

# KINDLEY LAW PC

RAYMOND S. KINDLEY

ADMITTED IN OREGON AND WASHINGTON

October 6, 2014

## VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center  
Public Utility Commission of Oregon  
P.O. Box 2148  
Salem, OR 97308-2148

**Re: UM1670 – Columbia Basin Electric Cooperative vs Pacific Power et al.**

Attention Filing Center:

Enclosed for filing in docket UM-1670, are an original and five copies of a Columbia Basin Electric Cooperative's Motion for Summary Judgment.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Please contact this office with any questions.

Sincerely,

/s/ Raymond S. Kindley

Raymond S. Kindley  
Attorney for Columbia Basin Electric Cooperative, Inc.

cc: Service List

## CERTIFICATE OF SERVICE

I hereby certify that on the 6<sup>th</sup> day of October, 2014, I served the foregoing document upon the persons named on the service list by electronic mail only as all parties have waived paper service.

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5  
6 **BEFORE THE**  
7 **PUBLIC UTILITY COMMISSION OF OREGON**

8 COLUMBIA BASIN ELECTRIC ) Docket No. UM 1670  
COOPERATIVE, INC. an Oregon )  
cooperative corporation ) COLUMBIA BASIN ELECTRIC  
9 Complainant, ) COOPERATIVE, INC'S MOTION  
vs. ) FOR SUMMARY JUDGMENT  
10 PACIFICORP, dba Pacific Power, an )  
Oregon business corporation, )  
11 Defendant, )  
12 )  
NORTH HURLBURT WIND, LLC, a )  
13 foreign limited liability company, )  
Defendant, )  
14 )  
SOUTH HURLBURT WIND, LLC, a )  
15 foreign limited liability company, )  
Defendant, )  
16 )  
HORSESHOE BEND WIND, LLC, a )  
17 foreign limited liability company, )  
18 Defendant, )  
and )  
19 CAITHNESS SHEPHERDS FLAT, LLC, a )  
20 foreign limited liability company, )  
Defendant )  
21 )

22  
23 The Complainant Columbia Basin Electric Cooperative, Inc. (the "Cooperative") in this  
24 matter hereby moves the Oregon Public Utility Commission (the "Commission") for summary  
25 judgment regarding the issues presented in the Cooperative's complaint.  
26



1 **INTRODUCTION**

2 The Territory Allocation Law, ORS 758.400 to 758.475 grants the Commission the  
3 authority to create exclusive service territories for providers of electric services. The purpose of  
4 the law is to keep rates low for electric users and gas consumers by protecting the investment of  
5 a utility’s customers in the electric or gas distribution system for the allocated territory. That  
6 protection is especially critical to an electric cooperative that is member-owned and has no stock  
7 holders.

8 The Cooperative filed a complaint with the Commission claiming that North Hurlburt  
9 Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC, Caithness Shepherds Flat,  
10 LLC (the “Caithness Defendants”) and PacifiCorp, dba Pacific Power, have all provide utility  
11 service in and into the Cooperative’s exclusive service territory in violation of ORS 758.450(2).

12 Through a complex series of transactions Pacific Power supplies backup power to South  
13 Hurlburt Wind and Horseshoe Bend Wind from an interconnection point with the Bonneville  
14 Power Administration (“BPA”) transmission system over an interconnected electrical system that  
15 is jointly owned by North Hurlburt Wind, South Hurlburt Wind, and Horseshoe Bend Wind. The  
16 South Hurlburt Wind project is partially in the Cooperative’s allocated territory and Horseshoe  
17 Bend Wind project is entirely in the Cooperative’s allocated territory.

18 As noted in the Conference Ruling, dated July 25, 2014, in this docket, this dispute is a  
19 case of first impression for the Commission. The Commission has not previously addressed the  
20 legal question of whether a “person” provides “utility service” under the Territory Allocation  
21 Law for station service power at a point of interconnection, at the wind tower, or somewhere-in-  
22 between. The Cooperative argues that the issue should hinge on the location of the load, e.g. the  
23 wind towers owned by South Hurlburt Wind and Horseshoe Bend Wind.

24 The Cooperative believes the outcome of this case is important in defining the Territory  
25 Allocation Laws and will likely set precedents for all allocated service territories in Oregon. A  
26 decision that bases each utility’s allocated territory on the location of load would preserve the

1 integrity of current allocated territories. A counter decision that enables electric users to avoid  
2 the allocated territory of a local utility merely by stringing conductors to a neighboring utility,  
3 however, would fundamentally defeat the spirit and letter of the Territory Allocation Law.  
4

## 5 **FACTS**

### 6 **A. Columbia Basin Electric Cooperative**

7 The Cooperative was formed in 1940. The Commission granted the Cooperative an  
8 allocated territory in the northern portion of its service area in OPUC Order 38089. That  
9 territory currently adjoins Pacific Power's territory. The boundary line between Pacific Power  
10 and the Cooperative roughly bisects the territory that encompasses the Shepherds Flat wind  
11 complex.  
12

### 13 **B. Shepherds Flat Wind Complex**

14 Planning and development of the Shepherds Flat Wind complex commenced over ten  
15 years ago. It initially was permitted as one wind generation project, but was later divided into  
16 three – North Hurlburt Wind, South Hurlburt Wind and Horseshoe Bend Wind (the “Three Wind  
17 Projects”).

18 The Three Wind Projects are interconnected to the BPA transmission system by jointly-  
19 owned electrical facilities that connect the Three Wind Projects to the BPA's Slatt Substation.  
20 Those jointly-owned electric facilities include (i) two 230 kV power lines that extend for  
21 approximately 4.5 miles between BPA's Slatt Substation and a three ring bus; (ii) the three ring  
22 bus; (iii) the land rights, e.g. easements, leases or fee simple, for power lines from the Slatt  
23 Substation to the individual collector substation for each wind project; (iv) all the towers,  
24 foundations, access roads, guide-wires and all communications equipment between the three ring  
25 bus and each collector substation. The only electrical equipment that each wind project claims is  
26

1 separately owned between the low side of each collector substation and the three ring bus is the  
2 230-kV wire conductor.

3 None of the Three Wind Projects individually, or separately, own any electric equipment  
4 that is directly connected to the BPA Slatt Substation. None of the Three Wind Projects  
5 individually, or separately, operate or maintain any of the jointly-owned facilities or any  
6 facilities connected to the BPA Slatt Substation. In fact, none of the Three Wind Projects  
7 individually, or separately, own the maintenance equipment, such as cranes, vehicles, and a spare  
8 transformer used to maintain and repair the jointly-owned power lines and electrical equipment.  
9 All of that operational and maintenance equipment is owned jointly by the Three Wind Projects.  
10 In short, the Three Wind Projects cannot receive the necessary utility service for their backup  
11 power needs without using the jointly held electrical facilities, property and equipment.  
12

13 **D. Caithness Shepherds Flat, LLC**

14 Caithness Shepherds Flat is the parent corporation, the sole ownership member, and the  
15 managing member for each of the Three Wind Projects.<sup>1</sup> In correspondence filed at the Federal  
16 Energy Regulatory Commission, Caithness Shepherds Flat LLC is represented as the sole owner  
17 of all the membership interests in the Three Wind Projects.<sup>2</sup>

18 Its management of the Three Wind Projects, however, is not passive or merely  
19 administrative. Through various organizational documents and contracts, Caithness Shepherds  
20 Flat retains management authority over the Three Wind Projects and their administrative,  
21 operational and maintenance functions, and contractors and subcontractors.

22 Caithness Shepherds Flat also purchases electric power from Pacific Power to provide the  
23 backup power for the Three Wind Projects. It delivers all the power its purchases to the Three  
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25 <sup>1</sup> "Caithness is the corporate parent of each of these three project-ownership entities." Response of North Hurlburt  
26 Wind, LLC to Columbia Basin Electric Cooperative's Motion to Amend Complaint, p. 2, (hereinafter referred to as  
"Caithness Response to Motion to Amend").

<sup>2</sup> See *Horseshoe Bend Wind, LLC*, FERC-FPA Electric Tariff, Shepherds Wind Project Shared Facilities Agreement  
(Jun 17, 2011) Docket ER 11-3381, available at :  
[http://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=13911025](http://elibrary.ferc.gov/idmws/file_list.asp?document_id=13911025)

1 Wind Projects' load.<sup>3</sup> In its role as backup power supplier to the Three Wind Projects, it is not  
2 an Energy Service Supplier under Oregon statutes or administrative rules. It does not own any  
3 electrical or generation facilities.<sup>4</sup> It is entirely unregulated by any state or federal agency.<sup>5</sup>  
4

5 **E. The Three Wind Projects**

6 1. Horseshoe Bend Wind Project

7 The Horseshoe Bend Wind Project is located entirely in the Cooperative's exclusive  
8 service territory.<sup>6</sup> This project consists of 116 wind turbines, a collector substation,  
9 transmission and distribution facilities, and maintenance facilities. The nameplate capacity of the  
10 Project is 290 MW. The South Shepherds Flat project collector substation steps up the voltage  
11 of the project output from 34.5 kV to 230 kV. That collector substation is located entirely in the  
12 Cooperative's allocated territory. The meter for the delivery of power from Pacific Power and  
13 the power sales from the Project are located in the collector substation.

14 The South Shepherds Flat maintenance facilities include a maintenance building, which is  
15 also located entirely in the Cooperative's exclusive service territory. The Cooperative provides  
16 electric utility service to that maintenance building. Back-up power to the Shepherds Flat  
17 South's wind turbines is supplied by Pacific Power via its sale to Caithness Shepherds Flat.  
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23 <sup>3</sup> Kindley Decl., Exhibit A.

24 <sup>4</sup> N. Hurlburt Response to CBEC Motion to Amend, p. 5. "Caithness has no ownership, access, or other interests in  
this ring-bus or any other transmission facility under the LGIAs or any other agreement."

25 <sup>5</sup> N. Hurlburt Response to CBEC Motion to Amend, p. 8.

26 <sup>6</sup> The legal description of perimeter of all Three Wind Project is set forth in Exhibits to the Cooperative's  
Complaint. A map that delineates the boundaries of the Three Wind Projects is provided in Kindley Decl., Exhibit  
B.

1           2.     South Hurlburt Wind Project

2           The South Hurlburt Wind Project is located in part within the Cooperative’s exclusive  
3 service territory. The South Hurlburt Wind Project consists of 116 wind turbines, a collector  
4 substation, transmission and distribution facilities, and maintenance facilities. The Project’s  
5 collector substation steps up the voltage of the project output from 34.5 kV to 230 kV. That  
6 collector substation is located Pacific Power’s allocated territory.

7           The Project’s maintenance facilities include a maintenance building, which is also located  
8 entirely in Pacific Power’s allocated service territory and Pacific Power provides electric utility  
9 service to that maintenance building. Back-up power to the Shepherds Flat South project wind  
10 turbines is supplied by Pacific Power through its sale to Caithness Shepherds Flat, LLC.

11           3.     North Hurlburt Wind Project

12           Shepherds Flat North wind project is located entirely in Pacific Power’s exclusive service  
13 territory. The project consists of 106 wind turbines, a collector substation, transmission and  
14 distribution facilities, and maintenance facilities. Shepherds Flat North’s collector substation is  
15 located entirely in Pacific Power’s exclusive service territory. Shepherds Flat North’s  
16 maintenance facilities located entirely in Pacific Power’s exclusive service territory. Pacific  
17 Power provides electric utility service to that maintenance building.

18  
19 **F.     Description of the Jointly-Owned Electrical Facilities**

20           The Caithness Defendants have described the the jointly-owned electrical facilities in at  
21 least four different documents. Although the descriptions have many similarities, the  
22 descriptions are inconsistent.

23           1.     Filings at Federal Energy Regulatory Commission

24           According to correspondence filed at the Federal Energy Regulatory Commission  
25 (“FERC”), Caithness Shepherds Flat distributes the power to the Three Wind Projects on  
26

1 electrical facilities that are jointly owned by the Three Wind projects.<sup>7</sup> That correspondence  
2 describes the jointly owned facilities:

3 Output from each of these three phases of project development will reach BPA's  
4 Slatt Substation by means of a combination of individually owned and jointly  
5 owned connector facilities. Each phase will have individually owned 34.5-kV  
6 collecting lines and a 34.5/230-kV substation. From the high side of these three  
7 34.5/230-kV substations, output from each phase will be collected over jointly  
8 owned collector facilities consisting of two 230-kV lines, each of approximately  
9 4 1/2 miles in length, a 230-kV three-ring power circuit breaker ring bus, and two  
10 additional 230-kV lines connecting the other side of the ring bus to the adjacent  
11 Slatt Substation. North Hurlburt, South Hurlburt and Horseshoe Bend each have  
12 an undivided ownership interest in these jointly owned connector facilities, which  
13 are designated as the "Shared Facilities" in the SFA [Shared Facilities  
14 Agreement] as part of this filing. These Shared Facilities constitute the  
15 "interconnection customer's interconnection facilities" specified in the LGIA  
16 between each Shepherds Flat Company and BPA.<sup>8</sup>

17 The above description of the jointly-owned facilities indicates that jointly-owned  
18 facilities consist of the two 230-kV lines between the Slatt Substation and the three ring bus, the  
19 three ring bus, and all of the transmission facilities between the three ring bus and each collector  
20 substation.

## 21 2. Shared Facilities Agreements

22 In addition to the Shared Facilities Agreement that the Three Wind Projects filed at  
23 FERC to obtain the waivers (the "Shared Facilities Agreement (FERC)"), the Three Wind  
24 Projects entered into another shared facilities agreement (the "Shared Facilities Agreement (Non-  
25 FERC)").<sup>9</sup> The primary distinction between these two Agreements is the description and  
26 treatment of the jointly-owned facilities.

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27 <sup>7</sup> See *Horseshoe Bend Wind, LLC*, FERC-FPA Electric Tariff, Shepherds Wind Project Shared Facilities Agreement  
28 (Jun 17, 2011), p. 4. Docket ER 11-3381, available at :  
29 [http://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=13911025](http://elibrary.ferc.gov/idmws/file_list.asp?document_id=13911025)

30 <sup>8</sup> *Id.*

31 <sup>9</sup> Kindley Decl., Exhibit C.

1 In the Shared Facilities Agreement (FERC) the jointly-owned facilities are described as  
2 only consisting of the two 230-kV power lines between the Slatt Substation and the ring bus and  
3 the ring bus. In the Shared Facilities Agreement (Non-FERC) the jointly-owned facilities  
4 include transmission facilities located between the ring bus and the South Hurlburt Wind, LLC  
5 collector substation and between the ring bus and the Horseshoe Bend Wind, LLC collector  
6 substation. The Shared Facilities Agreement (Non-FERC) is very careful to exclude from the  
7 jointly-owned facilities the actual transmission cable or wires located between ring bus and the  
8 South Hurlburt Wind collector substation and between the ring bus and Horseshoe Bend Wind..

9 3. Shared Assets Option Agreement

10 The Three Wind Projects entered into a Shared Assets Option Agreement with Saddle  
11 Butte Wind, LLC on December 16, 2010, which also describes the jointly-owned facilities.<sup>10</sup>  
12 Saddle Butte Wind, LLC is an affiliate of Caithness Energy, LLC. It will be the fourth wind  
13 project to be developed and joined to the Shepherds Flat Wind complex. In the Shared Assets  
14 Option Agreement, the Three Wind Projects jointly give Saddle Butte Wind, LLC an option to  
15 purchase an undivided interest in the jointly-owned electrical facilities.

16 Appendix A to the Shared Assets Option Agreement describes the Shared Facilities under  
17 both the FERC and Non-FERC Shared Facilities Agreement as follows:

18 A. Shared Facilities Agreement No. 1 [Shared Facilities Agreement (FERC)]

- 19 (i) All parts of the 3-ring power circuit breaker ring bus that conduct electricity;  
20 (ii) The two (2) 230-kV transmission lines, each line of approximately 4.5 miles  
21 in length, that electrically connect the 3-ring power circuit breaker ring bus to  
the Interconnection Provider's transmission system at their common Point of  
Interconnection.

22 B. Shared Facilities Agreement No. 2 [Shared Facilities Agreement (Non-FERC)]

- 23 (i) Transmission line poles, foundations, guys, wires and any other support  
mechanisms or other parts supporting the 3-ring power circuit breaker and *any*  
24 *transmission cables and other facilities used in connection with such facilities,*  
and  
25 (ii) Transmission access roads.  
[Emphasis added]

26 <sup>10</sup> Kindley Decl., Exhibit D. Shared Asset Option Agreement

1 The description of the jointly-owned facilities (or Shared Assets) in the Shared Assets  
2 Option Agreement suggests that the jointly-owned electrical facilities consists all of the electrical  
3 equipment between the three ring bus and the collector substations, including the transmission  
4 wires connecting the collector substations to the three ring bus.

5 In sum, the exact description of the joint-owned electrical facilities is inconsistent. What  
6 can be determined, however, that the jointly owned facilities consist of (i) two 230-kV power  
7 lines between Slatt Substation and the three ring bus, (ii) the three ring bus, (iii) all the towers,  
8 footing, guys, other support mechanisms, communication wires and equipment between the three  
9 ring bus and the collector substations of South Hurlburt Wind and the Horseshoe Bend Wind.  
10 Other jointly owned property and equipment consist of maintenance trucks, cranes, access roads,  
11 easements, right-of-ways, and associated leases and fee simple rights necessary for the operation  
12 of the jointly-owned electrical equipment.

13 The 230-kV transmission lines between the three ring bus and the South Hurlburt Wind  
14 project and the Horseshoe Bend Wind project may or may not be jointly-owned. Those lines,  
15 however, are jointly managed, operated and maintained by the Three Wind Projects and  
16 Caithness Shepherds Flat.

## 17 18 19 **G. Operation, Maintenance and Control of the Jointly-Owned Facilities**

20 The Caithness Defendants have created a myriad of contractual and ownership  
21 arrangements to jointly own, operate, maintain and control the jointly-owned electrical facilities,  
22 property and equipment.

### 23 **1. FERC Filings**

24 The correspondence that the Three Wind Projects filed at FERC to obtain approval of the  
25 Shared Facilities Agreement (FERC) describes the ownership arrangement of the joint facilities.  
26 It provides that each of the Three Wind Projects, as co-tenants:



1 will own an undivided tenancy in common interest in the Shared Facilities  
2 [jointly-owned facilities] in its respective “Percent Interest.” The [Share Facilities  
3 Agreement] provides for Percentage Interests in proportion to the anticipated  
4 nameplate capacity of each of the first three phases of the projects development,  
5 so that Horseshoe Bend and South Hurlburt would each have an approximate 34%  
6 interest and North Hurlburt would have an approximate 31% interest. All  
7 construction costs and operating expenses will be shared by the Co-Tenants in  
8 proportion to their Percentage Interest.<sup>11</sup>

9 The correspondence further describes that the Three Wind Projects will simply divide  
10 costs and expenses:

11 The SFA contains no jurisdictional rates or charges, and no jurisdictional services  
12 are to be offered or performed under the SFA. No payments will be made among  
13 the Co-Tenants other than to reimburse shared construction costs and expenses  
14 that might have been advanced by one of the Co-Tenants on behalf of the others.<sup>12</sup>

## 15 2. Shared Facilities Agreements

16 In each of Shared Facilities Agreements, the Three Wind Projects declare they have  
17 contributed land and real estate rights, electrical facilities and equipment to interconnect the  
18 Three Wind Projects with the BPA transmission system.

19 The recitals in both the Shared Facilities Agreement provide:

- 20 C. The Co-Tenants are also holders of certain lease, easement, license and  
21 permit rights, all of which are particularly described in the agreements  
22 listed in Exhibit B-1 attached hereto (the “Shared Premises Agreements”),  
23 to use certain real property more particularly described on Exhibit B-2  
24 attached hereto (as amended and supplemented from time to time, the  
25 “Shared Premises”). Each of the Co-Tenants will require the use and  
26 possession of specific portions of the Shared Premises for the  
27 construction, operation, and maintenance of its respective Project, subject  
28 to the terms and conditions of such Shared Premises Agreements.
- 29 D. The Co-Tenants intend that their shared use of the Shared Premises also  
30 include rights and obligations regarding certain common infrastructure  
31 facilities to be erected on the Shared Premises that are to support the  
32 construction, operation and maintenance of their respective Projects,  
33 including operation and maintenance facilities, access roads, and lay-down

<sup>11</sup> See *Horseshoe Bend Wind, LLC*, FERC-FPA Electric Tariff, Shepherds Wind Project Shared Facilities Agreement (Jun 17, 2011), p. 5. Docket ER 11-3381, available at :  
[http://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=13911025](http://elibrary.ferc.gov/idmws/file_list.asp?document_id=13911025)

<sup>12</sup> *Id.*, at 5.

1 and staging areas for construction and Wind Turbines, all as more  
2 particularly described as the “Shared Facilities.”

3 E. Shared Facilities shall also include certain moveable equipment such as  
4 cranes and vehicles and a Spare Transformer, all as more particularly  
described below as the “Shared Equipment”.

5 F. The Co-Tenants wish to set forth herein their respective rights and  
6 obligations regarding the joint design, procurement, development,  
7 construction, installation, ownership, use, maintenance, repair,  
8 replacement of, and additions to the Shared Premises, Shared Facilities,  
and the Shared Equipment (collectively the “Shared Assets”).

9 Section 3.1 of the Shared Facilities Agreement (Non-FERC) sets forth that each wind  
10 project has the right to jointly construct, use, operate, repair, maintain, remove and replace the  
11 Shared Facilities.<sup>13</sup>

12 The Shared Facilities Agreement (Non-FERC) also reveals that the Three Wind Projects  
13 have engaged Shepherds Flat Management, LLC to jointly manage, operate, and maintain the  
14 Shared Facilities.<sup>14</sup> The Three Wind Projects turn over the entire operation and management of  
15 the jointly-owned facilities, property and equipment to Shepherds Flat Management by  
16 authorizing Shepherds Flat Management to administer each wind project’s O&M Agreement in  
17 accordance with each wind project’s Administrative Management Agreement with Shepherds  
18 Flat Management.<sup>15</sup>

19 Furthermore, each of the Three Wind Projects relinquishes its independent control and  
20 operation of its share of the jointly-owned facilities to the collective authority of the Three Wind  
21 Projects. Section 8.2 provides, “a Majority of the Co-Tenants with Segment Interests or  
22 Premises Interests, as applicable, in any Shared Asset may direct the Manager to take any of the  
23 following actions” . . . “day-to-day management and operational activities” . . . “to negotiate,

24 \_\_\_\_\_  
25 <sup>13</sup> Kindley Decl. Exhibit C, Section 3.1, Shared Facilities Agreement (Non-FERC) p. 11.

26 <sup>14</sup> *Id.*, Section 7.1, Shared Facilities Agreement (Non-FERC), p. 27.

<sup>15</sup> *Id.*, Section 8.2, Shared Facilities Agreement (Non-FERC), p. 30.

1 enter into, execute, acknowledge, amend or administer agreements related to the use, operation,  
2 maintenance, and repair of the Shared Assets as permitted by this Agreement” . . . “to expend  
3 monies necessary for the management, operation, maintenance, and repair of the Shared  
4 Facilities” . . . and “to represent the Co-Tenants collectively when appropriate in connection with  
5 their individual power purchase agreements, Site Certificates and LGIAs.”

6 In short, pursuant to the Shared Facilities Agreement (Non-FERC), Shepherds Flat  
7 Management operates and maintains all of the Shared Facilities and Shared Assets at the  
8 direction of, and pursuant to, the majority interests of the Three Wind Projects. Each of the  
9 Three Wind Projects have delegate and subordinated its individual control and management of  
10 its share of the jointly-owned facilities to collective authority of the majority of the Three Wind  
11 Projects.

12 The collective relationship between each of the Three Wind Projects and Shepherds Flat  
13 Management is punctuated by the fact that the same person, John A. McNamara, Senior Vice  
14 President, Finance, of Caithness Northwestern Wind, LLC, executed the Shared Facilities  
15 Agreement (Non-FERC) on behalf of every party to that agreement. He executed the Shared  
16 Facilities Agreement (Non-FERC) as the duly authorized representative of Horseshoe Bend  
17 Wind, South Hurlburt Wind, North Hurlburt Wind and Shepherds Flat Management. So,  
18 although each of the Three Wind Projects are separate legal entities, and they are supposedly  
19 operating independently the Three Wind Projects and Shepherds Flat Management operate,  
20 maintain and control the jointly owned facilities, property and equipment as one.

21 3. The Three Projects Limited Liability Agreements

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Caithness Shepherds Flat solely manages and controls the Three Wind Projects including the jointly-owned facilities.

**H. The Cooperative’s Discussions with Caithness Affiliates Concerning Service to Projects**

The Cooperative began discussions concerning utility service to the Three Wind Projects over ten years ago with Patricia Piltz, a developer of the Shepherds Flat wind site.<sup>16</sup> Those discussions later involved Derrel Grant, Vice President of Caithness Shepherds Flat. The Cooperative relied upon those discussions to conclude it would provide the utility service to the Shepherd Flats project’s load located in the Cooperative’s territory.

1. Meeting Among the Cooperative, BPA and Caithness

Jerry Healy, the General Manager for the Cooperative, met with Derrel Grant and other representatives from Caithness Shepherds Flat and representatives from the Bonneville Power Administration (“BPA”) at BPA’s Vancouver offices on July 21, 2010. During that meeting according to notes prepared by BPA staff, participants discussed two alternate methods to serve the backup power needs of the Three Wind Projects.<sup>17</sup>

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<sup>16</sup> Kindley Decl. Exhibit F. Healy Letter to Caithness

<sup>17</sup> Kindley Decl., Exhibit G. BPA, CBEC, and Caithness Meeting Notes on July 21, 2010.

1 The first option was all Three Wind Projects would be served by the Cooperative with  
2 power delivered under the Cooperative's Network Transmission agreement with BPA. Pacific  
3 Power and the Cooperative would make an accounting arrangement whereby Pacific Power  
4 would serve the Shepherd Flat North project and a portion of the Shepherds Flat Central project.  
5 Pacific Power and the Cooperative would enter into a separate wheeling agreement with Pacific  
6 Power to enable Pacific Power's service to the Shepherds Flat North and part of the Shepherds  
7 Flat Central project.

8 The second option consisted of the Cooperative serving the Shepherds Flat South project,  
9 the Shepherds Flat Central project would be served by a virtual meter point jointly held by the  
10 Cooperative and Pacific Power and Pacific Power would serve Shepherds Flat North project.  
11 This option would require Pacific Power to enter into a separate point-to-point transmission  
12 contract with BPA to enable Pacific Power to deliver power to the Shepherds Flat North project.

13 The meeting on July 21, 2010, concluded with the parties agreeing to meet again with  
14 Pacific Power representatives to "work out the issues." Jerry Healy stated he would be available  
15 August 3, 2010, for the subsequent meeting.

16 The meeting notes demonstrate the Cooperative did not receive a request for utility  
17 service for the back-up power needs of any of the Three Wind Projects by any of the Caithness  
18 parties at that meeting. The notes also demonstrate the Cooperative was willing to work out the  
19 service arrangements with Pacific Power and to divide the service according to the location of  
20 the Three Wind Project's load.

21 2. Meeting Among Caithness, BPA and Pacific Power

22 Caithness representatives met with BPA staff and Pacific Power representatives on  
23 August 5, 2010, without the Cooperative. According to notes drafted by Chuck Phinney, a  
24 Pacific Power management employee, Pacific Power stated that "backup service to the North,  
25 Central and South projects will be taken at one point of delivery at Slatt Substation and that Slatt  
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1 Substation is in our service territory.” Pacific Power recommended that Caithness “apply for  
2 service for the entire backup load at Slatt Sub.”<sup>18</sup>

3 Caithness representatives asked about Pacific Power’s service to the Shepherds Flat  
4 South project since it is in the Cooperative’s service territory. BPA representatives stated that  
5 the Cooperative would dispute the service territory issue if Pacific Power provided backup  
6 service to all Three Wind Projects. In spite of these concerns, Pacific Power claimed its proposal  
7 was consistent with its policy, which was “set by precedent within Pacific Power, but not a PUC  
8 ruling.”

9 The participants at the August 5, 2010, meeting continued the discussion on how Pacific  
10 Power would serve the backup power needs of all Three Projects, even the Shepherds Flat South  
11 project. Pacific Power threatened it would go to the PUC if the Cooperative served the  
12 Shepherds Flat South project.

13 Pacific Power representatives indicated that the only way the Cooperative could serve the  
14 Shepherds Flat South project is if the Cooperative built a separate transmission line and installed  
15 a meter in its own service territory. BPA representatives closed the door on that option by  
16 stating “Columbia Basin would not be interested in being in the transmission business.”

17 The participants then addressed the option of placing meters at the collector substations  
18 for each separate wind project, which would permit Pacific Power and the Cooperative to divide  
19 the service according to location of the loads.

20 The notes then address the key point that if Pacific Power and the Cooperative split the  
21 loads at the meters, Pacific Power and the Cooperative would both be requesting capacity from  
22 BPA. That would mean the Three Wind Project would have to pay two capacity charges. The  
23 notes conclude with the statement that “the customer will call and request service to the North  
24 and Central projects with Pacific Power.”

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<sup>18</sup> Kindley Decl., Exhibit H, BPA, Caithness, Pacific Power meeting notes of August 5, 2010.

1 The Cooperative first learned of this meeting and received the notes when Pacific Power  
2 provided a copy of the notes as a response to a Cooperative data request in this proceeding. The  
3 Cooperative never authorized BPA staff to speak on its behalf or to preclude the Cooperative  
4 from building transmission facilities to serve that portion of load located in its service territory.

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6 **I. Caithness Shepherds Flat Power Purchase Agreement with Pacific Power**

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The electric power that Pacific Power sells to Caithness Shepherds Flat is from Pacific Power's system resources.<sup>19</sup> It is not from any renewable energy resource.

1. Pacific Power's Rate Schedule 47

The Power Purchase Agreement requires Pacific Power to sell the power to Caithness Shepherds Flat under Pacific Power's Rate Schedule 47. Rate Schedule 47 is designed for power sales to power generators, not customers like Caithness Shepherds Flat, which own no generation or electric facilities. The Rate Schedule 47 provides it is applicable:

To Large Nonresidential Consumers supplying all or some portion of their load by self-generation operating on a regular basis, requiring standby electric service from the Company where the Consumer's self-generation has both a total nameplate rating of 1,000 kW or greater and where standby electric service is required for 1,000 kW or greater.

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<sup>19</sup> Kindley Decl., Exhibit J. Response to CBEC Data Request, "Pacific Power service Caithness Shepherds Flat, LLC's load with system resources."



1 Rate Schedule 47 further provides under its Special Provisions, "Power and energy sold  
2 by Company to Consumer shall not be resold except as expressly provided in Company tariffs."

3 **J. Pacific Power's Policies**

4 [Deleted Confidential]  
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21 **K. Caithness Delayed Service Request to the Cooperative**

22 Caithness Shepherds Flat was eventually forced to request electric service from the  
23 Cooperative in 2012. To obtain tax credits from Marrow and Gillum Counties, Caithness  
24 Shepherds Flat had entered into Strategic Investment Program Agreements. Those Agreements  
25 had provisions whereby the Three Wind Projects were to obtain local services. One of those  
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1 contract obligations required Caithness Shepherds Flat, LLC to request electric utility service  
2 from the Cooperative.

3 Caithness Shepherds Flat sent a letter to the Cooperative on July 31, 2012, claiming that  
4 it needed the Cooperative to confirm Caithness Shepherds Flat had requested utility service from  
5 the Cooperative.<sup>20</sup>

6 In that letter, Caithness Shepherd Flat explained why it had entered into the April 15,  
7 2011, power purchase agreement with Pacific Power. It claimed that Pacific Power “informed us  
8 that it had the right to serve 100 percent of the total station service load (all three Project  
9 components) because utility delivery of all station service power was to be made within its  
10 exclusive service territory at Slatt.”<sup>21</sup> Caithness Shepherds Flat also claimed that since the  
11 Cooperative did not challenge Pacific Power before the Commission, it entered into the  
12 agreement with Pacific Power.

13 Caithness Shepherds Flat, LLC proclaimed that if the Cooperative were to provide utility  
14 service in response to its request:

15 [The Cooperative] would simply need to designate Slatt Substation as a new point  
16 of delivery under its existing BPA transmission agreement and work out some  
17 arrangements with Pacific Power to divide up station service power deliveries,  
18 using the metering already in place. No construction would be required for the  
19 Coop to serve this load; it would merely be a matter of bookkeeping between the  
20 two utilities. As Caithness understands it, this outcome could result either from a  
21 consensual agreement with Pacific Power under ORS 758.410 or through a PUC  
22 order declaring that some portion of the Project’s station service load is within the  
23 Coop’s service territory.<sup>22</sup>

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25 <sup>20</sup> Kindley Decl., Exhibit L.

26 <sup>21</sup> *Id.*, at 2.

<sup>22</sup> *Id.*

1           **The Cooperative’s Response**

2           The Cooperative responded to the Caithness Shepherds Flat, LLC on August 21, 2012.<sup>23</sup>

3           The Cooperative noted that Caithness Shepherds Flat, LLC had never made a request to the  
4           Cooperative prior to the July 31, 2012, letter. The Cooperative did respond, however, that it  
5           would proceed expeditiously with Caithness Shepherds Flat, LLC’s request for service set forth  
6           in the August 21, 2012, letter.

7           The Cooperative’s letter also stated that the Cooperative had been working with Pacific  
8           Power to work out a “utility-to-utility” solution. Additionally, the Cooperative was working  
9           with BPA on developing two new points of delivery for power to the Shepherds Flat Central and  
10          South projects.

11          The Cooperative did inform Caithness Shepherds Flat, LLC that it was in the process of  
12          developing a rate for the utility service to the wind projects. The Cooperative identified the only  
13          material component to that rate would be BPA power cost. The Cooperative would ensure those  
14          costs would be allocated, “in a manner that is equitable to both the member receiving the service  
15          and the Cooperative as a whole.” The Cooperative’s letter does not state or even imply the  
16          Cooperative intended to take this matter to the Commission for resolution at that time.

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18          **M. Failed Resolution**

19          After the exchange of letters in the late summer of 2012, the Cooperative, Pacific Power  
20          and Caithness Shepherds Flat, LLC worked diligently to resolve the outstanding issues and,  
21          consequently, almost reached resolution.

22          Jeffery Delgado, Caithness Corporation, sent an email to BPA Transmission Account  
23          Executive, Angela DeClerck, on July 24, 2013, setting forth new terms of service for the Three  
24          Wind Projects.<sup>24</sup> Mr. Delgado noted that Pacific Power aggregated the separate loads of the

25          \_\_\_\_\_  
26          <sup>23</sup> Kindley Decl., Exhibit F. Healy Letter to Caithness, July 31, 2012.

<sup>24</sup> Kindley Decl., Exhibit M. Caithness and BPA Emails on Demand Charges

1 Three Wind Projects into one load for billing purposes and North Hurlburt Wind LLC serves as  
2 the single customer of Pacific Power. Under the new terms, Pacific Power and the Cooperative  
3 would serve that portion of the load in each of their respective service territories – 45 percent by  
4 the Cooperative and 55 percent for Pacific Power. The email was to be considered as a “formal  
5 request to BPA, on behalf of all three project entities, that this division of service to station-  
6 service loads be implemented . . . North Hurlburt Wind LLC will continue to serve as a single  
7 customer regarding all three station-service loads, both as a continuing customer of Pacific  
8 Power and as a new customer/member of the Coop.”

9 Mr. Delgado, however, requested BPA to confirm that it would permit the continuation of  
10 the arrangement whereby the loads of the Three Wind Projects would be aggregated into one  
11 load. He concluded that the request was contingent upon the aggregation of load.

12 Ms. DeClerck responded with:

13 We have no problem implementing the station service arrangements but one issue  
14 I want to note is that BPA cannot accommodate the request on an aggregated  
15 basis. I discussed this with PacifiCorp (PAC). We can only allocate a share of  
each meter in the requested percentages to PAC and Columbia Basin.<sup>25</sup>

16 Thus, the parties’ efforts to resolve the service issue by agreement failed. Caithness  
17 Shepherds Flat, LLC would not proceed because it would have to pay three demand charges  
18 instead of one. It assumed that service from the Cooperative would be significantly greater than  
19 service from Pacific Power.

## 20 21 **I. ARGUMENT**

22 The Caithness Affiliate defendants and Pacific Power actions violate the Cooperative’s  
23 allocated territory. ORS 758.450(2) provides:

24 Except as provided in subsection (4) of this section, no other person shall offer,  
25 construct or extend utility service in or into an allocated territory.

26  

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<sup>25</sup> Kindley Decl., Exhibit M.

1           There are four elements to prove a violation of ORS 758.450: (i) the entity must be a  
2 “person” or “persons” as defined by ORS 758.450(2); (ii) the arrangement must involve “utility  
3 service” as defined in ORS 758.450(3); (iii) the utility service must be “offered, constructed or  
4 extended in or into an allocated territory”; and (iv) none of the exemptions in ORS 758.450(4)  
5 can apply.

6  
7           **A.     The Caithness Defendants**

8           **1.     All of the Caithness Defendants are “Persons” as defined by ORS**  
9           **758.400(2).**

10           ORS 758.400(2) defines the term “person” as “individuals, firms, partnerships,  
11 corporations, associations, cooperatives and municipalities or their agents, lessee, trustee or  
12 referee.”

13           **a.     Each of the Caithness Defendant is a “Person” Pursuant to ORS**  
14           **758.400(2)**

15           Each defendant is a corporation organized under the laws of the State of Delaware and  
16 licensed to do business in Oregon. The Oregon Secretary of State public records show that  
17 PacifiCorp, dba Pacific Power, Caithness Shepherds Flat, LLC, North Hurlburt Wind, LLC,  
18 South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC are all corporations.

19           Additionally, in its determinations concerning the Cooperative’s Motion to Amend its  
20 Complaint, the ALJ in this proceeding concluded that the Caithness Affiliates are “persons” as  
21 defined under ORS 758.400(2). Consequently, all of the defendants are subject to the  
22 jurisdiction of the Commission and subject to proscriptions of the Territory Allocation Law.  
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1                                   **b. The Caithness Defendants are also an “Association” formed for the**  
2                                   **purpose of providing Utility Service to the Three Wind Projects.**

3                   In addition to each Caithness Defendant’s status as a separate “person” under ORS  
4 758.400(2) all of the Caithness Defendants have organized and formed an unincorporated  
5 association to provide utility service in and into the Cooperative’s exclusive service territory.  
6 The association is in addition to, and discrete from, the individual members.

7                   In *Northwest Natural Gas Co. v. Oregon Public Utility Comm’n*, 195 Or.App. 547, 558,  
8 the Court stated that the term “association” means “a body of persons organized for the  
9 prosecution of some purpose, having no charter form the state but having the general form and  
10 mode of procedure as a corporation.” In *Northwest Natural*, the court determined the association  
11 in that case was a condominium arrangement of joint users of electric or gas distribution  
12 facilities and held that the users of the pipeline facilities were a separate “association,” which  
13 was included within the definition of the term “person.” *Northwest Natural*, 195 Or.App at 558.

14                   Here, the Caithness Affiliates have created more sophisticated association for the purpose  
15 of providing backup electric service to the Three Wind Projects. Evidence of the association  
16 includes common control and management (i) of the Three Wind Projects, (ii) of the jointly-  
17 owned electrical facilities, (iii) of the operations of all Three Projects, and (iv) of contractors,  
18 which provide operation & maintenance serves to the projects and the jointly-owned facilities.

19                                   1. Common Control of the Three Wind Projects and Joint Facilities

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2. Common Ownership of Electrical Facilities

The Three Wind Projects jointly own all electrical facilities, such as poles and wires, between the Slatt Substation and the ring bus, including the ring bus, and all property rights, such as easements, fee simple and leases, for power line right-of-way corridor from the Slatt Substation to the ring bus.

The Three Wind Projects also jointly own all the property for right-of-ways from the ring bus to each Project's collector substation and the towers, footings, guides and operating and maintenance equipment for the power lines between the ring bus and each collector substation. According to the Shared Facilities Agreement, the only electrical equipment owned separately by each wind projects, between the ring bus and low side of the transformers in the collector substations, are the individual wires hanging from the towers.

3. Common Operation

On an operational basis, the Caithness Affiliates operate the jointly owned electrical facilities as one unit.

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3 In the Shared Facilities Agreement, which sets for the terms for operating the electric  
4 facilities jointly-owned by the three wind projects, the Three Projects agreed to turn the  
5 administration of the Three Projects to a common administrator, Shepherds Flat Management,  
6 LLC.

7 [Deleted Confidential]  
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9 **4. Common Maintenance**

10 The Three Wind Projects have turned over responsibility of maintenance of the Three  
11 Wind Projects, including the jointly-owned facilities to Shepherds Flat Management.<sup>26</sup>  
12 Shepherds Flat Management oversees and administers each Project's O&M Agreement and the  
13 Operator, which is General Electric International, Inc.<sup>27</sup>

14 In sum, the Three Wind Projects, and Caithness Shepherds Flat as parent, sole member  
15 and manager of each wind project, have created an association to manage, administer, operate  
16 and maintain the Three Wind Projects. Included in the association functions is to purchase and  
17 distribute backup power from Pacific Power. This association falls within the definition of ORS  
18 758.400(2).

19 The Caithness Defendants have argued that Caithness Shepherds Flat is simply an agent  
20 of the Three Wind Projects. "Caithness receives a monthly bill from Pacific Power, as a billing  
21 agent for its affiliates."<sup>28</sup> Under ORS 758.400(2) "agents" are also included in the definition of  
22 the term "Person." While Caithness Shepherds Flat does play a far greater role than simply a  
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25 <sup>26</sup> Kindley Decl., Exhibit C, Shared Facilities Agreement (Non-FERC), section 8.2.

26 <sup>27</sup> *Id.*, at p. 8.

<sup>28</sup> North Hurlburt Response to CBEC Motion to Amend, p. 6.



1 purchasing agent for the Three Wind Project, even if its role was limited that of a simple agent, it  
2 would still be a “person” subject to the Territory Allocation Law.

3  
4 **3. Pacific Power is a “Person” under ORS 758.400(2).**

5 Pacific Power is a corporation organized under the laws of the State of Delaware. It is a  
6 “person” under ORS 758.400(2) and subject to the Commission’s jurisdiction and the  
7 prohibitions set forth in the Territory Allocation Laws.

8  
9 **B. All of the Defendants Are Providing Utility Service**

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11 ORS 758.450(2) provides that no person “shall offer, construct, or extend utility service”  
12 ORS 758.400(3) defines the term “utility service” as:

13 service provided by any equipment, plant or facility for the distribution of  
14 electricity to users or distribution of natural gas or manufactured gas to consumers  
through a connected and interrelated distribution system.

15 The term “service” as used in Chapter 758, “is used in its broadest and most inclusive  
16 sense.” ORS 756.010(8).

17 Additionally, under the definition of ORS 758.400(3) the plain language in the definition  
18 of “utility service” indicates the term is broadly inclusive; service provided by “any equipment,  
19 plant or facility for the distribution of electricity to users” is included.

20 Furthermore, the narrow definition in ORS 768.400(3) of what is not “utility service”  
21 creates a very broad definition of what is “utility service.” ORS 768.400(3) provides:

22 Utility service does not include service provided through or by the use of any equipment,  
23 plant or facilities for the production or transmission of electricity or gas which pass  
24 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.

25 The term “utility service” only excludes service if it is made available through (i) “any  
26 equipment, plant or facilities for the production or transmission of electricity or gas” which (ii)  
pass through or over but are not used to provide service in or do not terminate in” an allocated

1 territory. The converse is – any service that is not expressly excluded under those conditions is  
2 “utility service.” Therefore, service that “uses any equipment, plant or facilities for production  
3 or transmission of electricity” that do terminate in an allocated territory of another person  
4 providing similar utility service falls under the definition of “utility service.”

5 In *Northwest Natural*, the court further elaborated on the definition of utility service, “[i]t  
6 is the physical act of distribution to more than one user of electricity or more than one consumer  
7 of gas that constitutes utility service; the contractual or other relationship between the entity that  
8 provides the electricity or gas and the entity that uses or consumes it is irrelevant under the  
9 statutory definition.” *Northwest Natural*, 195 Or.App at 559.

10 The court concluded:

11 [I]t does not matter under the act that the facilities are co-owned by the consumers  
12 of the gas or that the owners do not offer service to the general public. It also  
13 does not matter that they operate jointly and are not customers of each other.  
14 What does matter is that the business entities involved do not each connect  
independently to the Williams pipeline but, rather, jointly operate a system as a  
separate entity, an entity that has a common connection to the pipeline.

15 *Northwest Natural*, 195 Or.App. at 560.

16 **1. The Caithness Defendants are Providing Utility Service to the Three**  
17 **Wind Projects**

18 The Caithness Defendants’ supply and distribution of backup power to the Three Wind  
19 Projects is “utility service” under the Territory Allocation Law.

20 The transmission and distribution lines jointly and independently owned by the Three  
21 Wind Projects are used by Three Wind Projects and Caithness Shepherds Flat “for the  
22 distribution of electricity power to users” - the Three Wind Projects.

23 Those transmission and distribution lines also are “a connected and interrelated  
24 distribution system.” When the Three Projects’ transmission and distribution lines are used to  
25 delivery power from the Slatt Substation to supply backup power to the Three Wind Projects,  
26 those lines are electrically and physically connected and interrelated. They are not operated,

1 managed or maintained separately. Also, power distributed over those transmission and  
2 distribution lines for the use of the Three Wind Projects is supplied by Pacific Power as if the  
3 Three Wind Projects are one – one customer, one load, and one capacity factor.

4 Those power lines that Caithness Defendants use to distribute power extend from the  
5 interconnection point at the Slatt Substation and terminate in the Cooperative’s allocated  
6 territory. They fall within the rubric of “any equipment, plant or facilities for the production or  
7 transmission of electricity,” which terminate in the allocated territory of another.

8 *Northwest Natural* also holds that one of the critical factors in the determination of utility  
9 service by an association is whether any of the Three Wind Projects are directly interconnected  
10 to BPA’s transmission facilities. None of the Three Wind Projects connect independently to the  
11 BPA transmission facilities at the Slatt Substation. It is undisputed that Three Wind Projects  
12 jointly own as co-tenants the two 230-kV power lines and ring bus that are directly connected to  
13 BPA’s Slatt Substation.

14 Although North Hurlburt Wind’s separately-owned facilities and all of its load are  
15 located in Pacific Power’s allocated territory, North Hurlburt Wind participates in the joint  
16 ownership of the electrical facilities, property and maintenance equipment used to service the  
17 loads located in the Cooperative’s service territory.

18 Caithness Shepherds Flat also works hand-in-hand with the Three Wind Projects in  
19 providing utility service to the loads of South Hurlburt Wind project and Horseshoe Bend Wind  
20 into the Cooperative’s territory. Caithness Shepherds Flat purchases the power from Pacific  
21 Power to serve the backup power loads of all Three Projects. It delivers that power to the South  
22 Hurlburt Wind and Horseshoe Bend Wind over jointly-owned facilities.

23 Additionally, as the parent, sole member and managing member for each of the Three  
24 Wind Projects also Caithness Shepherds Flat has management control over the construction,  
25 operation and maintenance of the electrical facilities, the property, and the equipment used to  
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1 distribute electric power to the Three Wind Projects. The extent of Caithness Shepherds Flat's  
2 control over each of the

3 [Deleted Confidential]  
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8 Therefore, through ownership and contractual arrangements, Caithness Shepherds Flat  
9 manages the jointly-owned electrical facilities through the Three Wind Projects.  
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11 **2. Pacific Power Offered and Provides Utility Service**

12 The Territory Allocation Laws states that no person shall “construct, offer or provide  
13 utility service in or into an allocated territory.” ORS 758.450(2).

14 **a. The Power Purchase Agreement Shows Pacific Power Offered and**  
15 **Provides Utility Service to the Three Wind Projects**

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3 Pacific Power's contractual arrangement with Caithness Shepherds Flat for the purchase  
4 of power is no defense. As stated in *Northwest Natural*:

5 It is the physical act of distribution to more than one user of electricity or more  
6 than one consumer of natural gas that constitutes utility service; contractual or  
7 other relationship between the entity that provides the electricity or gas and the  
8 entity that used or consumes it is irrelevant under the statutory scheme.<sup>29</sup>

9 The court's statement shows that what is critical is the distribution of power to more than  
10 one user of electricity. The Caithness Defendants have stated that Caithness Shepherds Flat has  
11 no electric facilities or load. The Caithness Defendants also claim that Pacific Power delivers  
12 power directly to the Three Wind Projects.

13 This consensual arrangement with Pacific Power has met the station-service  
14 power needs of all three facilities since their completion, about three years ago.  
15 Under this arrangement, North Hurlburt, South Hurlburt and Horseshoe Bend  
16 each take delivery directly from Pacific Power at their respective 230-kV points  
17 of interconnection within the Slatt Substation. Caithness receives a monthly bill  
18 from Pacific Power, as a billing agent for its affiliates.<sup>30</sup>

19 The Caithness Defendants, including Pacific Power's counterparty to the Power Purchase  
20 Agreement, clearly believe that Pacific Power delivers power directly to the Three Wind  
21 Projects.

22 **b. Pacific Power's Also Offered to Directly Serve the Three Project's Loads**

23 ORS 758.450(2) provides that no person "shall offer . . . or extend utility service in or  
24 into an allocated territory." Notes of the meeting between BPA, Caithness and Pacific Power on  
25 August 5, 2010, demonstrate Pacific Power's offer to directly serve the Three Wind Projects.  
26 Pacific Power's employee "recommended that the customer apply for service for the entire

<sup>29</sup> Northwest Natural, 195 Or.App. at 559.

<sup>30</sup> North Hurlburt Response to CBEC Motion to Amend, p. 6.

1 backup load at Slatt Sub.” The notes also provide that Pacific Power threatened litigation if it  
2 didn’t serve all Three Wind Projects.

3 The ability of the customer to request service from Pacific Power for the North and  
4 Central projects and from Columbia Basin for the South project was discussed. Pacific  
5 Power indicated that we would object on the grounds of protecting our service territory  
6 and go to the PUC.

7 **c. Pacific Power’s Rate Schedule and Policy Show It is Providing Utility**  
8 **Service to the Three Wind Projects**

9 [Deleted Confidential]

1                   **d. Pacific Power’s Delivery Point at Slatt Substation is No Defense**

2                   Although Pacific Power delivers the power to Caithness Shepherds Flat at the Slatt  
3 Substation, the analysis of whether Pacific Power provides utility service into the Cooperative’s  
4 allocated territory should not stop there.

5                   The definition of “utility service” means service by “*any* equipment, plant or facility for  
6 the distribution of electricity to users.” Pacific Power’s sale to Caithness Shepherds Flat depends  
7 upon three meters located in each of the Three Wind Project’s substations. The collector  
8 substation for Horseshoe Bend Wind is located entirely within the Cooperative’s service  
9 territory. Pacific Power’s use of that meter for the distribution of electric power to Caithness  
10 Shepherds Flat for the Three Wind Projects demonstrates Pacific Power does provide utility  
11 service in the Cooperative’s allocated territory.

12                  Furthermore, Pacific Power does use the electrical facilities and equipment owned by the  
13 Three Wind Projects to supply power to their loads. Absent the illegal construction and  
14 operation of the jointly-owned transmission and distribution facilities by the Caithness  
15 Defendants, Pacific Power could not provide power to serve the loads located in the  
16 Cooperative’s territory.

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18                   **C. The Defendants Provide the Utility Service In or Into the Cooperative’s**  
19                   **Allocated Service Territory**

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21                  It is undisputed that much of the land area and a significant number of the wind turbines  
22 owned and operated by the Shepherds Flat Central project are located in the Cooperative’s  
23 allocated service territory.<sup>31</sup> In the area of the Three Wind Projects, the Cooperative’s territory  
24 allocation boundary with Pacific Power bisects the South Hurlburt Wind. All of the project  
25 boundary of the Horseshoe Bend Wind project lies within the Cooperative’s allocated territory.

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<sup>31</sup> Kindley Decl., Exhibit B. Map of Shepherds Flat

1 As discussed above, all of the Caithness Defendants jointly provide utility service to all  
2 Three Wind Project's load, including South Hurlburt Wind's and Horseshoe Bend Wind's  
3 located in the Cooperative's allocated territory.

4 Pacific Power use of its rates, policies and power sale agreement with Caithness  
5 Shepherds Flat shows Pacific Power is extending its utility service in and into the Cooperative's  
6 allocated territory. Pacific Power's use the meter located in the Horseshoe Bend Wind collector  
7 substation demonstrates is provides utility service in and into the Cooperative's allocated  
8 territory. Additionally, Pacific Power use of the illegal transmission and distribution facilities  
9 used by the Caithness association in the Cooperative's service territory shows Pacific Power  
10 extension of utility service in and into the Cooperative's Service Territory.

11  
12 **D. None of the Exemptions in ORS 758.450(4) Apply**

13 None of the exemptions in ORS 758.450(4) apply to the Defendants actions in providing  
14 utility service in and into the Cooperative's exclusive service territory. ORS 758.450(4)  
15 provides in relevant part:

16 (4) The provisions of ORS 758.400 to 758.475 do not apply to any  
17 corporation, company, individual or association of individuals providing heat,  
18 light, or power (a) From any energy resource to fewer than 20 customers, if it  
19 began providing service to a customer prior to July 14, 1985; (b) From any energy  
20 resource to fewer than 20 residential customers so long as the corporation,  
21 company, individual or association of individuals serves only residential  
22 customers; (c) From solar or wind resources to any number of customers; or (d)  
23 From biogas, waste heat or geothermal resources for nonelectric generation  
24 purposes to any number of customers.

25 None of the defendants in this proceeding fall within any of the exemptions in ORS  
26 758.450(4). Pacific Power is a utility with thousands of industrial and residential customers. The  
power that it provides to Caithness Shepherds Flat, LLC is from its own system power resources,



1 which are not renewable resources.<sup>32</sup> Therefore, none of the exemptions in ORS 758.450()  
2 apply to Pacific Power.

3 Caithness Shepherds Flat, LLC does not own electric facilities or generation resources.  
4 It provides the system power it receives from Pacific Power to the Three Wind Projects. Those  
5 sales commenced long after July 14, 1985. Therefore, none of the exemptions in ORS  
6 758.450(4) apply to Caithness Shepherds Flat, LLC.

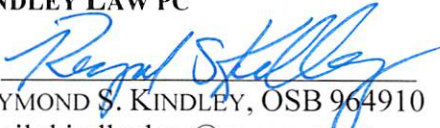
7 The Three Wind Projects receive the system power from Caithness Shepherds Flat, LLC  
8 and jointly distribute that power across their jointly owned facilities. They are not providing  
9 “providing heat, light or power from solar or wind resources” to serve their own backup power  
10 loads. To the extent the Three Wind Projects are operating in conjunction with Caithness  
11 Shepherds Flat, LLC as an “association” that association is also not “providing heat, light or  
12 power from solar or wind resources.” There exemption does not apply to any of the defendants.

13  
14 **CONCLUSION**

15 For the above reasons, Columbia Basin Electric Cooperative respectfully requests the  
16 Oregon Public Utility Commission to grant the Cooperative’s Motion for Summary Judgment.

17  
18 DATED this 6<sup>th</sup> day of October 2014.

19  
20  
21 **KINDLEY LAW PC**

22 By   
23 RAYMOND S. KINDLEY, OSB 964910  
24 Email: kindleylaw@comcast.net  
25 Tel: (503) 206-1010  
26 Attorney for Columbia Basin Electric  
Cooperative, Inc.

32 Kindley Decl., Exhibit J.

1 Raymond S. Kindley  
OSB No. 964910  
2 Kindley Law, P.C.  
P.O. Box 569  
3 West Linn, OR 97068  
Tel: (503) 206-1010  
4 kindleylaw@comcast.net

5  
6 **BEFORE THE**  
7 **PUBLIC UTILITY COMMISSION OF OREGON**

8 COLUMBIA BASIN ELECTRIC ) Docket No. UM 1670  
COOPERATIVE, INC. an Oregon )  
9 cooperative corporation ) DECLARATION OF RAYMOND S.  
Complainant, ) KINDLEY IN SUPPORT OF COLUMBIA  
10 vs. ) BASIN ELECTRIC COOPERATIVE, INC'S  
PACIFICORP, dba Pacific Power, an ) MOTION FOR SUMMARY JUDGMENT  
11 Oregon business corporation, )  
12 Defendant, )  
)  
13 NORTH HURLBURT WIND, LLC, a )  
foreign limited liability company, )  
14 Defendant, )  
)  
15 SOUTH HURLBURT WIND, LLC, a )  
foreign limited liability company, )  
16 Defendant, )  
17 )  
18 Horseshoe Bend Wind, LLC, a )  
foreign limited liability company, )  
19 Defendant, )  
and )  
20 Caithness Shepherds Flat, LLC, a )  
foreign limited liability company, )  
21 Defendant. )

22  
23 I, Raymond S. Kindley, do declare the following if called to testify, would and could  
24 completely testify thereto:

- 25 1. I am over age of 18, and make this Declaration based upon personal knowledge.  
26 2. I am an attorney at the law firm of Kindley Law, P.C., in Oregon City, Oregon,

1 and I am the attorney of record for Columbia Basin Electric Cooperative, Inc. (the  
2 “Cooperative”) in the above captioned docket before the Public Utility Commission of Oregon  
3 (“OPUC”).

4 3. True and correct copy of Defendants Pacific Power’s Responses to the  
5 Cooperative’s First Set of Data Requests, No. 24 in this docket is attached as Exhibit A to this  
6 Declaration.

7 4. True and correct copy of Columbia Basin Electric Cooperative’s Response to  
8 Caithness Shepherds Flat data request No. 1.a. and 1.b. is attached as Exhibit B. The Response  
9 is a map of the Shepherds Flat project with jointly-owned facilities and the Cooperative’s  
10 territory allocation boundary included. Caithness Shepherds Flat prepared the map and the  
11 Cooperative added the boundary line between Pacific Power’s and the Cooperative’s allocated  
12 territory. The map is confidential under the Protective Order in this proceeding.

13 5. True and correct copy of North Hurlburt Wind’s Response to the Cooperative’s  
14 Data Request No. 2-NH-9 is attached as Exhibit C. The Response is the Shepherds Flat Wind  
15 Project Shared Facilities Agreement (Non-FERC).

16 6. True and correct copy of an attachment to Caithness Shepherds Flat’s Response to  
17 the Cooperative’s Data Request is attached as Exhibit D. The document is the Shared Assets  
18 Option Agreement among the Three Wind Projects and Saddle Butte Wind, LLC. The document  
19 is confidential under the Protective Order in this proceeding.

20 7. True and correct copy of an attachment to Caithness Shepherds Flat’s Response to  
21 the Cooperative’s Data Request is attached as Exhibit E. The document is the Limited Liability  
22 Company Agreement between South Hurlburt Wind, LLC and Caithness Shepherds Flat, LLC.  
23 The document is confidential under the Protective Order in this proceeding.

24 8. True and correct copy of an attachment to Caithness Shepherds Flat’s Response to  
25 the Cooperative’s Data Request is attached as Exhibit F. The document is letter sent by the  
26 Cooperative to Caithness Shepherds Flat on August 21, 2012.

1           9.     True and correct copy of meeting notes regarding a meeting on July 21, 2010,  
2 between the Bonneville Power Administration, Columbia Basin Electric Cooperative and  
3 Caithness is attached as Exhibit G.

4           10.    True and correct copy of an attachment to Pacific Power's Response to the  
5 Cooperative's Data Request No. 9 is attached as Exhibit H. The document is a copy of meeting  
6 notes regarding a meeting on August 5, 2010, between the Bonneville Power Administration,  
7 Columbia Basin Electric Cooperative, and Caithness.

8           11.    True and correct copy of an attachment to Pacific Power's Response to the  
9 Cooperative's Data Request No. 8 is attached as Exhibit I. The document is a contract entitled  
10 "Electric Service Agreement" between Pacific Power and Caithness Shepherds Flat. The  
11 document is confidential under the Protective Order in this proceeding.

12          12.    True and correct copy of Pacific Power's Response to the Cooperative's Data  
13 Request No. 2-PAC-6 is attached as Exhibit J.

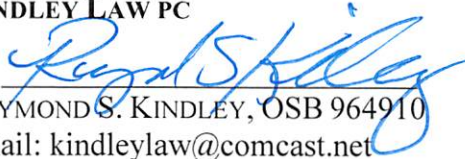
14          13.    True and correct copy of an attachment to Pacific Power's Response to the  
15 Cooperative's Data Request 2-PAC-3 is attached as Exhibit K. The document is Pacific Power's  
16 Backup and Station Retail Service Policy for Generation Resources. The document is  
17 confidential under the Protective Order in this proceeding.

18          14.    True and correct copy of an attachment to Caithness Shepherds Flat's Response to  
19 the Cooperative's Data Request is attached as Exhibit L. The document is a letter from  
20 Caithness Shepherds Flat to the Cooperative dated July 31, 2014.

21          15.    True and correct copy of email correspondence from the Cooperative's records is  
22 attached as Exhibit M.

1 DATED this 6<sup>th</sup> day of October 2014.

2 **KINDLEY LAW PC**

3 By   
4 RAYMOND S. KINDLEY, OSB 964910  
5 Email: kindleylaw@comcast.net  
6 Tel: (503) 206-1010  
7 Attorney for Columbia Basin Electric  
8 Cooperative, Inc.

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**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit A**

**Data Request No. 24:**

24. Please provide a list of all electrical facilities owned by Caithness Shepherds Flat, LLC.

**Response to Request No. 24:**

This data request is overly broad, unduly burdensome and not commensurate to the needs of this case, vague, and not reasonably calculated to lead to the discovery of admissible evidence. CSF further responds that it does not own electrical facilities.

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
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**Kindley Declaration**

**Exhibit B**



**REDACTED**  
**CONFIDENTIAL INFORMATION**  
**SUBJECT TO PROTECTIVE ORDER**  
**NO. 13-426**

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
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**Kindley Declaration**

**Exhibit D**

**REDACTED**  
**CONFIDENTIAL INFORMATION**  
**SUBJECT TO PROTECTIVE ORDER**  
**NO. 13-426**

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
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**Kindley Declaration**

**Exhibit E**

**REDACTED**  
**CONFIDENTIAL INFORMATION**  
**SUBJECT TO PROTECTIVE ORDER**  
**NO. 13-426**

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
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**Kindley Declaration**

**Exhibit F**



## **COLUMBIA BASIN ELECTRIC COOPERATIVE, Inc.**

171 N. LINDEN WAY • P.O. BOX 398 • HEPPNER, OREGON 97836-0398  
Telephone (541) 676-9146 • Fax (541) 676-5159  
Condon Telephone (541) 384-2023

jerryh@columbiabasin.cc  
tommyw@columbiabasin.cc  
brian@columbiabasin.cc  
josh@columbiabasin.cc  
joan@columbiabasin.cc

August 21, 2012

Caithness Shepherds Flat, LLC  
Derrel Grant  
Vice President  
565 5<sup>th</sup> Avenue, 29<sup>th</sup> 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

Caithness Shepherds Flat, LLC  
Derrel Grant  
August 21, 2012  
Page 2

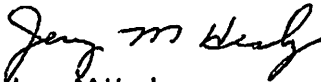
and CBEC. When I get concurrence with PacifiCorp on the allocation percentage I will make final request for service from BPA.

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, PacificCorp

CAITHNESS003265



**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit G**

**Customer Meeting with BPA, CBEC, and Caithness Wind Developer  
Station Service Arrangements for Shepherds Flat  
Vancouver offices  
7/21/2010**

**Attendees:**

Derrel Grant	CW
Chuck Cadiente	CW
Ken Talovich	CW
John ?	CW
Jerry Healy	CBEC
Angela De'Clerk	BPA
Eric Taylor	BPA
Cherilyn Randall	BPA
Reed Campbell	BPA

**Shepherds Flat – Horse Shoe Bend**

**Three collector substations – North, Central, and South  
338 Turbines, type 4  
Permitted for 900MW**

**Station Service load:**

**Jerry – 40KW for each collector site**

**Derrel does not think the type 4 turbines will need that much station service. Some heat, computers and oil circulation pumps. (Derrel will provide Jerry the expected load per turbine.)**

**Discussion on tear 2 rates:**

**Jerry wanted CW to understand they will be charged tear 2 rates. Once BPA has declared the high water mark and the new rates have been provided CBEC will be able to provide a rate to CW. These rates may be higher than the PAC rates. Since the tear 2 rates are unknown at this time the differential between CBEC and PAC is an unknown. (Currently CBEC has a total load of 10-12MW).**

**Service Territory:**

**South collector building and turbines are 100% CBEC**

**Central turbines are 1/3 CBEC and 2/3 PAC – the collector building is 100% PAC**

**North collector building and turbines are 100% PAC**

**South Collector building station service:**

**CBEC can have it installed 1 month after trenching.**

**Should CW take delivery at 12.47kV? CW can install underground up to the CBEC pole with disconnect switch and meter. CBEC's charge would be at a lower rate if CW**

received service at 12.47kV. CBEC currently does not have any customers at the Primary voltage delivery rate.

CW does not see any problem running a cable to the CBEC pole at the road. They're running lots of cable and this will not even show up in the big picture.

**Central collector station service:**

Building will be in the PAC service territory – (separate distribution line)

Back-feed will be 1/3 CBEC and 2/3 PAC.

PAC would like to use the CBEC NT agreement to provide their portion of back-feed.

PAC does not want to enter into a PTP agreement with BPA which would require scheduling for such a small load. Jerry may be willing to work something out with PAC.

BPA does not have any objections to CBEC carrying PAC on their NT agreement.

**North collector station service:**

Building is 100% PAC – (separate distribution line)

Back-feed – 100% PAC

**Options for Back-feed:**

- 1) All three sites would be considered by BPA as CBEC meter points. The North and Central collector facilities would be carried on the CBEC NT agreement. CBEC and PAC would have a separate wheeling agreement/charge to provide service for PAC.
- 2) The South would be served by CBEC, the Central would be served by a virtual meter point CBEC/PAC, and the North would be served by PAC. PAC would need to establish a PTP with BPA to serve this load.

CW would like to setup a meeting together with CBEC and PAC to work out the issues. Jerry is agreeable to getting together with CW and PAC. CBEC would like to have BPA in attendance at this meeting. Jerry will be in Vancouver on 8/3 if that date works.

Notes by: Reed Campbell – TPC  
Bonneville Power Administration

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
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**Kindley Declaration**

**Exhibit H**

**Meeting Notes Pacific Power, BPA, and Caithness Development regarding Shepherds Flat Wind Farm**

**Attendees**

**Pacific Power**

**Vince Crawford, Tom Eyford, Bob Simpson, Bob McCarthy, Les Bahls, Chuck Phinney**

**Caithness Development, LLC**

**Derrel Grant, John Cameron**

**BPA**

**Ken Johnston, Eric Taylor, Angela DeClerk**

**Vince gave the background on the definition of station service, and backup service, our typical expected demand for backup service, the details of the service territory issues with serving the backup service, and the precedents that have already been set in situations similar to Shepherds Flat.**

**It was clear that any service territory disputes may have to go to debate and resolution from OPUC.**

**Vince explained the Pacific Power position that the backup service to the North, Central and South projects will be taken at one point of delivery at Slatt Substation and that Slatt Sub is in our service territory. He recommended that the customer apply for service for the entire backup load at Slatt Sub.**

**The customer asked about the process if Columbia Basin disputes service to the South project since it is in their service territory. Vince explained the process with the PUC.**

**Angela stated that she believes that Columbia Basin will dispute the service territory issue if we serve backup service to all three sites.**

**The customer asked if the service territory policy that we are proposing has been blessed by the PUC. Vince explained that it has been set by precedent within Pacific Power, but not a PUC ruling.**

**The customer indicated that it is their desire that resolution of any disputes have no impact on their construction time.**

**The group discussed the methodology of how Pacific Power interfaces with BPA to request capacity and the ability to split the request into separate blocks for the North, Central, and South projects. Vince explained that we need the customer to make the request for the load and provide the amount, and timing. The customer will have bi-directional, revenue quality metering at the collector substation in each section of the project.**

**Derrel and John explained that they have made concessions to local officials as part of their permitting process to support local businesses. John asked if Pacific Power could serve the North and Central projects and Columbia Basin could serve the South project.**

**Vince and Tom explained the issues regarding change of ownership of the transmission system, and stated that if Columbia Basin were to build a separate transmission line from Slatt Substation to the South project, they could meter the load in their service territory. BPA indicated that Columbia Basin would not be interested in being in the transmission business.**

**John asked if we could get a declarative statement from the OPUC. Vince and Tom indicated that we would only get a ruling if Columbia Basin filed a protest with the PUC.**

**Vince, Tom, and Bob went over a similar scenario at Jones Canyon where multiple entities are served from one source. John stated that the North, Central, and South projects are all separate entities.**

**The ability of the customer to request service from Pacific Power for the North and Central projects and from Columbia Basin for the South project was discussed. Pacific Power indicated that we would object on the grounds of protecting our service territory and go to the PUC.**

**John felt that this situation could be considered a special case and not affect the precedents already set for protection of service territory.**

**It was questioned whether the BPA metering at Slatt Sub was revenue quality. Bob Simpson explained our metering requirements and the ability of our metering to interface with BPA metering at Slatt Sub.**

**A discussion was held regarding the customers ability to request service at each collector substation and have the billing adjusted for losses back to Slatt Sub. In this case both Pacific Power and Columbia Basin would be requesting capacity from BPA.**

**Bob McCarthy explained rate Schedule 47 and discussed the customer's ability to increase or decrease their demand thresholds during the contract year. The contractual process was explained. Pacific Power will provide John with the proper toll free number for Caithness to use to request service.**

**It was decided that the issue will need to be escalated within Pacific Power to obtain direction on the issue of service territory protection. The customer will call and request service to the North and Central projects with Pacific Power.**

**Other issues discussed were the alternate feed for station service at the substations. We told the customer that these requests were in process, and that Columbia Basin would need to request service for the alternate feed to the South Substation.**

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit I**

**REDACTED**  
**CONFIDENTIAL INFORMATION**  
**SUBJECT TO PROTECTIVE ORDER**  
**NO. 13-426**



**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit J**

UM 1670/PacifiCorp  
September 2, 2014  
CBEC 2<sup>nd</sup> Set of Data Request 2.6

**CBEC Data Request 2.6**

Please describe the type or source of electric power that Pacific Power sells to Caithness Shepherds Flat, LLC, e.g., system power, renewable power, solar power, or wind power.

**Response to CBEC Data Request 2.6**

Pacific Power serves Caithness Shepherds Flat, LLC's load with system resources.

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit K**

**REDACTED**  
**CONFIDENTIAL INFORMATION**  
**SUBJECT TO PROTECTIVE ORDER**  
**NO. 13-426**

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit L**

## CAITHNESS SHEPHERDS FLAT, LLC

c/o Caithness Corporation  
565 5<sup>th</sup> Avenue, 29<sup>th</sup> floor  
New York, New York 10017  
*Phone: 212-921-9098 Fax: 212-921-9236*

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.

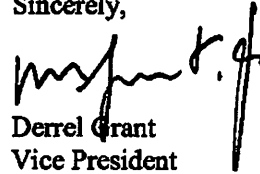
Caithness reiterates that it does not want to get into the middle of any disagreement over service territories between the Coop and Pacific Power. Simply inform us how you intend to proceed. If you initiate legal proceedings, Caithness would likely intervene to protect its interests, but would not take 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



**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit M**

---

**From:** DeClerck,Angela (BPA) - TSE-TPP-2 [[ardeclerck@bpa.gov](mailto:ardeclerck@bpa.gov)]  
**Sent:** Wednesday, July 24, 2013 2:46 PM  
**To:** 'Jeffrey J. Delgado'  
**Cc:** 'Phinney, Chuck'; Jerry Healy; 'Cameron, John'; 'Dale Ellis'; 'Kenneth Talovich'; 'Derrel A. Grant'; 'Gary Keevill'; 'Gail Conboy'; Taylor, Eric K (BPA) - TSE-TPP-2  
**Subject:** RE: CSF - Station Service

Hi Jeff,

We have no problems implementing the station service arrangements but one issue I want to note is that BPA cannot accommodate the request on an aggregated basis. I discussed this with PacifiCorp (PAC). We can only allocate a share of each meter in the requested percentages to PAC and Columbia Basin.

Angela

**From:** Jeffrey J. Delgado [<mailto:idelgado@caithnessenergy.com>]  
**Sent:** Wednesday, July 24, 2013 10:28 AM  
**To:** DeClerck,Angela (BPA) - TSE-TPP-2  
**Cc:** Phinney, Chuck; [JerryH@columbiabasin.cc](mailto:JerryH@columbiabasin.cc); Cameron, John; Dale Ellis; Kenneth Talovich; Derrel A. Grant; Gary Keevill; Gail Conboy  
**Subject:** CSF - Station Service

Angela:

As you know, discussions have occurred between PacifiCorp (d.b.a. Pacific Power) and Columbia Basin Electric Cooperative regarding station service to each of our three Shepherds Flat projects, Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South. Presently, 100 percent of that service is provided by Pacific Power, delivered through BPA's Slatt substation. One of the three project entities, North Hurlburt Wind LLC, serves as Pacific Power's single customer regarding all three station-service loads, which are aggregated for billing purposes.

Under a replacement station service arrangement, Pacific Power and Columbia Basin Cooperative have agreed to share the aggregated station service loads, with 55 percent of the aggregated load being served by Pacific Power and 45 percent of that aggregated load going to the Coop. This email will serve as our formal request to BPA, on behalf of all three project entities, that this division of service to station-service loads be implemented, as of the first day of a future billing month to be selected by BPA. North Hurlburt Wind LLC will continue to serve as single customer regarding all three station-service loads, both as a continuing customer of Pacific Power and as a new customer/member of the Coop.

It is of critical importance that the aggregated billing arrangement described in this email be continued under these new station-service arrangements, and this request is conditioned on the assurances of BPA, Pacific Power and Columbia Basin Cooperative that aggregation of all three loads will continue.

**At your convenience, I request written acknowledgement of this email and BPA agreement to its terms. If you have any questions or concerns, we should arrange a conference call among Caithness, BPA and the two utilities (representatives copied on this email).**

**Regards,  
Jeff**

**Jeffrey Delgado, Director  
Caithness Corporation  
565 Fifth Avenue, 29th Floor  
New York, NY 10017  
Office: 917-472-4572  
Fax: 212-921-9239**

**[jdelgado@cdevny.com](mailto:jdelgado@cdevny.com)<mailto:[jdelgado@cdevny.com](mailto:jdelgado@cdevny.com)>**

**[www.caithnessdevelopment.com](http://www.caithnessdevelopment.com/)<http://[www.caithnessdevelopment.com](http://www.caithnessdevelopment.com/)/>**

**UM 1670**

**Columbia Basin Electric Cooperative's Motion for Summary  
Judgment**

**Kindley Declaration**

**Exhibit C**

**SHEPHERDS FLAT WIND PROJECT  
SHARED FACILITIES AGREEMENT (NON-FERC)**

among

**HORSESHOE BEND WIND, LLC,**

---

**SOUTH HURLBURT WIND, LLC,**

**NORTH HURLBURT WIND, LLC,**

and

**SHEPHERDS FLAT MANAGEMENT, LLC**

**December 14, 2010**

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SHEPHERDS FLAT WIND PROJECT

SHARED FACILITIES AGREEMENT (NON-FERC)

This SHARED FACILITIES AGREEMENT (NON-FERC) (the "Agreement"), dated as of December 14, 2010 (the "Effective Date"), is entered into by and among HORSESHOE BEND WIND, LLC, a Delaware limited liability company ("Horseshoe Bend"), SOUTH HURLBURT WIND, LLC, a Delaware limited liability company ("South Hurlburt"), NORTH HURLBURT WIND, LLC, a Delaware limited liability company ("North Hurlburt") (the foregoing parties may be referred to from time to time herein each separately as a "Co-Tenant," and collectively as the "Co-Tenants"), and SHEPHERDS FLAT MANAGEMENT, LLC, a Delaware limited liability company ("Manager") (the Co-Tenants and Manager may be referred to collectively herein as the "Parties," and each separately as a "Party").

**RECITALS:**

A. The Co-Tenants are each separately developing and will each separately construct, own and operate a wind powered electricity generating project on real property in Gilliam and Morrow Counties, Oregon. Horseshoe Bend's Wind Turbines and related infrastructure (the "Horseshoe Bend Project") will be located on the real property more particularly described on Exhibit A-1 attached hereto (the "Horseshoe Bend Project Site"). South Hurlburt's Wind Turbines and related infrastructure (the "South Hurlburt Project") will be located on the real property more particularly described on Exhibit A-2 attached hereto (the "South Hurlburt Project Site"). North Hurlburt's Wind Turbines and related infrastructure (the "North Hurlburt Project") will be located on the real property more particularly described on Exhibit A-3 attached hereto (the "North Hurlburt Project Site"). From time to time herein, the Co-Tenants' respective project sites described above may be each individually referred to as a "Project Site," and collectively referred to as the "Project Sites," and the Co-Tenants' respective Projects are each individually referred to as a "Project," and collectively as the "Projects."

B. Each Co-Tenant holds or shall hold the individual real property rights (by fee ownership, lease, easement, right of way, or otherwise) to its respective Project Site.

C. The Co-Tenants are also holders of certain lease, easement, license and permit rights, all of which are more particularly described in the agreements listed on Exhibit B-1 attached hereto (the "Shared Premises Agreements"), to use certain real property more particularly described on Exhibit B-2 attached hereto (as amended and supplemented from time to time, the "Shared Premises"). Each of the Co-Tenants will require the use and possession of specified portions of the Shared Premises for the construction, operation, and maintenance of its respective Project, subject to the terms and conditions of such Shared Premises Agreements.

D. The Co-Tenants intend that their shared use of the Shared Premises shall also include rights and obligations regarding certain common infrastructure facilities to be erected on the Shared Premises that are to support the construction, operation and maintenance of their respective Projects, including operation and maintenance facilities, access roads, and lay-down

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and staging areas for construction and Wind Turbines, all as more particularly described below as the "Shared Facilities."

E. Shared Facilities shall also include certain movable equipment such as cranes and vehicles and a Spare Transformer, all as more particularly described below as the "Shared Equipment."

F. The Co-Tenants wish to set forth herein their respective rights and obligations regarding the joint design, procurement, development, construction, installation, ownership, use, maintenance, repair, replacement of, and additions to the Shared Premises, Shared Facilities and the Shared Equipment (collectively, the "Shared Assets").

G. Each Co-Tenant has entered into an Administrative Management Agreement with Manager (the "Administrative Management Agreement(s)") pursuant to which Manager has agreed to perform all of its obligations under this Agreement with respect to each such Co-Tenant and which agreements govern the terms of payment to the Manager and certain other arrangements between the Co-Tenants and the Manager, as set forth in more detail herein. The Co-Tenants and the Manager desire to set forth herein the services to be performed by the Manager at the pleasure of the Co-Tenants with respect to the Shared Assets and to engage Manager for such purposes, and Manager wishes to accept said engagement, on the terms and conditions contained herein.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 Definitions. Unless otherwise noted, capitalized terms not defined in the body of this Agreement have the following meanings.

"Additional Shared Assets" has the meaning set forth in Section 3.6.

"Additional Shared Facilities" has the meaning set forth in Section 3.6.

"Additional Shared Premises" has the meaning set forth in Section 3.6.

"Administrative Management Agreement(s)" has the meaning set forth in Recital G.

"Affiliate" means, with respect to any Party, any Person directly or indirectly controlling, controlled by or under common control with such Party. The term "control" and correlative terms includes the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

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**"Agreement"** means this Shared Facilities Agreement, as set forth in the preamble above.

**"Applicable Construction Costs"** has the meaning set forth in Section 4.5.

**"Applicable Reimbursable Shared Expenses"** has the meaning set forth in Section 4.5.

**"Approved Shared Facilities O&M Budget"** has the meaning set forth in Section 4.6(a).

**"Balance of Plant Agreement(s)"** means (i) that certain Balance of Plant Agreement, dated as of October 30, 2009, by and between Horseshoe Bend and Contractor, (ii) that certain Balance of Plant Agreement, dated as of October 30, 2009, by and between South Hurlburt and Contractor and (iii) that certain Balance of Plant Agreement, dated as of October 30, 2009, by and between North Hurlburt and Contractor, as each such agreement has been amended and may be amended, modified or otherwise supplemented in the future from time to time.

**"Build-Out Agreement"** means that certain Build Out Agreement dated as of the date hereof, by and among Horseshoe Bend, South Hurlburt, North Hurlburt, CSF, Caithness Member and GE Member.

**"Caithness Member"** means Caithness Energy, L.L.C., a Delaware limited liability company.

**"Commercial Operation"** means, with respect to each Project, when such Project shall have first commenced production of electrical energy for delivery and sale to the Point of Interconnection (excluding any test energy).

**"Company Indemnified Parties"** has the meaning set forth in the Administrative Management Agreement(s).

**"Confidential Information"** means, with respect to a given Disclosing Party and the respective Receiving Party, collectively and individually, all data, materials and information (including software, data, technology, know-how, trade secrets, processes, ideas, inventions (whether patentable or not), prototypes, schematics, design plans, drawings, pricing information, customer and service provider lists, business arrangements, business information, financial information, financial results, technical information, analyses, forecasts, compilations, studies, contracts, agreements, and planning or strategy information) provided by or on behalf of a Party (each Party in such capacity, a "Disclosing Party") to the other Party (each Party in such capacity, a "Receiving Party") or the Receiving Party's Representatives, or to which the Receiving Party or the Receiving Party's Representatives are given access by or on behalf of the Disclosing Party, whether verbally or in written or electronic form, related to the Disclosing Party, any Project, the Shared Facilities, the Shared Premises, or the Co-Tenants in connection with this Agreement. Notwithstanding the foregoing, Confidential Information under this Agreement does not include any information that: (a) the Receiving Party can demonstrate is now publicly available, or that later becomes publicly available through no action by the Receiving Party or the Receiving Party's Representatives in violation of this Agreement; (b) the Receiving Party can demonstrate is already in the possession of the Receiving Party or the Receiving Party's Representatives and is not subject to a confidentiality or fiduciary obligation at

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the time of the information's disclosure under this Agreement; (c) the Receiving Party can demonstrate is lawfully received from any source other than the Disclosing Party or the Disclosing Party's Representatives under circumstances not involving, to the Receiving Party's knowledge, a breach of any fiduciary or confidentiality obligation; or (d) the Receiving Party can demonstrate is independently developed by or for the Receiving Party or the Receiving Party's Representatives without reference to, or the use of, any portion of the Confidential Information.

**"Constructing Co-Tenant"** has the meaning set forth in Section 4.4.

**"Construction Costs"** has the meaning set forth in Section 4.4.

**"Contractor"** means Blattner Energy, Inc., a Minnesota corporation.

**"Co-Tenant(s)"** has the meaning in the preamble to this Agreement.

**"Co-Tenant Indemnified Party"** has the meaning set forth in Section 11.2.

**"Co-Tenant Property"** has the meaning set forth in Section 8.15.1.

**"CSF"** means Caithness Shepherds Flat, LLC, a Delaware limited liability company.

**"Default Rate"** means a rate per annum equal to the lesser of (a) a varying rate per annum equal to the sum of (i) the 3-month LIBOR as published in The Wall Street Journal, with adjustments in that varying rate to be made on the same date as any change in that rate is so published, plus (ii) six percent (6%) per annum and (b) the maximum rate permitted by Law.

**"Disclosing Party"** has the meaning set forth in the definition of **"Confidential Information."**

**"Dispute"** means any controversy, claim or dispute that arises out of or in connection with this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity of this Agreement, whether the same is based on rights, privileges or interests recognized by or based upon statute, contract, agreement (whether written or oral), tort, common law or other Law.

**"DOE"** means the U.S. Department of Energy.

**"EFSC"** means the Oregon Energy Facility Siting Council.

**"Effective Date"** means the date first set forth above in the preamble.

**"Emergency"** means any occurrence, in the reasonable judgment of Manager or a Co-Tenant, that may arise that requires immediate action and which constitutes a serious actual or potential hazard to the safety of Persons or property, that may materially interfere with the safe, economical or environmentally sound operation of the Shared Assets or any Project, or that is likely to violate any applicable Law, Governmental Approvals, LGIA, Shared Premises Agreement, or Land Matters.

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**"Encumbered Interest"** has the meaning set forth in Section 17.2.2(d).

**"Environmental Laws"** means all Laws relating to the protection of the environment, health or safety or the use, generation, release, treatment, storage, disposal or exposure to Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Clean Water Act, the Resource, Conservation and Recovery Act of 1976, the Occupational Safety and Health Act of 1970, the Clean Air Act, all as amended and similar State of Oregon laws and regulations.

**"Event of Default"** has the meaning set forth in Section 14.1.

**"Expenses"** has the meaning set forth in the Administrative Management Agreement(s).

**"EWG"** means an "exempt wholesale generator," as such term is defined in Section 1262 of the Public Utility Holding Company Act of 2005 and FERC's regulations thereunder.

**"FDIC"** means the Federal Deposit Insurance Corporation and its successors.

**"FERC"** means the Federal Energy Regulatory Commission and its successors.

**"Financing Documents"** means all documents evidencing a Mortgage or evidencing the indebtedness which is secured by a Mortgage.

**"Financing Party"** means, with respect to each Co-Tenant, the agent or lead bank and any other financial institutions or governmental agencies (including the DOE), party to a loan agreement, loan guarantee, hedge agreement, tax equity financing documents or other debt, equity, sale-leaseback or other type of financing instrument with such Co-Tenant, secured in part by such Co-Tenant's share of, or interest in, the Shared Assets or all or a portion of such Co-Tenant's Undivided Interest.

**"Force Majeure"** means acts of God or any other casualty or occurrence, condition, event or circumstance of any kind or nature not reasonably within the affected Party's control and which could not have been avoided by reasonable measures or foreseeable by the affected Party, including strikes, slow downs or labor difficulties (other than any such action by or in relation to the Manager or any of its subcontractors), flood, earthquakes, explosions, natural disasters, acts of a Governmental Authority, including the Interconnection Provider, or other hazards, acts of public enemies, riots, civil commotions, insurrection, or war. Force Majeure expressly does not include any delay in performing or failure of performance of any contractual provision by a Party (except to the extent caused by a Force Majeure event); late delivery or breakage of equipment or materials (except to the extent caused by a Force Majeure event); or economic hardship.

**"FPA"** means the Federal Power Act, as amended, and all rules or regulations adopted thereunder.

**"GE Member"** means EFS Shepherds Flat, LLC, a Delaware limited liability company.

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**“Governmental Approval”** means any permit, license, certificate, concession, approval, consent, ratification, permission, clearance, confirmation, exemption, waiver, franchise, certification, designation, rating, registration, variance, qualification, accreditation or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority, whether under any contract with any Governmental Authority, including without limitation, any “safe harbor agreements” or pursuant to any Law, including without limitation, a Site Certificate, and any grading, building, or conditional use permits affecting the applicable real property and in effect with respect to the Projects, the Shared Assets, or any part of them.

**“Governmental Authority”** means any national, State, or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau or entity (including any zoning authority, NERC, Interconnection Provider, acting under delegated authority, DOE, FERC, the Securities and Exchange Commission, the FDIC, EFSC, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority), or any arbitrator with authority to bind a party at law.

**“Grantor Co-Tenant”** has the meaning set forth in Section 4.2.1(a).

**“Hazardous Material”** means any hazardous or toxic substance or waste, pollutant or contaminant as defined under applicable Environmental Laws, including petroleum products, asbestos, polychlorinated biphenyls and radioactive materials.

**“Horseshoe Bend”** has the meaning set forth in the preamble.

**“Horseshoe Bend Project”** and **“Horseshoe Bend Project Site”** have the meanings set forth in Recital A above.

**“Insolvent Co-Tenant”** has the meaning set forth in Section 17.2.2(f).

**“Interconnection Provider”** means the United States Department of Energy, Bonneville Power Administration, or its successor as entity responsible for operation and administration of the Federal Columbia River Transmission System.

**“Interest Rate”** means a rate of seven percent (7%) per annum.

**“Land Matters”** means any and all covenants, conditions, restrictions, and other encumbrances affecting the applicable real property and binding upon the owner, tenant, licensee, easement holder, or any other user or occupant of that real property.

**“Laws”** means any applicable constitutional provisions, statutes, acts, codes, laws, rules, regulations, ordinances, orders, decrees, rulings, judgments or decisions of a Governmental Authority or arbitral body.

**“LGIA”** means that certain Large Generator Interconnection Agreement between Interconnection Provider and CSF, dated October 13, 2009, together with all agreements,

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schedules, appendices, exhibits and other documents ancillary thereto, which LGIA will be replaced in the future with three (3) standardized interconnection agreements (each, an "LGIA"); one such LGIA between each Co-Tenant, respectively, and Interconnection Provider providing for the interconnection of that Co-Tenant's Project to the Interconnection Provider's transmission system, at a voltage of 230-kV, at the Point of Interconnection, together with other related agreements, schedules, appendices, exhibits and other documents ancillary thereto by and between each of Co-Tenant, on the one hand, and Interconnection Provider, on the other hand.

"Liabilities" means any and all claims, actions, debts, losses, liabilities, damages, expenses, awards, judgments, settlement payments, fines, penalties, costs, royalties, assessments (tax or otherwise), proceedings, deficiencies or obligations, whether civil or criminal, including those arising out of any investigation, action, claim, settlement, compromise, judgment or award, by any private party or Governmental Authority, of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, and whether or not resulting from third party claims, and any out-of-pocket costs and expenses (including court costs and fees, reasonable legal counsels', accountants', or other fees and expenses) incurred in defending against or investigating any of the same.

"Liens" means any mortgage, deed of trust, lien (statutory or otherwise), pledge, charge, hypothecation, assignment for security, security interest, restrictive covenant or easement or encumbrance of any kind in respect of any asset (real or personal) which is movable or immovable and now owned or hereafter acquired, whether or not filed, recorded or otherwise perfected or effective under applicable Law, or any preference, priority or preferential arrangement of any kind or nature whatsoever including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Majority of the Co-Tenants" means fifty one percent (51%) or more of the Percentage Interests of all Co-Tenants entitled to vote on any particular matter under this Agreement; provided, however, that if the matter requiring a vote is applicable to a particular Segment or Segments, then it shall mean fifty one percent (51%) or more of the Segment Interests of such Segment(s).

"Management Fee" has the meaning set forth in the Administrative Management Agreement(s).

"Manager" has the meaning set forth in the preamble.

"Manager Representative" has the meaning set forth in Section 8.12.

"MBR" means authorization by FERC pursuant to the FPA under 18 CFR Part 35 Subpart H to sell electric energy, capacity and specified ancillary services at wholesale in interstate commerce at market-based rates, acceptance by FERC of a tariff consistent with applicable FERC tariff requirements, and granting such regulatory waivers and blanket authorizations as are customarily granted by FERC to entities with market-based rate authority,

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including blanket authorization pursuant to Section 204 of the FPA to issue securities and assume liabilities.

**"Mortgagor Co-Tenant"** has the meaning set forth in Section 17.2.2(d).

**"Mortgage"** means any Lien, including but not limited to a trust deed, mortgage, security agreement, capital lease, sale-leaseback instrumentation, pledge agreement or other lien or asset pledge that directly or indirectly benefits one or more Financing Parties.

**"Nameplate Capacity"** means the aggregate nameplate power generating capacity of all the Wind Turbines in a Project, in megawatts, as published in the manufacturer's technical specifications for the applicable Wind Turbines, as that capacity may be increased, due to Project upgrade, or decreased, due to permanent Project derating.

**"NERC"** means the North American Electric Reliability Corporation.

**"New Co-Tenant"** has the meaning set forth in Section 6.15.

**"North Hurlburt"** has the meaning set forth in the preamble.

**"North Hurlburt Project"** and **"North Hurlburt Project Site"** have the meanings set forth in Recital A above.

**"O&M Agreement(s)"** means those certain Operation Support Agreements, each dated as of October 16, 2009, by and between each Co-Tenant, on one hand, and the Operator, on the other, as the same may be amended, modified or otherwise supplemented in the future from time to time, and any agreement entered into in replacement or substitution therefor.

**"Operator"** means General Electric International, Inc., a Delaware corporation, and its successors and assigns permitted under the O&M Agreement(s).

**"Option Agreement"** means that certain Shared Assets Option Agreement, dated as of the date hereof, by and among North Hurlburt, South Hurlburt, Horseshoe Bend and Saddle Butte.

**"Other Indemnified Party"** has the meaning set forth in Section 11.2.

**"Parties"** and **"Party"** have the respective meanings set forth in the preamble.

**"Percentage Interest"** means the percentage set forth on Exhibit D attached hereto with respect to each Co-Tenant, subject to change from time to time with the expansion or reduction of a Project including any increase or decrease in a Project's Nameplate Capacity.

**"Person"** means any natural person, corporation, limited liability company, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.



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**"Point of Interconnection"** means the specified point of interconnection under the applicable LGIA pursuant to which a Project is interconnected with the electric transmission facilities of the Interconnection Provider.

**"Premises Interest"** means the interest of any Co-Tenant in any Shared Premises, which, unless all of the Co-Tenants with Premises Interests in such Segment agree otherwise, shall be equal to the applicable Co-Tenant's pro-rata portion thereof with respect to all Co-Tenants with Premises Interests therein, calculated in accordance with the relative amount of capacity (in Megawatts) of electricity each such Co-Tenant's Project has been allocated to be conducted through the applicable Shared Premises.

**"Project(s)"** has the meaning set forth in Recital A above.

**"Project Site(s)"** has the meaning set forth in Recital A above.

**"Project Specific Assets"** means, for each Project, any of the assets comprising such Project, the Project Site underlying such Project and the agreements and contractual arrangements related to such Project and Project Site (including the Co-Tenant's interest in an LGIA). For the avoidance of doubt, the Project Specific Assets shall exclude all of the Shared Assets.

**"Prudent Wind Industry Practices"** means those practices, methods, standards and acts (including those engaged in or approved by a significant portion of the wind power industry for similar facilities in the United States) that at a particular time in the exercise of good judgment would have been expected to accomplish the desired result in a manner consistent with applicable laws, safety, environmental protection, economy and expedition. Prudent Wind Industry Practices is not intended to be the optimum practices, methods or acts, but rather to be a spectrum of good and proper practices, methods and acts.

**"Receiving Party"** has the meaning set forth in the definition of **"Confidential Information"**.

**"Representatives"** means, with respect to a Party, such Party's Affiliates, officers, directors, managers, members, shareholders, partners, employees, lenders, contractors, vendors, suppliers, advisors, consultants, agents and representatives.

**"Restoration"** has the meaning set forth in **Section 6.11**.

**"Saddle Butte"** means Saddle Butte Wind, LLC, a Delaware limited liability company.

**"Segment"** has the meaning set forth on **Exhibit C** attached hereto.

**"Segment Interest"** means the interest of any Co-Tenant in a Segment, which, unless all of the Co-Tenants with Segment Interests in such Segment agree otherwise, shall be equal to the applicable Co-Tenant's pro-rata portion thereof with respect to all Co-Tenants with Segment Interests therein, calculated in accordance with the relative amount of capacity (in Megawatts) of

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electricity each such Co-Tenant's Project has been allocated to flow through the applicable Segment.

"Shared Assets" has the meaning set forth in Recital G above.

"Shared Equipment" means those Shared Facilities which are more particularly described on Exhibit C-2 attached hereto.

"Shared Expenses" has the meaning set forth in Section 4.2.

"Shared Facilities" has the meaning set forth on Exhibit C attached hereto.

"Shared Facilities O&M Budget" has the meaning set forth in Section 4.6(a).

"Shared Facilities Representative" has the meaning set forth in Section 5.2.

"Shared Premises" has the meaning set forth in Recital C above.

"Shared Premises Agreements" has the meaning set forth in Recital C above.

"Shared Transformer" means that certain 230/34.5kV oil cooled 3 phase power transformer operating at 177MVA, as more particularly described as Item 1 on Exhibit C-2 attached hereto, or any future replacement thereof obtained in accordance with this Agreement.

"Site Certificate(s)" means, individually or collectively, depending on the context (a) the First Amended Site Certificate for Shepherds Flat Central effective as of March 12, 2010, (b) the First Amended Site Certificate for Shepherds Flat North effective as of March 12, 2010, and (c) the First Amended Site Certificate for Shepherds Flat South effective as of March 12, 2010.

"Solvent Co-Tenants" have the meaning set forth in Section 17.2.2(f).

"South Hurlburt" has the meaning set forth in the preamble.

"South Hurlburt Project" and "South Hurlburt Project Site" have the meanings set forth in Recital A above.

"Status Defaults" have the meaning set forth in Section 17.2.2(b).

"Strategic Investment Program Agreement" has the meaning set forth in the definition of "Tax".

"Tax" means all federal, state, provincial, territorial, municipal, local or foreign income, profits, franchise, gross receipts, environmental (including taxes under Internal Revenue Code § 59A), customs, duties, net worth, sales, use, goods and services, withholding, value added, ad valorem, employment, social security, disability, occupation, pension, real property, personal property (tangible and intangible), stamp, transfer, conveyance, severance, production, excise and other taxes, withholdings, duties, levies, imposts and other similar charges and assessments (including any and all fines, penalties and additions attributable to or otherwise imposed on or

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with respect to any such taxes, charges, fees, levies or other assessments, and interest thereon) imposed by or on behalf of any Governmental Authority, in each case whether such Tax arises by law, contract or otherwise. "Tax" also includes all community service fees and other payments, including payments in lieu of property taxes, paid under each of the two "Strategic Investment Program Agreements," which are 15-year property tax abatement agreements executed, pursuant to ORS 285C.600 – 285C.620, with each of Gilliam and Morrow Counties, Oregon, regarding taxable property (both tangible and intangible) comprising the North Hurlburt Project, South Hurlburt Project and Horseshoe Bend Project.

"Transfer" means to grant, sell, assign, set over, deliver, convey, demise, dispose of or otherwise transfer an interest in tangible or intangible assets.

"Undivided Interest" has the meaning set forth in Section 3.2.

"Wind Turbine" means a wind turbine generator, each including the following components: a tower, a nacelle, turbine blades, controller/low voltage distribution panel console (including interconnecting cabling from the nacelle to the ground controller), control panels, wind vanes, FAA lighting, grounding, anemometers, and foundation.

2. **TERM.** This Agreement will commence on the Effective Date and remain in full force and effect following the Effective Date until the first occurrence of one of the following: (a) a single Co-Tenant becomes the owner of the entire ownership interest in all of the Shared Assets, (b) the mutual agreement of all the Co-Tenants, or (c) otherwise as provided under this Agreement.

### 3. SHARED ASSETS

3.1 Shared Facilities. Each Co-Tenant shall install, construct, use, operate, repair, maintain, improve, remove and replace, as applicable to such Co-Tenant, (a) the Shared Facilities on the Shared Premises, in accordance with Exhibit C-1 attached hereto, and (b) the Shared Equipment, in accordance with Exhibit C-2 attached hereto.

3.2 Partial Conveyance of Co-Tenancy Interests in Shared Facilities. Effective upon completion or installation of each component of the Shared Facilities on the Shared Premises and upon payment by each Co-Tenant with a Segment Interest therein of its respective amount due in reimbursement to the Constructing Co-Tenant or procuring Co-Tenant, if any, as applicable, in accordance with Section 4, upon and subject to the terms, conditions, restrictions and reservations set forth in this Agreement and in the applicable Shared Premises Agreements, the Co-Tenant that has procured, constructed, installed or caused the procurement, construction or installation of such Shared Facilities shall be deemed to have GRANTED, SOLD, TRANSFERRED, ASSIGNED, and CONVEYED, and does hereby GRANT, SELL, TRANSFER, ASSIGN, AND CONVEY unto each of the other such Co-Tenants, as applicable, an undivided ownership interest in and to such Shared Facilities owned or hereafter acquired or constructed by the transferring Co-Tenant, in each case in proportion to the Segment Interest of the respective transferee Co-Tenant, **AS IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A**

**PARTICULAR PURPOSE, OR ANY OTHER SIMILAR WARRANTY ARISING UNDER STATUTORY OR COMMON LAW**, while at the same time reserving to itself an undivided ownership interest in and to such Shared Facilities in the amount of its Segment Interest in such Shared Facilities. The intent of the foregoing is that each Co-Tenant shall own an undivided tenancy in common interest in each of the Shared Facilities in proportion to its respective Segment Interest in such Shared Facilities so as to provide for the common ownership of such Shared Facilities (along with all appurtenant rights) by the Co-Tenants, subject to the terms and conditions of this Agreement. The foregoing undivided tenancy in common interest of each Co-Tenant in the Shared Facilities may be referred to from time to time in this Agreement as an "Undivided Interest."

3.3 **Shared Premises Agreements and Land Matters**. A Co-Tenant's exercise of rights with respect to each portion of its Undivided Interest shall be subject to that Co-Tenant's rights under the applicable Shared Premises Agreements to use such Shared Premises on which the applicable Shared Facilities are located. Each Co-Tenant shall comply with all the terms and conditions of the applicable Shared Premises Agreements, the Land Matters, and the Governmental Approvals in connection with such Co-Tenant's operations and activities under this Agreement, except to the extent that any such actions would violate any applicable Law. Any amounts due under the terms of the Shared Premises Agreements shall be paid by the Manager, subject to reimbursement by the Co-Tenants in accordance with Section 4 below. No Shared Premises Agreement may be terminated, modified or amended without the consent of all of the Co-Tenants that are party to, or that directly enjoy rights or benefits under, such Shared Premises Agreement. Nevertheless, if any Co-Tenant wishes to terminate its interest in a Shared Premises Agreement, and such termination (a) is permitted by the Shared Premises Agreement itself or by the counterparty thereto and (b) will have no adverse effect on the other Co-Tenants thereto, then the Co-Tenant may terminate its interest in that Shared Premises Agreement. The permitted termination by a Co-Tenant of its interest in a Shared Premises Agreement shall not cause or be deemed to cause the release of the Co-Tenant for any liabilities or obligations accruing prior to such termination under this Agreement or such Shared Premises Agreement.

3.4 **Access to Shared Facilities**. Subject to Section 3.3 above, each Co-Tenant and its Representatives shall have access to the Shared Facilities in which such Co-Tenant has Segment Interest (a) for inspection of such Shared Facilities, (b) for investigation and any required maintenance or repair of such Shared Facilities agreed to be undertaken by such Co-Tenant or not performed by the Manager in accordance with Section 8 of this Agreement, and (c) for the operation of such Shared Facilities, all in accordance with this Agreement and Prudent Wind Industry Practices (which shall expressly include using licensed engineers to work on any electrical Shared Facilities). Notwithstanding the foregoing, except in the event of an Emergency, each Co-Tenant shall provide no less than twenty-four (24) hours' prior notice to the Manager and the other Co-Tenants of its intent to access the Shared Facilities pursuant to this Section 3.4, and no less than forty-eight (48) hours' prior notice to the Manager and the other Co-Tenants prior to performing any maintenance or repairs pursuant to clause (b) or (c) above. A Co-Tenant and/or any Co-Tenant's Representatives shall follow all applicable safety, security and site rules then established in writing by the agreement of a Majority of the Co-Tenants and the Manager. In the event of an Emergency, prior notice is not required to access the affected Shared Facilities to respond to the Emergency, but the responding Co-Tenant shall provide

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notice of access to the Manager and the Co-Tenants with a Segment Interest in such Shared Facilities as soon as reasonably practicable thereafter (no more than twenty four (24) hours after access).

3.5 No Interference, Cooperation and Over-Burdening. A Co-Tenant's use of the Shared Assets or the operation of its Project may not interfere with the use and enjoyment by the other Co-Tenants of their respective rights in such Shared Assets or the operation of their Projects, except as specifically provided herein. Subject to the terms and conditions of this Agreement, including Section 6.16 below, each of the Co-Tenants hereby consents to the development and operation of the Projects, and each of the Co-Tenants shall cooperate in good faith to accommodate each of the other Co-Tenant's use of the Shared Assets for the benefit of each others' Projects as contemplated by this Agreement. Each Co-Tenant acknowledges and agrees that the use of the Shared Assets by the Projects as contemplated herein does not, separately or in the aggregate, constitute an overburdening of the Shared Assets, or any part thereof. No Co-Tenant will use or permit a Person under its direction or control to use the Shared Assets in any manner that would create waste or nuisance, violate any applicable Laws or any Land Matters or that would jeopardize the issuance or maintenance of any insurance policy relating to the Shared Assets or any Governmental Approval as to the Shared Assets or any Project, nor otherwise conduct or cause to be conducted operations on its Project Site or on the Shared Premises which would have similar effects on, or otherwise damage (excluding ordinary wear and tear) or interfere with, the Shared Assets.

3.6 Additional Real Property Rights and Facilities. To the extent that any additional real property and rights therein ("Additional Shared Premises") or physical facilities ("Additional Shared Facilities," and together with the Additional Shared Premises, the "Additional Shared Assets") that relate to the Shared Assets or operation thereof, are required by any Co-Tenant or would materially benefit, in the reasonable belief of a Co-Tenant or the Manager, one or more Projects, then the Co-Tenant or the Manager may give written notice to the other Co-Tenants of such requirement or benefit, with a reasonable explanation of why such Additional Shared Assets are needed or beneficial and why such additions would not be duplicative of existing Shared Premises or Shared Facilities. Each Co-Tenant receiving such notice shall have thirty (30) days after receiving such notice to determine if such Additional Shared Assets are also needed or would be beneficial for its Project and to so notify all the other Co-Tenants and Manager in writing of its election whether to participate in the acquisition, installation, and/or construction of such Additional Shared Assets and the inclusion of such Shared Asset in the applicable category of Shared Assets. A Co-Tenant's failure to notify the other Co-Tenants and Manager of its election to participate within such thirty (30) day period will be deemed an election to decline the addition of the proposed Additional Shared Assets to the Shared Assets in which such Co-Tenant has an Undivided Interest. Any Additional Shared Assets that a Majority of the Co-Tenants approve as provided above to be added to the Shared Assets to be governed by this Agreement shall be (a) procured jointly by the Co-Tenants that elect to use the Additional Shared Assets, pursuant to a separate Shared Premises Agreement, if applicable, (b) automatically deemed to be added to the Shared Premises and/or Shared Facilities, as applicable, under this Agreement (as a new Segment in the case of new Shared Facilities) as to each Co-Tenant that has an Undivided Interest therein, and (c) held in undivided ownership interests by the acquiring Co-Tenants, in proportion with each such Co-Tenants'

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relative Segment Interest therein (or as the acquiring Co-Tenants may otherwise agree among themselves), to be governed by the terms of this Agreement. If a Majority of the Co-Tenants do not agree to add Additional Shared Assets requested by a Co-Tenant or the Manager, then nothing herein shall prevent the requesting Co-Tenant (or any group of them) from acquiring the Additional Shared Asset or other additional premises or facilities needed by and to be held by such Co-Tenant(s), not as part of the Shared Assets hereunder, and not subject to the terms of this Agreement, provided that any Additional Shared Asset or other additional premises or facilities so acquired shall not interfere with the development, construction, operation, usage or the maintenance of the Shared Assets or the other Co-Tenants' Projects, or otherwise violate the terms and conditions of this Agreement, the Land Matters, Governmental Approvals or applicable Laws. All costs (both capital and operating) associated with any Additional Shared Assets or upgrades to existing Shared Facilities in connection therewith shall be recovered exclusively from those Co-Tenants electing to participate therein pursuant to this Section 3.6.

**3.7 Construction-Related Conditions to Installation of Additional Shared Facilities or Connecting Projects to the Shared Facilities.** Any Co-Tenant installing Additional Shared Facilities or connecting its Project to the Shared Facilities shall (a) not interfere with the use or access by the other Co-Tenants of the Shared Facilities, except as may be necessary during the installation, repair, or replacement of Shared Facilities, (b) to the extent commercially reasonable, schedule during an off-peak and/or low wind or other down-time period any required disconnection of the Shared Facilities to conduct construction activities to minimize the impact on the Projects of the other Co-Tenants, (c) provide at least ninety (90) days' prior written notice of commencement of such construction activities together with a detailed description thereof and plans and specifications (which shall be approved by all the Co-Tenants who shall also approve the party performing such construction, such approval not to be unreasonably withheld, conditioned or delayed), (d) provide at least ninety (90) days' prior written notice of any planned outages, and the durations thereof, of the Shared Facilities that would result in a disconnection of another Co-Tenant's Project, (e) take into consideration, to the extent commercially reasonable, any changes in the construction plans or timing of construction required by another Co-Tenant, provided that the other Co-Tenant does not attempt to interfere with the installation of the proposed Additional Shared Facilities, unless such installation can reasonably be expected to result in an Emergency or violate the terms of the Shared Premises Agreements, the Land Matters, Governmental Approvals, applicable Laws, or this Agreement, (f) be responsible for obtaining and complying with any necessary Governmental Approvals and providing documentary evidence of such Governmental Approvals, including any Site Certificate amendment, to the Co-Tenants and the Manager, and (g) compensate the other Co-Tenants' Projects for lost revenues as a result of lost generation due to an outage or disconnection of such Co-Tenants' Projects. Any Co-Tenants installing Additional Shared Facilities that are needed by or would benefit less than all of the Co-Tenants, or connecting its own Project to the Shared Facilities, shall indemnify, defend and hold harmless the other Co-Tenants who do not have any Segment Interest in such Additional Shared Facilities for, from and against all Liabilities, including third party claims, property and revenue losses to the extent incurred, as a result of such construction or installation activities, to the extent such claims and damages are not covered by the insurance required by Section 12. Installation of Additional Shared Facilities that are needed by or would benefit all Co-Tenants and are approved by a Majority of the Co-Tenants, shall be installed jointly by the Co-Tenants that elect to use the Additional Shared Facilities,

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pursuant to a separate Shared Premises Agreement, if applicable, or by the Manager at the direction of such Co-Tenants and will be at the risk of all such Co-Tenants, and each such Co-Tenant shall have the right to review and approve all design, planning and installation elements in connection with such installation and to observe the testing of any new facilities prior to commercial operation, such approval not to be unreasonably withheld, conditioned or delayed, and will bear any risk of loss thereof in proportion with its Segment Interest in the Additional Shared Facilities, to the extent such loss is not covered by the insurance required by Section 12.

### 4. SHARED EXPENSES AND CONSTRUCTION COSTS

4.1 Liabilities for the Account of the Co-Tenants; No Charging of Fees, Premiums or Profits. Except as specifically set forth in this Agreement, each Co-Tenant shall be solely responsible for its Liabilities relating to its Project and Project Specific Assets, including without limitation, all Liabilities arising from acquiring, designing, installing, constructing, using, operating, maintaining and repairing its Project Specific Assets. Each Co-Tenant shall, at its sole cost and expense, maintain in good working order and repair at all times each part of its Project that connects with or which affects the Shared Assets. Each Co-Tenant (or Co-Tenants, if any Additional Shared Assets are being acquired or installed at the joint expense of two or more Co-Tenants) acquiring or installing any Additional Shared Assets shall be responsible for, and pay, all Liabilities relating to the acquisition or installation, as applicable, of the Additional Shared Assets in which it has or obtains a Segment Interest, except to the extent otherwise provided in Section 3.7. Further, each Co-Tenant shall be responsible for all Liabilities arising from such Co-Tenant's actions or inactions in violation of this Agreement, the Shared Premises Agreements, Land Matters, and Governmental Approvals. The Co-Tenants agree that the purpose of this Agreement is for the Co-Tenants and their respective Projects to benefit from the cost savings, convenience and efficiencies that result from the common utilization of the Shared Assets and no Co-Tenant shall charge any other Co-Tenant any fee, premium or other profit relating to the Shared Assets or services provided under this Agreement.

#### 4.2 Shared Expenses.

4.2.1 The Co-Tenants each shall be responsible for and shall reimburse the Manager or another Co-Tenant, as applicable (in accordance with Section 4.3), for Liabilities arising under or relating to the following (collectively, the "Shared Expenses") and in the following described proportions:

(a) for all those Co-Tenants which are parties to a particular Shared Premises Agreement and have rights to the portion of the Shared Premises provided therein, the Liabilities arising under such Shared Premises Agreement and the use, maintenance, repair, and inspection of the applicable portion of the Shared Premises shall be shared by those Co-Tenants in proportion to their relative Premises Interests (e.g., if two (2) Co-Tenants are parties to a Shared Premises Agreement, and each has an equal Premises Interest thereunder, they shall share equally in the Shared Expense; if three Co-Tenants are parties to a Shared Premises Agreement, and they have Premises Interests in the amounts of ten percent (10%), thirty percent (30%), and sixty percent (60%) in a particular Shared Premises thereunder, they shall share in the Shared Expense in a ratio of 1:3:6, or expressed as fractions, 1/10 to 3/10 to 6/10); provided, however,

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that with respect to those Shared Premises where one Co-Tenant is the primary holder of any underlying real estate rights (the "Grantor Co-Tenant") and has granted the other Co-Tenant(s) subsidiary interests therein (i.e., subleases or subeasements), then such Shared Expenses do not include the obligation to contribute to or reimburse the Grantor Co-Tenant for any portion of any rent or royalty payments payable to any third party under such Shared Premises Agreement but shall include any crop or property damage obligation attributable to the Shared Premises or any expenses under such Shared Premises Agreement payable specifically in connection with transmission rights applicable to the Shared Assets; and

(b) the Shared Facilities, in proportion to the Co-Tenants' respective applicable Segment Interests therein; provided that (i) any replacement or repairs of any Shared Equipment as a result of damage that is not the fault of a Co-Tenant or its contractors (other than Manager) or representatives or agents shall be in proportion to each Co-Tenant's respective applicable Segment Interests therein, (ii) any replacement or repairs of any Shared Equipment as a result of damage that is the fault of a Co-Tenant or its contractors (other than Manager) or representatives or agents shall be paid by such Co-Tenant that is at fault (unless otherwise covered by insurance, in which event, such Co-Tenant that is at fault shall pay all deductible and uninsured amounts), and (iii) any replacement or repair of the Spare Transformer shall be in accordance with Section 5.4.2 below.

4.2.2 Each Co-Tenant may, from time to time, propose additional categories or types of expenses to be Shared Expenses to be administered jointly by the Co-Tenants, or by the Manager at the direction of the Co-Tenants in accordance with this Section 4.2. Any such proposed expense must be approved by a Majority of the Co-Tenants; provided that any Co-Tenant that would not be subject to the payment of such expense and would not otherwise be affected by the incurrence of such expense shall have no voting rights with respect to such new Shared Expenses and shall not be counted in calculating the required number of Co-Tenants to constitute a Majority of the Co-Tenants.

4.2.3 Notwithstanding the foregoing, none of the following shall constitute Shared Expenses:

(a) the cost of acquiring and developing the Shared Assets, including without limitation, acquisition, option and rent costs, development, permitting and any other costs incurred in connection with the Shared Facilities of any Project other than such Co-Tenant's Applicable Construction Costs;

(b) the cost and expense of any Project Specific Assets and the connection and integration of Project Specific Assets with any Shared Facilities (including without limitation, any design, procurement, construction, or installation costs and any modifications to existing Shared Facilities required to accommodate such integration); or

(c) any imbalance charges or other charges incurred under an LGIA that result from the operation of a Project that are reasonably allocable (based on output or some other objective criteria) to such Project.



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### 4.3 Invoicing, Late Payments.

4.3.1 No later than ten (10) days after the end of each calendar month following the Effective Date, the Manager shall invoice the Co-Tenants for their respective portions of the Shared Expenses, if any. The Manager's invoice shall include a detailed breakdown of the Shared Expenses and each Co-Tenant's share of the Shared Expenses. The Co-Tenants shall (a) make all payments owed to the Manager in accordance with each such Co-Tenant's Administration Management Agreement and (b) shall pay any amounts owed to other Co-Tenants directly to such other Co-Tenants to whom the Shared Expenses may be payable under this Section 4.3 by wire transfer of immediately available funds, within thirty (30) days of receipt of such invoice. All sums not paid to another Co-Tenant within thirty (30) days after receipt of Manager's invoice shall thereafter bear interest at the Default Rate. Each Co-Tenant will have the right to audit, and receive supporting documentation for, any expenses or other amounts required to be paid by such Co-Tenant under this Agreement. If there is a dispute as to any amount invoiced by the Manager, the Co-Tenants so invoiced shall pay all amounts not in dispute in accordance with this Section 4.3. The Co-Tenants disputing any such amounts shall pay their respective disputed amount that is ultimately determined as payable by such Co-Tenant with interest thereon at the Default Rate accruing from the date of receipt of the Manager's disputed invoice.

4.3.2 To the extent that the Manager receives liquidated damages, transmission network upgrade credits or other credits or refunds pursuant to an LGIA, the Manager shall promptly remit such damage payment, credit or refund to the Co-Tenants according to each Co-Tenant's Percentage Interest or if applicable to a particular Segment, then according to the Segment Interests of the applicable Co-Tenants; provided that if such damages, credits or refunds are reasonably allocable (based on output or some other objective criteria) to one or more Projects, they shall be remitted to such Projects according to such reasonable allocation.

4.3.3 All funds received by the Manager, except those due to the Manager for fees or reimbursements to the Manager as and when expressly provided in this Agreement and the Administration Management Agreements, shall be distributed to third parties in accordance with the invoices submitted to the Co-Tenants therefor and/or allocated among the Co-Tenants so as to ensure that each Co-Tenant ultimately pays its respective portion of the Shared Expenses (including, without limitation, taking into account any refunds remitted to certain Co-Tenants pursuant to Section 4.3.2 above).

4.4 Construction Costs. Each of the Co-Tenants constructing Segments of the Shared Facilities or procuring the initial Shared Equipment shall fund the design, engineering, procurement, installation, construction, and permitting costs and expenses (including costs for required grading and building permits) required to complete the Shared Facilities it is responsible for constructing pursuant to Exhibit C-1 attached hereto and to complete the procurement and acquisition of the Shared Equipment it is responsible for acquiring pursuant to Exhibit C-2 attached hereto (collectively, "Construction Costs"). To the extent more than one Co-Tenant is responsible for construction of particular Shared Facilities pursuant to Exhibit C-1 or acquisition of specified Shared Equipment pursuant to Exhibit C-2, those Co-Tenants shall be responsible for the Construction Costs as set forth in their respective Balance of Plant Agreements; provided,

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however, that if the cost of such Shared Equipment is not contained in such Balance of Plant Agreements, then the other Co-Tenants shall reimburse such procuring Co-Tenant in accordance with their respective Segment Interests in such Shared Equipment. If one or more Co-Tenants responsible for the construction of certain Shared Facilities require the use of such Shared Facilities prior to any other Co-Tenants, the Co-Tenants requiring earlier use may construct the applicable Shared Facilities and fund all the Construction Costs of those Shared Facilities. The Co-Tenants so electing to construct such Shared Facilities (the "Constructing Co-Tenants") shall provide written notice to the other Co-Tenants and Manager prior to commencing construction and within five (5) days of completing construction. Any Constructing Co-Tenant shall be reimbursed for Construction Costs (other than its own share thereof) by all other Co-Tenants with a Percentage Interest in the constructed Shared Facilities, as set forth below.

4.5 Reimbursement of Construction Costs and Shared Expenses. All Co-Tenants with a Segment Interest in any particular Segment have paid or will pay their agreed upon share of Construction Costs with respect to such Segment upon payment of all sums required in connection therewith contained in such Co-Tenant's Balance of Plant Agreement and none of the initial Co-Tenants to this Agreement shall be responsible for reimbursing any other Co-Tenant for such initial Construction Costs. Any New Co-Tenant, other than a party succeeding to the entire Undivided Interest of an existing Co-Tenant (including any Financing Parties who obtain an existing Co-Tenant's Undivided Interest pursuant to the exercise of remedies under applicable Financing Documents by foreclosure or otherwise), or any existing Co-Tenant that acquires a Segment Interest in a Segment that was not constructed as part of the initial Construction Costs, shall reimburse (i) the Constructing Co-Tenants (or, in lieu thereof, any other Co-Tenant that acquired a prior Segment Interest in the applicable Segment and previously reimbursed the Constructing Co-Tenants for the Applicable Construction Costs) for a percentage of the amounts incurred in constructing the applicable Segment spent by such Constructing Co-Tenants equal to such acquiring Co-Tenant's Segment Interest in the applicable Segments, in each case together with interest on such amounts accrued at the Interest Rate beginning on the date that such costs were incurred by such Co-Tenant (the "Applicable Construction Costs"), and (ii) the Co-Tenants for their respective Shared Expenses which constitute capital expenditures to repair or modify the Shared Facilities following their initial construction in an amount equal to a percentage of such amounts incurred by such Co-Tenants equal to the acquiring Co-Tenant's Segment Interest in the applicable Segments, in each case together with interest on such amounts accrued at the Interest Rate beginning on the date that such costs were incurred by each such Co-Tenant ("Applicable Reimbursable Shared Expenses"). Prior to connecting any Project Specific Assets or Additional Shared Assets to an already constructed Segment or utilizing any portion of an already constructed Segment, a Co-Tenant which did not construct the Segment shall provide written notice to the Constructing Co-Tenants, the other Co-Tenants, and the Manager, of its intent to use or connect to the constructed Segment and within fifteen (15) days after receiving such notice, the Constructing Co-Tenants and other Co-Tenants entitled to payment pursuant to this Section 4.5 shall issue an invoice to the requesting Co-Tenant for the Applicable Construction Costs and Applicable Reimbursable Shared Expenses. The requesting Co-Tenant shall pay the invoice for Applicable Construction Costs and Applicable Reimbursable Shared Expenses prior to commencing the use of the constructed Segment or connecting any Project Specific Assets or Additional Shared Assets to the constructed Segment. This Section is not intended to provide all Co-Tenants with rights to use all Segments, but only a mechanism for

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reimbursement of Construction Costs among Co-Tenants with Segment Interests as set forth on Exhibit C-1 and Exhibit C-2 attached hereto. A Co-Tenant with no Segment Interest in a particular Segment desiring to obtain a Segment Interest therein shall be required to obtain the consent of all the Co-Tenants with Segment Interests in the applicable Segment, which consent may be denied in such Co-Tenants' discretion, as all Segments are fully used by or fully allocated to a Project, and shall be subject to all the terms and conditions of this Agreement, including Sections 3.4 and 3.5 above, and the obligation to reimburse any Co-Tenants with a right hereunder to be reimbursed for any Applicable Construction Costs.

### 4.6 Shared Facilities O&M Budget.

(a) Within ninety (90) days after the Effective Date and no later than September 1 of each calendar year thereafter during the term of this Agreement, the Manager shall deliver to the Co-Tenants a proposed budget for operation, maintenance and repair of the Shared Assets for the following calendar year, or the portions of the year remaining ninety (90) days after the Effective Date (each, a "Shared Facilities O&M Budget"), describing the scheduled work to be completed in the following calendar year and the general operational plans for the Shared Assets during such year, including responsibilities and emergency procedures and detailing the expected revenue and expenses for the following calendar year including explanations for any material differences from the prior calendar year and such draft budget shall include, at a minimum, the billing rates, estimated cost, based on time and materials and all fees and reimbursable costs contemplated in this Agreement, for anticipated operation and maintenance services and repairs to be provided by or contracted for by the Manager during each month of the following year (or portions thereof), including any Shared Expenses. The Shared Facilities O&M Budget shall set forth the respective amounts allocated to the different Co-Tenants in accordance with the allocation of Shared Expenses provided in Section 4.2 above. When approved pursuant to subparagraph (b) below, the Shared Facilities O&M Budget shall be the "Approved Shared Facilities O&M Budget" for such year.

(b) The Co-Tenants shall each have thirty (30) days from receipt of a proposed Shared Facilities O&M Budget either to approve or disapprove the same in writing by notice to the Manager and the other Co-Tenants. A Co-Tenant's failure to so disapprove a proposed Shared Facilities O&M Budget within such thirty (30) day period shall constitute such Co-Tenant's approval of such Shared Facilities O&M Budget. If the Shared Facilities O&M Budget is approved by at least a Majority of the Co-Tenants, the Shared Facilities O&M Budget will be the Approved Shared Facilities O&M Budget for the following year. In the event that a proposed Shared Facilities O&M Budget is not approved within the time indicated, the Shared Facilities O&M Budget prepared and approved for the previous year shall be utilized until such time as the new Shared Facilities O&M Budget is approved.

(c) If during any calendar year the Manager believes that a variance (in excess of the permitted variances described in subsection (d) below) is reasonably likely to occur between the actual expense of operating and maintaining the Shared Assets and the budgeted expense for a particular material budget item as provided in the then applicable Approved Shared Facilities O&M Budget, then the Manager shall timely notify the Co-Tenants of such belief in writing and advise the Co-Tenants of the necessary revisions to the Approved Shared Facilities

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O&M Budget and the reasons for those revisions. If a Majority of the Co-Tenants agree, the Co-Tenants and the Manager shall proceed in good faith to revise the Approved Shared Facilities O&M Budget in such manner for the balance of the year.

(d) The commercially reasonable and necessary costs and expenses incurred by the Manager that are within ten percent (10%) of the applicable line item on the Approved Shared Facilities O&M Budget and, when taken together with all other variances from the line items on the Approved Shared Facilities O&M Budget, do not cause the overall Approved Shared Facilities O&M Budget to be exceeded, and which are otherwise incurred in accordance with the most recently Approved Shared Facilities O&M Budget, shall not require any additional approval of the Co-Tenants.

### 5. USE OF SHARED ASSETS

5.1 Use. Subject to the other requirements of this Agreement, each Co-Tenant shall have the right to use each Segment of the Shared Facilities to the extent such Co-Tenant owns a Segment Interest in the applicable Segment, as set forth in Exhibit C-1 and Exhibit C-2 attached hereto.

5.2 Shared Facilities Representatives. On or promptly following the date of Commercial Operation of a Co-Tenant's Project, such Co-Tenant shall, by written notice to the other Co-Tenants and the Manager, designate an individual (the "Shared Facilities Representative"), who will have authority to bind such Co-Tenant in all matters concerning this Agreement (other than to amend this Agreement), to communicate on a day-to-day basis with each other Co-Tenant and to direct the Manager regarding operational and maintenance issues. Each Co-Tenant may change its Shared Facilities Representative at any time and from time to time by prior written notice to the other Co-Tenants and the Manager.

5.3 Liens. Except as provided in Section 17.2 below or otherwise set forth in or required by this Agreement, the Financing Documents or the applicable Shared Premises Agreement, the LGIAs, Governmental Approvals or Land Matters, no Co-Tenant will create, permit or suffer to exist by, through or under the Co-Tenant or the Co-Tenant's Representatives, and, except as otherwise provided in this Agreement, hereby waives for itself and its Representatives, any Liens on the Shared Assets, or on the Segment Interests, Premises Interests or Project Specific Assets of any other Co-Tenant, including (a) Liens for Taxes, unless such Liens with respect to the Shared Assets only are not yet delinquent or which are being contested in good faith by appropriate proceedings, and (b) statutory Liens in favor of carriers, warehousemen, contractors, suppliers, designers, brokers or other like Liens, unless such Liens with respect to the Shared Assets only arise in the ordinary course of business of such Co-Tenant and for amounts that are not yet due or which are being contested in good faith by appropriate proceedings; provided, in the case of any such permitted Lien in clauses (a) and (b) above, so long as any such proceeding does not involve any substantial danger of the sale, foreclosure, forfeiture or loss of any part of the Shared Assets and such Co-Tenant posts any bond that is required by applicable Law to avoid such sale, foreclosure, forfeiture or loss while such claims are being contested and to be applied to the satisfaction of such Lien and all other amounts owed to cause the applicable Shared Assets to be released from such Lien before such foreclosure,

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forfeiture, sale or loss. Each applicable Co-Tenant will take prompt steps to discharge any unpermitted Lien filed against any such Shared Asset, or the Segment Interests, Premises Interests or Project Specific Assets of any other Co-Tenant. If any Co-Tenant creating or suffering a Lien prohibited hereby with respect to such Co-Tenant fails to discharge promptly any such prohibited Lien, any other Co-Tenant shall have the right to notify the Co-Tenant which created or suffered such prohibited Lien in writing and to take any reasonable action to satisfy, defend, settle or otherwise remove the Lien at the expense of the Co-Tenant that was required to but failed to discharge the same. A Co-Tenant's rights to pursue remedies at law or equity for a breach of this Agreement by another Co-Tenant shall not be limited by this Section, and may include seeking and placing judgment liens and exercising on same to the extent otherwise permitted at law and this Agreement.

### 5.4 Use of Shared Equipment.

5.4.1 Subject to Section 5.4.2 below, each Co-Tenant owning a Segment Interest in any of the Shared Equipment shall have the right to use and operate any of such Shared Equipment in connection with the operation, repair and maintenance of its Project. If more than one Co-Tenant owning a Segment Interest in any of the Shared Equipment desires to use any portion of such Shared Equipment at the same time as any other Co-Tenant owning a Segment Interest in such Shared Equipment, the Manager shall use its commercially reasonable efforts to coordinate and schedule such use of the Shared Equipment to minimize disruption in operations of each affected Project.

5.4.2 Each Co-Tenant owning a Segment Interest in the Shared Transformer shall have the right to install and operate the Shared Transformer at such Co-Tenant's Project substation in the event that the transformer installed at such Co-Tenant's Project substation breaks or fails for any reason and cannot be promptly repaired. If a Co-Tenant installs or causes the installation of the Shared Transformer at such Co-Tenant's Project substation pursuant to Section 5.4.1, then such Co-Tenant shall arrange for its separately-owned Project substation transformer to be repaired or replaced promptly and shall use its commercially reasonable efforts to enforce any warranty rights with respect to its damaged or defective substation transformer. In the event a Co-Tenant's substation transformer is repaired or replaced, then a Majority of the Co-Tenants shall determine if such repaired or replaced substation transformer shall be reinstalled so that the Spare Transformer is uninstalled and available for use by another Co-Tenant, or if the repaired or replaced substation transformer should become the Spare Transformer, available for use by another Co-Tenant pursuant to this Agreement.

## 6. OBLIGATIONS AND CERTAIN RIGHTS OF THE CO-TENANTS

6.1 Standards of Performance; Action, Omission or Failure to Perform an Obligation that Results in a Material Adverse Effect on Another Co-Tenant or that Co-Tenant's Project. Notwithstanding any other provision of this Agreement to the contrary, each Co-Tenant will develop, construct, operate and maintain its Project and perform its obligations under this Agreement in accordance with (a) all applicable Laws, including the applicable Site Certificates, (b) Prudent Wind Industry Practices, (c) the LGIAs and the applicable terms of the Shared Premises Agreements, (d) any and all Governmental Approvals, (e) all applicable Land Matters,

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(f) the applicable power purchase agreement of each respective Co-Tenant, and (g) the Financing Documents. No Co-Tenant will take any action, omit to take any action on its part to be taken or fail to perform any obligation under any such agreements or as required by any such applicable Laws or that arise out of any Land Matters, that could reasonably be expected to materially and adversely affect any other Co-Tenant or another Co-Tenant's Project or gives rise to a Liability affecting any other Co-Tenant, another Co-Tenant's Project or the Shared Assets, including any action, omission or failure to perform an obligation that results in damage to, disconnection of, or an outage of another Co-Tenant's Project.

6.2 Taxes. Unless otherwise directed by the Co-Tenants, the Manager shall administer the Co-Tenants' Strategic Investment Program Agreements with Gilliam and Morrow Counties, Oregon in accordance with each such Co-Tenant's Administrative Management Agreement, and shall pay all real and personal property Taxes, general or special, levied against the Shared Assets before delinquency and before any fine, interest or penalty will become due or be imposed for their non-payment, except that the Manager may withhold payment of any Tax if the Manager (at the direction of the applicable Co-Tenant) is contesting the payment of such Tax in good faith by appropriate proceedings and (a) such proceeding does not involve any danger of the sale, forfeiture or loss of any part of such Shared Asset, which shall include the posting of any bond that is required by applicable Law to avoid such sale, forfeiture or loss while the payment of such Tax is being contested, (b) the Manager notifies all the Co-Tenants thereof in writing at least thirty (30) days before such payment is due or paid and (c) the Manager complies with any requirements under any applicable Shared Premises Agreement in connection therewith (including posting a bond or other security in favor of any party to such agreement if required). All costs associated with such contest shall be borne by the Party or Parties on whose behalf the Manager is conducting such contest. Each Co-Tenant shall promptly deliver to the Manager any correspondence received related to Taxes payable by the Manager hereunder. All such Taxes and assessments paid by the Manager shall be treated as Shared Expenses and invoiced to the Co-Tenants in accordance with Section 4.3.

6.3 Environmental Compliance. Each Co-Tenant shall, with respect to its Project, (including its Project Specific Assets, including the Project Site upon which its Project is installed), be responsible for and shall have exclusive control over all investigations, studies, cleanup, corrective action or response or remedial action required by any Governmental Authority now or hereafter authorized to regulate environmental or other related matters, including, without limitation, any consent decree or court or administrative order now or hereafter applicable to such Co-Tenant's use, operation or ownership of its Project (including its Project Specific Assets and Project Site). The Manager shall, with respect to the Shared Premises and the Shared Facilities, subject to the oversight and direction of the Co-Tenants with interests in the applicable Shared Premises and Shared Facilities, oversee all investigations, studies, clean up, corrective action or response or remedial action required by any Governmental Authority now or hereafter authorized to regulate environmental or other matters or by any consent decree or court or administrative order now or hereafter applicable to such Co-Tenants' use, operation or ownership of the Shared Premises or the Shared Facilities, and subject to Sections 11.1 and 11.2, each Co-Tenant with an interest in the subject Shared Premises shall be responsible, in proportion to its relative Premises Interest, for all Liabilities related to such investigations, studies, clean up, corrective action or response or remedial action. The Manager

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shall keep all Co-Tenants fully apprised as to the above matters affecting the Shared Premises and shall consult with all of them prior to taking any action involving any Governmental Authority or risk of incurring any Liability. The Co-Tenants with an interest in an applicable portion of the Shared Premises shall manage and control all investigations and any environmental cleanup, remediation or related activities with respect to such Shared Premises, or direct the Manager to do so.

6.4 Interconnection. Except as specified in Section 3.1, each Co-Tenant shall be solely responsible for securing for its own benefit, and for maintaining, such rights as are necessary to interconnect its Project with the transmission and interconnection system of the Interconnection Provider in accordance with its own LGIA and to deliver the electrical energy generated by its Project, or such portion of the electrical energy generated by its Project, as is consistent with the terms and conditions of this Agreement.

6.5 Wind and Operational Data. Each Co-Tenant hereunder agrees to share with all other Co-Tenants its current and historical wind data collected from anemometers from locations on its Project Site and the Shared Premises, whether the anemometer is a Shared Facility or not. The Co-Tenants shall also coordinate and reasonably cooperate with each other on wind sector management and shall pool and share operational data regarding their respective Projects and the Shared Facilities; with the mutual objective of optimizing the operational and maintenance efficiency of each of the Projects and the Shared Facilities. The sharing Co-Tenant makes no representation or warranty, express or implied, and will have no Liability with respect to the data so provided, whether for completeness, accuracy or otherwise. The receiving Co-Tenant will maintain the confidentiality of the data received in accordance with the requirements of this Agreement.

6.6 Voting or Approval Rights. Unless specifically provided in this Agreement, each Co-Tenant shall have the right to vote or give its approval, on any matter requiring or needing a vote or approval of the Co-Tenants. Unless otherwise specified herein, a vote of a Majority of the Co-Tenants shall be required for any approval to be provided by the Co-Tenants hereunder.

6.7 Relationship of the Co-Tenants. Except as specifically otherwise set forth in this Agreement, the rights, duties, obligations and liabilities of the Co-Tenants under this Agreement will be individual and several and not joint or collective, and no Co-Tenant shall be responsible for the act or omission of any other Co-Tenant under this Agreement. It is not the intention of the Co-Tenants to create, nor will this Agreement be deemed to create, any partnership, agency, joint venture or trust, or to authorize any Co-Tenant to act as an agent, servant or employee for any other Co-Tenant. Each Co-Tenant will remain solely responsible for the actions of its own employees.

6.8 Regulatory Status; FERC. Each Co-Tenant represents and warrants that it is an EWG, and the Co-Tenants each covenant to maintain their status as an EWG for so long as they are a Party or have any interest in the Shared Assets. Each Co-Tenant shall refrain from taking any action that could adversely impact any other Co-Tenant's ability to maintain its qualification as an EWG. The Co-Tenants covenant to obtain and maintain, for so long as they are a party to this Agreement or have any interest in the Shared Assets, any acceptance and/or authorization

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required under the FPA, with respect to this Agreement, to the Shared Assets, and to any sales of power at wholesale by any of the Co-Tenants. If any Co-Tenant fails to maintain its status as an EWG, then the other Co-Tenants shall have the rights to take such actions as are necessary to protect and maintain their Projects and their interests hereunder, including bringing an action for injunctive relief and/or disconnecting such Co-Tenant's Project from the Shared Facilities, subject to the prior written consent of the Financing Party or Financing Parties of the Co-Tenant(s) seeking to take such actions.

6.9 No Dedication of Property; No Public Access. Each Co-Tenant agrees that entering into this Agreement, performing its obligations hereunder, or exercising its rights hereunder, either in whole or part, is not intended to be, and shall in no way be construed as or deemed to be a dedication to public or quasi-public use or purpose of any of the Project Specific Assets of the Co-Tenant, the Project Specific Assets of another Co-Tenant, any Shared Assets, or any portion of the foregoing. In electing to add any new real property or facilities as Shared Premises or Shared Facilities pursuant to Section 3.7, each Co-Tenant shall be deemed to be acting solely on its own and any participating Co-Tenant's behalf and not on behalf of, or for the benefit of, any third party. The Co-Tenants also agree that, unless and until so ordered by a Governmental Authority in a final, non-appealable order, there shall be no, and none of them shall provide, public access to, or usage of, the Shared Assets or any portion of them. The Co-Tenants undertake to cooperate in enforcing such requirement for limiting access to the Shared Assets, including establishing and enforcing procedures and protocols for security, safety, and protection of the Shared Assets. To the extent any Governmental Authority attempts to compel the Co-Tenants to provide public access to or use of the Shared Assets, the Co-Tenants shall cooperate to dispute and resist such compulsion by any and all reasonable judicial, administrative, legislative, political and other legal means available, unless a majority of the Co-Tenants agree otherwise and no Co-Tenant's Project is materially adversely affected thereby. Notwithstanding the foregoing, each Co-Tenant shall comply with any Governmental Approvals' requirements and those of all applicable Shared Premises Agreements, such Co-Tenant's LGIA or Land Matters. Additionally, to the extent any Co-Tenant's Project's Governmental Approvals are expressly conditioned on providing a third party access to cross over the Shared Premises, such rights of access shall not adversely impact the development, construction, operation, maintenance or repair of the Shared Facilities, any Project, or any part thereof, as confirmed by an independent engineer selected by a Majority of the Co-Tenants, and provided that no public right of access may be created in any Shared Facilities, all of which are the property of and allocated to the Co-Tenants and their Projects, the Co-Tenants shall cooperate in good faith and negotiate a resolution of such request to facilitate the Governmental Approvals.

6.10 Crossing and Co-Location Rights. Each Co-Tenant hereunder shall be permitted to cross and encroach upon the Shared Premises with its Project Specific Assets (including collection lines, access roads, Wind Turbine foundations, and overhang by Wind Turbine blades) solely to the extent necessary to develop, construct, operate and maintain its Project, provided that any such crossings, encroachments, or overhang shall be subject to the noninterference and overburdening protections of Section 3.5 above and to the extent such is allowed under the applicable Governmental Approvals, Shared Premises Agreement, the LGIAs or Land Matters. In particular, any Co-Tenant's exercise of rights under this Section 6.10 shall be permitted only in accordance with Prudent Wind Industry Practices, and shall not interfere with or endanger the



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construction, operation, or maintenance of the Shared Facilities. In the event of a conflict in the location or operation of the Shared Facilities and any Project Specific Assets on the Shared Premises, the Shared Facilities shall take priority over the Project Specific Assets, and any Project Specific Assets existing within the Shared Premises shall take priority over any subsequent Additional Shared Facilities or Project Specific Assets requiring the use of the Shared Premises.

6.11 Restoration. No later than thirty (30) days before the end of the term of this Agreement, each Co-Tenant shall (or shall cause Manager to) do the following (collectively, "Restoration"): (a) remove the Shared Facilities located on its Project Site, except that with respect to any such Shared Facilities located beneath the surface of the land (such as, without limitation, footings and foundations), such Party shall only be required to, remove the same to a depth of twelve inches (12") below the surface of the land (or if a greater depth is required by any applicable third party agreement or by a Governmental Authority with jurisdiction, then to such greater depth), (b) cover up all pit holes, trenches and other borings and excavations made by or on behalf of such Co-Tenant on the Shared Premises, (c) leave the surface of the Shared Premises free from debris arising from the foregoing or from the operations or activities of such Co-Tenant and (d) take any other action with respect to the Shared Facilities as may be required pursuant to the Site Certificate(s) and any applicable third party agreement. All Restoration shall be a Shared Expense.

6.12 Additional Partial Assignments, Subleases and Subleases. Subject to the terms and conditions of this Agreement, each Co-Tenant agrees (a) to cooperate, and (b) without additional compensation, to either partially release from, partially assign or grant a sublease or sublease over such Co-Tenant's Project Site, in each such case, as reasonably necessary for the development, construction, start-up, commissioning, testing, financing, operation and maintenance of any other Co-Tenant's Project; provided, however, that such partial release, assignment, sublease or sublease is permitted under the applicable Shared Premises Agreement, shall not include any area occupied by the transferring Co-Tenant's Wind Turbines or Wind Turbine foundations, violate the terms of this Agreement, including Section 3.5 above, or otherwise materially and adversely affect the granting Co-Tenant's Project, including obstructing or preventing the maintenance or operation of any Wind Turbines and related supporting facilities.

6.13 Cooperation. Upon reasonable request of a Co-Tenant, each Co-Tenant will cooperate in the financing or refinancing of such requesting Co-Tenant's Project, including the execution of estoppels, consents for the benefit of the Financing Parties and other similar agreements as may be reasonably requested by the requesting Co-Tenant and its Financing Parties, in the making of any filings required by such requesting Co-Tenant for regulatory compliance or obtaining Governmental Approvals, and in the operation and maintenance of such requesting Co-Tenant's Project, all solely at the expense of the requesting Co-Tenant.

6.14 Co-Tenants' Responsibilities to the Manager. Each Co-Tenant shall do all of the following:

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(a) with the exception of information and data the Manager is required to record and collect hereunder, provide the Manager with all material information that such Co-Tenant is required to generate, obtain or provide to the Manager, including, but not limited to permits, agreements, data and documents for the Shared Assets that is reasonably required for the Manager to perform its obligations under this Agreement;

(b) examine all material documents submitted by the Manager and render any necessary decisions pertaining thereto promptly;

(c) promptly make material decisions required under this Agreement or any other agreement that the Manager may be requested to administer hereunder and respond to all reasonable requests from the Manager for approval made hereunder;

(d) promptly execute and deliver such evidence of the Manager's authority hereunder as may be reasonably required by third parties;

(e) except to the extent the same are being disputed in good faith, promptly make all payments owed by such respective Co-Tenant and incur all expenditures required of such respective Co-Tenant in connection with the Shared Assets in accordance with this Agreement and the Shared Facilities O&M Budget; and

(f) cooperate with the Manager and the other Co-Tenants in all actions relating to the Shared Premises and Shared Facilities that are necessary to maintain each Co-Tenant in good standing under its LGIA, its Site Certificate, its MBR authority and its EWG status.

### 6.15 Admission of New Co-Tenants; Build-Out Agreement.

(a) Except for a Financing Party that obtains the Undivided Interest of an existing Co-Tenant pursuant to its Financing Documents (in which case no consent shall be required from any of the other Co-Tenants), a New Co-Tenant shall be added under this Agreement (a "New Co-Tenant") only upon the satisfaction of the following requirements: (a) the prospective New Co-Tenant shall be in the process of developing a wind energy electrical generation project, (b) the consent of all of the existing Co-Tenants with a Percentage Interest in the Shared Facilities proposed to be used by the New Co-Tenant, or if the New Co-Tenant will only use Shared Premises and not Shared Facilities, then the consent of all of the Co-Tenants with Premises Interests therein (in either case, in such Co-Tenant's sole discretion), (c) the New Co-Tenant has first obtained rights to use the underlying Shared Premises on which the Shared Facilities it wishes to use are located, by fee interest, lease, easement, sublease, subbasement, or license, as applicable, (d) the New Co-Tenant agrees in writing to accept and be bound by all the terms and conditions contained in this Agreement, (e) that all payments due and payable pursuant to Section 6.14(b) have been paid to the existing Co-Tenants, (f) compliance by the New-Cotenant with all the terms of this Agreement, including Section 17.1, to the extent applicable, Section 3 and Section 4, and (g) all approvals required from the Financing Parties under the Financing Documents, if any, have been obtained. Upon fulfillment of the foregoing conditions precedent and payment of all amounts owed under this Agreement in consideration of

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all Percentage Interests so acquired, including payment to the Co-Tenants contributing Percentage Interests to such New Co-Tenant for reimbursement of Applicable Construction Costs pursuant to Section 4.5 above, the New Co-Tenant shall be granted a Percentage Interest in the applicable Shared Facilities that is no greater than the sum of the then-current Nameplate Capacities of the Projects existing and such grant shall be made pro-rata by each Co-Tenant with an existing Percentage Interest in the applicable Shared Facilities in accordance with their respective Percentage Interests in the applicable Shared Facilities and Exhibit C-1 and Exhibit C-2 attached hereto shall be modified and sent to all the Co-Tenants. The New Co-Tenant's Percentage Interests, Premises Interests and Segment Interests hereunder shall be calculated pursuant to Exhibits C and D attached hereto, which shall be modified by the Manager to reflect the new interests of the existing Co-Tenants and the New Co-Tenant.

(b) The New Co-Tenant shall cause all payments to be made under the Build-Out Agreement in favor of North Hurlburt, South Hurlburt and/or Horseshoe Bend when due and payable thereunder.

6.16 Outage or Disconnection. To the extent any Co-Tenant's operating Project is disconnected or an outage occurs resulting in a loss of production and revenue to such Project, and the loss is a result of another Co-Tenant's exercise of rights under Section 3.7 or breach of this Agreement, the responsible Co-Tenant shall reimburse the Co-Tenant(s) that suffered the loss within thirty (30) days of notice and supporting documentation of the loss.

## 7. APPOINTMENT OF MANAGER

7.1 Engagement of the Manager The Co-Tenants hereby engage the Manager as an independent contractor of the Co-Tenants to serve at the pleasure of, and in all cases subject to the discretion and control of, the Co-Tenants and to manage, operate, and maintain the Shared Assets and to perform other duties pertaining to the Shared Assets, including the ongoing compliance with all obligations under the LGIA(s) and the Site Certificates pertaining to the Shared Assets, all as set forth in this Agreement, but subject in all cases to the discretion and control of the Co-Tenants. The Manager accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof. Manager shall be the Manager as of the Effective Date and shall hold such position until it resigns or is removed or replaced as provided by this Section 7.1. Notwithstanding anything to the contrary in the foregoing, if pursuant to any provision under this Agreement, the Manager is precluded from performing any management service, Manager shall be relieved from its obligation to provide such service.

7.2 Relationship. While the Manager shall serve at the direction of the Co-Tenants in accordance with this Agreement with respect to the Shared Assets, the Manager shall perform all such functions in its capacity as the "Manager" of each Co-Tenant in accordance with each Co-Tenant's Administrative Management Agreement, pursuant to which the Manager has agreed to perform all of its obligations under this Agreement with respect to each such Co-Tenant. In the event of any conflict between this Agreement and any Administrative Management Agreement with respect to any Shared Asset, this Agreement shall prevail.

7.3 Removal of the Manager.

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### 7.3.1 Removal by Co-Tenants.

(a) Any Co-Tenant may remove the Manager by written notice to the Manager and the other Co-Tenants if any of the following conditions are satisfied:

(i) Co-Tenants' Election. A Majority of the Co-Tenants elect in writing to remove the Manager for any reason in their sole and absolute discretion, and provide thirty (30) days' written notice of termination to the Manager following such election;

(ii) For Manager Breach. The Manager (A) breaches any provision of this Agreement, or (B) engages in negligence or willful misconduct in the performance of its obligations hereunder or fails to meet its standard of performance set forth in Section 8.1; and the Manager fails to cure any such breach or action within thirty (30) days after receiving notice thereof from any Co-Tenant (or, if such cure cannot reasonably be completed within the thirty (30) day period, the Manager fails to undertake and promptly cure upon receipt of such notice or fails to give adequate assurances to the Co-Tenants (in the Co-Tenants' sole discretion) that such breach or action will be so cured with all reasonable speed, not to exceed an additional thirty (30) days); or

(iii) For Cessation of Operations. The Manager dissolves, liquidates, or terminates its corporate or limited liability company existence.

(b) No removal of the Manager by the Co-Tenants shall be effective unless and until a successor Manager is appointed with the approval of a Majority of the Co-Tenants, or all the Co-Tenants agree otherwise, unless the Manager ceases to exist. In the event of any removal of the Manager by the Co-Tenants under this Section 7.3.1, the Manager shall provide reasonable assistance to the Co-Tenants to assure a smooth, efficient transition of its management services to the Co-Tenants, or any successor operator selected by the Co-Tenants, for which Manager shall be reimbursed its reasonable expenses in connection therewith. If so instructed by the Co-Tenants, the Manager shall cancel all contracts in a commercially reasonable manner or cause them to be assigned to the applicable Co-Tenants and otherwise use reasonable efforts to mitigate costs associated with such cancellations or assignments; provided, however, that all such cancellation, assignment and termination costs and expenses shall be borne by the Co-Tenants requesting such actions and not the Manager; provided, further, that such amounts do not include any sums which are disputed by reason of Manager's default; and provided, further, that each Co-Tenant shall be entitled to off-set any amounts owed to such Co-Tenant by the Manager. The Manager shall forthwith deliver to the applicable Co-Tenants any plans, designs, papers, computer data, warranties or printouts or other materials which the Manager has generated or has received in the course of performing its duties hereunder that apply to such Co-Tenants' Segment Interests. All parts, tools and other equipment which are the property of the Co-Tenants shall be returned to the applicable Co-Tenants.

### 7.3.2 Resignation by the Manager.

(a) The Manager may resign from its position as Manager if any of the following occur:

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(i) For Co-Tenant Breach. Any Co-Tenant's failure to make undisputed payments when such payments are due and payable under this Agreement, unless within sixty (60) days after written notice from the Manager to the Co-Tenants of such non-payment, all such undisputed payments are made to the Manager in accordance herewith;

(ii) For Cessation of Operations. All of the Co-Tenants dissolve, liquidate, or terminate their corporate or limited liability company existence; or

(iii) Notice of Termination. The Manager provides one hundred twenty (120) days' prior written notice to each Co-Tenant of its intention to resign as the Manager hereunder.

(b) In the event of any permitted resignation by the Manager under this Section 7.3.2, the Manager shall provide reasonable assistance to the Co-Tenants to assure a smooth, efficient transition of its management services to the Co-Tenants, or any successor Manager selected by the Co-Tenants, for which the Manager shall be reimbursed its reasonable expenses in connection therewith. If so instructed by the Co-Tenants, the Manager shall cancel all contracts in a commercially reasonable manner or cause them to be assigned to the Co-Tenants and otherwise use reasonable efforts to mitigate costs associated with such cancellations; provided, however, that all such cancellation and termination costs and expenses shall be borne by the Co-Tenants requesting such actions, and not by the Manager.

**7.3.3 Obligations at End of Term or Upon Removal or Resignation.**

(a) The Manager shall perform all management services with respect to the Shared Assets as required under this Agreement through the date of termination or expiration of this Agreement or the removal or resignation of the Manager in accordance with this Section 7.3, and each Co-Tenant shall make all payments required by it hereunder related to reimbursement of the Manager for expenses through such date, with such payment to be made in full within thirty (30) days after such termination, expiration, removal or resignation.

(b) The Manager shall deliver to the Co-Tenants all of the Co-Tenant Property (including any copies thereof) upon expiration or termination of this Agreement or the removal or resignation of the Manager in accordance with this Section 7.3 and upon request of the Co-Tenants from time to time. Upon expiration or termination of this Agreement or the removal or resignation of the Manager in accordance with this Section 7.3, the Parties shall cooperate with one another in the orderly transfer of management services, including providing all information, schedules, reports and other data in the Manager's possession and relating to the Shared Facilities and, at the Co-Tenants' request, any rights under any contracts with subcontractors to the extent assignable; provided, however, that any such efforts requested by the Co-Tenants and performed by the Manager after the date of termination or expiration of this Agreement (for any reason) shall be a reimbursable expense and compensated in accordance with Section 4.2 and Section 7.4, as applicable.

**7.4 Manager Fees and Reimbursement.** In addition to reimbursement by the Co-Tenants for any Shared Expenses incurred by the Manager under this Agreement, as

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consideration for the management services to be performed by Manager hereunder, the Manager shall be paid a Management Fee and shall be reimbursed for its Expenses by each Co-Tenant in accordance with each such Administrative Management Agreement.

7.5 New Management Agreements. If a new Manager is appointed by a Majority of the Co-Tenants, such appointment shall not be effective until the joinder of the new Manager in this Agreement by a writing in which the new Manager agrees to be bound by all the terms and conditions contained herein and, with respect to each Co-Tenant, the new Manager and such Co-Tenant have entered into an Administrative Management Agreement or such new Manager has replaced the prior Manager under the applicable Administrative Management Agreement, with respect to each Co-Tenant, the new Manager and such Co-Tenant have entered into an Administrative Management Agreement or such new Manager has replaced the prior Manager under the applicable Administrative Management Agreement.

### 8. DUTIES OF THE MANAGER

8.1 In General. The Manager shall cause the Shared Assets to be operated and maintained at the direction of the Co-Tenants and in accordance with (a) all applicable Laws, (b) Prudent Wind Industry Practices, (c) the terms and conditions of the Shared Premises Agreements, (d) applicable Land Matters, (e) applicable Governmental Approvals, including the Site Certificates, (f) all applicable requirements of the Interconnection Provider under the LGIAs, (g) the requirements of any Financing Documents or other project agreements (which requirements will be relayed to the Manager by the Co-Tenants), and (h) the provisions of this Agreement, including taking the actions described in Exhibit E, and the Administrative Management Agreements. All decisions with respect to the Shared Assets shall be made by the Majority of the Co-Tenants with a Percentage Interest in such Shared Assets, who may then direct the Manager accordingly, and only upon such direction (unless otherwise expressed herein), shall Manager have authority to act on behalf of the Co-Tenants with respect to any matters relating to the Shared Assets. The Manager shall be relieved from performing, any such acts that would cause it to violate any applicable laws or regulations, including actions for which it is required to possess a license that it does not, in fact, possess.

8.2 Specific Authority. Without limiting the generality of the foregoing, each Co-Tenant hereby directs the Manager to manage such Co-Tenant's O&M Agreement in accordance with, and pursuant to, its Administrative Management Agreement, as it applies to the ongoing operations and maintenance of the Shared Assets within the scope of such O&M Agreement. Further, a Majority of the Co-Tenants with Segment Interests or Premises Interests, as applicable, in any particular Shared Assets may direct the Manager to enter into other agreements relating to the use, operation, maintenance, and repair of such Shared Assets as permitted by this Agreement, including Exhibit E attached hereto, and each Administrative Management Agreement (but such authority shall not extend to entering into agreements related to any Shared Premises Agreements) on behalf of the Co-Tenants, including, without limitation, agreements to provide services being provided under the O&M Agreements following the expiration or termination thereof. Additionally, a Majority of the Co-Tenants with Segment Interests or Premises Interests, as applicable, in any Shared Assets may direct the Manager to take any of the following actions:

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8.2.1 The day-to-day management and operations activities described on Exhibit E hereto;

8.2.2 to negotiate, enter into, execute, acknowledge, amend or administer agreements relating to the use, operation, maintenance, and repair of the Shared Assets as permitted by this Agreement, including Exhibit E attached hereto, and each Administrative Management Agreement (but such authority shall not extend to entering into agreements related to any Shared Premises Agreements) on behalf of the Co-Tenants, in each case in accordance with the then-applicable Approved Shared Facilities O&M Budget, and provided that (a) no such actions adversely affect the rights or privileges of any of the Co-Tenants or their use, operation access to or availability of the Shared Assets, and (b) the Manager shall provide each Co-Tenant with copies of any such agreement promptly upon execution thereof;

8.2.3 to employ from time to time, at the expense and direction of the Co-Tenants, persons, firms or corporations to render services generally needed to accomplish the purposes of the Co-Tenants with respect to the Shared Assets, subject to Exhibit E attached hereto, and in accordance with the Administrative Management Agreements;

8.2.4 to pay and collect amounts due in connection with the Shared Assets, and to maintain one or more bank accounts wherein funds received by the Manager in connection with its duties hereunder shall be maintained, in each case in accordance with the then-applicable Approved Shared Facilities O&M Budget and any restrictions in the Financing Documents;

8.2.5 to expend monies necessary for the management, operation, maintenance, and repair of the Shared Facilities (in accordance with the Approved Shared Facilities O&M Budget);

8.2.6 to negotiate with, and represent the Co-Tenants' interests before any Governmental Authority regarding property valuation and real property taxes (if any) related to the Shared Assets (provided that if the Manager is not properly licensed to undertake such representation, then the Manager, with the consent of a Majority of the Co-Tenants, shall procure the services of an appropriately licensed Person to undertake such representation);

8.2.7 to execute, acknowledge, and deliver any and all instruments and take such other steps as are reasonably necessary to effectuate the foregoing and as are consistent therewith; and

8.2.8 to represent the Co-Tenants collectively when appropriate in connection with their individual power purchase agreements, Site Certificates and LGIAs.

**8.3 Limitation on Authority.**

8.3.1 The Manager shall not, without the approval of all of the Co-Tenants, and in accordance with the Financing Documents or other project agreements, as applicable:

- (a) Create or cause to be created any Lien on any of the Shared Assets;

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(b) Amend or modify the terms of, or terminate this Agreement, the Site Certificates or LGIAs;

(c) Amend, modify or terminate any Shared Premises Agreements (except that the consent of only all such Co-Tenants who are parties to such Shared Premises Agreements shall be required);

(d) Perform or omit to perform any act which would cause any Person reasonably to believe that the Manager is a partner of the Co-Tenants or authorized to bind such Co-Tenants, except as expressly authorized herein;

(e) Sell, assign, mortgage, encumber, convey or otherwise transfer all or any portion of the Undivided Interests held by any Co-Tenant, or any components of the Shared Assets (other than due to obsolescence or upon winding up hereunder);

(f) Borrow funds or otherwise incur indebtedness on behalf of a Co-Tenant;

(g) Procure any insurance coverage that is less than or conflicts with the coverages required by Section 12;

(h) Adopt any Shared Facilities O&M Budget or amend or modify any Approved Shared Facilities O&M Budget;

(i) Commit to expenditures in excess of the amounts set forth in the Approved Shared Facilities O&M Budget, for or on behalf of the Co-Tenants;

(j) Incur cumulative expenses greater than the amounts set forth in the Approved Shared Facilities O&M Budget; and

(k) Do any act or that is specified as being beyond the authority of a Co-Tenant, or in contravention of, or that will otherwise cause a Co-Tenant to be in default under, this Agreement, the Administrative Management Agreement to which such Co-Tenant is a party or any Financing Documents or project documents to which such Co-Tenant is a party or by which it is bound.

8.4 Additional Shared Assets. Upon a permitted acquisition and inclusion as a Shared Asset of any Additional Shared Assets under Section 3.6 or Section 3.7, or otherwise, the Manager will prepare amendments to Exhibit C-1 or Exhibit C-2, as applicable, to reflect the addition of the Additional Shared Assets to the Shared Assets, which proposed amendments will be submitted to each Co-Tenant for its review and approval.

8.5 Reporting; Notices; Records. Upon written request from any Co-Tenant, the Manager shall provide such Co-Tenant with such reports and records as such Co-Tenant requests or as reasonably necessary to keep such Co-Tenant apprised as to any significant matters concerning the maintenance and repair of the Shared Assets. Additionally, the Manager shall inform the Co-Tenants of any matters related to the Shared Assets as may have a material impact



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on the operation, maintenance and repair of each Co-Tenant's Project. The Manager's reporting obligations shall include all of the following:

(a) Collecting such data and information regarding the Shared Facilities' performance as are required to generate performance reports for any Co-Tenant requesting the same;

(b) Promptly after receiving the same, providing to the Co-Tenants written notice of any communications, orders or requirements of any Governmental Authority affecting the Shared Assets;

(c) Cooperating fully and providing such records and other information that may be requested by any of the Co-Tenants in connection with (i) the filing of its tax returns, (ii) the maintenance and retention of its books and records, (iii) any financial reporting or other disclosures that may be required, and (iv) any audit, litigation or other proceeding by any Governmental Authority, including those that pertain to taxes;

(d) Collecting and providing any information, to the extent such information is in Manager's possession or is reasonably available to Manager, regarding the Shared Assets required for any reports to any Governmental Authorities;

(e) Reporting promptly (and in any event within twenty-four (24) hours of becoming aware of an incident) to the Co-Tenants and to any other Persons entitled to receive such notice any incident of explosion, fire, storm, or other Emergency on the Shared Premises or any Project Site, or otherwise affecting any of the Shared Facilities, of which it becomes aware; and

(f) Providing prompt notice to the Co-Tenants, all in commercially reasonable detail upon learning of the event requiring notice, of (i) any actual violation of any applicable Law, including a requirement of any Governmental Approval, requirement arising out of a Land Matter, or Shared Premises Agreements and (ii) all events, occurrences, conditions, and issues that the Manager reasonably considers are material to, or are reasonably likely to have a material adverse effect on, the operation, maintenance, or results of operations, including notices of Liens and claims of Liens and any and all notices under any Financing Document or project agreements of defaults, events or other conditions required to be reported to the counterparties thereunder.

8.6 Access; Audit Rights. The Manager shall allow each Co-Tenant and/or its authorized representatives reasonable access to the Shared Assets for the purposes of inspecting or auditing the books and records maintained by the Manager with respect to the Shared Assets (at each such Co-Tenant's sole cost and expense); provided, that the Co-Tenants shall only have the right to inspect or audit such books and records for any period that is within three (3) calendar years from the date of an applicable payment is made hereunder or the final settlement or disposition of any claim made pursuant to this Agreement. If any such inspection or audit discloses an error and that, as a result thereof, any overpayment or any underpayment has occurred hereunder, the amount thereof shall be paid within thirty (30) days after receipt of an

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invoice (with reasonable supporting detail) with interest (except that any underpayment caused by the actions or inactions of Manager will not bear interest) at the Default Rate to the Party to whom it is owed by the other Parties obligated therefor; provided, that a Party shall only be liable for any amounts hereunder that relate to errors discovered and disclosed within the inspection and audit period provided for in this provision.

8.7 Emergencies. In the event of any Emergency involving the Shared Assets, the Manager shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, loss of life, or damage or destruction of property, including actions required or reasonably requested by the Interconnection Provider, and shall, as soon as reasonably practicable, report any such Emergency, including the Manager's response thereto, to the Co-Tenants.

8.8 Cooperation with Lenders. Notwithstanding any other provision of this Agreement, the Manager shall during normal business hours and upon reasonable prior notice, cooperate with each Co-Tenant's Financing Parties and their advisors and consultants and shall make all information, reports, logs and other documents relating to the Shared Assets available to such Financing Parties and their advisors and consultants, and shall make the Manager's personnel available for consultation with such Financing Parties and their advisors and consultants all as reasonably requested. The Co-Tenants hereby authorize Manager to, and the Manager hereby agrees that it shall, at any time and from time to time during the term of this Agreement, after receipt of a written request by any of the Co-Tenants, to execute and deliver to such Co-Tenants and/or any Financing Parties, any consents to collateral assignments or estoppel statements as may reasonably be requested.

8.9 Access. The Co-Tenants acknowledge that the Manager's performance under this Agreement is dependent upon the Manager having access to all parts of the Shared Assets and access to all documents as reasonably required by the Manager, and having required approvals and decisions from the Co-Tenants, all to the extent such relate to the particular performance required of the Manager.

8.10 Inspection by Co-Tenants. The Co-Tenants and each of them, through their Representatives, have the right, at all reasonable times, at the expense of the Co-Tenant(s) so acting (a) to inspect or cause to be inspected, the (i) services of Manager (except for an inspection of the books and records, which shall be handled in accordance with Section 8.6), (ii) Shared Assets, and (iii) equipment, materials and methods to be used in the operation and maintenance of the Shared Assets (or the installation of any Additional Shared Assets); provided, however, that such inspection shall not unreasonably interfere with the operation and maintenance of the Shared Assets, and any Persons inspecting the work shall abide by any and all reasonable safety rules and procedures established by the Manager and approved in writing by all Co-Tenants as provided in Section 3.4, that are not inconsistent with this Agreement or otherwise applicable to the Shared Assets, as communicated to them in writing by the Manager prior to their access to the Shared Premises; (b) to attend any and all operation and maintenance meetings in connection with any Shared Assets for which such Co-Tenant has a Segment Interest; provided, however, that such attendance shall not unreasonably interfere with the Manager's performance of its obligations under this Agreement or in connection with the Shared Assets or the operation and maintenance of the Shared Assets; and (c) to access, for itself, its

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employees, agents, representatives or advisors, all parts of the Shared Assets. For purposes of clause (b) immediately above, the Manager shall give the Co-Tenants entitled to attend any such meeting reasonable advance notice of all material construction meetings in order to permit each of the Co-Tenants to send a representative to such meeting, if it so desires. The Co-Tenants' review or inspection of any services provided by the Manager hereunder will not be construed as constituting approval or acceptance of such services. The Manager at all times will retain responsibility for the services that meet the requirements of this Agreement, regardless of whether or not the Co-Tenants have reviewed or inspected such services, plans, documentation or other acts or items.

8.11 Risk of Loss. As between the Co-Tenants and the Manager, the Co-Tenants (in proportion to their respective Segment Interests for the applicable Shared Facilities, and with their respective Premises Interests for the applicable Shared Premises) shall be responsible for the risk of loss to the Shared Assets or any portion thereof during the term of this Agreement.

8.12 Manager Representative. On or promptly after the Effective Date, the Manager shall, by written notice to the Co-Tenants, designate an individual representative (the "Manager Representative") whose instructions, requests, and decisions will be binding upon such Manager in all matters concerning this Agreement, except that the Manager Representative shall not have the authority to amend this Agreement. The Manager shall have the right to change the Manager Representative at any time and from time to time by written notice to the Co-Tenants.

8.13 Manager's Employees. The Manager shall be responsible, in connection with its performance hereunder, and without any related reimbursement or payment from any Co-Tenant, for (a) all payroll, withholding, old age, social security, unemployment, accident insurance, health insurance, employee benefit, and other taxes of employees of the Manager, and (b) all surcharges, penalties, fees and other governmental amounts and charges relating thereto.

8.14 Assignment of Warranties. The Manager shall be responsible for enforcing all manufacturer, constructor and other warranties with respect to the Shared Facilities and any parts or materials associated therewith on behalf of the Co-Tenants. All of the Co-Tenants and Manager shall cooperate in the enforcement of the foregoing warranties, and to the extent possible, any Co-Tenant holding a warranty for a portion of the Shared Facilities shall assign such warranty to Manager for enforcement and collection, and any funds received in lieu of repair or replacement shall be used for repair or replacement of the affected Shared Facilities. Any excess warranty funds shall be distributed to those Co-Tenants with a Segment Interest in the applicable Shared Facilities in proportion to their Segment Interest. The Manager's out of pocket costs and expenses incurred in enforcing said warranties shall be included in the Shared Expenses hereunder.

### 8.15 Rights of Co-Tenants; License of Co-Tenant Property.

8.15.1 The Manager hereby acknowledges and agrees that the Co-Tenants shall hold title to all specialized equipment, tools, parts, reports, data, information, records, books, plans, designs, papers or print outs or other information used by the Manager in the performance of Manager's obligations under this Agreement to the extent such assets have been paid for by

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the Co-Tenants, including those which the Manager has generated, received or purchased (but has been reimbursed by the Co-Tenants) in the course of performing its duties hereunder ("Co-Tenant Property"), but excluding any Manager owned or licensed property (including software, or other intellectual property developed outside of the scope of the management services provided hereunder). Notwithstanding the foregoing, Co-Tenant Property does not include personnel records, information about the Manager's internal costs or internal business practices, trade secrets or other confidential information of the Manager, materials covered by legal privilege relating to the Manager's own counsel (but not to counsel, or materials relating to any audit or dispute between the Parties or between the Manager and any other Person).

8.15.2 The Co-Tenants hereby grant the Manager (including its relevant subcontractors) a paid-up, worldwide license to use the Co-Tenant Property subject to this Agreement in connection with this Agreement and to any limitations, restrictions, terms and conditions relating to such Co-Tenant Property or imposed by applicable Law. Such license shall automatically expire immediately upon the resignation or replacement of the Manager or upon the termination or expiration of this Agreement; provided that the Manager may retain a copy of Co-Tenant Property (other than equipment, tools and parts) as the Manager deems necessary for compliance with Law or for audit purposes, subject to the confidentiality provisions of this Agreement.

### 9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties. As of the date of this Agreement, each Party represents and warrants to each other Party that:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation and is duly authorized and qualified to transact business in the state of Oregon;

(b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(d) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any Governmental Authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with;

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(e) this Agreement constitutes the Party's legal, valid, and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); and

(f) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding, or investigation pending, nor to its knowledge is any such action, proceeding, or investigation threatened (or any basis therefor known to it) which questions the validity of this Agreement, or which would materially or adversely affect its rights or obligations as a Party.

9.2 Exclusivity of Warranties. **THE REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS AGREEMENT ARE EXCLUSIVE, AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WILL APPLY TO THE SUBJECT MATTER OF THIS AGREEMENT.**

### 10. FORCE MAJEURE

Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by any Force Majeure if and to the extent that such Party is prevented or delayed from performing by reason of the Force Majeure; provided, however, that (a) the prevention or delay of performance shall be of no greater scope and of no longer duration than is necessarily caused by the Force Majeure and required by any remedial measures, (b) no obligations of any Party that arose before the occurrence of such causes shall be excused as the result of the occurrence, and (c) each Party shall use reasonable commercial efforts to remedy its inability to perform; provided, further, that no Force Majeure shall excuse any payment obligations of either the Manager or the Co-Tenants due hereunder. If the performance by any Party of its obligations under this Agreement is affected by any Force Majeure, such Party shall as soon as practicable notify the other Parties of the nature and extent thereof.

### 11. INDEMNIFICATION

11.1 Indemnification Between any Co-Tenant and the Manager. The Manager, on one hand, and each Co-Tenant, on the other, shall indemnify, defend and hold harmless the other such Party and, with respect to the Manager, its Manager Indemnified Parties (as defined in the Administrative Management Agreements) and with respect to the Co-Tenants, their Company Indemnified Parties (as defined in the Administrative Management Agreements) for, from and against any and all Liabilities to the extent arising out of or related to any breach of this Agreement, any Shared Premises Agreements and in connection with the Shared Assets in general, pursuant to and in accordance with the indemnification provisions contained in each respective Administrative Management Agreement. Such indemnity claims shall be exclusive and in lieu of any and all other rights and remedies for money damages which any such party may have against the other.

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11.2 Co-Tenant to Co-Tenant Indemnification. To the full extent permitted by Law, each Co-Tenant agrees to indemnify, defend, reimburse and hold harmless each other Co-Tenant (each, a "Co-Tenant Indemnified Party") and such other Co-Tenants' respective directors, managers, officers, shareholders, partners, members, Affiliates (other than the indemnifying Co-Tenant), employees, agents, representatives, successors and assigns (collectively, the "Other Indemnified Parties"), for, from and against any and all Liabilities, including any damage to or an outage of another Co-Tenant's Project, to the extent arising out of or related to any breach of this Agreement or a Shared Premises Agreement by the indemnifying Co-Tenant, any negligent act or omission of the indemnifying Co-Tenant, or any Hazardous Materials spilled, generated, released or introduced into or on the Shared Premises or a Project Site by, through or under the indemnifying Co-Tenant. The indemnification provided under this Section 11.2 will not apply to the extent the Liabilities are caused by the gross negligence or intentionally wrongful acts or omissions of any of the applicable Co-Tenant Indemnified Parties or Other Indemnified Parties, or to the extent that the Liability gives rise to an indemnification claim against the Co-Tenant Indemnified Party or Other Indemnified Party seeking such indemnification in favor of the indemnifying Co-Tenant.

11.3 Notice and Legal Defense. Promptly after receipt by a Co-Tenant Indemnified Party or an Other Indemnified Party under this Section 11 or other parts of this Agreement of any claim or notice or the commencement of any action, administrative or legal proceeding, or investigation as to which indemnity provided for in this Section 11 may apply, the applicable Co-Tenant Indemnified Party or Other Indemnified Party will notify the indemnifying Party hereunder in writing of such fact. The indemnifying Party hereunder will assume the defense thereof with counsel designated by the applicable Co-Tenant Indemnified Party or Other Indemnified Party and reasonably satisfactory to the indemnified Party; provided that if the defendants in any such action include both the indemnified Party and the applicable Co-Tenant Indemnified Party or Other Indemnified Party, and the indemnified Party will have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the applicable Co-Tenant Indemnified Party or Other Indemnified Party, the indemnified Party will have the right to select separate counsel to participate in the defense of such action on behalf of the indemnified Party, at the applicable Co-Tenant Indemnified Party's or Other Indemnified Party's reasonable expense. The applicable Co-Tenant Indemnified Party or Other Indemnified Party will not, without the written consent of the indemnified Party, (a) settle or compromise any indemnity claim or consent to the entry of any final judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release or releases from all liability in respect of such indemnity claim of all indemnified Parties affected by such indemnity claim, or (b) settle or compromise any indemnity claim if the settlement imposes equitable remedies or material obligations on the indemnified Party other than financial obligations for which such indemnified Party will be indemnified under this Agreement. No indemnity claim that is being defended in good faith by the applicable Co-Tenant Indemnified Party or Other Indemnified Party will be settled or compromised by the indemnified Party without the written consent of the applicable Co-Tenant Indemnified Party or Other Indemnified Party.

11.4 Failure to Defend Action. Should the indemnified Party be entitled to indemnification under this Section 11 as a result of a claim by a third party, and the indemnifying

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Party fails to assume the defense of such claim, the indemnified Party may, at the expense of the indemnifying Party, contest (or, with the prior written consent of the indemnifying Party, settle) such claim.

11.5 Indemnification Amount. In the event that an indemnifying Party is obligated to indemnify, reimburse or hold an indemnified Party harmless under this Section 11, the amount owing to the indemnified Party will be the amount of such indemnified Party's reasonable, actual out-of-pocket loss net of any insurance or other recovery.

11.6 Supremacy and Survival. The provisions expressed in this Section 11 will prevail over any conflicting or inconsistent provisions contained elsewhere in this Agreement and will survive termination of this Agreement. This Section 11 shall survive the termination or expiration of this Agreement with respect to liabilities then accrued until the expiration of the applicable statute of limitations.

11.7 Waiver of Consequential Damages. **EXCEPT IN CASES OF FRAUD OR WILLFUL MISCONDUCT, NEITHER THE MANAGER NOR ANY CO-TENANT SHALL BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES THAT ARISE OUT OF, RELATE TO, OR ARE OTHERWISE ATTRIBUTABLE TO THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES, OR ANY ADDITIONAL SERVICES, OR OTHER DUTIES HEREUNDER, EXCEPT TO THE EXTENT SUCH DAMAGES ARE OWED TO UNAFFILIATED THIRD PARTIES IN RELATION TO A LOSS FOR WHICH ONE PARTY OWES INDEMNITY OBLIGATIONS TO THE OTHER PARTY UNDER THIS AGREEMENT. FOR AVOIDANCE OF DOUBT, LOST REVENUES FROM LOST PRODUCTION OR PRODUCTION RESULTING FROM AN OUTAGE, DISCONNECTION, OR DAMAGE TO A PROJECT SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES HEREUNDER, AND SHALL BE FULLY RECOVERABLE DAMAGES FOR ANY CLAIMS ARISING HEREUNDER, INCLUDING CLAIMS FOR INDEMNIFICATION UNDER THIS SECTION 11.**

## 12. INSURANCE

12.1 Co-Tenants' Insurance Requirements. For the duration of this Agreement, either (a) the Co-Tenants shall, at their sole cost and expense, jointly maintain the insurance policies and coverages described in Part A (Required Insurance Coverages of Co-Tenants) of Exhibit F or (b) upon the agreement of all the Co-Tenants, one Co-Tenant or the Manager may procure such insurance policies and coverage on behalf of all of the Co-Tenants, and the Co-Tenants shall bear responsibility for premiums therefor based on their respective Percentage Interests.

### 12.2 Evidence, Terms and Modification of Insurance.

(a) Each Party shall provide the other Parties with insurance certificates reasonably acceptable to the other Parties evidencing that insurance coverages are in compliance with this Agreement. Such insurance and certificates shall (i) name the other Party's group (i.e., Co-Tenants or the Manager, as applicable) as an additional insured under the Commercial

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General Liability, Employer's Liability, Auto Liability and Umbrella Liability policies to the extent of their respective interests; (ii) provide a waiver of any rights of subrogation against the other Party's group (i.e., Co-Tenants or the Manager, as applicable); and (iii) indicate that the Commercial General Liability and Umbrella Liability policies have been endorsed as described above. All policies of a Party shall be written with insurers that the other Parties, in their reasonable discretion, deem acceptable (such acceptance will not be unreasonably withheld or delayed). All policies shall be written on an occurrence basis, except as provided in Section 12.2(b). All policies of a Party shall contain an endorsement that the other Parties' insurance policies shall be primary in all instances regardless of like coverages, if any, carried by such other Party. No Party's liability under this Agreement is limited to the amount of insurance coverage required herein by virtue of this Section 12.2.

(b) If any insurance required to be maintained by a Party hereunder ceases to be available on commercially reasonable terms in the commercial insurance market, such Party shall provide written notice to the other Parties, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not available on commercially reasonable terms in the commercial insurance market for electric generating plants of similar type, geographic location and design. Upon receipt of such notice, such first-mentioned Party shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured, and the other Party shall not unreasonably withhold its consent to modify or waive such requirement.

### 13. CONFIDENTIALITY

#### 13.1 Confidentiality.

13.1.1 The Confidential Information shall not be disclosed or permitted to be disclosed by the Receiving Party to any other person or entity not a Party hereto without the prior written consent of the Disclosing Party, except:

(a) to the Receiving Party's Representatives; provided that the Receiving Party guarantees the adherence of its Affiliates to, and will be responsible for their breach of, this Section 13.1; and provided, further, that prior to making disclosure of Confidential Information to its Representatives who are not directors, officers or employees of the Receiving Party or its Affiliates, the Receiving Party shall obtain a written undertaking of confidentiality not less restrictive than this Section 13.1 from each such Representative (except in the case of outside legal counsel the Receiving Party shall only be required to procure that such legal counsel is bound by a professional legal duty of confidentiality to the Receiving Party); and

(b) to the extent such information is required to be disclosed under applicable Law or stock exchange regulations or by a governmental or court order, decree, regulation or rule; provided that the Receiving Party makes all commercially reasonable efforts to give prompt written notice to the Disclosing Party as far as possible in advance of such disclosure to permit the Disclosing Party to obtain a protective order against or otherwise to limit the disclosure (in connection with which the Receiving Party shall reasonably cooperate with the



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Disclosing Party); and provided, further, that, in any case, the Receiving Party shall only disclose that portion of the Confidential Information that, in the opinion of the Receiving Party's legal counsel, is required to be disclosed and shall use its commercially reasonable efforts to ensure further confidential treatment of the Confidential Information so disclosed.

13.1.2 The Receiving Party shall use the Confidential Information, or permit the same to be used by the Receiving Party's Representatives, in connection with the Receiving Party's exercise of its rights and performance of its obligations under this Agreement and for no other purpose whatsoever.

13.1.3 The Parties acknowledge that the Disclosing Party would not have an adequate remedy at law for money damages if the covenants contained in this Section 13.1 were breached. Accordingly, the Disclosing Party shall be entitled to an injunction restraining such disclosure and other equitable relief (including specific performance), without the requirement of posting a bond or other security.

**14. CO-TENANT EVENTS OF DEFAULT, TERMINATION, REMEDIES, LIMITATION OF LIABILITY, SURVIVAL**

14.1 Events of Default. The occurrence and continuation of any of the following events at any time during the term of this Agreement, except to the extent caused by, or resulting from, an act or omission of another Co-Tenant in breach of this Agreement or an event of Force Majeure, will constitute an event of default of a Co-Tenant (an "Event of Default"):

14.1.1 Payment. The Co-Tenant fails to pay when due any amounts required to be paid by such Co-Tenant under this Agreement, and such failure to pay is not cured within fifteen (15) days following written notice from the Manager or any other Co-Tenant to whom any such amount is owed specifying the amount to be paid, provided that such period will be extended for so long as the allegedly breaching Co-Tenant is disputing in good faith any such amount not paid when due pursuant to the procedures set forth in Section 15.

14.1.2 Shared Premises Agreements. A Co-Tenant breaches, or causes the breach of, a Shared Premises Agreement and fails to cure such breach within the time permitted by such Shared Premises Agreement, after receipt of a notice of breach under the Shared Premises Agreement to cure, or cause to be cured, the breach described therein, as is given to the breaching Co-Tenant. Each of the Co-Tenants agrees to provide a copy of any notice of breach under a Shared Premises Agreement that is received or given by it to the Manager and the other Co-Tenants within twenty-four (24) hours of receiving (or giving) such notice of breach, regardless of the party or the contract that is alleged to be in breach in the notice.

14.1.3 Breach of LGIA, Site Certificate and Other Agreements. A Co-Tenant breaches, or causes the breach of, its applicable LGIA, Site Certificate, Strategic Investment Program Agreement or other agreement, and the exercise of any remedies for such breach by a third party could reasonably have a material adverse effect on any of the Shared Assets or this Agreement or any of the non-breaching Co-Tenants' Projects, and such breaching Co-Tenant fails to cure such breach within the time permitted by such agreement. Each of the Co-Tenants

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agrees to provide a copy of any notice of breach received or given by it to the Manager and the other Co-Tenants under an applicable LGIA or a Site Certificate within twenty-four (24) hours of receiving (or giving) such notice of breach, regardless of the party or the contract that is alleged to be in breach in the notice.

14.1.4 Regulatory Compliance. A Co-Tenant fails to maintain its EWG status or fails to maintain, in continuous and ongoing compliance with applicable regulations, its MBR authority once obtained, or is not in compliance with any federal regulatory Law, rule or regulation, and the result thereof could reasonably have a material adverse effect on any of the Shared Assets or this Agreement or any of the non-breaching Co-Tenants' Projects, and such Co-Tenant fails to cure such non-compliance within the time permitted, if any, by such regulatory Law, rule or regulation. Each of the Co-Tenants agrees to provide a copy of any notice of any such failure received by it to the Manager and the other Co-Tenants within twenty-four (24) hours of receiving such notice. Other Defaults. The Co-Tenant fails to cure any other failure to perform or observe when due any act or covenant under this Agreement that such Co-Tenant is obligated to perform or observe within thirty (30) days following written notice from any other Co-Tenant specifying the nature of the failure to perform, provided that if the breach is not reasonably capable of being cured within thirty (30) days, then the breach will be deemed cured if the breaching Co-Tenant commences, diligently pursues, and completes action that remedies the breach within ninety (90) days of receipt of such notice.

14.1.6 Seizure of Property. Any substantial part of such Co-Tenant's property is subjected to any levy, seizure, assignment or sale for or by any creditor or Governmental Authority that materially affects that Co-Tenant's ability to perform under this Agreement.

14.1.7 Bankruptcy. If the Co-Tenant is adjudicated as bankrupt, becomes insolvent, enters into an arrangement or composition with the Co-Tenant's creditors, suffers permanent or temporary court-appointed receivership of substantially all of such Co-Tenant's property, makes a general assignment for the benefit of creditors, files a voluntary bankruptcy petition or suffers the filing of an involuntary bankruptcy petition that is not dismissed within thirty (30) days after filing.

14.1.8 Breach of Build-Out Agreement. The breach of any payment obligations under the Build-Out Agreement in favor of North Hurlburt, South Hurlburt and/or Horseshoe Bend thereunder.

14.2 Remedies. Upon the occurrence and during the continuation of an Event of Default by a Co-Tenant, each other Co-Tenant will have any and all of the following remedies, exercisable only after due inquiry that an Event of Default has occurred and is continuing and in coordination with other Co-Tenants that are also exercising their cure rights with respect to such Event of Default by the defaulting Co-Tenant:

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14.2.1 Tender Performance. In its sole and absolute discretion, to cure the default of the defaulting Co-Tenant by making or tendering the required payment or performance, and permitting the defaulting Co-Tenant's Project to remain connected to the Shared Facilities and sales of electricity by the defaulting Co-Tenant to be continued.

14.2.2 Disconnect Co-Tenant. To the extent such Event of Default affects or relates to any Shared Facilities in which the acting non-defaulting Co-Tenant has a Segment Interest, to cause the disconnection of the defaulting Co-Tenant's Project Specific Assets from such Shared Facilities; provided that the defaulting Co-Tenant's Project will be permitted to reconnect promptly when and if the default is cured, and any and all damages suffered and incurred by the non-defaulting Co-Tenants as a result of such default have been compensated.

14.2.3 Specific Performance. To bring an action to specifically enforce the provisions of this Agreement. The Co-Tenants agree that damages alone are an inadequate remedy for an Event of Default under this Agreement, and that each Co-Tenant will be entitled to seek injunctive and other equitable relief against any other Co-Tenant to prevent or eliminate such default.

14.2.4 Other Rights and Remedies. To exercise any and all other rights and remedies which the non-defaulting Co-Tenants might otherwise have under this Agreement, at law or in equity (subject to any applicable limitations thereon in this Agreement).

14.3 Reimbursement of Expenses to Cure; Lien. If any Co-Tenant elects to cure an Event of Default of another Co-Tenant, the defaulting Co-Tenant will reimburse each curing Co-Tenant for its expenses incurred in rendering the cure, plus interest at the Default Rate. The Co-Tenant(s) curing the default will have a lien on the defaulting Co-Tenant's Undivided Interest, to the extent of the amount expended by such curing Co-Tenant in remedying the default (including attorneys' fees), and the defaulting Co-Tenant hereby appoints the curing Co-Tenant as its attorney-in-fact, which appointment is coupled with an interest and is irrevocable and with full powers of substitution, to file, record and otherwise assert such lien, to the extent of the expenditures in relation to such cure or remedy or to exercise such defaulting Co-Tenant's right to take any lawful and reasonable action to cure any Event of Default, including with respect to any Shared Premises Agreement and any financing; provided, however, that no such Lien in favor of such curing Co-Tenant shall attach until such curing Co-Tenant has executed and delivered a subordination and non-disturbance and attornment agreement in favor of the Financing Parties. Each Party shall, upon demand, reimburse any other Party (with interest at the Default Rate) for all of its reasonable costs, fees and expenses (including reasonable attorneys' fees) in connection with the exercise of its rights hereunder.

14.4 Remedies Cumulative. No right, remedy or election given by any term of this Agreement will be deemed exclusive but each will be cumulative with all other rights, remedies and elections available under this Agreement, at law or in equity (subject to any applicable limitations thereon in this Agreement).

14.5 Waiver of Partition. THE CO-TENANTS WILL NOT HAVE AND HEREBY IRREVOCABLY WAIVE THE RIGHT TO PARTITION ALL OR ANY PORTION OF THE

SHARED ASSETS, OR TO MAKE APPLICATION TO ANY COURT OR AUTHORITY OR TO COMMENCE OR PROSECUTE ANY ACTION OR PROCEEDING FOR PARTITION OF THE SHARED ASSETS. EACH PARTY WILL BE ENTITLED TO A DECREE OR ORDER RESTRAINING OR ENJOINING SUCH PARTITION, APPLICATION, ACTION OR PROCEEDING UPON ANY BREACH OF THE PROVISIONS OF THIS SECTION 14.5. THE CO-TENANTS ACKNOWLEDGE AND AGREE THAT THEIR MUTUAL OBLIGATIONS UNDER THIS AGREEMENT ARE FULL AND SATISFACTORY CONSIDERATION FOR THE WAIVER PROVIDED IN THIS SECTION 14.5.

## 15. DISPUTE RESOLUTION

15.1 Arbitration. Unless stated otherwise herein, all Disputes shall be resolved in accordance with the dispute resolution procedures set forth in this Section 15. In the event of any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to resolve or arbitrate, the Parties, represented by chief executive officer or chief operating officer level officers, shall first use good faith efforts to resolve such matter for a period of not less than thirty (30) days. If the Parties cannot resolve such matter pursuant to the immediately preceding sentence, the matter shall be determined by arbitration in New York, New York, before three (3) neutral arbitrators. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on any award may be entered in any court having jurisdiction. The arbitrators may, in the award, allocate all or part of the costs of arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

15.2 Injunctive Relief; Joinder. Notwithstanding the foregoing, (a) the Parties may at any time seek injunctive or equitable relief from a court of competent jurisdiction, and (b) nothing herein shall prevent a Party from defending or pursuing any claim in a court or other proceeding against a third party that has been initiated by such third party. Notwithstanding or any other provisions of this Agreement related to submitting Disputes to arbitration or other dispute resolution process, if and to the extent a matter submitted to arbitration or such other process involves a third party whose joinder as a party is reasonably necessary for the resolution of the matter but who is not otherwise contractually bound by the arbitration or dispute resolution process and who does not agree to be bound by the arbitration or other dispute resolution process, any Party to such matter may elect by notice to the others to have the arbitration or other dispute resolution process dismissed without prejudice and to have the Dispute resolved by suit or action or other appropriate proceedings under the other provisions of this Agreement whereby jurisdiction over such third party is obtained.

## 16. NOTICES.

All notices and other communications required or permitted by this Agreement or by applicable Law to be served upon or given to a Party by another Party shall be in writing and shall be deemed duly served, given and received (a) on the date of service, if served personally or sent by facsimile transmission (with appropriate confirmation of receipt) to the Party to whom notice is to be given, or (b) on date of receipt, if mailed by certified mail, postage prepaid, return

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receipt requested, or (c) on the date of receipt if sent by a nationally recognized courier for next day service and so addressed as follows:

**If to Horseshoe Bend, South Hurlburt, North Hurlburt:**

c/o Caithness Energy, L.L.C.  
565 Fifth Avenue, 29th Floor  
New York, NY 10017  
Attention: John McNamara and Gail Conboy  
Facsimile: (212) 921-9239

With a copy to:

Boies, Schiller & Flexner LLP  
575 Lexington Avenue, 7th Floor  
New York, NY 10022  
Attention: Christopher Boies, Esq.  
Facsimile: (212) 446-2350

**If to Manager:**

c/o Caithness Energy, L.L.C.  
565 Fifth Avenue, 29th Floor  
New York, NY 10017  
Attention: David Casale and Gail Conboy  
Facsimile: (212) 921-9239

With a copy to:

Boies, Schiller & Flexner LLP  
575 Lexington Avenue, 7th Floor  
New York, NY 10022  
Attention: Christopher Boies, Esq.  
Facsimile: (212) 446-2350

**17. MISCELLANEOUS PROVISIONS**

**17.1 Transfers.**

**17.1.1 Transfer by Co-Tenants.** No Co-Tenant shall Transfer, directly or indirectly, its Undivided Interest, its Premises Interest or its rights under this Agreement, whether voluntarily, by operation of law, or otherwise, to any Person, except (a) with the consent of all the Co-Tenants, (b) as provided in Section 17.2 below, (c) if the assignment of the Undivided Interest, the Premises Interest and the accompanying rights of the Co-Tenant under this Agreement are assigned together with the transfer of the Co-Tenant's entire Project to the transferee of the Project (in which case, such transferee shall assume all the obligations of the

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assigning Co-Tenant from and after the date of assignment), (d) the assignment of the Undivided Interest, its Premises Interest and the accompanying rights of the Co-Tenant under this Agreement for purposes of facilitating a *bona fide* sale-leaseback financing transaction with respect to the assigning Co-Tenant's Project, or (e) as permitted in Section 6.15. If all the Co-Tenants approve an assignment, and the procedures provided in Section 17.1.2 are complied with, the assigning Co-Tenant shall be released from any further obligations hereunder with respect to the interest assigned to the extent arising from and after the effective date of such assignment. Notwithstanding the foregoing, the sale or exchange of membership interests in any Co-Tenant (or any of its constituent members or partners) in connection with any sale, exchange, merger, reorganization or tax equity financing shall be expressly permitted and shall not require the consent or approval of any other Party hereunder.

**17.1.2 Procedures.** No Co-Tenant shall be bound by any assignment, no assignment shall be valid, and no assignee of any Co-Tenant's Undivided Interest, its Premises Interest or its rights under this Agreement shall become a Co-Tenant and a Party hereto unless (a) the assignment is permitted under Section 17.1.1 above, (b) a counterpart of the instrument of assignment, executed by the parties thereto, is delivered to the other Co-Tenants and to Manager, (c) the assignee consents in writing, in form approved by all the Co-Tenants, to be bound by the terms of this Agreement in the place and stead of the assigning Co-Tenant with respect to all obligations and liabilities arising from and after such assumption, and (d) any and all necessary Financing Parties and other third party consents to such assignment are obtained.

### **17.2 Right to Encumber; Financing Party Protection.**

**17.2.1 Right to Encumber.** The Manager and each Co-Tenant specifically agree that any Co-Tenant may at any time pledge, collaterally assign, encumber, or grant a security interest in its own Undivided Interest, its Premises Interest and in its rights under this Agreement to any of the Financing Parties. The Manager and each Co-Tenant also agree that it shall, at any time and from time to time during the term of this Agreement, after receipt of a written request by another Co-Tenant, execute and deliver to the other Co-Tenant and that Co-Tenant's Financing Parties, as designated in such request, such estoppel certificates and consents as may be reasonably requested thereby.

**17.2.2 Financing Party Protection Provisions.** Notwithstanding any other provision of this Agreement, should a Co-Tenant pledge, collaterally assign or encumber its Undivided Interest and its rights under this Agreement as provided above, the Parties hereto expressly agree between themselves and for the benefit of any Financing Parties that:

(a) concurrently with the delivery of any notices of an Event of Default under this Agreement to any Co-Tenant or to the Manager, the Party delivering such notice shall deliver copies of all such notice to any Financing Party that has delivered written notice to the Manager of its desire to be so informed and containing its notice address with copies by e-mail to such Financing Party's legal counsel at such e-mail address(es) as may be provided to the Manager by such Financing Party (and which information the Manager shall timely deliver to each Co-Tenant);

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(b) any Financing Party shall have the right (but not the obligation) within either (i) sixty (60) days after its receipt of a notice of an Event of Default of such Financing Party's mortgagor Co-Tenant under this Agreement to cure such Event of Default if it is monetary or (ii) a reasonable period of time, but not less than one hundred and twenty (120) days, for such Financing Party to cure the Event of Default if it is nonmonetary; provided, however, that such Financing Party shall not be required, as a condition to avoiding any non-defaulting Party exercising its rights following an Event of Default, to cure an Event of Default that cannot reasonably be cured by the Financing Party, such as the bankruptcy filing of a Party, seizure of a Co-Tenant's property, the failure of a Co-Tenant to supply information and similar incurable defaults (collectively, "Status Defaults");

(c) this Agreement shall not be materially altered, amended, modified, terminated or rescinded by any Party without the prior written consent of each Financing Party; no Financing Party shall be bound by any amendment or modification of this Agreement made without the prior written consent of such Financing Party;

(d) without any further consent of any Party, each Financing Party shall have the right to (i) transfer the Undivided Interest and/or Premises Interest (as applicable, the "Encumbered Interest") of the Co-Tenant (as applicable, a "Mortgagor Co-Tenant") that has ~~encumbered its Undivided Interest and/or Premises Interest in the Shared Assets in favor of such~~ Financing Party in enforcement of the Mortgage to such Financing Party or its designee or immediate successor in interest, by any means, including a conveyance in lieu of foreclosure, (ii) transfer the Encumbered Interest in enforcement of the Mortgage to a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale, and if such purchaser is a Financing Party, then to its immediate successor in interest and (iii) exercise any other rights or remedies afforded to such Financing Party under its Mortgage (and the related Financing Documents) and under this Agreement; none of the terms of this paragraph (d) shall constitute a breach, default or Event of Default under this Agreement. If a Financing Party shall become a Co-Tenant under this Agreement, or a Mortgagor Co-Tenant's Encumbered Interests shall be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage, or any Shared Assets shall be transferred by deed in lieu of foreclosure, this Agreement shall continue in full force and effect as a direct agreement between the other Parties hereto and the party who shall succeed to the rights and duties of the Mortgagor Co-Tenant hereunder. The other Parties hereto shall attorn to any such Financing Party or any such other successor party as a Co-Tenant hereunder, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that the Parties agree that in the event that a Financing Party or any such other party succeeds to the interest of a Mortgagor Co-Tenant under this Agreement, such Financing Party or such other successor party: (A) shall not be personally liable for any act or omission of any prior Co-Tenant (including such Mortgagor Co-Tenant); (B) shall not be bound by any material amendment or modification of this Agreement not previously approved by such Financing Party and (C) shall not be liable to other Parties for any monetary defaults of such Party which accrue prior to the date of the transfer giving rise to the attornment hereunder;

(e) with respect to insurance required under this Agreement:

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(i) notwithstanding any provisions contained in this Agreement to the contrary, as long as the Mortgage remains an encumbrance against the Encumbered Interest, all such Mortgagor Co-Tenant's policies of insurance called for in herein or otherwise in effect for the Shared Premises shall, in addition to any provisions required under this Agreement, contain a standard mortgagee protection endorsement, and the applicable Financing Party shall be entitled to hold the originals or certificates of all such policies; provided that if more than one Financing Party entitled to hold such originals hereunder requests to hold the originals or certificates of all such policies, then the same shall be delivered to the Financing Party whose Mortgage is senior in lien priority or in accordance with any intercreditor agreement then in effect;

(ii) each Financing Party shall be entitled to participate in the settlement or adjustment of any losses with respect to any Segment Interest and/or Premises Interest included within its applicable Encumbered Interest in accordance with the applicable Mortgagor Co-Tenant's Segment Interest or Premises Interest, as applicable, therein, covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of each Financing Party;

(iii) Each Financing Party shall have the right to participate in ~~any settlement of or stipulation of judgment with respect to any condemnation proceeding~~ affecting all or any portion of the Shared Assets with respect to any Segment Interest and/or Premises Interest included within its applicable Encumbered Interest or any agreement to sell all or any portion of such Shared Assets in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without each applicable Financing Party's prior written consent; and

(iv) notwithstanding any provisions to this Agreement to the contrary, the Parties agree that any property insurance proceeds and condemnation award with respect to the Shared Assets included within any Segment Interest and/or Premises Interest included within its applicable Encumbered Interest shall be paid to each such Financing Party in accordance with the applicable Mortgagor Co-Tenant's Segment Interest or Premises Interest therein, and each Financing Party shall administer such proceeds or award in accordance with the terms of its Financing Documents; and

(f) In the event that this Agreement or a Co-Tenant's interest in this Agreement is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditor's rights with respect to a Co-Tenant (the "Insolvent Co-Tenant"), then, so long as the applicable Financing Party has cured any monetary breaches hereunder and is making commercially reasonable efforts to cure any non-monetary breaches hereunder (other than Status Defaults), the Parties other than the Insolvent Co-Tenant (the "Solvent Co-Tenants") shall, immediately upon written request from such Financing Party received within ninety (90) days after receipt of notice by Financing Party of any such termination, rejection or disaffirmance, without demanding additional consideration therefor, (i) enter into a new agreement, which shall (A) contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by a Party prior to such termination, rejection or disaffirmance), (B) be for a term commencing on the date of such termination,



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rejection or disaffirmance, and continuing for the remaining term of this Agreement before giving effect to such termination, rejection or disaffirmance, (C) include the applicable Financing Party as the successor to the Undivided Interest and/or Premises Interest of the Insolvent Co-Tenant, and (D) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created or suffered by any Party hereto, and, until such time as such new agreement is executed and delivered, such Financing Party may enter, use and enjoy the Shared Assets and conduct operations thereon as if this Agreement were still in effect, or (ii) to the extent only the Insolvent Co-Tenant's interest is terminated, permit the applicable Financing Party or its designee to join in this Agreement as a new Co-Tenant in place of the Insolvent Co-Tenant, within twenty (20) days after the receipt of such request. A Financing Party shall only be liable under this Agreement while it is the owner of an Undivided Interest and/or has taken possession of a Premises Interest.

17.2.3 Expenses. Except as otherwise provided in this Agreement, all reasonable expenses, including reasonable attorneys' fees, incurred by the Manager or any other Co-Tenant in connection with (a) the assignment or proposed assignment of all or any part of a Co-Tenant's Undivided Interest or Premises Interest and its rights under this Agreement, or (b) the actual or proposed pledge, collateral assignment, encumbrance, or grant of a security interest in all or any part of a Co-Tenant's Undivided Interest or Premises Interest and its rights under this Agreement to a Financing Party, shall be paid by the assigning/borrowing Co-Tenant to the Manager and respective Co-Tenant(s) upon request therefor.

17.2.5 Assignment by Manager. The Manager may not assign, pledge or otherwise transfer all or any of its rights, or delegate any of its obligations under or in this Agreement or any interest herein without the prior written consent of all of the Co-Tenants, which may be withheld in each Co-Tenant's sole and absolute discretion; provided, however, such restriction on assignment shall not apply if the assignment is to an Affiliate of the Manager or constitutes an indirect assignment as a result of a merger, acquisition, sale or other institutional reorganization of the Manager or its Affiliates.

17.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of (a) the State of New York in all respects other with respect only to the real property that is governed by this Agreement, without giving effect to any choice of law rules thereof which may permit or require the application of the laws of another jurisdiction (other than New York General Obligations Law Section 5-1401), and (b) the State of Oregon with respect only to the real property that is governed by this Agreement. The Parties hereby irrevocably submit to the jurisdiction of the courts of the State of New York in the county of New York or of the United States of America in the Southern District of New York and hereby waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue in any such action or proceeding in any such court. IN ADDITION, EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. Each Party (a) certifies that no representative, agent or attorney of the other Party has represented, expressly or otherwise, that the other Party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges

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that it and the other Party have been induced to enter into this Agreement by, among other things, the mutual waivers in this.

17.4 Compliance with Laws. This Agreement is subject to all present and future Laws, including valid orders, rules and regulations of any Governmental Authority having jurisdiction over the Shared Assets, the Projects or the Parties.

17.5 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Section 17.5 (Survival), Section 11 (Indemnification), Section 13 (Confidentiality), Section 14.4 (Remedies Cumulative) and Section 15 (Dispute Resolution) are intended to and shall survive termination of this Agreement so as to cover all claims instituted within the period set forth in the applicable statute of limitations.

17.6 Effect of Waiver. The Parties agrees that no failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, unless such waiver is made expressly and confirmed in writing by the Party against whom such waiver would be enforced, nor shall any single or partial exercise by a Party of any right, power or privilege hereunder preclude any other or future exercise thereof.

17.7 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

17.8 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, representations, communications and understandings, written or oral, express or implied, pertaining thereto. Any modifications, amendments, or changes to this Agreement shall be binding upon the Parties only if agreed upon in writing and signed by the authorized representatives of the Parties and shall be subject to any requisite Governmental Approvals.

17.9 Not for the Benefit of Third Parties. This Agreement is intended to be solely for the benefit of the Parties, the Co-Tenant Indemnified Parties, the Other Indemnified Parties and the Financing Parties, and their respective successors and permitted assignees, and is not intended to and shall not confer any rights or benefits on any Person not a signatory hereto.

17.10 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that all of the Parties are not signatories to the original or to the same counterpart. A copy of this Agreement signed by a Party and delivered by facsimile or electronic transmission to the other Parties shall have the same effect as the delivery of an original of this Agreement containing the original signature of such first-mentioned Party.

17.11 Further Assurances. Each Party agrees to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Parties, which are not inconsistent with the provisions of this

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Agreement and which do not involve assumptions of obligations or materially affect the cost of performance, other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

17.12 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created in this Agreement will be the sole obligations of the Parties to this Agreement. No Party will have recourse to any parent, subsidiary, partner, joint venture, affiliate, director, or officer of the other Parties for performance of such obligations unless the obligations are assumed in writing by the person against whom recourse is sought.

17.13 Successors and Assigns. Subject to Section 17.1, this Agreement will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns. The Shared Assets will be held, conveyed, assigned, hypothecated, encumbered, leased, used and occupied, subject to the covenants, terms and provisions set forth in this Agreement, which covenants, terms and provisions will run with the land, and will be binding upon and inure to the benefit of each Party and each other person and entity having any interest therein during their ownership thereof, and their respective permitted grantees, heirs, successors and assigns, and will create privity of contract and estate among the Parties and their respective grantees, heirs, successors and permitted assigns.

17.14 Competing Ventures. Any Co-Tenant or the Manager may engage in or possess an interest in other business ventures of any nature and description, independently or with others, including but not limited to the ownership, financing, leasing, management, syndication, investment, brokerage and development of real property or energy projects (including real property or projects of the same type and nature as the Projects), and none of the other Co-Tenants nor the Manager shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom.

17.15 Memorandum. Concurrently with the execution and delivery of this Agreement, the Parties will execute a Memorandum of this Agreement in the form of Exhibit G attached hereto, which Memorandum will be recorded in the official real estate records of the county or counties in which the Shared Assets are located. The provisions of this Agreement will control, however, with regard to any omissions from, or provisions of this Agreement that may be in conflict with, the Memorandum of Agreement. At such time as this Agreement has been terminated, the Parties agree to execute and record in the official real estate records of the counties referred to above, a termination of the Memorandum of Agreement, which termination will specifically refer to the Memorandum of Agreement and will recite that this Agreement has terminated in accordance with the provisions of this Agreement.

17.16 Interpretation.

17.16.1 Headings. The titles, captions and headings in this Agreement are inserted for convenience only and will not be used for the purposes of construing or interpreting this Agreement.

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17.16.2 References in this Agreement. In this Agreement, unless a clear, contrary intention appears: (a) the singular includes the plural and vice versa; (b) reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (c) pronouns and reference to any gender includes each other gender; (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement; (e) reference to any Law means such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (f) reference to any Section means such Section of this Agreement, and references in any Section or definition to any clause means such clause of such Section or definition; (g) "hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular Section or other provision of this Agreement; (h) "including" (and with correlative meaning "include") means including without limitation; and (i) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

17.16.3 Industry Meanings. Words and abbreviations not defined in this Agreement that have well-known technical or wind power industry meanings in the United States are used in this Agreement in accordance with those recognized meanings.

17.16.4 Joint Responsibility for Drafting. This Agreement was negotiated and prepared by the Parties with advice of counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Agreement, and none of the provisions of this Agreement will be construed against one Party on the ground that such Party is the author of this Agreement or any part of this Agreement.

17.16.5 Incorporation of Exhibits and Recitals. The Exhibits attached to and the recitals set forth in this Agreement are incorporated into this Agreement by reference for all purposes.

17.16.6 No Merger. If and to the extent any Co-Tenant hereunder has or should acquire separate estates in any portion of the Shared Premises, including leases, easements, or fee interests, those estates shall not be merged, but shall survive and continue

17.16.7 Covenants Running with the Land. Each obligation of the Co-Tenants under this Agreement will, for so long as and only for so long as such obligation will be in effect under this Agreement, be a covenant running with the land and will inure to the benefit of and be binding upon, as applicable, the successors and assigns of the Co-Tenants, with respect to all such Persons' respective interests in the Shared Assets. Notwithstanding the foregoing, upon the termination of this Agreement, each such obligation of the Co-Tenants shall terminate to the extent not then accrued and shall no longer be a covenant running with the land and shall no longer benefit or be binding upon any such successors or assigns with respect to the underlying

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Shared Assets to the extent such successors or assigns acquire their interests therein following such termination.

17.16.8 Attorneys' Fees. With respect to any Dispute relating to this Agreement, or in the event that a suit, action, arbitration, or other proceeding of any nature whatsoever, including (without limitation), any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action seeking a declaration of rights or an action for rescission, is instituted to interpret or enforce this Agreement or any provision of this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants' and other experts' and professional fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith including (without limitation) deposition and expert fees and costs incurred in creating exhibits and reports, as determined by the judge or arbitrator at trial or other proceeding, or on any appeal or review, in addition to all other amounts provided by law. Costs and expenses include but are not limited to postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges, including but not limited to court reporters' charges, appearance fees, and all costs of transcription; and costs incurred in searching copying records. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be sufficient to fully reimburse all attorneys' fees reasonably incurred. In addition, each Party shall be entitled to recover its attorneys' fees, costs and expenses incurred in the preparation and service of notices of breach or default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default.

*[Signature page follows]*

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IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**"CO-TENANTS":**

**HORSESHOE BEND WIND, LLC**  
a Delaware limited liability company

By: Caithness Shepherds Flat, LLC  
a Delaware limited liability company  
Its Manager

By: Caithness Northwestern Wind, LLC  
a Delaware limited liability company  
Its Managing Member

By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

**SOUTH HURLBURT WIND, LLC**  
a Delaware limited liability company

By: Caithness Shepherds Flat, LLC  
a Delaware limited liability company  
Its Manager

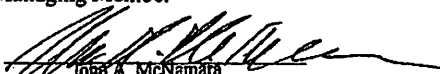
By: Caithness Northwestern Wind, LLC  
a Delaware limited liability company  
Its Managing Member

By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

**NORTH HURLBURT WIND, LLC**  
a Delaware limited liability company

By: Caithness Shepherds Flat, LLC  
a Delaware limited liability company  
Its Manager

By: Caithness Northwestern Wind, LLC  
a Delaware limited liability company  
Its Managing Member

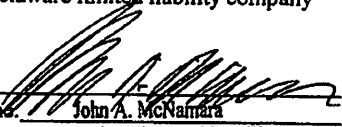
By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

Non-FERC Shared Facilities Agreement

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**"MANAGER":**

SHEPHERDS FLAT MANAGEMENT, LLC,  
a Delaware limited liability company

By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

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Non-FERC Shared Facilities Agreement

EXHIBIT A-1

**Horseshoe Bend Project and Project Site Description**

Horseshoe Bend Project:

The Horseshoe Bend Project is an approximate 290 MW wind energy generation facility to be constructed on the Project Site described and depicted below. The project will consist of 116 General Electric 2.5 MW wind turbine generators, along with associated above and below ground electrical transmission and collection systems, pad mounted transformers and related equipment.

Project Site: The Horseshoe Bend Project Site as identified in that certain Site Certificate for the Shepherds Flat Wind Farm, issued by the Oregon Energy Facility Siting Council ("Council") on July 25, 2008, as amended by that certain First Amended Site Certificate for Shepherds Flat South, issued by the Council on March 21, 2010 (as may be subsequently modified and amended by the Council from time to time) in favor of Horseshoe Bend, as certificate holder.



**EXHIBIT A-2**

**South Hurlburt Project and Project Site Description**

**South Hurlburt Project:**

The South Hurlburt Project is an approximate 290 MW wind energy generation facility to be constructed on the Project Site described and depicted below. The project will consist of 116 General Electric 2.5 MW wind turbine generators, along with associated above and below ground electrical transmission and collection systems, pad mounted transformers and related equipment.

**Project Site:** The South Hurlburt Project Site as identified in that certain Site Certificate for the Shepherds Flat Wind Farm, issued by the Oregon Energy Facility Siting Council ("Council") on July 25, 2008, as amended by that certain First Amended Site Certificate for Shepherds Flat Central, issued by the Council on March 21, 2010 (as may be subsequently modified and amended by the Council from time to time) in favor of South Hurlburt, as certificate holder.

**EXHIBIT A-3**

**North Hurlburt Project and Project Site Description**

North Hurlburt Project:

The North Hurlburt is an approximate 265 MW wind energy generation facility to be constructed on the Project Site described and depicted below. The project will consist of 106 General Electric 2.5 MW wind turbine generators, along with associated above and below ground electrical transmission and collection systems, pad mounted transformers and related equipment.

Project Site: The North Hurlburt Project Site as identified in that certain Site Certificate for the Shepherds Flat Wind Farm, issued by the Oregon Energy Facility Siting Council ("Council") on July 25, 2008, as amended by that certain First Amended Site Certificate for Shepherds Flat North, issued by the Council on March 21, 2010 (as may be subsequently modified and amended by the Council from time to time) in favor of North Hurlburt, as certificate holder.

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**EXHIBIT B-1**

**Shared Premises Agreements**

1. Omnibus Agreement Regarding Grants of Subordinate Rights and Easements (Horseshoe Bend, South Hurlburt and North Hurlburt) dated as of December \_\_\_\_, 2010, among North Hurlburt Wind, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, a memorandum of which was recorded on \_\_December \_\_\_\_, 2010, as Document No. \_\_\_\_, in the official records of Gilliam County, Oregon, and on \_\_\_\_December \_\_\_\_, 2010 as Microfilm No. 2010-\_\_\_\_ in the official records of Morrow County, Oregon.
2. Second Amended and Restated Wind Project Ground Lease (North Hurlburt), dated as of October 11, 2010, by and between Skye H. Krebs and Penny M. Krebs, as tenants in common, as Surface Owner, and Columbia River Wind, LLC, an Oregon limited liability company, as Wind Lease Rights Owner, and together with the Surface Owner, as Landlord, and North Hurlburt Wind, LLC, Tenant, a memorandum of which was recorded on December 7, 2010 as Document No. 2010-000483, in the official records of Gilliam County, Oregon.
3. Grant of Easement and Easement Agreement dated as of October 11, 2009, by and between J.R. Krebs, as Owner, and Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Developer, a Memorandum of which was recorded in the Official Records of Gilliam County, Oregon on October 16, 2009 as Document No. 2009-000442, as assigned to North Hurlburt Wind, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated as of July 27, 2010 and recorded on August 3, 2010 as Instrument No. 2010-000278 in the Official Records of Gilliam County, Oregon, as amended by that certain First Amendment to Grant of Easement and Easement Agreement dated as of December 6, 2010 by and between J.R. Krebs, as Owner, and North Hurlburt Wind, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, collectively, as Developer, which was recorded on December \_\_\_\_, 2010 as Instrument No. \_\_\_\_ in the Official Records of Gilliam County, Oregon.
4. Wind Project Ground Lease dated as of June 18, 2009 between Vic Jansen, as Surface Owner, VCK LLC, a Washington limited liability company, as VCK LLC Wind Revenue Co-Owner, and Randy Allred and Nancy Allred, as Allred Wind Revenue Co-Owner, collectively, as Landlord, and Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded July 27, 2009 as Document No. 2009-000312 in the official records of Gilliam County, Oregon, and on July 28, 2009 as Microfilm No. 2009-24412 in the official records of Morrow County, Oregon, as amended by that certain unrecorded First Amendment to Wind Project Ground Lease dated as of November 13, 2009, and that certain Second Amendment to Wind Project Ground Lease dated as of December 4, a memorandum of which was recorded on December 10, 2010 as Document No. 2010-000499, in the official records of Gilliam County, Oregon, on December 10, 2010 as Microfilm No. 2010-27316 in the

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official records of Morrow County, Oregon. The Tenant's interest in the lease was assigned pursuant to that certain Assignment and Assumption Agreement (Real Estate Rights) dated as of December 8, 2010, between Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Assignor, and South Hurlburt Wind, LLC, a Delaware limited liability company, as Assignee, including the terms and provisions thereof, and recorded on December \_\_\_\_, 2010 as Document No. \_\_\_\_\_, in the official records of Gilliam County, Oregon, and on \_December \_\_\_\_, 2010 as Microfilm No. 2010-\_\_\_\_\_ in the official records of Morrow County, Oregon.

5. Grant of Easement and Easement Agreement dated as of October 29, 2009, by and between Monty Crum Ranches, LLC, an Oregon limited liability company, as Owner, and Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Developer, a Memorandum of which was recorded on November 3, 2009 as Instrument No. 2009-000468 in the Official Records of Gilliam County, Oregon, as assigned to South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated as of July 27, 2010 and recorded on August 3, 2010 as Instrument No. 2010-00277 in the Official Records of Gilliam County, Oregon, as amended by that certain First Amendment to Grant of Easement and Easement Agreement dated as of July 27, 2010 by and between Monty Crum Ranches, LLC, as Owner, and South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, collectively, as Developer, which was recorded on August 3, 2010 as Instrument No. 2010-000280 in the Official Records of Gilliam County, Oregon.
6. Second Amended and Restated Wind Project Ground Lease dated as of October 11, 2010, by and between 4GD Land Co., an Oregon partnership, and Loren A. Heideman and Della K. Heideman, or their successors, Trustees of the Loren and Della Heideman Revocable Trust dated June 22, 2004, as amended, collectively, as Landlord, and South Hurlburt Wind, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded on December 1, 2010 as Document No. 2010-000471 in the official records of Gilliam County, Oregon, and on December 2, 2010 as Microfilm No. 2010-27216 in the official records of Morrow County, Oregon.
7. Second Amended and Restated Wind Project Ground Lease, dated as of October 11, 2010, by and between Keven Haguewood, Linda Haguewood, Stephanie Hisler-Haguewood (formerly known as Stephanie Haguewood), Dustin Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Mason Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Kirk Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Bailey Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Ally Haguewood, with Linda Haguewood as substitute custodian for each of the four named custodianships, collectively, as Landlord, and South Hurlburt Wind, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded on December 10, 2010 as Document No. 2010-000495, in the official records of Gilliam County, Oregon.

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8. Second Amended and Restated Wind Project Ground Lease, dated as of October 11, 2010, by and between Keven Haguewood, Linda Haguewood, Stephanie Hisler-Haguewood (formerly known as Stephanie Haguewood), Dustin Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Mason Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Kirk Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Bailey Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Ally Haguewood, with Linda Haguewood as substitute custodian for each of the four named custodianships, collectively, as Landlord, and Horseshoe Bend Wind, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded on December 10, 2010 as Document No. 2010-000496, in the official records of Gilliam County, Oregon and on December 10, 2010 as Microfilm No. 2010-27315 in the official records of Morrow County, Oregon.
9. Wire Line Crossing Agreement dated as of May 27, 2010, by and between Columbia Basin Electric Cooperative, Inc., a cooperative association of the State of Oregon, as Licensor, and Horseshoe Bend Wind, LLC and South Hurlburt Wind, LLC, collectively, as Licensee, and recorded on July 2, 2010 as Instrument No. 2010-000243 in the official records of Gilliam County, Oregon, and on July 2, 2010 as Microfilm No. 2010-26395 in the official records of Morrow County, Oregon, as amended by that certain Amendment to Wire Line Crossing Agreement dated as of December 7, 2010, which has been, or will be, recorded in Gilliam and Morrow Counties, Oregon.
10. Conditional License Agreement dated as of March 1, 2010, by and between Portland General Electric Company, an Oregon corporation, and Caithness Shepherds Flat, LLC, and recorded on April 26, 2010 as Instrument No. 2010-000166 in the official records of Gilliam County, Oregon, as assigned to North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, and Horseshoe Bend Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated effective as of December 10, 2010.
11. Unrecorded Wire Line Crossing Agreement dated as of April 1, 2010, by and between PacifiCorp., an Oregon corporation, as Licensor, and Caithness Shepherds Flat, LLC, as Licensee (R/W File No. 20090305), as assigned to North Hurlburt Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated December 10, 2010.
12. Acknowledgment of Non-Interference dated as of November 30, 2010, by and among Pacific Wind Development, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC and recorded on December 7, 2010 as Instrument No. 2010-000482 in the official records of Gilliam County, Oregon.
13. Consent Agreement dated as of November 30, 2010, by and among Pebble Springs Wind, LLC, an Oregon limited liability company, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, and recorded on December 7, 2010 as Instrument No. 2010-000481 in the official records of Gilliam County, Oregon.
14. Consent Agreement dated as of November 30, 2010, by and among South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC, and Pacific Wind Development, LLC, a Delaware

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limited liability company, and recorded on December 7, 2010 as Instrument No. 2010-000479 in the official records of Gilliam County, Oregon and on December 7 2010 as Microfilm No. 2010-27250 the official records of Morrow County, Oregon.

**EXHIBIT B-2**

**Shared Premises**

Tract 1:

Shared Facilities Easement, East Side of Section 25/3/21 to Slatt Substation

A 100 foot wide strip of land lying in Section 25, the Southeast ¼ of the Southeast ¼ of Section 26, and in the North ½ of the Northeast ¼ of Section 35, Township 3 North, Range 21 East, Willamette Meridian, Gilliam County, Oregon, being more particularly described as follows:

A strip of land, 100.00 feet in width lying 50.00 feet on each side of the following described line.

Beginning at a point on the East line of said Section 25, said point bears South 00°23'24" East 387.56 feet from the Northeast corner of said section, said point also being 50.00 feet distant Southeasterly from the Southeasterly line of the BPA Ashe #1 and #2 Easement as described in M-61-181, Deed Records of Gilliam County; thence leaving said East line, parallel with and 50.00 feet distant from said Southeasterly line, South 53°22'12" West 4,690.41 feet; thence leaving said parallel line, South 02°27'39" West 856.13 feet to a point being 50.00 feet distant Southerly from the Southerly line of the ~~PGE transmission line easement described in M-66-158, Deed Records of Gilliam~~ County; thence parallel with and 50.00 feet distant from said Southeasterly line, South 88°23'49" West 220.65 feet; thence South 53°22'12" West 3,239.07 feet to the intersection with the Northeasterly line of the BPA Slatt Substation as shown on Record of Survey #267, Survey Records of Gilliam County and there terminating.

The sidelines of said 100 foot wide strip shall be extended or truncated such that they intersect the Easterly line of said Section 25 at the point of beginning and the Northeasterly line of said Slatt Substation at the terminus point.

Tract 2:

Shared Facilities Easement (North Hurlburt Wind, LLC)

A strip of land of variable width lying in Sections 19, 20, and 30 of Township 3 North, Range 22 East, Willamette Meridian, Gilliam County, Oregon, being more particularly described as follows:

Commencing at the Northwest corner of said Section 30; thence along the West line of said Section, South 00°23'24" East 387.56 feet to the true point of beginning of this description, said true point of beginning, being 50.00 feet distant Southerly from the Southeasterly line of the BPA Ashe #1 and #2 easement as described in M-61-181, Records of Gilliam County; thence parallel with and 50.00 feet distant from said Southeasterly line, North 53°22'12" East 703.28 feet; thence North 48°02'50" East 1,174.75 feet; thence North 64°28'43" East 9,661.99 feet; thence leaving said parallel line, South 25°44'13" East 504.02 feet to the intersection with the Northerly line of the Shepherds Flat Wind Project Ring Bus site and Point "A"; thence South 25°55'54" East

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164.00 feet to the intersection with the Southerly boundary of said Ring Bus site and Point "B"; thence South 26°00'00" East 90.37 feet; thence South 04°19'40" West 3,466.48 feet to the intersection with the Northerly right-of-way line of Rhea County Road and terminus point of this description, said terminus point bears North 28°45'39" West 1,034.75 feet from the Southeast corner of said Section 20.

The above described strip of land shall be 100.00 feet in width lying 50.00 feet on each side of the above described centerline from the true point of beginning to Point "A". The strip shall be 386.00 feet in width, lying 192.81 feet to the left and 193.19 feet to the right of the above described centerline from Point "A" to Point "B". The strip shall be 100.00 feet in width lying 50.00 feet on each side of the above described centerline from Point "B" to the terminus point. The sidelines of the above described strip shall be extended or truncated such that they end at the intersection with the West line of said Section 30 at the true point of beginning and said Northerly right-of-way line of Rhea County Road at the terminus point.

Contains 37.27 acres, more or less.

Tract 3:

**Shared Facilities Easement (South Hurlburt Wind, LLC)**

A 100 foot wide strip of land lying in Sections 20, 28, 29, and 33, Township 3 North, Range 22 East, Sections 4, 9, 15, 16, 22, 23, 25, and 26, Township 2 North, Range 22 East, and in Section 1, Township 1 North, Range 22 East, Willamette Meridian, Gilliam County, also lying in Sections 30 and 31 of Township 2 North, Range 23 East, and in Section 6 of Township 1 North, Range 23 East, Willamette Meridian, Morrow County, Oregon, being more particularly described as follows:

A strip of land 100 feet in width, lying 50.0 feet on each side of the following described line:

Commencing at the Southeast corner of said Section 20; thence North 30°41'55" West 984.24 feet to the true point of beginning of this description, said true point of beginning lies on the Southerly right-of-way line of Rhea County Road; thence South 04°19'40" West 1,968.18 feet; thence South 18°46'57" East 3,832.73 feet to Point "A"; thence South 04°36'31" West 331.41 feet; thence South 23°13'47" East 1,696.71 feet; thence South 32°06'21" East 5,675.98 feet; thence South 13°04'31" East 5,154.92 feet; thence South 00°04'11" East 5,919.36 feet; thence South 32°06'46" East 1,400.00 feet; thence South 14°01'17" East 1,885.28 feet; thence South 14°28'21" East 508.05 feet; thence South 13°54'34" East 2,050.81 feet; thence South 49°16'03" East 4,778.19 feet; thence South 07°32'53" East 3,084.69 feet; thence North 89°25'24" East 5,094.86 feet; thence South 57°34'51" East 3,091.72 feet; thence South 74°48'12" East 3,330.21 feet; thence South 03°05'19" East 5,334.76 feet; thence South 43°15'57" West 4,910.73 feet, more or less, to the intersection with the Northeasterly right-of-way line of Fourmile Canyon County Road and terminus point of this description, said terminus point bears South 33°42'54" East 4,090.40 feet from the Northeast corner of said Section 1.



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Also, the following described 100 foot wide strip of land:

A strip of land 100.00 feet in width lying 50.00 feet on each side of the following described line:

Commencing at the aforesaid Point "A"; thence South 71°07'45" West 121.20 feet to the intersection with the Easterly boundary of the Shepherds Flat Central Substation and terminus point of this description.

The sidelines of the above described strips of land shall be extended or truncated such that they end at the intersection with the Southerly right-of-way line of Rhea County Road at the true point of beginning and the Northeasterly right-of-way line of Fourmile Canyon County Road and Easterly boundary of the Shepherds Flat Central Substation at the terminus points.

The above described strips contain 138 acres, more or less.

Tract 4:

Shared Facilities Easement (Horseshoe Bend Wind, LLC)

A 100 foot wide strip of land lying in Sections 1 and 12, Township 1 North, Range 22 East, Willamette Meridian, Gilliam County, Oregon, being more particularly described as follows:

A strip of land, 100.00 feet in width, lying 50.00 feet on each side of the following described line:

Commencing at the Northeast corner of said Section 1; thence South 33°51'09" West 4,149.61 feet to the true point of beginning of this description, said true point of beginning lies on the Southwesterly right-of-way line of Fourmile Canyon County Road; thence South 43°15'57" West 225.18 feet; thence South 00°00'56" East 3,002.80 feet to the intersection with the North line of the Shepherds Flat Wind Project South Substation site and terminus point of this description, said terminus point bears South 20°26'38" West 7,057.44 feet from said Northeast corner of Section 1.

Contains 7.41 acres, more or less.

EXHIBIT C-1

**Shared Facilities, Segments, Constructing Co-Tenants,  
and Segment Interests of the Co-Tenants**

The Shared Facilities (other than the Shared Equipment) are described in the table below, and are divided into various segments (each a "Segment"). The Co-Tenants responsible for constructing or maintaining (or causing the construction and maintenance of) the Shared Facilities within each Segment are also set forth below. Except as otherwise set forth below or unless all of the Co-Tenants with Segment Interests in a particular Segment agree otherwise, each Co-Tenant's Segment Interest therein shall be equal to its pro-rata portion thereof with respect to all Co-Tenants with Segment Interests therein, calculated in accordance with the relative amount of capacity (in Megawatts) of electricity each such Co-Tenant's Project has been allocated to flow through the applicable Segment, as set forth below for the initial Segments.

Shared Facilities Segment	Description of Shared Facilities covered by such Segment	Constructing/ Procuring/ Co-Tenants Responsible for Initial Construction Cost	Each Co-Tenant's Segment Interest
All of the Shared Premises	The Optical Power Ground Cable containing data and voice lines	Horseshoe Bend South Hurlburt North Hurlburt	Horseshoe Bend - 33.333% South Hurlburt- 33.333% North Hurlburt- 33.333%
The Shared Premises within the South Hurlburt Project Site south of the South Hurlburt Substation	Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset and the Optical Power Ground Cable containing data and voice lines), Transmission access roads	Horseshoe Bend South Hurlburt	Horseshoe Bend - 91.5% South Hurlburt - 8.5%
The Shared Premises within the South Hurlburt Project Site including and north of the South Hurlburt Substation	Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset and the Optical Power Ground Cable containing data and voice lines), Transmission access roads	Horseshoe Bend South Hurlburt	Horseshoe Bend - 50% South Hurlburt - 50%

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<p>The Shared Premises within the North Hurlburt Project Site south of the fence surrounding the 3-ring power circuit breaker ring bus</p>	<p>Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset), Transmission access roads</p>	<p>Horseshoe Bend South Hurlburt</p>	<p>Horseshoe Bend - 50% South Hurlburt - 50%</p>
<p>The Shared Premises between and including (i) the fence surrounding the 3-ring power circuit breaker ring bus adjacent to the North Hurlburt Project Substation (inward from and including the fence surrounding such structure) and (ii) the North Hurlburt Project Site's western boundary</p>	<p>Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts supporting the 3-ring power circuit breaker and any transmission cables and other facilities used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset, and the Optical Power Ground Cable containing data and voice lines), Transmission access roads</p>	<p>Horseshoe Bend South Hurlburt North Hurlburt</p>	<p>Horseshoe Bend - 34.3% South Hurlburt - 34.3% North Hurlburt - 31.4%</p>
<p>The Shared Premises from the western boundary of the North Hurlburt Project west to the Point of Interconnection</p>	<p>Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines conducting electricity that may be attached thereto, which are each Co-Tenant's Project Specific Asset, and the Optical Power Ground Cable containing data and voice lines), Transmission access roads</p>	<p>Horseshoe Bend South Hurlburt North Hurlburt</p>	<p>Horseshoe Bend - 34.3% South Hurlburt - 34.3% North Hurlburt - 31.4%</p>

**EXHIBIT C-2**

**Shared Equipment**

The Shared Equipment is described in the table below. The Co-Tenants responsible for procuring and acquiring such Shared Equipment are also set forth below. Each Co-Tenants' respective Segment Interest in the various Shared Equipment is determined pro-rata in proportion to the relative Percentage Interest of those Co-Tenants with Segment Interest in such Shared Equipment, unless all of the Co-Tenants with Segment Interests in the applicable Shared Equipment agree otherwise.

<b>Shared Equipment Segment</b>	<b>Location of Shared Equipment</b>	<b>Procuring Co-Tenant(s) Responsible for Initial Purchase Cost (subject to reimbursement per Section 4.5 of the Agreement)</b>	<b>Co-Tenants with a Segment Interest</b>
Spare Transformer	On Shared Premises - Location still open	Horseshoe Bend South Hurlburt North Hurlburt	Horseshoe Bend - 33.333% South Hurlburt- 33.333% North Hurlburt- 33.333%
Equipment and Vehicles: -Manitowoc 16000 crane - Gove Model RT 890E crane - tractor trailer rig	On Shared Premises - Location still open	Horseshoe Bend South Hurlburt North Hurlburt	Horseshoe Bend - 33.333% South Hurlburt- 33.333% North Hurlburt- 33.333%

**EXHIBIT D**

**Determination of Percentage Interest of Each Co-Tenant**

The Percentage Interest of each Co-Tenant hereunder is a fraction, the numerator of which is the Nameplate Capacity of a Co-Tenant's Project and the denominator of which is the Nameplate Capacity of all the Co-Tenants' Projects listed below. As of the Effective Date, the Percentage Interest of the respective Co-Tenants are as follows:

<b>Co-Tenant</b>	<b>Percentage Interest</b>
Horseshoe Bend (290 MW Project)	$(290 \text{ MW}/845 \text{ MW}) \times 100 = 34.3195\%$
South Hurlburt (290 MW Project)	$(290 \text{ MW}/845 \text{ MW}) \times 100 = 34.3195\%$
North Hurlburt (265 MW Project)	$(265 \text{ MW}/845 \text{ MW}) \times 100 = 31.3609\%$
<b><u>Total: 845 MW of Projects*</u></b>	<b><u>Total: 100%</u></b>

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\* 845 MW represents the interconnection requests submitted as of the date this Agreement, which requests and capacity are fully allocated to the Projects. This Exhibit D shall be modified by the Manager to reflect any increase in the total available interconnection capacity obtained for any New Co-Tenant, if any, and the New Co-Tenant shall be added to this Exhibit D with appropriate adjustments to all Percentage Interests.

**EXHIBIT E**

**Manager's Responsibilities and Scope of Work**

At the direction of a Majority of the Co-Tenants, the Manager shall be responsible for the following Scope of Work on the Shared Premises and with respect to the Shared Facilities, which Scope of Work includes all maintenance of such Shared Assets, including, without limitation, the specific tasks enumerated below. The Co-Tenants agree and acknowledge that all of the services in the Scope of Work other than reporting, accounting and billing shall initially be performed by the O&M Contractor pursuant to each O&M Agreement and the Manager shall supervise all such services pursuant to its obligations under each Administrative Management Agreement. At such time as the initial O&M Agreement expires or terminates, a Majority of the Co-Tenants may direct the Manager to enter into a new operations and management agreement with a provider of such services approved by a Majority of the Co-Tenants in advance.

**General:**

- General inspection of any and all gates, cattle guards, culverts, security systems, and lighting installed in connection with the development and operation of the Shared Facilities, as well as, any fencing erected to enclose any Shared Assets.
- Maintain access roads on the Shared Premises by dragging or grader, including the importation of new road material.
- Dressing of roads.
- Weed abatement and vegetation control.
- Brush control and clear and maintenance of transmission corridors.
- Snow removal, as needed.
- Erosion control, including culverts, as needed.

**Environmental:**

- Proper disposal of all waste arising from Manager's work on the Shared Facilities and maintenance activities and completion of all required manifests and logs.
- Compliance with Governmental Approvals, Land Matters, and applicable Laws.
- Storage of materials in compliance with all regulations.

**Shared Facilities:**

- Insulator washing, as required.
- Pole line inspection.
- Gas-fill of breakers.
- Torquing of electrical connections and structures.
- Coordinate with the Co-Tenants for events or conditions that would affect the Projects.
- Periodic testing of protective relays.
- Testing contact resistance and operation on breakers and switches per manufacturer's specifications.
- Weed abatement and vegetation control.
- Witness meter and relay calibrations for interconnect as required by interconnect guidelines.
- Periodic testing of voltage regulation/power factor equipment, if installed.

**Other:**

- Reporting
- Billing

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**EXHIBIT F**

**PART A – REQUIRED INSURANCE COVERAGES OF CO-TENANTS**

[SEE ATTACHED]

INSURANCE REQUIREMENTS

Maintenance of Insurance

a. Borrower shall, without cost to the Master Administrative Agent, the Collateral Agent or the Financing Parties, maintain or cause to be maintained on its behalf in effect at all times the insurance required to be maintained by the Borrower under the Project Documents.

b. Without limiting the foregoing, the Borrower shall, without cost to the Master Administrative Agent, the Collateral Agent or the Financing Parties, maintain or cause to be maintained on its behalf in effect at all times the types of insurance required by the following provisions together with any other types of insurance required hereunder, with insurance companies rated A- X or better, by Best's Insurance Guide and Key Ratings (or an equivalent rating by another nationally recognized insurance rating agency of similar standing if Best's Insurance Guide and Key Ratings shall no longer be published) or other insurance companies of recognized responsibility satisfactory to the Master Administrative Agent, in consultation with the Insurance Consultant, the following insurance coverages until all obligations of Borrower pursuant to the Master Agreement and the other Financing Documents have been fully discharged:

(1) Commercial general liability insurance on an "occurrence" policy form, AEGIS claims-first-made or other similar policy form acceptable to the Master Administrative Agent in consultation with the Insurance Consultant, including coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability, suits brought against Borrower from actions of an independent contractor (for the protection of the Borrower as opposed to the independent contractor) and personal injury, with primary coverage limits of no less than \$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence and a \$2,000,000 annual aggregate limit. Either by separate policy or by inclusion in the commercial general liability policy, sudden and accidental pollution liability insurance consistent with industry practice.

The commercial general liability policy shall also include a severability of interest clause with no exclusions or limitations for cross liability if the policy has multiple named insureds. Deductibles shall not exceed \$25,000.

(2) Automobile liability insurance, if applicable, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with state legal requirements, with limits of not less than \$1,000,000 per accident with respect to bodily injury, property damage or death.

(3) Workers compensation insurance, if applicable, disability benefits insurance and such other forms of insurance which the Borrower is required by law to provide for the Project, providing statutory benefits and other states' endorsement and



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USL&H Act coverage (if any exposure exists), covering loss resulting from injury, sickness, disability or death of the employees of the Borrower or of any contractor or subcontractor performing work with respect to the Project. The Borrower shall endeavor to require that all contractors and subcontractors maintain all forms or types of insurance with respect to their employees as are required by law with limits of not less than \$1,000,000 per accident, \$1,000,000 for disease, and \$1,000,000 for each employee.

(4) From the point of groundbreaking for any Project and through the date of Final Completion of all Projects, or until such time as cover is provided under the operational insurance as set forth below, builder's risk insurance on an "all risk basis" (including earthquake, flood, sabotage, collapse, sinkhole and subsidence) and "soft cost coverage" on an "agreed amount" (with no deduction for depreciation or coinsurance penalty) basis and providing:

(A) coverage for the Projects and the Site, including removal of debris, insuring the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of the Projects in a minimum aggregate amount not less than full replacement value of the Projects (provided, however, that earthquake and flood coverage may be subject to an annual aggregate limit of at least \$100,000,000);

(B) off-site coverage with a per occurrence limit of 5% of the limit of liability or such higher amount as is sufficient to cover off-site equipment for which there have been progress payments;

(C) transit coverage (including ocean cargo where ocean transit will be required) with a per occurrence limit of the full insurable value of any single shipment;

(D) coverage for operational testing and startup with the same dollar coverage and modifications as set out in (4)(A) above for all assets related to the Projects, with cover running continuously for machinery breakdown from the beginning of testing until such time as operational cover is put into place; and

(E) business interruption insurance (of a "delay" or "delay in start-up" and "contingent delay in start up nature) in a minimum aggregate amount not less than the equivalent of 12 months loss of profits (including grossed up PTC and REC values, if applicable), and six (6) months Contingent DSU, on an "all risk" basis as set forth in (4) (A) through (4) (D) above. The Contingent Delay in Start Up shall endorse and insure all non-owned substations and interconnect facilities and material project suppliers.

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All such policies may have deductibles of not greater than \$250,000 per loss for physical damage, thirty (30) days per loss for business interruption/delay in start-up coverage (60 days in the aggregate), and \$100,000 for transit coverage.

(5) From and after Final Completion of all Projects, "all risk" property insurance coverage in the full amount of the total of all insurable Project Costs and including a full replacement cost endorsement on an "agreed amount" basis (with no deduction for depreciation or coinsurance penalty), providing, without limitation:

(A) coverages against "all risk" of physical damage, including loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, sabotage, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood (provided, however, that earthquake and flood coverage may be subject to an annual aggregate limit of at least \$100,000,000), collapse, sinkhole and subsidence with a sublimit of not less than \$500,000 for on-site pollution clean-up required as a result of the occurrence of an insured risk;

~~(B) off-site coverage with a per occurrence limit of \$2,500,000 or such~~  
higher amount as is sufficient to cover off-site equipment for which there have been progress payments;

(C) transit coverage (including ocean cargo where ocean transit will be required), if applicable, with a per occurrence limit sufficient to cover the full insurable value of any item in transit; and

(D) machinery breakdown coverage for wind turbines not covered by manufacturer warranty and the infrastructure, defined as the interconnection, substation, circuit breakers, transformers and switches, on a "comprehensive" basis including breakdown and repair with limits not less than full replacement cost of the insured objects.

Cover shall include LEG 2/96 or equivalent cover with respect to design error and faulty workmanship and materials.

The Borrower shall also maintain or cause to be maintained with respect to the Project business interruption insurance on an "all risk" basis as set forth in (4)(A) through (4)(D) above, but not less than 12 months Advance Loss of Profits (total revenue less non-continuing cost) including 12 months grossed up Production Tax Credits and RECs (if applicable). The Borrower shall also maintain contingent business interruption cover on non-owned substation(s) and transmission facilities in an amount not less than 120 days debt service, grossed up PTC's and REC's (if applicable) and continuing expenses. The Borrower shall also maintain or cause to be maintained, expediting or extra expense coverage in an amount not less than \$5,000,000.

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Property deductibles shall be no greater than \$250,000 for physical damage and machinery breakdown and a waiting period of not greater than 30 days any one loss (60 days in the aggregate) for business interruption.

(6) Umbrella Excess Liability Insurance of not less than \$20,000,000 for the applicable Contractor(s) and the Borrower. Such coverages shall be on a per occurrence basis or AEGIS claims made and over and above coverage provided by the policies described in paragraphs (1), (2) and (3) above. The umbrella and/or excess policies shall have insurance coverage as broad as the requirements forth in paragraphs (1), (2) and (3) above, and which are provided in the underlying policies.

(7) Aircraft liability, to the extent exposure exists, for the use of any owned, non-owned or hired aircraft used in the construction or operation of the Project with limits of not less than \$15,000,000.

(8) Pollution liability, the Borrower shall also provide or cause the applicable Contractor(s) to provide sudden and accidental pollution liability insurance with a limit of not less than \$5,000,000 per occurrence and including punitive damages insurance (subject to commercial availability) during the Construction Period and during the operations period of each Project, including the Project Commercial Operation Date for each Project.

(9) Such other or additional insurance (as to risks covered, policy amounts, policy provisions or otherwise) as, under prudent industry practice, are from time to time insured against for property and facilities similar in nature, use and location to the Projects.

c. Borrower shall endeavor to endorse its policies to contain the following or equivalent wording unless not available on commercially reasonable terms.

(1) Errors and Omissions (Builders Risk and Operational Property Policies only) - It is hereby understood and agreed that the coverages afforded by this policy to one insured shall not be invalidated or affected by any unintentional errors, omissions, or in any information required to be reported by another insured.

(2) Notice of Injurious Exposure to Conditions (Third-Party Policies Only) - It is agreed that failure of any agent, servant, or employee of the insured other than the owner, partner of any partnership, or an officer of the insured to notify the company of any occurrence of which he has knowledge shall not invalidate the insurance afforded by this policy as respects the named insured.

(3) Knowledge of Injurious Exposure to Conditions (Third-Party Policies Only) - It is hereby understood and agreed that knowledge of an occurrence by the agent, servant, or employee of the insured shall not in itself constitute knowledge by the insured, unless an executive officer of the insured's

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corporation or the owner or a partner of any partnership insured shall have received such notice from its or their agent, servant, or employee.

d. All insurance coverage shall be on a "no coinsurance or self-insurance/replacement cost" basis consistent with industry standards in terms of coverages, terms and conditions (including deductibles). Copies of policies shall be submitted to the Master Administrative Agent upon request.

e. All policies wherein the Master Administrative Agent and/or the Collateral Agent has an insurable interest shall insure the interests of the Secured Parties and the Collateral Agent as mortgagee, insure the Borrower and shall name the Collateral Agent and the Secured Parties as additional insured to the extent of the Borrower's indemnity obligations contained herein, unless the Collateral Agent and the Secured Parties are named as an insured under the policy. The interest of the Secured Parties, as mortgagee, shall be protected through a mortgagee / loss payee wording, acceptable to the Master Administrative Agent, in consultation with the Insurance Consultant, endorsed to the first party property type policies (including but not limited to all risk builders risk, delay in startup, all risk property, business interruption, marine cargo, marine DSU, inland transit, inland transit DSU, etc.). All policies covering real or personal property or business interruption shall name the Collateral Agent, on behalf of the Secured Parties, as First Loss Payee in accordance with Lender's Loss Payable Endorsement 438 BFU or equivalent and shall provide that any payment thereunder for any loss or damage with respect to the Project shall be made to the Collateral Agent, except that such policies may provide that any payments of less than \$1,000,000 (not to exceed \$2,000,000 in any year) made in respect of any single casualty or other occurrence may be paid solely to the Borrower, unless the Master Administrative Agent shall have notified the insurer that an Event of Default has occurred hereunder and shall be continuing. Upon payment and satisfaction of all of Borrower's obligations under, and termination of, the Financing Documents, the Master Administrative Agent will instruct the insurers to name the Borrower, or such successor credit provider or other Person as the Borrower shall specify, as loss payee.

Each policy shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Borrower) shall operate in the same manner as if there were a separate policy covering each such insured. Each policy shall waive subrogation against the Collateral Agent and the Secured Parties or the Borrower and shall waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Borrower, the Collateral Agent or the Secured Parties. Each such policy shall provide that if any premium or installment is not paid when due, or if such insurance is to be canceled, terminated or adversely materially changed for any reason whatsoever, the insurers (or their representatives) will promptly notify the Borrower and the Master Administrative Agent, and any such cancellation, termination or change shall not be effective until forty-five (45) days, (ten (10) days with regard to nonpayment), after receipt of such notice by the Master Administrative Agent, other than in respect of policies covering war and kindred risks, and that appropriate certification shall be made to the Borrower by each insurer with respect thereto.

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**EXHIBIT G**

**Form of Memorandum of Agreement**

[SEE ATTACHED]

**EXHIBIT G-1**

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RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Caithness Shepherds Flat, LLC  
c/o Caithness Energy, L.L.C.  
565 Fifth Avenue, 29th Floor  
New York, NY 10017  
Attention: David Casale and Gail Conboy  
Facsimile: (212) 921-9239

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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**MEMORANDUM OF SHARED FACILITIES AGREEMENT (NON-FERC)**

THIS MEMORANDUM OF SHARED FACILITIES AGREEMENT (NON-FERC) (this "Memorandum") is made, dated and effective as of December 14, 2010 (the "Effective Date"), is entered into by and among HORSESHOE BEND WIND, LLC, a Delaware limited liability company ("Horseshoe Bend"), SOUTH HURLBURT WIND, LLC, a Delaware limited liability company ("South Hurlburt"), NORTH HURLBURT WIND, LLC, a Delaware limited liability company ("North Hurlburt") (the foregoing parties may be referred to from time to time herein each separately as a "Co-Tenant" and collectively as the "Co-Tenants"), and SHEPHERDS FLAT MANAGEMENT, LLC, a Delaware limited liability company ("Manager") (the Co-Tenants and Manager may be referred to collectively herein as the "Parties," and each separately as a "Party"), with reference to the following recitals:

**RECITALS**

A. The Co-Tenants have entered into that certain Shared Facilities Agreement (Non-FERC) (the "Agreement") dated on or about the Effective Date to set forth therein their respective rights and obligations regarding the joint design, procurement, development, construction, installation, ownership, use, maintenance, repair, replacement of, and additions to certain "Shared Facilities" and certain "Shared Premises" described below, and to contract with Manager for the provision of certain limited services to be performed at the pleasure of the Co-Tenants with respect to the Shared Facilities and the Shared Premises, and the Manager has accepted said engagement, on the terms and conditions contained therein. All capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement.

B. The Co-Tenants are each developing and will each separately construct, own and operate a wind powered electricity generating project on real property in Gilliam and/or Morrow County, Oregon. Horseshoe Bend's Wind Turbines and related infrastructure (the "Horseshoe Bend Project") will be located on the real property more particularly described on Exhibit A-1 attached hereto (the "Horseshoe Bend Project Site"). South Hurlburt's Wind Turbines and related infrastructure (the "South Hurlburt Project") will be located on the real property more particularly described on Exhibit A-2 attached hereto (the "South Hurlburt Project Site"). North Hurlburt's Wind Turbines and related infrastructure (the "North Hurlburt Project") will be located on the real property more particularly described on Exhibit A-3 attached hereto (the

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"North Hurlburt Project Site"). From time to time herein, the Co-Tenants' respective project sites described above may be each individually referred to as a "Project Site," and collectively referred to as the "Project Sites," and the Co-Tenants' respective Projects are each individually referred to as a "Project," and collectively as the "Projects." Each Project is a geographically discrete portion of a phased renewable-energy development.

C. Each Co-Tenant holds the individual real property rights (by fee ownership, lease, easement, right of way, or otherwise) to its respective Project Site.

D. The Co-Tenants are also holders of certain lease, easement, license and permit rights, all of which are more particularly described in the agreements listed on Exhibit B-1 attached hereto (the "Shared Premises Agreements"), to use certain real property more particularly described on Exhibit B-2 attached hereto (as amended and supplemented from time to time, the "Shared Premises"). Each of the Co-Tenants will require the use and possession of specified portions of the Shared Premises for the construction, operation, and maintenance of its respective Project, subject to the terms and conditions of such Shared Premises Agreements.

E. The Co-Tenants intend that their shared use of the Shared Premises shall also include rights and obligations regarding certain common infrastructure facilities to be erected on the Shared Premises that are to support the operation of their respective Projects (the "Shared Facilities"), all as more particularly described on Exhibit C.

F. In the Agreement, the Co-Tenants set forth their respective rights and obligations regarding the joint design, procurement, development, construction, installation, ownership, use, maintenance, repair, replacement of, and additions to the Shared Premises and Shared Facilities (collectively, the "Shared Assets").

G. The Co-Tenants are recording this Memorandum in order to give public notice of their respective rights in and to the Shared Assets and their rights and obligations under the Agreement.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants contained in the Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Term. The Agreement commenced on the Effective Date and will remain in full force and effect following the Effective Date until the first occurrence of one of the following: (a) a single Co-Tenant becomes the owner of the entire ownership interest in all of the Shared Assets, (b) the mutual agreement of all the Co-Tenants, or (c) otherwise as provided under the Agreement.

2. Shared Assets.

(a) Shared Facilities. Pursuant to the grant referenced and made in Section 2(b) below, each Co-Tenant shall have an Undivided Interest (as defined below) in certain of the Shared Facilities (each, a "Segment Interest"), as set forth in Exhibit C attached hereto, on the

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Shared Premises equal to its Percentage Interest (as defined in Exhibit D attached hereto) with respect to each such Co-Tenant, subject to change from time to time with the expansion or reduction of a Project including any increase or decrease in a Project's Nameplate Capacity.

(b) Partial Conveyance of Co-Tenancy Interests in Shared Facilities. Pursuant to, and as set forth in the Agreement, effective upon completion or installation of each component of the Shared Facilities on the Shared Premises and upon payment by each Co-Tenant with a Segment Interest therein of its respective amount due in reimbursement to the Constructing Co-Tenant or procuring Co-Tenant, if any, as applicable, in accordance with the Agreement, upon and subject to the terms, conditions, restrictions and reservations set forth in the Agreement and in the applicable Shared Premises Agreements, the Co-Tenant that has procured, constructed, installed or caused the procurement, construction or installation of such Shared Facilities shall be deemed to have GRANTED, SOLD, TRANSFERRED, ASSIGNED, and CONVEYED, and does hereby GRANT, SELL, TRANSFER, ASSIGN, AND CONVEY unto each of the other such Co-Tenants, as applicable, an undivided ownership interest in and to such Shared Facilities owned or hereafter acquired or constructed by the transferring Co-Tenant, in each case in proportion to the Segment Interest of the respective transferee Co-Tenant, **AS IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER SIMILAR WARRANTY ARISING UNDER STATUTORY OR COMMON LAW,** while at the same time reserving to itself an undivided ownership interest in and to such Shared Facilities in the amount of its Segment Interest. The intent of the foregoing is that each Co-Tenant shall own an undivided tenancy in common interest in each of the Shared Facilities in proportion to its respective Segment Interest in such Shared Facilities so as to provide for the common ownership of such Shared Facilities (along with all appurtenant rights) by the Co-Tenants, subject to the terms and conditions of the Agreement. The foregoing undivided tenancy in common interest of each Co-Tenant in the Shared Facilities may be referred to from time to time in the Agreement as an "Undivided Interest."

3. Liens. Except as provided in the Agreement, the Financing Documents or the applicable Shared Premises Agreement, the LGIAs, Governmental Approvals or Land Matters, no Co-Tenant will create, permit or suffer to exist by, through or under the Co-Tenant or the Co-Tenant's Representatives, and, except as otherwise provided in the Agreement, hereby waives for itself and its Representatives, any Liens on the Shared Assets, or on the or the Undivided Interests, Percentage Interests in any Shared Premises or Project Specific Assets of any other Co-Tenant, as more particularly described in the Agreement.

4. No Dedication of Property; No Public Access. Each Co-Tenant agrees that entering into the Agreement, performing its obligations thereunder, or exercising its rights thereunder, either in whole or part, is not intended to be, and shall in no way be construed as or deemed to be a dedication to public or quasi-public use or purpose of any of the Project Specific Assets of the Co-Tenant, the Project Specific Assets of another Co-Tenant, any Shared Assets, or any portion of the foregoing.

5. Crossing and Co-Location Rights. Each Co-Tenant hereunder shall be permitted to cross and encroach upon the Shared Premises with its Project Specific Assets (including collection lines, access roads, Wind Turbine foundations, and overhang by Wind Turbine blades)



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solely to the extent necessary to develop, construct, operate and maintain its Project, all as more particularly set forth in the Agreement.

6. Relationship of the Co-Tenants. The rights, duties, obligations and liabilities of the Co-Tenants under the Agreement will be individual and not joint or collective, and no Co-Tenant shall be responsible for the default of any other Co-Tenant under the Agreement. It is not the intention of the Co-Tenants to create, nor will the Agreement be deemed to create, any partnership, agency, joint venture or trust, or to authorize any Co-Tenant to act as an agent, servant or employee for any other Co-Tenant. Each Co-Tenant will remain solely responsible for the actions of its own employees.

7. Power of Attorney. Pursuant to Section 14.3 of the Agreement, if any Co-Tenant elects to cure an Event of Default of another Co-Tenant, the defaulting Co-Tenant will reimburse each curing Co-Tenant for its expenses incurred in rendering the cure, plus interest at the Default Rate. The Co-Tenant(s) curing the default will have a lien on the defaulting Co-Tenant's Undivided Interest and its Percentage Interest in the Shared Premises, to the extent of the amount expended by such curing Co-Tenant in remedying the default (including attorneys' fees), and the defaulting Co-Tenant hereby appoints the curing Co-Tenant(s) as its attorney-in-fact, which appointment is coupled with an interest and is irrevocable and with full powers of substitution, to file, record and otherwise assert such lien, to the extent of the expenditures in relation to such cure or remedy or to exercise such defaulting Co-Tenant's right to take any lawful and reasonable action to cure any Event of Default, including with respect to any Shared Premises Agreement and any financing. The defaulting Party shall, upon demand, reimburse any other Party (with interest at the Default Rate) for all of its reasonable costs, fees and expenses (including reasonable attorneys' fees) in connection with the exercise of its rights hereunder.

8. Incorporation of Agreement Terms; Superiority of Agreement. The terms, conditions and covenants of the Agreement are incorporated herein by reference as though fully set forth herein. The purpose of this Memorandum is to give public notice of the existence of the Agreement and this Memorandum does not supersede, modify or amend the Agreement, nor shall it be used in interpreting the terms, conditions or covenants of the Agreement. In the event of any conflict between this Memorandum and the Agreement, the Agreement shall control.

9. Survival of Rights. The Shared Facilities and each Co-Tenant's Undivided Interest shall be (a) held, conveyed, hypothecated, encumbered, transferred and used subject to the terms of the Agreement, (b) deemed to be covenants running with and binding upon the land pursuant to applicable Law for so long as the Agreement remains in effect, (c) deemed to be equitable servitudes, and (d) shall be binding upon and inure to the benefit of the parties hereto and any other person and entity having any interest therein during their ownership thereof, and their respective grantees, assignees, transferees, heirs, legatees, executors, administrators, successors and assigns, and all persons claiming under them.

10. Notices. All notices and other communications required or permitted by the Agreement or by applicable Law to be served upon or given to a Party by another Party shall be in writing and shall be deemed duly served, given and received (a) on the date of service, if served personally or sent by facsimile transmission (with appropriate confirmation of receipt) to the Party to whom notice is to be given, or (b) on date of receipt, if mailed by certified mail,

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postage prepaid, return receipt requested, or (c) on the date of receipt if sent by a nationally recognized courier for next day service and so addressed as follows:

If to Horseshoe Bend, South Hurlburt, North Hurlburt:

c/o Caithness Energy, L.L.C.  
565 Fifth Avenue, 29th Floor  
New York, NY 10017  
Attention: John McNamara and Gail Conboy  
Facsimile: (212) 921-9239

With a copy to:

Boies, Schiller & Flexner LLP  
575 Lexington Avenue, 7th Floor  
New York, NY 10022  
Attention: Christopher Boies, Esq.  
Facsimile: (212) 446-2350

If to Manager:

c/o Caithness Energy, L.L.C.  
565 Fifth Avenue, 29th Floor  
New York, NY 10017  
Attention: David Casale and Gail Conboy  
Facsimile: (212) 921-9239

With a copy to:

Boies, Schiller & Flexner LLP  
575 Lexington Avenue, 7th Floor  
New York, NY 10022  
Attention: Christopher Boies, Esq.  
Facsimile: (212) 446-2350

11. Right to Encumber. The Manager and each Co-Tenant specifically agree that any Co-Tenant may at any time pledge, collaterally assign, encumber, or grant a security interest in its own Undivided Interest, its interest in any Shared Premises and in its rights under the Agreement to any Financing Party (as defined below). The Manager and each Co-Tenant also agree that it shall, at any time and from time to time during the term of the Agreement, after receipt of a written request by another Co-Tenant, execute and deliver to the other Co-Tenant and that Co-Tenant's Financing Parties, as designated in such request, such estoppel certificates and consents as may be reasonably requested thereby. "Financing Party" means, with respect to each Co-Tenant, the agent or lead bank and any other financial institutions or government agency, party to a loan agreement, loan guarantee, hedge agreement, tax equity financing documents or other debt, equity, sale-leaseback or other type of financing instrument with such

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Co-Tenant, secured in part by such Co-Tenant's share of, or interest in, the Shared Assets or all or a portion of such Co-Tenant's Undivided Interest, including the U.S. Department of Energy.

12. **Financing Party Protection Provisions.** Notwithstanding any other provision of the Agreement, should a Co-Tenant pledge, collaterally assign or encumber its Undivided Interest, its interest in any Premises and/or its rights under the Agreement as provided above, the Parties hereto expressly agree between themselves and for the benefit of any Financing Parties that:

(a) concurrently with the delivery of any notices of an Event of Default under the Agreement to any Co-Tenant or to the Manager, the Party delivering such notice shall deliver copies of all such notice to any Financing Party that has delivered written notice to the Manager of its desire to be so informed and containing its notice address with copies by e-mail to such Financing Party's legal counsel at such e-mail address(es) as may be provided to the Manager by such Financing Party (and which information the Manager shall timely deliver to each Co-Tenant);

(b) any Financing Party shall have the right (but not the obligation) within either (i) sixty (60) days after its receipt of a notice of an Event of Default of such Financing Party's mortgagor Co-Tenant under the Agreement to cure such Event of Default if it is monetary or (ii) a reasonable period of time, but not less than one hundred and twenty (120) days, for such Financing Party to cure the Event of Default if it is nonmonetary; provided, however, that such Financing Party shall not be required, as a condition to avoiding any non-defaulting Party exercising its rights following an Event of Default, to cure an Event of Default that cannot reasonably be cured by the Financing Party, such as the bankruptcy filing of a Party, seizure of a Co-Tenant's property, the failure of a Co-Tenant to supply information and similar incurable defaults (collectively, "Status Defaults");

(c) the Agreement shall not be materially altered, amended, modified, terminated or rescinded by any Party without the prior written consent of each Financing Party; no Financing Party shall be bound by any amendment or modification of the Agreement made without the prior written consent of such Financing Party;

(d) without any further consent of any Party, each Financing Party shall have the right to (i) transfer the Undivided Interest and/or interest in any Shared Premises (as applicable, the "Encumbered Interest") of the Co-Tenant (as applicable, a "Mortgagor Co-Tenant") that has encumbered its Undivided Interest and/or its interest in any Shared Premises in favor of such Financing Party in enforcement of the Mortgage to such Financing Party or its designee or immediate successor in interest, by any means, including a conveyance in lieu of foreclosure, (ii) transfer the Encumbered Interest in enforcement of the Mortgage to a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale, and if such purchaser is a Financing Party, then to its immediate successor in interest and (iii) exercise any other rights or remedies afforded to such Financing Party under its Mortgage (and the related Financing Documents) and under the Agreement; none of the terms of this paragraph (d) shall constitute a breach, default or Event of Default under the Agreement. If a Financing Party shall become a Co-Tenant under the Agreement, or a Mortgagor Co-Tenant's Encumbered Interests shall be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage, or

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any Shared Assets shall be transferred by deed in lieu of foreclosure, the Agreement shall continue in full force and effect as a direct agreement between the other Parties hereto and the party who shall succeed to the rights and duties of the Mortgagor Co-Tenant hereunder. The other Parties hereto shall attorn to any such Financing Party or any such other successor party as a Co-Tenant hereunder, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that the Parties agree that in the event that a Financing Party or any such other party succeeds to the interest of a Mortgagor Co-Tenant under the Agreement, such Financing Party or such other successor party: (A) shall not be personally liable for any act or omission of any prior Co-Tenant (including such Mortgagor Co-Tenant); (B) shall not be bound by any material amendment or modification of the Agreement not previously approved by such Financing Party and (C) shall not be liable to other Parties for any monetary defaults of such Party which accrue prior to the date of the transfer giving rise to the attornment hereunder;

(e) with respect to insurance required under the Agreement:

(i) notwithstanding any provisions contained in the Agreement to the contrary, as long as the Mortgage remains an encumbrance against the Encumbered Interest, all such Mortgagor Co-Tenant's policies of insurance called for in herein or otherwise in effect for the Shared Premises shall, in addition to any provisions required under the Agreement, contain a standard mortgagee protection endorsement, and the applicable Financing Party shall be entitled to hold the originals or certificates of all such policies; provided that if more than one Financing Party entitled to hold such originals hereunder requests to hold the originals or certificates of all such policies, then the same shall be delivered to the Financing Party whose Mortgage is senior in lien priority or in accordance with any intercreditor agreement then in effect;

(ii) each Financing Party shall be entitled to participate in the settlement or adjustment of any losses with respect to any Undivided Interest and/or its interest in any Shared Premises included within its applicable Encumbered Interest in accordance with the applicable Mortgagor Co-Tenant's Percentage Interest therein, covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of each Financing Party;

(iii) Each Financing Party shall have the right to participate in any settlement of or stipulation of judgment with respect to any condemnation proceeding affecting all or any portion of the Shared Assets with respect to any Undivided Interest and/or any interest in any Shared Premises included within its applicable Encumbered Interest or any agreement to sell all or any portion of such Shared Assets in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without each applicable Financing Party's prior written consent; and

(iv) notwithstanding any provisions to the Agreement to the contrary, the Parties agree that any property insurance proceeds and condemnation award with respect to the Shared Assets included within any Undivided Interest and/or any interest in any Shared Premises included within its applicable Encumbered Interest shall be paid to each such Financing Party in accordance with the applicable Mortgagor Co-Tenant's Percentage Interest therein, and

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each Financing Party shall administer such proceeds or award in accordance with the terms of its Financing Documents; and

(f) In the event that the Agreement or a Co-Tenant's interest in the Agreement is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditor's rights with respect to a Co-Tenant (the "Insolvent Co-Tenant"), then, so long as the applicable Financing Party has cured any monetary breaches hereunder and is making commercially reasonable efforts to cure any non-monetary breaches hereunder (other than Status Defaults), the Parties other than the Insolvent Co-Tenant (the "Solvent Co-Tenants") shall, immediately upon written request from such Financing Party received within ninety (90) days after receipt of notice by Financing Party of any such termination, rejection or disaffirmance, without demanding additional consideration therefor, (i) enter into a new agreement, which shall (A) contain the same covenants, agreements, terms, provisions and limitations as the Agreement (except for any requirements that have been fulfilled by a Party prior to such termination, rejection or disaffirmance), (B) be for a term commencing on the date of such termination, rejection or disaffirmance, and continuing for the remaining term of the Agreement before giving effect to such termination, rejection or disaffirmance, (C) include the applicable Financing Party as the successor to the Undivided Interest and/or its interest in any Shared Premises of the Insolvent Co-Tenant, and (D) enjoy the same priority as the Agreement over any lien, encumbrance or other interest created or suffered by any Party hereto, and, until such time as such new agreement is executed and delivered, such Financing Party may enter, use and enjoy the Shared Assets and conduct operations thereon as if the Agreement were still in effect, or (ii) to the extent only the Insolvent Co-Tenant's interest is terminated, permit the applicable Financing Party or its designee to join in the Agreement as a new Co-Tenant in place of the Insolvent Co-Tenant, within twenty (20) days after the receipt of such request. A Financing Party shall only be liable under the Agreement while it is in possession of or is the owner of an Undivided Interest and/or an interest in any Shared Premises.

(g) Except as otherwise provided in the Agreement, all reasonable expenses, including reasonable attorneys' fees, incurred by the Manager or any other Co-Tenant in connection with (a) the assignment or proposed assignment of all or any part of a Co-Tenant's Undivided Interest or interest in any Shared Premises and its rights under the Agreement, or (b) the actual or proposed pledge, collateral assignment, encumbrance, or grant of a security interest in all or any part of a Co-Tenant's Undivided Interest or interest in any Shared Premises and its rights under the Agreement to a Financing Party, shall be paid by the assigning/borrowing Co-Tenant to the Manager and respective Co-Tenant(s) upon request therefor.

### 13. Interpretation.

(a) The titles, captions and headings in this Memorandum are inserted for convenience only and will not be used for the purposes of construing or interpreting this Memorandum.

(b) In this Memorandum, unless a clear, contrary intention appears: (i) the singular includes the plural and vice versa; (ii) reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such assigns are permitted by this Memorandum, and reference to a Person in a particular capacity excludes such Person in any

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other capacity; (iii) pronouns and reference to any gender includes each other gender; (d) reference to any agreement (including this Memorandum), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Memorandum; (e) reference to any Law means such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (iv) reference to any Section means such Section of this Memorandum, and references in any Section or definition to any clause means such clause of such Section or definition; (v) "hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Memorandum as a whole and not to any particular Section or other provision of this Memorandum; (vi) "including" (and with correlative meaning "include") means including without limitation; and (vii) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

14. Counterparts. This Memorandum may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

15. Not for the Benefit of Third Parties. The Agreement is intended to be solely for the benefit of the Parties, the Financing Parties, and their respective successors and permitted assignees, and is not intended to and shall not confer any rights or benefits on any party not a signatory thereto.

[SIGNATURES ON NEXT PAGE]

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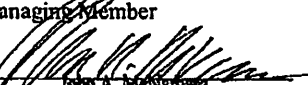
IN WITNESS WHEREOF, the Parties to this Memorandum have caused this Memorandum to be executed by their duly authorized representatives as of the Effective Date.

**"CO-TENANTS":**

HORSESHOE BEND WIND, LLC  
a Delaware limited liability company

By: Caithness Shepherds Flat, LLC  
a Delaware limited liability company  
Its Manager

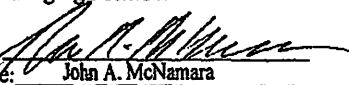
By: Caithness Northwestern Wind, LLC  
a Delaware limited liability company  
Its Managing Member

By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

SOUTH HURLBURT WIND, LLC  
a Delaware limited liability company

By: Caithness Shepherds Flat, LLC  
a Delaware limited liability company  
Its Manager


By: Caithness Northwestern Wind, LLC  
a Delaware limited liability company  
Its Managing Member

By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

NORTH HURLBURT WIND, LLC  
a Delaware limited liability company

By: Caithness Shepherds Flat, LLC  
a Delaware limited liability company  
Its Manager

By: Caithness Northwestern Wind, LLC  
a Delaware limited liability company  
Its Managing Member

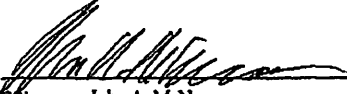
By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

Memorandum to Non-FERC Shared Facilities Agreement

**UM 1670: N. Hurlburt's Response to CBEC Data Request No. 2-NH-9**

**"MANAGER":**

SHEPHERDS FLAT MANAGEMENT, LLC,  
a Delaware limited liability company

By:   
Name: John A. McNamara  
Title: Senior Vice President, Finance

Memorandum to Non-FERC Shared Facilities Agreement



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Acknowledgements

State of New York

County of New York

On the \_\_\_\_\_ day of December, 2010, before me, the undersigned, personally appeared John A. McNamara, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gail M. Conboy (Seal)  
GAIL M. CONBOY  
Notary Public, State of New York  
No. 4984578  
Qualified in New York County  
Commission Expires 4/2/14

State of New York

County of New York

On the \_\_\_\_\_ day of December, 2010, before me, the undersigned, personally appeared John A. McNamara, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gail M. Conboy (Seal)  
GAIL M. CONBOY  
Notary Public, State of New York  
No. 4984578  
Qualified in New York County  
Commission Expires 4/2/14

Acknowledgement Page to Memorandum of Non-FERC Shared Facilities Agreement

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Acknowledgements

State of New York

County of New York

On the \_\_\_\_\_ day of December, 2010, before me, the undersigned, personally appeared John A. McNamara, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gail M. Conway (Seal)  
GAIL M. CONWAY  
Notary Public, State of New York  
No. 4964578  
Qualified in New York County  
Commission Expires 4/2, /14

State of New York

County of New York

On the \_\_\_\_\_ day of December, 2010, before me, the undersigned, personally appeared John A. McNamara, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gail M. Conway (Seal)  
GAIL M. CONWAY  
Notary Public, State of New York  
No. 4964578  
Qualified in New York County  
Commission Expires 4/2, /14

**EXHIBIT A-1**

**Horseshoe Bend Project and Project Site Description**

**Horseshoe Bend Project:**

The Horseshoe Bend Project is an approximate 290 MW wind energy generation facility to be constructed on the Project Site described and depicted below. The project will consist of 116 General Electric 2.5 MW wind turbine generators, along with associated above and below ground electrical transmission and collection systems, pad mounted transformers and related equipment.

**Project Site:** The Horseshoe Bend Project Site as identified in that certain Site Certificate for the Shepherds Flat Wind Farm, issued by the Oregon Energy Facility Siting Council ("Council") on July 25, 2008, as amended by that certain First Amended Site Certificate for Shepherds Flat South, issued by the Council on March 21, 2010 (as may be subsequently modified and amended by the Council from time to time) in favor of Horseshoe Bend, as certificate holder.



**EXHIBIT A-2**

**South Hurlburt Project and Project Site Description**

**South Hurlburt Project:**

The South Hurlburt Project is an approximate 290 MW wind energy generation facility to be constructed on the Project Site described and depicted below. The project will consist of 116 General Electric 2.5 MW wind turbine generators, along with associated above and below ground electrical transmission and collection systems, pad mounted transformers and related equipment.

**Project Site:** The South Hurlburt Project Site as identified in that certain Site Certificate for the Shepherds Flat Wind Farm, issued by the Oregon Energy Facility Siting Council (“**Council**”) on July 25, 2008, as amended by that certain First Amended Site Certificate for Shepherds Flat Central, issued by the Council on March 21, 2010 (as may be subsequently modified and amended by the Council from time to time) in favor of South Hurlburt, as certificate holder.

**EXHIBIT A-3**

**North Hurlburt Project and Project Site Description**

**North Hurlburt Project:**

The North Hurlburt is an approximate 265 MW wind energy generation facility to be constructed on the Project Site described and depicted below. The project will consist of 106 General Electric 2.5 MW wind turbine generators, along with associated above and below ground electrical transmission and collection systems, pad mounted transformers and related equipment.

**Project Site:** The North Hurlburt Project Site as identified in that certain Site Certificate for the Shepherds Flat Wind Farm, issued by the Oregon Energy Facility Siting Council ("Council") on July 25, 2008, as amended by that certain First Amended Site Certificate for Shepherds Flat North, issued by the Council on March 21, 2010 (as may be subsequently modified and amended by the Council from time to time) in favor of North Hurlburt, as certificate holder.



**EXHIBIT B-1**

**Shared Premises Agreements**

1. Omnibus Agreement Regarding Grants of Subordinate Rights and Easements (Horseshoe Bend, South Hurlburt and North Hurlburt) dated as of December \_\_\_\_, 2010, among North Hurlburt Wind, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, a memorandum of which was recorded on December \_\_\_\_\_, 2010 as Document No. 2010-\_\_\_\_\_, in the official records of Gilliam County, Oregon, and on December \_\_\_\_, 2010 as Microfilm No. 2010-\_\_\_\_\_ in the official records of Morrow County, Oregon.
2. Second Amended and Restated Wind Project Ground Lease (North Hurlburt), dated as of October 11, 2010, by and between Skye H. Krebs and Penny M. Krebs, as tenants in common, as Surface Owner, and Columbia River Wind, LLC, an Oregon limited liability company, as Wind Lease Rights Owner, and together with the Surface Owner, as Landlord, and North Hurlburt Wind, LLC, as Tenant, a memorandum of which was recorded on December 7, 2010 as Document No. 2010-000483, in the official records of Gilliam County, Oregon.
3. Grant of Easement and Easement Agreement dated as of October 11, 2009, by and between J.R. Krebs, as Owner, and Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Developer, a Memorandum of which was recorded in the Official Records of Gilliam County, Oregon on October 16, 2009 as Document No. 2009-000442, as assigned to North Hurlburt Wind, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated as of July 27, 2010 and recorded on August 3, 2010 as Instrument No. 2010-000278 in the Official Records of Gilliam County, Oregon, as amended by that certain First Amendment to Grant of Easement and Easement Agreement dated as of December 6, 2010 by and between J.R. Krebs, as Owner, and North Hurlburt Wind, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, collectively, as Developer, which was recorded on December \_\_\_\_, 2010 as Instrument No. 2010-\_\_\_\_\_ in the Official Records of Gilliam County, Oregon.
4. Wind Project Ground Lease dated as of June 18, 2009 between Vic Jansen, as Surface Owner, VCK LLC, a Washington limited liability company, as VCK LLC Wind Revenue Co-Owner, and Randy Allred and Nancy Allred, as Allred Wind Revenue Co-Owner, collectively, as Landlord, and Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded July 27, 2009 as Document No. 2009-000312 in the official records of Gilliam County, Oregon, and on July 28, 2009 as Microfilm No. 2009-24412 in the official records of Morrow County, Oregon, as amended by that certain unrecorded First Amendment to Wind Project Ground Lease dated as of November 13, 2009, and that certain Second Amendment to Wind Project Ground Lease dated as of December 4, a memorandum of which was recorded on December 10, 2010 as Document No. 2010-000499, in the official records of Gilliam County, Oregon, on December 10, 2010 as Microfilm No. 2010-27316 in the

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official records of Morrow County, Oregon. The Tenant's interest in the lease was assigned pursuant to that certain Assignment and Assumption Agreement (Real Estate Rights) dated as of December 8, 2010, between Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Assignor, and South Hurlburt Wind, LLC, a Delaware limited liability company, as Assignee, including the terms and provisions thereof, and recorded on December \_\_\_\_\_, 2010 as Document No. 2010-\_\_\_\_\_ in the official records of Gilliam County, Oregon, and on December \_\_\_\_\_, 2010 as Microfilm No. 2010-\_\_\_\_\_ in the official records of Morrow County, Oregon.

5. Grant of Easement and Easement Agreement dated as of October 29, 2009, by and between Monty Crum Ranches, LLC, an Oregon limited liability company, as Owner, and Caithness Shepherds Flat, LLC, a Delaware limited liability company, as Developer, a Memorandum of which was recorded on November 3, 2009 as Instrument No. 2009-000468 in the Official Records of Gilliam County, Oregon, as assigned to South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated as of July 27, 2010 and recorded on August 3, 2010 as Instrument No. 2010-00277 in the Official Records of Gilliam County, Oregon, as amended by that certain First Amendment to Grant of Easement and Easement Agreement dated as of July 27, 2010 by and between Monty Crum Ranches, LLC, as Owner, and South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, collectively, as Developer, which was recorded on August 3, 2010 as Instrument No. 2010-000280 in the Official Records of Gilliam County, Oregon.
6. Second Amended and Restated Wind Project Ground Lease dated as of October 11, 2010, by and between 4GD Land Co., an Oregon partnership, and Loren A. Heideman and Della K. Heideman, or their successors, Trustees of the Loren and Della Heideman Revocable Trust dated June 22, 2004, as amended, collectively, as Landlord, and South Hurlburt Wind, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded on December 1, 2010 as Document No. 2010-000471 in the official records of Gilliam County, Oregon, and on December 2, 2010 as Microfilm No. 2010-27216 in the official records of Morrow County, Oregon.
7. Second Amended and Restated Wind Project Ground Lease, dated as of October 11, 2010, by and between Keven Haguewood, Linda Haguewood, Stephanie Hisler-Haguewood (formerly known as Stephanie Haguewood), Dustin Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Mason Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Kirk Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Bailey Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Ally Haguewood, with Linda Haguewood as substitute custodian for each of the four named custodianships, collectively, as Landlord, and South Hurlburt Wind, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded on December 10, 2010 as Document No. 2010-000495, in the official records of Gilliam County, Oregon.

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8. Second Amended and Restated Wind Project Ground Lease, dated as of October 11, 2010, by and between Keven Haguewood, Linda Haguewood, Stephanie Hisler-Haguewood (formerly known as Stephanie Haguewood), Dustin Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Mason Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Kirk Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Bailey Haguewood, Keven Haguewood as custodian under the Oregon Uniform Transfers to Minors Act for Ally Haguewood, with Linda Haguewood as substitute custodian for each of the four named custodianships, collectively, as Landlord, and Horseshoe Bend Wind, LLC, a Delaware limited liability company, as Tenant, a memorandum of which was recorded on December 10, 2010 as Document No. 2010-000496, in the official records of Gilliam County, Oregon and on December 10, 2010 as Microfilm No. 2010-27315 in the official records of Morrow County, Oregon.
9. Wire Line Crossing Agreement dated as of May 27, 2010, by and between Columbia Basin Electric Cooperative, Inc., a cooperative association of the State of Oregon, as Licensor, and Horseshoe Bend Wind, LLC and South Hurlburt Wind, LLC, collectively, as Licensee, and recorded on July 2, 2010 as Instrument No. 2010-000243 in the official records of Gilliam County, Oregon, and on July 2, 2010 as Microfilm No. 2010-26395 in the official records of Morrow County, Oregon, as amended by that certain Amendment to Wire Line Crossing Agreement dated as of December 7, 2010, which has been, or will be, recorded in Gilliam and Morrow Counties, Oregon.
10. Conditional License Agreement dated as of March 1, 2010, by and between Portland General Electric Company, an Oregon corporation, and Caithness Shepherds Flat, LLC, and recorded on April 26, 2010 as Instrument No. 2010-000166 in the official records of Gilliam County, Oregon, as assigned to North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, and Horseshoe Bend Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated as of December 10, 2010 and recorded on December \_\_\_\_\_, 2010 as Document No. 2010-\_\_\_\_\_, in the official records of Gilliam County, Oregon, and on December \_\_\_\_\_, 2010 as Microfilm No. 2010-\_\_\_\_\_ in the official records of Morrow County, Oregon.
11. Unrecorded Wire Line Crossing Agreement dated as of April 1, 2010, by and between PacifiCorp., an Oregon corporation, as Licensor, and Caithness Shepherds Flat, LLC, as Licensee (R/W File No. 20090305), as assigned to North Hurlburt Wind, LLC pursuant to that certain Assignment and Assumption Agreement dated December 10, 2010.
12. Acknowledgment of Non-Interference dated as of November 30, 2010, by and among Pacific Wind Development, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC and recorded on December 7, 2010 as Instrument No. 2010-000482 in the official records of Gilliam County, Oregon.
13. Consent Agreement dated as of November 30, 2010, by and among Pebble Springs Wind LLC, an Oregon limited liability company, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC, and recorded on December 7, 2010 as Instrument No. 2010-000481 in the official records of Gilliam County, Oregon.



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14. Consent Agreement dated as of November 30, 2010, by and among South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC, and Pacific Wind Development, LLC, a Delaware limited liability company, and recorded on December 7, 2010 as Instrument No. 2010-000479 in the official records of Gilliam County, Oregon and on December 7 2010 as Microfilm No. 2010-27250 the official records of Morrow County, Oregon.

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**EXHIBIT B-2**

**Shared Premises**

Tract 1:

Shared Facilities Easement, East Side of Section 25/3/21 to Slatt Substation

A 100 foot wide strip of land lying in Section 25, the Southeast ¼ of the Southeast ¼ of Section 26, and in the North ½ of the Northeast ¼ of Section 35, Township 3 North, Range 21 East, Willamette Meridian, Gilliam County, Oregon, being more particularly described as follows:  
A strip of land, 100.00 feet in width lying 50.00 feet on each side of the following described line.

Beginning at a point on the East line of said Section 25, said point bears South 00°23'24" East 387.56 feet from the Northeast corner of said section, said point also being 50.00 feet distant Southeasterly from the Southeasterly line of the BPA Ashe #1 and #2 Easement as described in M-61-181, Deed Records of Gilliam County; thence leaving said East line, parallel with and 50.00 feet distant from said Southeasterly line, South 53°22'12" West 4,690.41 feet; thence leaving said parallel line, South 02°27'39" West 856.13 feet to a point being 50.00 feet distant Southerly from the Southerly line of the PGE transmission line easement described in M-66-158, Deed Records of Gilliam County; thence parallel with and 50.00 feet distant from said Southeasterly line, South 88°23'49" West 220.65 feet; thence South 53°22'12" West 3,239.07 feet to the intersection with the Northeasterly line of the BPA Slatt Substation as shown on Record of Survey #267, Survey Records of Gilliam County and there terminating.

The sidelines of said 100 foot wide strip shall be extended or truncated such that they intersect the Easterly line of said Section 25 at the point of beginning and the Northeasterly line of said Slatt Substation at the terminus point.

Tract 2:

Shared Facilities Easement (North Hurlburt Wind, LLC)

A strip of land of variable width lying in Sections 19, 20, and 30 of Township 3 North, Range 22 East, Willamette Meridian, Gilliam County, Oregon, being more particularly described as follows:

Commencing at the Northwest corner of said Section 30; thence along the West line of said Section, South 00°23'24" East 387.56 feet to the true point of beginning of this description, said true point of beginning, being 50.00 feet distant Southerly from the Southeasterly line of the BPA Ashe #1 and #2 easement as described in M-61-181, Records of Gilliam County; thence parallel with and 50.00 feet distant from said Southeasterly line, North 53°22'12" East 703.28 feet; thence North 48°02'50" East 1,174.75 feet; thence North 64°28'43" East 9,661.99 feet; thence leaving said parallel line, South 25°44'13" East 504.02 feet to the intersection with the Northerly line of the

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Shepherds Flat Wind Project Ring Bus site and Point "A"; thence South 25°55'54" East 164.00 feet to the intersection with the Southerly boundary of said Ring Bus site and Point "B"; thence South 26°00'00" East 90.37 feet; thence South 04°19'40" West 3,466.48 feet to the intersection with the Northerly right-of-way line of Rhea County Road and terminus point of this description, said terminus point bears North 28°45'39" West 1,034.75 feet from the Southeast corner of said Section 20.

The above described strip of land shall be 100.00 feet in width lying 50.00 feet on each side of the above described centerline from the true point of beginning to Point "A". The strip shall be 386.00 feet in width, lying 192.81 feet to the left and 193.19 feet to the right of the above described centerline from Point "A" to Point "B". The strip shall be 100.00 feet in width lying 50.00 feet on each side of the above described centerline from Point "B" to the terminus point. The sidelines of the above described strip shall be extended or truncated such that they end at the intersection with the West line of said Section 30 at the true point of beginning and said Northerly right-of-way line of Rhea County Road at the terminus point.

Contains 37.27 acres, more or less.

Tract 3:

Shared Facilities Easement (South Hurlburt Wind, LLC)

A 100 foot wide strip of land lying in Sections 20, 28, 29, and 33, Township 3 North, Range 22 East, Sections 4, 9, 15, 16, 22, 23, 25, and 26, Township 2 North, Range 22 East, and in Section 1, Township 1 North, Range 22 East, Willamette Meridian, Gilliam County, also lying in Sections 30 and 31 of Township 2 North, Range 23 East, and in Section 6 of Township 1 North, Range 23 East, Willamette Meridian, Morrow County, Oregon, being more particularly described as follows:

A strip of land 100 feet in width, lying 50.0 feet on each side of the following described line:

Commencing at the Southeast corner of said Section 20; thence North 30°41'55" West 984.24 feet to the true point of beginning of this description, said true point of beginning lies on the Southerly right-of-way line of Rhea County Road; thence South 04°19'40" West 1,968.18 feet; thence South 18°46'57" East 3,832.73 feet to Point "A"; thence South 04°36'31" West 331.41 feet; thence South 23°13'47" East 1,696.71 feet; thence South 32°06'21" East 5,675.98 feet; thence South 13°04'31" East 5,154.92 feet; thence South 00°04'11" East 5,919.36 feet; thence South 32°06'46" East 1,400.00 feet; thence South 14°01'17" East 1,885.28 feet; thence South 14°28'21" East 508.05 feet; thence South 13°54'34" East 2,050.81 feet; thence South 49°16'03" East 4,778.19 feet; thence South 07°32'53" East 3,084.69 feet; thence North 89°25'24" East 5,094.86 feet; thence South 57°34'51" East 3,091.72 feet; thence South 74°48'12" East 3,330.21 feet; thence South 03°05'19" East 5,334.76 feet; thence South 43°15'57" West 4,910.73 feet, more or less, to the intersection with the Northeasterly right-of-way line of Fourmile Canyon County Road and terminus point of this description, said terminus point bears South

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33°42'54" East 4,090.40 feet from the Northeast corner of said Section 1.

Also, the following described 100 foot wide strip of land:

A strip of land 100.00 feet in width lying 50.00 feet on each side of the following described line:

Commencing at the aforesaid Point "A"; thence South 71°07'45" West 121.20 feet to the intersection with the Easterly boundary of the Shepherds Flat Central Substation and terminus point of this description.

The sidelines of the above described strips of land shall be extended or truncated such that they end at the intersection with the Southerly right-of-way line of Rhea County Road at the true point of beginning and the Northeasterly right-of-way line of Fourmile Canyon County Road and Easterly boundary of the Shepherds Flat Central Substation at the terminus points.

The above described strips contain 138 acres, more or less.

Tract 4:

**Shared Facilities Easement (Horseshoe Bend Wind, LLC)**

A 100 foot wide strip of land lying in Sections 1 and 12, Township 1 North, Range 22 East, Willamette Meridian, Gilliam County, Oregon, being more particularly described as follows: A strip of land, 100.00 feet in width, lying 50.00 feet on each side of the following described line:

Commencing at the Northeast corner of said Section 1; thence South 33°51'09" West 4,149.61 feet to the true point of beginning of this description, said true point of beginning lies on the Southwesterly right-of-way line of Fourmile Canyon County Road; thence South 43°15'57" West 225.18 feet; thence South 00°00'56" East 3,002.80 feet to the intersection with the North line of the Shepherds Flat Wind Project South Substation site and terminus point of this description, said terminus point bears South 20°26'38" West 7,057.44 feet from said Northeast corner of Section 1.

Contains 7.41 acres, more or less.



EXHIBIT C-1

**Shared Facilities, Segments, Constructing Co-Tenants,  
and Segment Interests of the Co-Tenants**

The Shared Facilities (other than the Shared Equipment) are described in the table below, and are divided into various segments (each a "Segment"). The Co-Tenants responsible for constructing or maintaining (or causing the construction and maintenance of) the Shared Facilities within each Segment are also set forth below. Except as otherwise set forth below or unless all of the Co-Tenants with Segment Interests in a particular Segment agree otherwise, each Co-Tenant's Segment Interest therein shall be equal to its pro-rata portion thereof with respect to all Co-Tenants with Segment Interests therein, calculated in accordance with the relative amount of capacity (in Megawatts) of electricity each such Co-Tenant's Project has been allocated to flow through the applicable Segment, as set forth below for the initial Segments.

Shared Facilities Segment	Description of Shared Facilities covered by such Segment	Constructing/ Procuring/ Co-Tenants Responsible for Initial Construction Cost	Each Co-Tenant's Segment Interest
All of the Shared Premises	The Optical Power Ground Cable containing data and voice lines	Horseshoe Bend South Hurlburt North Hurlburt	Horseshoe Bend - 33.333% South Hurlburt- 33.333% North Hurlburt- 33.333%
The Shared Premises within the South Hurlburt Project Site south of the South Hurlburt Substation	Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset and the Optical Power Ground Cable containing data and voice lines), Transmission access roads	Horseshoe Bend South Hurlburt	Horseshoe Bend - 91.5% South Hurlburt - 8.5%
The Shared Premises within the South Hurlburt Project Site including and north of the South Hurlburt Substation	Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset and the Optical Power Ground Cable containing data and voice lines), Transmission access roads	Horseshoe Bend South Hurlburt	Horseshoe Bend - 50% South Hurlburt - 50%

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<p>The Shared Premises within the North Hurlburt Project Site south of the fence surrounding the 3-ring power circuit breaker ring bus</p>	<p>Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset), Transmission access roads</p>	<p>Horseshoe Bend South Hurlburt</p>	<p>Horseshoe Bend - 50% South Hurlburt - 50%</p>
<p>The Shared Premises between and including (i) the fence surrounding the 3-ring power circuit breaker ring bus adjacent to the North Hurlburt Project Substation (inward from and including the fence surrounding such structure) and (ii) the North Hurlburt Project Site's western boundary</p>	<p>Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts supporting the 3-ring power circuit breaker and any transmission cables and other facilities used in connection with such facilities (but expressly excluding all electrical lines that may be attached thereto, which are each Co-Tenant's Project Specific Asset, and the Optical Power Ground Cable containing data and voice lines), Transmission access roads</p>	<p>Horseshoe Bend South Hurlburt North Hurlburt</p>	<p>Horseshoe Bend - 34.3% South Hurlburt - 34.3% North Hurlburt - 31.4%</p>
<p>The Shared Premises from the western boundary of the North Hurlburt Project west to the Point of Interconnection</p>	<p>Transmission line poles, foundations, guys, wires and any other support mechanisms or other parts used in connection with such facilities (but expressly excluding all electrical lines conducting electricity that may be attached thereto, which are each Co-Tenant's Project Specific Asset, and the Optical Power Ground Cable containing data and voice lines), Transmission access roads</p>	<p>Horseshoe Bend South Hurlburt North Hurlburt</p>	<p>Horseshoe Bend - 34.3% South Hurlburt - 34.3% North Hurlburt - 31.4%</p>

**EXHIBIT C-2**

**Shared Equipment**

The Shared Equipment is described in the table below. The Co-Tenants responsible for procuring and acquiring such Shared Equipment are also set forth below. Each Co-Tenants' respective Segment Interest in the various Shared Equipment is determined pro-rata in proportion to the relative Percentage Interest of those Co-Tenants with Segment Interest in such Shared Equipment, unless all of the Co-Tenants with Segment Interests in the applicable Shared Equipment agree otherwise.

<b>Shared Equipment Segment</b>	<b>Location of Shared Equipment</b>	<b>Procuring Co-Tenant(s) Responsible for Initial Purchase Cost (subject to reimbursement per Section 4.5 of the Agreement)</b>	<b>Co-Tenants with a Segment Interest</b>
Spare Transformer	On Shared Premises - Location still open	Horseshoe Bend South Hurlburt North Hurlburt	Horseshoe Bend - 33.333% South Hurlburt- 33.333% North Hurlburt- 33.333%
Equipment and Vehicles -Manitowoc 16000 crane - Gove Model RT 890E crane - tractor trailer rig	On Shared Premises - Location still open	Horseshoe Bend South Hurlburt North Hurlburt	Horseshoe Bend - 33.333% South Hurlburt- 33.333% North Hurlburt- 33.333%

**EXHIBIT D**

**Determination of Percentage Interest of Each Co-Tenant**

The "Percentage Interest" of each Co-Tenant hereunder is a fraction, the numerator of which is the Nameplate Capacity of a Co-Tenant's Project and the denominator of which is the Nameplate Capacity of all the Co-Tenants' Projects listed below. As of the Effective Date, the Percentage Interest of the respective Co-Tenants are as follows:

<b>Co-Tenant</b>	<b>Percentage Interest</b>
Horseshoe Bend (290 MW Project)	$(290 \text{ MW}/845 \text{ MW}) \times 100 = 34.3195\%$
South Hurlburt (290 MW Project)	$(290 \text{ MW}/845 \text{ MW}) \times 100 = 34.3195\%$
North Hurlburt (265 MW Project)	$(265 \text{ MW}/845 \text{ MW}) \times 100 = 31.3609\%$
<b><u>Total: 845 MW of Projects*</u></b>	<b><u>Total: 100%</u></b>

\* 845 MW represents the interconnection requests submitted as of the date the Agreement, which requests and capacity are fully allocated to the Projects; provided, however, that some or all of the Co-Tenants may increase their capacity such that the total capacity of the Projects may be as high as 1,014 MW. This Exhibit D shall be modified by the Manager to reflect any increase in the total available interconnection capacity obtained for any Co-Tenant or any New Co-Tenant, if any, and the New Co-Tenant shall be added to this Exhibit D with appropriate adjustments to all Percentage Interests.



**EXHIBIT E**

**Manager's Responsibilities and Scope of Work**

At the direction of a Majority of the Co-Tenants, the Manager shall be responsible for the following Scope of Work on the Shared Premises and with respect to the Shared Facilities, which Scope of Work includes all maintenance of such Shared Assets, including, without limitation, the specific tasks enumerated below. The Co-Tenants agree and acknowledge that all of the services in the Scope of Work other than reporting, accounting and billing shall initially be performed by the O&M Contractor pursuant to each O&M Agreement and the Manager shall supervise all such services pursuant to its obligations under each Administrative Management Agreement. At such time as the initial O&M Agreement expires or terminates, a Majority of the Co-Tenants may direct the Manager to enter into a new operations and management agreement with a provider of such services approved by a Majority of the Co-Tenants in advance.

**General:**

- General inspection of any and all gates, cattle guards, culverts, security systems, and lighting installed in connection with the development and operation of the Shared Facilities, as well as, any fencing erected to enclose any Shared Assets.
- Maintain access roads on the Shared Premises by dragging or grader, including the importation of new road material.
- Dressing of roads.
- Weed abatement and vegetation control.
- Brush control and clear and maintenance of transmission corridors.
- Snow removal, as needed.
- Erosion control, including culverts, as needed.

**Environmental:**

- Proper disposal of all waste arising from Manager's work on the Shared Facilities and maintenance activities and completion of all required manifests and logs.
- Compliance with Governmental Approvals, Land Matters, and applicable Laws.
- Storage of materials in compliance with all regulations.

**Shared Facilities:**

- Insulator washing, as required.
- Pole line inspection.
- Gas-fill of breakers.
- Torquing of electrical connections and structures.
- Coordinate with the Co-Tenants for events or conditions that would affect the Projects.
- Periodic testing of protective relays.
- Testing contact resistance and operation on breakers and switches per manufacturer's specifications.
- Weed abatement and vegetation control.
- Witness meter and relay calibrations for interconnect as required by interconnect guidelines.
- Periodic testing of voltage regulation/power factor equipment, if installed.

**Other:**

- Reporting
- Billing

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**EXHIBIT F**

**PART A – REQUIRED INSURANCE COVERAGES OF CO-TENANTS**

[SEE ATTACHED]

INSURANCE REQUIREMENTS

Maintenance of Insurance

a. Borrower shall, without cost to the Master Administrative Agent, the Collateral Agent or the Financing Parties, maintain or cause to be maintained on its behalf in effect at all times the insurance required to be maintained by the Borrower under the Project Documents.

b. Without limiting the foregoing, the Borrower shall, without cost to the Master Administrative Agent, the Collateral Agent or the Financing Parties, maintain or cause to be maintained on its behalf in effect at all times the types of insurance required by the following provisions together with any other types of insurance required hereunder, with insurance companies rated A- X or better, by Best's Insurance Guide and Key Ratings (or an equivalent rating by another nationally recognized insurance rating agency of similar standing if Best's Insurance Guide and Key Ratings shall no longer be published) or other insurance companies of recognized responsibility satisfactory to the Master Administrative Agent, in consultation with the Insurance Consultant, the following insurance coverages until all obligations of Borrower pursuant to the Master Agreement and the other Financing Documents have been fully discharged:

(1) Commercial general liability insurance on an "occurrence" policy form, AEGIS claims-first-made or other similar policy form acceptable to the Master Administrative Agent in consultation with the Insurance Consultant, including coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability, suits brought against Borrower from actions of an independent contractor (for the protection of the Borrower as opposed to the independent contractor) and personal injury, with primary coverage limits of no less than \$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence and a \$2,000,000 annual aggregate limit. Either by separate policy or by inclusion in the commercial general liability policy, sudden and accidental pollution liability insurance consistent with industry practice.

The commercial general liability policy shall also include a severability of interest clause with no exclusions or limitations for cross liability if the policy has multiple named insureds. Deductibles shall not exceed \$25,000.

(2) Automobile liability insurance, if applicable, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with state legal requirements, with limits of not less than \$1,000,000 per accident with respect to bodily injury, property damage or death.

(3) Workers compensation insurance, if applicable, disability benefits insurance and such other forms of insurance which the Borrower is required by law to provide for the Project, providing statutory benefits and other states' endorsement and

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USL&H Act coverage (if any exposure exists), covering loss resulting from injury, sickness, disability or death of the employees of the Borrower or of any contractor or subcontractor performing work with respect to the Project. The Borrower shall endeavor to require that all contractors and subcontractors maintain all forms or types of insurance with respect to their employees as are required by law with limits of not less than \$1,000,000 per accident, \$1,000,000 for disease, and \$1,000,000 for each employee.

(4) From the point of groundbreaking for any Project and through the date of Final Completion of all Projects, or until such time as cover is provided under the operational insurance as set forth below, builder's risk insurance on an "all risk basis" (including earthquake, flood, sabotage, collapse, sinkhole and subsidence) and "soft cost coverage" on an "agreed amount" (with no deduction for depreciation or coinsurance penalty) basis and providing:

(A) coverage for the Projects and the Site, including removal of debris, insuring the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of the Projects in a minimum aggregate amount not less than full replacement value of the Projects (provided, however, that earthquake and flood coverage may be subject to an annual aggregate limit of at least \$100,000,000);

(B) off-site coverage with a per occurrence limit of 5% of the limit of liability or such higher amount as is sufficient to cover off-site equipment for which there have been progress payments;

(C) transit coverage (including ocean cargo where ocean transit will be required) with a per occurrence limit of the full insurable value of any single shipment;

(D) coverage for operational testing and startup with the same dollar coverage and modifications as set out in (4)(A) above for all assets related to the Projects, with cover running continuously for machinery breakdown from the beginning of testing until such time as operational cover is put into place; and

(E) business interruption insurance (of a "delay" or "delay in start-up" and "contingent delay in start up nature) in a minimum aggregate amount not less than the equivalent of 12 months loss of profits (including grossed up PTC and REC values, if applicable), and six (6) months Contingent DSU, on an "all risk" basis as set forth in (4) (A) through (4) (D) above. The Contingent Delay in Start Up shall endorse and insure all non-owned substations and interconnect facilities and material project suppliers.

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All such policies may have deductibles of not greater than \$250,000 per loss for physical damage, thirty (30) days per loss for business interruption/delay in start-up coverage (60 days in the aggregate), and \$100,000 for transit coverage.

(5) From and after Final Completion of all Projects, "all risk" property insurance coverage in the full amount of the total of all insurable Project Costs and including a full replacement cost endorsement on an "agreed amount" basis (with no deduction for depreciation or coinsurance penalty), providing, without limitation:

(A) coverages against "all risk" of physical damage, including loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, sabotage, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood (provided, however, that earthquake and flood coverage may be subject to an annual aggregate limit of at least \$100,000,000), collapse, sinkhole and subsidence with a sublimit of not less than \$500,000 for on-site pollution clean-up required as a result of the occurrence of an insured risk;

(B) off-site coverage with a per occurrence limit of \$2,500,000 or such higher amount as is sufficient to cover off-site equipment for which there have been progress payments;

(C) transit coverage (including ocean cargo where ocean transit will be required), if applicable, with a per occurrence limit sufficient to cover the full insurable value of any item in transit; and

(D) machinery breakdown coverage for wind turbines not covered by manufacturer warranty and the infrastructure, defined as the interconnection, substation, circuit breakers, transformers and switches, on a "comprehensive" basis including breakdown and repair with limits not less than full replacement cost of the insured objects.

Cover shall include LEG 2/96 or equivalent cover with respect to design error and faulty workmanship and materials.

The Borrower shall also maintain or cause to be maintained with respect to the Project business interruption insurance on an "all risk" basis as set forth in (4)(A) through (4)(D) above, but not less than 12 months Advance Loss of Profits (total revenue less non-continuing cost) including 12 months grossed up Production Tax Credits and RECs (if applicable). The Borrower shall also maintain contingent business interruption cover on non-owned substation(s) and transmission facilities in an amount not less than 120 days debt service, grossed up PTC's and REC's (if applicable) and continuing expenses. The Borrower shall also maintain or cause to be maintained, expediting or extra expense coverage in an amount not less than \$5,000,000.

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Property deductibles shall be no greater than \$250,000 for physical damage and machinery breakdown and a waiting period of not greater than 30 days any one loss (60 days in the aggregate) for business interruption.

(6) Umbrella Excess Liability Insurance of not less than \$20,000,000 for the applicable Contractor(s) and the Borrower. Such coverages shall be on a per occurrence basis or AEGIS claims made and over and above coverage provided by the policies described in paragraphs (1), (2) and (3) above. The umbrella and/or excess policies shall have insurance coverage as broad as the requirements forth in paragraphs (1), (2) and (3) above, and which are provided in the underlying policies.

(7) Aircraft liability, to the extent exposure exists, for the use of any owned, non-owned or hired aircraft used in the construction or operation of the Project with limits of not less than \$15,000,000.

(8) Pollution liability, the Borrower shall also provide or cause the applicable Contractor(s) to provide sudden and accidental pollution liability insurance with a limit of not less than \$5,000,000 per occurrence and including punitive damages insurance (subject to commercial availability) during the Construction Period and during the operations period of each Project, including the Project Commercial Operation Date for each Project.

(9) Such other or additional insurance (as to risks covered, policy amounts, policy provisions or otherwise) as, under prudent industry practice, are from time to time insured against for property and facilities similar in nature, use and location to the Projects.

c. Borrower shall endeavor to endorse its policies to contain the following or equivalent wording unless not available on commercially reasonable terms.

(1) Errors and Omissions (Builders Risk and Operational Property Policies only) - It is hereby understood and agreed that the coverages afforded by this policy to one insured shall not be invalidated or affected by any unintentional errors, omissions, or in any information required to be reported by another insured.

(2) Notice of Injurious Exposure to Conditions (Third-Party Policies Only) - It is agreed that failure of any agent, servant, or employee of the insured other than the owner, partner of any partnership, or an officer of the insured to notify the company of any occurrence of which he has knowledge shall not invalidate the insurance afforded by this policy as respects the named insured.

(3) Knowledge of Injurious Exposure to Conditions (Third-Party Policies Only) - It is hereby understood and agreed that knowledge of an occurrence by the agent, servant, or employee of the insured shall not in itself constitute knowledge by the insured, unless an executive officer of the insured's

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corporation or the owner or a partner of any partnership insured shall have received such notice from its or their agent, servant, or employee.

d. All insurance coverage shall be on a "no coinsurance or self-insurance/replacement cost" basis consistent with industry standards in terms of coverages, terms and conditions (including deductibles). Copies of policies shall be submitted to the Master Administrative Agent upon request.

e. All policies wherein the Master Administrative Agent and/or the Collateral Agent has an insurable interest shall insure the interests of the Secured Parties and the Collateral Agent as mortgagee, insure the Borrower and shall name the Collateral Agent and the Secured Parties as additional insured to the extent of the Borrower's indemnity obligations contained herein, unless the Collateral Agent and the Secured Parties are named as an insured under the policy. The interest of the Secured Parties, as mortgagee, shall be protected through a mortgagee / loss payee wording, acceptable to the Master Administrative Agent, in consultation with the Insurance Consultant, endorsed to the first party property type policies (including but not limited to all risk builders risk, delay in startup, all risk property, business interruption, marine cargo, marine DSU, inland transit, inland transit DSU, etc.). All policies covering real or personal property or business interruption shall name the Collateral Agent, on behalf of the Secured Parties, as First Loss Payee in accordance with Lender's Loss Payable Endorsement 438 BFU or equivalent and shall provide that any payment thereunder for any loss or damage with respect to the Project shall be made to the Collateral Agent, except that such policies may provide that any payments of less than \$1,000,000 (not to exceed \$2,000,000 in any year) made in respect of any single casualty or other occurrence may be paid solely to the Borrower, unless the Master Administrative Agent shall have notified the insurer that an Event of Default has occurred hereunder and shall be continuing. Upon payment and satisfaction of all of Borrower's obligations under, and termination of, the Financing Documents, the Master Administrative Agent will instruct the insurers to name the Borrower, or such successor credit provider or other Person as the Borrower shall specify, as loss payee.

Each policy shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Borrower) shall operate in the same manner as if there were a separate policy covering each such insured. Each policy shall waive subrogation against the Collateral Agent and the Secured Parties or the Borrower and shall waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Borrower, the Collateral Agent or the Secured Parties. Each such policy shall provide that if any premium or installment is not paid when due, or if such insurance is to be canceled, terminated or adversely materially changed for any reason whatsoever, the insurers (or their representatives) will promptly notify the Borrower and the Master Administrative Agent, and any such cancellation, termination or change shall not be effective until forty-five (45) days, (ten (10) days with regard to nonpayment), after receipt of such notice by the Master Administrative Agent, other than in respect of policies covering war and kindred risks, and that appropriate certification shall be made to the Borrower by each insurer with respect thereto.

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**EXHIBIT G**

**Form of Memorandum of Agreement**

[SEE ATTACHED]

EXHIBIT G-1