

Exhibit M

Applicant's Financial Capability

Wheatridge Renewable Energy Facility East
March 2023

Prepared for
Wheatridge East Wind, LLC

Prepared by



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Acronyms and Abbreviations

| | |
|--------------------|---|
| Certificate Holder | Wheatridge East Wind, LLC |
| Facility | Wheatridge Renewable Energy Facility East |
| OAR | Oregon Administrative Rule |
| RFA 1 | Request for Amendment 1 |

1.0 Introduction

The Wheatridge Renewable Energy Facility East (Facility) is an approved, but not yet constructed, wind energy generation facility consisting of up to 66 turbines and related or supporting facilities with a peak generating capacity of up to 200 megawatts, to be located in an Approved Site Boundary of approximately 4,582 acres on over 42,000 acres of leased land in Morrow and Umatilla counties, Oregon. As part of Request for Amendment (RFA) 1 to the Facility Site Certificate, Wheatridge East Wind, LLC (Certificate Holder) is proposing to expand wind power generation at the Facility to provide the opportunity for increased power capacity and availability. This includes expanding the Site Boundary and micrositing corridors, increasing the peak generating capacity by adding more and newer turbines, changing the intraconnection routes, and extending the construction date. See the RFA 1's Division 27 document (*Request for Amendment #1 for the Wheatridge Renewable Energy Facility East*) for a more detailed summary of the proposed changes.

This Exhibit M was prepared to meet the submittal requirements in Oregon Administrative Rule (OAR) 345-021-0010(1)(m). Analysis in this exhibit incorporates and/or relies on reference information, analysis, and findings found in the Application for Site Certificate (ASC), previous RFAs, and Oregon Department of Energy Final Orders to demonstrate that the Facility, as modified by RFA 1, continues to comply with applicable Site Certificate conditions and the approval standard in OAR 345-022-0050.

2.0 Opinion of Legal Counsel – OAR 345-021-0010(1)(m)(A)

OAR 345-021-0010(1)(m) Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection requires the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant must include:

OAR 345-021-0010(1)(m)(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements.

The Certificate Holder previously provided an opinion from their legal counsel indicating that the Certificate Holder has the legal authority to construct and operate the Facility without violating its articles of incorporation or similar agreements (Wheatridge 2020; resubmitted as Attachment M-1).

3.0 Bond, Security, or Other Financial Instrument – OAR 345-021-0010(1)(m)(B)

OAR 345-021-0010(1)(m)(B) The type and amount of the applicant's proposed bond or letter of credit to meet the requirements of OAR 345-022-0050.

The estimated cost of the Facility decommissioning and restoration is provided in Exhibit X. In accordance with Condition PRE-RF-01, prior to beginning construction on the Facility, the Certificate Holder will submit to Oregon Department of Energy a bond or letter of credit in an amount equal to or greater than the net cost of Facility decommissioning and restoration. The bond or letter of credit will be provided in a form approved by the Energy Facility Siting Council and will ensure that adequate funds are available to restore the site to a useful, nonhazardous condition following permanent cessation of Facility construction or operation. The bond or letter of credit will be adjusted annually for inflation according to the Gross Domestic Product Implicit Price Deflator Index.

4.0 Evidence of Reasonable Likelihood of Obtaining Security – OAR 345-021-0010(1)(C)

OAR 345-021-0010(1)(m)(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.

The Energy Facility Siting Council previously found that the Certificate Holder has a reasonable likelihood of obtaining a bond or letter of credit in an amount necessary to retire and restore the site, previously calculated at \$7 million (second-quarter 2020 dollars)¹.

To reflect the modified and updated retirement cost estimate detailed in Exhibit X, the Certificate Holder has obtained a letter from a financial institution (see Attachment M-2) demonstrating the reasonable likelihood that they will be able to obtain one or bonds in an amount equal to or greater than the cost of Facility decommissioning and restoration.

5.0 References

Wheatridge (Wheatridge Wind II, LLC). 2020. Request for Amendment #1 for the Wheatridge Renewable Energy Facility II. Prepared by Tetra Tech, Inc. August 2020. Available online at:

¹ Final Order on Request for Amendment 1 to the Site Certificate for the Wheatridge Renewable Energy Facility II (November 2020), p. 31

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<https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2020-10-12-WREFII-AMD1-Request-for-Amendment-1.pdf>.

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Attachment M-1. Opinion of Legal Counsel

September 2, 2020

Ms. Sarah Esterson, Siting Analyst
Oregon Department of Energy
500 Capitol Street NE, 1st Floor
Salem, OR 97301

Re: Wheatridge East Wind, LLC

Dear Ms. Esterson:

This firm has acted as special counsel to Wheatridge East Wind, LLC, a Delaware limited liability company (the "Certificate Holder") in connection with the Site Certification for the Wheatridge Renewable Energy Facility East and the Certificate Holder's development, construction, operation and retirement of the wind farm located in Morrow and Umatilla Counties, Oregon (the "**Wheatridge Project**").

For purposes of the opinions expressed in this letter, we have examined a certified copy of the Certificate of Formation of Wheatridge East Wind, LLC, filed with the State of Delaware Secretary of State, Division of Corporations on August 20, 2020 (the "**COF**"), and a copy of the Limited Liability Company Agreement of Wheatridge East Wind, LLC, dated as of August 25, 2020 and made effective as of August 20, 2020, executed by Wheatridge Wind Holdings, LLC, as Sole Member (the "**LLC Agreement**", and together with the COF, the "**Documents**").

We have reviewed only the Documents and have made no other investigation or inquiry. Without limiting the generality of the foregoing, we have not examined or reviewed any document or instrument (other than the Documents), including, without limitation, any document or instrument referred to in the Documents. We have also relied, without additional investigation, upon the facts and representations set forth in the Documents.

In our examination of the Documents and in rendering the following opinion, in addition to the assumptions contained elsewhere in this letter, we have, with your consent, assumed without investigation (and we express no opinion regarding the following):

(a) that the Documents are valid and binding obligations of each party thereto, enforceable against such party in accordance with its respective terms;

(b) We have assumed that the provisions of the LLC Agreement relating to the powers of, and authorization and execution of documents and agreements by the Certificate Holder would be enforced by Delaware law as written.

Based solely upon our examination and consideration of the Documents, and in reliance thereon, and in reliance upon the factual statements and representations contained in the Documents, and our consideration of such matters of law as we have considered necessary or appropriate for the expression of the opinion contained herein, and subject to the exceptions, limitations, qualifications and assumptions expressed herein, we are of the opinion that, subject to the Certificate Holder's meeting all of the requirements of any applicable federal, state and local laws (including all rules and regulations promulgated thereunder), the Certificate Holder has the legal authority to construct and operate the Wheatridge Project without violating the Documents.

The opinion expressed herein is limited solely to the scope of our opinion is based solely on the Limited Liability Company Act of the State of Delaware.

Please do not hesitate to contact me if you have any questions regarding this matter.

Very truly yours,

Squire Patton Boggs (US) LLP

SQUIRE PATTON BOGGS (US) LLP

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Attachment M-2. Letter from Financial Institution



LETTER OF CREDIT COMMITMENT LETTER

Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, Oregon 97301-3737

January 11, 2023

Attention: Todd R. Cornett, Assistant Director, Siting Division

Dear Mr. Cornett:

NextEra Energy Resources, LLC ("NextEra"), the parent company of Wheatridge East Wind, LLC ("Wheatridge"), is submitting a Request for Amendment 1 to the Wheatridge Renewable Energy Facility East, Energy Facility Siting Council of Oregon Site Certificate that requires evidence that Wheatridge can restore the site to a useful non-hazardous condition. The Bank of Nova Scotia (the "Bank") will issue an irrevocable standby letter of credit (the "Letter of Credit") for the Project in a form reasonably acceptable to you up to a maximum amount of nine million four hundred eighty-eight thousand three hundred ninety-one dollars (\$9,488,391.00) should it be required.

The Bank's commitment hereunder is subject to credit availability, the non-occurrence of a material adverse change affecting general market conditions or the NextEra's financial condition, regular review and acceptance of the terms and conditions of the final contract and required letter of credit, due diligence and approval by the Bank.

The Bank shall not be under any obligation to issue any Letter of Credit if any order, judgment or decree of any governmental authority or arbitrator shall by its terms purport to enjoin or restrain the Bank from issuing the Letter of Credit, or any law or regulation applicable to the Bank or any request or directive (whether or not having the force of law) from any governmental authority with jurisdiction over the Bank shall prohibit, or request that the Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the Bank is not otherwise compensated) not in effect on the closing date, or shall impose upon the Bank any unreimbursed loss, cost or expense which was not applicable on the closing date and which the Bank in good faith deems material to it.

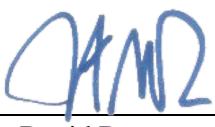
For the avoidance of doubt, this letter is not (and is not intended to be) a binding commitment to extend credit, provide or arrange all or any part of the debt financing, or provide any financing or services, but rather an expression of genuine interest and support in this matter based on the information provided to us; it being understood that any offer ultimately made by the Bank will be subject to the conditions referred to above and shall be evidenced only by the execution and delivery of, and shall be subject to the terms and conditions of, the definitive credit documentation referred to above.

The Bank's commitment hereunder will terminate on January 11, 2024.

Furthermore, any arrangement for the final letter of credit is a matter between NextEra and the Bank and we assume no liability to third parties or you if, for any reason, we do no execute said letter of credit.

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Yours truly,
The Bank of Nova Scotia

By: 

Print: David Dewar
Title: Director

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