

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Wheatridge Wind Energy, LLC**

)

**Docket No. TX17-\_\_\_-000**

**APPLICATION FOR ORDER DIRECTING  
GENERATOR INTERCONNECTION AND TRANSMISSION SERVICE**

Pursuant to Sections 210, 211, and 212 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824i, 824j, and 824k, Wheatridge Wind Energy, LLC (“Wheatridge” or “Applicant”) hereby applies for an order from the Commission requiring Umatilla Electric Cooperative (“UEC”) to interconnect with Wheatridge’s proposed wind-generation project and to provide transmission service to a substation owned and operated by the Bonneville Power Administration (“BPA”). As explained below, UEC is willing to design, construct, own and operate the interconnection and transmission facilities necessary to accommodate Wheatridge’s request but requires a Commission order to clarify that UEC’s provision of such service is consistent with the requirements of a transmitting utility under Sections 210, 211, and 212 of the Federal Power Act. Wheatridge requests that the Commission issue its final order within 90 days of this application (by April 5, 2017) so as not to delay the timely development of the project.

**I. BACKGROUND**

Wheatridge is developing a wind powered generation facility that will have a maximum nominal generating capacity of 500 MW and will be located in eastern Oregon in Morrow and Umatilla Counties (“the Project”). The Project will utilize an internal conductor to aggregate and transmit the energy from the turbines to a project collector substation in Morrow County. Wheatridge proposes to interconnect the collector substation with UEC's system through facilities to be constructed by UEC and transmit all the energy generated by the Project to BPA’s

Morrow Flats substation to facilitate Wheatridge’s sale of its electric energy at wholesale in interstate commerce. In order to transmit the Project’s energy to the BPA transmission system, a request for interconnection and point-to-point transmission service was submitted to UEC on July 29, 2010 by 2Morrow Energy, LLC (“2Morrow”), and a Deposit Agreement was entered into by 2Morrow with UEC for transmission of 1,012 MW of electrical power across UEC’s transmission system. 2Morrow subsequently assigned to Wheatridge all of 2Morrow’s right, title and interest in the 1,012 MW of transmission service it had requested. On August 5, 2011, Wheatridge also submitted to UEC a point-to-point transmission service request and deposit for an additional 238 MW of capacity on the UEC transmission system.<sup>1</sup>

UEC is a not-for-profit rural electric cooperative operating in Morrow and Umatilla Counties, Oregon. UEC is exempt from Commission regulation as a public utility pursuant to section 201(f) of the FPA, 16 U.S.C. § 824(f). Notwithstanding this exemption, and as discussed in greater detail below, UEC has long provided wheeling service to third parties across its system under non-discriminatory rates, terms and conditions and is a transmitting utility as defined by the FPA.<sup>2</sup>

Wheatridge and UEC have entered into several letters of intent and other agreements for the purpose of identifying a route and the UEC infrastructure that would be necessary for a 230 kV transmission line to connect the Project’s facilities to a BPA substation. The current proposed route is addressed in a Letter of Intent dated April 15, 2015 (the “2015 LOI”). The 2015 LOI sets forth the mutual understandings and intentions of UEC and Wheatridge relating to

---

<sup>1</sup> The two transmission requests are to accommodate the current Project and future development by Wheatridge.

<sup>2</sup> A “transmitting utility” is defined as “an entity (including an entity described in 201(f)) that owns, operates, or controls facilities used for the transmission of electric energy – (A) in interstate commerce; (B) for the sale of electric energy at wholesale.” FPA Section 3(23), 16 U.S.C. § 796(23).

multiple agreements under which UEC will design, construct and own a 230 kV transmission line of approximately 23 miles in length in Morrow County connecting the Project to a BPA substation near Boardman, Oregon (the “UEC 230 kV Line”). UEC and Wheatridge have also executed a Facilities Agreement, dated January 11, 2016, that obligates UEC to identify a primary route corridor, prepare easements and permits and perform a preliminary line design. The primary route corridor identified for the UEC 230 kV Line is shown on the map attached as Exhibit A.<sup>3</sup>

It is currently contemplated that while UEC will design, construct, own and operate the necessary generator interconnection and transmission facilities, Wheatridge, as the first party to use the UEC 230 kV Line, will pay all capital costs for the construction of the UEC 230 kV Line and interconnection facilities and thereafter will receive transmission revenue credits (up to the amount of its capital contribution) from wholesale transmission service revenues received by UEC from service provided to third parties using the excess capacity of the UEC 230 kV Line, should any such revenues ever be collected by UEC.

The Project turbines will fall within the franchised retail service territories of both UEC and a neighboring electric distribution cooperative, Columbia Basin Electric Cooperative (“CBEC”) which, like UEC, is not a public utility. Approximately 20 miles of the primary route corridor for the UEC 230 kV Line traverses CBEC’s franchised retail service territory.

Retail service to the Project in the form of station power would be provided in accordance with state franchised retail service territories. In accordance with Oregon law, UEC could only supply the station power for the Project facilities located within the UEC franchised

---

<sup>3</sup> The map in Exhibit A identifies the UEC 230 kV Line as the UEC T-Line to Morrow Flats.

retail service territory. Station power for the Project facilities to be located in the CBEC franchised retail service territory would be supplied by CBEC under its retail tariff.

**II. AN ORDER UNDER FPA SECTIONS 210 AND 211 IS REQUIRED FOR APPLICANT TO OBTAIN INTERCONNECTION AND TRANSMISSION SERVICE.**

Wheatridge requests the Commission to issue an order under FPA Sections 210 and 211 to require UEC to interconnect with the Project and provide the point-to-point transmission service required by Wheatridge to transmit the energy from the Project to the BPA transmission system for sale into the wholesale market. UEC has informed Wheatridge that UEC desires to provide these services and, as noted above, Wheatridge and UEC have entered into the 2015 LOI and the Facilities Agreement for that purpose. As a transmitting utility UEC understands that it is obligated to provide the service requested by Wheatridge. However, UEC requires a Commission order under FPA Sections 210 and 211 to clarify that the service to be provided for Wheatridge – more specifically the provision of generator interconnection and transmission service to the bulk electric grid – is subject to the Commission’s jurisdiction and not limited by state law affecting franchised retail service territories.<sup>4</sup> Accordingly, Wheatridge is seeking such a Commission determination that requiring UEC to provide the interconnection and transmission services proposed in this application would meet the standards of FPA sections 210, 211 and 212.<sup>5</sup> The proposed order requested here would remove these jurisdictional uncertainties, thereby advancing the development of the Project and associated interconnection and transmission facilities by confirming that the services UEC will be ordered to provide are

---

<sup>4</sup> See *Tex-La Electric Cooperative of Texas*, 67 FERC ¶ 61,019 at p. 61,055 (1994) (A Commission order under Section 211 “is not an assertion of jurisdiction over specific facilities, but rather an assertion of authority to order specific services ... [without] distinctions between transmission and distribution facilities.”)

<sup>5</sup> See, e.g., *Southern Cross Transmission LLC and Pattern Power Marketing LLC*, 139 FERC ¶ 62,206 (2011).

required of UEC as a transmitting utility under the FPA and are not inconsistent with Oregon law allocating retail service territories between distribution utilities.<sup>6</sup>

As required by Section 36.1(b) of the Commission’s regulations, 18 CFR § 36.1(b), attached to this application is a form of notice suitable for publication in the Federal Register and a sworn statement that actual notice has been provided to each affected party, as defined in Section 36.1(a)(1) of the regulations.<sup>7</sup>

**III. THIS APPLICATION MEETS THE REQUIREMENTS OF FPA SECTIONS 210, 211 AND 212.**

This application meets the requirements for a Commission order under FPA Sections 210, 211 and 212 under the terms of those statutory provisions as interpreted in Commission precedent.<sup>8</sup>

A. Jurisdiction

Under Section 210(a) of the FPA, any electric utility may apply to the Commission for “an order requiring the physical interconnection of its facilities with the transmission facilities of any electric utility.”<sup>9</sup> Under Section 211(a) of the FPA any electric utility or any other person generating electric energy for sale for resale may apply to the Commission for an order requiring a transmitting utility to provide transmission service to the Applicant. Wheatridge is eligible to be an Applicant as an electric utility<sup>10</sup> because it intends to construct generation facilities to

---

<sup>6</sup> OR. Rev. Stat. §§ 758.400 to 758.475.

<sup>7</sup> Wheatridge has used a broad definition of affected parties in providing notice.

<sup>8</sup> *See generally Nevada Power Co.*, 110 FERC ¶ 61,029 (2005).

<sup>9</sup> *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 P28 (2002) (internal quotations omitted) (“*Kiowa*”).

<sup>10</sup> An “electric utility” is defined as a “person or Federal or State agency (including an entity described in section 201(f) that sells electric energy.” FPA Section 3(22), 16 U.S.C. § 796(22)(A).

engage in sales for resale.<sup>11</sup> Similarly, UEC is currently a transmitting utility under the FPA<sup>12</sup> because it provides non-jurisdictional interstate transmission service for a small landfill gas facility (Finley Buttes) to the BPA transmission system and provides transmission service to BPA for the benefit of a BPA preference power customer, Hermiston Energy Services. UEC has committed to construct and operate the additional associated interconnection facilities and the UEC 230 kV Line originating at the Project and terminating at BPA's Morrow Flats substation so as to permit Wheatridge to make wholesale sales in interstate commerce. Consequently, Applicant has been informed by UEC that UEC waives its rights to an evidentiary hearing under Sections 210 and 211 of the FPA.

B. Good Faith Request

Section 211(a) requires the Applicant to make a request to the transmitting utility for transmission service at least 60 days prior to filing the application. Wheatridge made a good faith request to UEC for interconnection and transmission services as early as 2010, more than 60 days prior to filing this application. Further, Section 213(a) contains procedures for an electric utility to request service and for the transmitting utility to respond to that request. Wheatridge waives the procedures in Section 213(a) applicable to UEC and has been informed by UEC that it waives notice under Sections 211(a) and 213(a).

C. Public Interest

Sections 210(c) and 211(a) provide that the Commission can issue an order directing the interconnection and transmission service if the order is in the public interest and meets the requirements of Section 212. With respect to an order under Section 210, the Commission must

---

<sup>11</sup> E.g., *Southern Cross Transmission LLC and Pattern Power Marketing LLC*, *supra*, P 25.

<sup>12</sup> 16 U.S.C. § 796(23).

find that the order (1) is in the public interest, (2) would encourage overall conservation of energy or capital, optimize the efficiency of use of facilities and resources, or (3) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies.

The Commission has previously found that “[n]ew interconnections generally meet the public interest test by making transmission service available to new generators and, thus increasing the supply of electricity and improving competition.”<sup>13</sup> Further, the Commission has previously determined that, “as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers.”<sup>14</sup> The Supreme Court has agreed, finding that “[n]on-discriminatory open access to transmission services is critical to the full development of competitive wholesale generation markets and the lower consumer prices achievable through such competition” and “[e]lectricity consumers are demanding access to lower cost supplies available in other regions of the United States, and access to . . . lower cost generation resources.”<sup>15</sup>

These principles are equally applicable here, where a non-jurisdictional transmitting utility is capable and willing to provide service to a generator seeking to connect to its system to

---

<sup>13</sup> *Kiowa, supra*, P 36. *Accord Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 535-36 (2008) (“*Morgan Stanley*”) (Order No. 888 transmission breaks down barriers that hinder a free market in wholesale electricity and “promote[s] competition in those areas of the industry amenable to competition, such as the segment that generates electric power, while ensuring that the . . . transmission grid . . . cannot exert monopolistic influence.”).

<sup>14</sup> *Nevada Power Co., supra*, P 17 (citing *Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,125, *reh’g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh’g*, 74 FERC ¶ 61,006 (1996), *aff’d* 315 F.3d 362 (D.C. Cir. 2003); and *Duquesne Light Co.*, 71 FERC ¶ 61,155 at pp 61,505-06 (1995) (public interest is satisfied if the transmitting utility is fairly compensated and reliability is not unreasonable impaired).

<sup>15</sup> *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1, supra*, at 536.

obtain access to the wholesale market. The public interest will be served by directing UEC to provide Wheatridge the requested interconnection and transmission service to enable the sales of its wind-generated energy in broader wholesale market.

D. Reliability

Section 211(b) precludes the Commission from issuing an order directing transmission service if the Commission finds it would impair the continued reliability of the electric systems affected by the order. Since the Project is a new generation facility, the effects of its interconnection to the BPA transmission system and on affected systems have been studied by BPA with System Impact Studies and Facilities Studies to identify the upgrades necessary to the Morrow Flat substation to avoid impairment of the continued reliability of the BPA transmission system. No impacts on any other systems were identified in the BPA studies. Further, the interconnection and operation of the UEC 230kV Line and BPA's Morrow Flats 230kV substation will be performed in compliance with all applicable reliability standards.<sup>16</sup> As a result, the Commission's final order will not direct a service that impairs reliability.

E. Effect on Contracts or Rate Schedules

Section 211(c) provides that the Commission cannot order transmission service if it would replace electric energy provided to the applicant under a contract with the transmitting utility or a rate schedule on file with the Commission. Wheatridge does not currently purchase electric energy from UEC or receive transmission service from UEC, or from anyone else, since it is a new generation facility, so Section 211(c) does not preclude an order for transmission

---

<sup>16</sup> Section 211 of the FPA predates the inclusion of Section 215 relating to mandatory reliability standards to protect the Bulk Power System. *See* 16 USC § 824o.



service here. Further UEC is not subject to the Commission's jurisdiction as a public utility; therefore, it does not have any rate schedules on file with the Commission.

F. Rates

Section 212(a) requires the transmitting utility subject to an order under Section 211 to provide wholesale transmission services at rates, charges, terms and conditions that permit the recovery of the transmitting utility's costs for the transmission services and related services. Further, to the extent practicable, the recovery of such costs should be from the applicant and not the transmitting utility's existing wholesale, retail, and transmission customers. Wheatridge confirms that it will pay the costs to construct the interconnection and transmission facilities to be constructed by UEC for the Wheatridge services, as described above. Further, pursuant to the 2015 LOI and the Facilities Agreement, Wheatridge will fund the capital costs of the facilities to construct the UEC 230 kV Line and pay an appropriate cost of service rate for the interconnection and point-to-point transmission services to be provided by UEC pursuant to applicable UEC rates and policies. This will not result in subsidization of the transmission service by UEC's existing customers.

G. Sections 212(g) and 212(h) concerning retail marketing areas, retail transmission and sham transactions

Section 212(g) prohibits the Commission from issuing an order that is inconsistent with any state law governing the retail marketing areas of electric utilities. Section 212(h) provides that no order issued under the FPA can require transmission of electric energy (1) directly to an ultimate consumer, or (2) to, or for the benefit of, an entity that would sell the electric energy directly to an ultimate consumer except in circumstances not applicable in this case. The interconnection and transmission service that UEC would be directed to provide will be solely for the purpose of providing Wheatridge a reliable high voltage transmission path to the BPA

transmission system to enable Wheatridge to make sales for resale of the energy generated by its 500 MW project.

Although the transmission facilities would interconnect with part of the Project located in the franchised retail service territory of CBEC, Wheatridge emphasizes that this application is solely for the purpose of enabling transmission from the Project to the BPA transmission system for wholesale sales. Wheatridge is not seeking an order that would require the transmission of electric energy directly to an ultimately consumer, or to or for the benefit of an entity that would otherwise sell electric energy directly to an ultimate consumer. Further, whether the facilities could be used for retail service in a particular state allocated retail service territory would be determined by the Oregon Public Utility Commission under Oregon law. Therefore, the Commission order requested in this application is not prohibited by Sections 212(g) and 212(h) because it would “not compel any transaction prohibited by Section 212(g) and (h).”<sup>17</sup>

#### H. Further Procedures

Section 212(c)(1) provides that prior to issuing a final order under Section 211 the Commission must issue a proposed order establishing a reasonable time for the parties to agree to the terms and conditions under which the proposed interconnection or transmission order will be carried out, including the allocation of costs between the parties and the compensation or reimbursement due. As noted above, Wheatridge and UEC have entered into agreements under which Wheatridge will fund the capital costs of the facilities and pay an appropriate cost of service rate for the interconnection and point-to-point transmission services to be provided by UEC pursuant to applicable UEC rates and policies. As a result, Wheatridge and UEC have a voluntary framework in place to reach agreement on the terms and conditions as contemplated by

---

<sup>17</sup> *Kiowa, supra*, P 46.

Section 212(c)(1). Consequently, UEC has informed Wheatridge that UEC waives its right to a proposed order under Section 212(c) so that the Commission can issue a final order expeditiously.<sup>18</sup> Therefore, Wheatridge requests the Commission to issue its final order within 90 days after the date of this application (by April 5, 2017) so that the development of the Project will not be delayed.

#### IV. CORRESPONDENCE AND COMMUNICATIONS

Applicant requests that all correspondence and communications regarding this application be addressed to the following:

Andrea Wolfman  
Michael Kunselman  
Alston & Bird LLP  
950 F Street, NW  
Washington, D.C. 20426  
andrea.wolfman@alston.com  
michael.kunselman@alston.com  
phone: 202-239-3300  
fax: 202-239-3333

---

<sup>18</sup> See, e.g., *PacifiCorp*, 111 FERC ¶ 61,070 P 5 (2005) (citing Order No. 888-A at p. 30,296 for the policy that upon receipt of a transmission provider's waiver of its rights to a request for service under Section 213(a) and the issuance of a proposed order under Section 212(c) the Commission will issue an order under Section 211).

V. **CONCLUSION**

For the reasons set forth above, Applicant respectfully requests the Commission to order UEC under Sections 210, 211, and 212 of the FPA to provide the requested interconnection and transmission services. Further, Wheatridge requests the Commission to issue its final order within 90 days after the date of this application.

Respectfully submitted,

**/s/ Andrea Wolfman**

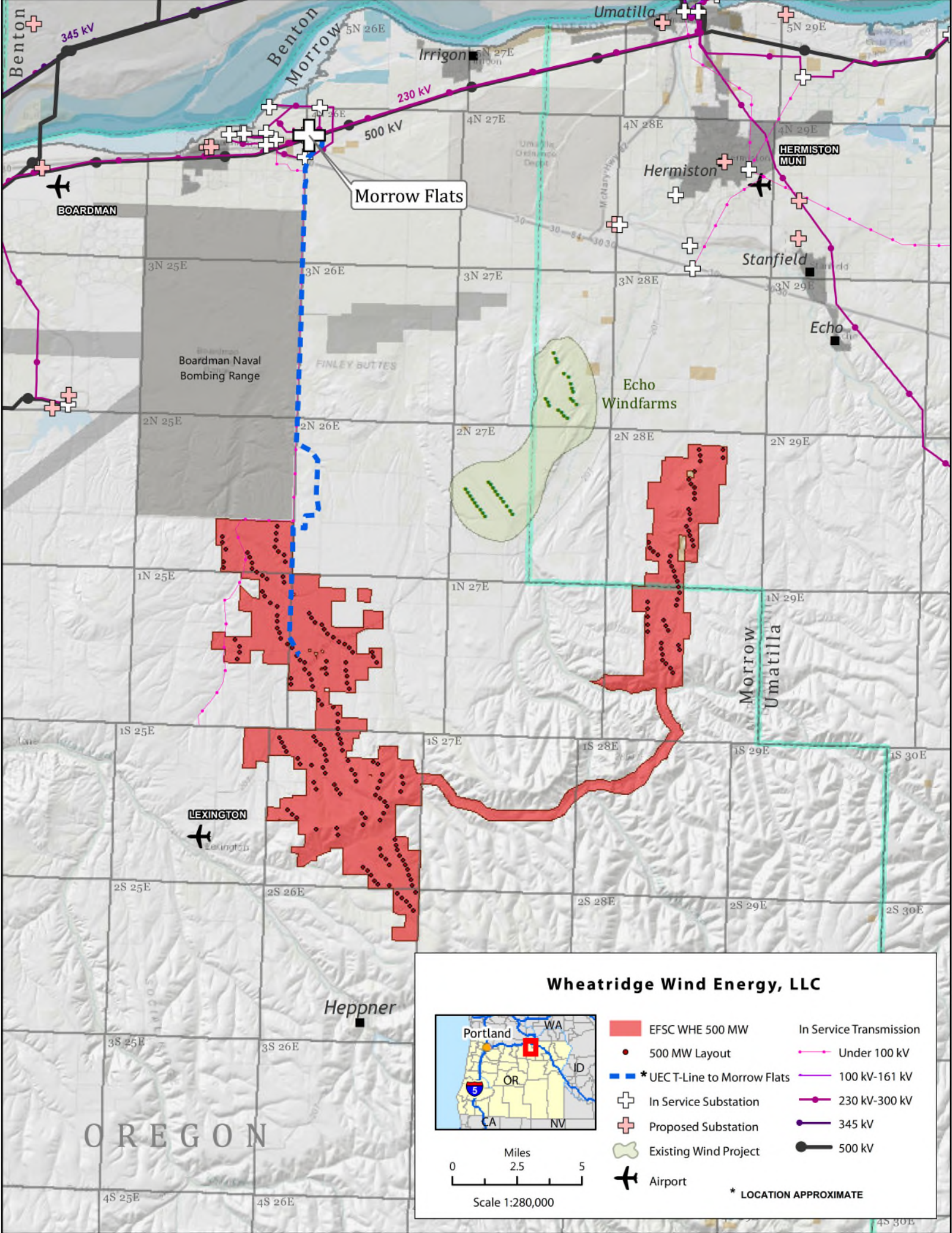
Andrea Wolfman  
Michael Kunselman

*Counsel to Wheatridge Wind Energy, LLC*

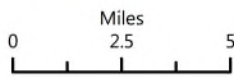
Date: January 6, 2017

**EXHIBIT A**

**MAP**



### Wheatridge Wind Energy, LLC



Scale 1:280,000

- EFSC WHE 500 MW
- 500 MW Layout
- \*UEC T-Line to Morrow Flats
- In Service Substation
- Proposed Substation
- Existing Wind Project
- Airport
- In Service Transmission
- Under 100 kV
- 100 kV-161 kV
- 230 kV-300 kV
- 345 kV
- 500 kV

\* LOCATION APPROXIMATE

**AFFIDAVIT OF SERVICE**



**AFFIDAVIT OF SERVICE**

Pursuant to 18 C.F.R. § 36.1(b)(2), I, being duly sworn, state that the entities identified on the following page have been provided notice that Wheatridge Wind Energy, LLC this day filed with the Federal Energy Regulatory Commission the foregoing Application For Order Directing Generator Interconnection And Transmission Service pursuant to Sections 210, 211, and 212 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824i, 824j, and 824k, requiring Umatilla Electric Cooperative to interconnect with the applicant’s proposed 500 MW wind-generation project and to provide transmission service to a substation owned and operated by the Bonneville Power Administration. This order is requested to clarify that the provision of such service is consistent with the requirements of a transmitting utility under Sections 210, 211 and 212 of the Federal Power Act. This notice and the forgoing application have been served pursuant to 18 C.F.R. § 385.2010 of the regulations of the Federal Energy Regulatory Commission.



Rafael Lopez  
Paralegal  
Alston & Bird LLP

Sworn and subscribed before me to this 6th day of January, 2017.



Notary Public

My Commission expires:

**EARNESTINE A. FLOWERS**  
**NOTARY PUBLIC DISTRICT OF COLUMBIA**  
My Commission Expires March 31, 2018





**Affected Parties Served:**

<p><b>Bonneville Power Administration, U.S. Dept. of Energy</b></p> <p>Timothy A. Johnson Assistant General Counsel for Power Bonneville Power Administration Post Office Box 3261 - LP Portland, OR 97208-3621 Telephone: 503-230-5285 Fax: 503-230-7405 Email: <a href="mailto:tajohnson@bpa.gov">tajohnson@bpa.gov</a></p> <p>Mary K. Jensen Assistant General Counsel for Transmission Bonneville Power Administration Post Office Box 3261 - LT Portland, OR 97208-3621 Telephone: 503-230-5758 Fax: 503-230-7405 Email: <a href="mailto:mkjensen@bpa.gov">mkjensen@bpa.gov</a></p>	<p><b>Umatilla Electric Cooperative</b></p> <p>Robert Echenrode General Manager &amp; CEO Umatilla Electric Cooperative 750 West Elm Ave. PO Box 1148 Hermiston, OR 97838 Telephone: (541) 564-4348 Fax: (541) 567-8142 E-Mail: <a href="mailto:Robert.echenrode@umatillaelectric.com">Robert.echenrode@umatillaelectric.com</a></p> <p>Thomas M. Grim Cable Huston 1001 SW Fifth Ave., Suite 2000 Portland, OR 97204-1136 Telephone: (503) 224-3092 Fax: (503) 224-3176 E-Mail: <a href="mailto:tgrim@cablehuston.com">tgrim@cablehuston.com</a></p>
<p><b>Oregon Public Utility Commission</b></p> <p>201 High Street, SE Suite 100 PO Box 1088 Salem OR 97301 <a href="mailto:puc.commission@state.or.us">puc.commission@state.or.us</a></p>	<p><b>Columbia Basin Electric Cooperative</b></p> <p>Thomas Wolff Columbia Basin Electric Cooperative 171 Linden Way PO Box 398 Heppner OR 97836-0398 Telephone: 541-676-9146 Fax: 541-676-5159 <a href="mailto:tommyw@columbiabasin.cc">tommyw@columbiabasin.cc</a></p>

## **FORM OF NOTICE**