

**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.

**DEFENDANT CAITHNESS  
SHEPHERDS FLAT, LLC'S  
PREHEARING MEMORANDUM OF  
ISSUES FOR DISCOVERY  
CONFERENCE**

Caithness Shepherds Flat, LLC (“CSF”) requests that the Commission limit any further discovery in this matter to a showing of substantial need. In August, the Caithness Parties agreed to Columbia Basin’s request to propose an extension of the briefing schedule in this case but made their position clear that they expected to oppose further discovery as excessive and not necessary to the needs of this case. The Caithness Parties further indicated that to the extent Columbia Basin believed further discovery was necessary, it should make its data requests promptly so that any issues requiring the Commission’s involvement could be handled quickly, without further delays in this case.

Columbia Basin did not issue CSF any further data requests until September 9, nearly a month later. CSF responded to those requests. Less than three weeks before the parties' agreed summary judgment deadline, Columbia Basin then issued its third set of data requests to CSF, on September 17. It includes requests that Columbia Basin easily could have made many months ago (or even last year), or included in any of its four prior sets of requests to the Caithness Parties. It also includes extraordinarily broad and onerous (and vague) requests, such as requests for "all documents, notes and information" related to or concerning different topics over multiple year time periods. Such requests appear to be the exact type of overly broad requests disallowed by the Commission in its July 25 Order and require the Caithness Parties to once again undertake a considerable search of records from multiple custodians.

Discovery in this case has consumed an extraordinary amount of time and expense for the Caithness Parties. Columbia Basin has issued almost 90 data requests to the Caithness Parties. To date, the Caithness Parties have produced over 4,500 pages of documents, including dozens of versions of highly sensitive agreements, years of proprietary energy use and financial information, and mapping information that required the hiring of an outside vendor to complete. The data requests that the Caithness Parties object to in Columbia Basin's third set of data requests would require more of the same, including the review of thousands of more pages of documents on topics that have little, if any, relevance to this case.

In considering the discovery that is commensurate to the needs of this case, the Caithness Parties request that the Commission also consider the disparity between Columbia Basin's approach to propounding discovery and answering discovery. Attached are copies of Columbia Basin's responses to specific data requests from North Hurlburt propounded late last year. What is apparent from the responses is that Columbia Basin's interpretation of what is relevant and

commensurate to the needs of this case varies drastically depending on whether the discovery is directed at Columbia Basin or propounded by it. The Caithness Parties request this Commission take into consideration that fact in determining the proper scope of discovery.

Responses to Specific Data Requests at Issue:

1. 3-CSF-1: The Commission previously ruled on the diagram information that it was necessary for CSF to provide or create for purposes of this case. CSF has complied and provided both a representative map and corresponding diagram to Columbia Basin.

CSF further objects on timeliness grounds. Columbia Basin requested additional mapping information in early September, which CSF agreed to provide in order to avoid a further discovery dispute. Columbia Basin followed up with data requests seeking additional mapping information in its second set of data requests (2-CSF-1 and 2-CSF-2). CSF consulted those requests and the Commission's order in engaging an outside contractor to create the map and corresponding diagram that has now been produced (and designated confidential). Columbia Basin's late request for additional details would impose an unnecessary burden and cost, and is not relevant.

2. 3-CSF-2: CSF objects to production of the Parent LLC Agreement on relevance and burden grounds. It is also inconsistent with the Commission's July Order rejecting CSF's attempts to require disclosure of further ownership information about the defendants. The Parent LLC Agreement (and all "restatements, amendments, revisions or other changes") is a highly sensitive document that contains financial modeling and membership information that can have no relevance to the issues in this case. This request would again require review and production of hundreds of pages of documents.
3. 3-CSF-4: CSF objects to production of the Balance of Plant Agreement on relevance and burden grounds. Columbia Basin's broad request could potentially cover thousands of pages if literally construed to include all exhibits, change orders, etc. And the relevance of this material to the issues in this case is not apparent.
4. 3-CSF-8 through 3-CSF-10: these requests call for legal conclusions.
5. 3-CSF-12 through 3-CSF-15: these requests are overly burdensome and vague (e.g., provide all "information"), and untimely. 3-CSF-15 is also framed as a contention interrogatory.

6. Second set of data responses. CSF responded to these requests in a timely manner and provided documents in response as well. Columbia Basin asserts it has been prejudiced by the “delays” resulting from CSF searching its records again for additional materials. For all the reasons discussed above, CSF disagrees. It further notes that any delay in the record search is a result of Columbia Basin’s submission of a third set of data requests.

DATED this 26<sup>th</sup> day of September, 2014.

DAVIS WRIGHT TREMAINE LLP

By /s/ Derek D. Green

John A. Cameron, OSB #92873

Derek D. Green, OSB #042960

Tel: 503-241-2300

Fax: 503-778-5299

Email: [johncameron@dwt.com](mailto:johncameron@dwt.com)

Email: [derekgreen@dwt.com](mailto:derekgreen@dwt.com)

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

## **ATTACHMENTS**

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

**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  
November 26, 2013  
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.

UM 1670/Columbia Basin Electric Cooperative  
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.



**UM 1670/Columbia Basin Electric Cooperative  
November 26, 2013  
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. 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.

**UM 1670/Columbia Basin Electric Cooperative  
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.

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

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. 26:**

26. Please provide a copy of all comments or other written documents presented or provided to the Oregon Energy Facility Siting Council ("EFSC"), or to the Oregon Department of Energy acting as staff to EFSC, regarding EFSC review of any application for a site certificate, including any certificate amendment, for the Shepherds Flat South wind facility.

**Response to Data Request No. 26:**

The requested information is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

**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 **DEFENDANT CAITHNESS SHEPHERDS FLAT, LLC'S PREHEARING MEMORANDUM OF ISSUES FOR DISCOVERY CONFERENCE** 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 26<sup>th</sup> day of September, 2014.

DAVIS WRIGHT TREMAINE LLP

By: /s/ Derek D. Green

\_\_\_\_\_  
John A. Cameron, OSB #92873  
Derek D. Green, OSB #042960  
1300 SW Fifth Avenue, Suite 2400  
Portland OR 97201  
Tel: 503-241-2300  
Fax: 503-778-5299  
Email: johncameron@dwt.com  
Email: derekgreen@dwt.com

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

W  
Thomas Wolff, Manager  
COLUMBIA BASIN ELECTRIC  
COOPERATIVE, INC.  
P O Box 398  
Heppner, OR 97836-0398  
Email: tommyw@columbiabasin.cc

W  
Charles N. Fadeley  
Attorney at Law  
P. O. Box 1408  
Sisters, OR 97759  
Email: fade@bendbroadband.com

W  
Raymond S. Kindley  
KINDLEY LAW, PC  
P O Box 569  
West Linn, OR 97068  
Email: kindleylaw@comcast.net

W  
Thomas M. Grim  
Tommy A. Brooks  
CABLE HUSTON  
1001 SW Fifth Ave., Suite 2000  
Portland, OR 97204-1136  
Email: tgrim@cablehuston.com  
tbrooks@cablehuston.com

W  
Dustin Till, Senior Counsel  
PACIFIC POWER  
825 NE Multnomah, Suite 1800  
Portland, OR 97232  
Email: Dustin.Till@PacifiCorp.com

W  
Oregon Dockets  
Pacifcorp, dba Pacific Power  
825 NE Multnomah St., Suite 2000  
Portland, OR 97232  
Email: oregondockets@pacificcorp.com

W  
Ted Case, Executive Director  
OREGON RURAL ELECTRIC  
COOPERATIVE ASSOCIATION  
698 12<sup>th</sup> Street SE, Suite 210  
Salem, OR 97301  
Email: tcase@oreca.org

W  
Steve Eldrige  
Umatilla Electric Cooperative Assn.  
P O Box 1148  
Hermiston, OR 97838  
Email: steve.eldrige@ueinet.com