

1 Decommissioning Oregon Energy Facilities” (“Cost Guide”) commissioned by the
2 Department.
3

4 **III. Procedural History**

5 **A. Department of Energy Review Steps**

6 **1. The Certificate Holder’s Request**

7 HPP submitted the Fifth Request to Amend Site Certificate on April 4, 2005. In response to the
8 Department’s questions, it provided additional information in support of its amendment request
9 in correspondence dated May 5, 2005.
10

11 **2. Notice to the Site Certificate Holder**

12 On April 5, 2005, the Department mailed notice to HPP, pursuant to OAR 345-027-0070(1)(c),
13 that it would issue a proposed order no later than May 30, 2005. However, as described below,
14 HPP requested that the Department delay issuing a proposed order by that date.
15

16 **3. Review by Other Agencies, Local Governments and Tribes**

17 The Department, pursuant to OAR 345-027-0070(1)(a), identified potentially affected agencies,
18 local governments, and tribes and asked them to review the request for amendment. The
19 Department mailed a copy of the amendment request along with a review report form on April
20 12, 2005, to those agencies, local governments and tribes and asked them to reply by May 6,
21 2005.
22

23 **4. Replies**

24 No agency, local government, or tribe stated objections to the requested amendment or
25 recommended conditions.
26

27 **5. Initial Public Notice**

28 On April 11, 2005, the Department mailed a notice of the request for amendment to all persons
29 on the Council’s general mailing list and persons on the Council’s special mailing list for the
30 Project, pursuant to OAR 345-027-0070(1)(b). The notice required that comments be delivered
31 to the Department by May 6, 2005.
32

33 **6. Public Comments on the Request**

34 On May 5, 2005, Mr. Ken Thompson of Helix, Oregon, submitted comments by e-mail. The
35 Department received a mailed version of his comments on May 9, 2005.
36

37 Mr. Thompson used two examples to punctuate his belief that the HPP facility should be
38 required to maintain a much larger retirement bond or letter of credit than it has proposed in its
39 amendment request. Mr. Thompson first compared the decommissioning of the HPP facility to
40 the decommissioning of the Harvey Aluminum/Martin Marietta Reduction Facility in The
41 Dalles. According to Mr. Thompson, the site is an EPA Superfund site that required 10 percent
42 above the nominal construction cost of \$65 million in 1955 to complete hazardous waste clean
43 up alone. Mr. Thompson then used the example of a bushel crib elevator, built in 1944, the
44 removal of which cost more than 100 percent of the original nominal cost.
45

1 HPP and the Department derived the cost estimates contained in this proposed order from a
2 guide the Department commissioned in 2004 to help it better estimate the costs of
3 decommissioning certain energy facilities. Pinnell/Busch, Inc., working in conjunction with
4 Pacific Energy Systems, Inc., prepared the “Cost Guide for Decommissioning Oregon Energy
5 Facilities” (“Cost Guide”), which indicated that the amount needed to decommission a facility
6 after it ceases operations is considerably less than originally estimated in most site certificates to
7 that point. The Pinnell/Busch project team consisted of industry experts with years of experience
8 decommissioning industrial facilities. This project team determined baseline cost data, including
9 unit cost estimates and scrap values. The result is a standardized method for determining
10 decommissioning costs that has as its basis the application of real-world industry costs to the
11 decommissioning process.

12
13 The Council previously has relied upon the Cost Guide in approving similar requests from the
14 certificate holders for the Port Westward Generating Project and the Summit/Westward Project
15 to lower retirement cost estimates and in approving the COB Energy Facility site certificate.
16 HPP’s amendment request follows these earlier requests in using the same method to determine a
17 more thoroughly researched decommissioning cost. The Department recommends that the
18 Council follow its practice, as well, in requiring the certificate holder to use the U.S. Gross
19 Domestic Product Implicit Price Deflator, Chain-Weight, to adjust the size of HPP’s bond or
20 letter of credit in real dollars.

21
22 Mr. Thompson’s example of a bushel crib elevator is not relevant to this facility. In addition,
23 there is nothing about HPP that indicates that it would become an EPA Superfund site that would
24 require extensive and costly hazardous materials clean-up. However, Mr. Thompson’s comments
25 highlight the fact that the HPP site certificate predates the customary site certificate conditions
26 the Council now includes in site certificates to protect against hazardous materials contamination
27 on site. As discussed below in Section IV(B), the Department recommends that the Council
28 approve these conditions for the HPP site certificate.

29 30 **7. HPP Response**

31 HPP’s amendment request did not account for the standard contingency and administration fees
32 the Department attaches to decommissioning costs. As it prepared Proposed Order conditions on
33 HPP’s request in mid-May, the Department reminded HPP that it would include in the revised
34 decommissioning costs those standard fees. In addition, the Department notified HPP that staff
35 had estimated a different number of waste loading and hauling trips than HPP had proposed.

36
37 In its amendment request, HPP had relied on the Department’s Cost Guide to estimate its hauling
38 and loading trips, but the Department’s previous experience in applying the Cost Guide has
39 shown that the guide underestimates the number of trips. In its earlier information request, the
40 Department noted this update and asked HPP to reconsider its number of trips or explain its
41 rationale for 30 loads, but HPP declined. Consequently, the Department notified HPP that it
42 would apply the number of trips estimated by previous site certificate holders (300) rather than
43 the number HPP proposed (30) based on the Cost Guide. In response, HPP requested that the
44 Department delay issuing a Proposed Order while it considered both the number of waste trips
45 and the contingency fees. HPP then submitted to the Department a “Supplemental Submission on
46 Decommissioning Cost Estimate,” dated June 9, 2005.

1 **Hazardous Materials Management Contingency.** In that supplement, HPP provided
2 information to support its assertion that the Department should not apply a hazardous materials
3 management contingency in HPP's case. HPP does not contest the Council's general policy of
4 requiring a \$500,000 contingency for the cleanup of hazardous materials. However, it asserts that
5 HPP is significantly different from the power projects for which the \$500,000 contingency is
6 applicable. Specifically, HPP notes that the Hermiston Power Project does not use oil as a
7 backup fuel, that it uses double containment and impervious containment systems, and that,
8 because HPP is already constructed and operating, uncertainties that might exist in the case of
9 proposed facilities do not exist at HPP.

10
11 The hazardous materials contingency of \$500,000 for a nominal 500 MW combined-cycle
12 facility was established in the case of the Umatilla Generating Project. In that case, as with HPP,
13 periodic site assessments were required. The \$500,000 hazardous materials contingency has been
14 applied to all 500-MW combined-cycle facilities since the site certificate was issued for the
15 Umatilla Generating Project. The sum was increased in the case of COB because of its larger
16 size and setting in an agricultural area.

17
18 The contingency of \$500,000 was established for facilities that operate exclusively with natural
19 gas fuel, with the exception of small amounts of liquid fuel used for a small backup power
20 generator and diesel fuel pump. The contingency was established for facilities that include
21 double containment of hazardous materials and are constructed in accordance with prudent
22 industry practices. The contingency was established in consideration of unforeseen events that
23 may occur over the course of several decades. For example, an event could happen through
24 accident, intentional maliciousness, lack of care that may occur when a facility or its owner
25 becomes unprofitable, newly discovered knowledge of the hazardous nature of various
26 chemicals, and other events and conditions that are not or cannot be envisioned today.

27
28 For the foregoing reasons, the Council finds that the distinctions claimed by HPP (the absence of
29 oil storage, the use of double containment and impervious containment systems, and the fact that
30 the facility has been constructed and is currently operating) are not significant distinctions from
31 the type of energy facility for which the \$500,000 contingency was originally established.

32
33 The Council finds that HPP's request for a change in the amount of the established hazardous
34 materials contingency is based on distinctions that do not warrant alterations to the existing
35 policy.

36
37 **Loading and Hauling Line Items.** In its "Supplemental Submission on Decommissioning Cost
38 Estimate," HPP submitted a detailed analysis of the quantity of waste that would require disposal
39 as a result of the demolition of the energy facility. HPP estimated that demolition would generate
40 8,352 cubic yards of non-recyclable waste that would require disposal in a landfill, the density of
41 the waste would be 24 pounds per cubic foot, and the weight of the waste would be 2,706 tons.

42
43 HPP obtained from a commercial waste hauler a cost quotation for hauling waste to the Finley
44 Buttes Landfill. The quoted cost was \$150 per 10-ton container (or \$15 per ton).

1 HPP obtained from Finley Buttes Landfill a cost quotation for waste disposal. The quoted cost
2 was \$30 per ton.

3
4 The Finley Buttes Landfill is located about 10 miles south of Boardman. It has operated since
5 about 1990. According to “Clark (Washington) Solid Waste Management Plan 2000”, The
6 Finley Buttes Landfill is estimated by the Oregon Department of Environmental Quality to have
7 a capacity of 90 million tons. In 1999, the landfill received only about 0.5 million tons of waste.
8 There are other regional landfills in the vicinity of Hermiston. Therefore, it is reasonable to
9 assume that, when the energy facility is decommissioned, either the Finley Buttes Landfill or
10 another landfill near the Columbia River in eastern Oregon will be available to accept the
11 demolition waste.

12
13 HPP calculated the cost to haul 2,706 tons at \$15 per ton and to dispose of that waste at \$30 per
14 ton. HPP also revised its previous estimate for removal of insulation, which was inadvertently
15 omitted in its original estimate. The result of these revisions is to increase the estimated cost of
16 demolition by \$229,284. The Council finds that HPP has employed reasonable assumptions and
17 methods in making these revisions.

18
19 HPP’s estimate of the volume of waste exceeds the estimate included in the Decommissioning
20 Cost Guide. Its estimate appears to be based on a thorough evaluation of quantities of waste
21 requiring disposal and on reasonable assumptions. Therefore, the Council accepts HPP’s
22 estimate of the volume and weight of waste that would require landfill disposal.

23
24 As a result of HPP’s recalculations, the Council finds that the total estimated retirement cost for
25 the facility is in the amount of \$3,929,574, comprising decommissioning costs of \$2,607,978, a
26 20-percent contingency in the amount of \$521,596, \$300,000 to cover administrative costs of the
27 State of Oregon, and a \$500,000 contingency for hazardous materials management.

28 29 **8. Proposed Order**

30 The Department issued its proposed order on August 17, 2005.

31 32 **9. Public Notice of Proposed Order**

33 On August 17, 2005, the Department mailed a notice of its proposed order to all persons on the
34 Council’s general mailing list and persons on the Council’s special mailing list for the Project,
35 pursuant to OAR 345-0207-0070(1)(b). The notice asked for comments to the Department by
36 September 16, 2005.

37 38 **10. Public Comment on the Proposed Order**

39
40 On August 24, 2005, the Department received a letter from Mr. Ken Thompson of Helix, which
41 nearly mirrored his earlier letter. Mr. Thompson’s concerns are addressed above in III.A.6. No
42 person requested a contested case.

1 **B. Council Review Steps**

2 **1. Council Notice**

3 The Department mailed the request for amendment and the proposed order to the Council on
4 August 17, 2005.

6 **2. Council Review**

7 The Department mailed a draft final order and site certificate to the Council on September 19,
8 2005.

10 **3. Council Decision**

11 The Council approved the final order and site certificate on September 27, 2005.

13 **IV. Changes to Site Certificate**

14 Under OAR 345-027-0050, a site certificate amendment request is required if a certificate holder
15 proposes to change the site boundary or otherwise to design, construct, operate or retire a facility
16 in a manner different from the description in the site certificate and the proposed change meets
17 one of four criteria. HPP's proposed changes trigger a site certificate amendment pursuant to the
18 following criteria:

19
20 (1)(d) "Could require a new condition or change to a condition in the site certificate."

21
22 HPP is requesting an amendment to the site certificate that would result in adding new conditions
23 and changing existing conditions.

25 **A. Site Certificate's Holder's Proposed Changes**

26 OAR 345-027-0060(1)(d) requires that a certificate holder include in a request for an amendment
27 to a site certificate, "[t]he specific language of the site certificate, including affected conditions,
28 that the certificate holder proposes to change, add or delete by an amendment." HPP's proposed
29 changes to specific conditions of the site certificate are shown below with additions double-
30 underlined and deletions shown by strikethrough.

32 **Financial Assurance: OAR 345-27-020(8) and 345-022-050**

34 (15) Prior to commencement of construction, the site certificate holder shall submit to
35 the State of Oregon through the Council, a guaranty substantially in the form of Second
36 Amended Exhibit A, executed by Calpine Corporation in the amount of \$8,202,000 (in 1995
37 dollars). The calculation of 1995 dollars shall be made using the index set forth below. The
38 guaranty shall remain in effect until such time as the total security in the retirement fund
39 described in Condition 16 below reaches \$8,202,000 (in 1995 dollars). For the purposes of this
40 site certificate, "total security in the retirement fund" means the total amount of all cash, letters
41 of credit and performance bonds deposited, issued or posted as security for the performance of
42 the site certificate holder's obligation under OAR 345-022-0130.¹

43

1 This section is preserved to give a sense of the history of this issue, but could also be deleted in its entirety as it is
no longer operative nor consistent with current Council rules.
Final Order HPP 5th Request to Amend Site Certificate
September 27, 2005

1 In the event that Calpine Corporation’s long-term unsecured debt is rated below “BB” or its
2 equivalent by S&P and Moody’s or their successors, the site certificate holder shall provide a
3 letter of credit in the amount of ~~\$8,202,000~~ \$2,485,123 (in ~~1995~~ 2005 dollars) less all amounts
4 then on deposit in the retirement fund. The calculation of ~~1995~~2005 dollars shall be made using
5 the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed Investment, as
6 published by the U.S. Department of Commerce, Bureau of Economic Analysis, or any successor
7 agency (“the index”). The amount of the letter of credit shall increase annually by the
8 percentage increase in the index. If at any time the index is no longer published, the Council
9 shall select a comparable calculation of ~~1995~~2005 dollars. The letter of credit shall not be
10 subject to revocation during the lifetime of the facility, except by action of the Council taken
11 pursuant to OAR 345-027-0150. The terms of the letter of credit and identity of the issuer shall
12 be subject to approval by the Council, which approval shall not be unreasonably withheld. All
13 funds received by the site certificate holder from the salvage of equipment or buildings shall be
14 committed to the restoration of the facility site to the extent necessary to fund the approved
15 restoration.

16 [Amendment No. 34]
17

18 **B. Department of Energy’s Proposed Changes**

19 HPP proposed changing Condition 15 largely to reflect a decrease in the amount of the required
20 letter of credit. However, the Department recommended that the Council delete nearly all
21 conditions under the existing separate “Financial Assurance” and “Retirement” standards and
22 instead require new conditions in the HPP site certificate to reflect both customary conditions for
23 the Council’s now combined Retirement and Financial Assurance standard and the current, post-
24 construction state of the HPP facility. The Department’s recommended changes are shown below
25 with deletions in double strike-through and additions in double underline. Because the conditions
26 in the HPP site certificate are numbered sequentially, for simplicity, the Department
27 recommended that the Council indicate where conditions have been deleted while retaining the
28 condition number, and add all new conditions to the end of the sequence, beginning at Condition
29 143.
30

31 ~~**Financial Assurance: OAR 345-022-0050**~~
32

33 (15) ~~Prior to commencement of construction, the site certificate holder shall submit to the~~
34 ~~State of Oregon through the Council, a guaranty substantially in the form of Second~~
35 ~~Amended Exhibit A, executed by Calpine Corporation in the amount of \$8,202,000 (in~~
36 ~~1995 dollars). The calculation of 1995 dollars shall be made using the index set forth~~
37 ~~below. The guaranty shall remain in effect until such time as the total security in the~~
38 ~~retirement fund described in Condition 16 below reaches \$8,202,000 (in 1995 dollars).~~
39 ~~For the purposes of this site certificate, “total security in the retirement fund” means the~~
40 ~~total amount of all cash, letters of credit and performance bonds deposited, issued or~~
41 ~~posted as security for the performance of the site certificate holder’s obligation under~~
42 ~~OAR 345-022-0130.²~~
43

1 ~~In the event that Calpine Corporation's long-term unsecured debt is rated below "BB" or~~
2 ~~its equivalent by S&P and Moody's or their successors, the site certificate holder shall~~
3 ~~provide a letter of credit in the amount of \$8,202,000 \$2,485,123 (in 1995 2005 dollars)~~
4 ~~less all amounts then on deposit in the retirement fund. The calculation of 19952005~~
5 ~~dollars shall be made using the U.S. Gross Domestic Product Deflator for Total Non-~~
6 ~~Residential Fixed Investment, as published by the U.S. Department of Commerce,~~
7 ~~Bureau of Economic Analysis, or any successor agency ("the index"). The amount of the~~
8 ~~letter of credit shall increase annually by the percentage increase in the index. If at any~~
9 ~~time the index is no longer published, the Council shall select a comparable calculation of~~
10 ~~19952005 dollars. The letter of credit shall not be subject to revocation during the~~
11 ~~lifetime of the facility, except by action of the Council taken pursuant to OAR 345-027-~~
12 ~~0150. The terms of the letter of credit and identity of the issuer shall be subject to~~
13 ~~approval by the Council, which approval shall not be unreasonably withheld. All funds~~
14 ~~received by the site certificate holder from the salvage of equipment or buildings shall be~~
15 ~~committed to the restoration of the facility site to the extent necessary to fund the~~
16 ~~approved restoration. [Amendment No. 34] [Condition deleted under Amendment No. 5]~~
17

- 18 (16) ~~This condition shall apply only while the site certificate holder satisfies Condition 15~~
19 ~~with a guaranty instead of a letter of credit.~~
20

21 ~~Starting with the first year of commercial operation, the site certificate holder shall~~
22 ~~establish a retirement fund and begin making commitments to the fund in the amount of~~
23 ~~\$800,000 (or more if the site certificate holder chooses) in the form of a letter of credit,~~
24 ~~performance bond, or cash ("annual commitments"). The terms of the security and~~
25 ~~identity of the issuer of a letter of credit or performance bond shall be subject to approval~~
26 ~~by the Council, which approval shall not be unreasonably withheld. Such annual~~
27 ~~commitments shall continue until the total security in the retirement fund reaches~~
28 ~~\$8,202,000 (in 1995 dollars) in no event later than 10 years from the date of commercial~~
29 ~~operation. The calculation of 1995 dollars shall be made using the U.S. Gross Domestic~~
30 ~~Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S.~~
31 ~~Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the~~
32 ~~index"). After the security in the fund reaches \$8,202,000 (in 1995 dollars), the fund shall~~
33 ~~increase annually by the percentage increase in the index. If at any time the index is no~~
34 ~~longer published, the Council shall select a comparable calculation of 1995 dollars. In~~
35 ~~the event the security in the retirement fund is less than \$8,202,000 (in 1995 dollars) at~~
36 ~~the time the site certificate holder notifies the Council of its intent to retire the facility,~~
37 ~~the annual commitments to the retirement fund shall be adjusted so as to assure that the~~
38 ~~total security in the funds is \$8,202,000 (in 1995 dollars) at the time of retirement. the~~
39 ~~site certificate holder shall describe the status of the fund in the annual report submitted~~
40 ~~to the Council. All funds received by the site certificate holder from the salvage of~~
41 ~~equipment or buildings shall be committed to the restoration of the facility site, to the~~
42 ~~extent necessary to fund the approved restoration. [Amendment No. 3] [Condition deleted~~
43 ~~under Amendment No. 5]~~
44

- 45 (17) ~~In the event construction is begun but not completed by the deadlines set forth in the Site~~
46 ~~Certificate, or the energy facility is closed permanently before the end of its useful life, HPP~~

1 ~~shall restore the site to a useful condition. Restoration shall include but not be limited to the~~
2 ~~removal of transmission line towers erected by the Site Certificate holder unless the Council~~
3 ~~determines that such towers are likely to be used by another facility, electric utility or other~~
4 ~~entity that provides electric service. [Condition deleted under Amendment No. 5]~~

5
6 **Retirement: OAR 345-22-130**

7
8 (76) ~~HPP shall manage all hazardous material in accordance with local and state regulatory~~
9 ~~standards. Documentation will be maintained and hazardous materials will be handled by~~
10 ~~qualified personnel. Hazardous waste will be stored on site no more than 90 days,~~
11 ~~followed by transport to a licensed treatment storage disposal facility, as described in~~
12 ~~ASC, exhibit B p.15a. [Condition deleted under Amendment No. 5]~~

13
14 (77) ~~Storage and handling of flammable and combustible liquid chemicals shall be in~~
15 ~~compliance with National Fire Protection Association Codes 30 and 321. Chemical~~
16 ~~storage areas will have secondary containment. Storage tanks for distillate shall have~~
17 ~~secondary containment. HPP shall comply with Uniform Building Code Chapters 79 for~~
18 ~~Hazardous Materials and 80 for Flammable Liquids. Concrete basins will be provided at~~
19 ~~each of the large electrical transformers to capture any insulating oil that might spill~~
20 ~~during a transformer failure or maintenance operation. (ASC Exhibit F p.6) Foundations~~
21 ~~and slabs for equipment containing lubricating oil, insulating oil or hydraulic fluid shall~~
22 ~~be designed to contain and collect any spill. Secondary containment for hazardous~~
23 ~~material storage areas shall have volume equal to 100 percent of the maximum chemical~~
24 ~~volume in primary containment (ASC Exhibit F p.9) [Condition deleted under~~
25 ~~Amendment No. 5]~~

26
27 (78) ~~HPP shall prevent any condition over which the certificate holder has control from~~
28 ~~developing on the site that would preclude restoration of the site to a useful condition.~~
29 ~~(OAR 345-27-020(9)) [Condition deleted under Amendment No. 5]~~

30
31 (79) ~~This condition shall apply only while the site certificate holder satisfies Condition 15~~
32 ~~with a guaranty instead of a letter of credit.~~

33
34 ~~Starting with the first year of commercial operation, the site certificate holder shall~~
35 ~~establish a retirement fund and begin making commitments to the fund in the amount of~~
36 ~~\$800,000 (or more if the site certificate holder chooses) in the form of a letter of credit,~~
37 ~~performance bond, or cash ("annual commitments"). The terms of the security and~~
38 ~~identity of the issuer of a letter of credit or performance bond shall be subject to approval~~
39 ~~by the Council, which approval shall not be unreasonably withheld. Such annual~~
40 ~~commitments shall continue until the total security in the retirement fund reaches~~
41 ~~\$8,202,000 (in 1995 dollars) in no event later than 10 years from the date of commercial~~
42 ~~operation. The calculation of 1995 dollars shall be made using the U.S. Gross Domestic~~
43 ~~Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S.~~
44 ~~Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the~~
45 ~~index"). After the security in the fund reaches \$8,202,000 (in 1995 dollars), the fund~~
46 ~~shall increase annually by the percentage increase in the index. If at any time the index is~~

1 ~~no longer published, the Council shall select a comparable calculation of 1995 dollars. In~~
2 ~~the event the security in the retirement fund is less than \$8,202,000 (in 1995 dollars) at~~
3 ~~the time the site certificate holder notifies the Council of its intent to retire the facility,~~
4 ~~the annual commitments to the retirement fund shall be adjusted so as to assure that the~~
5 ~~total security in the funds is \$8,202,000 (in 1995 dollars) at the time of retirement. The~~
6 ~~site certificate holder shall describe the status of the fund in the annual report submitted~~
7 ~~to the Council. All funds received by the site certificate holder from the salvage of~~
8 ~~equipment or buildings shall be committed to the restoration of the facility site, to the~~
9 ~~extent necessary to fund the approved restoration. [Amendment No. 3] [Condition deleted~~
10 ~~under Amendment No. 5]~~

11
12 (80) ~~In the event construction is begun but not completed by the deadlines set forth in the Site~~
13 ~~Certificate, or the energy facility is closed permanently before the end of its useful life,~~
14 ~~HPP shall restore the site to a useful condition. Restoration shall include but not be~~
15 ~~limited to the removal of transmission line towers erected by the Site Certificate holder~~
16 ~~unless the Council determines that such towers are likely to be used by another facility,~~
17 ~~electric utility or other entity that provides electric service. [Condition deleted under~~
18 ~~Amendment No. 5]~~

19
20 (81) ~~At least five years prior to planned permanent closure of the facility, HPP shall submit a~~
21 ~~retirement plan to the Council for approval. The plan shall describe how the site will be~~
22 ~~restored adequately to a useful condition, including options for post-retirement land use,~~
23 ~~information on how impacts to fish, wildlife and the environment will be minimized~~
24 ~~during the retirement process, measures to protect the public against risk or danger~~
25 ~~resulting from post-retirement site conditions. The plan shall provide for restoration of~~
26 ~~vegetation to the maximum extent consistent with the anticipated use of the site after the~~
27 ~~facility is retired. [Condition deleted under Amendment No. 5]~~

28
29 (82) ~~HPP shall retire the facility at the end of its useful life in accordance with the approved~~
30 ~~final retirement plan, pursuant to OAR 345-27-110. [Condition deleted under~~
31 ~~Amendment No. 5]~~

32
33 (83) ~~The retirement plan shall provide for restoration of vegetation to the maximum extent~~
34 ~~consistent with the anticipated use of the site after the facility is retired. [Condition~~
35 ~~deleted under Amendment No. 5]~~

36
37 (84) ~~Not later than four months before commencing construction of the transmission line, or~~
38 ~~immediately before commencing construction of the energy facility (whichever is sooner)~~
39 ~~HPP shall notify ODOE of which alternative transmission line route will serve the energy~~
40 ~~facility. Once this election has been made, Council approval of the other alternative~~
41 ~~transmission line shall terminate. [Condition deleted under Amendment No. 5]~~

42
43 **Retirement and Financial Assurance, OAR 345-022-0050 [Amendment No. 5]**

44
45 (143) The certificate holder shall retire the facility if the certificate holder permanently ceases
46 construction or operation of the facility. The certificate holder shall retire the facility

1 according to a final retirement plan approved the by Council, as described in OAR 345-
2 027-0110, and prepared pursuant to Condition (144). [Amendment No. 5]
3

4 (144) Two years before closure of the energy facility, the certificate holder shall submit to the
5 Department a proposed final retirement plan for the facility and site, pursuant to OAR
6 345-027-0100, including:
7

8 (a) A plan for retirement that provides for completion of retirement within two years
9 after permanent cessation of operation of the energy facility and that protects the
10 public health and safety and the environment;
11

12 (b) A description of actions the certificate holder proposes to take to restore the site to
13 a useful, non-hazardous condition; and
14

15 (c) A detailed cost estimate, a comparison of that estimate with the dollar amount
16 secured by a bond or letter of credit and any amount contained in a retirement
17 fund, and a plan for assuring the availability of adequate funds for completion of
18 retirement. [Amendment No. 5]
19

20 (145) The certificate holder shall prevent the development of any conditions on the site that
21 would preclude restoration of the site to a useful, non-hazardous condition to the extent
22 that prevention of such site conditions is within the control of the certificate holder.
23 [Amendment No. 5]
24

25 (146) Within 30 days after Council approval of the certificate holder's Fifth Request to Amend
26 Site Certificate, the certificate holder shall submit a bond or letter of credit in the amount
27 of \$3,929,574 (in 2005 dollars) naming the State of Oregon, acting by and through the
28 Council, as beneficiary or payee.
29

30 (a) The form of the bond or letter of credit and identity of the issuer shall be subject
31 to approval by the Council.
32

33 (b) The certificate holder shall maintain the bond or letter of credit in effect at all
34 times until the facility has been retired.
35

36 (c) The calculation of 2005 dollars shall be made using the U.S. Gross Domestic
37 Product Implicit Price Deflator, Chain-Weight, as published in the Oregon
38 Department of Administrative Services' "Oregon Economic and Revenue
39 Forecast," or by any successor agency ("Index"). If at any time the Index is no
40 longer published, the Council shall select a comparable calculation of 2005
41 dollars.
42

43 (d) The amount of the bond or letter of credit account shall increase by the percentage
44 increase in the Index.
45

1 (e) The certificate holder shall not revoke or reduce the bond or letter of credit before
2 retirement of the facility without approval by the Council. [Amendment No. 5]

3
4 (147) The certificate holder shall describe in the annual report submitted to the Council,
5 pursuant to OAR 345-026-0080, the status of the retirement fund or other instrument to
6 ensure it has adequate funds to restore the site. [Amendment No. 5]

7
8 (148) Within six months after Council approval of the certificate holder's Fifth Request to
9 Amend Site Certificate, the certificate holder shall prepare and implement a materials
10 management and monitoring plan approved by the Department. The materials
11 management and monitoring plan must address the handling of potentially hazardous
12 substances (as defined by ORS 465-200), measures to prevent on- or off-site
13 contamination and documentation of plan implementation. [Amendment No. 5]

14
15 (149) Not later than ten years after Council approval of the certificate holder's Fifth Request to
16 Amend Site Certificate, and each ten years thereafter during the life of the energy facility,
17 the certificate holder shall complete an independent Phase I Environmental Site
18 Assessment of the site. Within 30 days after its completion, the certificate holder shall
19 deliver the Phase I Environmental Site Assessment report to the Department.
20 [Amendment No. 5]

21
22 (150) In the event that any Phase I Environmental Site Assessment identifies improper handling
23 or storage of hazardous substances or improper record keeping procedures, the certificate
24 holder shall correct such deficiencies within six months after completion of the
25 corresponding Phase I Environmental Site Assessment. It shall promptly report its
26 corrective actions to the Department. The Council shall determine whether the corrective
27 actions are sufficient. [Amendment No. 5]

28
29 (151) The certificate holder shall report to the Department any release of hazardous substances,
30 pursuant to DEQ regulations, within one working day after the discovery of such release.
31 This obligation shall be in addition to any other reporting requirements applicable to such
32 a release. [Amendment No. 5]

33
34 (152) If the certificate holder has not remedied a release consistent with applicable Oregon
35 Department of Environmental Quality standards or if the certificate holder fails to correct
36 deficiencies identified in the course of a Phase I Environmental Site Assessment within
37 six months after the date of the release or the date of completion of the Phase I
38 Environmental Site Assessment, the certificate holder shall submit within such six-month
39 period to the Council for its approval an independently prepared estimate of the
40 additional cost of remediation or correction.

41
42 (a) Upon approval of an estimate by the Council, the certificate holder shall increase
43 the amount of its bond or letter of credit by the amount of the estimate.
44 [Amendment No. 5]

1 (153) All funds received by the certificate holder from the salvage of equipment and buildings
2 shall be committed to the restoration of the site to the extent necessary to fund the
3 approved site restoration and remediation. [Amendment No. 5]
4

5 (154) The certificate holder shall pay the actual cost to restore the site to a useful, non-
6 hazardous condition at the time of retirement, notwithstanding the Council's approval in
7 the site certificate of an estimated amount required to restore the site. [Amendment No. 5]
8

9 (155) If the Council finds that the certificate holder has permanently ceased operation of the
10 facility without retiring the facility according to a final retirement plan approved by the
11 Council, as described in OAR 345-027-0110 and prepared pursuant to Condition (144),
12 the Council shall notify the certificate holder and request that the certificate holder
13 submit a proposed final retirement plan to the Department within a reasonable time not to
14 exceed 90 days.
15

16 (a) If the certificate holder does not submit a proposed final retirement plan by the
17 specified date or if the Council rejects the retirement plan that the certificate
18 holder submits, the Council may direct the Department to prepare a proposed final
19 retirement plan for the Council's approval.
20

21 (b) Upon the Council's approval of the final retirement plan prepared pursuant to
22 subsection (a), the Council may draw on the bond or letter of credit described in
23 Condition (146) and shall use the funds to restore the site to a useful, non-
24 hazardous condition according to the final retirement plan, in addition to any
25 penalties the Council may impose under OAR Chapter 345, Division 29.
26

27 (c) If the amount of the bond or letter of credit is insufficient to pay the actual cost of
28 retirement, the certificate holder shall pay any additional cost necessary to restore
29 the site to a useful, non-hazardous condition.
30

31 (d) After completion of site restoration, the Council shall issue an order to terminate
32 the site certificate if the Council finds that the facility has been retired according
33 to the approved final retirement plan. [Amendment No. 5]
34

35 (156) The certificate holder shall manage all hazardous material in accordance with local and
36 state regulatory standards. The certificate holder shall ensure that documentation is
37 maintained and hazardous materials are handled by qualified personnel. Hazardous waste
38 will be stored on site no more than 90 days, followed by transport to a licensed treatment
39 storage disposal facility, as described in ASC, Exhibit B p.15a. [Amendment No. 5]
40

41 (157) Storage and handling of flammable and combustible liquid chemicals shall be in
42 compliance with National Fire Protection Association Codes 30 and 321. Chemical
43 storage areas will have secondary containment. Storage tanks for distillate shall have
44 secondary containment. The certificate holder shall comply with Uniform Building Code
45 Chapters 79 for Hazardous Materials and 80 for Flammable Liquids. Concrete basins will
46 be provided at each of the large electrical transformers to capture any insulating oil that

1 might spill during a transformer failure or maintenance operation. (ASC, Exhibit F, p.6)
2 Foundations and slabs for equipment containing lubricating oil, insulating oil or hydraulic
3 fluid shall be designed to contain and collect any spill. Secondary containment for
4 hazardous material storage areas shall have volume equal to 100 percent of the maximum
5 chemical volume in primary containment. (ASC, Exhibit F, p. 9) [Amendment No. 5]
6

7 **Discussion.** At the time the Council issued a site certificate to HPP in 1996, the Council’s rules
8 defined separate Financial Assurance and Retirement standards. The Council’s rules now contain
9 a combined Retirement and Financial Assurance standard, and the Council generally requires
10 more, and in some cases more stringent, conditions under this combined standard than were
11 required in 1996. Pursuant to OAR 345-027-070, the Council is required to evaluate an
12 amendment request under its current rules and find that the changes comply with applicable
13 standards.
14

15 To find that HPP’s Fifth Request to Amend Site Certificate complies with the Retirement and
16 Financial Assurance Standard, the Department recommended that the Council impose conditions
17 comparable to those currently imposed on new site certificate holders under the standard. The
18 conditions include a more streamlined approach to satisfying the bond or letter of credit
19 requirement, more stringent precautions to avoid site contamination from hazardous materials,
20 and more thorough site retirement planning. The Department also recommended that the Council
21 retain and renumber two existing conditions related to hazardous materials that, if required
22 today, likely would be found under a different standard.
23

24 In its final order in connection with the original site certificate, the Council found that the site
25 restoration costs would be \$8,202,000 (in 1995 dollars). Prior to beginning construction, HPP
26 submitted to the Council a guaranty in the amount of \$8,202,000 (in 1995 dollars) in compliance
27 with this requirement. On June 13, 2002, and with the Council’s approval of as part of the Third
28 Amended Site Certificate, HPP replaced its guaranty with a letter of credit issue by Scotia
29 Capital in the amount of \$7,700,582. (The difference between the \$8,202,000 and the \$7,700,592
30 is the result of the retirement calculation system allowed under HPP’s site certificate.)
31

32 In this request for amendment, HPP used the Cost Guide commissioned by the Department to
33 initially propose a total estimated retirement cost of \$2,485,123. In a letter dated May 5, 2005,
34 HPP responded to Department questions in part by proposing a revised total of \$2,486,948. After
35 submitting its “Supplemental Submission on Decommissioning Cost Estimate” on June 9, 2005,
36 HPP proposed a revised total of \$2,607,978. The Department recommended increasing that
37 number by \$1,321,596 for a total of \$3,929,574 for the following reasons:
38

- 39 • The Council routinely imposes the following additional amounts on estimated retirement
40 costs: a 20-percent contingency to cover unforeseen developments over the expected 30-
41 year life of an energy facility (\$521,596 in this case); \$300,000 to cover administrative
42 costs for the State of Oregon; and a \$500,000 contingency for hazardous materials
43 management. The Department recommended that the Council impose these costs on HPP.
44

1 **V. Compliance with Siting Standards**

2 In addressing the standards set forth in this section, the Council assesses the impacts of the
3 changes proposed in the amendment request and the compliance with applicable standards,
4 pursuant to OAR 345-027-0070(9)(c).

5 **A. Organizational Expertise Standard - OAR 345-022-0010**

6 This standard has four paragraphs. The first two paragraphs, -0010(1) and -0010(2), relate to
7 application qualifications and capability and the final two paragraphs, -0010(3) and -0010(4),
8 relate to third-party permits.

9
10 **1. Applicant Qualification and Capability - OAR 345-022-0010(1)**

11 To issue a site certificate, the Council must find that the applicant has the organizational
12 expertise to construct, operate and retire the proposed facility in compliance with Council
13 standards and conditions of the site certificate. To conclude that the applicant has this
14 expertise, the Council must find that the applicant has demonstrated the ability to design,
15 construct and operate the proposed facility in compliance with site certificate conditions
16 and in a manner that protects public health and safety and has demonstrated the ability to
17 restore the site to a useful, non-hazardous condition. The Council may consider the
18 applicant's experience, the applicant's access to technical expertise and the applicant's
19 past performance in constructing, operating and retiring other facilities, including, but not
20 limited to, the number and severity of regulatory citations issued to the applicant.

21
22 **Discussion.** The Council finds that this amendment will not have an impact on HPP's
23 qualifications as the certificate holder.

24
25 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
26 022-0010(1).

27
28 **2. Applicant Qualification and Capability - OAR 345-022-0010(2)**

29 The Council may base its findings under section (1) on a rebuttable presumption that an
30 applicant has organizational, managerial and technical expertise, if the applicant has an
31 ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate
32 the facility according to that program.

33
34 **Discussion.** OAR 345-022-010(1) is not addressed herein because the certificate holder does not
35 have an ISO 9000 or 14000 certified program.

36
37 **3. Third-Party Services and Permits - OAR 345-022-0010(3)**

38 If the applicant does not itself obtain a state or local government permit or approval for
39 which the Council would ordinarily determine compliance but instead relies on a permit
40 or approval issued to a third party, the Council, to issue a site certificate, must find that
41 the third party has, or has a reasonable likelihood of obtaining, the necessary permit or
42 approval, and that the applicant has, or has a reasonable likelihood of entering into, a
43 contractual or other arrangement with the third party for access to the resource or service
44 secured by that permit or approval.

1 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
2 final orders regarding third-party permits.

3
4 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
5 022-0010(3).

6
7 **4. Third-Party Services and Permits - OAR 345-022-0010(4)**

8 If the applicant relies on a permit or approval issued to a third party and the third party
9 does not have the necessary permit or approval at the time the Council issues the site
10 certificate, the Council may issue the site certificate subject to the condition that the
11 certificate holder shall not commence construction or operation as appropriate until the
12 third party has obtained the necessary permit or approval and the applicant has a contract
13 or other arrangement for access to the resource or service secured by that permit or
14 approval.

15
16 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
17 final orders regarding third-party permits.

18
19 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
20 022-0010(4).

21
22 **B. Structural Standard - OAR 345-022-0020**

23 (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the
24 Council must find that:

- 25 (a) The applicant, through appropriate site-specific study, has adequately
26 characterized the site as to seismic zone and expected ground motion and
27 ground failure, taking into account amplification, during the maximum
28 credible and maximum probable seismic events; and
29 (b) The applicant can design, engineer, and construct the facility to avoid
30 dangers to human safety presented by seismic hazards affecting the site
31 that are expected to result from all maximum probable seismic events. As
32 used in this rule "seismic hazard" includes ground shaking, landslide,
33 liquefaction, lateral spreading, tsunami inundation, fault displacement, and
34 subsidence;
35 (c) The applicant, through appropriate site-specific study, has adequately
36 characterized the potential geological and soils hazards of the site and its
37 vicinity that could, in the absence of a seismic event, adversely affect, or
38 be aggravated by, the construction and operation of the proposed facility;
39 and
40 (d) The applicant can design, engineer and construct the facility to avoid
41 dangers to human safety presented by the hazards identified in subsection
42 (c). ***

43
44 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
45 final orders regarding its Structural Standard.

1 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
2 022-0020.

3
4 **C. Soil Protection Standard - OAR 345-022-0022**

5 To issue a site certificate, the Council must find that the design, construction, operation
6 and retirement of the facility, taking into account mitigation, are not likely to result in a
7 significant adverse impact to soils including, but not limited to, erosion and chemical
8 factors such as salt deposition from cooling towers, land application of liquid effluent,
9 and chemical spills.

10
11 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
12 final orders regarding its Soil Protection Standard.

13
14 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
15 022-0022.

16
17 **D. Land Use Standard - OAR 345-022-0030**

- 18 (1) To issue a site certificate, the Council must find that the proposed facility
19 complies with the statewide planning goals adopted by the Land Conservation and
20 Development Commission.
21 (2) The Council shall find that a proposed facility complies with section (1) if: ***
22

23 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
24 final orders regarding its Land Use Standard.

25
26 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
27 022-0030.

28
29 **E. Protected Areas Standard - OAR 345-022-0040**

- 30 (1) Except as provided in sections (2) and (3), the Council shall not issue a site
31 certificate for a proposed facility located in the areas listed below. To issue a site
32 certificate for a proposed facility located outside the areas listed below, the
33 Council must find that, taking into account mitigation, the design, construction
34 and operation of the facility are not likely to result in significant adverse impact to
35 the areas listed below. Cross-references in this rule to federal or state statutes or
36 regulations are to the version of the statutes or regulations in effect as of August
37 28, 2003: ***
38

39 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
40 final orders regarding its Protected Areas Standard.

41
42 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
43 022-0040.

44
45 **F. Retirement and Financial Assurance Standard – OAR 345-022-0050**

46 To issue a site certificate, the Council must find that:

- 1 (1) The site, taking into account mitigation, can be restored adequately to a useful,
2 non-hazardous condition following permanent cessation of construction or
3 operation of the facility.
- 4 (2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in
5 a form and amount satisfactory to the Council to restore the site to a useful, non-
6 hazardous condition.

7
8 **Discussion.** In its Final Order approving the site certificate, the Council found that HPP
9 demonstrated that it could adequately restore the site. However, HPP's site certificate contains
10 outdated references to separate "Retirement" and "Financial Assurance" standards. Under OAR
11 345-027-0070(9)(c), the Council is required to evaluate the amendment under its current
12 Retirement and Financial Assurance standard. That evaluation is contained in Section IV(B).

13
14 The Council finds that, with the condition changes as proposed in Section IV(B), the certificate
15 holder complies with the Council's current Retirement and Financial Assurance standard.

16
17 The Council finds that the amount of the bond or letter of credit applicable to the certificate
18 holder is \$3,929,574 (in 2005 dollars).

19
20 **Conclusion.** The proposed amendment does not affect the certificate holder's ability to meet the
21 Retirement and Financial Assurance standard. It uses a Department-commissioned study as the
22 basis for reducing the amount of the required retirement amount, making that amount easier to
23 secure. The Council finds that, with the conditions proposed in this order, the certificate holder
24 meets the requirements of OAR 345-022-0050.

25
26 **G. Fish and Wildlife Habitat Standard - OAR 345-022-0060**

27 To issue a site certificate, the Council must find that the design, construction, operation
28 and retirement of the facility, taking into account mitigation, are consistent with the fish
29 and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of
30 September 1, 2000. ***

31
32 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
33 final orders regarding its Fish and Wildlife Habitat Standard.

34
35 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
36 022-0060.

37
38 **H. Threatened and Endangered Species Standard - OAR 345-022-0070**

39 To issue a site certificate, the Council, after consultation with appropriate state agencies,
40 must find that:

- 41 (1) For plant species that the Oregon Department of Agriculture has listed as
42 threatened or endangered under ORS 564.105(2), the design, construction,
43 operation and retirement of the proposed facility, taking into account mitigation:
 - 44 (a) Are consistent with the protection and conservation program, if any, that
45 the Oregon Department of Agriculture has adopted under ORS
46 564.105(3); or

- 1 (b) If the Oregon Department of Agriculture has not adopted a protection and
2 conservation program, are not likely to cause a significant reduction in the
3 likelihood of survival or recovery of the species; and
4 (2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as
5 threatened or endangered under ORS 496.172(2), the design, construction,
6 operation and retirement of the proposed facility, taking into account mitigation,
7 are not likely to cause a significant reduction in the likelihood of survival or
8 recovery of the species.
9

10 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
11 final orders regarding its Threatened and Endangered Species Standard.
12

13 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
14 022-0070.
15

16 **I. Scenic and Aesthetic Values Standard - OAR 345-022-0080**

- 17 (1) Except for facilities described in section (2), to issue a site certificate, the Council
18 must find that the design, construction, operation and retirement of the facility,
19 taking into account mitigation, are not likely to result in significant adverse
20 impact to scenic and aesthetic values identified as significant or important in
21 applicable federal land management plans or in local land use plans in the
22 analysis area described in the project order.
23 (2) The Council may issue a site certificate for a special criteria facility under OAR
24 345-015-0310 without making the findings described in section (1). However, the
25 Council may apply the requirements of section (1) to impose conditions on a site
26 certificate issued for such a facility.
27

28 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
29 final orders regarding its Scenic and Aesthetic Values Standard.
30

31 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
32 022-0080.
33

34 **J. Historic, Cultural and Archeological Resources - OAR 345-022-0090**

- 35 (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the
36 Council must find that the construction, operation and retirement of the facility,
37 taking into account mitigation, are not likely to result in significant adverse
38 impacts to: ***
39

40 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
41 final orders regarding its Historic, Cultural and Archeological Resources Standard.
42

43 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
44 022-0090.
45

46 **K. Recreation Standard - OAR 345-022-0100**

1 (1) Except for facilities described in section (2), to issue a site certificate, the Council
2 must find that the design, construction and operation of a facility, taking into
3 account mitigation, are not likely to result in a significant adverse impact to
4 important recreational opportunities in the analysis area as described in the project
5 order. The Council shall consider the following factors in judging the importance
6 of a recreational opportunity: ***
7

8 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
9 final orders regarding its Recreation Standard.

10
11 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
12 022-0100.

13
14 **L. Public Services Standard - OAR 345-022-0110**

15 (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the
16 Council must find that the construction and operation of the facility, taking into
17 account mitigation, are not likely to result in significant adverse impact to the
18 ability of public and private providers within the analysis area described in the
19 project order to provide: sewers and sewage treatment, water, storm water
20 drainage, solid waste management, housing, traffic safety, police and fire
21 protection, health care and schools. ***
22

23 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
24 final orders regarding its Socio-Economic Impacts Standard, now defined as its Public Services
25 Standard.

26
27 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
28 022-0110.

29
30 **M. Waste Minimization Standard - OAR 345-022-0120**

31 (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the
32 Council must find that, to the extent reasonably practicable:
33 (a) The applicant's solid waste and wastewater plans are likely to minimize
34 generation of solid waste and wastewater in the construction, operation,
35 and retirement of the facility, and when solid waste or wastewater is
36 generated, to result in recycling and reuse of such wastes; ***
37

38 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
39 final orders regarding its Waste Minimization Standard.

40
41 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
42 022-0120.

43
44 **M. Carbon Dioxide Standard - OAR 345-024-0550**

1 To issue a site certificate for a base load gas plant, the Council must find that the net
2 carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of
3 carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide
4 emissions and net electric power output measured on a new and clean basis. For a base
5 load gas plant designed with power or augmentation technology as defined in OAR 345-
6 001-0010, the Council shall apply the standard for a non-base load power plant, as
7 described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the
8 designed operation of the power augmentation technology. ***
9

10 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
11 final orders regarding its Carbon Dioxide Standard.
12

13 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 345-
14 024-0550.
15

16
17 **N. Noise Standard - OAR 340-35-035(1)(b)(B)**

18 The Council applies and enforces the Department of Environmental Quality’s (“DEQ”)
19 noise standards for energy facilities under its jurisdiction. The DEQ noise regulations for
20 industrial and commercial noise sources apply to the Project. Under the DEQ regulations,
21 the generating facility would be located on a “previously unused industrial site” and
22 according to the regulations:
23

24 No person owning or controlling a new industrial or commercial
25 noise source located on a previously unused industrial or
26 commercial site shall cause or permit the operation of that noise
27 source if the noise levels generated or indirectly caused by that
28 noise source increase the ambient statistical noise levels, L10 or
29 L50, by more than 10 dBA in any one hour, or exceed the levels
30 specified in Table 8, as measured at an appropriate measurement
31 point. OAR 340-035-0035(1)(b)(B)(i).
32

33 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
34 final orders regarding its Noise Standard.
35

36 **Conclusion.** The Council finds that the certificate holder meets the requirements of OAR 340-
37 35-035(1)(b)(B).
38

39 **O. Wetlands - OAR 345-022-0000**

40 Pursuant to OAR 345-022-0000, the Council must determine compliance with applicable
41 statutes, ORS 196.800-.990, and applicable Department of State Lands (“DSL”) regulations,
42 OAR 141-085-005 *et seq.* relating to fill and other operations taking place
43 within wetlands. These regulations require persons to obtain a removal/fill permit if more
44 than 50 cubic yards of material will be removed or altered within “waters of the state.”
45 The overall standard to be considered in granting a removal/fill permit is whether the
46 proposed activity would not “unreasonably interfere with the paramount policy of this

1 state to preserve the use of its waters for navigation, fishing and public recreation.” ORS
2 196.825(2).

3
4 **Discussion.** The Council finds that the proposed amendment will not change the findings of the
5 final orders regarding its Wetlands Standard.

6
7 **Conclusion.** The Council finds that approval of this amendment request will satisfy the
8 Council’s obligation to determine compliance with DSL removal/fill permit requirements.

9
10 **O. Public Health and Safety – ORS 469.401(2)**

11 The Council is required to impose conditions in the site certificate for the protection of
12 public health and safety.

13
14 **Discussion.** The Council finds that the proposed amendment will not have an impact on the
15 findings of the final orders regarding compliance with its Public Health and Safety Standard. If
16 anything, the addition of new conditions under the Council’s Retirement and Financial
17 Assurance Standard will increase the protection of public health and safety.

18
19 **Conclusion.** The Council finds that the certificate holder meets the Council’s public health and
20 safety requirements, pursuant to ORS 469.401(2).

21
22 **VI. Conclusions**

23 The Council finds that the actions in the certificate holder’s amendment request are consistent
24 with current Council rules, with other applicable statutes and rules, and with statewide land use
25 planning goals and would not cause a significant adverse impact to public health and safety or
26 the environment. In approving this order, the Council limited its consideration to the effects that
27 may be produced by the proposed changes to the facility site as described in the certificate
28 holder’s Fifth Request for Amendment to the Site Certificate for the Hermiston Power Project. In
29 considering those effects, the Council relied on its staff’s review of state statutes, administrative
30 rules, and local government ordinances.

31
32 Based on the above findings, the Energy Facility Siting Council concludes that it should amend
33 the Third Amended Site Certificate for the Hermiston Power Project as the certificate holder
34 requests with additional conditions and modifications to existing conditions as noted above in
35 Section IV.

36
37 **FINAL ORDER**

38 Based on the above findings of fact, discussions and conclusions of law, the Energy Facility
39 Siting Council determines that it shall approve the Fifth Request for Amendment and that the
40 chairperson of the Council shall execute the site certificate in the form of the “Fourth Amended
41 Site Certificate for the Hermiston Power Project.”

1 Ordered this 27th day of September 2005.

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Hans Neukomm, Chair
Energy Facility Siting Council

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.405. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.