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BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the matter of the Third Amended) FINAL ORDER FOR
Thermal Power Plant Site Certificate For) PARTIAL TRANSFER OF
The Coyote Springs Cogeneration Project) SITE CERTIFICATE (CHANGE OF
(Amendment No. 8)) DIRECT OWNERSHIP)

Summary

The Energy Facility Siting Council (“Council”) approves the request for a partial transfer of the Site Certificate with amendments to the Site Certificate, as noted in this order.

A. Summary and Background of the Request for Partial Transfer of the Site Certificate

Pursuant to Oregon Laws Chapter 469 and OAR 345-027-0100(6), Avista Corporation and Mirant Oregon, LLC (Mirant Oregon), submitted on May 2, 2002, to the Council a request that it approve the transfer of ownership interests in Coyote Springs Cogeneration Project, Phase 2 (Phase 2), and to make associated amendments to the Second Amended Thermal Power Plant Site Certificate (Site Certificate) issued by the Council on February 22, 2001, for the Coyote Springs Cogeneration Project ("Project").

The current Site Certificate authorizes Coyote Springs 2, LLC (CS2), as 100 percent owner of Phase 2, to construct, operate and retire Phase 2. The current Site Certificate also requires that Avista Corporation hold all necessary authority to direct, compel and obligate CS2 to implement all actions required to meet CS2’s obligations under the Site Certificate.

In February 2001, the Council approved a transfer of ownership interests in CS2, and thus Phase 2, from Avista Power to Avista Corporation. As part of the approval, Avista Corporation assumed the authority to compel CS2 to meet Site Certificate requirements. Avista Corporation holds this authority under the current Site Certificate despite the fact that Avista Corporation does not expect to complete the transfer of ownership interests from Avista Power to Avista Corporation until January 1, 2003.

In December 2001, Mirant Oregon became a 50 percent equity owner of CS2 along with Avista Power. That action did not require a Site Certificate amendment as long as Avista Corporation retained full authority to compel CS2 to meet Site Certificate requirements.

Avista Corporation and Mirant Oregon now propose to transfer direct ownership of Phase 2 from CS2 to Avista Corporation and Mirant Oregon. As part of their transfer proposal, Avista Corporation and Mirant Oregon propose to amend the Site Certificate to reflect Avista Corporation and Mirant Oregon as the direct co-owners of Phase 2. Neither Avista Power nor CS2 will exist as part of the amended Site Certificate. The transfer would place equal responsibility on Avista Corporation and Mirant Oregon as co-owners to ensure Phase 2 meets Site Certificate requirements. Avista Corporation and Mirant Oregon would each assume joint

1 and several liability to the State of Oregon for performance of the responsibilities of the Co-
2 owners under the Site Certificate.

3
4 The requested transfer has no effect on PGE or its ability to own and operate Phase 1.
5

6 **A.1. Name and Address of Transferees**

7 Avista Corporation
8 1411 East Mission Avenue
9 Spokane, WA 99220
10

11 Mirant Oregon, LLC
12 1350 Treat Boulevard, Suite 500
13 Walnut Creek, CA 94596
14

15 **A.2. Brief Description of the Project**

16 PGE owns and operates Phase 1 of the Project, which consists of a 241 megawatt, natural
17 gas-fired electricity generating facility, located on a 20-acre parcel within the Port of Morrow
18 Industrial Park, in Boardman, Oregon (“Phase 1”). Phase 1 is described in greater detail in the
19 Council’s Final Order approving PGE’s original Application for Site Certificate. Phase 1 was
20 constructed and permitted to accommodate the anticipated future development of a second similar
21 generating unit (“Phase 2”), to be constructed immediately adjacent to Phase 1 and which will
22 share and jointly own certain facilities in common with Phase 1.
23

24 The Council issued the original Site Certificate to PGE on September 16, 1994. To date,
25 the Site Certificate has been amended on seven occasions. The Council granted PGE a first
26 amendment to the Site Certificate on December 6, 1996. Amendment No.1 incorporated into the
27 Site Certificate specific conditions that were originally commitments made by PGE in its Site
28 Certificate application and supporting documents. The Council's order approving the amendment
29 further approved an amendment to incorporate the applicability of then-current OAR 345-27-050
30 through OAR 345-27-080 and OAR 345-27-095.
31

32 The Council granted PGE a second amendment to the Site Certificate on March 7, 1997.
33 Amendment No. 2 allowed PGE to use #2 low-sulfur distillate oil for back-up fuel for the natural
34 gas-fired combustion turbines at Coyote Springs.
35

36 The Council granted a third amendment to the Site Certificate on August 28, 1998.
37 Amendment No. 3 removed the Site Certificate conditions relating to development of Phase 2 of
38 the Project that had required PGE to demonstrate either that the facility met the need for facility
39 standard or qualified for an exemption under former OAR 345-23-010(2). In place of the need
40 for facility standard, Amendment No. 3 imposed Site Certificate conditions ensuring compliance
41 with the applicable carbon dioxide (CO₂) emissions standard, ORS 469.503(2)(a). In addition,
42 Amendment No. 3 removed the authorization to use #2 low-sulfur distillate oil as back-up fuel for
43 Phase 2.

44 The Council granted PGE's fourth amendment to the Site Certificate, with modifications,
45 on October 22, 1998. The Council executed Amendment No. 4 in the form of the "First

1 Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Plant,"
2 which incorporated Amendment Nos. 1 through 4. In Amendment No. 4 PGE requested a change
3 to the Site Certificate conditions related to the construction completion date for Phase 2. The
4 amendment, as granted, extended the construction completion deadline for Phase 2 from
5 September 16, 1999, to September 16, 2001.
6

7 The Council granted Amendment No. 5. on June 15, 2000. Amendment No. 5 granted a
8 second extension of the construction completion deadline from September 16, 2001, to
9 September 16, 2003. In addition, it provided the option to use power augmentation (a "hybrid
10 plant"), as set forth in OAR 345-024-0550, to Phase 2 and applied the current CO₂ standard for
11 base load gas plants to Phase 2. It also clarified that the milestone for completion of construction
12 is the date of commercial operation of the facility.
13

14 On June 15, 2000, the Council also granted Amendment No. 6, immediately after granting
15 Amendment No. 5. Amendment No. 6 approved a partial transfer of the Site Certificate from
16 PGE to CS2 and amended the Site Certificate as needed to authorize the partial transfer.
17 Specifically, it transferred to CS2 the rights to own, construct, operate and retire Phase 2 and
18 required that Avista Power hold all authority necessary to ensure that CS2 meet its obligations
19 under the Site Certificate. The Council executed the "Second Amended Thermal Power Plant
20 Site Certificate for the Coyote Springs Cogeneration Project," which incorporated Amendments
21 No. 1 through No. 6 on June 23, 2000.
22

23 In February 2001, the Council granted Amendment No. 7, which transferred ownership
24 interests in CS2 from Avista Power to Avista Corporation. Upon the Council's approval of the
25 transfer, Avista Corporation assumed sole authority and responsibility to ensure that construction
26 of Phase 2 complied with the conditions of the Site Certificate. On February 22, 2001, the Council
27 executed the "Second Amended Thermal Power Plant Site Certificate for the Coyote Springs
28 Cogeneration Project," which incorporated Amendments No. 1 through No. 7.
29

30 Under the current Second Amended Site Certificate, PGE owns, operates and is
31 responsible for Phase 1 while CS2 is authorized to construct, operate and retire Phase 2.
32

33 **B. Procedural History**

34 **B.1. Transferees' Request**

35 Avista Corporation and Mirant Oregon submitted their request for partial transfer of the
36 Project's Site Certificate to the Council on May 2, 2002.
37

38 **B.2. Notice**

39 Pursuant to OAR 345-027-0100(8), the Office mailed a notice on May 3, 2002, of its
40 receipt of the application for the transfer to all persons on the Council's general mailing list and
41 persons on the special mailing list for the Project. That notice specified that the Council would
42 hold an informational hearing on the request at the Council meeting on May 17, 2002, in
43 Pendleton, Oregon, and that persons could submit comments in writing to the Council until 5 p.m.
44 on May 24, 2002.
45

46 The Office mailed the request for partial transfer to Council members on May 7, 2002.

1 The Council listed the informational hearing in its published agenda for the May 17, 2002,
2 meeting, which the Office mailed to the Council and to the Council's general mailing list on May
3 17, 2002.
4

5 **B.3. Informational Hearing**

6 The Council conducted the informational hearing during its general meeting on May 17,
7 2002. Pursuant to OAR 345-027-0100(9), the informational hearing was not a contested case
8 hearing. The Office presented a summary of the request. Representatives of Avista Corporation
9 and Mirant Oregon, the prospective owners, presented information about the reasons for the
10 transfer, the managerial and technical expertise of Mirant Oregon and information about Mirant
11 Oregon's financial condition. No member of the public made comment at the informational
12 hearing.
13

14 **B.4. Public Comments**

15 The close of the public comment period was 5 p.m. on May 24, 2002. The Council
16 received no written comments by the deadline.
17

18 **B.5. Draft Final Order**

19 The Office issued a Draft Final Order on October 1, 2002, and mailed it to the Council on
20 October 1, 2002. It gave notice to the public on September 26, 2002, that the Council would
21 make a decision on the transfer request at its meeting in St. Helens on October 4, 2002. However,
22 by agreement of all parties, Avista Corporation and Mirant Oregon withdrew the transfer request
23 for consideration at the meeting on October 4, 2002.
24

25 The Office issued a revised Draft Final Order on October 18, 2002, and mailed it to the
26 Council on October 29, 2002. It gave notice to the public on October 29, 2002, that the Council
27 would make a decision on the transfer request at its meeting in Tigard on November 8, 2002.
28

29 **B.6. Council Decision Meeting**

30 The Council held a meeting in St. Helens on Oct. 4, 2002. By agreement of all parties,
31 Avista Corporation and Mirant Oregon withdrew the transfer request for consideration at the
32 meeting on October 4, 2002. However, the Council approved the form of letters of credit from
33 Avista Corporation and Mirant Oregon necessary to effect the transfer.
34

35 The Council held a meeting in Tigard on November 8, 2002. A representative acting on
36 behalf of both Avista Corporation and Mirant Oregon participated in the meeting. At the
37 meeting, the Office presented information about the Draft Final Order. Following the presentation
38 and comments, the Council approved the order for Amendment No. 8 and authorized the Office
39 to prepare a final order for the Chair's signature. The Council further directed its chair to execute
40 the Third Amended Site Certificate incorporating Amendment No. 8.
41

42 **C. General Findings of Fact Related to the Request for Partial Transfer**

43 **C.1. Description of the Proposed Transfer**

44 CS2 is a Delaware limited liability company. It is currently a wholly-owned, direct
45 subsidiary of Avista Power and Mirant Oregon. Avista Power develops, owns and operates the
46 non-regulated power generation facilities of Avista Corporation. In February 2001, the Council
47 authorized the transfer of Avista Power's ownership interests in CS2 to Avista Corporation.
48 Avista Corporation requested the transfer to place Phase 2 under the corporation's regulated

1 utility division and provide a reliable and cost effective source of electricity generation for its
2 ratepayers. The transfer of ownership interests from Avista Power to Avista Corporation is not
3 expected to occur until January 1, 2003. However, under the current Site Certificate, Avista
4 Corporation holds all necessary authority to direct, compel and obligate CS2 to implement all
5 actions required to meet Site Certificate conditions.
6

7 Under state and federal law, Avista Corporation may not operate Phase 2 as a regulated
8 facility through a subsidiary (such as CS2). Therefore, prior to operation, Avista Corporation
9 intended to “roll” CS2 into Avista Corporation, assume its responsibilities directly, and dissolve
10 CS2 as a legal entity.
11

12 In December 2001, Mirant Oregon became a 50 percent equity owner of CS2 along with
13 Avista Power. That action did not require a Site Certificate amendment as long as Avista
14 Corporation retained full authority to compel CS2 to meet Site Certificate requirements.
15

16 Avista Corporation and Mirant Oregon now propose to transfer direct ownership of Phase
17 2 from CS2 to Avista Corporation and Mirant Oregon and to amend the existing references to
18 Avista Corporation in the Site Certificate to reflect Avista Corporation and Mirant Oregon as the
19 direct owners of Phase 2. CS2 would no longer exist as part of the Site Certificate. The transfer
20 would place equal responsibility on Avista Corporation and Mirant Oregon as co-owners to
21 ensure Phase 2 meets Site Certificate requirements. Under 345-027-0100(1)(a), a Site Certificate
22 amendment is required when a transfer in ownership results in a request to also transfer
23 responsibility for meeting Site Certificate requirements.
24

25 The requested transfer has no effect on PGE or its ability to own and operate Phase 1.
26

27 **C.2. Anticipated Date of Transfer of Ownership**

28 Avista Corporation and Mirant Oregon wish to transfer direct ownership of Phase 2 on
29 January 1, 2003. OAR 345-027-0100(4) prohibits the parties from closing the transactions prior
30 to Council approval.
31

32 Avista Corporation and Mirant Oregon requested that the Council make its final ruling on
33 this Application for Partial Transfer on November 8, 2002.
34

35 **C.3. Request for Council Approval**

36 The Council’s rules concerning Site Certificate transfers state:
37

38 “A transfer of ownership requires a transfer of the Site Certificate when the person who
39 will have the legal right to possession and control of the site or the facility does not have the
40 authority under the Site Certificate to construct, operate, or retire the facility.” OAR 345-027-
41 0100(1)(a).”
42

43 PGE and CS2 are the current holders of the Site Certificate. Under the current Site
44 Certificate, PGE holds those rights, and is responsible for those obligations, for all purposes

1 relevant to Phase 1; CS2 holds those rights, and is responsible for those obligations, for all
2 purposes relevant to Phase 2.

3
4 The requested approval to transfer ownership interests in Phase 2 removes CS2 from the
5 Site Certificate, adds Avista Corporation and Mirant Oregon as co-owners of Phase 2 and equally
6 obligates Avista Corporation and Mirant Oregon to implement all actions required to meet Site
7 Certificate conditions. Such approval requires the Council to amend the Site Certificate to replace
8 all references to CS2 with the term “co-owners,” defined as Avista Corporation and Mirant
9 Oregon. Such approval also requires the Council to amend the Site Certificate to add Mirant
10 Oregon to Avista Corporation as holding the authority to construct, operate or retire the facility.

11
12 **C.4. Requested Amendments to Site Certificate**

13 **C.4.1 Applicant Proposals Approved by the Council**

14 Avista Corporation and Mirant Oregon propose to amend the Site Certificate almost
15 exclusively to change language referring to CS2 to language referring to Avista Corporation and
16 Mirant Oregon, defined as the “Co-owners.” The more than 150 instances of this changed language
17 can be found in the attached red-lined version of the proposed Site Certificate.

18
19 In addition, Avista Corporation and Mirant Oregon propose to amend the Site Certificate as
20 follows. The Council approves amendment of the Site Certificate as described in this section.

21
22 I. SITE CERTIFICATION

23
24 E. The Co-owners shall appoint a Project Director to act as a single point of contact
25 between the Co-owners and the Office of Energy. Prior to the transfer of the
26 ownership interest in phase two to the Co-owners, the Co-owners shall provide the
27 Office of Energy with the name and contact information for the initial Project Director.
28 The Co-owners may change the Project Director at any time. Change in the Project
29 Director does not require Council approval or amendment of this Site Certificate. The
30 Co-owners shall notify the Office of Energy in writing of any change in the Project
31 Director within 10 business days of such change.

32
33 **IV. MANDATORY CONDITIONS**

34
35 The following mandatory conditions are either specifically required by OAR 345-027-
36 0020 or are appropriate under OAR 345-027-0020(4)(o) or OAR 345-027-0023 (Feb.
37 2000) to address project and site-specific conditions and requirements. These
38 mandatory conditions shall apply in addition to, and should be read together with, the
39 specific additional conditions provided in this Site Certificate to ensure compliance
40 with the siting standards of OAR Chapter 345, Divisions 22, 23 and 24.

41
42 (1) PGE, with respect to phase one, and the Co-owners, with respect to phase
43 two, shall comply with all applicable laws, regulations and ordinances of state,
44 federal and local authorities, including all conditions contained in any permits,
45 licenses and approvals issued by such authorities. PGE and the Co-owners shall

1 comply with the conditions of the Site Certificate. The duty of PGE and the Co-
2 owners to comply applies notwithstanding a failure or oversight in the proposed
3 order or Site Certificate to identify all applicable laws, regulations and ordinances.
4 PGE and the Co-owners shall design, construct, operate and retire phases one and
5 two, respectively, in accordance with the requirements of the Oregon Energy
6 Facility Siting Statute, ORS 469.300 et seq., and EFSC rules applicable to the
7 facility. Avista Corporation and Mirant Oregon each assume joint and several
8 liability to the State of Oregon for performance of the responsibilities of the Co-
9 owners under the Site Certificate. [rev. Amendment 6, 8]

10
11 V. CONDITIONS ISSUED PURSUANT TO EFSC STANDARDS

12
13 B. Standards Relating to the Applicant

14
15 Organizational, Managerial and Technical Expertise Standard: OAR 345-022-0010

16
17 ~~3. CS2 Corporate Authority~~

18
19 ~~Prior to commencing construction of phase two and for the duration of this Site~~
20 ~~Certificate, Avista Corporation, shall hold all necessary authority to direct, compel~~
21 ~~and obligate CS2 to implement all actions required to meet CS2's obligations under~~
22 ~~this Site Certificate. If Avista Corporation enters into a co-ownership agreement~~
23 ~~of CS2 with other parties, CS2 shall identify to the Council the co-owners and file~~
24 ~~with the Council a summary of a contractual agreement among the co-owners~~
25 ~~demonstrating that Avista Corporation retains all necessary authority to direct,~~
26 ~~compel and obligate CS2 to implement all actions required to meet CS2's~~
27 ~~obligations under this Site Certificate. In its annual report submitted to the~~
28 ~~Council, CS2 shall describe any withdrawal of a co-owner of CS2 other than~~
29 ~~Avista Corporation. [Amendment 6; rev. Amendment 7]~~

30
31 **C.4.2 Applicant Proposals Amended by the Council**

32 Avista Corporation and Mirant Oregon propose to amend the Site Certificate as
33 follows. The Council approves amendment of the Site Certificate as described in this section for
34 the substitution of “the Co-owners” for “CS2.” The Council does not approve amendment of the
35 Site Certificate as described in this section for the substitution of “operation” for “construction.”

36
37 VII. AMENDMENT OF SITE CERTIFICATION AGREEMENT

38
39 PGE, ~~CS2~~the Co-owners and EFSC recognize that, because of the length of time
40 that may pass between the date on which this agreement is executed and the date
41 on which ~~construction~~ operation will commence, and that will pass between the
42 time ~~construction~~ operation is commenced and the energy facility is retired, it may
43 be necessary to amend this agreement.

1
2 **C.4.3 Council Amendments**

3 The Office of Energy identified additional amendments. The Council approves those
4 amendments of the Site Certificate as described in this section.
5

6 V. CONDITIONS ISSUED PURSUANT TO EFSC STANDARDS

7
8 A. Need for the Facility

9
10 3(1)(e) The Co-owners shall demonstrate to the Office prior to the start of
11 commercial operation that they have assumed responsibility for the project's
12 Memorandum of Understanding with The Climate Trust [rev. Amendment 8].

13
14 D. Standards Relating to the Impacts of Construction, Operation and
15 Retirement

16
17 6. Retirement and Financial Assurance Standard: OAR 345-022-0050 (April
18 2002)

19
20 The Office of Energy's April 2002 rulemaking collapsed the Council's then-
21 separate Retirement and Financial Assurance standards into one standard and
22 instituted language changes to the standard. However, PGE is not an applicant
23 or transferee for the request addressed by this Final Order, and the April 2002
24 rule changes do not apply to PGE or phase one under this Final Order. As the
25 applicants and the transferees for the request addressed by this Final Order, the
26 Co-owners must comply with the updated Retirement and Financial Assurance
27 standard. The retirement portion of the standard is addressed here for the Co-
28 owners. Section IV (16) of the site certificate contains a revised existing
29 condition that fulfills the requirement of the financial assurance portion of the
30 standard. [rev. Amendment 8]

31
32 (a) Upon retirement of the facility, PGE, with respect to phase one, ~~and CS2~~
33 ~~with respect to phase two,~~ shall restore ~~its~~their respective portions of the
34 CSCP site to a useful condition. [rev. Amendment 6, 8]

35
36 (b) Upon retirement of the facility, the Co-owners, with respect to phase two,
37 shall restore their portion of the CSCP site to a useful non-hazardous
38 condition following permanent cessation of construction or operation of the
39 facility. [rev. Amendment 8]

40
41 **C.5. Applicable Regulations**

42 OAR 345-027-0100(10) directs the Council to approve a transfer if the Council finds that
43 the Transferee meets the following standards:
44

1 (a) The transferee complies with the standards described in OAR
2 345-022-0010, OAR 345-022-0050 and, if applicable, OAR
3 345-024-0710(1);

4
5 (b) The transferee is lawfully entitled to possession or control of the site or the
6 facility described in the Site Certificate;

7
8 (c) The transferee agrees to abide by all the terms and conditions of the Site
9 Certificate to be transferred as determined by the Council; and

10
11 (d) The facility complies with the statutes, local government ordinances and
12 Council rules in effect on the date of the Council's order that the Council
13 decides should apply to the transferred facility based on the transferee's
14 consent or upon a clear showing of a significant threat to the public health,
15 safety or the environment. In the order, the Council shall include any new or
16 amended Site Certificate conditions necessary to assure compliance with these
17 statutes, local government ordinances and Council rules.

18
19 These standards are addressed below in Section D: "Compliance with Applicable
20 Regulations."

21
22 **D. Compliance with Applicable Regulations (OAR 345-027-0100(10))**

23 **D.1. Compliance with OAR 345-027-0100(10)(a)**

24 **D.1.1. Organizational Expertise (OAR 345-022-0010)**

25 The organizational expertise standard has four sections. Subsections (1) and (2) relate to
26 applicant qualifications and capability. Subsections (3) and (4) relate to third-party services and
27 permits.

28
29 **a. Applicant Qualification and Capability (OAR 345-022-0010(1) and (2))**

30 Section (1) of this standard provides that:

31
32 To issue a Site Certificate, the Council must find that the applicant has the
33 organizational expertise to construct, operate and retire the proposed facility
34 in compliance with Council standards and conditions of the Site Certificate.
35 To conclude that the applicant has this expertise, the Council must find that
36 the applicant has demonstrated the ability to design, construct and operate the
37 proposed facility in compliance with Site Certificate conditions and in a
38 manner that protects public health and safety and has demonstrated the ability
39 to restore the site to a useful, non-hazardous condition. The Council may
40 consider the applicant's experience, the applicant's access to technical
41 expertise and the applicants' past performance in constructing, operating and
42 retiring other facilities, including, but not limited to, the number and severity
43 of regulatory citations issued to the applicant.
44

1 **Discussion.** In its February 2001 amendment to the Site Certificate, the Council found
2 that Avista Corporation possessed the expertise necessary to construct and operate Phase 2. Its
3 qualifications and capability will remain unchanged under the current proposed Site Certificate
4 amendment.
5

6 Avista Corporation and Mirant Oregon state in their transfer request that construction of
7 phase two will be substantially complete prior to the transfer of ownership on January 1, 2003. As
8 a result, the portions of OAR 345-022-0010(1) that require the Council to find that the applicant
9 possesses the organizational expertise to construct the proposed facility will have been satisfied
10 under the current Site Certificate by Avista Corporation. Mirant Oregon should have no need to
11 supply construction qualifications if it is to assume responsibility under the Site Certificate only
12 after the completion of construction.
13

14 However, it is possible that construction will not be complete by January 1, 2003. In
15 anticipation of that event, the Office requested proof from Mirant Oregon that it has the
16 organizational expertise to construct the proposed facility.
17

18 Transferee's In-House Expertise. CS2 will continue to be the holder of the Site
19 Certificate until January 1, 2003. Its qualifications and capability will remain unchanged since the
20 Council approved the initial transfer of the Site Certificate to CS2.
21

22 Avista Corporation will continue to hold all authority to compel CS2 to comply with Site
23 Certificate conditions until the transfer occurs on January 1, 2003. Its qualifications and capability
24 remain unchanged since the Council approved the transfer of ownership interests from Avista
25 Power to Avista Corporation in February 2001.
26

27 As to the in-house expertise of Mirant Oregon: Mirant Oregon currently owns 50 percent
28 of CS2. Mirant Oregon is a wholly-owned indirect subsidiary of Mirant Corporation. Mirant
29 Corporation, formerly known as Southern Energy, Inc., is a diversified energy company that
30 develops, constructs, owns, and operates power plants and sells wholesale electricity, natural gas
31 and other energy commodities through its various subsidiaries. Mirant Corporation has extensive
32 operations in North America, Europe and Asia.
33

34 Mirant Corporation has extensive experience operating power plants. In 2000, Mirant
35 Corporation operated generating units with a combined capacity of 16,354 megawatts.
36

37 Mirant Corporation's employees are experienced in all aspects of power plant operation.
38 The Vice President of Mirant Corporation's California Business Unit, Ms. Anne Cleary, will be
39 responsible for managing Mirant Oregon's participation in phase two of the Project. Since 2000,
40 Ms. Cleary has been responsible for overseeing power generation assets with a combined capacity
41 of approximately 3,000 megawatts. Ms. Cleary also has an extensive background in business
42 development, including acquisition and financing of energy investments.
43

1 Transferee's Power Facility Development History. CS2 will continue to be the holder of
2 the Site Certificate until January 1, 2003. Its qualifications and capability remain unchanged since
3 the Council approved the partial transfer of the Site Certificate to CS2.
4

5 Avista Corporation will continue to hold all authority to compel CS2 to comply with Site
6 Certificate conditions until January 1, 2003. Its qualifications and capability remain unchanged
7 since the Council approved the transfer of ownership interests from Avista Power to Avista
8 Corporation in February 2001.
9

10 As to the power facility development history of Mirant Oregon as one of the direct co-
11 owners of Phase 2: Mirant Corporation owns or controls more than 20,000 MW of electric
12 generating capacity worldwide. The company has about 2,100 MW under construction and almost
13 3,000 MW in planned development globally. In the United States, Mirant Corporation owns or
14 controls some 17,000 MW of generating capacity. A table illustrating Mirant Corporation's most
15 recent power plant construction projects is provided in its request. Included on the table is the
16 556-megawatt Bosque County Plant located in the Dallas-Fort Worth area. The natural-gas
17 facility, fully on line in June 2001, has two simple-cycle peaking units that produce about 154
18 megawatts each and a 248-megawatt natural gas-fired combined-cycle unit. Also included in the
19 table is Mirant Corporation's Sugar Creek generating plant, which began commercial operation in
20 July 2002 as a simple-cycle plant in West Terre Haute, Indiana, with a total capacity of 322 MW.
21 Mirant Corporation is converting the facility to a combined-cycle operation, with a scheduled
22 completion date of June 2003. The conversion is expected to increase the total capacity to 550
23 MW.
24

25 In 2000, Mirant Corporation examined its regulatory performance results for 39
26 generating units totaling more than 6,600 megawatts. Exhibit J of the request provides a list of
27 regulatory exceedences or violations occurring at Mirant Corporation's thermal generating
28 facilities during the year 2000. It shows no violations that undermine Mirant Corporation's
29 management qualifications.
30

31 Transferee's Access to and Management of Outside Expertise. Until the spring of 2002, CS2 had
32 a contractual relationship with NEPCO, the Engineering, Procurement and Construction (EPC)
33 contractor responsible for all phases of engineering, design, procurement and construction of
34 Phase 2. NEPCO was a wholly owned subsidiary of ENRON. In response to ENRON's
35 bankruptcy proceedings and NEPCO's inability to continue to perform its duties for Phase 2, CS2
36 engaged Black & Veatch Corporation to complete the remaining construction work. Black &
37 Veatch Corporation, founded in 1915, is a leading global engineering, construction and consulting
38 company specializing in infrastructure development in the fields of energy, water and information.
39 Black & Veatch Corporation has been involved in implementing more than 60,000 MW of
40 combustion turbine-based power generation.
41

42 With the proposed transfer, Avista Corporation and Mirant Oregon do not intend any current
43 change in CS2's contractual relationships with Black and Veatch Corporation or with PGE, the
44 Operation and Maintenance (O&M) operator responsible for managerial and technical expertise to
45 ensure the safe operation of Phase 2.

1
2 **Conclusion.** The Council finds that the transfer of Phase 2’s ownership from CS2 to
3 direct ownership by Avista Corporation and Mirant Oregon satisfies the requirements of OAR
4 345-022-0010(1).

5
6 Section (2) of this standard provides that:

7
8 The Council may base its findings under section (1) on a rebuttable
9 presumption that an applicant has organizational, managerial and technical
10 expertise, if the applicant has an ISO 9000 or ISO 14000 certified program
11 and proposes to design, construct and operate the facility according to that
12 program.

13
14 **Discussion.** This subsection does not impose a requirement; rather, it provides a
15 rebuttable presumption of the managerial and technical expertise upon which an applicant may
16 rely. Neither Avista Corporation nor Mirant Oregon is asking to rely on this subsection.

17
18 **Conclusion.** The Council finds that OAR 345-022-0010(2) does not apply to this
19 transfer.

20
21 **b. Third-Party Services and Permits (OAR 345-022-0010(3) and (4)).**

22 Section (3) of this standard requires that:

23
24 If the applicant does not itself obtain a state or local government permit or
25 approval for which the Council would ordinarily determine compliance but instead
26 relies on a permit or approval issued to a third party, the Council, to issue a Site
27 Certificate, must find that the third party has, or has a reasonable likelihood of
28 obtaining, the necessary permit or approval, and that the applicant has, or has a
29 reasonable likelihood of entering into, a contractual or other arrangement with the
30 third party for access to the resource or service secured by that permit or
31 approval.

32
33 Additionally, the final section (4) of the standard provides:

34
35 If the applicant relies on a permit or approval issued to a third party and the third
36 party does not have the necessary permit or approval at the time the Council
37 issues the Site Certificate, the Council may issue the Site Certificate subject to the
38 condition that the certificate holder may not commence construction or operation
39 as appropriate until the third party has obtained the necessary permit or approval
40 and the applicant has a contract or other arrangement for access to the resource
41 or service secured by that permit or approval.

42
43 **Discussion.** Section V.B.2 of the Site Certificate identifies three third-party permits and
44 services on which the applicant is relying: industrial water supply from the Port of Morrow; use of
45 the Port of Morrow’s industrial wastewater disposal system for process wastewater disposal; and

1 sanitary wastewater disposal into the City of Boardman’s sewage treatment system. The transfer
2 of the ownership interests in Phase 2 will not affect these third-party permits and services, which
3 have already been obtained, or the Project’s ability to continue to comply with the conditions of
4 these permits.

5
6 **Conclusion.** The Council finds that the transfer of ownership of Phase 2 from CS2 to
7 direct ownership by Avista Corporation and Mirant Oregon satisfies the requirements of OAR
8 345-022-010(3) and (4).

9
10 **D.1.2. Retirement and Financial Assurance (OAR 345-022-0050)¹**

11 The retirement and financial assurance standard provides:

- 12
13 (1) To issue a Site Certificate, the Council must find that: The site, taking into
14 account mitigation, can be restored adequately to a useful, non-hazardous
15 condition following permanent cessation of construction or operation of
16 the facility.
17 (2) The applicant has a reasonable likelihood of obtaining a bond or letter of
18 credit in a form and amount satisfactory to the Council to restore the site
19 to a useful, non-hazardous condition.

20
21 Further, Council rule OAR 345-027-0020 requires the following mandatory conditions:

22
23 The Council shall impose the following conditions in every Site Certificate.
24 The Council may impose additional conditions.

25 ***

26 (8) Before beginning construction of the facility, the certificate holder shall
27 submit to the State of Oregon, through the Council, a bond or letter of credit,
28 satisfactory to the Council, in an amount specified in the Site Certificate to
29 restore the site to a useful, non-hazardous condition. The certificate holder
30 shall maintain a bond or letter of credit in effect at all times until the facility
31 has been retired. The Council may specify different amounts for the bond or
32 letter of credit during construction and during operation of the facility.

33
34 **Discussion.** In its Final Order approving Amendment No. 6, the Council found that CS2
35 and Avista Power, through their affiliation with Avista Corporation, satisfied the requirements of
36 OAR 345-022-0050. The transfer of CS2 ownership from Avista Power to Avista Corporation
37 did not change this finding. Neither does the transfer of Phase 2 ownership from CS2 to Avista
38 Corporation.

39
40 CS2 previously provided financial assurance for site restoration as required by OAR 345-
41 027-0020(8) and Site Certificate condition #15 in the amount of \$2,968,846, in the form of a
42 letter of credit. On November 17, 2000, the Council approved the letter of credit, which was for
43 the construction phase only. If CS2 had remained the owner of the project, it would have supplied

¹ The new combined standard does not impose new substantive obligations.

1 another letter of credit for the operation phase of the project, as required by Site Certificate
2 condition #16.

3 CS2's letter of credit expires December 31, 2002. That expiration date may occur before
4 the construction phase of the project is complete and the proposed transfer from CS2 to Avista
5 Corporation and Mirant Oregon occurs. As a result, Avista Corporation and Mirant Oregon must
6 supply a new letter of credit that covers both the construction and operation phases. Avista
7 Corporation and Mirant Oregon each propose to provide a letter of credit for half of the amount
8 due to fulfill Site Certificate obligations for Phase 2. They each must provide a letter of credit for
9 \$1,526,697. Because Avista Corporation and Mirant Oregon propose providing letters of credit
10 that are effective January 1, 2003, the transfer of the Site Certificate to Avista Corporation and
11 Mirant Oregon can not occur before January 1, 2003, without an amendment to the Site
12 Certificate to address letter of credit issues.

13 **Conclusion:** Avista Corporation proposes to provide a letter of credit effective January 1,
14 2003, from Fleet National Bank. The Council approves the letter of credit for \$1,526,697
15 substantially in the form as submitted by Avista Corporation.

16 Mirant Oregon proposes to provide a letter of credit effective January 1, 2003, from
17 Wachovia Bank National Association. The Council approves the letter of credit for \$1,526,697
18 substantially in the form as submitted by Mirant Oregon.

19 The Council finds that the transfer of ownership of Phase 2 from CS2 to direct ownership
20 by Avista Corporation and Mirant Oregon satisfies the requirements of OAR 345-022-0050.

21
22 **D.1.3. CO₂ Emissions Standard (OAR 345-024-0710(1))**

23 The relevant portion of the cited standard provides,
24

25 If the applicant elects to meet the applicable carbon dioxide emissions
26 standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-
27 0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a
28 bond or letter of credit in a form reasonably acceptable to the Council to
29 ensure the payment of the offset funds and the additional funds required under
30 section (4).***
31

32 **Discussion.** CS2 met the carbon dioxide standard via the monetary path. The Site
33 Certificate as amended by Amendment No. 5 provides that Phase 2 may include a natural gas-
34 fired duct burner (power augmentation) with a generating capacity of about 20 MW. Therefore,
35 both OAR 345-024-0560(3) (CO₂ compliance for base load gas plants) and 345-024-0600(3)
36 (CO₂ compliance for non-base load power plants) apply.
37

38 CS2 provided financial assurance for the calculated carbon dioxide emissions from Phase 2 in the
39 form of a letter of credit naming The Climate Trust as beneficiary. The Council approved the
40 form and amount of the letter of credit (\$2,382,207.96) on November 17, 2000. Fleet National
41 Bank issued the letter of credit on January 3, 2001. That letter of credit has been fully disbursed
42 to The Climate Trust as provided for in OAR 345-024-0710. However, Avista Corporation and
43 Mirant Oregon may owe The Climate Trust funds in the future depending on plant performance,

1 including the amount of duct burning employed. Avista Corporation and Mirant Oregon are
2 required to demonstrate that they have assumed the responsibility of CS2’s Memorandum of
3 Agreement with The Climate Trust by new Condition V.A.3(1)(e).
4

5 **Conclusion.** The Council finds that the transfer of ownership of Phase 2 from CS2 to
6 direct ownership by Avista Corporation and Mirant Oregon satisfies the requirements of OAR
7 345-024-0710(1).
8

9 **D.2. Compliance with OAR 345-027-0100(10)(b): Transferee's Right to Possession and**
10 **Control of Site and Facility**

11 Avista Power and Mirant Oregon each own 50 percent of CS2. After the proposed
12 transfer of ownership, Avista Corporation and Mirant Oregon will be the Co-owners and shall be
13 the parties “lawfully entitled to possession or control of the site or the facility described in the Site
14 Certificate” as required by OAR 345-027-0100(10).
15

16 **Conclusion.** The Council finds that the transfer of ownership of Phase 2 from CS2 to
17 direct ownership by Avista Corporation and Mirant Oregon satisfies the requirements of OAR
18 345-027-0100(10)(b).
19

20 **D.3. Compliance with OAR 345-027-0100(10)(c): Compliance with Site Certificate**

21 The Site Certificate requires the facility to be designed, constructed, operated and retired
22 as described more specifically in various conditions in the Site Certificate. The only substantial
23 changes that will be brought about by the proposed transfer of Phase 2’s ownership are identified
24 in the Request for Partial Transfer submitted by Avista Corporation and Mirant Oregon and
25 described with specificity in Sections C.1. “Description of the Proposed Transfer” and C.4.
26 “Requested Amendments to Site Certificate” of this order.
27

28 Avista Corporation and Mirant Oregon are able and agree to assume all of CS2’s
29 obligations under the Site Certificate upon Council approval of the transfer of Phase 2 ownership
30 from CS2 to Avista Corporation and Mirant Oregon.
31

32 **Conclusion.** The Council finds that the transfer of Phase 2 ownership from CS2 to Avista
33 Corporation and Mirant Oregon satisfies the requirements of OAR 345-027-0100(10)(c).
34

35 **D.4. Compliance with OAR 345-027-0100(10)(d): Compliance with Other Statutes,**
36 **Ordinances, and Council Rules**

37 In its request, Avista Corporation and Mirant Oregon stated that they identified no other
38 new or existing statutes, local government ordinances, or Council rules that are applicable to this
39 Site Certificate.
40

41 The Council considered and adopted amendments in Amendment No. 5 (June 2000) that
42 bring the Site Certificate up to date with current Council standards.² The Council identified no
43 other new or existing statutes, local government ordinances, or Council rules that it proposes

² As discussed previously, the combining of the Financial Assurance and Retirement standards under the Council’s April 2002 rulemaking provided no substantive changes and is not an issue here.

1 should be applicable to this Site Certificate as a result of the requested change in ownership. The
2 Council's review of the transfer request identified no significant threat to the public health, safety,
3 or environment that would require new conditions for the Site Certificate.
4

5 **Conclusion.** The Council finds that the facility complies with the statutes, local
6 government ordinances and Council rules in effect on the date of this order and that no new
7 conditions are required to satisfy OAR 345-027-0100(10)(d).
8

9 **E. Conclusions about the Request for Partial Transfer and Amendment**

10 The Council finds that the Request for Partial Transfer of Site Certificate, to transfer
11 ownership interests in CS2 to direct ownership of Phase 2 by Avista Corporation and Mirant
12 Oregon, is consistent with current Council rules, with other applicable state statutes and rules, and
13 with statewide land use planning goals and would not cause a significant adverse impact to public
14 health and safety or the environment. In preparing this order, the Council has considered state
15 statutes, administrative rules, and local government ordinances in effect at this time, and whether
16 the facility complies with all Council standards in effect at this time.
17

18 Based on the above findings, reasoning and conclusions, the Council amends the Second
19 Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project as
20 Avista Corporation and Mirant Oregon requested in their Request for Partial Transfer of Site
21 Certificate for the Coyote Springs Cogeneration Project and amended by the Council, and as
22 shown in the Council's attached proposed Third Amended Site Certificate (incorporating
23 Amendments #1 through #8).

1 **FINAL ORDER**

2
3 Based on the above findings of fact, discussions and conclusions of law, the Energy
4 Facility Siting Council approves the Avista Corporation and Mirant Oregon Request for Partial
5 Transfer of Site Certificate (Change of Direct Ownership of Site Certificate Holder) for the
6 Coyote Springs Cogeneration Project (Amendment No. 8). The Council Chair shall execute the
7 Site Certificate amendment in the form of the "Third Amended Thermal Power Plant Site
8 Certificate for the Coyote Springs Cogeneration Project," which shall incorporate Amendments
9 No. 1 through No. 8.

10
11 Issued November 8, 2002.

12
13
14
15 _____
16 Dr. Roslyn Elms-Sutherland
17 Chair
18 Energy Facility Siting Council
19

20
21 **Notice of the Right to Appeal**

22 You have the right to appeal this order to the Oregon Supreme Court pursuant to Oregon
23 Revised Statutes (ORS) 469.405. To appeal you must file a petition for judicial review with the
24 Supreme Court within 60 days from the day this order was served on you. If this order was
25 personally delivered to you, the date of service is the date you received this order. If this order
26 was mailed to you, the date of service is the date it was mailed, not the day you received it. If you
27 do not file a petition for judicial review within the 60-day time period, you lose your right to
28 appeal.
29