

November 17, 2023 EFSC Meeting

Agenda Item G Attachments

Attachment 1:	Parent Company Letter
Attachment 2:	Performance Guarantee Form
Attachment 3:	Parent Company Letter

Attachment 1: Parent Company Letter



Nolin Hills Wind
c/o Capital Power
155 Federal St, Suite 1200
Boston, MA 02110
www.capitalpower.com

June 24, 2022

Via Email

Chair Marci Grail, Chair
Energy Facility Siting Councilmembers
Todd Cornett, Siting Division Administrator
Oregon Department of Energy
550 Capitol Street NE, First Floor
Salem, OR 97310

Re: Capital Power Corporation commitment to Nolin Hills Wind Power Project

Dear Chair Grail and Councilmembers:

This letter has been prepared in response to the comments made by members of the Energy Facility Siting Council (EFSC, or Council) at the public hearing held on May 26, 2022 on the Draft Proposed Order (DPO) on the Application for Site Certificate (Application) for the Nolin Hills Wind Power Project (Project).

At the hearing, a question was raised about the corporate structure of Nolin Hills Wind, LLC and its connection to Capital Power Corporation (Capital Power). More specifically, a Councilmember requested a 'firm statement' that Capital Power 'stands behind' the Project. **This letter is intended to provide that 'firm statement' and authenticate the testimony provided by Capital Power's authorized representative, Matt Martin, at the May 26, 2022 hearing in general, and specifically the portion attached hereto.**

As outlined in Exhibits A, D and M of the Application, Nolin Hills Wind, LLC is a wholly owned subsidiary of Capital Power, a Canadian Corporation that is publicly traded on the Toronto Stock Exchange (TSE: CPX) and has an investment grade credit rating of BBB+ (issued by Standard & Poor's). Capital Power is an independent power producer that owns and operates 26 power projects totaling more than 6,000 megawatts (MWs) across North America. Through its ownership and operation of a fleet of complex power generation projects, Capital Power is constantly proving that it can meet contractual commitments and regulatory requirements to the full satisfaction of partners, lenders, and investors. The Application provides verifiable evidence that Capital Power has the financial wherewithal and expertise to develop, construct, own and operate the Project.

Please allow this letter to serve as further evidence that Capital Power 'stands behind' the Nolin Hills Wind Power Project. Capital Power has committed to providing the financial assurance outlined in Exhibit M of the Application and the human capital and expertise outlined

in Exhibit D of the Application to ensure that the Project is built to the appropriate standards and within the regulatory framework approved by the Council.

Sincerely,

Capital Power Corporation

A handwritten signature in black ink, reading "Christopher L. Kopecky". The signature is written in a cursive style with a large, sweeping initial "C".

Christopher Kopecky,
Senior Vice President and Chief Legal, Development and Commercial Officer

Enclosures:

Excerpt of May 26, 2022 EFSC Hearing Testimony
Exhibits A, D and M of the Application

cc: Timothy L. McMahan, Stoel Rives LLP
Matthew Martin, Director, Capital Power

Attachment 2: Performance Guarantee Form

PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the Oregon Energy Facility Siting Council (EFSC) to issue the Site Certificate for the Nolin Hills Wind Power Project, Issue Date [REDACTED] (Site Certificate) to Nolin Hills Wind, LLC, a subsidiary of Capital Power Corporation (Subsidiary), the undersigned, Capital Power Corporation (Guarantor), a corporation incorporated in Canada with its principal place of business in the United States in Boston, Massachusetts hereby unconditionally guarantees to the EFSC the full and prompt payment and performance of all obligations, accrued and executory, which Subsidiary presently or hereafter may have under the Site Certificate. Guarantor further agrees to indemnify the EFSC against any losses the EFSC may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the EFSC of any of its rights and remedies under the Site Certificate, in the event of a default by Subsidiary thereunder, and/or as a result of the enforcement or attempted enforcement by the EFSC of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the Subsidiary's signing of the Site Certificate. Guarantor further agrees that Subsidiary and EFSC shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Site Certificate without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses that might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Subsidiary into or with another entity, corporate or otherwise, or the liquidation or dissolution of Subsidiary, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Subsidiary to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Subsidiary, or adjudication of Subsidiary as a bankrupt, or (iii) the assertion by the EFSC against Subsidiary of any of the EFSC's rights and remedies provided for under the Site Certificate, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Subsidiary, or existing in the EFSC's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the EFSC shall not be required to pursue any right or remedy it may have against Subsidiary or other Guarantors under the Site Certificate, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Subsidiary, or otherwise. Guarantor affirms that the EFSC shall not be required to first commence any action or obtain any judgment against Subsidiary before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the EFSC any amount, the payment of which is guaranteed hereunder and the payment of which by Subsidiary is in default under the Site Certificate or under any other document(s) or instrument(s) executed by Subsidiary as aforesaid, and that Guarantor will, upon demand,

perform all other obligations of Subsidiary, the performance of which by Subsidiary is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the EFSC that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, on [REDACTED].

CAPITAL POWER CORPORATION

By: _____
Name:
Title:

Acknowledged and Agreed to:
ENERGY FACILITY SITING COUNCIL

By: _____
Name:
Title: Chair

Attachment 3: Parent Company Letter

WAGON TRAIL ENERGY CENTER, LLC
700 Universe Blvd.
Juno Beach, FL 33408

September 19, 2023

Oregon Department of Energy
Energy Siting Division
550 Capital St. NE
Salem, OR 97301


To Whom it May Concern,

As described in the Application for Site Certificate submitted by Wagon Trail Energy Center, LLC for the Wagon Trail Solar Project ("Facility"), Wagon Trail Energy Center, LLC is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC.


With this letter, Wagon Trail Energy Center, LLC and NextEra Energy Resources, LLC confirm that Wagon Trail Energy Center, LLC will have access to sufficient resources and expertise to construct, own, operate, and maintain the Facility, which resources and expertise may be obtained as services provided by NextEra Energy Resources, LLC or an affiliate thereof on terms and conditions that will ensure the availability of such resources and expertise to Wagon Trail Energy Center, LLC as and when needed to ensure safe and reliable operation of the Facility.

Thank you in advance for your consideration of this matter.

Very truly yours,



Anthony Pedroni
Vice President
Wagon Trail Energy Center, LLC



Anthony Pedroni
Vice President
NextEra Energy Resources, LLC