

1 At the time HPP's site certificate was issued, applicants were required to
2 demonstrate a need for their proposed facilities ("need") under former ORS 469.501(L)
3 and OAR 345, Division 23. Applicants could also demonstrate that their facilities were
4 exempt from the need requirement. In its order approving HPP's site certificate ("final
5 order"), the Council found that HPP qualified for an exemption from the need standard
6 because HPP met the criteria in OAR 345-23-010(3), the "6(c) Exemption." The 6(c)
7 Exemption provides an exemption from the need standard for facilities for which, among
8 other things, "all the net electric output is contracted to the Bonneville Power
9 Administration." *Id.* HPP's compliance with the criteria in the 6(c) Exemption is
10 ensured through Conditions 1 through 4 and 90 of the site certificate. If HPP cannot
11 fulfill these conditions prior to construction, Condition 4 requires it to amend its site
12 certificate to demonstrate need under OAR 345, Division 23.

13 14 **A.2 Unit Size**

15 The Council's rules allow flexibility in the choice of turbines, within certain
16 constraints. OAR 345-27-050(2)(a) provides:

17
18 (2) No Site Certificate amendment is required for:

19 (a) A change to an electrical generation facility that results in an increase
20 in the electrical generating capacity without increasing the number of electric
21 generators at the site, changing fuel type, increasing fuel consumption by more
22 than 10%, or enlarging the facility site, and that does not violate any other
23 conditions specified in the Site Certificate.

24
25 The Council's final order allows HPP to construct the combined-cycle plant with
26 combustion turbines built by one of four vendors: General Electric, Asea Brown-Boveri
27 ("ABB"), Siemens, and Westinghouse. At the time HPP submitted its application for site
28 certificate (ASC), each of these combined-cycles had a nominal capacity of
29 approximately 230 MW per unit. The site certificate describes the proposed two-unit
30 facility as having a nominal capacity of 460 MW. It describes the facility as using
31 approximately 3,400 MMBtu of natural gas per hour at full load (page 4).

32
33 However, in the two and one-half years since HPP submitted its ASC, all four
34 vendors have revised the nominal capacity ratings for the turbine models HPP proposes to
35 use. The revisions are based upon continued improvement in turbine performance for
36 each model, as well as on additional data from models that others have purchased and
37 installed.

38
39 In particular, based on performance improvements and on data from a unit
40 installed in New Jersey, ABB has revised the capacity rating of the combined-cycle based
41 on its model GT-24 turbine to 268 MW per unit. This represents a 14 percent increase
42 over the output anticipated in the ASC. Fuel consumption for the improved GT-24
43 design for two units increases only 4 percent, from 3,400 MMBtu/hr to 3,527 MMBtu/hr

1 using only natural gas and 3,537 MMBtu/hr at a combined rate of natural gas and
2 distillate fuel. The improved efficiency of the GT-24 combined-cycle consumes less fuel
3 per kilowatt hour of power generated and decreases carbon dioxide emissions per
4 kilowatt hour.

5
6 HPP is requesting no changes to the site certificate relating to the likely increased
7 capacity of the facility. Furthermore, it remains bound by all other conditions that might
8 possibly be affected by a change in capacity. Because HPP has selected a specific power
9 plant design, the Council uses the capacity and heat rate calculations in this order that are
10 based on data ABB provided to HPP for the-plant design. (Exhibit D, Request for
11 Amendment Number One).

12 13 **B. Procedural History**

14 15 **B.1 Office of Energy Review Steps**

16 17 **B.1.2 HPP's Request**

18 HPP submitted its Request for Amendment Number One to the Council on
19 October 23, 1997.

20 21 **B.1.3 Review by Other Agencies, Local Governments and Tribes**

22 The Office of Energy (OOE), pursuant to OAR 345-27-070(1), identified
23 potentially affected agencies, local governments and tribes and asked them to review the
24 request for amendment. OOE mailed a copy of the amendment request along with a
25 review report form on October 28, 1997 to those agencies, local governments and tribes
26 and asked them to reply by November 26, 1997.

27
28 The reviewing agencies, local governments and tribes are the Oregon Department
29 of Geology and Mineral Industries (DOGAMI); the Oregon Department of Fish and
30 Wildlife (ODFW); the Division of State Lands (DSL); the Department of Agriculture
31 (ODA); the Department of Land Conservation and Development (DLCD); the Water
32 Resources Department (WRD); the Department of Parks and Recreation (ODPR); the
33 State Historic Preservation Office (SHPO); the Department of Transportation (ODOT),
34 the Department of Environmental Quality (DEQ), the Office of State Fire Marshall, the
35 Oregon Public Utilities Commission (OPUC), the Building Codes Division (BCD), the
36 Department of Forestry (ODF), the Northwest Power Planning Council (NWPPC), the
37 Cities of Hermiston, Stanfield, Umatilla, Echo, and Irrigon, Umatilla County, the
38 Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of
39 Warm Springs.

40 41 **B.1.3.1 Replies**

42 No agency, local government or tribe suggested conditions. The Department of
43 Transportation noted that any work on the state right of way and any access to the state

1 highway system would require permits. The State Fire Marshall recommended that HPP
2 consider a fixed-foam fire suppression system for its oil tanks. Neither of these
3 comments relates to the amendment HPP requested. Furthermore, both topics are
4 exempted from Council regulation.

5 6 **B.1.4 Initial Public Notice**

7 On October 28, 1997, OOE mailed a notice of HPP's request for amendment to all
8 persons on the Council's general mailing list and persons on the Council's mailing list for
9 HPP's initial site certificate proceeding, pursuant to OAR 345-27-070(1). On October
10 29, 1997, OOE mailed the same notice of HPP's request for amendment to adjacent
11 property owners. The notice asked for initial comments to OOE by November 26, 1997.

12
13 No member of the public suggested conditions. The only comment was from Ball Janik,
14 LLP, attorneys for the Umatilla Generating Company, LP. That letter noted Umatilla
15 Generating Company's interest in any issues regarding interpretation or implementation
16 of the carbon dioxide standard. However, the letter offered no specific comments relating
17 to HPP's request for amendment.

18 19 **B.1.5 Proposed Order**

20 OOE issued its proposed order January 26, 1998.

21 22 **B.1.6 Notice**

23 At its November 14, 1997 meeting, the Council instructed OOE staff to file a
24 notice of proposed rule-making concerning the adoption of a rule to govern the binding
25 arbitration process that will apply to this amendment request if any person disagrees with
26 the Council's finding of HPP's compliance with the CO₂ standard, pursuant to ORS
27 469.409. Based on the rule adoption process begun by its action on November 14, the
28 Council placed the adoption of the arbitration rule on the January 23, 1998 meeting
29 agenda. It stayed the present action until notice could be provided of both the proposed
30 order for this amendment and the arbitration rule that would govern disputes arising out
31 of this matter. The Council adopted the rule, OAR 345-27-0200, on January 23, 1998.

32
33 On January 26, 1998, OOE mailed notice of the proposed order to the Council's
34 general mailing list, persons on the Council's mailing list for HPP's first site certificate
35 proceeding, and the adjacent property owners list, pursuant to OAR 345-27-070(2). The
36 notice set a deadline for public comments by February 24, 1998 and gave notice of the
37 procedure for requesting binding arbitration for challenges to the Council's final order.

38 39 **B.1.7. Public Comments on Proposed Order Regarding Facts and Policies**

40 The Office of Energy received two written comments on the proposed order on
41 February 24, 1998. Mr. Eugene Rosolie submitted comments on behalf of Northwest
42 Environmental Advocates and Mr. Daniel W. Meek submitted comments on behalf of
43 Don't Waste Oregon Council, Utility Reform Project, and Mr. Lloyd Marbet.

1 This section of addresses factual and policy issues. Some of Mr. Meek's
2 comments raised legal and procedural issues. The Council addresses those issues in
3 Section B.1.8 below.

4
5 **B.1.7.1. Northwest Environmental Advocates**

6 Mr. Rosolie objected to HPP's proposed Conditions 1 and 4 to the extent the
7 proposed language establishes a set monetary obligation. He supported the language for
8 conditions that OOE proposed as offering more flexibility in matching the monetary path
9 payments to the facility that will be built and providing greater assurance that the
10 monetary path payment requirement matches actual obligations.

11
12 Mr. Rosolie also objected to the language in HPP's proposed conditions that
13 either 1) would require the qualified organization to refund moneys already obligated or
14 2) would permit HPP to diminish its guaranty up to the amount not expended if the
15 facility has lower net emissions than estimated when it completes its 100-hour test. Mr.
16 Rosolie argued that either interpretation of HPP's proposed language could put undue
17 pressure on the qualified organization to expend funds too quickly and could set up an
18 internal conflict of interest on the board of the qualified organization, since HPP will
19 participate as a non-voting member. He also argued that the HPP proposal is contrary to
20 the agreement that crafted the legislation and is contrary to the language of the law.

21
22 Mr. Rosolie supported OOE's recommendations regarding Conditions 1 and 4 in
23 opposition to HPP's proposal. For reasons stated in Section D.2, below, the Council also
24 concurs with OOE's recommendations regarding Conditions 1 and 4.

25
26 **B.1.7.2. Don't Waste Oregon Council, et al.**

27 Mr. Meek argued that the Council should require HPP to pay the monetary path
28 payment into an account that bears interest or other income. He noted that OOE proposed
29 that the Council index the monetary path payment requirement to 1998 dollars. However,
30 the proposed order only requires that HPP provide a guaranty that the funds be available
31 to the Oregon Climate Trust. He argued that the Council should require HPP to place the
32 funds, in 1998 dollars, in an account controlled by the Oregon Climate Trust. Doing so
33 would allow the account to earn at least 5 percent annually with no risk or higher returns
34 with little risk. Mr. Meek argued that relying solely on the index will result in less funds
35 be available than from a secure, interest-bearing account. It could conceivably result in a
36 reduction in the nominal amount with deflation over time.

37
38 ORS 469.503(2)(d) provides that "...The site certificate holder shall provide a
39 bond or comparable security in a form reasonably acceptable to the council to ensure the
40 payment of the offset funds and the amounts required under subparagraph (A)(ii) of this
41 paragraph..." The Council believes that the important concern is that the money in the
42 monetary path payment requirement retains its 1998 value until it is withdrawn by the
43 Oregon Climate Trust. Under the site certificate conditions the Council sets forth in

1 Section D.2, HPP is not required to sign the guaranty or provide a letter of credit until just
2 prior to when it begins construction. Because the Oregon Climate Trust cannot withdraw
3 offset funds until it is ready to sign contracts for offsets, pursuant to OAR
4 469.503(2)(d)(A)(i), there will be an additional delay after HPP performs the guarantee.
5 As explained in Section D.2.1.1, the Council will adopt conditions that include a clause
6 requiring indexing of funds to ensure the funds retain their 1998 value.

7
8 It has been long-standing Council policy that future funds be indexed. The
9 Council believes this is fair and consistent with the law. On the other hand, the law does
10 not require that the security instrument be interest-bearing or provide other income. The
11 statute uses the phrase "bond or comparable security." A bond is not normally an
12 interest-bearing instrument. The Council believes that the legislature did not intend to
13 authorize the Council to require that the funds be placed in an interest-bearing account.
14 The parties negotiating the initial draft of the law agreed that there would be flexibility
15 for the applicant to propose a satisfactory security and rejected requiring specific
16 instruments. The Council does not accept the recommendation that it require HPP to
17 place the funds to meet the monetary path payment requirement in an interest bearing or
18 income generating account.

19
20 **B.1.8 Public Comments on Proposed Order Regarding Procedural and Legal**
21 **Issues**

22 Mr. Meek argued that HPP does not qualify for application of ORS 469.409
23 because HPP does not possess a valid site certificate. He noted that HPP is requesting
24 this amendment pursuant to ORS 469.409:

25
26 **469.409 Amendment of site certificate to demonstrate compliance with**
27 **carbon dioxide emissions standard: binding arbitration to resolve disputes.**
28 Any site certificate holder that is required by its site certificate or by law to
29 demonstrate need for the facility shall instead demonstrate compliance with the
30 carbon dioxide emissions standard applicable to the type of facility subject to the
31 site certificate before beginning construction. *** [1997 c.428 s. 7]
32

33 Mr. Meek argued that the statute applies only to a "...site certificate holder that is
34 required by its site certificate or by law to demonstrate need for the facility." He further
35 argued that HPP does not currently hold a site certificate because the order granting one
36 was stayed pursuant to ORS 469.403(4), which provides:

37
38 (4) The filing of a petition for judicial review shall stay the order, except that the
39 Supreme Court may lift the stay upon showing that:

40
41 (a) The delay in construction will result in substantial economic injury to
42 the applicant; and
43 /

1 (b) Construction will not result in irreparable harm to resources protected
2 by applicable council standards or applicable agency or local government
3 standards.
4

5 Mr. Meek argued that the effectiveness of the site certificate was stayed on
6 May 31, 1996 when the commentators and others filed in the Oregon Supreme Court their
7 challenge to the Council order granting the site certificate. SC No. S433267.
8

9 Mr. Meek is correct that the filing of an appeal stays the Council order and
10 prevents HPP from commencing construction. Nevertheless, HPP still has a valid site
11 certificate. The order and the site certificate remain valid until and unless the court
12 declares them invalid.
13

14 Mr. Meek's appeal of the original site certificate to the Supreme Court is based
15 on his challenge to the "6C" exemption from need. This amendment, if granted, will
16 make the Supreme Court review of the site certificate moot. The Supreme Court has held
17 the case in abeyance until the Council acts on this amendment request. Therefore, the
18 Council finds that the appeal of the order and site certificate and the stay of the order
19 create no impediment to the granting of the amendment.
20

21 Mr. Meek also claims that HB 3283 is unconstitutional in several respects,
22 including that it illegally precludes judicial review, violates the separation of powers
23 doctrine, and contains illegal delegations of legislative powers. In reviewing Mr. Meek's
24 claims, the Council relies on the presumption that duly enacted legislation, such as HB
25 3283, is valid; and, it bears in mind that its determination of the validity of HB 3283 is
26 subject to review by the courts.
27

28 Mr. Meek first claims that HB 3283 violates constitutional guarantees to due
29 process, separation of powers, and "checks and balances" because HB 3283 provides that
30 the Council's order amending the site certificate to apply the carbon dioxide standard is
31 not subject to judicial review. It is well established that the legislature has the authority
32 to limit the jurisdiction of courts and that such limitations do not violate due process or
33 separation of powers. The only exception relates to constitutional challenges to the
34 statute or its implementation. Here, the provision only bars judicial review of the
35 Council's decisions relating to HPP's qualification under the statutory criteria, but does
36 not preclude Mr. Meek from making his constitutional arguments to a court. Therefore,
37 the Council finds that the statute is not unconstitutional.
38

39 Mr. Meek next claims that HB 3283's reliance upon binding arbitration to settle
40 disputes "about the site certificate holder's demonstration of compliance with the
41 applicable carbon dioxide emission standard" violates the separation of powers doctrine
42 and Article 1, Section 21, of the Oregon Constitution, which provides:
43 /

1 No ex-post facto law, or law impairing the obligation of contracts shall
2 ever be passed, nor shall any law be passed, the taking effect of which
3 shall be made to depend upon any authority except as provided in this
4 Constitution; provided, that laws locating the Capitol of the State,
5 locating County Seats and submitting town, and corporate acts, and other
6 local, and Special laws may take effect, or not, upon a vote of the
7 electors interested.
8

9 Among other things, this constitutional provision has been interpreted to prohibit
10 the delegation of legislative powers to non-governmental entities. There has been no
11 improper delegation here, however. While there are few Oregon cases discussing binding
12 arbitration, in other jurisdictions binding arbitration involving a government agency has
13 been upheld where the arbitrator has no personal interest in the outcome and the decision
14 is based on factors set out by the legislature. Here, both criteria are met.
15

16 Clearly the Oregon legislature has substituted binding arbitration for judicial
17 review on a narrow, fact-based issue. No policy questions have been left for the arbitrator
18 to decide. The neutral arbitrator's role is not likely to go much beyond resolving disputes
19 about competing mathematical calculations, or, as is suggested by Mr. Meek's comments,
20 about the details of paying the offset funds. Furthermore, the statute clearly sets out the
21 methodology for determining the carbon dioxide offsets, making the determination
22 largely ministerial. The arbitrator's role certainly does not extend to making law, that is
23 setting standards of conduct applicable to other persons. HB 3283 contains a complete
24 description of the requirements for compliance with the carbon dioxide emissions
25 standard, including the monetary path. The Council finds that the binding arbitration
26 provisions are not unconstitutional.
27

28 Mr. Meek also asserts that the "monetary path" is unconstitutional because it
29 delegates authority to a private agency over which the government has no control.
30

31 Mr. Meek is incorrect. The monetary path does allow a site certificate holder to
32 meet its carbon mitigation obligations by making payments to a "qualified organization."
33 ORS 469.503. However, the statute has delegated no state power to the qualified
34 organization.
35

36 The legislature has neither given the "qualified organization" the power to
37 determine how much money the applicant must pay, nor the use to which those funds are
38 put. The Council determines the amount of money the applicant must make available.
39 The funds must be used for "the direct reduction, elimination, sequestration or avoidance
40 of carbon dioxide emissions." ORS 469.503(2)(e)(K)(iii). The Council finds that the use
41 of the qualified organization is not unconstitutional.
42 /

1 For the reasons outlined above, the Council finds that HB 3283 is a constitutional
2 exercise of legislative power.

3
4 **B.2 Council Review Steps**

5
6 **B.2.1 Council Notice**

7 OOE mailed HPP's request for amendment and a memo summarizing the request
8 to the Council on November 5, 1997. OOE staff and HPP presented information about
9 the request to the Council at its November 14, 1997 meeting.

10
11 For the reasons discussed above regarding public notice, OOE mailed the
12 proposed order to the Council on January 26, 1998.

13
14 **B.2.2 Council Hearing and Action**

15 On March 13, 1998 the Council conducted a hearing on the request for
16 amendment and adopted this final order.

17
18 **C. General Findings of Fact Related to the Request for Amendment**

19
20 **C.1 Proposed Changes to the Site Certificate**

21 HPP requests a site certificate amendment that removes site certificate conditions
22 that require HPP to demonstrate compliance either with the 6(c) Exemption or the need
23 for facility standard and that adds conditions relating to the carbon dioxide emissions
24 standard, pursuant to ORS 469.409. HPP submitted its amendment request pursuant to
25 OAR 345-27-050, which requires site certificate holders to request amendments when
26 they propose to change an aspect of the facility in any way that would invalidate the basis
27 for a finding made by the Council in granting the site certificate.

28
29 HPP also cites ORS 469.409 as authority for its request. HPP proposes to
30 demonstrate compliance with the applicable carbon dioxide emissions standard based on
31 payment of carbon dioxide mitigation funds pursuant to ORS 469.503(2)(c)(C).

32
33 **C.1.1. Current Need for Facility Conditions**

34 In order to proceed with construction of its facility, HPP must comply with
35 Condition 4 of its site certificate, which provides:

36
37 “(4) In accordance with the Mandatory Condition requirement in
38 OAR 345-27-020(6)(d), the Site Certificate holder shall provide to the Council,
39 prior to commencement of construction:

40
41 (i) A long term power sales contract with the Bonneville Power
42 Administration for all the net electric output of the facility; and
43 /

1 (ii) A final, non-appealable determination by the Pacific Northwest
2 Electric Power and Conservation Planning Council, under the criteria
3 identified in OAR 345-23-010(3), that the Bonneville Power
4 Administrator's decision to acquire output from the proposed facility is
5 consistent with the 1991 Northwest conservation and Electric Power Plan
6 and is in accordance with the criteria identified in
7 OAR 345-23-010(3)(a)(b), and (c). If such a determination is not
8 provided, the certificate holder shall not commence construction of the
9 facility unless it demonstrates need in a process conforming to the
10 requirements of OAR 345-27-070(3). The issue at the hearing shall be
11 limited to whether the facility complies with OAR Chapter 345, division
12 23.
13

14 HPP's site certificate requires HPP either to meet the 6(c) Exemption criteria or to
15 demonstrate need. At this time, HPP certifies that it cannot provide the required final
16 determination from the Power Planning Council regarding a decision by BPA to acquire
17 power from HPP's proposed facility because BPA has not exercised its option to acquire
18 such power. Therefore, under Condition 4 of the site certificate, HPP cannot proceed to
19 construction "unless it demonstrates need * * *." The Council finds that HPP thus is
20 "required by its site certificate *** to demonstrate need."
21

22 **C.1.2. Application of Carbon Dioxide Emissions Standard**

23 The application of the CO₂ emissions standard to the HPP site certificate is
24 authorized by ORS 469.409, which provides:
25

26 **469.409 Amendment of site certificate to demonstrate compliance with
27 carbon dioxide emissions standards; binding arbitration to resolve disputes.**

28 Any site certificate holder that is required by its site certificate or by law to
29 demonstrate need for the facility shall instead demonstrate compliance with the
30 carbon dioxide emissions standard applicable to the type of facility subject to the
31 site certificate before beginning construction. Such a demonstration shall be made
32 as an amendment to the site certificate.
33

34 The Council finds that ORS 469.409 applies to HPP for the reasons discussed in
35 section C.1.1.
36

37 **C.1.3. Applicable Standard**

38 HPP's proposed generating facility will be fueled by natural gas, with distillate
39 used as a backup fuel. HPP's site certificate contains no limits on facility hours of
40 operation other than restrictions on the use of backup fuel. Thus, the Council finds that
41 the facility is a base-load gas plant as that term is defined in ORS 469.503(2)(e)(B). The
42 applicable standard for a base-load gas plant is as follows:
43 /

1 The net carbon dioxide emissions rate of the proposed base load gas plant shall
2 not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net
3 electric power output, with carbon dioxide emissions and net electric power
4 output measured on a new and clean basis. ORS 469.503(2)(a).

5
6 ORS 469.503(2)(c), as amended, first requires the Council to determine “the gross
7 carbon dioxide emissions that are reasonably likely to result from the operation of the
8 proposed energy facility.” The determination is to be based upon the facility’s proposed
9 design and is to assume a 100 percent load factor (8,760 hours) and a 30-year facility life.
10 ORS 469.503(2)(e)(B).

11
12 The statute requires the Council to use a rate of 117 lb. of CO₂ emissions per
13 MMBtu (0.000117 lb. CO₂/Btu) of natural gas fuel consumed and a rate of 161 lb. CO₂
14 per MMBtu (0.000161 lb. CO₂/Btu) of distillate fuel consumed. ORS 469.503(2)(e)(G).

15
16 **C.1.4 Determining the Monetary Path Payment Requirement (Offset Funds and**
17 **Selection and Contracting Funds)**

18 The following discussion demonstrates the method the Council uses to determine
19 the monetary path payment requirement for the site certificate holder. The “monetary
20 path payment requirement” means the combination of offset funds as defined in ORS
21 469.503(2)(c)(C) and selection and contracting funds as defined in ORS
22 469.503(2)(d)(A)(ii), whether calculated based on estimated heat rates and capacities for
23 each fuel or calculated based on data (“Year One Heat Rates” and “Year One Capacities”)
24 from the “Year One Test” report, conducted pursuant to ORS 469.503(2)(e)(G) and
25 OOE’s proposed Condition 4(f). (Table 1 shows this demonstration also.)

26
27 HPP has selected a specific power plant design for its proposed energy facility
28 and has provided information about the installed capacity and heat rate of that design
29 based on current information from a major equipment supplier. The Council, therefore,
30 bases its calculations to determine gross carbon dioxide emissions on such information.
31 However, HPP has not yet entered into a contract for the purchase of plant equipment. As
32 described in Section A.2, continuing improvements in the performance of turbines and
33 other equipment mean that, at the time of equipment purchase and installation, the final
34 installed capacity and heat rate of the proposed facility may differ from current
35 projections. Hours of operation on distillate may also vary from those HPP proposed in
36 its request for amendment. The Council, therefore, adopts a two-step process to allow
37 itself to determine that HPP meets the applicable CO₂ standard.

38
39 Step one develops a method by which the Council determines the appropriate
40 amount of the monetary path payments, based on HPP’s proposed combustion turbine.
41 This method is then specified as a condition (Condition 4) in the amended site certificate.

42 /

1 Step two will use the method specified in the site certificate condition to calculate
2 the required amount of the monetary path payment requirement. HPP will use the
3 methodology to calculate the estimated monetary path payment requirement prior to
4 beginning construction of the facility. This amount will be based on the final contracted
5 capacity and heat rate of the facility for each fuel, along with the limit on the number of
6 hours that HPP will be allowed to use distillate fuel. HPP must submit this information
7 to the Council before it begins construction, pursuant to Condition 4(e). HPP will also
8 use this methodology to determine whether it must increase its monetary path payment
9 requirement, based on calculations using Year One Test data, as specified in
10 Condition 4(d).

11
12 In its request for amendment, HPP performed the calculations for the process in a
13 manner that allowed it to derive a method for calculating its required monetary path
14 payments (offset funds and selection and contracting funds) that combined several steps
15 into one factor. However, the Council uses a method that makes explicit all calculations
16 and that is applicable both to estimated payments and additional payments, if any, due
17 after the Year One Test.

18
19 The Council uses this two-step process to ensure that the estimated monetary path
20 payment requirement that HPP must guaranty before beginning construction closely
21 matches the adjusted monetary path payment that may be required after it has tested the
22 operating facility. The Council allows no adjustment that would lower the guaranty or
23 letter of credit that HPP provided prior to beginning construction even if the estimated
24 monetary path payment requirement exceeds the payment requirement calculated using
25 Year One Test data. Therefore, it is important the amounts that HPP guarantees prior to
26 beginning construction be the most accurate estimate at the time.

27
28 For the purposes of demonstrating the calculation of the gross carbon dioxide
29 emissions for the proposed plant, the Council uses a nominal generating capacity of the
30 two-unit combustion turbine configuration of 536 MW (net, with no steam to off-site
31 use), based on HPP's request for amendment. The same methodology would apply to a
32 one-unit configuration. The Council also uses the limit on average number of hours of
33 burning distillate fuel annually that HPP proposes in its request for amendment
34 (15.75 days, or 378 hours).

35
36 **C.1.4.1 Step One: The Method of Calculation**

37 To calculate estimated offset funds required, the Council uses the proposed
38 average number of hours annually that the facility will be permitted to use distillate fuel
39 (378 hours). It subtracts 378 hours from 8,760 hours (the total number of hours in a year)
40 to determine the average number of hours annually that the facility will use natural gas
41 for fuel (8,382 hr).

42 /

1 The Council then calculates the total CO₂ emissions (lb. CO₂) that the facility will
2 produce using each fuel. For natural gas, the Council multiplies the nominal power of the
3 facility (536 MW, or 536,000 kW) while operating on natural gas by the annual average
4 hours of operation on natural gas (8,382 hr); it then multiplies that product by 30 years to
5 determine the total net plant output for 30 years (134,782,560,000 kWh). It then
6 multiplies total net plant output for 30 years by the heat rate while operating on natural
7 gas (6,580 Btu/kWh) and by the CO₂ emissions factor for natural gas (0.000117 lb.
8 CO₂/Btu) to determine the total CO₂ emissions while operating on natural gas
9 (103,763,701,642 lb.).

10
11 For distillate fuel, the Council multiplies the nominal power of the facility (537
12 MW, or 537,000 kW) while operating on distillate fuel by the annual average hours of
13 operation permitted on distillate fuel (378 hr); it then multiplies that product by 30 years
14 to determine the total net plant output for 30 years (6,089,580,000 kWh). It then
15 multiplies total net plant output for 30 years by the heat rate while operating on distillate
16 fuel (7,016 Btu/kWh) and by the CO₂ emissions factor for distillate fuel (0.000161 lb.
17 CO₂/Btu) to determine the total CO₂ emissions while operating distillate fuel
18 (6,878,643,418 lb.).

19
20 The Council then calculates the average CO₂ emissions rate for facility using the
21 two fuels. It adds total CO₂ emissions that each fuel contributes for 30 years to determine
22 the total combined CO₂ emissions from the facility (110,642,345,060 lb.). The Council
23 adds the total net plant output from operation on each fuel for 30 years to determine the
24 total combined plant output (140,872,140,000 kWh). The Council then divides the total
25 combined CO₂ emissions by the total combined net plant output to determine the average
26 CO₂ emissions rate for the facility (0.7854097 lb. CO₂/kWh).

27
28 The Council subtracts the carbon dioxide standard of 0.7 lb. CO₂/kWh from the
29 average CO₂ emissions rate for the facility to calculate the excess CO₂ emissions rate
30 (0.0854097 lb./ CO₂ kWh).

31
32 The Council multiplies the total combined plant output for 30 years by the excess
33 CO₂ emissions rate. Then it divides that product by 2,000 pounds per ton to determine
34 the total amount of CO₂ emissions that the site certificate holder must mitigate
35 (6,015,924 tons).

36
37 HPP has selected the "monetary path" provided in ORS 469.503(2)(c)(C) to meet
38 the net CO₂ standard. Under the monetary path, the payment by the site certificate holder
39 of \$0.57 is deemed to result in a reduction of one ton of CO₂ emissions. Therefore, the
40 Council multiplies the tons of excess CO₂ emissions by the unit mitigation rate of \$0.57
41 per ton of CO₂ to calculate the sub-total for the offset fund (\$3,429,076).

Table 1
Illustration of Methodology for Determining
Monetary Path Payment Requirement
Two Units, No Cogeneration

Annual Hours of Plant Operation	
Total hours (load factor: 100%)	8,760
Time on distillate fuel (hours)	378
Time on natural gas (hours)	8,382
CO₂ emissions from operation on natural gas	
Nominal power (kW) on primary fuel	536,000
Total net plant output (kWh for 30 years)	134,782,560,000
Primary heat rate (Btu/kWh)	6,580
CO ₂ emissions factor (lb./Btu)	0.000117
CO ₂ emissions (lb.)	103,763,701,642
CO₂ emissions from operation on distillate fuel	
Nominal power (kW) on secondary fuel	537,000
Total net plant output (kWh for 30 years)	6,089,580,000
Secondary heat rate (Btu/kWh)	7,016
CO ₂ emissions factor (lb./Btu)	0.000161
CO ₂ emissions (lb.)	6,878,643,418
Average CO₂ emissions rate for facility	
Total combined CO ₂ emissions for 30 years (lb.)	110,642,345,060
Total combined plant output for 30 years (kWh)	140,872,140,000
Average CO ₂ emissions rate (lb./kWh)	0.7854097
Calculation of Offset Funds	
Average CO ₂ emissions (lb./kWh)	0.7854097
Standard (lb. CO ₂ /kWh)	0.7000000
Excess CO ₂ emissions rate (lb. CO ₂ /kWh)	0.0854097
Total CO ₂ emissions that must be mitigated (tons)	6,015,924
CO ₂ mitigation costs per ton of emissions	\$ 0.57
Sub-Total: CO ₂ offset funds required	\$ 3,429,076
Calculation of Contracting and Selection Funds	
Sub-Total: Contracting and selection funds required	\$ 175,540
Total: Monetary Path Payment Requirement	\$ 3,604,617

1 In addition to paying offset funds, HPP must pay the qualified organization to
2 compensate it for its costs of selecting and contracting for implementation of offsets, as
3 specified in ORS 469.503(2)(d)(A)(ii). To calculate the appropriate selection and
4 contracting fund amount, the Council subtracts \$500,000 from the offset fund subtotal,
5 then multiplies the remaining amount (\$2,929,076) by 4.286 percent, then adds
6 \$50,000 to that product to calculate the selection and contracting fund sub-total
7 (\$175,540).

8
9 The Council then adds the sub-totals of the offset fund and the selection and
10 contracting fund to calculate the monetary path payment requirement for the facility
11 (\$3,604,617).

12 13 **C.1.4.2 Step Two: Calculating the Estimated and Adjusted Monetary Path** 14 **Payment Requirement**

15 For step two of the process, the site certificate holder shall use the contracted
16 design parameters for capacity and heat rate for the facility that it reports pursuant to
17 Condition 4(e) to calculate the estimated monetary path payment requirement. Likewise,
18 the site certificate holder shall use the Year One Capacities and Year One Heat Rates that
19 it reports for the facility pursuant to Condition 4(f) to calculate whether it owes additional
20 monetary path payments.

21
22 The Council finds that the methodologies it employs in sections C.1.4.1 and
23 C.1.4.2 and Table 1 accurately demonstrate the calculation method to determine the site
24 certificate holder's monetary path payment requirement to meet the CO₂ standard.

25 26 **C.1.5 Means of Securing Required Emissions Reductions**

27 ORS 469.503(2)(c) provides: "For any remaining emissions reduction necessary
28 to meet the applicable standard, the applicant may elect to use any of the subparagraphs
29 (A) to (D) of this paragraph, or any combination thereof." HPP elects to use
30 subparagraph (C) of ORS 469.503(2)(c), which provides as follows:

31
32 "The applicant or a third party agrees to provide funds in an amount deemed
33 sufficient to produce the reduction in carbon dioxide emissions necessary to meet
34 the applicable carbon dioxide emissions standard, in which case the funds shall be
35 used as specified in paragraph (d) of this subsection. Unless modified by the
36 council as provided below, the payment of 57 cents shall be deemed to result in a
37 reduction of one ton of carbon dioxide emissions. The council shall determine the
38 offset funds using the monetary offset rate and the level of emissions reduction
39 required to meet the applicable standards."

40
41 In electing to use subparagraph (C), HPP does not request any carbon dioxide
42 emissions credit for cogeneration at its facility as proposed in the application for site
43 certificate and approved in the site certificate (page 2). However, HPP does not intend to

1 waive, and expressly reserves, the right to operate the project as a cogeneration project, as
2 set forth in the site certificate. Any added carbon dioxide offsets from such cogeneration
3 would be an added benefit for the state, but HPP does not seek any credit under
4 ORS 469.503(2)(c) for such offsets.

5
6 HPP proposes to disburse the required mitigation funds to a qualified
7 organization, as described below, pursuant to the provisions of ORS 469.503(2)(d)(A). In
8 addition, prior to the commencement of construction, HPP proposes to provide a guaranty
9 or letter of credit executed sufficient to ensure payment of these funds, as shown in
10 Exhibit B-2. Conditions proposed below will implement these measures.

11 12 **C.1.6 Designation of the Qualified Organization**

13 An applicant proceeding under ORS 469.503(2)(c)(C) must designate a qualified
14 organization to receive carbon dioxide offset funds and use them to implement offset
15 programs. The qualified organization also receives selection and contracting funds. HPP
16 has designated the Oregon Climate Trust as the qualified organization.

17
18 The criteria that an entity must meet to be a qualified organization are set out in
19 ORS 469.503(2)(e)(K). Under that section, a "qualified organization" means an entity
20 that:

21
22 "(i) Is exempt from federal taxation under section 501(c)(3) of the
23 Internal Revenue Code as amended and in effect on December 31, 1996;

24
25 "(ii) Either is incorporated in the State of Oregon or is a foreign
26 corporation authorized to do business in the State of Oregon;

27
28 "(iii) Has in effect articles of incorporation that require that offset funds
29 receive pursuant to this section are used for offsets that will result in the
30 direct reduction, elimination, sequestration or avoidance of carbon dioxide
31 emissions, that require that decisions on the use of funds are made by a
32 body composed of seven voting members of which three are appointed by
33 the council, three are Oregon residents appointed by the Bullitt Foundation
34 or an alternative environmental nonprofit organization named by the body,
35 and one is appointed by the applicants for site certificates that are subject
36 to paragraph (d) of this subsection and the holders of such site certificates,
37 and that require nonvoting membership on the decision-making body for
38 holders of site certificates that have provided funds not yet disbursed
39 under paragraph (d)(A) of this subsection;

40
41 "(iv) Has made available on an annual basis, beginning after the first year
42 of operation, a signed opinion of an independent certified public
43 accountant stating that the qualified organization's use of funds pursuant to

1 this statute conforms with generally accepted accounting procedures
2 except that the qualified organization shall have one year to conform with
3 generally accepted accounting principles in the event of a nonconforming
4 audit;

5
6 "(v) Has to the extent applicable, except for good cause, entered into
7 contracts obligating at least 60 percent of the offset funds to implement
8 offsets within two years after the commencement of construction of the
9 facility; and

10
11 "(vi) Has to the extent applicable, except for good cause, complied with
12 paragraph (d)(A)(I) of this subsection."
13

14 The first three of these criteria are applicable to this request. The Oregon Climate
15 Trust meets these three criteria as follows:

16
17 469.503(2)(e)(K)(i). The Oregon Climate Trust has received an exemption from
18 federal taxation under section 501(c)(3) of the Internal Revenue Code (Internal
19 Revenue Service letter dated November 19, 1997).

20
21 469.503(2)(e)(K)(ii). The Oregon Climate Trust is incorporated in the State of
22 Oregon.

23
24 469.503(2)(e)(K)(iii). The Oregon Climate Trust has in effect articles of
25 incorporation that comply with this section.

26
27 469.503(2)(e)(K)(iv). This criterion is not applicable because the Oregon Climate
28 Trust, having filed its articles of incorporation on June 26, 1997, has not
29 completed its first year of operation.

30
31 469.503(2)(e)(K)(v). This criterion is not applicable because it relates to the
32 operations of the qualified organization after construction of the proposed facility
33 has commenced and the site certificate holder has made disbursements to the
34 qualified organization.

35
36 469.503(2)(e)(K)(vi). This criterion is not applicable because it relates to the
37 operations of the qualified organization after construction of the proposed facility
38 has commenced and the site certificate holder has made disbursements to the
39 qualified organization.

40
41 The Council finds that the Oregon Climate Trust meets all the applicable criteria
42 as a qualified organization
43 /

1 **D. Amendments to Site Certificate**

2 HPP requests the following amendments to the site certificate to apply the carbon
3 dioxide standard in lieu demonstrating need for the facility. HPP changes are shown as
4 strikeouts and single underlines. The Council's revisions follow the discussion of each
5 requested amendment. The Council's revisions show modifications to the amended site
6 certificate conditions as strikeouts and double underlines, except for Condition 4, which
7 is shown as a complete replacement of the condition HPP proposed. Because the Council
8 makes a significant reorganization of the conditions, some elements move among
9 conditions.

10
11 **D.1. Need for Facility**

12 HPP requests that the Council delete Conditions no. 1 through no. 4 on pages 5
13 and 6 and Condition 90 on pages 18 and 19 of the site certificate. These conditions relate
14 to the need for the facility and exemption therefrom.

15
16 **“III. CONDITIONS**

17
18 ~~Need/BPA Exemption: OAR 345-23-010(3)~~

19
20 ~~(1) — Prior to commencement of construction, the Site Certificate holder shall notify the~~
21 ~~Council in writing of the final selection of gas turbine vendor.~~

22
23 ~~(2) — Prior to commencement of construction, the Site Certificate holder shall submit~~
24 ~~design information to the Department sufficient to verify that the facility's actual design~~
25 ~~fuel chargeable to power heat rate under ISO conditions as defined in~~
26 ~~OAR 345-01-010(21) is less than 8,000 Btu/Kwh, with no credit taken for steam to the~~
27 ~~steam host.~~

28
29 ~~(3) — Within six months of completion of the first full year of commercial operation,~~
30 ~~the Site Certificate holder shall provide a test report of the capacity and unit heat rate in~~
31 ~~BTU per kilowatt hour produced, corrected to ISO conditions and accounting for steam~~
32 ~~delivered to the steam host, averaged over the first full year of operation, to document~~
33 ~~that the facility achieves a fuel chargeable to power heat rate of less than 8,000 Btu/Kwh.~~

34
35 ~~(4) — In accordance with the Mandatory Condition requirement in~~
36 ~~OAR 345-27-020(6)(d), the Site Certificate holder shall provide to the Council, prior to~~
37 ~~commencement of construction:~~

38
39 ~~_____ (i) — A long term power sales contract with the Bonneville Power~~
40 ~~Administration for all the net electric output of the facility; and~~

41
42 ~~_____ (ii) — A final, non appealable determination by the Pacific Northwest~~
43 ~~Electric Power and Conservation Planning Council, under the criteria identified in~~

1 ~~OAR 345-23-010(3), that the Bonneville Power Administrator's decision to acquire~~
2 ~~output from the proposed facility is consistent with the 1991 Northwest conservation and~~
3 ~~Electric Power Plan and is in accordance with the criteria identified in~~
4 ~~OAR 345-23-010(3)(a)(b), and (c). If such a determination is not provided, the certificate~~
5 ~~holder shall not commence construction of the facility unless it demonstrates need in a~~
6 ~~process conforming to the requirements of OAR 345-27-070(3). The issue at the hearing~~
7 ~~shall be limited to whether the facility complies with OAR Chapter 345, division 23.~~

8
9 The Site Certificate holder must demonstrate compliance with the need for facility
10 standard in effect at the time the decision on the request to amend is made.

11 ~~“(90) Except for the portion of capacity to be used by the Site Certificate holder:~~

12 ~~———— (d) ——— For facilities exempt from demonstrating need under OAR 345-23-010(3),~~
13 ~~facilities for which all of the net electric output is contracted to the Bonneville Power~~
14 ~~Administration, for Council shall condition the Site Certificate to require, before~~
15 ~~construction:~~

16 ~~———— (A) ——— A long term power sales contract with the Bonneville Power~~
17 ~~Administration for all the net electric output of the facility; and~~

18 ~~———— (B) ——— A final, non-appealable determination by the Pacific Northwest~~
19 ~~Electric Power and Conservation Planning Council, under the criteria identified in~~
20 ~~OAR 345-23-010(3), that the Bonneville Power Administrator's decision to acquire~~
21 ~~output from the proposed facility is consistent with the 1991 Northwest Conservation and~~
22 ~~Electric Power Plan and is in accordance with the criteria identified in~~
23 ~~OAR 345-23-010(3)(a), (b) and (c). If such a determination is not provided, the~~
24 ~~certificate holder shall not begin construction unless it demonstrates need in a process in~~
25 ~~conformance with OAR 345-27-070, except that the Council shall hold a contested case if~~
26 ~~requested by any person as provided in 345-27-070(3). The hearing shall be limited to~~
27 ~~consideration of whether the facility complies with division 23 of these rules.”~~

28
29 The Council deletes these conditions for the reasons stated in section C.1.1, along
30 with adding conditions to apply the CO₂ standard.

31 32 **D.2. Additional Conditions for the Site Certificate**

33
34 **D.2.1** HPP requests that the Council add the following conditions under “Carbon
35 Dioxide Emissions Standard, ORS 469.503(2)” and number them 1 through 4, beginning
36 on page 5 of the site certificate.

37
38 **D.2.1.1** HPP requests the following new Condition 1:

39
40 (1) Prior to commencement of construction the Site Certificate holder shall
41 submit to the State of Oregon, through the Council, a guaranty substantially in the
42 form attached as Exhibit B-2, executed by TransCanada PipeLines Limited and
43 Ida-West Energy Company. The guaranty shall remain in effect until such time as

1 the Site Certificate holder has disbursed the amount of \$1,817,555 for a one unit
2 project, and \$3,606,540 for a two unit project, as adjusted in accordance with the
3 terms of this Site Certificate, to the Oregon Climate Trust (the "Oregon Climate
4 Trust"). The guaranty will be in the initial amount of \$1,817,555 for a one unit
5 project, and \$3,606,540 for a two unit project, and will thereafter be reduced
6 upon, and in the exact amount of, any disbursement by the Site Certificate holder
7 to the Oregon Climate Trust.
8

9 Subsequent to filing its request for amendment number one, HPP submitted an
10 "Interim Report to the Energy Facility Siting Council Regarding the Withdrawal of a
11 Partner and Management Committee Changes." HPP filed the Report to inform the
12 Council of a change in the ownership of the Hermiston Power Project and to request a
13 change to Condition 15 in the site certificate. Upon review of the Report, OOE
14 determined that the proposed change to Condition 15 required that the Council treat that
15 proposed change as a request for amendment. Therefore, the Council processed the
16 Report as the Request for Amendment Number Two to the Site Certificate for the
17 Hermiston Power Project. The Council approved that amendment request at its meeting
18 on January 23, 1998. The amended Condition 15, and related Conditions 16 and 79,
19 changed the parties to the guaranty and provided alternative mechanisms.
20

21 The Council modifies the amendment HPP proposed to make it consistent in form
22 and requirements with the guaranty the Council approved in Amendment Number Two.
23 The changes add Idaho Power Company as a guarantor, allow HPP to substitute another
24 guarantor with Council approval, and allow HPP to provide a letter of credit in lieu of the
25 guaranty.
26

27 The Council also modifies the condition so it does not specify the dollar amount
28 of the requirement. The monetary path payment requirement is determined by the
29 methodology the Council adopts in Condition 4.
30

31 The Council's condition also includes an indexing of the funds in 1998 dollars
32 until they are withdrawn by the qualified organization. Indexing is consistent with the
33 guaranty approved in Amendment Request Number Two. It is an element that OOE
34 proposed, but HPP did not propose.
35

36 The Council believes that the money in the guaranty or letter of credit should
37 maintain its value until the money is withdrawn by the Oregon Climate Trust. The
38 monetary path payment must be made prior to beginning construction, which may be as
39 late as November 30, 2000. In addition, it could be some time before the money is
40 actually withdrawn by the Oregon Climate Trust. The Council believes that the money
41 should retain its value over this period so that the value of the money that is withdrawn
42 by the Oregon Climate Trust is equal to the value of the money at the time the Council

1 made the determination that HPP met the carbon dioxide standard by reliance on the
2 monetary path payment requirement.

3
4 The Council's modifies Condition 1 as follows:

5
6 (1) Prior to commencement of construction, the site certificate holder shall
7 submit to the State of Oregon through the Council a guaranty substantially in the
8 form of Exhibit B-2, executed by TransCanada PipeLines Ltd. and , Ida-West
9 Energy Company ("Ida West"). The guaranty shall remain in effect until such
10 time as the Site Certificate holder has disbursed the amount of \$1,817,555 for a
11 one unit project, and \$3,606,540 for a two unit project, as adjusted in accordance
12 with the terms of this Site Certificate, to the Oregon Climate Trust (the "Oregon
13 Climate Trust"). The guaranty will be in the initial amount of \$1,817,555 for a
14 one unit project, and \$3,606,540 for a two unit project, and will thereafter be
15 reduced upon, and in the exact amount of, any disbursement by the Site
16 Certificate holder to the Oregon Climate Trust, and Idaho Power Company in the
17 amount of the monetary path payment requirement (in 1998 dollars) as
18 determined by the calculations set forth in Condition 4 and based on the estimated
19 heat rate and capacity certified pursuant to Condition 4(e) below and as adjusted
20 in accordance with the terms of this site certificate pursuant to Condition 4(d).
21 For the purposes of this site certificate, the "monetary path payment requirement"
22 means the offset funds determined pursuant to ORS 469.503(2)(c) and the
23 selection and contracting funds determined pursuant to ORS 469.503(2)(d)(A)(ii)
24 that the site certificate holder must disburse to the Oregon Climate Trust, as the
25 qualified organization, pursuant to ORS 469.403(2)(d)(A). The calculation of
26 1998 dollars shall be made using the index set forth below.

27
28 The site certificate holder may offer to substitute the guaranty of a new parent
29 corporation of Ida West for the guaranty of Idaho Power Company. In that event,
30 the Council will approve the guaranty from the new parent unless the Council
31 finds that the proposed guaranty does not provide comparable security to the
32 guaranty of Idaho Power Company. Such approval will not require a site
33 certificate amendment. The guaranty shall remain in effect until such time as the
34 site certificate holder has disbursed the full amount of the monetary path payment
35 requirement to the Oregon Climate Trust ("Oregon Climate Trust") as provided in
36 ORS 469.503(2)(d)(A).

37
38 In lieu of the guaranty requirement set forth above that the site certificate holder
39 must provide prior to commencement of construction, the site certificate holder
40 may instead provide a letter of credit in the amount of the monetary path payment
41 requirement as calculated pursuant to Condition 4 below (in 1998 dollars) and
42 based on the estimated capacity and heat rate of the plant as certified by the site
43 certificate holder pursuant to Condition 4(e). If the site certificate holder has

1 provided a letter of credit prior to commencing construction and if calculations
2 pursuant to Condition 4(d) demonstrate that the site certificate holder must
3 increase its monetary path payments, the site certificate holder shall increase the
4 letter of credit sufficiently to meet the adjusted monetary path payment
5 requirement within the time required by Condition 4(d). The site certificate
6 holder may reduce the amount of the letter of credit commensurate with payments
7 it makes to the Oregon Climate Trust.

8
9 The calculation of 1998 dollars shall be made using the US Gross Domestic
10 Product Deflator for Total Non-Residential Fixed Investment, as published by the
11 US Department of Commerce, Bureau of Economic Analysis, or any successor
12 agency ("the index"). The amount of the letter of credit shall increase annually by
13 the percentage increase in the index and shall be pro-rated within the year to the
14 date of disbursement to the Oregon Climate Trust. If at any time the index is no
15 longer published, the Council shall select a comparable calculation of 1998
16 dollars. The letter of credit shall not be subject to revocation prior to
17 disbursement of the full monetary path payment requirement, including any
18 adjusted monetary path payment requirement. The terms of the letter of credit and
19 identity of the issuer shall be subject to approval by the Council, which approval
20 shall not be unreasonably withheld.

21
22 **D.2.1.2 HPP requests the following new Condition 2:**

23
24 (2) The Site Certificate holder shall disburse to the Oregon Climate Trust offset
25 funds as requested by the Oregon Climate Trust up to the total amount of
26 \$1,715,460 per turbine unit and administrative funds up to the total amount of
27 \$102,095 for a one-unit project and \$175,619 for a two-unit project, as adjusted in
28 accordance with the terms of this Site Certificate. Disbursements shall be made in
29 response to requests from the Oregon Climate Trust made in accordance with the
30 requirements of ORS 469.503(2)(d)(A).

31
32 In this proposed condition, HPP specifies the amount of money it must pay to the
33 qualified organization and requests that the total amount of funds be “adjusted in
34 accordance with the terms of this Site Certificate.” There are two changes that the
35 Council makes to the condition.

36
37 First, the Council adopts the process outlined in section C.1.4 to determine the
38 estimated monetary path payment once HPP has contracted for a combustion turbine.
39 This acknowledges that the site certificate allows flexibility in turbine selection rather
40 than specifying a set amount of payment in the condition.

41
42 Second, HPP proposes language that would permit it to adjust its guaranty or
43 letter of credit both downward and upward. Under HPP’s proposal, if Year One Test data

1 show the CO₂ emissions are lower than the emissions estimated using design data, it
2 would be permitted to decrease the guaranty or letter of credit it made to meet the
3 estimated monetary path payment requirement. The Council concludes that proposal is
4 not within the scope of the ORS 469.503(2).
5

6 HPP clarified its proposal regarding an adjustment to the guaranty in a letter to
7 OOE on January 26, 1998. HPP stated that the intent of its proposal to allow the HPP to
8 reduce the amount of the guaranty or letter of credit (within the limit of remaining funds)
9 if the Oregon Climate Trust has not withdrawn all the funds before the adjustment is
10 calculated. However, the Council also believes that the language in the conditions that
11 HPP submitted is open to another interpretation, even if that were not HPP's intent. The
12 Council reads HPP's proposed conditions as requiring the qualified organization to
13 refund monetary path payments after the qualified organization had contracted for
14 expenditure of the funds.
15

16 There are several reasons the Council opposes HPP's proposal regarding the
17 adjustment. In all likelihood, the Oregon Climate Trust will have already entered into
18 contracts to purchase offsets long before the Year One Test is completed. In fact, ORS
19 469.503(2)(e)(K)(v) requires the qualified organization to expend at least 60 percent of
20 offset funds within two years, which would likely be before a facility is completed, much
21 less tested. Implementation of the HPP proposal could put pressure on the Oregon
22 Climate Trust to delay spending funds until the adjustment is calculated. The site
23 certificate holder will be a non-voting member of the board until the funds are expended
24 and will be able to influence such decisions. Furthermore, allowing an adjustment that
25 could decrease the available funds could make it difficult for the Oregon Climate Trust to
26 negotiate contracts near the time of the adjustment. Finally, there is nothing in the statute
27 to suggest that the monetary path payment requirement should be adjusted downward
28 once the site certificate holder has made it available to the qualified organization. The
29 Council believes the HPP proposal is not workable and is not justified.
30

31 On the other hand, ORS 469.503(2)(c) requires the Council to adopt conditions to
32 "ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean
33 basis." The only way the Council can meet such a requirement is to require the site
34 certificate holder to adjust its monetary payments to ensure that the net emissions are not
35 exceeded. Therefore, the conditions must have a mechanism to increase the monetary
36 path payments if necessary to meet the CO₂ standard.
37

38 The Council adopts the following modified version of Condition 2 to reflect the
39 language in its proposed Condition 1. It deals with the adjustment clause in language for
40 Condition 4.
41

42 (2) The site certificate holder shall disburse to the Oregon Climate Trust offset
43 funds and contracting and selection funds as requested by the Oregon Climate

1 Trust up to the total amount of \$1,715,460 per turbine unit and administrative
2 funds up to the total amount of \$102,095 for a one unit project and \$175,619 for a
3 two unit project, monetary path payment requirement as determined by the
4 calculations set forth in Condition 4 and based on the estimated heat rate and
5 capacity certified pursuant to Condition 4(e) below (in 1998 dollars) and as
6 adjusted in accordance with the terms of this site certificate pursuant to Condition
7 4(d). Disbursements shall be made in response to requests from the Oregon
8 Climate Trust made in accordance with the requirements of ORS
9 469.503(2)(d)(A).

10
11 **D.2.1.3** HPP requests the following new Condition 3:

12
13 (3) Notwithstanding anything in this Site Certificate to the contrary, the Site
14 Certificate holder shall have no obligation with regard to offsets, the offset funds
15 or administrative funds other than to make available to the Oregon Climate Trust
16 the total amount required under this Site Certificate, nor shall any
17 nonperformance, negligence or misconduct on the part of the Oregon Climate
18 Trust be a basis for revocation of this Site Certificate or any other enforcement
19 action by the council with respect to the Site Certificate holder.

20
21 The Council notes that this conditions paraphrases ORS 469.503(2)(d)(A)(iii).
22 The Council adopts the condition with editorial changes, as follows:

23
24 (3) Notwithstanding anything in this amended sSite cCertificate to the contrary,
25 the sSite cCertificate holder shall have no obligation with regard to offsets, the
26 offset funds or administrative, and the selection and contracting funds other than
27 to make available to the Oregon Climate Trust the total amount required under
28 this sSite cCertificate, nor shall any nonperformance, negligence or misconduct on
29 the part of the Oregon Climate Trust be a basis for revocation of this sSite
30 cCertificate or any other enforcement action by the Ceouncil with respect to the
31 sSite cCertificate holder.

32
33 **D.2.1.4** HPP requests the following new Condition 4:

34
35 (4) The Site Certificate Holder shall comply with the following conditions
36 regarding monitoring and offset fund adjustment:

37
38 (A) Prior to commencement of construction, the Site Certificate holder
39 shall notify the Council in writing of the final selection of gas turbine vendor and
40 shall submit written design information to the Department sufficient to verify that
41 the facility's actual design carbon dioxide emissions on an annual average basis
42 are not more than 0.7854 lb./kWh on a new and clean basis as defined in ORS
43 469.503(2). The information submitted shall include the proposed maximum

1 number of days of facility operation on fuel oil, as well as the facility's new and
2 clean heat rate, nominal electric generating capacity, and carbon dioxide
3 emissions for each fuel type. The report shall also include an affidavit or other
4 evidence from the Site Certificate holder to confirm that the vendor has
5 guaranteed the heat rate and that the Site Certificate holder's contract with the
6 vendor includes a liquidated damages provision adequate to fund any increased
7 CO₂ mitigation obligation calculated under Condition 4(D) resulting from
8 vendor's failure to achieve the guaranteed heat rate. Based upon this information,
9 the total amount of the Site Certificate holder's obligations under Condition 2
10 above, and the amount of the guaranty in Condition 1 above, shall be adjusted to
11 reflect the facility's actual design carbon dioxide emissions. The adjustment shall
12 be performed according to the methodology in Condition 4(D), below.

13
14 (B) Within two months of completion of the first year of commercial
15 operation, the Site Certificate holder shall provide a test report of the actual heat
16 rate, net electric power output and average carbon dioxide emissions per hour, for
17 each fuel type used, without degradation, as determined by a 100-hour test at full
18 power completed during the first 12 months of commercial operation, with the
19 results adjusted for the average annual site condition for temperature, barometric
20 pressure and relative humidity and use of alternative fuels, and using a rate of 117
21 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161
22 pounds of carbon dioxide per million Btu of distillate fuel. Based upon the data
23 contained in the test report, the total amount of the site Certificate holder's
24 obligations under Condition 2 above, and the amount of the guaranty in Condition
25 1 above, shall be adjusted to reflect the facility's reported carbon dioxide
26 emissions. The adjustment shall be performed according to the methodology in
27 Condition 4(D), below.

28
29 (C) The combustion turbine units shall be fueled solely with natural
30 gas or with synthetic gas with a carbon content per MMBtu no greater than natural
31 gas, except that fuel oil may be used for no more than an average of 15.75 days
32 per year calculated on a rolling average of the previous five years. However, if
33 prior to the commencement of construction the Site Certificate holder proposes in
34 its written submission to the Council made pursuant to Condition 4(A) above, to
35 use fuel oil more or less than 15.75 days per year, the number proposed by the
36 Site Certificate holder shall replace 15.75 days as the binding maximum for fuel
37 oil use under this Condition 4(C).

38
39 (D) Upon the Site Certificate holder's submissions to the Council
40 pursuant to each of Conditions 4(A) and 4(B), if the calculation of the total of the
41 offset fund and the selection and contracting fund payments, as described below,
42 differs from the total of the offset fund and the selection and contracting fund
43 payments in the guaranty provided in Condition 1, then the total amount of the

1 guaranty in Condition 1 above, and the total amount of the site Certificate
2 holder's obligations under Condition 2 above, shall be adjusted accordingly.

3
4 To calculate possible adjustments pursuant to this condition, the Site
5 Certificate holder shall use the respective capacity and heat rate for each fuel it
6 reported under condition 4(A) or 4(B), as applicable. The Site Certificate holder
7 shall calculate a combined emissions rate (lb. CO₂/kWh) by using the reported
8 heat rate for natural gas, 0.000117 (lb. CO₂/Btu), and the reported heat rate for
9 fuel oil, 0.000161 (lb. CO₂/Btu), and by prorating each of these rates to reflect the
10 Site Certificate holder's written commitment, pursuant to Condition 4(A), to a
11 numeric maximum number of days per year on fuel oil. From that combined
12 emissions rate, The Site Certificate holder shall subtract 0.7 lb. CO₂/kWh to
13 calculate its excess CO₂ emissions rate. It shall calculate the combined annual
14 nominal energy (kWh) by prorating the reported capacity for each fuel (kW) by
15 same proportions of time it used for the heat rates. It shall multiply annual
16 nominal energy by its excess CO₂ emissions rate, then multiply that by 30 years to
17 calculate total pounds of excess CO₂ emissions. It shall then convert pounds of
18 CO₂ to tons and multiply tons by the unit mitigation rate of \$0.57 per ton of CO₂
19 to calculate the sub-total for the offset fund.

20
21 To calculate the appropriate selection and contracting fund amount, the
22 Site Certificate holder shall subtract \$500,000 from the offset fund subtotal,
23 multiply the remaining amount by 4.286 percent, then add \$50,000 to that product
24 to calculate the selection and contracting fund sub-total.

25
26 The Site Certificate holder shall then add the sub-totals of the offset fund
27 and the selection and contracting fund to calculate the total funds associated with
28 the combined reported capacity and heat rates. If that total differs from the total
29 amount of funds provided for in the guaranty in Condition 1, the Site Certificate
30 holder shall adjust the guaranty by the difference between the original guaranty
31 and the new amount and notify the Council and the Oregon Climate Trust that the
32 total amount of its obligations under Condition 2 has been adjusted within two
33 weeks of filing its submission under Condition 4(A) or 4(B), as applicable.

34
35 Because of the extensive changes the Council makes to the condition and the
36 complexity of the condition, Condition 4 is shown below as the Council adopts it, rather
37 than striking through the elements proposed by HPP. The discussion highlights the
38 changes between what HPP proposed and what the Council adopts.

39
40 In its adoption of Condition 4(a)-(c), the Council uses the process it described in
41 section C.1.4 as the way to determine estimated and adjusted monetary path payment
42 requirements. This replaces HPP's proposed Condition 1, which simply specified the
43 amount of money that would be required and provided for a guaranty.

1 In its adoption of Condition 4(d), the Council requires the site certificate holder to
2 increase any monetary path payments calculated using the Year One Test data. As
3 discussed in section D.2.1.2 above, the condition does not allow the site certificate holder
4 to reduce the guaranty or letter of credit for the estimated monetary path payment
5 requirement. This replaces HPP's proposed Condition 4(D), which provided for a
6 decrease in the guaranty or letter of credit if the tested facility had lower than estimated
7 emissions.

8
9 In adopting Condition 4(e), the Council incorporates elements that HPP proposed
10 in its Condition 4(A).

11
12 In adopting of Condition 4(f), the Council incorporates the concepts that HPP
13 proposed in its Condition 4(B), except for the adjustment issue.

14
15 In adopting Condition 4(g), the Council incorporates the concepts that HPP
16 proposed in its Condition 4(C). It also brings in language from the definition of a base
17 load gas plant (ORS 469.503(2)(e)(B)) to ensure the limit on the use of alternative fuels.

18
19 (4) The site certificate holder shall use the following methodology to calculate
20 the amount of the monetary path payment requirement that it must make available
21 to the qualified organization pursuant to ORS 469.503(2)(d)(A). The same
22 methodology shall apply to a one-unit or a two-unit facility. All calculations shall
23 be made assuming that no steam is supplied for cogeneration. The site certificate
24 holder shall use the contracted design parameters for capacity and heat rate for the
25 facility that it reports pursuant to Condition 4(e) to calculate the estimated
26 monetary path payment requirement. The site certificate holder shall use the Year
27 One Capacities and Year One Heat Rates that it reports for the facility pursuant to
28 Condition 4(f) to calculate whether it owes additional monetary path payments.

29
30 (a) To calculate the offset funds payment requirement as provided in ORS
31 469.503(2)(c), the site certificate holder shall use the following methodology:

32
33 (A) The site certificate holder shall use the respective capacity, heat rate,
34 and carbon dioxide emission factor for each fuel. The carbon dioxide
35 emission factor for natural gas is 0.000117 lb. CO₂/Btu, and for distillate
36 fuel it is 0.000161 lb. CO₂/Btu;

37
38 (B) The site certificate holder shall determine the time the plant will
39 operate using each fuel. For distillate fuel, the time shall be the average
40 number of hours annually that this site certificate permits the facility to
41 use distillate fuel pursuant to Condition 4(g). The site certificate holder
42 shall determine the annual average hours of operation on natural gas by
43 subtracting the annual average hours on distillate fuel from 8,760 hours;

1 (C) The site certificate holder shall calculate the total CO₂ emissions
2 (lb. CO₂) for each fuel:

3
4 (i) First, the site certificate holder shall multiply the nominal
5 power of the facility (kW) while operating on natural gas by the
6 annual average hours of operation on natural gas. It shall then
7 multiply that product by 30 years to determine the total net plant
8 output (kWh). It shall multiply the total net plant output by the
9 heat rate (Btu/kWh) while operating on natural gas and by the
10 carbon dioxide emission factor for natural gas (0.000117 lb.
11 CO₂/Btu) to determine the total CO₂ emissions (lb.) from operating
12 on natural gas;

13
14 (ii) Second, the site certificate holder shall multiply the nominal
15 power of the facility (kW) while operating on distillate fuel by the
16 annual average hours of operation on distillate fuel. It shall then
17 multiply that product by 30 years to determine the total net plant
18 output (kWh). It shall multiply the total net plant output by the
19 heat rate (Btu/kWh) while operating on distillate fuel and by the
20 carbon dioxide emission factor for distillate fuel (0.000161 lb.
21 CO₂/Btu) to determine the total CO₂ emissions (lb.) from operating
22 on distillate fuel; then,

23
24 (D) The site certificate holder shall calculate the average CO₂ emissions
25 rate (lb. CO₂/kWh) for the two fuels. It shall add the total CO₂ emissions
26 that each fuel contributes for 30 years to determine the total combined
27 CO₂ emissions from the facility (lb.). Then, it shall add the total net plant
28 output from operation on each fuel for 30 years to determine the total
29 combined plant output (kWh). Then it shall divide the total combined
30 CO₂ emissions by the total combined plant output to determine the
31 average CO₂ emissions rate for the facility (lb. CO₂/kWh);

32
33 (E) The site certificate holder shall subtract the carbon dioxide standard of
34 0.7 lb. CO₂/kWh from the average CO₂ emissions rate for the facility to
35 determine its excess CO₂ emissions rate (lb. CO₂/kWh);

36
37 (F) The site certificate holder shall multiply the total combined plant
38 output (kWh) by the facility's excess CO₂ emissions rate (lb. CO₂/kWh).
39 It shall then divide that product by 2,000 pounds to determine the total
40 tons of CO₂ emissions it must mitigate (tons); then,
41 /

1 (G) The site certificate holder shall multiply the total tons of CO₂
2 emissions it must mitigate by \$0.57 per ton of CO₂ to determine the sub-
3 total for the offset funds.

4
5 (b) To calculate the selection and contracting funds sub-total as provided in ORS
6 469.503(2(d)(A)(ii), the site certificate holder shall subtract \$500,000 from the
7 offset funds subtotal; then multiply the remaining amount by 4.286 percent; then
8 add \$50,000 to that product.

9
10 (c) To determine its monetary path payment requirement, the site certificate
11 holder shall add the sub-total for the offset funds and the sub-total for the
12 selection and contracting funds.

13
14 (d) When the site certificate holder submits the Year One Test report required in
15 Condition 4(f), it shall increase its guaranty or letter of credit for the monetary
16 path payment requirement if the calculation using reported data shows that the
17 adjusted monetary path payment requirement exceeds the monetary path payment
18 requirement for which the site certificate holder had provided a guaranty or letter
19 of credit prior to commencing construction, pursuant to Condition 1.

20
21 (A) The site certificate holder shall make the appropriate calculations and
22 increase its guaranty or letter of credit, if necessary, within 30 days of
23 filing its Year One Test report with the Council.

24
25 (B) In no case shall the site certificate holder diminish the guaranty or
26 letter of credit it provided prior to commencing construction or receive a
27 refund from the qualified organization based on the calculations made
28 using the Year One Capacities and the Year One Heat Rates.

29
30 (e) Prior to commencement of construction, the site certificate holder shall notify
31 the Council in writing of its final selection of gas turbine vendor and shall submit
32 written design information to the Council sufficient to verify the facility's
33 designed new and clean heat rate and its nominal electric generating capacity at
34 average annual site conditions for each fuel type. The information that the site
35 certificate holder submits shall include the proposed binding annual average
36 number of hours of facility operation on distillate fuel oil. The report shall also
37 include an affidavit or other evidence from the site certificate holder to confirm
38 that the vendor has guaranteed the heat rate and that the site certificate holder's
39 contract with the vendor includes a liquidated damages provision adequate to fund
40 any increased monetary path payment requirement calculated under Condition
41 4(d) resulting from vendor's failure to achieve the guaranteed heat rates or
42 capacities.

1 (f) Within two months of completion of the first year of commercial operation,
2 the site certificate holder shall provide to the Council pursuant to ORS
3 469.503(2)(e)(G) a test report (Year One Test) of the actual heat rates (Year One
4 Heat Rates) and nominal generating capacities (Year One Capacities) for each fuel
5 type used, without degradation, assuming no steam is supplied for cogeneration,
6 as determined by a 100-hour test at full power completed during the first
7 12 months of commercial operation, with the results adjusted for the average
8 annual site condition for temperature, barometric pressure and relative humidity
9 and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per
10 million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per
11 million Btu of distillate fuel.

12
13 (g) The combustion turbine units shall be fueled solely with natural gas or with
14 synthetic gas with a carbon content per million Btu no greater than natural gas,
15 except that the site certificate holder may use distillate fuel for no more than an
16 average of 378 hours per year calculated on a rolling average of the previous five
17 years. For the first five years, distillate fuel use may fluctuate, provided that the
18 average use, when calculated at the end of five years, does not exceed 378 hours
19 per year. However, if prior to the commencement of construction the site
20 certificate holder proposes in its written submission to the Council made pursuant
21 to Condition 4(e) to use distillate fuel more or less than 378 hours on average per
22 year, the number proposed by the site certificate holder shall replace 378 hours as
23 the binding annual average number of hours for distillate fuel use under this
24 Condition 4(g) and for calculations of the monetary path payment requirement.

25
26 Notwithstanding the number of hours permitted annually of distillate fuel use
27 based on a five-year rolling average or during the first five years, in no year shall
28 the facility's use of distillate fuel exceed 10 percent of its expected total annual
29 fuel use in Btu, higher heating value.

30
31 **Conclusion.** With the adoption of Conditions 1 through 4 as it modifies them,
32 the Council finds that HPP meets the carbon dioxide emissions standard, ORS
33 469.503(2)(a).

34
35 **E. Compliance with Other Council Standards**

36 OAR 345-27-070(6) sets forth the Council's general standard for review of a
37 request by a site certificate holder for an amendment:

38
39 "In evaluating a request for an amendment under this rule, the Council shall
40 limit its consideration to the effects which may be produced by the
41 proposed change or addition to the site or facility described in the request
42 for amendment. In considering those effects, the Council shall apply state

1 statutes, administrative rules, and local government ordinances in effect on
2 the date the amended Site Certificate is executed.”
3

4 The following discussion of applicable standards addresses the current
5 (November 1995) version of the OAR Chapter 345, Division 22 rules.
6

7 **E.1 Standards Relating to the Applicant**
8

9 **E.1.1.1 Applicant Qualification and Capability, OAR 345-22-010(1)**

10 To meet this paragraph of the standard, the Council must find that “the applicant
11 has the organizational, managerial and technical expertise to construct and operate the
12 facility. To conclude that the applicant has the organizational, managerial and technical
13 expertise to construct and operate the proposed facility, the Council must determine that
14 the applicant has a reasonable probability of successful construction and operation of the
15 facility considering the experience of the applicant, the availability of technical expertise
16 to the applicant, and, if the applicant has constructed or operated other facilities, the past
17 performance of the applicant, including but not limited to the number and severity of
18 regulatory citations, in constructing or operating a facility, type of equipment, or process
19 similar to the proposed facility.”
20

21 **Discussion.** This amendment will not affect any Council finding relating to
22 applicant qualification and capability, OAR 345-22-010(1).
23

24 **Conclusion.** The Council finds that HPP has satisfied the requirements of OAR
25 345-22-010(1).
26

27 **E.1.1.2 Third-Party Services and Permits, OAR 345-22-010(2)**

28 The standard for organizational, managerial and technical expertise - third party
29 services and permits, effective November 10, 1994. This paragraph of the standard
30 requires that:
31

32 "If the applicant will not itself obtain any state or local government permit or
33 approval for which the Council would ordinarily determine compliance with
34 applicable standards, but will rely on a permit or approval issued to a third party,
35 the Council must determine that the named third party has, or has a reasonable
36 likelihood of obtaining, the necessary permit or approval, and that the applicant
37 has, or has a reasonable likelihood of entering into, a contractual or other
38 arrangement with the third party for access to the resource or service secured by
39 that permit or approval."
40

41 **Discussion.** This amendment will not affect any Council finding relating to third-
42 party services and permits, OAR 345-22-010(2).
43 /

1 **E.3 Standards Relating to the Impacts of Construction, Operation and**
2 **Retirement**

3
4 **E.3.1 Protected Area Standard, OAR 345-22-040**

5 The protected area standard prohibits the siting of an energy facility in any of the
6 listed protected areas. OAR 345-22-040(1). The standard permits the siting of a facility
7 outside the listed protected areas so long as the Council finds, "taking into account
8 mitigation, the design, construction and operation of the facility...is not likely to result in
9 significant adverse impact" to any of the listed protected areas.

10
11 **Discussion.** This amendment will not affect any Council finding relating to the
12 protected area standard.

13 **Conclusion.** The Council finds that HPP meets the protected areas standard,
14 OAR 345-22-040,

15
16 **E.3.2 Fish and Wildlife Habitat Standard, OAR 345-22-060**

17 The fish and wildlife habitat standard requires that the Council find that "the
18 design, construction, operation and retirement of the facility, taking into account
19 mitigation, is consistent with the fish and wildlife mitigation goals and standards of OAR
20 635-415-030." OAR 635-415-030 describes four categories of habitat in order of their
21 value. The rule then establishes mitigation goals and corresponding implementation
22 standards for each habitat category.

23
24 **Discussion.** This amendment will not affect any Council finding relating to the
25 fish and wildlife habitat standard.

26
27 **Conclusion.** The Council finds that HPP meets the fish and wildlife habitat
28 standard, OAR 345-22-060.

29
30 **E.3.3 Threatened and Endangered Species, OAR 345-22-070**

31 The threatened and endangered species standard requires that the Council find that
32 the design, construction, operation and retirement of the facility, taking into account
33 mitigation be consistent with any applicable conservation program adopted pursuant to
34 ORS 496.172(3) or ORS 564.105(3). If no conservation program applies, the facility
35 must not have the potential to reduce significantly the likelihood of the survival or
36 recovery of any threatened or endangered species listed under ORS 496.172(2) or ORS
37 564.105(2).

38
39 **Discussion.** This amendment will not affect any Council finding relating to the
40 threatened and endangered species standard.

41
42 **Conclusion.** The Council finds that HPP meets the threatened and endangered
43 species standard, OAR 345-22-070.

1 **E.3.4 Scenic and Aesthetic Standard, OAR 345-22-080**

2 The scenic and aesthetic standard requires that the Council find that “the design,
3 construction, operation and retirement of the proposed facility, taking into account
4 mitigation, is not likely to result in significant adverse impact to scenic and aesthetic
5 values identified as significant or important in the applicable federal land management
6 plans or the local land use plan for the site or its vicinity.”

7
8 **Discussion.** This amendment will not affect any Council finding relating to the
9 scenic and aesthetic standard.

10
11 **Conclusion.** The Council finds that HPP meets the scenic and aesthetic values
12 standard, OAR 345-22-080.

13
14 **E.3.5 Historic, Cultural and Archeological Resources Standard, 345-22-090**

15 The historic, cultural and archeological resources standard requires that the
16 Council find that “the design, construction, operation and retirement of the facility, taking
17 into account mitigation, is not likely to result in significant adverse impacts to:

18
19 “(1) Historic, cultural or archaeological resources that have been listed on, or
20 would likely be listed on the National Register of Historic Places;

21
22 “(2) For a facility on private land, archaeological objects, as defined in ORS
23 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c);
24 and,

25
26 “(3) For a facility on public land, archaeological sites, as defined in ORS
27 358.905(1)(c).”

28
29 **Discussion.** This amendment will not affect any Council finding relating to the
30 historic, cultural and archeological resources standard.

31
32 **Conclusion.** The Council finds that HPP meets the historic, cultural, and
33 archeological resources standard, OAR 345-22-090.

34
35 **E.3.6 Recreation Standard, OAR 345-22-100**

36 The recreation standard requires that the Council find that “design, construction
37 and operation of a facility, taking into account mitigation, is not likely to result in a
38 significant adverse impact to important recreational opportunities in the impact area.
39 Factors which will be considered in judging the importance of a recreational opportunity
40 include:

41 “(1) Any special designation or management of the location,

42 “(2) The degree of demand

43 “(3) Uniqueness

1 number one and that the chairperson of the Council shall execute the site certificate
2 amendment in the form of the "Thermal Power Plant Amended Site Certificate for the
3 Hermiston Power Project," which incorporates "Amendment Number One to the Thermal
4 Power Plant Site Certificate for the Hermiston Power Project." The Amended Site
5 Certificate also incorporates "Amendment Number Two to the Thermal Power Plant Site
6 Certificate for the Hermiston Power Project," which the Council adopted on January 23,
7 1997. The Amended Site Certificate is attached to this order and is incorporated by
8 reference into this order.

9
10 Issued this 19th day of March, 1998.

11
12
13
14
15


16 Terry Edvalson,
17 Chair, Energy Facility Siting Council
18
19
20

21 **Notice of the Right to Request Binding Arbitration**

22 ORS 469.409 provides a process to amend an existing site certificate to
23 change from the need for facility standard to the carbon dioxide emissions standard. That
24 section also provides that any dispute regarding the site certificate holder's compliance
25 with the carbon dioxide standard will be resolved by binding arbitration. Unlike other
26 amendment proceedings, there is no opportunity for a judicial review of the Energy
27 Facility Siting Council's final order.

28
29 The governing rules for this amendment process are at OAR 345-27-0200,
30 adopted by the Energy Facility Siting Council on January 23, 1998. The demonstration
31 of compliance with the applicable carbon dioxide emissions standard is the only issue that
32 is subject to binding arbitration.

33
34 You may only request binding arbitration if you submitted written comments on
35 OOE's Proposed Order by 5:00 p.m. on February 24, 1998 and you appeared at the
36 Council meeting at which the Council adopted the final order on the amendment request.

37
38 To request binding arbitration, you must submit a written request to the Office of
39 Energy within 15 days of the issuance of the Council's final order. If you do not file a
40 petition for binding arbitration within the 15-day time period, you lose your right to
41 request arbitration.

42 /

GUARANTY

This GUARANTY, dated as of _____, _____ (this "Guaranty") is executed and delivered by IDA-WEST ENERGY COMPANY, an Idaho corporation, TRANSCANADA PIPELINES LIMITED, a Canadian corporation, and IDAHO POWER COMPANY, an Idaho corporation (individually a "Guarantor" and collectively the "Guarantors"), in favor the Oregon Energy Facility Siting Council ("EFSC").

Recitals

A. The Guarantors have, through their wholly owned subsidiaries, formed Hermiston Power Partnership, an Oregon general partnership ("HPP"), for the purpose of developing, constructing, owning and operating a nominal 460 MW (net) natural gas-fired combined-cycle combustion turbine cogeneration plant and related and supporting facilities (the "Project") to be located near Hermiston, Oregon.

B. HPP previously filed an application with EFSC for a site certificate authorizing construction and operation of the Project in accordance with ORS Chapter 469 and the rules and regulations of EFSC promulgated thereunder.

C. On March 19, 1998, EFSC and HPP entered into an amended site certificate for the Project issued pursuant to HPP's application therefor. The amended site certificate requires HPP, prior to the commencement of construction of the Project, to obtain security, satisfactory to EFSC, in an amount sufficient to satisfy HPP's obligations under ORS 469.503(2)(d) relating to the monetary path payment requirement, which shall include estimated offset funds and selection and contracting funds and any increased amounts of those funds required to meet the monetary path payment requirement as calculated using data from the facility when it is tested on a new and clean basis pursuant to ORS 469.503(2)(e)(G).

D. To induce EFSC to amend the site certificate for the Project, and in consideration of EFSC's amending such site certificate, the Guarantors desire to execute and deliver this Guaranty in favor of EFSC to enable HPP to satisfy the conditions in the site certificate for the Project described above relating to HPP's obligations under ORS 469.503(2)(d).

Accordingly, the Guarantors hereby covenant and agree with EFSC as follows:

SECTION 1. The Guarantors, jointly and severally, hereby irrevocably, absolutely and unconditionally under any and all circumstances guarantee to EFSC the punctual and full performance and payment of each and every obligation of HPP now existing or which may hereafter arise under ORS 469.503(2)(d) as in effect on the date

1 hereof relating to the payment of the monetary path requirement (in 1998 dollars
2 calculated using the index referred to in the amended site certificate for the Project
3 relating to the calculation of the monetary path payment requirement) (the "Guaranteed
4 Obligations"), as may be increased by calculations using data provided in the test of the
5 facility on a new and clean basis pursuant to ORS 469.503(2)(e)(G), and agree that, if for
6 any reason whatsoever, HPP shall fail or be unable duly, punctually and fully to perform
7 or pay the Guaranteed Obligations, the Guarantors shall, jointly and severally, forthwith
8 perform or pay the Guaranteed Obligations, or cause the Guaranteed Obligations to be
9 performed or paid, without regard to any exercise or non-exercise by EFSC of any right,
10 power or privilege under or in respect of the Guaranteed Obligations.

11
12 SECTION 2. This Guaranty shall be direct, immediate and primary and shall be
13 a guarantee of payment and performance and not of collection, and is not conditioned or
14 contingent upon any requirement that EFSC proceed against HPP or any other person or
15 pursue any other right or remedy in EFSC's power before proceeding against the
16 Guarantors of any of them or upon any other event, contingency or circumstance
17 whatsoever.

18
19 SECTION 3. The Guarantors, jointly and severally, hereby unconditionally,
20 absolutely and irrevocably agree to hold EFSC harmless and to indemnify EFSC from
21 and against any and all claims costs, liabilities and expenses of any nature whatsoever,
22 including reasonable attorneys' fees, resulting from, arising out of or relating to any
23 failure by HPP to perform the Guaranteed Obligations when due or any failure by the
24 Guarantors to perform any of their obligations hereunder when due and in accordance
25 with the terms hereof.

26
27 SECTION 4. To the fullest extent permitted by law, the obligations of the
28 Guarantors under this Guaranty shall be absolute, irrevocable and unconditional, shall
29 remain in full force and effect, and shall not be affected by or subject to any reduction,
30 termination or other impairment by set-off, deduction, counterclaim, recoupment,
31 interruption or otherwise, and the Guarantors shall have no right to terminate this
32 Guaranty or to be released, relieved or discharged, in whole or in part, from their payment
33 or performance obligations referred to in this Guaranty for any reason whatsoever,
34 including without limitation, any one or more of the following:

35
36 (a) any amendment, supplement or modification to, waiver of, consent to
37 or departure from, or failure to exercise any right, remedy, power or privilege
38 under or in respect of, the Guaranteed Obligations or any other agreement or
39 instrument relating thereto;

40
41 (b) any insolvency, bankruptcy, reorganization, dissolution or liquidation
42 of, or any similar occurrence with respect to, or cessation of existence of, or
43 change of ownership of, any person, or any rejection of any of the Guaranteed
44 Obligations in connection with any Proceeding (as defined in Section 5 below) or

1 any disallowance of all or any portion of any claim by EFSC in connection with
2 any Proceeding;

3
4 (c) the failure to create, preserve, validate, perfect or protect any security
5 interest granted to, or in favor of, any person;

6
7 (d) any substitution, modification, exchange, release, settlement or
8 compromise of any security or collateral for or guarantee of any of the
9 Guaranteed Obligations, or failure to apply such security or collateral or failure to
10 enforce such guarantee; or

11
12 (e) any other event or circumstance whatsoever which might otherwise
13 constitute a legal or equitable discharge of a surety or guarantor, it being the
14 intent of the Guarantors that their obligations under this Guaranty shall be
15 irrevocable, absolute and unconditional under any and all circumstances.

16
17 This Guaranty and the obligations of the Guarantors hereunder shall continue to be
18 effective or be automatically reinstated, as the case may be, if at any time any payment by
19 or on behalf of HPP is rescinded or must otherwise be restored by EFSC for any reason,
20 including, but not limited to, as a result of any Proceeding with respect to HPP or any
21 other person, as though such payment had not been made.

22
23 SECTION 5. The Guaranteed Obligations shall include, without limitation,
24 interest accruing following the commencement by or against HPP of any case or
25 proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up,
26 liquidation, dissolution or composition or adjustment of debt (a "Proceeding"), whether or
27 not allowed as a claim in any such Proceeding.

28
29 SECTION 6. To the fullest extent permitted by law, the Guarantors hereby
30 waive (a) all set-offs, counterclaims, presentments, demands for performance, notices of
31 adverse change in the financial condition of HPP or of any other fact that might increase
32 Guarantors' risk hereunder, notices of nonperformance, protests, notice of any of the
33 matters referred to in Section 4, notices of presentation for payment, notices of demand
34 for performance, notices of protest, notices of dishonor, notice of any waivers or
35 indulgences or extensions, notice of the creation or existence of any Guaranteed
36 Obligations, notices of every kind which may be required to be given by any statute or
37 rule of law and notice of acceptance of this Guaranty; (b) diligence, presentment and
38 demand of payment, filing of claims with a court in connection with any Proceeding,
39 protest or notice with respect to the Guaranteed Obligations and all demands whatsoever;
40 (c) any and all statutes of limitations, all laws providing for the exemption of property
41 from execution or for valuation and appraisal upon foreclosure; and (d) any requirement
42 that any action or proceeding be brought against HPP or any other person, or any
43 requirement that any person exhaust any right, power or remedy or proceed against any
44 other person, prior to any action against the Guarantors or any of them under the terms

1 thereof; (e) any defense arising by reason of any disability or other defense of HPP or by
2 reason of cessation from any cause whatsoever of the liability of HPP with respect to the
3 Guaranteed Obligations (other than the defense that the Guaranteed Obligations have
4 been paid or performed in their entirety), (f) any right to assert against EFSC any defense
5 (legal or equitable), set-off against counterclaims, or claim which any Guarantor may
6 now or at any time hereafter claim against HPP or any other party liable to EFSC.

7
8 SECTION 7. Guarantors consent and agree that, without notice to or by
9 Guarantors and without affecting or impairing the obligations or Guarantors hereunder,
10 EFSC may, by action or inaction:

11
12 (a) compromise, settle, extend the duration or the time for the payment or
13 performance of, or discharge the performance of, or otherwise not enforce the
14 Guaranteed Obligations;

15
16 (b) release or substitute any Guarantor or any other guarantor, if any, of
17 the Guaranteed Obligations, or enforce, exchange, release, or waive any security
18 for the Guaranteed Obligations or any other guaranty of the Guaranteed
19 Obligations, or any portion thereof.

20
21 SECTION 8. Until all of the Guaranteed Obligations have been fully and
22 indefeasibly discharged, to the full extent necessary to prevent any payments or other
23 transfers from HPP or Guarantors to EFSC from being made for the benefit of an insider
24 creditor in determining whether such payments or other transfers constitute avoidable
25 transfers or preferences under Section 547 of the Bankruptcy Code, Guarantors hereby
26 waive (a) any right of subrogation or reimbursement Guarantors have or may have as
27 against HPP with respect to the Guaranteed Obligations; (b) any right to proceed against
28 HPP, now or hereafter, for contribution, indemnity, reimbursement and any other
29 suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether
30 arising under express or implied contract or by operation of law, which Guarantors may
31 now have or hereafter have as against HPP with respect to the Guaranteed Obligations,
32 and (c) any rights to recourse to or with respect to any asset of HPP.

33
34 SECTION 9. This Guaranty is a continuing guaranty, shall apply to all
35 Guaranteed Obligations whenever arising, shall be binding upon the Guarantors and their
36 respective successors and shall inure to the benefit of and be enforceable by EFSC and its
37 successors.

38
39 SECTION 10. All notices to be served under this Guaranty shall be in writing
40 and delivered personally or mailed by certified mail, postage prepaid and return receipt
41 requested, or by telegram or telecopier addressed as follows:

42 /

43 /

44 /

1 If to the Guarantors:

2
3 Ida-West Energy Company
4 3380 Americana Terrace
5 Suite 300
6 Boise, Idaho 83706
7 Attention of President
8 (208) 395-8930
9 (208) 395-8931 [fax]

Idaho Power Company
PO Box 70
Boise, Idaho 83707
Attention of President
(208) 388-2200

10
11 TransCanada PipeLines Limited
12 TransCanada PipeLines Towers
13 111 - Fifth Avenue SW
14 PO Box 1000, Station M
15 Calgary, Alberta
16 Canada T2P 4KS
17 Attention of President
18 (403) 267-8894
19 (403) 267-8954 [fax]

20
21 If to EFSC:

22
23 Energy Facility Siting Council
24 625 Marion Street NE
25 Salem, Oregon 97310
26 Attention of Chairman
27 (503) 556-0005
28 (503) 556-7257 [fax]

29
30 or at such other address as may from time to time be designated in writing in a notice
31 delivered as aforesaid. Notice given by personal delivery shall be effective upon actual
32 receipt. Notice given by certified mail, postage prepaid and return receipt requested shall
33 be effective three days after the date of mailing. Notice given by telegram or telecopier
34 shall be effective upon actual receipt if received during the recipient's normal business
35 hours, or at the beginning of the recipient's next business day after receipt if not received
36 during the recipient's normal business hours. All notices by telegram or telecopies shall
37 be confirmed promptly after transmission in writing by certified mail or personal
38 delivery.

39
40 SECTION 11. This Guaranty shall in all respect be governed by, and construed
41 in accordance with, the law of the State of Oregon without regard to principles of
42 conflicts of laws.

43 /

1 SECTION 12. Each Guarantor represents and warrants to EFSC that: (a) such
2 Guarantor is a corporation duly organized, validly existing and in good standing under
3 the laws of the jurisdiction of its incorporation; (b) the execution and delivery of this
4 Guaranty and its performance have been duly authorized by all necessary corporate action
5 on the part of such Guarantor and do not require any other corporate actions or
6 proceedings or any stockholder approval or consent of any trustee or holder of any
7 indebtedness of such Guarantor; and (c) this Guaranty has been duly executed and
8 delivered by such Guarantor and constitutes the legal, valid and binding obligation of
9 such Guarantor, enforceable against such Guarantor in accordance with its terms, except
10 as such enforceability may be limited by bankruptcy, insolvency, reorganization or
11 similar laws relating to or affecting the enforcement of creditors' rights generally or by
12 general principles of equity, regardless of whether such enforceability is considered in a
13 proceeding in equity or at law.

14
15 SECTION 13. The obligations and liabilities of each of the Guarantors under
16 this Guaranty shall terminate (subject to automatic reinstatement under Section 4) on the
17 date on which the Guaranteed Obligations have been paid and performed in their entirety
18 (in 1998 dollars calculated using the index referred to in the site certificate for the Project
19 relating to the calculation of the monetary path payment requirement), but not before HPP
20 has met any additional obligations that it may incur based on calculations of monetary
21 path payment requirement using data from the facility when it is tested on a new and
22 clean basis pursuant to ORS 469.503(2)(e)(G).

23
24 SECTION 14. If any provision of this Guaranty shall for any reason be held
25 invalid, illegal or unenforceable in any respect, such invalidity, illegality or
26 unenforceability shall not affect any other provision of this Guaranty, and this Guaranty
27 shall be construed as if such invalid, illegal or unenforceable provision had never been
28 contained herein, but only to the extent of its invalidity, illegality or unenforceability.

29
30 SECTION 15. (a) Each Guarantor hereby irrevocably agrees that any legal
31 action or proceeding against it arising out of or relating to this Guaranty or the
32 Guaranteed Obligations may be brought in any Oregon State or Federal court in the City
33 of Salem or the City of Portland in the State of Oregon and hereby irrevocably submits
34 generally and unconditionally to the non-exclusive jurisdiction of such courts.

35
36 (b) Each Guarantor hereby irrevocably and unconditionally appoints Stoel Rives
37 LLP as its authorized agent to receive and acknowledge on its behalf service of any writ,
38 summons, order, judgment or other notice of legal process in Oregon and agrees that any
39 writ, summons, order, judgment or other notice of legal process shall be sufficiently
40 served on it if delivered to such agent for service at its address in Portland, Oregon
41 whether or not such agent gives notice thereof to such Guarantor. Each Guarantor agrees
42 that it will at all times maintain an agent for service in Oregon with respect to its
43 obligations under this Section 13, and in the event that for any reason the agent named
44 above (or its successor) shall no longer serve as agent of any Guarantor to receive service

1 of process as aforesaid, such Guarantor shall promptly appoint a successor so to serve and
2 shall notify EFSC thereof.

3
4 (c) Nothing in this Section 15 shall limit the right of EFSC to commence any
5 legal action or proceeding or otherwise proceed against any Guarantor in any other
6 jurisdiction or to serve process in any manner permitted by applicable law nor shall the
7 taking of proceedings in any one or more jurisdictions preclude the taking of proceedings
8 in any other jurisdiction whether concurrently or not.

9
10 SECTION 16. Subordination. Each Guarantor hereby agrees that any and all
11 present and future indebtedness of HPP owing to Guarantor is postponed in favor of and
12 subordinated to, full and final payment and performance of the Guaranteed Obligations in
13 their entirety. In this regard, no payment of any kind whatsoever shall be made with
14 respect to such indebtedness so long as any Guaranteed Obligation remains unpaid or
15 unperformed.

16
17 SECTION 17. Attorneys' Fees and Costs. Guarantors agree to pay, on demand,
18 all reasonable attorneys' fees and all other costs and expenses which may be incurred by
19 EFSC in the enforcement of this Guaranty or in any way arising out of, or consequential
20 to the protection, assertion, or enforcement of the Guaranteed Obligations whether or not
21 suit is brought.

22
23 SECTION 18. Execution and Counterparts. This Guaranty may be executed in
24 several counterparts, all of which when taken together shall constitute one Guaranty
25 binding on all parties, notwithstanding that all parties are not signatories to the same
26 counterpart. Each copy of the Guaranty so executed shall constitute an original.

27
28 IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be
29 executed and delivered by its duly authorized officer as of the date first above written.

30
31
32 IDA-WEST ENERGY COMPANY
33 an Idaho corporation
34

35
36
37 By:
38 Name:
39 Title:

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IDAHO POWER COMPANY
an Idaho corporation

By:
Name:
Title:

TRANSCANADA PIPELINES
LIMITED
a Canadian corporation

By:
Name:
Title:

By:
Name:
Title:

ACCEPTED:

OREGON ENERGY FACILITY SITTING COUNCIL

By:
Name:
Title:

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