
2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in effect on the date that termination is sought or until the site certificate is revoked under ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that revocation is ordered. ORS 469.401(1).
3. This site certificate does not address, and is not binding with respect to, matters that were not addressed in the Council's Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm and in the *Final Order on Amendment #1*. Such matters include, but are not limited to: building code compliance, wage, hour and other labor regulations, local government fees and charges and other design or operational issues that do not relate to siting the facility (ORS 469.401(4)) and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council. 469.503(3). [Amendment #1 (SFWF); Amendment #1]

4. Both the State and the certificate holder shall abide by local ordinances, state law and the rules of the Council in effect on the date this site certificate is executed. ORS 469.401(2). In addition, upon a clear showing of a significant threat to public health, safety or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules. ORS 469.401(2).
5. For a permit, license or other approval addressed in and governed by this site certificate, the certificate holder shall comply with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules. ORS 469.401(2).
6. Subject to the conditions herein, this site certificate binds the State and all counties, cities and political subdivisions in Oregon as to the approval of the site and the construction, operation and retirement of the facility as to matters that are addressed in and governed by this site certificate. ORS 469.401(3).
7. Each affected state agency, county, city and political subdivision in Oregon with authority to issue a permit, license or other approval addressed in or governed by this site certificate shall, upon submission of the proper application and payment of the proper fees, but without hearings or other proceedings, issue such permit, license or other approval subject only to conditions set forth in this site certificate. ORS 469.401(3).
8. After issuance of this site certificate, each state agency or local government agency that issues a permit, license or other approval for the facility shall continue to exercise enforcement authority over such permit, license or other approval. ORS 469.401(3).
9. After issuance of this site certificate, the Council shall have continuing authority over the site and may inspect, or direct the Oregon Department of Energy (Department) to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of this site certificate. ORS 469.430.

III. DESCRIPTION

1. The Facility

(a) The Energy Facility

The energy facility is an electric power generating facility with an average electric generating capacity of up to 97 megawatts and a peak generating capacity of not more than 290 megawatts that produces power from wind energy. The facility consists of not more than 116 wind turbines. The energy facility is described further in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*. [Amendment #1 (SFWF); Amendment #1]

(b) Related or Supporting Facilities

The facility includes the following related or supporting facilities described below and in greater detail in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*:

- Power Collection System
- Collector Substation

- Meteorological towers
- Field workshop
- Control system
- Access roads
- Additional construction areas

[Amendment #1 (SFWF); Amendment #1]

Power Collection System

A power collection system operating at 34.5 kilovolts (kV) transports power from each turbine to a collector substation. To the extent practicable, the collection system is installed underground at a depth of at least three feet. Segments of the collector system are aboveground. Aboveground segments are installed on single-pole, cross-arm structures. [Amendment #1]

Collector Substations and Interconnection

The facility includes a collector substation. The facility includes a 230-kV transmission line between the substation and the interconnection site. The interconnection site is located at the Bonneville Power Administration Slatt Switching Station. [Amendment #1 (SFWF)]

Meteorological Towers

The facility includes two permanent meteorological (met) towers. [Amendment #1 (SFWF)]

Field Workshop

The facility includes a field workshop. Including fenced areas, the field workshop occupies about 1.6 acres. [Amendment #1 (SFWF)]

Control System

A fiber optic communications network links the control panels within each wind turbine to a host computer located in the field workshop. Supervisory, Control and Data Acquisition (SCADA) systems at the field workshop collect operating and performance data from the turbines and the facility's met towers. [Amendment #1 (SFWF)]

Access Roads

The facility includes up to 33 miles of new roads that provide access to the turbine strings. The access roads connect to graveled turbine turnouts at the base of each turbine. [Amendment #1 (SFWF); Amendment #1]

Temporary Construction Areas

During construction, the facility includes temporary laydown areas used to stage construction and store supplies and equipment. The facility includes construction crane paths to move construction cranes between turbine strings.

2. Location of the Facility

The facility is located in Morrow County and Gilliam County south of Interstate Highway 84 and east of Arlington, Oregon, between State Highways 19 and 74. The facility is located entirely on private land subject to long-term wind energy leases. [Amendment #1 (SFWF)]

ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

First Amended Site Certificate
for
Shepherds Flat South

March 12, 2010

The Oregon Energy Facility Siting Council

SITE CERTIFICATE FOR SHEPHERDS FLAT SOUTH

I. INTRODUCTION

The Oregon Energy Facility Siting Council (Council) issues this site certificate for the Shepherds Flat South (the facility) in the manner authorized under ORS Chapter 469. This site certificate is a binding agreement between the State of Oregon (State), acting through the Council, and Horseshoe Bend Wind, LLC (certificate holder) authorizing the certificate holder to construct and operate the facility in Gilliam County and Morrow County, Oregon. [Amendment #1 for the Shepherds Flat Wind Farm (SFWF)]

The findings of fact, reasoning and conclusions of law underlying the terms and conditions of this site certificate are set forth in the following documents, incorporated herein by this reference: (a) the Council's *Final Order on the Application for the Shepherds Flat Wind Farm* issued on July 25, 2008, (b) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, and (c) the *Final Order on Amendment #1*. In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order of priority: (1) this First Amended Site Certificate, (2) the *Final Order on Amendment #1*, (3) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, (4) the *Final Order on the Application for the Shepherds Flat Wind Farm* and (5) the record of the proceedings that led to the Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm. [Amendment #1 (SFWF); Amendment #1]

[Text added by Amendment #1 (SFWF) was removed by Amendment #1].

The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this site certificate, except where otherwise stated or where the context clearly indicates otherwise.

II. SITE CERTIFICATION

1. To the extent authorized by state law and subject to the conditions set forth herein, the State authorizes the certificate holder to construct, operate and retire a wind energy facility, together with certain related or supporting facilities, at the site in Gilliam County and Morrow County, Oregon, as described in Section III of this site certificate. ORS 469.401(1).
2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in effect on the date that termination is sought or until the site certificate is revoked under ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that revocation is ordered. ORS 469.401(1).
3. This site certificate does not address, and is not binding with respect to, matters that were not addressed in the Council's Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm and in the *Final Order on Amendment #1*. Such matters include, but are not limited to: building code compliance, wage, hour and other labor regulations, local government fees and charges and other design or operational issues that do not relate to siting the facility (ORS 469.401(4)) and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council. 469.503(3). [Amendment #1 (SFWF); Amendment #1]

4. Both the State and the certificate holder shall abide by local ordinances, state law and the rules of the Council in effect on the date this site certificate is executed. ORS 469.401(2). In addition, upon a clear showing of a significant threat to public health, safety or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules. ORS 469.401(2).
5. For a permit, license or other approval addressed in and governed by this site certificate, the certificate holder shall comply with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules. ORS 469.401(2).
6. Subject to the conditions herein, this site certificate binds the State and all counties, cities and political subdivisions in Oregon as to the approval of the site and the construction, operation and retirement of the facility as to matters that are addressed in and governed by this site certificate. ORS 469.401(3).
7. Each affected state agency, county, city and political subdivision in Oregon with authority to issue a permit, license or other approval addressed in or governed by this site certificate shall, upon submission of the proper application and payment of the proper fees, but without hearings or other proceedings, issue such permit, license or other approval subject only to conditions set forth in this site certificate. ORS 469.401(3).
8. After issuance of this site certificate, each state agency or local government agency that issues a permit, license or other approval for the facility shall continue to exercise enforcement authority over such permit, license or other approval. ORS 469.401(3).
9. After issuance of this site certificate, the Council shall have continuing authority over the site and may inspect, or direct the Oregon Department of Energy (Department) to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of this site certificate. ORS 469.430.

III. DESCRIPTION

1. The Facility

(a) The Energy Facility

The energy facility is an electric power generating facility with an average electric generating capacity of up to 97 megawatts and a peak generating capacity of not more than 290 megawatts that produces power from wind energy. The facility consists of not more than 116 wind turbines. The energy facility is described further in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*. [Amendment #1 (SFWF); Amendment #1]

(b) Related or Supporting Facilities

The facility includes the following related or supporting facilities described below and in greater detail in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*:

- Power Collection System
- Collector Substation

- Meteorological towers
- Field workshop
- Control system
- Access roads
- Additional construction areas

[Amendment #1 (SFWF); Amendment #1]

Power Collection System

A power collection system operating at 34.5 kilovolts (kV) transports power from each turbine to a collector substation. To the extent practicable, the collection system is installed underground at a depth of at least three feet. Segments of the collector system are aboveground. Aboveground segments are installed on single-pole, cross-arm structures. [Amendment #1]

Collector Substations and Interconnection

The facility includes a collector substation. The facility includes a 230-kV transmission line between the substation and the interconnection site. The interconnection site is located at the Bonneville Power Administration Slatt Switching Station. [Amendment #1 (SFWF)]

Meteorological Towers

The facility includes two permanent meteorological (met) towers. [Amendment #1 (SFWF)]

Field Workshop

The facility includes a field workshop. Including fenced areas, the field workshop occupies about 1.4 acres. [Amendment #1 (SFWF)]

Control System

A fiber optic communications network links the control panels within each wind turbine to a host computer located in the field workshop. Supervisory, Control and Data Acquisition (SCADA) systems at the field workshop collect operating and performance data from the turbines and the facility's met towers. [Amendment #1 (SFWF)]

Access Roads

The facility includes up to 27.5 miles of new roads that provide access to the turbine strings. The access roads connect to graveled turbine turnouts at the base of each turbine. [Amendment #1 (SFWF); Amendment #1]

Temporary Construction Areas

During construction, the facility includes temporary laydown areas used to stage construction and store supplies and equipment. The facility includes construction crane paths to move construction cranes between turbine strings.

2. Location of the Facility

The facility is located in Morrow County and Gilliam County south of Interstate Highway 84 and east of Arlington, Oregon, between State Highways 19 and 74. The facility is located entirely on private land subject to long-term wind energy leases. [Amendment #1 (SFWF)]

DELGADO EXHIBIT 6
SUBMITTED UNDER SEAL

135 FERC ¶ 61,251
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Horseshoe Bend Wind, LLC	Docket Nos. ER11-3381-000
North Hurlburt Wind, LLC	ER11-3382-000
South Hurlburt Wind, LLC	ER11-3383-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND GRANTING REQUEST FOR WAIVERS

(Issued June 17, 2011)

1. This order accepts the Shepherds Flat Wind Project Shared Facilities Agreement (Shared Facilities Agreement) filed by Horseshoe Bend Wind, LLC, (Horseshoe Bend), North Hurlburt Wind, LLC (North Hurlburt), and South Hurlburt Wind, LLC (South Hurlburt) (collectively, Applicants), effective June 17, 2011, and rants the requested waivers of certain requirements under Order Nos. 888,[1] 889,[2] and 890,[3] and section 35.28, Part 37, and Part 358 of the Commission's regulations.[4]

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[1] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[2] *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

[3] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC

(continued...)

I. Background

2. Applicants state that they are individually developing separate phases of an 845 MW wind generating facility, the Shepherds Flat Wind Facility, that will be located in Eastern Oregon. Applicants also state that each company is an exempt wholesale generator (EWG)[5] and has filed, concurrently with this filing, an application for market-based rate authority.[6] The total anticipated output of each phase, as discussed further below, has been sold to Southern California Edison Company under three separate 20-year long-term power purchase agreements. In addition, Applicants explain that test power from the Horseshoe Bend facility will begin in August 2011, with completion of all three facilities by the end of 2012.

Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[4] 18 C.F.R. Part 358 (2010); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g,* Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g,* Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g,* Order No. 717-C, 131 FERC ¶ 61,045 (2010).

[5] *Horseshoe Bend Wind, LLC,* Notice of Self-certification of Exempt Wholesale Generator Status, Docket No. EG09-84-000 (August 12, 2009); *North Hurlburt Wind, LLC,* Notice of Self-certification of Exempt Wholesale Generator Status, Docket No. EG09-82-000 (August 12, 2009); and *South Hurlburt Wind, LLC,* Notice of Self-certification of Exempt Wholesale Generator Status, Docket No. EG09-83-000 (August 12, 2009). The Notice of Effectiveness of Exempt Wholesale Generator Status was accepted for the Shepherds Flat Group on November 16, 2009.

[6] *See* Horseshoe Bend, Docket No. ER11-3376-000; North Hurlburt, Docket No. ER11-3377-000; and South Hurlburt, Docket No. ER11-3378-000.

3. Horseshoe Bend and South Hurlburt are each developing a 290 MW wind generating facility that will consist of 116 wind turbines with each having a nameplate capacity of 2.5 MW. Similarly, North Hurlburt is developing a 265 MW wind generating facility that will consist of 106 wind turbines. The total output from these facilities will be delivered over Bonneville Power Administration's (Bonneville) transmission system and each project will interconnect to Bonneville's Slatt Substation. The shared transmission facilities consist of a 230 kV ring bus and two 4.5 mile 230 kV lines.

II. Description of Filing

4. On April 18, 2011, Horseshoe Bend filed a Shared Facilities Agreement on behalf of itself, North Hurlburt, and South Hurlburt, with a requested effective date of June 17, 2011. Applicants state that each of these three companies is a Co-Tenant under the Shared Facilities Agreement.[7] Thus, according to the Applicants, they will own an undivided tenancy in common interest in the shared facilities that will be allocated according to their respective percentage interest in the nameplate capacity of each facility. Hence, Horseshoe Bend and South Hurlburt will each own an approximate 34 percent interest in the shared facilities and North Hurlburt will have an approximate 31 percent interest. Additionally, Applicants state that all construction costs and operating expenses will be shared by the Co-Tenants in proportion to their percentage interests.

5. The Applicants explain that the Shared Facilities Agreement establishes the terms and conditions under which Applicants will jointly own, utilize, operate, and maintain certain shared facilities, for the sole purpose of interconnecting their respective wind generation facility to Bonneville's transmission grid. Applicants also explain that the Shared Facilities Agreement does not establish rates, terms, or conditions for the provision of a Commission jurisdictional service. Moreover, Applicants contend that no payments will be made among Co-Tenants other than to reimburse shared construction costs and expenses that might have been advanced by one of the Co-Tenants on behalf of the others. Applicants offer that the terms and conditions of the Shared Facilities Agreement are consistent with the terms and conditions of similar agreements that have

[7] On April 18, 2011, in Docket Nos. ER11-3382-000 and ER11-3383-000, North Hurlburt and South Hurlburt filed Certificates of Concurrence with this filing.

been approved by the Commission.[8] Accordingly, Applicants request that the Commission accept the Shared Facilities Agreement, effective June 17, 2011.

6. In addition, Applicants also request waiver of the following Commission regulatory requirements applicable to transmission providers: the Open Access Transmission Tariff (OATT), the Open-Access Same-Time Information System (OASIS), and the Standards of Conduct with respect to the shared transmission facilities. Applicants assert that their transmission facilities are "limited and discrete" because the shared facilities and the individually owned facilities (i.e, certain 34.5 kV collecting lines and a 34.5/230 kV switchyard necessary to connect the generators to the shared facilities) are, even when taken together, limited and discrete and do not form an integrated transmission grid. Finally, Applicants contend that none of these facilities are designed or intended to be used to transmit power to any other entity.

7. Applicants also assert that they each qualify as "small public utility" because even if each of their wind facilities generated the full nameplate capacity during every hour of the year each entity would generate under the 4 million MWh threshold for qualification as a small utility.[9]

III. Notice of Filing

8. Notice of the filings in Docket Nos. ER11-3381-000, ER11-3382-000, and ER11-3383-000 were published in the *Federal Register*, 76 Fed. Reg. 22,690 (2011), with protests or motions to intervene due on or before May 9, 2011. None were filed.

IV. Discussion

9. The Commission finds the terms and conditions of the Shared Facilities Agreement to be just and reasonable, and not unduly discriminatory or preferential. Accordingly, we will accept the proposed Shared Facilities Agreement, effective June 17, 2011, as requested.

10. In addition, the Commission will grant the Applicants' requested waivers for the shared facilities. Order Nos. 888 and 890 require public utilities to file an OATT prior to providing transmission service. Order No. 889 requires public utilities to establish an OASIS and abide by certain standards of conduct. In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the

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[8] Transmittal Letter at 6 (citing *Goshen Phase II, LLC*, 133 FERC ¶ 61,090 (2010); *Evergreen Wind Power V, LLC*, 131 FERC ¶ 61,239 (2010).

[9] *Id.* at 7.

requirements of Order Nos. 888, 889, and 890.[10] The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004[11] are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.[12] Order No. 717 did not change those criteria.[13]

11. The Commission may grant requests for waiver of Order Nos. 888 and 890 to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive a transmission service request, the Commission has determined that the public utility must file an OATT with the Commission within 60 days of the date of the request, and it must comply with any additional requirements that are effective on the date of the request.[14]

12. The Commission may also grant a public utility's request for waiver of the requirements set forth in Order No. 889: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission

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[10] *See, e.g., Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*); *see also Goshen Phase II, LLC and Ridgeline Alternative Energy, LLC*, 133 FERC ¶ 61,090 (2010) (noting that the Commission will evaluate requests for waiver of Order Nos. 888 and 890 utilizing the same criteria).

[11] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

[12] *See Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

[13] *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

[14] *Black Creek,* 77 FERC ¶ 61,232 at 61,941.

grid); and (2) no other circumstances are present that indicate that waiver would not be justified.[15] The Commission also allows waivers for small public utilities that do not participate in a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO)[16] based on whether such utilities dispose of no more than 4 million MWh annually.[17] Moreover, the Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).[18]

13. Based on the Applicants' representations, we find that the shared facilities and the generator tie lines are limited and discrete facilities that do not constitute an integrated transmission system for the purpose of the waiver analysis considered in this order. The Applicants will only utilize the shared facilities to interconnect with, and deliver their own power onto, Bonneville's transmission system. Accordingly, we will grant the Applicants' request for waivers of the requirements for the shared facilities as set forth in Order Nos. 888, 889, and 890, and section 35.28 and Parts 37 and 358 of the Commission's regulations.[19]

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[15] *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 3 (2011) (*Black Hills*). As we explained in *Black Hills*, membership or non-membership in a tight power pool is no longer a factor in this determination.

[16] As we stated in *Black Hills*, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved ISO or RTO. *Black Hills*, 135 FERC ¶ 61,058 at P 2.

[17] *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009) (*Wolverine*).

[18] *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

[19] We note that if there is a material change in facts that affect the waivers granted herein, Applicants must notify the Commission within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009); *see also Wolverine*, 127 FERC ¶ 61,159 at P 14 n.21.

14. If the Applicants receive a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request, and must comply with any additional regulatory requirements effective on the date of the request in compliance with Order Nos. 888 and 890.[20]

The Commission orders:

(A) The Shared Facilities Agreement is hereby accepted for filing, effective June 17, 2011, as requested.

(B) The Applicants' request for waiver of the requirements of Order Nos. 888, 889, and 890, and of section 35.28, Part 37 and the Standards of Conduct requirements of Part 358 of the Commission's regulations are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[20] *Black Creek,* 77 FERC ¶ 61,232 at 61,941.

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

Data Request No. 3:

3. Please describe the "electrical transmission and distribution system" mentions in the Cooperative's complaint, paragraph no. 3, page 3, lines 11-12. What is the highest voltage of any facility comprising that "electrical and distribution system?"

Response to Data Request No. 3:

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

The "electrical transmission and distribution system" is all the electric facilities that Columbia Basin Electric Cooperative uses to transmit and distribute electric power to its members. 115 kV.

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Data Request No. 4:

4. Please specify any and all 230-kV lines, substations, or other facilities that comprise part(s) of the Cooperative's system, as described in its answer to Data Request No. 3.

Response to Data Request No. 4:

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

Columbia Basin Electric Cooperative's system does not include any 230 kV lines, substations, or other facilities at this time.

UM 1670/Columbia Basin Electric Cooperative
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Data Request No. 6:

6. Please specify, by voltage(s) and location, the substations(s) or other facilities at which the Cooperative currently received electrical power purchased at wholesale from the Bonneville Power Administration ("BPA").

Response to Data Request No. 6:

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

Alkali Substation	115 kV
Columbia Ridge Substation	115 kV
Condon Substation	115 kV
Fossil Substation	69 kV
Horn Butte Substation	115 kV
Ione Substation	69 kV
Jones Canyon Substation	230 kV
Hinkle Substation	69 kV

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Data Request No. 7:

7. Specify which, if any, of the substation(s) or other facilities specified in response to Data Request No. 6 are located outside the geographic area claimed by the Cooperative as its service territory.

Response to Data Request No. 7:

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

Horn Butte Substation
Jones Canyon Substation
Hinkle Substation

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Data Request No. 8(a):

8. Regarding the Cooperative's allegations regarding its rights to provide electric service to South Hurlburt Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 21:

   a. Please specify, by location and by voltage(s), the retail point(s) of delivery at which the Cooperative would provide such electrical service.

Response to Data Request No. 8(a):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends on the outcome of this proceeding.

UM 1670/Columbia Basin Electric Cooperative
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CBEC Responses to North Hurlburt Wind Data Requests

Data Request No. 8(b):

8. Regarding the Cooperative's allegations regarding its rights to provide electric service to South Hurlburt Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 21:

   b. Is the retail point(s) of delivery specified in answer to Data Request No. 8(a) currently in commercial operation? If not, not please specify the anticipated service date and projected capital cost of such retail point(s) of delivery.

Response to Data Request No. 8(b):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis as that analysis would depend upon the outcome of this proceeding.

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November 26, 2013
CBEC Responses to North Hurlburt Wind Data Requests

Data Request 8(c):

8. Regarding the Cooperative's allegations regarding its rights to provide electric service to South Hurlburt Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 21:

   c. To the extent the Cooperative identifies any capital cost in its answer to Data Request No. 8(b), please specify what portion of such capital cost it would expect South Hurlburt Wind, LLC, to bear as a contribution in aid of construction or other up-front payment to the Cooperative.

Response to Data Request 8(c):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis as that analysis would depend upon the outcome of this proceeding.

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CBEC Responses to North Hurlburt Wind Data Requests

Data Request No. 8(d):

8. Regarding the Cooperative's allegations regarding its rights to provide electric service to South Hurlburt Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 21:

   d. Please specify where electric service to South Hurlburt Wind, LLC, would be metered by the Cooperative.

Response to Data Request No. 8(d):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis as that analysis would depend upon the outcome of this proceeding.

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

Data Request No. 8(e):

8. Regarding the Cooperative's allegations regarding its rights to provide electric service to South Hurlburt Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 21:

   e. If the meter(s) specified in response to Data Request No. 8(d) is not, or will not be, owned by the Cooperative, please provide a copy of the contract by which the Cooperative will have the right to use such meters.

Response to Data Request No. 8(e):

Columbia Basin Electric Cooperative objects to this request as not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative would not enter into such a contract until a date after the conclusion of this proceeding.

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

Data Request No. 9(a):

9. Regarding the Cooperative's allegations regarding its rights to provide electric service to Horseshoebend Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 20:

   a. Please specify, by location and by voltage(s), the retail point(s) of delivery at which the Cooperative would provide such electrical service.

Response to Data Request No. 9(a):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis as that analysis would depend upon the outcome of this proceeding.

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

Data Request No. 9(b):

9. Regarding the Cooperative's allegations regarding its rights to provide electric service to Horseshoebend Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 20:

   b. Is the retail point(s) of delivery specified in answer to Data Request No. 9(a) currently in commercial operation? If not, not please specify the anticipated service date and projected capital cost of such retail point(s) of delivery.

Response to Data Request No. 9(b):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis as that analysis would depend upon the outcome of this proceeding.

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November 26, 2013
CBEC Responses to North Hurlburt Wind Data Requests

Data Request No. 9(c):

9. Regarding the Cooperative's allegations regarding its rights to provide electric service to Horseshoebend Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 20:

   c. To the extent the Cooperative identifies any capital cost in its answer to Data Request No. 9(b), please specify what portion of such capital cost it would expect South Hurlburt Wind, LLC, to bear as a contribution in aid of construction or other up-front payment to the Cooperative.

Response to Data Request No. 9(c):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis as that analysis would depend upon the outcome of this proceeding.

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

Data Request No. 9(d):

9. Regarding the Cooperative's allegations regarding its rights to provide electric service to Horseshoebend Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 20:

   d. Please specify where electric service to South Hurlburt Wind, LLC, would be metered by the Cooperative.

Response to Data Request No. 9(d):

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or development of a special study, is not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis as that analysis would depend upon the outcome of this proceeding.

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

Data Request No. 9(e):

9. Regarding the Cooperative's allegations regarding its rights to provide electric service to Horseshoebend Wind, LLC, regarding the Shepherds Flat Central wind, regarding the Shepherds Flat Central wind project, as stated in its Complaint, paragraph no. 20:

   e. If the meter(s) specified in response to Data Request No. 9(d) is not, or will not be, owned by the Cooperative, please provide a copy of the contract by which the Cooperative will have the right to use such meters.

Response to Data Request No. 9(e):

Columbia Basin Electric Cooperative objects to this request as not commensurate to the needs of this case, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative would not enter into such a contract until a date after the conclusion of this proceeding.

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Data Request No. 10:

10. Provide a copy of any agreement between the Cooperative and PacifiCorp, d.b.a. Pacific Power, pursuant to which either party has permitted the other party to provide retail utility service within its service territory. If no such agreement exists, so state.

Response to Data Request No. 10:

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:

Columbia Basin Electric Cooperative does not have any written agreements whereby Pacific Power may provide retail utility service within its service territory.

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November 26, 2013
CBEC Responses to North Hurlburt Wind Data Requests

Data Request No. 15:

15. Please identify the rate that the Cooperative would seek to impose for electrical service on:

a. Shepherds Flat South, and

b. Shepherds Flat Central.

Response to Data Request No. 15:

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or calls for the development of a special study and as not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Columbia Basin Electric Cooperative response as follows:

Columbia Basin Electric Cooperative has not conducted the requested analysis.

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November 26, 2013
CBEC Responses to North Hurlburt Wind Data Requests

Data Request No. 16:

16. Please specify the margin (i.e., anticipated customer revenue in excess of cost of serving that customer) that the Cooperative would incorporate into the rates specified in each of its responses to Data Request No. 15(a) and 15(b). Please specify the margin in terms of dollar amounts and percentages. You may assume a load factor of 22 percent in calculating margin amounts.

Response to Data Request No. 16:

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or calls for the development of a special study and as not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Columbia Basin Electric Cooperative response as follows:

Columbia Basin Electric Cooperative has not conducted the requested analysis.

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

Data Request No. 18:

18. Regarding the Cooperative's rate(s):

a. Please explain whether the rate and separately delineated charged specified in your response to Data Request No. 15(a) is the same rate that the Cooperative applies to its existing customer in the class of service that includes station power service. If it is not the same rate, explain why the Cooperative would propose a different rate for Shepherds Flat South.

b. If your answer to Data Request No. 18(a) is that the Cooperative has no other station-service loads, please explain whether the rate and separately delineated charges specified in your response to Data Request No. 15(a) is the same rate that the Cooperative applies to the class of service nearest approximating station service load. If it is not the same rate, explain why the Cooperative would propose a different rate for Shepherds Flat South.

Response to Data Request No. 18:

Columbia Basin Electric Cooperative objects to these requests as requesting information not maintained in the ordinary course of business or calls for development of a special study and as not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Columbia Basin Electric Cooperative response as follows:

Columbia Basin Electric Cooperative has not conducted the requested analysis.

Data Request No. 19:

19. If the Cooperative would impose other charges (in addition to the rate specified in response to Data Request No. 15), please separately delineate each and every such charge.

Response to Data Request No. 19:

Columbia Basins Electric Cooperative objects to this request because the requested information is not maintained in the ordinary course of business or calls for the development of a special study relevant or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not conducted the requested analysis.

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

Data Request No. 22:

22. Please specify the total number of customers to whom the Cooperative currently provides electrical service. Of that total, what percentage are residential customers?

Response to Data Request No. 22:

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

The total number of meters served by Columbia Basin Electric Cooperative is 3,851. The percentage of that total the number of meters that serve residential loads is 80.4 percent.

UM 1670/Columbia Basin Electric Cooperative
September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat Data Request No. 1

1. On the previously-supplied Confidential Attachment to 2-SCF-1 [SIC] (CAITHNESS004510), which was created by CSF for purposes of this contested case at the request of Columbia Basin and subject to the Protective Order in this case, please identify the following:

   c. Specifically by voltage and location, any and all transmission lines, distribution lines, transformers, or substations that are owned or operated by Columbia Basin anywhere in the land depicted on the map.

Response to Caithness Shepherds Flat Data Request No. 1.c.

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study and such information is already in the possession of the Caithness Affiliate defendants.

UM 1670/Columbia Basin Electric Cooperative
September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat Data Request No. 1

1. On the previously-supplied Confidential Attachment to 2-SCF-1 [SIC] (CAITHNESS004510), which was created by CSF for purposes of this contested case at the request of Columbia Basin and subject to the Protective Order in this case, please identify the following:

   d. The location or locations of Columbia Basin's proposed point of delivery for electric service to South Hurlburt Wind, LLC, and the voltage(s) of each such delivery point.

Response to Caithness Shepherds Flat Data Request No. 1.d.

Please see response to Caithness Shepherds Flat Data Request No. 2.a. Subpart 8.a. and b. South Hurlburt Wind, LLC has not made a request for service to Columbia Basin Electric Cooperative. The Cooperative would have to speculate as to the point of delivery and voltage that South Hurlburt Wind, LLC would identify for service.

UM 1670/Columbia Basin Electric Cooperative
September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat Data Request No. 1

1. On the previously-supplied Confidential Attachment to 2-SCF-1 [SIC] (CAITHNESS004510), which was created by CSF for purposes of this contested case at the request of Columbia Basin and subject to the Protective Order in this case, please identify the following:

   e. The location or locations at which Columbia Basin asserts it could provide a point of delivery for electrical service to South Hurlburt Wind, LLC, and the voltage(s) of each such delivery point. For any asserted point of delivery that would require the construction of additional facilities, please describe those facilities and the expected costs associated.

Response to Caithness Shepherds Flat Data Request No. 1.e.

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study.

CERTIFICATE OF FILING AND SERVICE

Docket No. UM 1670

I hereby certify that on the date given below the original and one true and correct copy of the foregoing **DECLARATION OF JEFFREY DELGADO IN SUPPORT OF CAITHNESS DEFENDANTS' MOTION FOR SUMMARY DETERMINATION** 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 6th day of October, 2014.

DAVIS WRIGHT TREMAINE LLP

By: /s/ Derek D. Green
John A. Cameron, OSB #92873
Derek D. Green, OSB #042960
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Of Attorneys for Defendants North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC and Caithness Shepherds Flat, LLC

UM 1670/Columbia Basin Electric Cooperative
September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat Data Request No. 1

1. On the previously-supplied Confidential Attachment to 2-SCF-1 [SIC] (CAITHNESS004510), which was created by CSF for purposes of this contested case at the request of Columbia Basin and subject to the Protective Order in this case, please identify the following:

   f. The location or locations of Columbia Basin's proposed points of delivery for electric service to Horseshoe Bend Wind, LLC, and the voltage(s) of each such delivery point.

Response to Caithness Shepherds Flat Data Request No. 1.f.

Please see response to Caithness Shepherds Flat Data Request No. 2.b. Subpart 9.a. and b. Horseshoe Bend Wind, LLC has not made a request for service for its backup loads to Columbia Basin Electric Cooperative. The Cooperative would have to speculate as to the point of delivery and voltage that Horsebend Bend Wind, LLC would identify for service.

UM 1670/Columbia Basin Electric Cooperative
September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat Data Request No. 1

1. On the previously-supplied Confidential Attachment to 2-SCF-1 [SIC] (CAITHNESS004510), which was created by CSF for purposes of this contested case at the request of Columbia Basin and subject to the Protective Order in this case, please identify the following:

   g. The location or locations at which Columbia Basin asserts it could provide a point of delivery for electrical service to Horseshoe Bend Wind, LLC, and the voltage(s) of each such delivery point. For any asserted point of delivery that would require the construction of additional facilities, please describe those facilities and the expected costs associated.

Response to Caithness Shepherds Flat Data Request No. 1.g.

Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study.

UM 1670/Columbia Basin Electric Cooperative
September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat, LLC Data Request 2.a.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.a. Response to NHW's Data Request No. 8 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.a.

Subpart 8.a. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service to Columbia Basin Electric Cooperative and in that request identified the voltage and the point of delivery for such retail electric service.

South Hurlburt Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative to identify the voltage or the point of deliver for such retail service.

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CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat, LLC Data Request 2.a.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.a. Response to NHW's Data Request No. 8 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.a.

Subpart 8.b. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service to Columbia Basin Electric Cooperative and in that request identified the voltage and the point of delivery for such retail electric service.

South Hurlburt Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative to identify the voltage or the point of deliver for such retail service. Columbia Basin Electric Cooperative would have to speculate as to the point of delivery that South Hurlburt Wind, LLC would identify.

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Caithness Shepherds Flat, LLC Data Request 2.a.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.a. Response to NHW's Data Request No. 8 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.a.

Subpart 8.c. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service to Columbia Basin Electric Cooperative and in that request identified the voltage and the point of delivery for such retail electric service.

South Hurlburt Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative to identify the voltage or the point of deliver for such retail service. Columbia Basin Electric Cooperative would have to speculate as to the point of delivery that South Hurlburt Wind, LLC would identify. Absent that information, Columbia Basin Electric Cooperative cannot estimate capital costs associated with such service.

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Caithness Shepherds Flat, LLC Data Request 2.a.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.a. Response to NHW's Data Request No. 8 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.a.

Subpart 8.d. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service to Columbia Basin Electric Cooperative and in that request identified the voltage and the point of delivery for such retail electric service.

South Hurlburt Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative to identify the voltage or the point of deliver for such retail service. Columbia Basin Electric Cooperative would have to speculate as to where Columbia Basin Electric Cooperative would install meters for such service.

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Caithness Shepherds Flat, LLC Data Request 2.a.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.a. Response to NHW's Data Request No. 8 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.a.

Subpart 8.e. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service to Columbia Basin Electric Cooperative and in that request identified the voltage and the point of delivery for such retail electric service.

South Hurlburt Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative to identify the voltage or the point of deliver for such retail service. Columbia Basin Electric Cooperative would have to speculate as to whether Columbia Basin Electric Cooperative would or would not own the meters used to measure power deliveries to the South Hurlburt Wind, LLC.

UM 1670/Columbia Basin Electric Cooperative
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CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat, LLC Data Request 2.b.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.b. Response to NHW's Data Request No. 9 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.b.

Subpart 9.a. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service from Columbia Basin Electric Cooperative to serve its maintenance building. In that request Horseshoe Bend Wind, LLC identified the voltage and the point of delivery for such retail electric service.

UM 1670/Columbia Basin Electric Cooperative
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CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat, LLC Data Request 2.b.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.b. Response to NHW's Data Request No. 9 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.b.

Subpart 9.b. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service from Columbia Basin Electric Cooperative for service to its maintenance building and in that request identified the voltage and the point of delivery for such retail electric service.

Horseshoe Bend Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative other than its request for service to its maintenance building, which Columbia Basin Electric Cooperative currently serves. Columbia Basin Electric Cooperative would have to speculate as to the point of deliver for additional retail service to Horseshoe Bend Wind, LLC, which it has not requested.

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Caithness Shepherds Flat, LLC Data Request 2.b.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.b. Response to NHW's Data Request No. 9 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.b.

Subpart 9.c. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service from Columbia Basin Electric Cooperative for its maintenance building and in that request identified the voltage and the point of delivery for such retail electric service.

Horseshoe Bend Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative other than its request for service to its maintenance building, which Columbia Basin Electric Cooperative currently serves. Columbia Basin Electric Cooperative would have to speculate as to the point of deliver for additional retail service to Horseshoe Bend Wind, LLC, which it has not requested. Absent that information, Columbia Basin Electric Cooperative cannot estimate capital costs associated with such service.

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Caithness Shepherds Flat, LLC Data Request 2.b.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.b. Response to NHW's Data Request No. 9 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.b.

Subpart 9.d. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service from Columbia Basin Electric Cooperative for its maintenance building and in that request identified the voltage and the point of delivery for such retail electric service.

Horseshoe Bend Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative other than its request for service to its maintenance building, which Columbia Basin Electric Cooperative currently serves. Columbia Basin Electric Cooperative would have to speculate as to the point of deliver for additional retail service to Horseshoe Bend Wind, LLC, which it has not requested. Columbia Basin Electric Cooperative would have to speculate as to where Columbia Basin Electric Cooperative would install meters for such service.

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Caithness Shepherds Flat, LLC Data Request 2.b.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.b. Response to NHW's Data Request No. 9 (all subparts)

Response to Caithness Shepherds Flat, LLC Request No. 2.b.

Subpart 9.e. Columbia Basin Electric Cooperative objects to this request as requesting information not maintained in the ordinary course of business or requires the development of a special study, is not commensurate to the needs of this case, requires speculation, and is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objection, Columbia Basin Electric Cooperative provides the following:

Columbia Basin Electric Cooperative has not done this analysis as the analysis depends upon the outcome of this proceeding.

Additionally, Columbia Basin Electric Cooperative provides retail service at the voltage and points of delivery identified and requested by its members. For instance, Horseshoe Bend Wind, LLC made a request for electrical service from Columbia Basin Electric Cooperative for its maintenance building and in that request identified the voltage and the point of delivery for such retail electric service.

Horseshoe Bend Wind, LLC has never made a request for electrical service to Columbia Basin Electric Cooperative other than its request for service to its maintenance building, which Columbia Basin Electric Cooperative currently serves. Columbia Basin Electric Cooperative would have to speculate as to the point of deliver for additional retail service to Horseshoe Bend Wind, LLC, which it has not requested.

Columbia Basin Electric Cooperative would have to speculate as to whether Columbia Basin Electric Cooperative would or would not own the meters used to measure power deliveries to the Horseshoe Bend Wind, LLC.

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Caithness Shepherds Flat, LLC Data Request 2.c.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.c. Response to NHW's Data Request No. 10, specifically answering the question whether or not Columbia Basin has a written agreement with Pacific Power permitting Columbia Basin to provide utility service at a delivery point within Pacific Power's service territory.

Response to Caithness Shepherds Flat, LLC Data Request No 2.c.

Columbia Basin Electric Cooperative objects to this request as requesting information that seeks a legal conclusion, is not commensurate with the needs of this case, vague, ambiguous, and not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to such objections, Columbia Basin Electric Cooperative provides the following:

This data request seeks a legal conclusion as to requesting whether Columbia Basin Electric Cooperative has an agreement "to provide utility service" within Pacific Power's service territory. The term "utility service" requires a legal conclusion under ORS 758. As such, no answer is required.

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Caithness Shepherds Flat, LLC Data Request 2.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.d. Response to NHW's Data Request No. 15.

Response to Caithness Shepherds Flat, LLC Request No. 2.d.

Columbia Basin Electric Cooperative objects to this request as requesting information that is not commensurate with the needs of this case, vague, ambiguous, irrelevant and requires speculation. For instance, the request is vague and ambiguous since Shepherds Flat South, a.k.a. as Horseshoe Bend Wind, LLC made a request for electrical service from Columbia Basin Electric Cooperative for its maintenance building and Columbia Basin Electric currently serves that load at its small commercial rate.

Shepherds Flat South and Central have not requested service from Columbia Basin Electric Cooperative for electric service to their backup loads. Columbia Basin Electric Cooperative would have to speculate as to what service these projects would request and details of such requests.

Subject to such objections, Columbia Basin Electric Cooperative provides the following information:

If Shepherds Flat South and Central requested service for backup power needs, the Cooperative would likely provide that service at its rate Schedule 11, if rate Schedule 11 is applicable to the requested service. The current rates under rate schedule 11 are set forth in Attachment CSF 2.d.

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Caithness Shepherds Flat, LLC Data Request 2.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.e. Response to NHW's Data Request No. 16.

Response to Caithness Shepherds Flat, LLC Data Request 2.e.

Columbia Basin Electric Cooperative objects to this request as requesting information that is not commensurate with the needs of this case, vague, ambiguous, not relevant, requires speculation, and requests information not maintained in the ordinary course of business or requires the development of a special study. Subject to such objections, Columbia Basin Electric Cooperative provides the following information:

Generally, under rate Schedule 11, Columbia Basin Electric Cooperative realizes a margin of approximately nine percent. That level of margin can vary from year to year, however, depending upon Columbia Basin Electric Cooperative's costs and revenue.

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Caithness Shepherds Flat, LLC Data Request 2.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.e. Response to NHW's Data Request No. 18.

Response to Caithness Shepherds Flat, LLC Data Request 2.f.

Columbia Basin Electric Cooperative objects to this request as requesting information that is not commensurate with the needs of this case, vague, ambiguous, irrelevant, requires speculation, and requests information not maintained in the ordinary course of business or requires the development of a special study. For instance, the term "station-service loads" is vague and ambiguous and the data request does not define that term. Subject to such objections, Columbia Basin Electric Cooperative provides the following information:

Columbia Basin Electric Cooperative would provide service to the backup power loads of Shepherds Flat Central and South with rate Schedule 11.

UM 1670/Columbia Basin Electric Cooperative
September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat, LLC Data Request 2.

Please provide whether Columbia Basin's November 26, 2013 responses to the following Data Requests contained in North Hurlburt Wind, LLC's First Set of Data Requests ("NHW's Data Requests") accurately reflects [SIC] Columbia Basin's present position based on current information. To the extent Columbia Basin's positions has changed as to any response, please provide the updated response below.

2.e. Response to NHW's Data Request No. 19.

Response to Caithness Shepherds Flat, LLC Data Request 2.g.

Columbia Basin Electric Cooperative objects to this request as requesting information that is not commensurate with the needs of this case, vague, ambiguous, irrelevant, requires speculation, and requests information not maintained in the ordinary course of business or requires the development of a special study. Subject to such objections, Columbia Basin Electric Cooperative provides the following information:

Columbia Basin Electric Cooperative would provide service to the backup power loads of Shepherds Flat Central and South with rate Schedule 11.

UM 1670/Columbia Basin Electric Cooperative
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Caithness Shepherds Flat, LLC Data Request 3.

Please identify and quantify, separately, any and all incremental power, transmission, distribution or overhead costs that would be incurred by the Cooperative as the result of its provision of station power service to South Hurlburt Wind, LLC. For purposes of this data request, "incremental cost" means cost differences from, or in addition to, costs presently being incurred by the Cooperative without station power service to South Hurlburt wind, LLC.

Response to Caithness Shepherds Flat, LLC Data Request No. 3.

Columbia Basin Electric Cooperative objects to this request as requesting information that is not commensurate with the needs of this case, vague, ambiguous, irrelevant, requires speculation, and requests information not maintained in the ordinary course of business or requires the development of a special study. For instance, South Hurlburt Wind, LLC has not made a request for service from the Cooperative and has not provided necessary information for Columbia Basin Electric Cooperate to even begin answering this data request. Columbia Basin Electric Cooperative would have to speculate as to what service South Hurlburt Wind, LLC would request and numerous details as to that service. Subject to such objections, Columbia Basin Electric Cooperative provides the following information:

Columbia Basin Electric Cooperative would provide service to the backup power loads of South Hurlburt Wind, LLC with rate Schedule 11. The rates in Schedule 11 are based on Columbia Basin Electric Cooperative's power costs, which in this case are primarily power costs from BPA at its Tier 2 rates.

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September 30, 2014
CSF First Set of Data Requests to CBEC

Caithness Shepherds Flat, LLC Data Request 3.

Please identify and quantify, separately, any and all incremental power, transmission, distribution or overhead costs that would be incurred by the Cooperative as the result of its provision of station power service to Horseshoe Bend Wind, LLC. For purposes of this data request, "incremental cost" means cost differences from, or in addition to, costs presently being incurred by the Cooperative without station power service to Horseshoe Bend Wind, LLC.

Response to Caithness Shepherds Flat Data Request No. 4.

Columbia Basin Electric Cooperative objects to this request as requesting information that is not commensurate with the needs of this case, vague, ambiguous, irrelevant, requires speculation, and requests information not maintained in the ordinary course of business or requires the development of a special study. For instance, Columbia Basin Electric Cooperative currently does provide power to serve the station service loads of Horseshoe Bend Wind, LLC. Horseshoe Bend Wind, LLC has not made a request for service from Columbia Basin Electric Cooperative to serve its backup power loads and has not provided necessary information for Columbia Basin Electric Cooperate to even begin answering this data request. Columbia Basin Electric Cooperative would have to speculate as to what service Horseshoe Bend Wind, LLC would request and numerous details as to that service. Subject to such objections, Columbia Basin Electric Cooperative provides the following information:

Columbia Basin Electric Cooperative would provide service to the backup power loads of Horseshoe Bend Wind, LLC with rate Schedule 11. The rates in Schedule 11 are based on Columbia Basin Electric Cooperative's power costs, which in this case are primarily power costs from BPA at its Tier 2 rates.

Raymond S. Kindley
OSB No. 964910
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West Linn, OR 97068
Tel: (503) 206-1010
kindleylaw@comcast.net

BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

COLUMBIA BASIN ELECTRIC COOPERATIVE, INC. an Oregon cooperative corporation Complainant, vs. PACIFICORP, dba Pacific Power, an Oregon business corporation, Defendant and NORTH HURLBURT WIND, LLC, a foreign limited liability company, Defendant	Docket No. UM 1670 COLUMBIA BASIN ELECTRIC COOPERATIVE, INC'S RESPONSE TO NORTH HURLBURT WIND, LLC'S FIRST REQUEST FOR ADMISSIONS

To: Defendant, North Hurlburt Wind, LLC, ("Defendant") by and through its counsel of record, John Cameron, Davis, Wright, Tremaine, LLP, 1300 S.W. 5th Avenue, Suite 2400, Portland, OR 97201-5610.

PLEASE TAKE NOTE that in response to Defendant's first set of request for admissions, Complaintant Columbia Basin Electric Cooperative, Inc. ("Complaintant") hereby responds as follows:

GENERAL OBJECTIONS

1. Complaintant objects to any request, definition or instruction that imposes obligations beyond those specified by applicable law, including the Oregon Rules of Civil Procedure and the Oregon Public Utility Commission's administrative rules.

2. Complaintant objects to each and every request to the extent that it calls for

KINDLEY LAW P.C.
Attorney at Law
PO Box 569
West Linn, Oregon 97068
Telephone (503) 206-1010•E-mail kindleylaw@comcast.net

Request for Admission No. 6: Please affirm, or deny, that the BPA has informed the Cooperative and representatives of Caithness Shepherds Flat, LLC, that it would allow the loads of Shepherds Flat South and Shepherds Flat Central to be aggregated for purposes of determining a single aggregated demand charge, if the Cooperative were to provide station service to the loads of such entities.

Response: Complaintant objects to this request because it is vague and ambiguous. The Complaintant admits an employee of BPA represented to the Cooperative that BPA would not allow the loads of the specified wind projects to be aggregated for purposes of determining a single aggregated demand charge, if the Cooperative were to provide station service to the load of such entities.

DATED this 26th day of November, 2013.

KINDLEY LAW PC

By */s/ Raymond S. Kindley*
RAYMOND S. KINDLEY, OSB 964910
Email: kindleylaw@comcast.net
Tel: (503) 206-1010
Attorney for Columbia Basin Electric Cooperative, Inc.

KINDLEY LAW P.C.
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KINDLEY LAW PC

RAYMOND S. KINDLEY ADMITTED IN OREGON AND WASHINGTON

October 1, 2014

VIA ELECTRONIC AND U.S. MAIL

Mr. John Cameron
Davis, Wright, Tremaine, LLP
1300 S.W. Fifth Avenue, Suite 2400
Portland, OR 97201-3610

RE: OR PUC Docket UM 1670
Supplemental Responses to Caithness Shepherds Flat, LLC First Set of Data Requests

Please find enclosed the supplemental information for Columbia Basin Electric Cooperative's Responses to Caithness Shepherds Flat, LLC First Set of Data Requests to Columbia Basin Electric Cooperative. The information is the map that is responsive to Caithness Shepherds Flat, LLC Data Request 1.a.

If you have any questions, please contact me.

Sincerely

Raymond S. Kindley

KINDLEY LAW, PC
PO BOX 569 • WEST LINN, OR 97068 • (503) 206-1010
kindleylaw@comcast.net

DELGADO EXHIBIT 8 PAGE 46 SUBMITTED UNDER SEAL

BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Request for Amendment #1 of the Site Certificate for Shepherds Flat South	))))	FINAL ORDER ON AMENDMENT #1

Oregon Energy Facility Siting Council
March 12, 2010

SHEPHERDS FLAT SOUTH:
FINAL ORDER ON AMENDMENT #1

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LIST OF ABBREVIATIONS

BPA	Bonneville Power Administration
Certificate Holder	Horseshoe Bend Wind LLC
Council	Energy Facility Siting Council
Department	Oregon Department of Energy
DEQ	Oregon Department of Environmental Quality
DSL	Oregon Department of State Lands
GCZO	Gilliam County Zoning Ordinance
MCZO	Morrow County Zoning Ordinance
MW	megawatt or megawatts
ODFW	Oregon Department of Fish and Wildlife
SCADA	Supervisory, Control and Data Acquisition (the control system for the energy facility)
SFC	Shepherds Flat Central
SFN	Shepherds Flat North
SFS	Shepherds Flat South
SFWF	Shepherds Flat Wind Farm
USFWS	U.S. Fish and Wildlife Service
WMMP	Wildlife Monitoring and Mitigation Plan

SHEPHERDS FLAT SOUTH:
FINAL ORDER ON AMENDMENT #1

I. INTRODUCTION

The Oregon Energy Facility Siting Council (Council) issues this order in accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by the certificate holder, Horseshoe Bend Wind LLC for amendment of the site certificate for Shepherds Flat South (SFS).

The Council issued a site certificate for SFS in September 2009. The site certificate authorized construction and operation of up to 120 wind turbines and related facility components. The facility would have a peak generating capacity of up to 360 megawatts. The facility site is entirely on private lands located in Morrow County and Gilliam County south of Interstate Highway 84 and east of Arlington, Oregon, between State Highways 19 and 74. The certificate holder has not begun construction of the facility.

The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this order.

II. PROCEDURAL HISTORY AND AMENDMENT PROCESS

On November 5, 2009, the certificate holder submitted a "Request to Amend the Site Certificate for Shepherds Flat South" (Request for Amendment #1). On November 12, 2009, the certificate holder sent copies of the amendment request to a list of reviewing agencies provided by the Oregon Department of Energy (Department) with a memorandum from the Department requesting agency comments by December 11, 2009. On November 17, the Department sent notice of the amendment request to all persons on the Council's mailing list, to the special list established for the facility and to an updated list of property owners supplied by the certificate holder, requesting public comments by December 11, 2009.

By letter dated November 18, the Department notified the certificate holder that the proposed order would be issued no later than January 15, 2010.

In response to the public and agency notices of the amendment request, the Department received written comments from the following reviewing agencies and members of the public:

- Reviewing Agencies
  Joe Misek, Oregon Department of Forestry
  Sarah Kelly, Oregon Department of State Lands
  Jerry Sauter, Oregon Water Resources Department
  Rose Owens, Oregon Department of Fish and Wildlife
  Todd Hesse, Oregon Department of Environmental Quality
- Public Comments
  Johnson Meninick, Confederated Tribes and Bands of the Yakama Nation
  Marisa Meyer / Gary Miller, U.S. Fish and Wildlife Service
  Leslie Nelson, The Nature Conservancy

The Department considered all of the comments in preparing the proposed order. A summary of all comments received and the Department's responses are included in Attachment D, incorporated herein by this reference.

By letter dated January 13, 2010, the Department notified the certificate holder that additional time would be needed to prepare the proposed order and, in accordance with OAR 345-027-0070(4), explained the circumstances justifying the delay. The Department stated that the proposed order would be issued by February 5.

The Department analyzed the Request for Amendment #1 for compliance with all applicable Council standards. The Department's recommended findings and conclusions were presented in the proposed order. The Department recommended that the Council approve the amendment request, subject to revisions of the site certificate discussed below at page 47.

After issuing the Proposed Order on February 4, 2010, the Department issued a public notice as required under OAR 345-027-0070(5). The Department mailed the notice to all persons on the Council's general mailing list and to all persons on the SFS special list, property owner list and reviewing agency list. In addition, the Department posted the notice on the Department's Internet website. The notice invited public comments and gave a deadline of March 8, 2010, for comments or contested case requests. The Department received the following comments by the deadline of March 8:

- Leta Neiderheiser, Oregon Historic Trails Advisory Council, requested that certain restrictions for the avoidance of impacts on the Oregon Trail be maintained for the new proposed boundaries of the "Shepherds Flat Wind Farm."[1] The Department responded to the comment by email, noting that the protections are incorporated in Condition 46 of the SFS site certificate and would continue to apply to the facility if the amendment were approved.[2]
- Andre Meyer expressed concern about turbine noise impacts and the potential negative impact on the value of his property. He requested that "Caithness be required to pay a more fair monetary 'value' for the noise easement prior to the 'Request for Amendment' being granted."[3] Condition 97 of the site certificate requires the certificate holder to demonstrate compliance with the noise control regulations in OAR 340-035-0035(1)(b)(B) based on the final design configuration of the facility. The certificate holder may or may not need a noise easement to demonstrate compliance with respect to the Meyer property. If the certificate holder needs a noise easement, obtaining the easement is a matter of private negotiation between the certificate holder and the landowner. The Council is not a party to the negotiation and has no authority to impose payment terms for a noise easement. The Department provided this information in response to the comment.[4]

At a public meeting in Hood River, Oregon, on March 12, 2010, the Council considered the Department's recommendations and voted to approve the amendment request.

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[1] Letter from Leta Neiderheiser, Chair, Oregon Historic Trails Advisory Council, February 27, 2010.
[2] Email from John White, Oregon Department of Energy, March 8, 2010. The condition also applies to Shepherds Flat Central.
[3] Email from Andre Meyer, Kalex Farms, March 8, 2010.
[4] Email from John White, Oregon Department of Energy, March 9, 2010.

III. DESCRIPTION OF THE PROPOSED AMENDMENT

The amendment request describes an expansion of the site boundary to accommodate an alternative route for a 230-kV transmission line to connect the facility to the regional transmission system operated by the Bonneville Power Administration (BPA). The alternative route would terminate at the same point of interconnection as described in the site certificate: a BPA substation currently under construction next to BPA's Slatt Switching Station. The alternative route for the transmission line would run from the SFS substation north to the Shepherds Flat Central (SFC) substation and then west to the BPA substation. The certificate holder proposes to construct the transmission line within either the previously-approved corridor or the proposed alternative corridor.

Companion amendment requests were submitted to the Council by North Hurlburt Wind LLC for Shepherds Flat North (SFN) and by South Hurlburt Wind LLC for SFC. The 230-kV interconnection lines for SFN, SFC and SFS would be jointly owned by the certificate holders for the three facilities, and the power from the three facilities would be carried on the same lines. Contracts among the three certificate holders or with a third party would address transmission line maintenance. All three facilities would use the same transmission line corridor. Use of the alternative route would eliminate the need for the interconnection line to cross an existing high-voltage power line and a County road within the SFN site.

The amendment would remove approximately 1,123 acres from the facility site.[5] These 1,123 acres would be added to the SFC site to accommodate new turbine locations in SFC.[6] In addition, approximately 1,290 acres of land within the previously-approved SFS site would be added to the SFC site but would not be removed from SFS. These 1,290 acres would be retained in SFS for a transmission corridor (no SFS turbines would be located within the area).[7]

Approximately 785 acres within the previously-approved SFC site would be added to the SFS site as part of the alternate transmission corridor for SFS. In addition, the amendment would add new lands (lands lying outside the previously-approved SFS or SFC site boundaries) to the facility site totaling approximately 4,855 acres.[8] This expansion of the facility site would allow the certificate holder to reconfigure the transmission line and turbine layout. The new lands include approximately 1,030 acres that are also proposed to be added to SFC under a companion amendment request.[9] This land would be used as a 230-kV transmission line corridor for SFS, adjacent to the previously-approved transmission corridor, so that the line can be reconfigured to reduce the impact on a cultivated field.[10]

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[5] The areas proposed to be removed from the SFS site are shown in the Request for Amendment #1, Section V, Map 1.
[6] A companion amendment request is being submitted to the Council by the SFC certificate holder.
[7] The shared 1,290-acre area lies between Fairview Lane and Cecil Road and is shown as part of the shaded area identified as "Transmission Corridor Option A" in the Request for Amendment #1, Section V, Map 2.
[8] Most of this land was proposed to be included in the Saddle Butte Wind Park, as described in the Notice of Intent submitted by Saddle Butte Wind LLC in August 2009. In addition, the new lands include a segment of the alternate transmission line corridor between the previously-approved SFC site boundary and the BPA Slatt substation (approximately 8.8 acres) and a transmission corridor crossing Eightmile Canyon (approximately 16.2 acres).
[9] Email from Patricia Pilz, January 21, 2010.
[10] Request for Amendment #1, Section I, p. 2).

The amendment would reduce the maximum number of turbines at the facility to 116 and would reduce the facility's maximum peak generating capacity to 290 MW.

The Request for Amendment #1 included a request for a general exception to Condition 40(d) where the adjacent land (outside of the certificate holder's lease area) is subject to a separate wind development lease and the wind leaseholders on both parcels have entered into a setback agreement acceptable to the Department. The certificate holder withdrew this exception request.[11]

1. Amendment Procedure

Under OAR 345-027-0050, a site certificate amendment is needed because the certificate holder proposes to design, construct or operate SFS in a manner different from the description in the current site certificate. In particular, the certificate holder proposes to expand the site boundary, which could result in significant adverse impacts that the Council has not previously addressed and in the need to revise the conditions of the site certificate.

The Department and the Council must follow the procedures of OAR 345-027-0070 in reviewing the amendment request. In making a decision on this amendment request, the Council applies the "applicable substantive criteria" (defined in OAR 345-022-0030) that were in effect on the date the certificate holder submitted the request for amendment. The Council applies all other State statutes, administrative rules and local government ordinances that are in effect on the date the Council makes its decision. For an amendment that would change the site boundary, the Council must consider whether the facility complies with all Council standards with respect to the area added to the site by the amendment. For any amendment, the Council must consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate. We address compliance with these requirements in Sections IV and V.

2. The Certificate Holder's Proposed Amendments to the Site Certificate

The certificate holder described the proposed changes to the facility in Section III of the amendment request. The amendment would reduce the maximum generating capacity of the facility to 290 MW and would reduce the maximum number of wind turbines to 116. The amendment would change the facility description and location by enlarging the facility site to increase the micrositing area for wind turbines and other components and to allow the option of constructing the 230-kV interconnection line in an alternative corridor. The amendment would remove other land from the facility site.

In Section IV of the amendment request, the certificate holder proposed specific changes to the site certificate.[12] The Department recommended that the Council approve the substance of the site certificate amendments proposed by the certificate holder and other modifications consistent with the amendment request. The Department's recommended site certificate revisions are discussed below at page 47. The *Wildlife Monitoring and Mitigation Plan* is incorporated in Condition 83 of the site certificate. The Department's recommended modifications of the *Wildlife Monitoring and Mitigation Plan* are addressed in Revision 12 and in Attachment A. The *Habitat Mitigation Plan* is incorporated in Condition 85 of the site

[11] Email from Patricia Pilz, January 1, 2010.
[12] Request for Amendment #1, Section IV, following p. 3.

certificate. The Department's recommended modifications of the *Habitat Mitigation Plan* are addressed in Revision 13 and in Attachment C.

3. Description of the Facilities Authorized by Amendment #1

The *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* (September 11, 2009) – hereinafter referred to as *Final Order on Amendment #1 (SFWF)* – describes SFS as approved before this amendment. If the Council approves Amendment #1, the facility description would be modified as described below.

Turbines

The Council previously approved construction of up to 120 turbines at SFS. The amendment would reduce the number of turbines to not more than 116. The certificate holder has selected a 2.5-MW turbine for the facility.[13] The combined peak generating capacity of the facility would not exceed 290 MW.

Power Collection System

Approximately 61 miles of 34.5-kV electric collector cables would connect the turbines to a facility substation.[14] Most of the collector system would be installed underground, but segments of the collector system could be located aboveground. The certificate holder has determined that collector lines would not be understrung on the 230-kV transmission line structures.[15] The maximum length of double-circuit aboveground segments would be 3.2 miles (6.4 miles of 3-conductor lines).[16] There would be no single-circuit segments aboveground. Up to 20 surface junction boxes would be installed to provide service access to the underground collector lines.[17]

Substation and Interconnection

A facility substation would be constructed within the SFS site boundary. Power from the collector system would be stepped-up to 230 kV at the substation. An aboveground 230-kV transmission line would connect the SFS facility to the regional transmission grid through the Bonneville Power Administration (BPA) Slatt Switching Station located west of the main project area. The previously-approved transmission line route (described in the amendment request as "Option A") would require a transmission line approximately 17.4 miles long that would run from the SFS substation north to the SFN substation and then west to the BPA substation.[18] The proposed alternative transmission line route ("Option B") would run from the SFS substation north to the SFC substation and then west to the BPA substation. Under Option B, the transmission line would be approximately 14.5 miles in length. The amendment request includes a map showing the Option A and Option B transmission line routes.[19] The certificate holder would be authorized to use either the previously-approved interconnection line corridor or the alternative corridor. Under either option, the transmission route would

[13] Request for Amendment #1, Section I, p. 1.
[14] Email from Patricia Pilz, January 12, 2010.
[15] Email from Patricia Pilz, December 16, 2009.
[16] Table of typical and maximum components (email from Carol Weisskopf, December 22, 2009).
[17] Email from Carol Weisskopf, December 22, 2009.
[18] Length of transmission line based on typical layout (Request for Amendment #1, Section III, p. 1).
[19] Request for Amendment #1, Section V, Map 3.

overlap the SFC and SFN sites in a shared corridor. The 230-kV transmission line would be supported on steel monopole structures.

Control System

The Supervisory, Control and Data Acquisition (SCADA) system is a fiber optic communications network that follows the same segment routes as the collector system. Where underground, communications lines would be placed in the same trenches as the collector lines, and aboveground communications lines would run on the same power poles as the collector lines. The overall length of the SCADA system is the same as the overall length of the collector system, described above.

Access Roads

The amendment would decrease the overall length of new roads to 27.5 miles (from the previously-approved maximum of 31.5 miles).[20] In addition, approximately 3.1 miles (but not more than 3.6 miles) of existing ranch roads would be improved. In total, the combined length of access roads would not exceed 31.1 miles, including both new roads and improved existing roads. The finished roads would be approximately 16 feet wide. The new roads and the improved existing roads would have a compacted base of native soil and a graveled surface to a depth of four to ten inches.[21]

Construction Disturbance Areas

During facility construction, there would be approximately 334 acres of temporary disturbance, based on the typical layout (an increase of up to 106 acres compared to the previously-approved facility).[22] The certificate holder's estimate of the area of construction disturbance increased based on discussions with the construction contractor regarding final design details, which occurred after the Request for Amendment #1 was submitted.[23] The reasons for the increase are described herein at page 18.

Temporary disturbance includes approximately 25.4 miles of new access roads and 3.2 miles of existing ranch roads that would be temporarily widened up to 71 feet wide to accommodate crane travel. Areas of temporary construction disturbance also include a 7-acre temporary staging and storage area, approximately 72 acres of temporary construction area at turbine sites, approximately 57 acres of temporary disturbance for trenching and approximately 34.5 acres of temporary disturbance associated with construction of aboveground collector and 230-kV transmission lines.

Site and Site Boundary

The *Final Order on Amendment #1 (SFWF)* describes the SFS site and site boundary as previously approved. If the Council approves Amendment #1, the area within the site boundary would increase by approximately 4,517 acres to a total of approximately 15,928

[20] Table of typical and maximum components (email from Carol Weisskopf, December 22, 2009).
[21] Email from Patricia Pilz, January 12, 2010.
[22] Temporary project construction footprint, typical layout (email from Carol Weisskopf, December 22, 2009). There could be up to 409 acres of temporary disturbance under maximum habitat disturbance layout, as shown in Table 4 herein.
[23] Email from Carol Weisskopf, December 22, 2009.

acres.[24] The amendment request includes a map of the expanded site boundary, showing the areas removed and the areas added to the site by the proposed amendment.[25]

IV. THE COUNCIL'S SITING STANDARDS: FINDINGS AND CONCLUSIONS

The Council must decide whether the amendment complies with the facility siting standards adopted by the Council. In addition, the Council must impose conditions for the protection of the public health and safety, conditions for the time of commencement and completion of construction and conditions to ensure compliance with the standards, statutes and rules addressed in the project order. ORS 469.401(2).

The Council is not authorized to determine compliance with regulatory programs that have been delegated to another state agency by the federal government. ORS 469.503(3). Nevertheless, the Council may consider these programs in the context of its own standards to ensure public health and safety, resource efficiency and protection of the environment.

The Council has no jurisdiction over design or operational issues that do not relate to siting, such as matters relating to employee health and safety, building code compliance, wage and hour or other labor regulations, or local government fees and charges. ORS 469.401(4).

In making its decision on an amendment of a site certificate, the Council applies the applicable State statutes, administrative rules and local government ordinances that are in effect on the date the Council makes its decision, except when applying the Land Use Standard. In making findings on the Land Use Standard, the Council applies the applicable substantive criteria in effect on the date the certificate holder submitted the request for amendment. OAR 345-027-0070(10).

1. General Standard of Review

OAR 345-022-0000

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose

[24] Approximately 1,123 acres would be removed from the site boundary, and approximately 5,640 acres would be added, for a net increase of 4,517 acres.
[25] Request for Amendment #1, Section V, Map 1.

conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

* * *

We address the requirements of OAR 345-022-0000 in the findings of fact, reasoning, conditions, and conclusions of law discussed in the sections that follow. Upon consideration of all of the evidence in the record, we state our general conclusion regarding the amendment request in Section VII.

2. Standards about the Applicants

(a) Organizational Expertise

OAR 345-022-0010

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the certificate holder, as a subsidiary of Caithness Energy, LLC, has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate.[26] The Council found that the certificate holder may optionally obtain concrete, water and fuel from "service areas" that would be permitted, constructed and operated by third-party contractors. In choosing that option, the certificate holder would rely on third-party permits. The Council found that the third-party contractors have a reasonable likelihood of getting the necessary permits and that the certificate holder has a reasonable likelihood of entering into a contractual or other arrangement with these contractors for access to concrete, water and fuel necessary for construction of SFS.[27]

The proposed changes to the SFS site boundary would not affect the Council's previous findings. The Council finds that there have been no changes of circumstances or underlying facts that would affect the Council's previous findings under this standard.

Conclusions of Law

Based on the findings discussed above, the Council concludes that certificate holder would meet the Council's Organizational Expertise Standard if Amendment #1 were approved.

(b) Retirement and Financial Assurance

OAR 345-022-0050

To issue a site certificate, the Council must find that:

(1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the SFS site could be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.[28] The Council found that the cost of site restoration would not exceed $8.887 million in 3rd Quarter 2009 dollars.[29] The Council found that the certificate holder, Horseshoe Bend Wind LLC, had demonstrated a reasonable likelihood of obtaining a bond or letter of credit for that amount.

As described herein, the proposed amendment would enlarge the facility site and would reduce the maximum number of wind turbines. It would reduce the maximum

[26] *Final Order on Amendment #1 (SFWF)*, p. 15.
[27] *Final Order on Amendment #1 (SFWF)*, p. 15-16.
[28] *Final Order Amendment #1 (SFWF)*, p. 16.
[29] *Final Order Amendment #1 (SFWF)*, p. 23.

combined length of aboveground segments of the collector and SCADA system and would reduce the number of junction boxes. It would decrease the maximum combined length of new access roads but would increase the area of temporary disturbance during construction. The amendment would reduce the maximum length of the 230-kV transmission line.[30]

For this amendment request, the Department calculated a revised cost estimate for SFS following the estimating procedure outlined in its draft "Facility Retirement Cost Estimating Guide." The estimate assumed a facility configuration that would result in the highest site restoration cost consistent with the maximum design flexibility requested by the certificate holder. The assumptions underlying the revised SFS cost estimate are as follows:

- 116 GE 2.5-MW turbines, each weighing 302 U.S. tons (including the weight of steel in the towers, nacelles, internal ladders and platforms).[31]
- Turbine foundations containing 66 cubic yards of concrete above three feet below grade.[32]
- 116 step-up transformers located within the turbine towers.[33]
- 89 turbine turnouts.[34]
- Two meteorological towers, one field workshop, one substation.[35]
- 3.2 miles of double-circuit 34.5-kV transmission segments (6.4 miles of line) and SCADA lines mounted on up to 58 poles.[36]
- 20 miles of single-circuit 230-kV transmission line mounted on up to 152 steel monopoles.[37]
- 20 junction boxes.[38]
- 27.5 miles of access roads.[39]
- Removal of facility components would disturb additional area around the component footprints. The estimated areas affected and the unit costs to

[30] The full length of the 230-kV line and all support structures needed for SFS are included in the estimate, although the same transmission route would be used for SFN and SFC and some support structures would be shared.
[31] Table of typical and maximum components (email from Carol Weisskopf, December 22, 2009) and wind turbine specifications, Request for Amendment #1 for the Shepherds Flat Wind Farm, Section III, p. 14.
[32] Wind turbine specifications, Request for Amendment #1 for the Shepherds Flat Wind Farm, Section III, p. 14.
[33] Email from Patricia Pilz, January 7, 2010. The unit cost for transformer removal is based on electrical disassembly costs alone.
[34] Turbines at ends of roads have no turnout, based on permanent facilities footprint (email from Carol Weisskopf, December 22, 2009).
[35] Permanent facilities footprint (email from Carol Weisskopf, December 22, 2009).
[36] Table of typical and maximum components (email from Carol Weisskopf, December 22, 2009).
[37] Table of typical and maximum components (email from Carol Weisskopf, December 22, 2009). The unit cost for the 230-kV transmission line has decreased from the cost shown in the *Final Order on Amendment #1 (SFWF)* due to a change from double-circuit to single-circuit and an increased distance between transmission poles (based on changes to footprint calculations, email from Carol Weisskopf, December 22, 2009).
[38] Email from Carol Weisskopf, December 22, 2009.
[39] Table of typical and maximum components (email from Carol Weisskopf, December 22, 2009).

restore these areas, based on the severity of disturbance expected, are shown in the table below.[40]

Using these highest-cost assumptions, the Department estimated the site restoration cost for SFS as shown in Table 1.[41]

Table 1: Cost Estimate for Facility Site Restoration (1st Quarter 2010 Dollars)

	Quantity	Unit Cost	Extension
Turbines			
Disconnect electrical and ready for disassembly (per tower)	116	$1,061	$123,067
Remove turbine hubs and blades (per tower)	116	$4,106	$476,296
Remove turbine nacelles and towers (per net ton of steel)	35,032	$76.67	$2,685,903
Remove tower foundations (per cubic yard of concrete)	7656	$38.68	$296,134
Remove transformers (per transformer)	116	$2,407	$279,212
Restore turbine turnouts (per turnout)	89	$97	$8,633
Met Towers			
Dismantle and dispose of met towers (per tower)	2	$9,483	$18,966
Substation and Field Workshop			
Dismantle and dispose of substation	1	$88,577	$88,577
Dismantle and dispose of field workshop	1	$27,798	$27,798
Transmission Line			
Remove 230-kV transmission line (per mile)	20	$15,270	$305,400
Remove 34.5-kV transmission line and SCADA (per mile)	6.4	$2,132	$13,645
Remove junction boxes & electrical to 4' below grade (each)	20	$1,416	$28,320
Access Roads			
Remove roads, grade and seed (per mile)	27.5	$17,460	$480,150

[40] The unit cost for restoring areas around access roads assumes that grading and seeding would be needed. The unit cost for areas of temporary transmission line access roads and cross-country crane paths assumes that only seeding would be needed. Restoration area for 34.5-kV and 230-kV transmission line poles includes both the permanent footprint and temporary disturbance areas. Acreages of disturbance shown in the table are based on the table of temporary construction disturbance, worst-case layout (email from Carol Weisskopf, December 22, 2009), except for the acreages for 34.5-kV transmission line support poles and cross-country crane paths, which are based on the table of typical and maximum components (email from Carol Weisskopf, December 22, 2009).

[41] The Facility Retirement Cost Estimating Guide computes the retirement and site restoration cost in terms of mid-2004 dollars. In the *Final Order on Amendment #1 (SFWF)*, the Council adopted unit costs adjusted to reflect preliminary 3rd Quarter 2009 dollars. Table 1 shows unit costs in 3rd Quarter 2009 dollars and an adjustment of the subtotal to 1st Quarter 2010 dollars using a multiplier of 1.0051. The multiplier was generated by dividing the 1st Quarter 2010 Gross Domestic Product Implicit Price Deflator (GDP) of 110.4873 by the 3rd Quarter 2009 GDP of 109.9229.

Restore Additional Areas Disturbed by Facility Removal			
Around turbine pads (per acre)	72.25	$5,988	$432,633
Around turnarounds and turning radii (per acre)	12.24	$5,988	$73,293
Around met towers (per acre)	0.22	$5,988	$1,317
Around substation (per acre)	1.83	$5,988	$10,958
Around 34.5-kV transmission line poles (per acre)	3.34	$2,973	$9,930
Around 230-kV power line poles and pulling disturbance (per acre)	28.74	$2,973	$85,444
Around access roads (per acre)	216.11	$5,988	$1,294,067
Around temporary transmission access and cross-country crane paths (per acre)	81.07	$2,973	$241,021
Laydown and storage areas (per acre)	7.0	$2,973	$20,811
General Costs			
Permits, mobilization, engineering, overhead, utility disconnects (unit cost)	1	$475,517	$475,517
Subtotal			**$7,477,101**
Subtotal Adjusted to 1st Quarter 2010 Dollars			**$7,515,235**
Performance Bond		1%	$75,152
Gross Cost			**$7,590,387**
Administration and Project Management		10%	$759,039
Future Developments Contingency		10%	$759,039
Total Site Restoration Cost (rounded to nearest $1,000)			**$9,108,000**

The Council finds that the SFS site, taking into account mitigation and including the changes proposed by Amendment #1, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility. The Council finds that $9.108 million (1st Quarter 2010 dollars) adjusted annually as described in revised Condition 30 is a conservative estimate of the cost to restore the SFS site to a useful, non-hazardous condition. The Department's estimate is higher than the amount the Council previously found to be a reasonable cost to restore SFS to a useful, non-hazardous condition ($8.887 million in 3rd Quarter 2009 dollars). The increase in the estimated site restoration cost is due primarily to the increase in acres of temporary disturbance.

The certificate holder provided a letter from JPMorgan Chase Bank, N.A. (Chase) stating that Chase "would be interested in issuing a letter of credit in the stated amount of up to $9,108,000 for the benefit of The Oregon Department of Energy by application of Horseshoe Bend Wind, LLC."[42] Chase stated that "there is a reasonable likelihood that Chase would be inclined to issue" the letter of credit (LC) if "the reimbursement obligations under the LC would be collateralized and documented in the same manner that Chase has previously issued letters of credit on behalf of other subsidiaries of Caithness Energy." The letter does not constitute a firm commitment by Chase to issue the letter of credit, but it is evidence that the certificate holder could obtain the necessary letter of credit for SFS. The Council finds that the certificate holder has demonstrated a reasonable likelihood of obtaining a bond or letter of credit, satisfactory to the Council, in an amount adequate to restore the SFS site to a useful, non-hazardous condition.

[42] Email from Carol Weisskopf, January 29, 2010, with attached letter from JPMorgan Chase Bank.

Conclusions of Law

Based on the findings stated above, the Council concludes that the certificate holder would meet the Council's Retirement and Financial Assurance Standard if Amendment #1 were approved.

3. Standards about the Impacts of Construction and Operation

(a) Land Use

OAR 345-022-0030

(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

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(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the

exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

* * *

Findings of Fact

In acting on this amendment request, the Council applies the applicable substantive criteria in effect on the date the certificate holder submitted the request for amendment. The Planning Directors of Gilliam County and Morrow County have confirmed that the applicable substantive criteria for the evaluation of wind energy facilities in the two counties have not changed between June 15, 2009 (the date the request for Amendment #1 for the SFWF was submitted) and the date the certificate holder submitted the present amendment request for SFS (November 5, 2009).[43] Therefore, the local land use criteria that the Council applied in the *Final Order on Amendment #1 (SFWF)* are applicable to this amendment request.

In the *Final Order on Amendment #1 (SFWF)*, the Council found that its previous findings with respect to the former Shepherds Flat Wind Farm would apply to SFS.[44] The Council found that SFS would occupy more than 20 acres of land in Gilliam County and more than 20 acres of land in Morrow County and therefore would not comply with Gilliam County Zoning Ordinance (GCZO) Section 4.020(D)(14) and Morrow County Zoning Ordinance (MCZO) Section 3.010(D)(16).[45] The Council's previous land use findings are incorporated herein by this reference. All land within the previously-approved site boundaries of SFS, SFC and SFN is zoned Exclusive Farm Use (EFU).[46]

When a facility does not comply with all of the applicable substantive criteria in the local jurisdiction, the Council must determine whether the facility otherwise complies with

[43] Email from Carla McLane, Morrow County Planning Director, December 1, 2009; email from Susie Anderson, Gilliam County Planning Director, December 2, 2009.
[44] *Final Order on Amendment #1 (SFWF)*, p. 25.
[45] *Final Order on Amendment #1 (SFWF)*, pp. 27-28.
[46] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 19.

the applicable statewide planning goals or if an exception to any applicable statewide planning goal is justified. The Council analyzed SFS for compliance with the requirements of ORS 215.283 and implementing regulations, specifically OAR 660-033-0120 and -0130, and the analysis is incorporated herein by this reference.[47]

The *Final Order on Amendment #1 (SFWF)* includes the Department's analysis of compliance with OAR 660-033-0120 and OAR 660-033-0130, as amended January 2, 2009 (the new rules), as well as analysis under these regulations in effect before the January 2009 amendments (the old rules). As of the date the certificate holder submitted the present amendment request, neither Gilliam County nor Morrow County had incorporated the January 2009 changes to OAR 660-033-0120 and OAR 660-033-0130 into the local zoning ordinances. Therefore, the land use analysis must address the old rules and the new rules.

Under the old rules, a power generation facility must not occupy more than 12 acres of high-value farmland or more than 20 acres of non-high-value farmland.[48] The Council has found that there is no high-value farmland within the previously-approved SFS and SFC site boundaries.[49] To the extent that the proposed amendment would add areas to the SFS site that are already included in the previously-approved SFC site boundary, the proposed expansion of the SFS site occupies non-high-value farmland. Approximately 4,855 acres lying outside the previously-approved SFS or SFC site boundaries (new lands) would be added to SFS by the proposed amendment.[50] In the amendment request, the certificate holder provided a map showing the Land Capability Classifications of all new lands proposed to be added to the SFS site.[51] The map demonstrates that there is no high-value farmland in these areas.

The area that would be occupied by SFS components is shown in Table 2 below:[52]

[47] *Final Order on Amendment #1 (SFWF)*, pp. 28-33.
[48] The *Final Order on Amendment #1 (SFWF)* includes the definition of "high-value farmland" and "non-high-value farmland" at pages 27 and 29.
[49] *Final Order on Amendment #1 (SFWF)*, pp. 29-30.
[50] All but 25 acres of the new lands were included in the proposed site of the Saddle Butte Wind Park, which lies entirely on EFU land (Notice of Intent, Saddle Butte Wind Park, August 2009, Exhibit J, p. 8). The new lands include a segment of the alternate transmission line corridor between the previously-approved SFC site boundary and the BPA Slatt substation (approximately 8.8 acres) and a transmission corridor crossing Eightmile Canyon (approximately 16.2 acres). These lands are also within the EFU zone.
[51] Request for Amendment #1, Section V, Map 6.
[52] Based on table of the facility footprint by county (email from Carol Weisskopf, December 23, 2009).

Table 2: Area Occupied by the Facility

Structure	Gilliam County (acres)	Morrow County (acres)	Total
Principal use			
Turbine towers, including pad areas and turnouts	2.7	2.3	5
Meteorological towers	<0.1	0	< 0.1
Field workshop	1.4	0	1.4
34.5-kV collector line structures	< 0.1	<0.1	0.1
Access roads	24.8	27.0	51.8
Subtotal	**29.0**	**29.3**	**58.3**
Substation	3.2	0	3.2
230-kV transmission line structures	0.1	<0.1	0.1
Total	**32.3**	**29.3**	**61.6**

Comparing Table 2 above with Table 6 in the *Final Order on Amendment #1 (SFWF)*, the proposed amendment would increase the area occupied by SFS components in Gilliam County and reduce the area occupied by SFS components in Morrow County. Overall, the amendment would reduce the total component footprint by approximately 4 acres.

Because SFS would occupy more than 20 acres of non-high-value farmland, the facility does not comply with OAR 660-033-0130 (old rule).[53] In the *Final Order on Amendment #1 (SFWF)*, the Council found that a Goal 3 exception was justified for SFN, SFC and SFS under ORS 469.504(2)(c) for the same reasons as discussed in the *Final Order on the Application for the Shepherds Flat Wind Farm* with respect to the SFWF.[54] Those findings are incorporated herein by this reference. The amendment would potentially affect 4,855 acres outside of the area previously approved for SFS or SFC, but the amendment would reduce the total land area occupied by the facility components. The proposed amendment does not change the nature of the land use. The effect of selecting Option A or Option B for the interconnection route would be a difference in location of the transmission line. It would not significantly increase the land use impacts associated with the transmission line or change the nature of those impacts.[55] Likewise, the amendment would reduce the number of turbines, and the reconfiguration of turbine locations, access roads and other components within a larger micrositing area would not significantly increase the impacts of the wind energy facility compared to the impacts already considered by the Council in the previous orders mentioned above. The Council finds that a Goal 3 exception is justified for SFS, including the changes requested in this amendment, for the same reasons discussed in the Council's previous orders.

Under the new rules, OAR 660-033-0130(37)(a) requires a finding that "reasonable alternatives" to siting a wind power facility on high-value farmland soils have been considered. As discussed above, SFS, including areas added by the proposed amendment, would not be located on high-value farmland soils. OAR 660-033-0130(37)(b) applies to

[53] Former OAR 660-033-0130 does not specify whether or not the 20-acre limit applies to a single county.
[54] The reasons justifying a Goal 3 exception are discussed at pages 55-58 of the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008).
[55] Selection of Option B would reduce the length of the 230-kV transmission line distance (and the area occupied by support structures) between SFS and the BPA Slatt substation compared to Option A (Request for Amendment #1, Section III, p. 1).

"arable" land and requires specific findings regarding "unnecessary negative impacts on agricultural operations," "unnecessary soil erosion or loss that could limit agricultural productivity," "unnecessary soil compaction that reduces the productivity of soil for crop production" and "unabated introduction or spread of noxious weeds and other undesirable weeds species."[56] The SFS components would be located on combination of arable and nonarable lands.[57] Accordingly, the criteria in OAR 660-033-0130(37)(b)(A) through (D) apply to SFS.

OAR 660-033-0130(37)(b)(A) requires that the proposed wind power facility must not "create unnecessary negative impacts on agricultural operations conducted on the subject property." This requirement is substantially similar to the approval standards the local ordinances of Gilliam County and Morrow County. In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council found that the SFWF complied with GCZO Section 4.020(H), GCZO Section 7.020(Q) and MCZO Section 3.010(D).[58] Each of these local ordinances require that a conditional use on EFU land must not "force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use" and must not "significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." In the *Final Order on Amendment #1 (SFWF)*, the Council applied its earlier reasoning and found that the SFC and SFS components located on arable lands in Gilliam County and Morrow County would not result in unnecessary negative impacts on agricultural operations.[59] Those findings are incorporated herein by this reference.

OAR 660-033-0130(37)(b)(B) requires that the proposed wind power facility must not "result in unnecessary soil erosion or loss that could limit agricultural productivity." OAR 660-033-0130(37)(b)(C) requires that facility construction or maintenance activities must not "result in unnecessary soil compaction that reduces the productivity of soil for crop production." In the *Final Order on Amendment #1 (SFWF)*, the Council found that the SFC and SFS components located on arable lands in Gilliam County and Morrow County would not result in unnecessary soil erosion or loss. Potential adverse impacts to soils and measures to avoid or control soil erosion and compaction are addressed by the Council's Soil Protection Standard, discussed below at page 18. Subject to Conditions 11, 36, 73, 75, 76 and 84, the Council finds that SFS, including the changes proposed by Amendment #1, would comply with OAR 660-033-0130(37)(b)(B) and OAR 660-033-0130(37)(b)(C).

OAR 660-033-0130(37)(b)(D) requires a finding that construction or maintenance activities would not result in the "unabated introduction or spread of noxious weeds and other undesirable weeds species." This requirement may be met by submission of a county-approved weed control plan. Condition 38 requires the certificate holder to implement a weed control program that is consistent with the Gilliam County and Morrow County weed control programs. Condition 84 addresses construction impacts to agricultural land and requires the certificate holder to implement the *Revegetation Plan*, which includes weed control measures recommended by Gilliam County and Morrow County weed control authorities. The Council

[56] OAR 660-033-0130(37)(b) defines "arable lands" means "lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10)."
[57] "Agricultural use by county" (table), Request for Amendment #1, Section IV, p. 3.
[58] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 22, 30-32 and 42.
[59] *Final Order on the Amendment #1 (SFWF)*, p. 33.

finds that, subject to the site certificate conditions, the construction and operation of SFS, including components within the expansion areas proposed by Amendment #1, would not result in unabated introduction or spread of weeds.

The Council finds that SFS, with the changes requested in this amendment, would meet the approval criteria contained in the new rules for a wind power generating facility under OAR 660-033-0130.

Conclusions of Law

Based on the findings of fact, reasoning and conditions discussed above, the Council finds that SFS, with the changes proposed by Amendment #1, would comply with all applicable substantive criteria from Gilliam County and Morrow County except GCZO Section 4.020(D)(14) and MCZO Section 3.010(D)(16). Accordingly, the Council must proceed with the land use analysis under ORS 469.504(1)(b)(B).

If the old rules apply, the Council finds that SFS does not comply with OAR 660-033-0130(22) because it would occupy more than 20 acres of non-high-value farmland. Therefore, the facility does not comply with the applicable statewide planning goal (Goal 3). The Council finds that an exception to Goal 3 is justified under ORS 469.504(2)(c). If the new rules apply, the Council finds that SFS, with the changes proposed by Amendment #1, complies with OAR 660-033-0130(37) and otherwise complies with all applicable statewide planning goals.[60]

Based on these findings and the site certificate conditions described herein, the Council concludes that SFS would comply with the Land Use Standard if Amendment #1 were approved.

(b) Soil Protection

OAR 345-022-0022

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the design, construction and operation of SFS would not result in a significant adverse impact to soils.[61] Those findings are incorporated herein by this reference. Amendment #1 would add approximately 5,640 acres to the site boundary, but approval of the amendment request would not result in any soil impacts of a kind that have not been addressed by the Council.[62]

A larger area of temporary disturbance could occur during construction under the proposed amendment. In the *Final Order on Amendment #1 (SFWF)*, the Council found that

[60] If the new rules apply and SFS were found not to comply with OAR 660-033-0130(37), then an exception to Goal 3 would be justified for the reasons discussed herein.
[61] *Final Order on Amendment #1 (SFWF)*, p. 34.
[62] Approximately 785 acres of the area added to the SFS site lies within the previously-approved SFC site.

approximately 226 acres of land could be temporarily disturbed during construction of SFS, based on the typical layout.[63] The certificate holder now estimates that temporary disturbance would affect approximately 334 acres under the typical layout.[64] The increase is primarily due to the certificate holder's ongoing discussions with the construction contractor, the final selection of a turbine type for the project and on-site geotechnical investigations. The certificate holder listed the following considerations affecting the estimate of temporary disturbance:[65]

- The number of foundations requiring compaction is based on core samples taken at the turbine sites.
- The temporary disturbance at non-compacted sites has increased due to the necessity of assembling part of the hydraulic system on site and then inserting it into the bottom tower sections. This requires the nacelle and tower sections to be present before erection, and just-in-time component delivery is precluded.
- The disturbance area around each 230-kV or 34.5-kV transmission line support pole has increased to allow assembly from both sides of the structure while it is lying on the ground.
- A temporary access roadway (10 feet wide in the typical case and 16 feet wide for the worst case) runs along the portions of the transmission line that are not adjacent to project or ranch roads.
- Trenching disturbance has increased because the collector system would be installed underground, except for one aboveground segment. Where possible, trenches have been located on ranch roads.
- The disturbance width has been reduced for roads used for access but not for crane travel. The difference in widths for the typical and worst case analysis is the estimated area needed for stockpiling of topsoil.
- Crane paths are required because the County roads are not wide enough to accommodate the crane safely. Where possible, crane paths have been located on ranch roads or above trenching disturbance to reduce the additional footprint.
- The 230-kV line will be passing beneath a PGE transmission line with a 700-foot easement and a PPL transmission line with a 50-foot easement. Extra equipment and personnel will be necessary for transmission pole erection within the easement.

Aside from the increased area of potential construction disturbance, the changes that would be allowed if Amendment #1 were approved would not substantially change the facts on which the Council relied in its previous findings regarding impact to soils. The Council finds that no changes to the site certificate conditions related to soil protection are needed (Conditions 11, 36, 73, 75, 76 and 84). The Council finds that the design, construction and

[63] *Final Order on Amendment #1 (SFWF)*, Table 11, pp. 49-50.
[64] Temporary project construction footprint, typical layout (email from Carol Weisskopf, December 22, 2009).
[65] Email from Carol Weisskopf, December 22, 2009.

operation of SFS, with the changes proposed by Amendment #1, would not likely result in significant adverse impact to soils, taking into account the mitigation required by the site certificate conditions.

Conclusions of Law

The Council concludes that SFS would comply with the Council's Soil Protection Standard if Amendment #1 were approved.

(c) Protected Areas

OAR 345-022-0040

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:

(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;

(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;

(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;

(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR Chapter 142;

(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(L) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:

Coastal Oregon Marine Experiment Station, Astoria

Mid-Columbia Agriculture Research and Extension Center, Hood River

Agriculture Research and Extension Center, Hermiston

Columbia Basin Agriculture Research Center, Pendleton

Columbia Basin Agriculture Research Center, Moro

North Willamette Research and Extension Center, Aurora

East Oregon Agriculture Research Center, Union

Malheur Experiment Station, Ontario

Eastern Oregon Agriculture Research Center, Burns

Eastern Oregon Agriculture Research Center, Squaw Butte

Central Oregon Experiment Station, Madras

Central Oregon Experiment Station, Powell Butte

Central Oregon Experiment Station, Redmond

Central Station, Corvallis

Coastal Oregon Marine Experiment Station, Newport

Southern Oregon Experiment Station, Medford

Klamath Experiment Station, Klamath Falls;

(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;

(p) State wildlife areas and management areas identified in OAR chapter 635, Division 8.

* * *

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the design, construction and operation of SFS were not likely to result in significant adverse impact to protected areas.[66] Those findings are incorporated herein by this reference. The changes that would be allowed if Amendment #1 were approved would not substantially change the facts on which the Council relied in its previous findings regarding adverse impacts to protected areas. Some of the land proposed to be added to the site (785 acres) lies within the site boundary of SFC, which the Council has previously determined to be in compliance with the Protected Areas Standard. The amendment would also add approximately 4,855 acres of new lands to the facility site, consisting of several separate areas adjacent to the previously-approved site boundary. The amendment request includes a map of these areas.[67] All of the lands proposed to be added to SFS by this amendment are privately-owned and are not adjacent to any protected areas.[68] The new areas do not significantly enlarge the analysis area previously considered by the Council in making findings of compliance with the standard. The Council finds that SFS, including the area proposed to be added to the site by Amendment #1, is not located in any protected area listed in OAR 345-022-0040 and that the design, construction and operation of SFS are not likely to result in a significant adverse impact to any protected area.

Conclusions of Law

For the reasons discussed above, the Council concludes that SFS would comply with the Council's Protected Areas Standard if Amendment #1 were approved.

(d) Scenic Resources

OAR 345-022-0080

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

* * *

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the design, construction and operation of SFS, taking mitigation into account and subject to the site certificate conditions, were not likely to result in significant adverse impact to scenic resources and values identified as significant or important in applicable federal land

[66] *Final Order on Amendment #1 (SFWF)*, p. 37.
[67] Request for Amendment #1, Section V, Map 5. Map 1 shows the previously-approved site (in yellow) and all added areas, including areas within SFC.
[68] Request for Amendment #1, Section IV, p. 3.

management plans or in local land use plans in the analysis area.[69] Those findings are incorporated herein by this reference.

The changes that would be allowed if Amendment #1 were approved would not substantially change the facts on which the Council relied in its previous findings regarding visual impacts on identified scenic resources or values. In several respects, the potential visual impact of the facility would be reduced. Approval of the amendment would reduce the maximum number of wind turbines at the facility. The amendment would reduce the maximum allowed length of the 230-kV interconnection line and would reduce the maximum allowed length of aboveground collector lines. Although Option B would allow construction of the interconnection line along a different route than under Option A, the choice of transmission line route would not significantly affect scenic resources. The proposed amendment would reduce the maximum combined length of access roads. The Council finds that the design, construction and operation of SFS are not likely to result in significant adverse impacts to scenic resources aesthetic values identified as significant or important in applicable federal land management plans or in local land use plans in the analysis area.

Conclusions of Law

For the reasons discussed above, the Council concludes that SFS would comply with the Council's Scenic Resources Standard if Amendment #1 were approved.

(e) Recreation

OAR 345-022-0100

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

(a) Any special designation or management of the location;

(b) The degree of demand;

(c) Outstanding or unusual qualities;

(d) Availability or rareness;

(e) Irreplaceability or irretrievability of the opportunity.

* * *

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that none of the recreational opportunities in the analysis area met the criteria to be considered "important" under the factors listed in the standard.[70] Therefore, the Council found that the design, construction and operation of SFS were not likely to result in significant adverse impacts to

[69] *Final Order on Amendment #1 (SFWF)*, pp. 37-38.
[70] *Final Order on Amendment #1 (SFWF)*, p. 38 (incorporating findings from the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 76-77).

recreational opportunities in the analysis area. Those findings are incorporated herein by this reference.

The expansion of the site to allow for a larger micrositing area and an optional transmission line route as requested in Amendment #1 would not affect any recreational opportunities that were not previously addressed by the Council. Approval of Amendment #1 would not change the facts or circumstances upon which the Council relied in making findings regarding impacts on recreational opportunities.

Conclusions of Law

For the reasons discussed above, the Council concludes that SFS would comply with the Council's Recreation Standard if Amendment #1 were approved.

(f) Public Health and Safety Standards for Wind Energy Facilities

OAR 345-024-0010

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

(1) Can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment.

(2) Can design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the certificate holder could design, construct and operate SFS to exclude members of the public from close proximity to the turbine blades and electrical equipment, to preclude structural failure of the tower or blades that could endanger public safety and to have adequate safety devices and testing procedures.[71] Those findings are incorporated herein by this reference. To ensure public safety, the Council included Conditions 12, 26, 40, 47, 59, 60, 61, 62, 63, 64 and 93 in the site certificate.

Under the proposed amendment, the certificate holder would have the option to locate the 230-kV transmission line in the alternate corridor described herein, but use of the alternate corridor would not result in any new or increased risk of harm to public safety. Likewise, reconfiguration of facility components within the expansion areas requested by the amendment, would not adversely affect public safety. Approval of Amendment #1 would not change the facts or circumstances upon which the Council relied in making findings regarding public health and safety at the SFS site.

Conclusions of Law

For the reasons discussed above, the Council concludes that SFS would comply with the Council's Public Health and Safety Standards for Wind Energy Facilities if Amendment #1 were approved.

[71] *Final Order on Amendment #1 (SFWF)*, pp. 39-40.

(g) Siting Standards for Wind Energy Facilities

OAR 345-024-0015

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant can design and construct the facility to reduce cumulative adverse environmental effects in the vicinity by practicable measures including, but not limited to, the following:

(1) Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts.

(2) Using underground transmission lines and combining transmission routes.

(3) Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations.

(4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment.

(5) Designing the components of the facility to minimize adverse visual features.

(6) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the certificate holder could design and construct SFS to reduce visual impact, to restrict public access and to reduce cumulative adverse environmental impacts in the vicinity to the extent practicable in accordance with the requirements of OAR 345-024-0015.[72] Those findings are incorporated herein by this reference. To address cumulative impacts, the Council included Conditions 58, 63, 86, 90, 91, 94 and 95 in the site certificate.

The proposed amendment would expand the SFS site to allow for a larger micrositing area and an alternative transmission line route. Nevertheless, significant cumulative impacts of the proposed facility would be reduced. Approval of the amendment would reduce the maximum number of wind turbines at the facility from 120 to 116. The amendment would reduce the permanent footprint of facility components by approximately 4 acres. The amendment would reduce the maximum combined length of new access roads and improvements to existing roads (which would be widened). The amendment would reduce the maximum allowed length of the 230-kV interconnection line from 24.3 miles to 20 miles and would reduce the maximum allowed length of aboveground collector line segments from 22.4 miles to 3.2 miles.[73] The amendment would reduce turbine density from 95 acres per turbine (120 turbines within an 11,411-acre site) to 137 acres per turbine (116 turbines within a 15,928-acre site).

[72] *Final Order on Amendment #1 (SFWF)*, pp. 40-41.
[73] Table of typical and maximum components (email from Carol Weisskopf, December 22, 2009).

The certificate holder addressed cumulative impacts to avian and bat species in the amendment request.[74] The certificate holder noted that the cumulative maximum generating capacity of SFN, SFC and SFS would be reduced from 909 MW to 845 MW if the Council approves all three amendment requests. In the cumulative impact studies that have been done within the Columbia Plateau region, estimates of avian and bat fatalities associated with wind energy facilities are related to facility generating capacity and to cumulative regional generating capacity of multiple facilities.[75] The reduction in the cumulative generating capacity of the three Shepherds Flat facilities would, therefore, result in a reduced impact of these three facilities on avian and bat fatalities in the region.

In light of the reduced impacts of the SFS compared to the facility as previously-approved, the Council finds that SFS, with the changes proposed by Amendment #1, can be designed and constructed to reduce visual impact, to restrict public access and to reduce cumulative adverse environmental impacts in the vicinity to the extent practicable in accordance with the requirements of OAR 345-024-0015.

Conclusions of Law

Based on these findings and subject to the conditions of the site certificate, the Council concludes that SFS would comply with the Council's Siting Standards for Wind Energy Facilities if Amendment #1 were approved.

(h) Siting Standards for Transmission Lines

OAR 345-024-0090

To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:

(1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;

(2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the certificate holder could design, construct and operate the proposed transmission line components of SFS in accordance with the standards described in OAR 345-024-0090.[76] Those findings are incorporated herein by this reference. The proposed amendment would allow the certificate holder the option to use a different route for the 230-kV interconnection line, but under either Option A or Option B, the line would be located on private property with limited public access. The Council has found that the aboveground 230-kV transmission line would produce

[74] Request for Amendment #1, Appendix 1, p. 6.
[75] Cumulative impacts within the Columbia Plateau region are discussed in the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 79-84.
[76] *Final Order on Amendment #1 (SFWF)*, p. 42 (incorporating findings from the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 86-87).

an electric field well below the 9 kV per meter standard required by OAR 345-024-0090(1).[77] Condition 81 requires the certificate holder to design all transmission lines to comply with the electric field standard. Condition 80 requires the certificate holder to ground fencing to reduce the potential risk of electric shock from induced currents. Condition 17 requires the certificate holder to design and construct transmission lines in accordance with the requirements of the National Electrical Safety Code and to implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged are properly grounded. Approval of Amendment #1 would not change the facts or circumstances upon which the Council relied in making findings regarding compliance with the standards in OAR 345-024-0090.

Conclusions of Law

For the reasons discussed above, the Council concludes that SFS would comply with the Council's Siting Standards for Transmission Lines if Amendment #1 were approved.

4. Standards to Protect Wildlife

(a) Threatened and Endangered Species

OAR 345-022-0070

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the design, construction and operation of SFS would not have the potential to significantly reduce the likelihood of the survival or recovery of any threatened or endangered plant or wildlife species listed under Oregon law.[78] Those findings are incorporated herein by this reference.

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[77] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 86-87.

[78] *Final Order on Amendment #1 (SFWF)*, pp. 42-44. A discussion of threatened or endangered plant and animal species that could potentially occur within the Shepherds Flat Wind Farm site (which encompassed the sites of SFN, SFC and SFS) and information about wildlife surveys conducted in the area are included in the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 88-96.

The proposed amendment would not significantly change wind facility components that would be authorized for construction and operation at SFS or otherwise significantly alter the facts upon which the Council relied in making its earlier findings.

In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council found that one State-listed threatened plant species, Laurent's milk-vetch, has the potential to occur within the five-mile analysis area around the former SFWF site boundary.[79] The species was not observed within the SFWF site boundary and was considered not likely to occur within the site boundary because its range was believed to lie at elevations above 1,970 feet. The species was recently observed, however, at elevations between 800 to 860 feet.[80] Suitable habitat for Laurent's milk-vetch may exist in that elevation range within the proposed expansion areas that lie outside the previously-approved site boundaries for SFS. The certificate holder has agreed to survey the area and to avoid impact to threatened or endangered plant species.[81] In Revision 14 discussed below at page 53, the Council modifies Condition 86 to require a pre-construction survey for threatened or endangered plant species and to require exclusion fencing during construction if Laurent's milk-vetch or any other threatened or endangered plant species is found.

In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council found that that two State-listed endangered wildlife species (gray wolf and Washington ground squirrel) and two State-listed threatened species (bald eagle and chinook salmon) have the potential to occur within the five-mile analysis area around the former SFWF site boundary.[82]

Gray wolves may have historically been present in Gilliam or Morrow Counties, but there have been no recent observations of the species within the analysis area. There is evidence of natural dispersion of the species into the state from neighboring lands in Idaho.[83]

Bald eagles forage and roost along the Columbia River. Eagles are unlikely to forage in the upland areas within the site boundary due to the lack of suitable perch trees. Conditions 63, 90 and 91 include measures to mitigate the risk of injury to bald eagles.

The Council has previously found that there is no suitable habitat for chinook salmon within the former SFWF site boundary.[84] The new lands proposed to be added to the SFS site do not contain aquatic habitat.[85]

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[79] The species is identified as "Laurence's milk-vetch" in the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 89.
[80] *Final Order on Amendment #1 for the Leaning Juniper II Wind Power Facility* (November 20, 2009), p. 61.
[81] Email from Patricia Pilz, January 13, 2010.
[82] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 91. The federally-listed threatened grizzly bear historically occurred in Gilliam and Morrow counties, but is now considered extirpated from Oregon (Request for Amendment #1, Appendix 1, p. 1). The federally-listed threatened Canada lynx is considered a very rare species in Oregon (Oregon Natural Heritage Information Center, *Rare, Threatened and Endangered Species in Oregon*, March 2007). Although the lynx potentially occurs in Morrow County (http://www.fws.gov/oregonfwo/Species/Data/CanadaLynx/), the USFWS Oregon Fish & Wildlife Office does not include the species on current lists of threatened species occurring in Morrow County or Gilliam County (http://www.fws.gov/oregonfwo/Species/Lists/).
[83] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 94.
[84] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 95. This finding applied as well to the federally-listed threatened steelhead and endangered sockeye salmon.
[85] Request for Amendment #1, Appendix 1, p. 3.

In the *Final Order on Amendment #1 (SFWF)*, the Council found that Washington ground squirrels (WGS) were present near the SFS site boundary and that a portion of the burrow area was within the site boundary.[86] This area is part of the land proposed to be removed from SFS and added to SFC. Condition 86(h) includes construction restrictions near the identified WGS colony to mitigate potential risks to the species. Condition 83 requires the certificate holder to implement the *Wildlife Monitoring and Mitigation Plan* (WMMP), which includes an assessment of the status of the WGS colony for two years after the facility becomes commercially operational. These requirements would be removed from the SFS site certificate and added to the SFC site certificate, if the Council approves both companion amendment requests that have been submitted by the certificate holders.

Surveys of suitable habitat within the former SFWF site boundary (plus a 1,000-foot buffer) were conducted in 2007 and 2008.[87] In May and June 2009, the certificate holder conducted surveys for WGS within suitable habitat in the area of the proposed Saddle Butte Wind Park, which included approximately 4,830 acres now proposed to be added to SFS under this amendment.[88] No active WGS colonies were found.[89] Four areas containing burrow entrances were found but showed no sign of recent WGS activity.[90] ODFW has requested pre-construction surveys for threatened, endangered or sensitive wildlife species, including WGS, in areas having suitable habitat on lands that the Council has not previously approved for a site certificate.[91] The certificate holder has agreed to conduct pre-construction surveys using a protocol approved by ODFW and to avoid impacts to the area within 1,000 feet of any Category 1 WGS habitat that is found within the survey area during the period in which the squirrels are active. In Revision 14 discussed below at page 53, the Council modifies Condition 86 to require pre-construction surveys for State-listed threatened, endangered or sensitive wildlife species in the new areas within 1,000 feet of any area potentially disturbed by facility construction, including WGS surveys, and to require avoidance of the area within 1,000 feet of any Category 1 WGS habitat during the period that WGS are active.

In Revision 15, the Council modifies Condition 92 to include a lower speed limit near any Category 1 or Category 2 WGS habitat identified during the pre-construction survey.

For the reasons discussed above, the Council finds that the State-listed threatened bald eagle and the State-listed endangered WGS may at some times be present in some locations within the SFS site boundary, including the areas that would be added by Amendment #1, but that the design, construction and operation of the SFS are unlikely to cause a significant reduction in the likelihood of survival or recovery of either species, taking into account the mitigation required by the site certificate conditions.

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[86] *Final Order on Amendment #1 (SFWF)*, p. 43; *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 94.
[87] Shepherds Flat Wind Farm Application Supplement, Attachment P-5a; *Addendum to the Surveys for Washington Ground Squirrels and Burrowing Owls at the Shepherds Flat Wind Farm*, March 17, 2008, Fig. 1 (email from Patricia Pilz, March 17, 2008).
[88] The certificate holder provided maps showing the areas searched for WGS within and near the proposed expanded SFS site boundary (email from Patricia Pilz, December 16, 2009).
[89] Request for Amendment #1, Attachment 1, p. 4.
[90] One of the burrow areas is located in the lands proposed to be added to SFC; three of the burrow areas are located in the lands proposed to be added to SFS (email from Carol Weisskopf, January 14, 2010).
[91] Email from Steve Cherry, ODFW, December 17, 2009.

Conclusions of Law

For the reasons discussed above and subject to the site certificate conditions described herein, the Council concludes that SFS would comply with the Council's Threatened and Endangered Species Standard if Amendment #1 were approved.

(b) Fish and Wildlife Habitat

OAR 345-022-0060

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the design, construction and operation of SFS would be consistent with the ODFW habitat mitigation goals and standards.[92] The Council made findings regarding the characteristics of the habitat types within the SFS site boundary.[93] The Council made findings regarding potential habitat impacts and mitigation requirements.[94] Those findings are incorporated herein by this reference.

In the amendment request, the certificate holder assessed the proposed expansion areas for special status plant and wildlife species and identified habitat categories and subtypes.[95] The proposed amendment would add approximately 5,640 acres to the SFS site, of which approximately 785 acres lie within the previously-approved SFC site. Approximately 1,123 acres would be removed from the SFS site by this amendment. The certificate holder estimated the habitat impacts of SFS, including the expansion area, based on a "typical project layout" as shown in Table 3:[96]

Table 3: Typical Layout Habitat Impacts

Habitat Type	Habitat Subtype	Acres Within the Site Boundary	Areas of temporary impact (acres)	Areas of permanent impact (acres)
Category 1				
Raptor nests	RN	0.06	0	0
Wetland	WL	0.03	0	0
Subtotal		**0.09**	**0**	**0**

[92] *Final Order on Amendment #1 (SFWF)*, p. 54.
[93] *Final Order on Amendment #1 (SFWF)*, pp. 49-51.
[94] *Final Order on Amendment #1 (SFWF)*, pp. 51-54.
[95] Request for Amendment #1, Appendix 1.
[96] Based on the habitat disturbance impact table (email from Carol Weisskopf, December 22, 2009).

Category 2				
Grassland	GL	355.68	1.35	0.22
Raptor nests	RN	2.11	0	0
Shrub-steppe – sage	SS-S	562.21	9.42	2.33
Wetland-wash	WL-W	7.99	0	0
Subtotal		**927.99**	**10.77**	**3**
Category 3				
Curlew	CUR	93.69	0	0
Grassland	GL	1215.89	31.06	6.49
Shrub-steppe – rabbitbrush	SS-R	57.25	0.44	0.1
Shrub-steppe – sage	SS-S	203.93	2.11	0.45
Subtotal		**1,570.76**	**33.61**	**7.04**
Category 4				
Grassland	PC	3,268.53	23.96	0.35
Previously cultivated	RS	514.8	12.81	1.79
Rock and soil		53.6	0.19	0.04
Subtotal		**3,836.93**	**36.96**	**2.18**
Category 5				
Previously cultivated	PC	686.37	28.25	5.03
Subtotal		**686.37**	**28.25**	**5.03**
Category 6				
Animal Facility	AF	20.43	0.06	0
Dryland wheat	DW	8,743.2	222.78	43.84
Road and parking	RP	110.46	1.22	0.98
Structures	ST	31.8	0	0
Subtotal		**8,905.89**	**224.06**	**44.82**
Total Area		**15,928.03**	**333.65**	**61.62**

For micrositing purposes, the applicants estimated the maximum habitat impacts of the SFS facility based on a "worst-case layout." The estimated areas of affected habitat are shown in Table 4.[97]

Table 4: Maximum Habitat Impacts

Habitat Type	Habitat Subtype	Areas of temporary impact (acres)	Areas of permanent impact (acres)
Category 1			
Raptor nests	RN	0	0
Wetland	WL	0	0
Subtotal		**0**	**0**

[97] Based on the habitat disturbance impact table (email from Carol Weisskopf, December 22, 2009).

Category 2			
Grassland	GL	1.74	0.22
Raptor nests	RN	0	0
Shrub-steppe – sage	SS-S	11.53	2.33
Wetland-wash	WL-W	0	0
Subtotal		**13.27**	**3**
Category 3			
Curlew	CUR	0	0
Grassland	GL	37.97	6.49
Shrub-steppe – rabbitbrush	SS-R	0.51	0.1
Shrub-steppe – sage	SS-S	2.76	0.45
Subtotal		**41.24**	**7.04**
Category 4			
Grassland	PC	31.49	0.38
Previously cultivated	RS	15.55	1.79
Rock and soil		0.31	0.05
Subtotal		**47.35**	**2.22**
Category 5			
Previously cultivated	PC	32.38	5.03
Subtotal		**32.38**	**5.03**
Category 6			
Animal Facility	AF	0	0
Dryland wheat	DW	273.43	43.84
Road and parking	RP	1.74	0.98
Structures	ST	0	0
Subtotal		**275.17**	**44.82**
Total Area		**409.41**	**61.66**

The maximum habitat impacts analysis allows for facility micrositing while ensuring that the certificate holder can mitigate for the habitat impacts of any micrositing configuration. The maximum habitat impacts analysis shapes the upper bounds of the quantity and quality of mitigation acres that would be required. Under Condition 29, the certificate holder must provide to the Department a description of the final design configuration and an assessment of the affected habitats before beginning construction. The actual habitat impacts and the size of the mitigation area required under Condition 85 and the incorporated *Habitat Mitigation Plan* are determined according to the final configuration of facility components. Condition 29 requires consultation with ODFW at the time of the pre-construction habitat assessment and allows the Department to employ a qualified contractor to confirm the habitat assessment by on-site inspection. ODFW policy guidance for assigning habitat categories that was in place when the SFWF site certificate was issued (July 25, 2008) will be applied to determine habitat categories under Condition 29 on lands lying within the original SFWF site boundary.[98]

[98] Any new policy guidance issued after July 25, 2008, will not be applied to the previously-approved areas (teleconference with ODFW, the applicants and the Department, July 29, 2009).

Compared with the previously-approved site, the typical project layout would decrease the permanent footprint by approximately 4 acres. Temporary disturbance would increase by approximately 108 acres for the reasons discussed above at page 18. In the maximum habitat impacts layout, temporary disturbance would increase by about 116.7 acres. All temporary disturbance areas must be restored after completion of construction, as required by the *Revegetation Plan* that is incorporated in Condition 84. No Category 1 habitat would be affected by the permanent footprint of the facility or by temporary construction disturbance. Approximately 13 acres Category 2 habitat could be affected temporarily during construction or by placement of permanent components. In the typical layout, 84 percent of the permanent footprint of the facility would be on lower-value habitat (Category 4, 5 or 6).

The *Final Order on Amendment #1 (SFWF)*, the Council made findings regarding mitigation of potential adverse impacts to wildlife and wildlife habitat.[99] Those findings are incorporated herein by this reference. Condition 83 requires the certificate holder to implement the *Wildlife Monitoring and Mitigation Plan* (WMMP). In Revision 12 discussed below at page 52, the Department recommended modification of the WMMP as shown in Attachment A to remove the WGS colony monitoring component. Because the colony area is part of the land that would be removed from the SFS site and added to the SFC site, the WGS monitoring component would apply to SFC under the proposed amendments. Condition 84 requires the certificate holder to implement the *Revegetation Plan* as incorporated in the *Final Order on Amendment #1 (SFWF)* as Attachment SFC-B. The proposed amendment would increase the area within the site boundary from approximately 11,411 acres to approximately 15,928 acres as shown in Table 3 above but would otherwise require no substantive changes to the *Revegetation Plan*.[100] Condition 85 requires the certificate holder to implement the *Habitat Mitigation Plan*. In Revision 13, the Department recommended modification of the *Habitat Mitigation Plan* as shown in Attachment C to reflect changes in the habitat acreages potentially affected as shown in Table 4. The size of the habitat mitigation area will be determined based on the final design configuration of the facility and the habitat assessment that is required by Condition 29. In Revision 14, the Department recommended modification of Condition 86 to require the pre-construction surveys for State-listed threatened, endangered or sensitive wildlife species recommended by ODFW.

Conclusions of Law

For the reasons discussed above and subject to the site certificate conditions described herein, the Council concludes that SFS would comply with the Council's Fish and Wildlife Habitat Standard if Amendment #1 were approved.

5. Standards Not Applicable to Site Certificate Eligibility

Under ORS 469.501(4), the Council may issue a site certificate without making the findings required by the standards discussed in this section (Structural Standard, Historic, Cultural and Archaeological Resources Standard, Public Services Standard and Waste

[99] *Final Order on Amendment #1 (SFWF)*, pp. 53-54 (incorporating the findings from the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 109-114).
[100] The acreages shown on page 1, lines 21-22, of the previously-approved *Revegetation Plan* for SFS do not reflect the area added by this amendment.

Minimization Standard).[101] Nevertheless, the Council may impose site certificate conditions based on the requirements of these standards.

(a) Structural Standard

OAR 345-022-0020

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 Edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from maximum probable ground motion events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and

(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in subsection (c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

* * *

Related Conditions

In the *Final Order on Amendment #1 (SFWF)*, the Council made findings regarding the seismic, geological and soil hazards within the SFS site boundary.[102] Those findings are incorporated herein by this reference. The site certificate includes conditions addressing structural safety (Conditions 12, 13, 14, 47, 48 and 49). The expansion of the site to

[101] This statute provides that the Council may not impose certain standards "to approve or deny an application for an energy facility producing power from wind." ORS 469.300 defines an "application" as "a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992." Although ORS 469.501(4) does not explicitly refer to a request for a site certificate amendment, we assume that the Legislature intended it to apply.

[102] *Final Order on Amendment #1 (SFWF)*, p. 56 (incorporating the findings in the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 115-117).

accommodate a reconfiguration of the wind turbines and related components as well as an alternative route for a 230-kV transmission line as requested in Amendment #1 would not result in placement of facility components within geologic areas dissimilar to those that have been addressed by the Council for the approved site. The Council finds that no changes to the site certificate conditions related to the Structural Standard are needed.

(b) Historic, Cultural and Archaeological Resources

OAR 345-022-0090

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

* * *

Related Conditions

In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council reviewed cultural resource surveys of the areas within the SFS site boundary and the areas within the SFC site boundary that would be added to SFS by this amendment.[103] The Council's previous findings are incorporated herein by this reference. The cultural resource surveys were conducted in consultation with the State Historic Preservation Office (SHPO), the Confederated Tribes of Warm Springs and the Confederated Tribes of the Umatilla Indian Reservation. The Council adopted Conditions 43, 44 and 45 to safeguard cultural resources in the SFS area. These conditions would apply as well to the proposed expansion area.

The Request for Amendment #1 includes a cultural resource overview of the proposed site of the Saddle Butte Wind Park.[104] The Saddle Butte overview is relevant because most of the new lands that would be added to SFS by this amendment lie within the proposed Saddle Butte Wind Park site. The overview consisted of a literature review and records search of the area, a discussion of the historical, cultural and ethnographic setting, and recommendations for field surveys of locations considered to have moderate to high potential for prehistoric or historic period resources. The overview did not include any on-site ground survey for historic, cultural or archaeological resources. Condition 43(d) requires the certificate holder to conduct

[103] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 118-122.
[104] "Cultural Resource Overview of the Proposed Saddle Butte Wind Park Project, Gilliam and Morrow Counties, Oregon" (October 8, 2009), Request for Amendment #1, Appendix 2.

a field investigation for historic, cultural or archaeological resources prior to construction in any areas of potential construction disturbance that have not been previously surveyed. The Council finds that no changes to the site certificate conditions related to the Historic, Cultural and Archaeological Resources Standard are needed.

(c) Public Services

OAR 345-022-0110

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

* * *

Related Conditions

In the *Final Order on Amendment #1 (SFWF)*, the Council addressed the potential impacts of construction and operation of SFS on the ability of public and private providers within the analysis area to provide public services.[105] The Council's previous findings are incorporated herein by this reference. The site certificate includes conditions addressing public services (Conditions 27, 52, 53, 54, 55, 56, 65, 66, 67, 68, 69, 70, 73, 75, 78, 99 and 100). Amendment #1 would expand the facility site to allow for a larger micrositing area and an optional transmission line route but would not change the analysis of affected public services. The Council finds that no changes to the site certificate conditions related to the Public Services Standard are needed.

(d) Waste Minimization

OAR 345-022-0120

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

[105] *Final Order on Amendment #1 (SFWF)*, p. 57 (incorporating the findings in the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 122-127).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Related Conditions

In the *Final Order on Amendment #1 (SFWF)*, the Council made findings and adopted site certificate conditions regarding the solid waste and wastewater likely to be generated during the construction, operation and retirement of SFS and the impact on surrounding communities.[106] The Council's previous findings are incorporated herein by this reference. The Council adopted Conditions 50, 51, 99, 100, 101 and 102 to address waste management concerns. Amendment #1 would expand the facility site to allow for a larger micrositing area and an optional transmission line route but would not change the analysis of waste minimization. The Council finds that no changes to the site certificate conditions related to the Waste Minimization Standard are needed.

V. OTHER APPLICABLE REGULATORY REQUIREMENTS: FINDINGS AND CONCLUSIONS

1. Requirements under Council Jurisdiction

Under ORS 469.503(3) and under the Council's General Standard of Review (OAR 345-022-0000), the Council must determine that a facility complies with "all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility." Other Oregon statutes and administrative rules that are applicable to the changes requested in Amendment #1 include the Department of Environmental Quality (DEQ) noise control regulations, the regulations adopted by the Department of State Lands (DSL) for removal or fill of material affecting waters of the state, the Oregon Water Resources Department's (OWRD) regulations for water rights and the Council's statutory authority to consider protection of public health and safety.

(a) Noise Control Regulations

The applicable noise control regulations are as follows:

OAR 340-035-0035
Noise Control Regulations for Industry and Commerce
(1) Standards and Regulations:
* * *

(b) New Noise Sources:
* * *

(B) New Sources Located on Previously Unused Site:

(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused

[106] *Final Order on Amendment #1 (SFWF)*, p. 58 (incorporating the findings from the *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 76-77).

by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.

(iii) For noise levels generated or caused by a wind energy facility:

(I) The increase in ambient statistical noise levels is based on an assumed background L50 ambient noise level of 26 dBA or the actual ambient background level. The person owning the wind energy facility may conduct measurements to determine the actual ambient L10 and L50 background level.

(II) The "actual ambient background level" is the measured noise level at the appropriate measurement point as specified in subsection (3)(b) of this rule using generally accepted noise engineering measurement practices. Background noise measurements shall be obtained at the appropriate measurement point, synchronized with windspeed measurements of hub height conditions at the nearest wind turbine location. "Actual ambient background level" does not include noise generated or caused by the wind energy facility.

(III) The noise levels from a wind energy facility may increase the ambient statistical noise levels L10 and L50 by more than 10 dBA (but not above the limits specified in Table 8), if the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located. The easement or covenant must authorize the wind energy facility to increase the ambient statistical noise levels, L10 or L50 on the sensitive property by more than 10 dBA at the appropriate measurement point.

(IV) For purposes of determining whether a proposed wind energy facility would satisfy the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are predicted assuming that all of the proposed wind facility's turbines are operating between cut-in speed and the wind speed corresponding to the maximum sound power level established by IEC 61400-11 (version 2002-12). These predictions must be compared to the highest of either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured. The facility complies with the noise ambient background standard if this comparison shows that the increase in noise is not more than 10 dBA over this entire range of wind speeds.

(V) For purposes of determining whether an operating wind energy facility complies with the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are measured when

the facility's nearest wind turbine is operating over the entire range of wind speeds between cut-in speed and the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled. The facility complies with the noise ambient background standard if the increase in noise over either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured, is not more than 10 dBA over this entire range of wind speeds.

(VI) For purposes of determining whether a proposed wind energy facility would satisfy the Table 8 standards, noise levels at the appropriate measurement point are predicted by using the turbine's maximum sound power level following procedures established by IEC 61400-11 (version 2002-12), and assuming that all of the proposed wind facility's turbines are operating at the maximum sound power level.

(VII) For purposes of determining whether an operating wind energy facility satisfies the Table 8 standards, noise generated by the energy facility is measured at the appropriate measurement point when the facility's nearest wind turbine is operating at the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled.

* * *

Findings of Fact

In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council concluded that the proposed SFWF, subject to site certificate conditions, would comply with the State noise control regulations.[107] The Council's findings were based on analysis of predicted noise levels from a "default layout" that included 280 Siemens SWT-93 2.3-MW turbines in the northern project area and 23 Vestas V90 3.0-MW turbines in the southern project area and that included two substations contributing to predicted noise levels. The Council found that the SFWF would comply with the applicable noise regulations if it were constructed according to the default layout and if the certificate holder acquired noise waivers from the owners of five properties where the ambient degradation limit would be exceeded.[108]

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the division of the SFWF into three separate facilities within the previously-approved site boundary of the SFWF with no increase in the combined maximum number of turbines that could be built would not significantly change the noise analysis.[109] The Council found that the cumulative noise emissions from SFN, SFC and SFS would comply with the noise regulations and that the separate noise emissions from each of the proposed facilities would also comply with the regulations if each facility were constructed according to the previously-analyzed default layout and if the certificate holder acquired noise waivers from the owners of properties where the ambient degradation limit would be exceeded.

The changes to SFS requested in the present amendment include expansion of the site and potential micrositing area for SFS turbines. Approval of the amendment would decrease

[107] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 136.
[108] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 135.
[109] *Final Order on Amendment #1 (SFWF)*, p. 60.

the maximum number of turbines authorized at the facility from 120 to 116. The Department requested a new noise analysis based on the maximum number of turbines that would be authorized at the facility if the amendment were approved. The certificate holder provided a noise analysis based on 116 GE 2.5xl turbines and a revised turbine layout (different from the layout used in the original noise analysis for SFWF).[110] The certificate holder's noise analysis was conducted by Mr. Bruce Walker, PhD of Channel Island Acoustics, the same consultant who performed the original SFWF noise study. Mr. Kerrie Standlee, P.E. of Daly-Standlee & Associates, Inc., reviewed the SFS study for the Department and confirmed Walker's findings.

The original noise study conducted for SFWF did not include sound attenuation factors for ground absorption and topographical barriers, and so the results were considered to be very conservative. For the SFS noise analysis, Walker accounted for ground and topographical attenuation along with atmospheric attenuation and distance attenuation.[111] At the request of the Department, Walker predicted sound levels at 29 noise sensitive receivers (Receiver R-1 and Receivers R-12 through R-39) using the manufacturer's stated "apparent sound power level" data increased by what was believed to be the "uncertainty" factor. Upon review of the manufacturer's specification data, however, Standlee determined that the certificate holder's analysis had used the standard deviation of 1.5 decibels (dB) associated with turbine test reproducibility rather than 3 dB associated with the "uncertainty" factor.[112]

The certificate holder elected to use the assumed ambient hourly L_{50} noise level of 26 dBA for the background ambient noise level at each noise sensitive receiver as allowed under OAR 340-035-0035(1)(b)(B)(iii)(I) rather than to conduct noise measurements at the receivers. Accordingly, to show compliance with the ambient noise degradation test, the noise generated by the operation of the proposed SFS wind turbines between cut-in wind speed and the wind speed associated with the maximum sound power level must not cause the hourly L_{50} noise level at any noise sensitive receiver to exceed 36 dBA.

The certificate holder proposes to construct up to 116 wind turbines within the site boundary. The certificate holder requests the flexibility to locate the turbines anywhere within the proposed site boundary, subject to the conditions of the site certificate. A potential layout of turbines was provided for 116 GE 2.5-MW turbines.[113] The certificate holder provided A-weighted overall sound power level and octave band data for the GE wind turbine model that was used in the noise modeling.[114] To support the conclusion that the submitted layout would be in compliance with the noise regulations, Walker modeled the sound pressure levels that would be found at each noise sensitive receiver based on this turbine layout.

The noise study results show that the noise radiating from the turbines would not exceed the DEQ maximum allowable hourly L_{50} noise level limit of 50 dBA or the hourly L_{10} noise level limit of 55 dBA at any of the 29 noise sensitive receivers. Standlee considered this finding to be valid even if the total 3-dBA "uncertainty" factor had been added to the sound power level in the noise predictions. The results of the study show that, with or without the inclusion of the additional sound power level adjustment factor, the noise levels at 19 of the

[110] Email from Patricia Pilz, January 16, 2010.
[111] Walker utilized SoundPLAN 7.0, an ISO 9613-2 compliant noise propagation modeling program.
[112] The manufacturer refers to this adjustment factor as the "K" factor.
[113] Email from Patricia Pilz, January 19, 2010.
[114] Email from Patricia Pilz, January 26, 2010.

29 receivers (R-1, R-16, R-17, R-18, R-19, R-20, R-21, R-22, R-24, R-25, R-26, R-27, R-28, R-29, R-30, R-33, R-34, R-35 and R-36) would exceed the ambient hourly L_{50} noise degradation limit of 36 dBA. Therefore, the certificate holder would be required to either alter the layout of the turbines in the final layout to reduce noise levels to 36 dBA (or less) at each residence or obtain waivers from the owners of all 19 noise sensitive properties allowing the noise levels to rise above the 36 dBA limit.[115]

Walker's noise study showed the noise radiating from SFS would be in compliance with the DEQ ambient noise degradation rule at the remaining ten noise sensitive receivers (R-12 through R15, R-23, R-31, R-32 and R-37 through R-39). After reviewing the results of the SoundPLAN calculations, Standlee concluded, however, that turbine noise levels would likely exceed the ambient noise degradation limit of 36 dBA at receiver R-23.[116] Thus, Standlee concluded that the certificate holder would be required to either alter the layout of the turbines in the final layout to reduce noise levels to 36 dBA (or less) at this residence or obtain a waiver from the owner of the property.[117]

Condition 3 requires the certificate holder to operate the facility in accordance with all applicable state laws and administrative rules. Condition 97 ensures that the final design configuration of SFS would comply with the noise control regulations. This condition requires the certificate holder to provide information about the turbines selected and about the final design layout to the Department before beginning construction. The condition requires the certificate holder to provide a noise analysis based on that final design and to demonstrate to the satisfaction of the Department that the facility would comply with the applicable noise control regulations.

The Council has the authority to act in the place of the DEQ to enforce OAR 340-035-0035(4)(a) and require the owner of an operating noise source to monitor and record the statistical noise levels upon written notification.[118] Condition 98 requires the certificate holder to notify the Department of any complaints received about noise from the facility as well as the actions taken to address them. In the event of a complaint regarding noise levels during operation of SFS, the Council may require the certificate holder to verify that the facility is operating in compliance with the noise control regulations.

Conclusions of Law

For the reasons discussed above and subject to the conditions discussed herein, the Council concludes that SFS would comply with the applicable noise control regulations in OAR 340-035-0035 if Amendment #1 were approved.

(b) Removal-Fill Law

The Oregon Removal-Fill Law (ORS 196.795 through 196.990) and regulations (OAR 141-085-0500 through 141-085-0785) adopted by DSL require a permit if 50 cubic yards or

[115] The certificate holder would have the option to conduct measurements to determine the actual ambient L_{10} and L_{50} background levels rather than using an assumed background L_{50} ambient noise level of 26 dBA.
[116] Standlee determined that the predicted noise level at the receiver would be above 36 dBA if the total 3-dBA "uncertainty" factor were included in the calculation.
[117] As with the other 19 receivers where noise is expected to exceed the 36-dBA limit, the certificate holder would have the option to conduct measurements to determine the actual ambient L_{10} and L_{50} background levels.
[118] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 136.

more of material is removed, filled or altered within any "waters of the state" at the proposed site.[119] The Council must determine whether a permit is needed and should be issued. The U.S. Army Corps of Engineers administers Section 404 of the Clean Water Act, which regulates the discharge of fill into waters of the United States (including wetlands), and Section 10 of the Rivers and Harbors Appropriation Act of 1899, which regulates placement of fill in navigable waters. Federal law may require a Nationwide or Individual fill permit for the proposed facility if waters of the United States are affected. A single application form (a Joint Permit Application Form) is used to apply for both the State and federal permits.

Findings of Fact

In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council found that a Removal/Fill Permit was not needed for construction of the SFWF.[120] Those findings are incorporated herein by this reference. The Council found that the SFWF 230-kV transmission line would cross one State-jurisdictional water (Eightmile Creek).[121] Impacts would be avoided by placing transmission line support structures outside a 10-foot buffer bordering the creek. No material would be removed from the creek channel or added as fill within the creek channel. In the *Final Order on Amendment #1 (SFWF)*, the Council found that the division of the SFWF into three separate facilities within the previously-approved site boundary of the SFWF would not affect any areas that were not previously addressed by the delineation report on the wetlands and waters within the SFWF analysis area.[122]

The proposed amendment would enlarge the site of SFS by approximately 4,517 acres. Approximately 1,123 acres would be removed from the site boundary, and approximately 5,640 acres would be added. The areas that would be added to the SFS site by this amendment include approximately 785 acres that lie within the previously-approved SFC site. This land would be added to the SFS site as part of the alternate transmission corridor for SFS. This SFC area was addressed by the delineation survey that was done for the SFWF.[123] No State-jurisdictional waters were found in this area.

Approximately 4,830 acres of new lands within the site of the proposed Saddle Butte Wind Park would instead be added to SFS under this amendment. Aquatic Contracting conducted a delineation survey for the lands that were proposed for the Saddle Butte Wind Park.[124] The Project Study Area (PSA) for the Saddle Butte delineation survey included eight sub-areas. Portions of the new lands proposed to be added to SFS by this amendment are included in seven of the eight sub-areas. Within the lands proposed to be added to SFS, Aquatic Contracting found one wetland, described as "a very small (0.02 acre) perennial palustrine emergent (PEM) seep located within a shallow tributary to Ely Canyon Creek."[125]

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[119] ORS 196.800(14) defines "Waters of this state." The term includes wetlands and certain other water bodies.
[120] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 138.
[121] DSL has confirmed that Eightmile Creek is a State-jurisdictional waterway (letter from Jess Jordan, DSL, February 19, 2008, attached to email a from Jess Jordan, March 4, 2008).
[122] *Final Order on Amendment #1 (SFWF)*, p. 62.
[123] Mason, Bruce & Girard, Inc, *Wetlands/Waters Delineation Report for Shepherds Flat Wind Farm Project, Gilliam and Morrow Counties, Oregon* (June 8, 2007), Figure 1.
[124] Aquatic Contracting, *Wetland and Waters Delineation Report, Saddle Butte Wind Park, Gilliam and Morrow Counties, Oregon* (August 30, 2009), Request for Amendment #1, Appendix 3.
[125] *Wetland and Waters Delineation Report, Saddle Butte Wind Park, Gilliam and Morrow Counties, Oregon* (August 30, 2009), p. 11.

DSL has concurred that the wetland is a State-jurisdictional water.[126] The certificate holder classified the wetland as Category 1 habitat.[127] The wetland lies approximately 500 feet from a County road and at least 1,650 feet from the nearest potential construction disturbance.[128]Aquatic Contracting found seven "highly ephemeral drainages" within the new lands proposed to be added to SFS.[129] DSL has concurred that the ephemeral waterways that were identified in the Saddle Butte delineation report are not State-jurisdictional.[130] In addition, portions of Fourmile Canyon lie within the previously-approved site boundary. Fourmile Canyon was previously identified as an ephemeral waterway.[131] DSL has concurred that Fourmile Canyon is not a jurisdictional water.[132]

The amendment would add approximately 8.8 acres within the proposed alternate transmission corridor between SFC and BPA's new Slatt substation and approximately 16.2 acres within the proposed alternate transmission corridor crossing Eightmile Canyon (a State-jurisdictional waterway). Condition 72 ensures that the certificate holder would avoid impacts to Eightmile Creek.

DSL has reviewed the amendment request and the three delineation reports that cover the areas of the three Shepherds Flat projects.[133] DSL has confirmed that, if the project areas are covered by the three delineations, no further information would be needed.[134] If construction would occur in any areas outside the previously-surveyed areas, the delineation might need to be amended.[135] The certificate holder has agreed to conduct a delineation survey before beginning construction for areas not covered by earlier surveys.[136] In Revision 16, the Council adopts new Condition 103 that would require a preconstruction survey for potential waters of the state in areas not previously investigated and avoidance of impact on any jurisdictional waters that are found.

Conclusions of Law

For the reasons discussed above, the Council concludes that no Removal/Fill Permit would be required for SFS if Amendment #1 were approved.

(c) Water Rights

Under ORS Chapters 537 and 540 and OAR Chapter 690, OWRD administers water rights for appropriation and use of the water resources of the state. Under OAR 345-022-

[126] Letter from Lynne McAllister, DSL, November 9, 2009 (attached to email from Patricia Pilz, November 11, 2009).
[127] Request for Amendment #1, Appendix 1, p. 4.
[128] Request for Amendment #1, Appendix 1, pp. 5-6.
[129] The certificate holder provided a map showing the locations of the ephemeral drainages within the proposed SFS site boundary (email from Patricia Pilz, December 30, 2009).
[130] Letter from Lynne McAllister, DSL, November 9, 2009 (attached to email from Patricia Pilz, November 11, 2009).
[131] Mason, Bruce & Girard, Inc, *Wetlands/Waters Delineation Report for Shepherds Flat Wind Farm Project, Gilliam and Morrow Counties, Oregon* (June 8, 2007), pp. 16-18.
[132] Email from Jess Jordan, DSL, March 4, 2008.
[133] The certificate holder provided a map showing the three project areas and the three delineation study areas (email from Patricia Pilz, January 14, 2010).
[134] Email from Sarah Kelly, DSL, January 20, 2010.
[135] Email from Sarah Kelly, DSL, November 30, 2009.
[136] Email from Patricia Pilz, January 2, 2010.

0000(1), the Council must determine whether SFS would comply with these statutes and administrative rules.

Findings of Fact

In the *Final Order on Amendment #1 (SFWF)*, the Council found that the certificate holder would not need to obtain a new water right for the water needed by the SFS facility during construction or operation.[137] The Council found that up to 26,400,000 gallons of water would be needed for construction of SFS, assuming construction of 120 wind turbines. The certificate holder would obtain construction water from the City of Arlington or alternatively from a "service area" that would be permitted, constructed and operated by third-party contractors.[138] During operation, water would be supplied from an on-site well located at the SFS field workshop. Condition 78 ensures that less than 5,000 gallons of water per day would be taken from the on-site well for operational uses.[139]

The certificate holder estimates that up to 25,520,000 gallons of water would be needed for construction of SFS, based on the maximum number of turbines that would be authorized under this amendment.[140] The possible sources of this water would be the same as previously considered by the Council in the *Final Order on Amendment #1 (SFWF)*. The proposed amendment would not change the water use during operation. The Council finds that the certificate holder would not need to obtain any new water rights for the facility as a result of the changes requested by this amendment.

Conclusions of Law

Based on the findings discussed above, the Council concludes that SFS would comply with applicable regulations pertaining to water rights if Amendment #1 were approved.

(d) Public Health and Safety

Under ORS 469.310, the Council is charged with ensuring that the "siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety...." State law further provides that "the site certificate shall contain conditions for the protection of the public health and safety...." ORS 469.401(2).

Findings of Fact

We discuss the Council's Public Health and Safety Standards for wind energy facilities above at page 24. In this section, we discuss the issues of fire protection, magnetic fields and coordination with the Oregon Public Utility Commission and the Boardman Military Operating Area.

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[137] Final Order on Amendment #1 (SFWF), pp. 62-63.
[138] Each service area would include a portable concrete batch plant, a refueling station and a water well (email from Patricia Pilz, July 12, 2009).
[139] ORS 537.545 provides a water right exemption for industrial and commercial uses of up to 5,000 gallons per day. The statute was amended in 2009 to require the owner of land on which an exempt well is drilled to provide a map to WRD showing the exact location of the well and to file the exempt water use with WRD for recording with submittal of a fee.
[140] Email from Patricia Pilz, December 16, 2009.

A. Fire Protection

In the *Final Order on Amendment #1(SFWF)*, the Council made findings and adopted conditions regarding fire prevention and response for SFS.[141] Those findings are incorporated herein by this reference. The proposed amendment would expand the facility site to allow for a larger micrositing area and an optional transmission line route for a 230-kV transmission line. The changes requested by the amendment would not result in new fire risks that would be different from the types of risk already considered by the Council. The site certificate includes conditions that address fire protection and response (Conditions 53, 54, 55, 56, 58 and 60), and the Council finds that no new fire protection conditions are necessary.

B. Magnetic Fields

Electric transmission lines create both electric and magnetic fields. The electric fields associated with the proposed transmission lines are addressed above at page 26. The certificate holder proposes to construct aboveground 230-kV lines and aboveground, single or double-circuit, 34.5-kV collector lines as described in the amendment request.[142] In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council made findings regarding the magnetic fields that could be produced by these transmission line configurations.[143] Those findings are incorporated herein by this reference. The *Final Order* includes references to the scientific literature on the biological effects of exposure to electric and magnetic fields. The Council has not found sufficient information upon which to set health-based limits for exposure to magnetic fields.[144] Nevertheless, the Council has encouraged applicants to implement low-cost measures to reduce or manage public exposure to magnetic fields from transmission lines under the Council's jurisdiction. Condition 81 requires the certificate holder to take reasonable steps to reduce or manage human exposure to electromagnetic fields, including specific measures listed in the condition.

C. Coordination with the PUC

The Oregon Public Utility Commission Safety and Reliability Section (PUC) has requested that the Council ensure that certificate holders coordinate with PUC staff on the design and specifications of electrical transmission lines and the natural gas pipelines. The PUC has explained that others in the past have made inadvertent, but costly, mistakes in the design and specifications of power lines and pipelines that could have easily been corrected early if the developer had consulted with the PUC staff responsible for the safety codes and standards. Condition 82 requires the certificate holder to coordinate the design of electric transmission lines with the PUC.

D. Boardman Military Operating Area

In the *Final Order on the Application for the Shepherds Flat Wind Farm*, the Council made findings regarding the Boardman Military Operating Area (BMOA), which lies to the east of the SFS site boundary.[145] Those findings are incorporated herein by this reference. The

[141] Final Order on Amendment #1 (SFWF), p. 63 (incorporating findings from the *Final Order on the Application* (July 25, 2008), p. 139).
[142] Request for Amendment #1, Section IV, p. 1.
[143] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), pp. 139-141.
[144] A recent review of the scientific literature confirmed the Council's earlier findings (Golder Associates, *EMF Report*, November 23, 2009).
[145] *Final Order on the Application for the Shepherds Flat Wind Farm* (July 25, 2008), p. 141.

certificate holder has agreed to provide the proposed final project layout to the Navy before construction and to work with the Navy to accommodate the Navy's interest in safe aviation training routes, which may include adjusting turbine locations where feasible.[146]

Conclusions of Law

Based on the findings discussed above and subject to the site certificate conditions discussed herein, the Council concludes that SFS would comply with requirements to protect public health and safety if Amendment #1 were approved.

2. Requirements That Are Not Under Council Jurisdiction

(a) Federally-Delegated Programs

Under ORS 469.503(3), the Council does not have jurisdiction for determining compliance with statutes and rules for which the federal government has delegated the decision on compliance to a state agency other than the Council. Nevertheless, the Council may rely on the determinations of compliance and the conditions in the federally-delegated permits issued by these state agencies in deciding whether the proposed facility meets other standards and requirements under its jurisdiction.

(b) Requirements That Do Not Relate to Siting

Under ORS 469.401(4), the Council does not have authority to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include design-specific construction or operating standards and practices that do not relate to siting. Nevertheless, the Council may rely on the determinations of compliance and the conditions in the permits issued by these state agencies and local governments in deciding whether the facility meets other standards and requirements under its jurisdiction.

VI. GENERAL APPLICATION OF CONDITIONS

The conditions referenced in this order include conditions that are specifically required by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities). The conditions referenced in this order include conditions based on representations in the request for amendment and the supporting record. The Council deems these representations to be binding commitments made by the certificate holder. This order also includes conditions that the Council finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24, or to protect public health and safety.

In addition to all other conditions referenced or included in this order, the site certificate holder is subject to all conditions and requirements contained in the rules of the Council and in local ordinances and state law in effect on the date the amended site certificate is executed.[147] Under ORS 469.401(2), upon a clear showing of a significant threat to the

[146] Email from Patricia Pilz, July 17, 2009.
[147] With regard to land use, the applicable local criteria are those in effect on the date the certificate holder submitted the request for amendment.

public health, safety or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules.

The Council recognizes that many specific tasks related to the design, construction, operation and retirement of the facility will be undertaken by the certificate holder's agents or contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents and contractors comply with all provisions of the site certificate.

VII. GENERAL CONCLUSION

The proposed amendment would expand the facility site to allow a larger micrositing area for wind turbines and other components and an optional transmission line route. The amendment would reduce the maximum number of turbines at the facility to 116 and would reduce the facility's maximum peak generating capacity to 290 MW. The Council adopts revisions to the site certificate as described in the section that follows.

Based on the findings and conclusions discussed above regarding the proposed amendment, the Council makes the following findings:

1. The proposed Amendment #1 complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619.
2. The proposed Amendment #1 complies with the applicable standards adopted by the Council pursuant to ORS 469.501.
3. The proposed Amendment #1 complies with all other Oregon statutes and administrative rules applicable to the amendment of the site certificate that are within the Council's jurisdiction.

Accordingly, the Council finds that the facility complies with the General Standard of Review (OAR 345-022-0000). The Council concludes, based on a preponderance of the evidence on the record, that the site certificate may be amended as requested by the certificate holder, subject to the revisions recommended by the Department and set forth below.

1. The Department's Recommended Revisions

New text proposed by the Department is shown with a single underline. New text proposed by the certificate holder with concurrence by the Department is shown with a double underline. Text proposed by the certificate holder but not recommended by the Department is not shown.[148] Deletions are shown with a strikethrough. The parenthetical references in square brackets follow standard practice and provide a historical reference of when changes were made to the site certificate. Page references are to the *Site Certificate for Shepherds Flat South* (September 11, 2009).

Revision 1

Page 1, lines 7-15:

The findings of fact, reasoning and conclusions of law underlying the terms and conditions of this site certificate are set forth in the following documents, incorporated herein by this

[148] The certificate holder proposed changes to the site certificate as shown in a red-line markup of the Site Certificate in the Request for Amendment #1, Section IV, following p. 3.

reference: (a) the Council's *Final Order on the Application for the Shepherds Flat Wind Farm* issued on July 25, 2008, ~~and~~ (b) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, and (c) the *Final Order on Amendment #1*. In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order of priority: (1) this First Amended Site Certificate, (2) the *Final Order on Amendment #1*, (~~2~~3) the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, (~~3~~4) the *Final Order on the Application for the Shepherds Flat Wind Farm* and (~~4~~5) the record of the proceedings that led to the Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm and to the *Final Order on Amendment #1*. [Amendment #1 (SFWF); Amendment #1]

Revision 1 Explanation

This revision adds a reference in the site certificate to the findings of fact, reasoning and conclusions in support of the present amendment. The revision establishes the order of priority in which the underlying documents should be considered in resolving any ambiguity. The present amendment of the site certificate for SFS is designated as "Amendment #1" and is distinguished from Amendment #1 for the Shepherds Flat Wind Farm, which is designated as "Amendment #1 (SFWF)."

Revision 2

Page 1, lines 16-22:

~~This site certificate is issued concurrently with site certificates for Shepherds Flat North and Shepherds Flat Central, as described in the Final Order on Amendment #1 for the Shepherds Flat Wind Farm, each of the three relating to a physically and geographically discrete portion of the facility authorized by the Site Certificate for the Shepherds Flat Wind Farm (July 25, 2008). Effective upon execution of all three new site certificates, the new site certificates will supersede the Site Certificate for the Shepherds Flat Wind Farm, which will be of no further force and effect.~~ [Text added by Amendment #1 (SFWF) was removed by Amendment #1.]

Revision 2 Explanation

For the purposes of the original site certificate for SFS, the deleted text explained that Amendment #1 for the Shepherds Flat Wind Farm created SFS as a separate facility with its own site certificate. Concurrently, Amendment #1 (SFWF) created SFN and SFC. Separate site certificates for each of the new facilities were executed and became effective on September 11, 2009, and superseded the previous site certificate for the SFWF, which has no further force or effect. Because that effective date has occurred, the deleted text is no longer necessary or appropriate for the SFS site certificate. Future amendments of this site certificate may or may not occur concurrently with amendments of the site certificates for SFN and SFC.

Revision 3

Page 1, line 33, through page 2, line 3:

3. This site certificate does not address, and is not binding with respect to, matters that were not addressed in the Council's Final Orders on the Application and Amendment #1 for the Shepherds Flat Wind Farm and in the *Final Order on Amendment #1*. Such matters include, but are not limited to: building code compliance, wage, hour and other labor regulations, local government fees and charges and other design or operational issues that do not relate to siting the facility (ORS 469.401(4)) and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council. 469.503(3). [Amendment #1 (SFWF); Amendment #1]

Revision 3 Explanation

This revision adds the matters addressed in the *Final Order on Amendment #1* to the scope of matters addressed in the site certificate.

Revision 4

Page 2, lines 30-34:

The energy facility is an electric power generating facility with an average electric generating capacity of up to ~~120~~97 megawatts and a peak generating capacity of not more than ~~360~~290 megawatts that produces power from wind energy. The facility consists of not more than ~~120~~116 wind turbines. The energy facility is described further in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*. [Amendment #1 (SFWF); Amendment #1]

Revision 4 Explanation

This revision decreases the maximum number of wind turbines and the maximum generating capacity of the facility. The revision adds cross-references to descriptions of the facility in the present order.

Revision 5

Page 2, line 35, through page 3, line 8:

The facility includes the following related or supporting facilities described below and in greater detail in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the *Final Order on Amendment #1*:

- Power Collection System
- Collector Substation
- Meteorological towers
- Field workshop
- Control system
- Access roads
- Additional construction areas

[Amendment #1 (SFWF); Amendment #1]

Revision 5 Explanation

The revision adds a cross-reference to descriptions of the related or supporting facilities in the present order.

Revision 6

Page 3, lines 10-14:

A power collection system operating at 34.5 kilovolts (kV) transports power from each turbine to a collector substation. To the extent practicable, the collection system is installed underground at a depth of at least three feet. Segments of the collector system are aboveground. Aboveground segments are installed on single-pole, cross-arm structures ~~or understrung on the 230-kV transmission line support structures (described below)~~. [Amendment #1]

Revision 6 Explanation

This revision eliminates the option to understring collector lines on the 230-kV transmission line structures.

Revision 7

Page 3, lines 30-32:

The facility includes up to ~~31.5~~27.5 miles of new roads that provide access to the turbine strings. The access roads connect to graveled turbine turnouts at the base of each turbine. [Amendment #1 (SFWF); Amendment #1]

Revision 7 Explanation

This revision reduces the maximum combined length of new access roads to 27.5 miles.

Revision 8

Page 10, lines 6-26:

26 The certificate holder shall construct a facility substantially as described in the site certificate and may select turbines of any type, subject to the following restrictions and compliance with all other site certificate conditions. Before beginning construction, the certificate holder shall provide to the Department a description of the turbine types selected for the facility demonstrating compliance with this condition.

(a) The total number of turbines at the facility must not exceed ~~120~~116 turbines.

(b) The combined peak generating capacity of the facility must not exceed ~~360~~290 megawatts.

(c) The turbine hub height must not exceed 105 meters and the maximum blade tip height must not exceed 150 meters.

(d) The minimum blade tip clearance must be 25 meters above ground.

(e) The maximum volume of concrete above three feet below grade in the turbine foundations must not exceed 66 cubic yards.

(f) The maximum combined weight of metals in the tower (including ladders and platforms) and nacelle must not exceed 393 U.S. tons per turbine.

(g) The certificate holder shall request an amendment of the site certificate to increase the combined peak generating capacity of the facility beyond ~~360~~290 megawatts, to increase the number of wind turbines to more than ~~120~~116 wind turbines or to install wind turbines with a hub height greater than 105 meters, a blade tip height greater than 150 meters or a blade tip clearance less than 25 meters above ground.

[Amendment #1 (SFWF); Amendment #1]

Revision 8 Explanation

This revision decreases the maximum number of wind turbines and the maximum generating capacity of the facility.

Revision 9

Page 11, lines 4-42:

30 Before beginning construction, the certificate holder shall submit to the State of Oregon through the Council a bond or letter of credit in the amount described herein naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The initial bond or letter of credit amount is either ~~$8.887~~9.108 million (~~3rd~~1st Quarter ~~2009~~2010

dollars), to be adjusted to the date of issuance as described in (b), or the amount determined as described in (a). The certificate holder shall adjust the amount of the bond or letter of credit on an annual basis thereafter as described in (b).

(a) The certificate holder may adjust the amount of the bond or letter of credit based on the final design configuration of the facility and turbine types selected by applying the unit costs and general costs illustrated in Table 3 in the Final Order on Amendment #1 for the Shepherds Flat Wind Farm and calculating the financial assurance amount as described in that order, adjusted to the date of issuance as described in (b) and subject to approval by the Department.

(b) The certificate holder shall adjust the amount of the bond or letter of credit, using the following calculation and subject to approval by the Department:

(i) Adjust the Subtotal component of the bond or letter of credit amount (expressed in 3rd Quarter 2009 dollars) to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor agency (the "Index") and using the index value for 3rd Quarter 2009 dollars and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the Index is no longer published, the Council shall select a comparable calculation to adjust 3rd Quarter 2009 dollars to present value.

(ii) Add 1 percent of the adjusted Subtotal (i) for the adjusted performance bond amount to determine the adjusted Gross Cost.

(iii) Add 10 percent of the adjusted Gross Cost (ii) for the adjusted administration and project management costs and 10 percent of the adjusted Gross Cost (ii) for the adjusted future developments contingency.

(iv) Add the adjusted Gross Cost (ii) to the sum of the percentages (iii) and round the resulting total to the nearest $1,000 to determine the adjusted financial assurance amount.

(c) The certificate holder shall use a form of bond or letter of credit approved by the Council.

(d) The certificate holder shall use an issuer of the bond or letter of credit approved by the Council.

(e) The certificate holder shall describe the status of the bond or letter of credit in the annual report submitted to the Council under Condition 21.

(f) The bond or letter of credit shall not be subject to revocation or reduction before retirement of the facility site.

[Amendment #1 (SFWF); Amendment #1]

Revision 9 Explanation

This revision adjusts the initial financial assurance amount based on the changes requested in Amendment #1 and expresses the total in 1st Quarter 2010 dollars.

Revision 10

Page 17, lines 1-3:

65 The certificate holder shall construct access roads with a finished width of approximately 16 feet, a compacted base of native soil and a gravel surface to a depth of four to ~~six~~ten inches. [Amendment #1 (SFWF); Amendment #1]

Revision 10 Explanation

This revision modifies Condition 65 to allow up to 10 inches of gravel on access roads, as requested by the certificate holder.

Revision 11

Page 18, lines 27-33:

79 The certificate holder shall install the 34.5-kV collector system underground to the extent practicable. The certificate holder shall install underground lines at a minimum depth of three feet. Based on geotechnical conditions or other engineering considerations, the certificate holder may install segments of the collector system aboveground on single-pole, cross-arm structures ~~or understrung on the 230-kV transmission line support structures~~, but the total length of aboveground double-circuit segments installed on single-pole structures must not exceed ~~19.9~~3.2 miles. [Amendment #1 (SFWF); Amendment #1]

Revision 11 Explanation

This revision modifies Condition 79 to eliminate the option to understring collector line on the 230-kV support structures. The revision modifies the limit on the length of aboveground collector segments.

Revision 12

Page 19, lines 21-24:

83 The certificate holder shall conduct wildlife monitoring as described in the *Wildlife Monitoring and Mitigation Plan* that is incorporated in the *Final Order on Amendment #1* ~~for the Shepherds Flat Wind Farm~~ as Attachment ~~SFS-~~A and as amended from time to time. [Amendment #1 (SFWF) Amendment #1]

Revision 12 Explanation

This revision incorporates the revised *Wildlife Monitoring and Mitigation Plan* that is attached to this order as Attachment A. The WMMP is revised to remove the WGS colony assessment, which would instead be required under the WMMP for SFC under the companion amendment request for SFC.

Revision 13

Page 19, lines 30-36:

85 The certificate holder shall acquire the legal right to create, enhance, maintain and protect a habitat mitigation area as long as the site certificate is in effect by means of an outright purchase, conservation easement or similar conveyance and shall provide a copy of the documentation to the Department. Within the habitat mitigation area, the certificate holder shall improve the habitat quality as described in the *Habitat Mitigation Plan* that is incorporated in the *Final Order on Amendment #1* ~~for the Shepherds Flat Wind Farm~~ as Attachment ~~SFS-~~C and as amended from time to time. [Amendment #1 (SFWF); Amendment #1]

Revision 13 Explanation

This revision incorporates the revised *Habitat Mitigation Plan* that is attached to this order as Attachment C. The *Habitat Mitigation Plan* is revised to reflect the changes in acreages of habitats potentially affected by construction of the facility.

Revision 14

Page 19, line 37, through page 20, line 36:

86 The certificate holder shall avoid permanent and temporary disturbance to the areas described in (a) through (g) and, during the times indicated, shall avoid construction disturbance in the areas described in ~~(h) and~~ (i) through (k). The certificate holder shall flag these areas for the duration of construction activities nearby and shall ensure that construction personnel avoid disturbance of the areas. The avoidance areas are:

(a) All Category 1 and those areas of Category 2 habitat shown on the "ODFW-2" Figures 1 through 12 in the Shepherds Flat Wind Farm Application. [Amendment #1 (SFWF)]

(b) Eight small areas of Category 3 shrub-steppe habitat as described in the Final Order on Amendment #1 for the Shepherds Flat Wind Farm, Section IV.4.(b)A. [Amendment #1 (SFWF)]

(c) All seeps, riparian areas and vernal pools.

(d) All water sources for wildlife, including perennial and intermittent streams, stock ponds and watering stations.

(e) All faces of bluffs or rock outcroppings.

(f) All trees or other structures that contain active raptor nests.

(g) For the facility substation and field workshop, all Category 3 habitat. [Amendment #1 (SFWF)]

(h) ~~The area within 1,000 feet of Category 2 Washington ground squirrel (WGS) habitat (as shown on "ODFW-2" Figure 8 in the Shepherds Flat Wind Farm Application) during the period in which the squirrels are active. To determine when the WGS are active, the certificate holder shall hire a qualified independent professional biologist to monitor the on-site colony within the Category 1 WGS habitat area described in the Final Order on the Application. The biologist shall begin monitoring the colony on January 15 if construction activity is occurring within 0.5 miles of the Category 2 WGS habitat at that time. Otherwise, the biologist shall begin monitoring upon the start of construction activity within 0.5 miles of the Category 2 WGS habitat at any time between January 15 and June 30. The biologist shall conduct weekly monitoring to detect signs of WGS activity. If signs of WGS activity are observed, the certificate holder shall halt construction activities within the avoidance area and shall notify the Department. The certificate holder shall flag the avoidance area and ensure that construction personnel avoid disturbance of the area until the biologist has determined that the WGS are no longer active. While the WGS are active, the biologist may suspend weekly monitoring until May 1. The certificate holder may resume construction activities within the avoidance area when the WGS are no longer active, as determined by the absence of WGS activity during three consecutive weeks of monitoring by the biologist.~~ [~~Amendment #1 (SFWF)~~Text removed by Amendment #1]

(i) The area within 0.5 miles of Category 3 curlew nesting habitat and the area within 0.5 miles the BLM Horn Butte Wildlife Area during the nesting season (March 8 through June 15). Before beginning construction, the certificate holder shall provide to the Department a map showing these avoidance areas relative to areas of potential construction disturbance. The certificate holder may engage in construction activities in these areas at times other than the nesting season.

(j) The area within 1,000 feet of any essential, limited and irreplaceable Washington ground squirrel (WGS) habitat within the new areas added to the site by Amendment #1 (excluding the areas within the site boundaries of Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South as approved on September 11, 2009) during the period in which the squirrels are active. The certificate holder shall hire a qualified independent

professional biologist to conduct pre-construction surveys for State-listed threatened, endangered or sensitive wildlife species in these new areas within 1,000 feet of any area potentially disturbed by facility construction. To determine whether WGS habitat exists and to determine whether WGS are active, the biologist shall search for WGS in suitable habitat using a two-survey protocol approved by the Oregon Department of Fish and Wildlife (ODFW). The certificate holder shall submit the results of the survey to ODFW and to the Department. If signs of WGS activity are observed, the certificate holder shall flag the avoidance area and ensure that construction personnel avoid disturbance of the area until the biologist has determined that the WGS are no longer active.

(k) Areas within a suitable buffer around confirmed populations of Laurent's milk-vetch or any other State-listed threatened or endangered plant species within the new areas added to the site by Amendment #1 (excluding the area within the site boundaries of Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South as approved on September 11, 2009). The certificate holder shall not install facility components or cause temporary disturbance within these areas. The certificate holder shall hire a qualified independent professional biologist to conduct pre-construction surveys for State-listed threatened or endangered plant species in these new areas within 1,000 feet of any area potentially disturbed by facility construction. The certificate holder shall submit the results of the survey to the Department.

[Amendment #1]

Revision 14 Explanation

This revision modifies Condition 86 to remove subsection (h), which applies to previously-identified WGS habitat on land that would be removed from SFS by this amendment and added to SFC under a companion amendment. The revision adds new subsection (j), which requires a pre-construction survey for State-listed threatened, endangered and sensitive wildlife species in the new lands added to SFS by this amendment, as recommended by ODFW. In particular, the certificate-holder would use an ODFW-approved protocol to search for WGS. Any Category 1 WGS habitat identified during the survey would be avoided under subsection (a) of this condition. In addition, the area within a 1,000-foot buffer would be avoided during construction when WGS are active. The revision adds new subsection (k) to ensure avoidance of impact to populations of Laurent's milk-vetch or other State-listed threatened or endangered plant species that are found during a pre-construction survey.

Revision 15

Page 21, lines 36-39:

92 The certificate holder shall impose and enforce construction and operation speed limits of 5 miles per hour on roads within 1,000 feet of Category 1 or Category 2 WGS habitat and 20 miles per hour on all other facility roads and shall ensure that all construction and operations personnel are instructed on the importance of cautious driving practices while on facility roads. [Amendment #1]

Revision 15 Explanation

This revision modifies Condition 92 to include a lower speed limit near any Category 1 or Category 2 Washington ground squirrel habitat that is found within the new areas lying outside previously-approved site boundaries. This would apply only if WGS are found to be

Revision 15

Page 21, lines 36-39:

92 The certificate holder shall impose and enforce construction and operation speed limits of 5 miles per hour on roads within 1,000 feet of Category 1 or Category 2 WGS habitat and 20 miles per hour on all other facility roads and shall ensure that all construction and operations personnel are instructed on the importance of cautious driving practices while on facility roads. [Amendment #1]

Revision 15 Explanation

This revision modifies Condition 92 to include a lower speed limit near any Category 1 or Category 2 Washington ground squirrel habitat that is found within the new areas lying outside previously-approved site boundaries. This would apply only if WGS are found to be active based on the preconstruction survey that is required under Condition 86(j), discussed above.

Revision 16

Page 24, following line 15:

103 Before beginning construction, the certificate holder shall determine whether any construction disturbance would occur in locations not previously investigated for potential jurisdictional waters as described in the *Final Order on Amendment #1*. The certificate holder shall conduct pre-construction investigations in these new areas within 1,000 feet of any area potentially disturbed by facility construction to determine whether any State-jurisdictional waters exist in those locations. The certificate holder shall submit a written report on the pre-construction investigation to the Department of Energy and to the Department of State Lands for approval before beginning construction and shall ensure that construction would have no impact on any jurisdictional water identified in the report. [Amendment #1]

Revision 16 Explanation

This revision would add new Condition 103 to the site certificate to require pre-construction survey of any areas not previously surveyed for waters of the state potentially subject to the Removal/Fill law. If any jurisdictional waters are identified, the certificate holder is required to take appropriate measures to avoid impacts on those areas.

VIII. ORDER

The Council approves Amendment #1 and issues an amended site certificate, subject to the terms and conditions set forth above.

Issued this 12th day of March, 2010.

THE OREGON ENERGY FACILITY SITING COUNCIL

By: _____
Robert Shiprack, Chair
Oregon Energy Facility Siting Council

Attachments
Attachment A: Wildlife Monitoring and Mitigation Plan
Attachment C: Habitat Mitigation Plan
Attachment D: Amendment Request Comments and Department Responses

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.

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ENERGY REBATE FORMS

Columbia Basin Electric Co-Op, Inc.

Electric Rates

RATES EFFECTIVE OCTOBER 2013

Residential Service:

Service Charge:

1 Phase - $23.00/mo
3 Phase - $27.00/mo

Energy Charge:

All kWh @ $.07614/kWh

Small General Service:

Service Charge:

1 Phase - $23.00/mo
3 Phase - $27.00/mo

Energy Charge:

All kWh @ $.08526/kWh

General Demand Service:

Service Charge:

$85.00/mo

Demand Charge:

All kW @ $5.14/kW

Energy Charge:

All kWh @ $.04584/kWh

Irrigation Pumping:

Monthly Minimum Charge x 12 Months:

First 15 HP - $7.81/HP ($117.15)
Next 35 HP - $5.27/HP ($184.45)
Next 150 HP - $3.05/HP ($457.50)

Over 200 HP - $2.74/HP

Energy Charge:

Summer (May - August)
All kWh @ $.02632/kWh

Winter (September - April)
All kWh @ $.03432/kWh

Street & Security Lighting

Monthly Charge:

250 W MV - $12.95/ea
70 W SV - $9.60/ea
100 W SV - $9.80/ea
150 W SV - $10.00/ea
200 W SV - $10.50/ea
250 W SV - $10.75/ea

CAITHNESS SHEPHERDS FLAT, LLC
c/o Caithness Corporation
565 5th Avenue, 29th floor
New York, New York 10017
Phone: 212-921-9099 Fax: 212-921-9239

July 31, 2012

VIA EMAIL and US MAIL

Mr. Jerry Healy
Manager
Columbia Basin Electric Cooperative
171 W Linden Way
Heppner, OR 97836

Re: Renewed Request for Station Service for Shepherds Flat Wind Resource Facilities Located in Columbia Basin Electric Cooperative's Service Territory

Dear Mr. Healy:

Columbia Basin Electric Cooperative (the "Coop") was sent a copy of the letter of July 5, 2012, from Mr. Greg Sweek, Morrow County Assessor, to Mr. Vincent Giglio, Caithness Shepherds Flat, LLC, ("Caithness"). In that letter, Mr. Sweek requested written confirmation from the Coop that Caithness has requested station service for Shepherds Flat Wind Project ("Project") facilities located in the Coop's service territory. His request was made in regard to a Strategic Investment Program Agreement executed between Caithness and Morrow County. For your convenience, a copy of Mr. Sweek's correspondence is attached. On Friday, July 27, you declined to provide that letter that Mr. Sweek has requested, stating that Caithness had never made its request for station service power in writing. To remove any ambiguity concerning this matter, Caithness hereby reiterates, in writing, its request that the Coop provide station service to Project facilities located within the Coop's service territory. As explained below, Caithness is willing to cooperate in any effort by the Coop to implement this written, renewed request.

History. The Project straddles the Oregon service territories of the Coop and PacifiCorp, dba "Pacific Power." We understand these service territories to be "exclusive." The Project is divided into three components: Shepherds Flat North (for which the Project entity is North Hurlburt Wind, LLC), Shepherds Flat Central (for which the Project entity is South Hurlburt Wind, LLC) and Shepherds Flat South (for which the Project entity is Horseshoe Bend Wind, LLC.). Each Project component has its own maintenance building and control room. The maintenance building and control room for Shepherds Flat North and Shepherds Flat Central are located within Pacific Power's service territory. Caithness paid Pacific Power to extend distribution lines to these facilities, which are now being served at retail by Pacific Power. The maintenance building and control room for Shepherds Flat South are located within the Coop's

service territory. Caithness paid the Coop to extend a distribution line to these facilities, which are now being served by the Coop. Horseshoe Bend Wind, LLC, is both a customer and a member of the Coop.

All three Project components connect to the Bonneville Power Administration ("BPA") transmission system at a single point of interconnection in BPA's Slatt Substation, which is located within Pacific Power's territory. At Slatt, 100 percent of Project output is delivered to BPA via 230-kV transmission lines owned by the Project entities. Also at Slatt, station service power for all three Project components is delivered to Caithness, as utility retail customer. From Slatt Substation, station service power is accepted into the Project via these same customer-owned, 230-kV lines.

In 2010, Caithness separately requested station service power from the Coop and from Pacific Power. We requested advice from each utility about which one was authorized to provide station service power to each of the three Project components. You and I met with BPA staff to discuss our request to the Coop. You told Caithness that you believed the Coop should serve some portion of the Project's total station service load. However, Pacific Power informed us that it had the right to serve 100 percent of the total station service load (all three Project components) because utility delivery of all station service power was to be made within its exclusive service territory at Slatt. You told us that the Coop would likely challenge Pacific Power's claim before the Oregon Public Utilities Commission ("PUC"), which has jurisdiction under Oregon law to resolve such territorial disputes. Caithness made it clear to both utilities that it, as customer, did not want to get into the middle of any dispute over service territories,

When the Coop failed to seek a ruling from the PUC, Caithness concluded that the Coop had decided not to challenge Pacific Power's assertion that 100 percent of the Project's station service load was within its exclusive service territory. Also, you had told us that the Coop did not even have a retail electric rate for service to the Project as a BPA "tier 2" load and could not develop such a rate until BPA determined its applicable wholesale rate a year or more later. The Coop was thus unable to satisfy our request for station service power. BPA was pressing us to conclude arrangements for station service so that we could complete our interconnection to the BPA system -- one of myriad arrangements yet to be worked out as we brought a $2 billion Project on line. Because of your decision not to seek a PUC ruling, we signed the contract tendered to us by Pacific Power for station service power at its published rate.

Implementation of Caithness' Renewed Request. It appears to us that the Coop may be having second thoughts about its failure to press before the PUC a claim of territorial right to serve some of the Project's station service load. Presently, station service power is being made available to Caithness at Slatt Substation, using facilities of BPA. Pacific Power has installed metering allowing it to measure its power deliveries. For the Coop to serve a part of this load, it would simply need to designate Slatt Substation as a new point of delivery under its existing BPA transmission agreement and work out some arrangement with Pacific Power to divide up station service power deliveries, using the metering already in place. No construction would be required for the Coop to serve part of this load; it would merely be a matter of bookkeeping between the two utilities. As Caithness understands it, this outcome could result either from a consensual agreement with Pacific Power under ORS 758.410 or through a PUC order declaring that some portion of the Project's station service load is within the Coop's service territory.

Caithness reiterates that it does not want to get into the middle of any disagreement over service territories between the Coop and Pacific Power. Simply inform us how you intend to proceed. If you initiate legal proceedings, Caithness would likely intervene to protect its interests, but would not take a position on the service-territory issue.

If the Coop has subsequently developed a rate applicable for service to a load such as ours, please provide us with a copy. If not, please inform Caithness about the commercially reasonable rate the Coop would intend to apply for station service power. If the Coop's rate were higher than Pacific Power's Schedule 43, that could of course affect the position we took if the PUC decided to consider relative rate levels in any proceeding you decide to initiate.

Again, Caithness will cooperate in any action the Coop chooses to take, while maintaining its neutrality between the two utilities on the service territory issue. I am copying PacifiCorp on this letter in the interests of preserving Caithness' neutrality.

Please acknowledge to Mr. Sweek your receipt of this written request without delay.

Sincerely,

Derrel Grant
Vice President

cc. Mr. Greg Sweek, Morrow County Assessor
Ms. Michelle Mishoe, PacifiCorp

COLUMBIA BASIN ELECTRIC COOPERATIVE, INC.
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August 21, 2012

Caithness Shepherds Flat, LLC
Derrel Grant
Vice President
565 5th Avenue, 29th floor
New York, New York 10017

Dear Mr. Grant:

Thank you for your letter dated July 31, 2012, regarding the provision of station service for the Shepherds Flat Wind Facilities (Project) owned by Caithness Shepherds Flat LLC (Caithness) and located in Columbia Basin Electric Cooperative, Inc.'s (CBEC) service territory. While much of the information in your letter is correct, I unfortunately cannot agree with some of the statements regarding the request to provide station service contained in the letter. Dating back over 10 years when I first met Patricia Piltz, and continuing up to the present time (including a meeting with you in Arlington, Oregon, and at BPA's office in Vancouver, Washington), I have always pressed the issue of station service for that portion of the Project located in CBEC service territory. You are correct that I declined to provide Mr. Sweek with a letter stating that Caithness had made a request for station service power at the Project. Although you, Pat, and I have discussed the issue of station service for the Project many times over the past 10 years, CBEC has never received a request for station service (written or verbal) until your letter dated July 27, 2012.

Nevertheless, CBEC does appreciate receiving Caithness' recent request for station service at the Project and we have proceeded expeditiously on that request in hopes that all of the matters involving Caithness' and Morrow County can be resolved quickly.

I have been involved in the following activities regarding station service to the Project. Over the past few weeks, CBEC has been working with PacifiCorp trying to come to a "utility-to-utility" solution to the station service issue. I remain hopeful that PacifiCorp and CBEC will come to agreement in the near future, but this issue may need your input. I have also been working with CBEC's transmission account executive at BPA on CBEC's request to BPA for two new points of delivery for your projects. The first one, Shepherds Flat South, should be a simple request. Shepherds Flat Central is a little more challenging. I will need some help from someone in your organization to identify the location of the turbines in the Shepherds Flat Central project. If someone could provide me with a map of these turbine locations with an underlining layer of township, range and section I will be able to allocate load for this project between PacifiCorp

and CBEC. When I get concurrence with PacifiCorp on the allocation percentage I will make final request for service from BPA.

Please be advised that CBEC commissioned a rate study following BPA's implementation of their new rates on October 1, 2011. The rate consultant has completed the study and CBEC has passed on these higher rates to the majority of our membership. However, we are still working on miscellaneous rate schedules that we presently do not have billing activity on, i.e., idle services, seasonal, minimum use accounts, and new large loads like Caithness. The only material component to a new large load rate will be BPA cost of power. CBEC wants to make sure it is passing on the BPA power cost charges in manner that is equitable to both the member receiving service and the Cooperative as a whole.

CBEC will continue to work with PacifiCorp and Caithness to resolve the issue of station service as quickly as possible. I believe it would expedite resolution of the outstanding issues if Caithness contacted their representative at PacifiCorp and requested that the relationship between Caithness and PacifiCorp be modified to accommodate CBEC providing the station service to the Project as outlined in this letter. Kindly let me know who I should work with on your side and PacifiCorp's to have the correct information regarding turbine numbers to be provided to BPA.

Once the matters involving BPA are addressed, CBEC will have the appropriate documentation prepared for memorializing the provision of station service by CBEC to the Project. In the interim, please do not hesitate to contact me should you have any questions or desire further information.

Sincerely,

Jerry M Healy
Manager

cc. Mr. Greg Sweek, Morrow County Assessor
Ms. Michelle Mishoe, PacifiCorp

CERTIFICATE OF FILING AND SERVICE

Docket No. UM 1670

I hereby certify that on the date given below the original and one true and correct copy of the foregoing **DECLARATION OF JEFFREY DELGADO IN SUPPORT OF CAITHNESS DEFENDANTS' MOTION FOR SUMMARY DETERMINATION** 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 6th day of October, 2014.

DAVIS WRIGHT TREMAINE LLP

By: /s/ Derek D. Green
John A. Cameron, OSB #92873
Derek D. Green, OSB #042960
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Of Attorneys for Defendants North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC and Caithness Shepherds Flat, LLC

UM 1670
SERVICE LIST

W = waives paper service

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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 DEREK GREEN IN SUPPORT OF CAITHNESS DEFENDANTS' MOTION FOR SUMMARY DETERMINATION**

I, Derek D. Green, 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 Motion for Summary Determination of the Caithness Defendants.

3. Attached hereto as Green Exhibit 1 is a copied excerpt from the 1985 legislative history of Oregon House Bill 2202 (63rd Assembly), obtained by this office from the Secretary of State Archives.

4. Attached hereto as Green Exhibit 2 are copies of public notices from Bonneville Power Administration and the Oregon Department of Energy in 2006 regarding Lifeline

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Development Group's wind energy development notice of intent to develop a wind energy project and proposed interconnection adjacent to BPA's Slatt switching station. Both documents are publicly available on, and were downloaded from, the BPA's public website.

DATED this 6th day of October, 2014.

/s/ Derek D. Green
Derek D. Green

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Bills considered:
HB 2202, 2838,
2702, 3021

SENATE COMMITTEE
ON
ENERGY AND NATURAL RESOURCES

June 06, 1985 **Hearing Room B**
Tapes 141-142
State Capitol

MEMBERS PRESENT:
SEN. BILL BRADBURY, CHAIR
SEN. ROD MONROE, VICE CHAIR
SEN. JOHN BRENNEMAN
SEN. JOYCE COHEN
SEN. L.B. DAY
SEN. JEANNETTE HAMBY
SEN. MARGIE HENDRIKSEN

STAFF PRESENT:
JEFF JOHNSON, ADMINISTRATOR
MARIA LUISA MEZA, ASSISTANT

WITNESSES:
REP. VERNER ANDERSON
Dist. 45

EDWARD J. STIPKALA
CPEX Pacific, Inc.

GENE MAUDLIN
Public Utility Commissioner

DENISE McPHAIL
Portland General Electric

ALAN WILLIS
Boise Cascade

PHILLIP FELL
Metropolitan Service Dist.

REP. WAYNE FAWBUSH
Dist. 56

TAPE 141, SIDE A

005 SENATOR BRADBURY called the hearing to order at 8:00 am.

HB 2202 - Relating to Public Utilities

020 REPRESENTATIVE ANDERSON came before the committee and explained the background of the bill(Exhibit A). He stated that he and REPRESENTATIVE TOM THROOP worked together on this bill. Original intent of the law was the allowance of small head hydro to

20 customer to be served by the facility. The intent was towards residential customers. Since that time, it was discovered by the utilities that they could serve industrial customers under the terms of the law. The bill has been re-drafted to grandfather what has gone on before to allow one industrial customer. It exempts some of the processes they felt needed a lift, in regards to solar and wind. It exempts some of the bio-gas, waste heat and geothermal that are used for non-electrical purposes.

083 SENATOR DAY asked if Representative Anderson had seen the proposed amendments and if he was in agreement with them (Exhibit B). REPRESENTATIVE ANDERSON stated that he felt that the amendments were onerous.

096 SENATOR BRADBURY asked if the bill was attempting to address the concern of pirating industrial customers from an existing utility by people involved in co-generation or in the development of other resources. REPRESENTATIVE ANDERSON responded that this was the basic concern.

126 SENATOR BRADBURY expressed his concern for the issue of incentives provided for co-generation. He questioned how this bill would affect co-generation. REPRESENTATIVE ANDERSON responded that the limitation was that the excess fuel would go unregulated or regulated, depending upon the circumstances, to an industrial-owned utility or a publicly-owned utility.

151 SENATOR HANLON, District 1, introduced EDWARD J. STIPKALA, Vice-President and manager of CPEX PACIFIC, INC.. STIPKALA submitted to the committee a handout (Exhibit C) which stresses the company's concerns.

191 SENATOR DAY asked how HB 2202 poses an impediment. STIPKALA responded that part of the language of subsection 3, page 2, line 11, does allow a corporation to service their own needs without the classification of a utility. SENATOR BRADBURY stated that he did not see how subsection 3 took care of the concern. This section allows for third party financing of acquisition or development by a utility customer.

246 GENE MAUDLIN, Public Utility Commissioner, came before the committee to address the concern expressed by Mr. Stipkala. MAUDLIN stated that there was nothing in the present law or in the amendments that prohibits a person from serving its own load under any manner they see fit. The amendment referred to, on third party financing, means that if somebody else finances a project, it isn't covered either. Existing law covers the person who wants to do everything themselves. This bill ensures third party financing.

MR. MAUDLIN then testified that it was possible to get power from BC HYDRO, a Canadian state-owned corporation, into this territory by using mostly Bonneville Power lines. They are anxious to sell the surplus power; it could do so to someone down here who can then use

To: People Interested in the Proposed Shepherds Flat Wind Farm Project

From: Cathy Van Horn, Oregon Department of Energy

Date: June 27, 2006

Subject: Notice of Intent for Wind Facility

Introduction

On June 27, 2006, the Oregon Department of Energy (Department) received a Notice of Intent from Lifeline Development Group, LLC, to apply to build a wind generation facility between Arlington and Willow Creek on about 32,100 acres of mostly privately owned farm land in Gilliam and Morrow counties. The facility would be called the Shepherds Flat Wind Farm (Project). It would include up to 300 wind turbines with a total nominal generating capacity of up to 750 megawatts (MW) of electricity.

A Notice of Intent signals a company's intent to file an application to build an energy facility in the near future. The application is for a permit called a "site certificate" from the Oregon Energy Facility Siting Council (Siting Council), a seven-member citizen council appointed by the governor. The site certificate application is reviewed under a consolidated state process through which the Siting Council makes decisions on most state permits that otherwise would be decided separately.

The Notice of Intent contains only preliminary information about the facility, its location, its conceptual design, and its potential impacts. The Department uses the notice to work with relevant government agencies and tribes to determine the appropriate regulations or specific concerns that an applicant must address in its application for a site certificate. It also uses the notice to gather public comments about the project early in the process. The Department then uses the agency, tribal and public comments to help us produce a document called a "project order," which details the information Lifeline must put into its application. Lifeline anticipates submitting an application in early fall 2006.

Public Review of the Notice of Intent

You can review a copy of the Notice of Intent at:

- The Department's office in Salem at 625 Marion St. NE
- The Arlington Public Library at 500 W. First St., Arlington, OR
- The Boardman Library at 200 South Main St., Boardman, OR
- On the web at http://egov.oregon.gov/ENERGY/SITING/announce.shtml

Request for Public Comments and Information Meeting

The Department requests written comments on the Notice of Intent by Monday, July 31, 2006. Written comments or questions can be submitted by regular mail, e-mail, or fax. The Department will also hold a public information meeting on Friday, July 28, 2006, where people can comment orally and ask questions. The public meeting will begin at 7 p.m. at the Arlington High School at 1200 Main Street in Arlington, Oregon.

The Department will hold additional comment opportunities once it receives an application.

At the July 28 meeting, the Department will:

- Explain the state's review process and how the public can participate;
- Hear public comments, questions and concerns on the proposed facility; and
- Ask Lifeline to answer questions from the public.

Description and Location of Proposed Facility

The facility would be called the Shepherds Flat Wind Farm (Project). It would include up to 300 wind turbines with a total nominal generating capacity of up to 750 megawatts (MW) of electricity. The Project would also include:

- Two substations
- An operations, maintenance and communications facility located on commercially zoned property
- Up to 10 permanent meteorological towers
- A 34.5-kilovolt (kV) power collection system linking each turbine to the next and the Project substations. The power collection system would largely be underground, but might be overhead in some locations.
- Interconnection with a Bonneville Power Administration 500 kV transmission line in Gilliam County adjacent to BPA's Slatt switching station
- A temporary concrete batch plant

Application Process

As noted above, the Siting Council will make the decision for the state about whether this facility will be built. The Department is a state agency that serves as staff to the Siting Council.

The Siting Council's site certificate process is a consolidated permitting process that includes the review of applicable regulations of most other state agencies such as the Water Resources Department, Department of Environmental Quality, and the Department of State Lands. The applicant has the ability to choose whether it will seek land use approvals from the local jurisdiction or from the Siting Council. The site certificate does not include federal permits or permits that the federal government has delegated to other state agencies, such as air quality permits delegated to the Department of Environmental Quality.

Briefly, the steps in the site certificate application process are:

- If the applicant moves beyond the Notice of Intent phase to file an Application for Site Certificate, the Department will notify adjacent property owners and any other members

of the public who ask to be on our mailing list. The notification will invite public comments on the application and will say where members of the public can review a copy of the application.

- After the Department considers comments from the public, state/local agencies, and tribes, we issue a Draft Proposed Order that either recommends approval or denial of the application. The Department will then issue notice of the Draft Proposed Order and will invite public comments on it.

- The Department will schedule a public hearing (described in OAR 345-015-0220) on the Draft Proposed Order. Anyone can raise issues or objections to the Draft Proposed Order in writing or at this public hearing. The Department will issue notice of this hearing. Failure to comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 precludes participation in the subsequent contested case and the right to appeal the Siting Council's final decision.

- The Siting Council will hold a contested case hearing, which is a formal, legal hearing format. At the end of the contested case, the Siting Council will make its final decision on the application. Any person can request to participate in the contested case provided he or she commented on the record of the Draft Proposed Order.

Land Use

As part of its application review, the Siting Council considers land use issues. An applicant can choose to obtain land use approvals either through the local jurisdiction or through the Siting Council. In its Notice of Intent, Lifeline has indicated that it plans to pursue land use approvals from the Siting Council. Should Lifeline's plans change, and the company chooses to pursue land use approvals from the local jurisdiction, public comments on land use issues should be directed to the local land use process.

To Comment or Request Further Information

We realize that the energy facility siting process is new to most people. Please feel free to call the Department with any questions or comments about the proposed facility or the permitting process. The Department contact for this project is:

Cathy Van Horn
Oregon Department of Energy
625 Marion St. NE
Salem, OR 97301
Phone: (503) 378-4041
Fax: 503-373-7806
E-mail: catherine.vanhorn@state.or.us

Department of Energy

Bonneville Power Administration
P.O. Box 491
Vancouver, Washington 98666-0491

TRANSMISSION BUSINESS LINE

October 5, 2006

In reply refer to: Shepherd's Flat Wind Interconnection - TNP-CSB-2

To: People interested in BPA's interconnection of the Shepherd's Flat wind project

Bonneville Power Administration has been asked by Lifeline Energy to interconnect up to 750 megawatts (MW) of electricity generated from their proposed Shepherd's Flat Wind Farm in Gilliam and Morrow Counties, Ore. to the Federal Columbia River Transmission System (FCRTS). As a federal agency, BPA must consider the environmental impacts of its decision to interconnect under the National Environmental Policy Act. The purpose of this letter is to describe the proposed interconnection process, invite you to a public meeting and explain how you may comment on the project or contact BPA with questions.

Background
Lifeline Energy has proposed the 750 MW Shepherds Flat Wind Farm in Gilliam and Morrow Counties, Ore. Lifeline would permit, build, own, and operate this wind project and its associated facilities, including a proposed transmission line that would be built between the wind project and the proposed interconnection to the FCRTS. Siting of the wind project is under the jurisdiction of the Oregon Energy Facility Siting Council (EFSC), which is currently reviewing the project. Oregon EFSC held a public meeting on July 28, 2006 to seek public input concerning the wind project. BPA staff attended that meeting to discuss BPA's proposed role in interconnecting the project to the FCRTS.

Proposal
To interconnect the proposed Shepherd's Flat Wind Farm, BPA proposes to expand its existing Slatt substation yard in Gilliam County in 2008, adding a 230-kilovolt (kV) yard. Lifeline Energy would build two to three collector substations and its wind farm with associated 230-kV lines that would connect these collector substations to BPA's expanded Slatt substation. BPA does not propose to purchase any of the power produced by this wind project.

Public Meeting
BPA invites all interested parties to attend a public meeting to review BPA's proposed interconnection of Lifeline's proposed wind project. The meeting is on:

Wednesday, Oct. 25, 2006
6 p.m. - 8 p.m.
Arlington Grade School
1400 Main Street
Arlington, Ore. 97812

Schedule
This project is in the preliminary environmental review stages. BPA will take public comment on its proposed interconnection through Nov. 10, 2006. BPA will also monitor the Oregon EFSC Site Certificate process for the proposed wind project and comments raised in that process. If BPA determines that the decision to interconnect this project is consistent with BPA's Business Plan Environmental Impact Statement published in June 1995, BPA will prepare a Record of Decision (ROD) tiered to the BPA EIS and its ROD. A tiered ROD could be released sometime in 2007, depending on the EFSC schedule for consideration of the wind project. Construction of the proposed Shepherd's Flat Wind Farm could begin as early as 2008.

How to Comment
Comments will be accepted through Nov. 10, 2006. Comments can be submitted online at *http://www.bpa.gov/comment*; via e-mail to *comment@bpa.gov*; via mail to Bonneville Power Administration, Public Affairs Office - DKC-7, P.O. Box 14428, Portland OR 97293-4428; or by fax to (503) 230-3285. You also can call us toll free with your comments at (800) 622-4519. In your comments, please reference Shepherd's Flat Wind Interconnection. Please note that all comment letters will be posted on BPA's Web site at *http://www.bpa.gov/comment/*.

For More Information
If you have questions or would like more information about BPA's proposed interconnection of the wind project, please call us toll-free at (800) 622-4519. Additional information is posted on our Web site at *http://www.transmission.bpa.gov/PlanProj/Wind/*. Information about EFSC's consideration of the wind project is available at: *http://www.oregon.gov/ENERGY/SITING/review.shtml*. Thank you for your interest in this project.

Sincerely,

/s/ Page Andrews, Oct. 5, 2006

Page Andrews
Project Manager

Enclosed:
Project Map

CERTIFICATE OF FILING AND SERVICE

Docket No. UM 1670

I hereby certify that on the date given below the original and one true and correct copy of the foregoing **DECLARATION OF DEREK D. GREEN IN SUPPORT OF CAITHNESS DEFENDANTS' MOTION FOR SUMMARY DETERMINATION** 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 6th day of October, 2014.

DAVIS WRIGHT TREMAINE LLP

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UM 1670
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W = waives paper service

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