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September 17, 2026

Joe Turner
Hearings Officer
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

Re: Federal Law Governing Transmission and Interconnection

Dear Hearings Officer Turner:

This letter is for inclusion in the Meadowlark CUP-SPR, Docket 785-26-000057-PLNG open record following the public hearing held on September 10, 2026. We represent TUAL bn LLC, who has serious concerns about how the City of Sherwood ("City") is approaching the review and approval of utility infrastructure.

It is important that the City of Sherwood be aware that the City's land use review of the Meadowlark application occurs within a broader legal framework that includes federal regulation of transmission service, generator interconnection, electric reliability, and critical infrastructure security. We recognize that the City retains authority to apply generally applicable land use standards, but that authority must be exercised in a manner that is consistent with—and does not obstruct—the federally regulated transmission and interconnection obligations governing Portland General Electric ("PGE").

PGE operates its regional transmission system under its Open Access Transmission Tariff ("OATT"), the federally regulated tariff that governs how PGE provides transmission and interconnection service over its transmission system. The OATT is filed with and administered by the Federal Energy Regulatory Commission ("FERC") and is formally published as Portland General Electric OATT Volume No. 8. Generally speaking, a tariff is a federally approved rulebook that governs how a transmission owner, like PGE, must provide transmission and interconnection service and what rights customers, like Meadowlark Energy Storage, have to receive that service.

Unlike a private contract, a FERC tariff, such as an OATT, has the force of federal law. A transmission provider like PGE cannot simply choose whether to follow it. Both PGE and transmission customers are legally bound by the tariff filed with and accepted by FERC. Here, the executed Large Generator Interconnection Agreement ("LGIA") between PGE and

Meadowlark requires the interconnection of Meadowlark BESS to PGE's transmission system in accordance with PGE's OATT. FERC has recognized previously that generator interconnection is a "critical component" of transmission service and established the standardized LGIA framework governing the rights and obligations of transmission providers and interconnection customers.[1] Accordingly, the Meadowlark BESS interconnection is part of a federally regulated transmission and interconnection framework administered pursuant to FERC's authority under the Federal Power Act. Federal law may apply in a manner that limits the City from imposing permitting conditions on utility infrastructure interconnection that would make it impossible to construct or reliably operate the required interconnection facilities or materially frustrate implementation of the federal interconnection framework.

While we acknowledge that the City retains authority to administer generally applicable land-use and permitting requirements, we caution the City that those requirements may not be applied in a manner that prevents implementation of a federally regulated interconnection arrangement. The Supreme Court has explained that states may pursue legitimate local objectives, but may not do so through regulatory mechanisms that intrude on matters committed to FERC's authority.[2] Consistent with that principle, the Third Circuit recently held that state permitting authority may not be used to override or obstruct a federally regulated transmission framework by substituting state judgment for determinations committed to federally approved processes.[3]

The City needs to be cautious that it does not impose conditions on a proposed utility upgrade and interconnection work that (1) prevents the facility from operating safely, (2) impairs PGE's compliance with binding reliability or operational requirements, or (3) renders construction of the facility technically impracticable. Conditions that have any of these effects may create an irreconcilable conflict with the federally regulated interconnection arrangement established under PGE's FERC-approved tariff and the parties' LGIA. Arguably, such conditions could be prohibited by federal law because they would pose an obstacle to implementation of the federal interconnection framework and effectively substitute local permitting judgments for determinations and requirements arising from the federally regulated interconnection process.[4]

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[1] *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003).

[2] *See Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150, 164-65 (2016) (holding that states may not pursue otherwise lawful policy goals through means that interfere with FERC-regulated electricity arrangements).

[3] *See Transource Pennsylvania, LLC v. DeFrank*, 156 F.4th 351, 375-80 (3d Cir. 2025) (holding that state action was preempted where it second-guessed a FERC-approved methodology and posed an obstacle to the accomplishment of federal transmission objectives).

[4] *See Transource,* 156 F.4th at 375-80 (state permitting authority may not be exercised in a manner that obstructs federally regulated transmission objectives); *Hughes,* 578 U.S. at 164-65.

In addition, NERC Reliability Standards approved and enforced by FERC impose mandatory standards. Those standards form part of a comprehensive and highly technical federal reliability framework that governs many aspects of transmission system planning, operation, maintenance, security, and reliability. The standards address, among other things, physical security, vegetation management, maintenance practices, transmission operations, facility ratings, and the reliable operation of bulk electric system facilities. FERC has recently approved an updated NERC reliability standard addressing physical security considerations for certain transmission stations and substations. That action reflects a broader federal focus on the security and resilience of critical transmission infrastructure.[5]

The applicability of any particular NERC reliability standard depends on detailed, facility-specific engineering, operational, and compliance assessments. Nevertheless, updated standards underscore the increasing emphasis federal regulators place on protecting transmission infrastructure and preserving utilities' ability to maintain appropriate security, access, and operational practices. More broadly, it illustrates that transmission facilities operate within an extensive federal reliability framework and that local permitting conditions may have implications extending beyond traditional land-use considerations. Ultimately, because compliance with these standards often involves fact-specific engineering, operational, and regulatory considerations, site modifications that affect visibility, access, maintenance, or operational functionality may have implications extending beyond local land-use considerations

We are concerned about the City's proposal regarding the interconnection of the Meadowlark BESS with the PGE Sherwood Substation. The PGE Sherwood Substation is already developed and forms part of a major high-voltage utility corridor that contains numerous tall transmission poles, lattice tower structures, and wires. Adding landscaping to the site or relocating access points could jeopardize the site's current safety clearances, maintenance accessibility, and safety protocols, which are required to operate the substation facility safely. Further, these site changes could hinder PGE's ability to meet its binding reliability or operational requirements. Landscaping around the perimeter of the existing substation, even if intended to mitigate the visual impact or meet City plan requirements, could interfere with PGE's ability to maintain appropriate visibility, inspection capabilities, maintenance access, physical security measures, and operational flexibility at the site. For example, landscaping could hinder utility personnel or local law enforcement from conducting visual inspections, maintaining appropriate access, or responding efficiently to operational or security concerns. These are the types of considerations that may implicate a utility's broader federal reliability and operational obligations. As a result, landscaping or access-related conditions could impair PGE's ability to satisfy applicable reliability, operational, maintenance, or security requirements—issues that necessarily implicate federal law.

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[5] NERC, *FERC Approves Reliability Standard for Physical Security* (Sep. 10, 2026), **********.nerc.com/newsroom/ferc-approves-reliability-standard-for-physical-security

For these reasons, we respectfully request that the City reconsider its approach to the Meadowlark BESS application. While the proposed use must meet applicable City code requirements, the City must also recognize the federal law framework. Thank you for your consideration.

Very truly yours

Davis Wright Tremaine LLP

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