

**BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON**

In the Matter of the Request for Amendment #1 of
the Site Certificate for the Klamath Generation
Facility

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FINAL ORDER ON
AMENDMENT #1

The Oregon Energy Facility Siting Council
September 21, 2007

KLAMATH GENERATION FACILITY:
FINAL ORDER ON AMENDMENT #1

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LIST OF ABBREVIATIONS

BPA	Bonneville Power Administration
Council	Oregon Energy Facility Siting Council
dBa	The “A-weighted” sound pressure level. The sound pressure level in decibels as measured on a sound level meter using the A-weighted filter network. The A-weighted filter de-emphasizes the very low and very high frequency components of the sound in a manner similar to the frequency response of the human ear and correlates well with subjective reactions to noise.
Department	Oregon Department of Energy
KG	Klamath Generation LLC (the certificate holder)
KGF	Klamath Generation Facility
MW	megawatt or megawatts
O&M	Operations and maintenance

**KLAMATH GENERATION FACILITY:
FINAL ORDER ON AMENDMENT #1**

I. INTRODUCTION

1 The Oregon Energy Facility Siting Council (Council) issues this order in accordance
2 with ORS 469.405 and OAR 345-027-0070. This order addresses a request by the certificate
3 holder, Klamath Generation LLC (“KG” or “certificate holder”), for amendment of the site
4 certificate for the Klamath Generation Facility (KGF).

5 On September 27, 2005, the Oregon Energy Facility Siting Council (Council) issued a
6 site certificate for the KGF. The facility is a combined-cycle combustion turbine system
7 fueled by natural gas, having a nominal electric generating capacity of approximately 500
8 megawatts (MW). The site certificate became effective on November 16, 2005, upon signing
9 by the Council and the certificate holder. Construction of the facility has not begun.

10 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this
11 order.

II. PROCEDURAL HISTORY AND AMENDMENT PROCESS

12 On May 17, 2007, KG submitted to the Oregon Department of Energy (Department) a
13 request for amendment of the site certificate (Amendment #1).¹ On May 24, 2007, the
14 Department sent copies of the amendment request to the reviewing agencies. The Department
15 requested agency comments by June 25, 2007. The Department received no substantive
16 comments from reviewing agencies.

17 On May 24, the Department sent notice of the amendment request to all persons on the
18 Council’s general mailing list, to persons on the mailing list established for the facility and to
19 an updated list of property owners supplied by the certificate holder. The Department
20 requested public comments by June 25, 2007. The Department received no public comments.

21 By letter dated May 24, 2007, the Department notified KG that the proposed order
22 would be issued no later than July 23, 2007. The Department provided a draft of the proposed
23 order to the certificate holder on July 19 and suggested a revised deadline of August 6 for
24 issuing the proposed order. The certificate holder responded with comments on August 6.² In
25 its comments, the certificate holder requested that the proposed order make no change in the
26 carbon dioxide monetary offset rate (from \$0.85 per ton to \$1.27 per ton) and no change in
27 references to “2005 dollars” (to “2007 dollars”) in Conditions 32, 38, 42 and 43. For the
28 reasons discussed herein, the Department recommends the changes. The Department issued a
29 Proposed Order on August 20, 2007. On the same day, the Department issued a notice of the
30 proposed order in accordance with OAR 345-027-0070 specifying a deadline for public
31 comments and requests for a contested case proceeding. No adverse comments or contested
32 case requests were received in writing by the deadline of September 19, 2007.

¹ First Request to Amend Site Certificate (Regarding Extension of Dates to Start and Complete Construction).

² Letter from Michael Roberts, PPM Energy, August 6, 2006.

1 On September 21, 2007, the Council considered the Department’s Proposed Order at a
2 public meeting in Klamath Falls, Oregon, and issued this Final Order approving the
3 amendment request subject to the revisions discussed herein.

III. DESCRIPTION OF THE PROPOSED AMENDMENT

4 KG requests an amendment to the site certificate to extend by 24 months the deadlines
5 for beginning and completing construction of the KGF (Amendment #1). If approved, the
6 amendment would extend the deadline for beginning construction from November 16, 2007,
7 to November 16, 2009. It would extend the deadline for completing construction from
8 November 16, 2010, to November 16, 2012.

9 In its amendment request, KG explained the reason for the request as follows:

10 KG has concluded that additional time is needed to commence construction of the Facility
11 because additional time is needed to secure power off-take commitments sufficient to justify
12 and to collateralize equipment and construction financing. In today’s western U.S. energy
13 market, power plants like the Facility are financed and built only when they can secure off-
14 take commitments for a sufficient portion of the generating capacity over a sufficient initial
15 term of years.

16 Despite its marketing efforts, KGF has not yet secured power off-take commitments sufficient
17 to proceed with the commencement of construction. Based on its assessment of the Facility’s
18 fundamentals and the current energy market, however, KGF is optimistic about investing in
19 the development of the Facility for an additional two years and therefore makes the present
20 request.

1. Amendment Procedure

21 Pursuant to ORS 469.370(12), the Council is required to “specify in the site certificate
22 a date by which construction of the facility must begin.” OAR 345-027-0030, sets out the
23 requirements for a certificate holder to request an extension of the deadlines for beginning and
24 completing construction.³

25 **345-027-0030**

26 **Amendment to Extend Construction Beginning and Completion Deadlines**

27 *(1) The certificate holder may request an amendment to extend the deadlines for*
28 *beginning or completing construction of the facility that the Council has specified*
29 *in a site certificate or an amended site certificate. The certificate holder shall*
30 *submit a request that conforms to the requirements of 345-027-0060 no later than*
31 *six months before the date of the applicable deadline, or, if the certificate holder*
32 *demonstrates good cause for the delay in submitting the request, no later than the*
33 *applicable deadline.*

³ The Council amended OAR 345-027-0030, effective May 15, 2007, after the site certificate became effective and before the request to amend the site certificate to extend the date of beginning construction was submitted. OAR 345-027-0030(5) codifies the Council’s application of updated carbon dioxide standard requirements when reviewing applications to amend site certificates to extend the deadline for construction. The amended rule rephrased section (5), but the substance of that section has been part of the Council’s rules since 1999.

1 (2) A request within the time allowed in section (1) to extend the deadlines for
2 beginning or completing construction suspends those deadlines until the Council
3 acts on the request.

4 (3) The Council shall review the request for amendment as described in OAR 345-
5 027-0070.

6 (4) If the Council grants an amendment under this rule, the Council shall specify
7 new deadlines for beginning or completing construction that are not more than
8 two years from the deadlines in effect before the Council grants the amendment.

9 (5) To grant an amendment extending the deadline for beginning or completing
10 construction of an energy facility subject to OAR 345-024-0550, 345-024-0590, or
11 345-024-0620, the Council must find that the facility complies with the carbon
12 dioxide standard in effect at the time of the Council's order on the amendment.

13 Pursuant to these rules, the Council may grant an extension of no more than two years
14 from the current deadlines. The Council rule requires the certificate holder to submit the
15 request “no later than six months before the date of the applicable deadline, or, if the
16 certificate holder demonstrates good cause for the delay in submitting the request, no later
17 than the applicable deadline.” Under the current site certificate, the deadline to begin
18 construction of the KGF is November 16, 2007 (Condition 46) and the deadline to complete
19 construction is November 16, 2010 (Condition 47).⁴

20 KG submitted its request to extend the deadline for beginning construction six months
21 before the deadline, and KG had previously notified the Department that it was planning to
22 submit the extension request. The Council accepts the request to extend the construction
23 deadlines as timely filed.

24 OAR 345-027-0070(10) provides:

25 *In making a decision to grant or deny issuance of an amended site certificate, the*
26 *Council shall apply the applicable substantive criteria, as described in OAR 345-*
27 *022-0030, in effect on the date the certificate holder submitted the request for*
28 *amendment and all other state statutes, administrative rules, and local government*
29 *ordinances in effect on the date the Council makes its decision.*

30 Under OAR 345-027-0070(10)(b), for an amendment that extends the deadlines for
31 beginning or completing construction, the Council must consider: (a) whether the Council has
32 previously granted an extension of the deadline; (b) whether there has been any change of
33 circumstances that affects a previous Council finding that was required for issuance of a site
34 certificate or amended site certificate; and (c) whether the facility complies with all Council
35 standards.

36 The Council has not previously granted an extension of the construction deadlines for
37 the KGF. The certificate holder proposes no change to the design or location of the facility at

⁴ Condition 46 states: “The certificate holder shall begin construction of the facility within two years after the effective date of the site certificate. Under OAR 345-015-0085(9), a site certificate is effective upon execution by the Council Chair and the applicant. The Council may grant an extension of the deadline to begin construction in accordance with OAR 345-027-0030 or any successor rule in effect at the time the request for extension is submitted.” The request to extend the deadline for beginning construction was submitted on May 17, 2007.

1 this time. In Sections IV and V below, we discuss compliance of the facility with all Council
2 standards as required under OAR 345-027-0070(10).

3 Under OAR 345-027-0070(10)(d), for all amendments, the Council must consider
4 whether the amount of the bond or letter of credit required under OAR 345-022-0050 is
5 adequate. The Council discusses the financial assurance issue below in Section IV.

2. Amendments to the Site Certificate as Proposed by KG

6 KG proposes the following amendments to the site certificate. Proposed additions are
7 double-underlined and proposed deletions have a strikethrough. The Department recommends
8 revisions to the site certificate that incorporate the substance of these amendments but that
9 include additional language consistent with KG's request. The Department's recommended
10 revisions are discussed in Section VII.1.

11 *Page 17, lines 12-16:*

12 (46) The certificate holder shall begin construction of the facility within ~~two~~four years after
13 the effective date of the site certificate. Under OAR 345-015-0085(9), a site certificate is
14 effective upon execution by the Council Chair and the applicant. The Council may grant
15 an extension of the deadline to begin construction in accordance with OAR 345-027-
16 0030 or any successor rule in effect at the time the request for extension is submitted.

17 *Page 17, lines 17-25:*

18 (47) The certificate holder shall complete construction of the facility within ~~five~~seven years
19 after the effective date of the site certificate. Construction is complete when: 1) the
20 facility is substantially complete as defined by the certificate holder's construction
21 contract documents, 2) acceptance testing has been satisfactorily completed and 3) the
22 energy facility is ready to begin continuous operation consistent with the site certificate.
23 The certificate holder shall promptly notify the Department of the date of completion of
24 construction. The Council may grant an extension of the deadline for completing
25 construction in accordance with OAR 345-027-0030 or any successor rule in effect at
26 the time the request for extension is submitted.

IV. THE COUNCIL'S SITING STANDARDS: FINDINGS AND CONCLUSIONS

27 The Council must decide whether the amendment complies with the facility siting
28 standards adopted by the Council. In addition, the Council must impose conditions for the
29 protection of the public health and safety, for the time of commencement and completion of
30 construction, and for ensuring compliance with the standards, statutes and rules addressed in
31 the project order. ORS 469.401(2).

32 The Council is not authorized to determine compliance with regulatory programs that
33 have been delegated to another state agency by the federal government. ORS 469.503(3).
34 Nevertheless, the Council may consider these programs in the context of its own standards to
35 ensure public health and safety, resource efficiency and protection of the environment.

36 The Council has no jurisdiction over design or operational issues that do not relate to
37 siting, such as matters relating to employee health and safety, building code compliance, wage
38 and hour or other labor regulations, or local government fees and charges. ORS 469.401(4).

39 In making its decision on an amendment of a site certificate, the Council applies the
40 applicable state statutes, administrative rules and local government ordinances that are in

1 effect on the date the Council makes its decision, except when applying the Land Use
2 Standard. In making findings on the Land Use Standard, the Council applies the applicable
3 substantive criteria in effect on the date the certificate holder submitted the request for
4 amendment. OAR 345-027-0070(9).

1. General Standard of Review

5 OAR 345-022-0000

6 *(1) To issue a site certificate for a proposed facility or to amend a site certificate,*
7 *the Council shall determine that the preponderance of evidence on the record*
8 *supports the following conclusions:*

9 *(a) The facility complies with the requirements of the Oregon Energy Facility*
10 *Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the*
11 *standards adopted by the Council pursuant to ORS 469.501 or the overall public*
12 *benefits of the facility outweigh the damage to the resources protected by the*
13 *standards the facility does not meet as described in section (2);*

14 *(b) Except as provided in OAR 345-022-0030 for land use compliance and*
15 *except for those statutes and rules for which the decision on compliance has been*
16 *delegated by the federal government to a state agency other than the Council, the*
17 *facility complies with all other Oregon statutes and administrative rules identified*
18 *in the project order, as amended, as applicable to the issuance of a site certificate*
19 *for the proposed facility. If the Council finds that applicable Oregon statutes and*
20 *rules, other than those involving federally delegated programs, would impose*
21 *conflicting requirements, the Council shall resolve the conflict consistent with the*
22 *public interest. In resolving the conflict, the Council cannot waive any applicable*
23 *state statute.*

24 * * *

25 We address the requirements of OAR 345-022-0000 in the findings of fact, reasoning,
26 recommended conditions and conclusions of law discussed in the sections that follow. Upon
27 consideration of all of the evidence in the record, we state our recommended general
28 conclusion regarding the amendment request in Section VII.

2. Standards about the Applicant

(a) Organizational Expertise

29 OAR 345-022-0010

30 *(1) To issue a site certificate, the Council must find that the applicant has the*
31 *organizational expertise to construct, operate and retire the proposed facility in*
32 *compliance with Council standards and conditions of the site certificate. To*
33 *conclude that the applicant has this expertise, the Council must find that the*
34 *applicant has demonstrated the ability to design, construct and operate the*
35 *proposed facility in compliance with site certificate conditions and in a manner*
36 *that protects public health and safety and has demonstrated the ability to restore*
37 *the site to a useful, non-hazardous condition. The Council may consider the*
38 *applicant's experience, the applicant's access to technical expertise and the*
39 *applicant's past performance in constructing, operating and retiring other*

1 facilities, including, but not limited to, the number and severity of regulatory
2 citations issued to the applicant.

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

7 (3) If the applicant does not itself obtain a state or local government permit or
8 approval for which the Council would ordinarily determine compliance but
9 instead relies on a permit or approval issued to a third party, the Council, to issue
10 a site certificate, must find that the third party has, or has a reasonable likelihood
11 of obtaining, the necessary permit or approval, and that the applicant has, or has
12 a reasonable likelihood of entering into, a contractual or other arrangement with
13 the third party for access to the resource or service secured by that permit or
14 approval.

15 (4) If the applicant relies on a permit or approval issued to a third party and the
16 third party does not have the necessary permit or approval at the time the Council
17 issues the site certificate, the Council may issue the site certificate subject to the
18 condition that the certificate holder shall not commence construction or operation
19 as appropriate until the third party has obtained the necessary permit or approval
20 and the applicant has a contract or other arrangement for access to the resource
21 or service secured by that permit or approval.

Findings of Fact

A. Certificate Holder's Expertise

22 KG is a limited liability company established in Oregon to develop, own and operate
23 the KGF. KG is a wholly owned subsidiary of PPM Energy, Inc. (PPM), an Oregon
24 corporation. PPM is a wholly-owned direct subsidiary of ScottishPower Holdings, Inc.
25 (SPHI), a Delaware corporation with general offices located in Portland, Oregon. SPHI is a
26 wholly-owned direct subsidiary of ScottishPower NA 2 Limited, a wholly-owned direct
27 subsidiary of Scottish Power PLC. Scottish Power PLC is owned by Iberdrola SA, a Spanish
28 electric company.

29 In the Final Order on the Application, the Council found that PPM would provide its
30 expertise to KG either directly or through Pacific Klamath Energy, Inc. (PKE), a PPM
31 subsidiary. The Council concluded that KG demonstrated that it has the organizational
32 expertise to construct and operate the proposed facility. There has been no change of
33 circumstances or underlying facts that affects the Council's previous findings under this
34 standard.

B. Third-Party Permits

35 The certificate holder would rely on the City of Klamath Falls for potable water
36 supply, reclaimed water supply, disposal of cooling tower discharge water and disposal of
37 wastewater. In the Final Order on the Application, the Council found that KG has a
38 reasonable likelihood of entering into a contractual or other arrangement with the City of
39 Klamath Falls for access to potable water. The Council, further, found that there is a
40 reasonable likelihood that the necessary contractual agreements between KG, the City and

1 South Suburban Sanitary District could be negotiated regarding a combined wastewater
2 treatment system to supply a sufficient amount of water for evaporative cooling at the KGF.
3 There has been no change of circumstances affecting these findings.

Conclusions of Law

4 Based on the findings stated above, the Council concludes that KG would meet the
5 Council’s Organizational Expertise Standard if Amendment #1 were approved.

(b) Retirement and Financial Assurance

6 **OAR 345-022-0050**

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

8 *(1) The site, taking into account mitigation, can be restored adequately to a useful,*
9 *non-hazardous condition following permanent cessation of construction or*
10 *operation of the facility.*

11 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of*
12 *credit in a form and amount satisfactory to the Council to restore the site to a*
13 *useful, non-hazardous condition.*

Findings of Fact

A. Site Restoration

14 In the Final Order on the Application, the Council made findings about the specific
15 tasks that would need to be performed to restore the KGF site to a useful, non-hazardous
16 condition. Because KG proposes no change to the facility structures or configuration in this
17 amendment, site restoration would be done as described in the Final Order on the Application.
18 Approval of Amendment #1 would not affect the Council’s previous finding that the site can
19 be adequately restored to a useful, non-hazardous condition.

B. Estimated Cost of Site Restoration

20 Under OAR 345-027-0070(10)(d), the Council must consider whether the amount of
21 the bond or letter of credit required under OAR 345-022-0050 is adequate. In the Final Order
22 on the Application, the Council found that the estimated cost of site restoration was \$6.2
23 million in 2005 dollars. This estimate was based on the applicant’s estimate for the cost of
24 restoring the site if the facility were built with evaporative cooling. The Council found the
25 overall cost estimate to be reasonable for both the evaporative cooling and dry cooling
26 options.

27 In more recent site certificate proceedings, the Department has used a detailed “Cost
28 Guide” methodology to estimate site restoration costs.⁵ In its review of this amendment
29 request, the Department applied the Cost Guide approach to assess the adequacy of the
30 previous site restoration estimate for the KGF. Table 1 shows the revised estimated site
31 restoration cost based on the Cost Guide approach. The Council finds that the estimated cost
32 of site restoration is \$4.160 million in 2006 dollars.

⁵ The “Facility Retirement Cost Estimating Guide” is a cost-estimating method developed by Pacific Energy Systems and Pinnell Busch Inc., for the Oregon Department of Energy.

Table 1: Site Restoration Cost Estimate (2006 dollars)

Cost Estimate Component	Estimated Cost
<u>Preliminary Work</u>	
Cut and cap lines, remove fences and gates, drain tanks, evacuate sludge	\$47,386
<u>Site Grading</u>	
Backfill, topsoil application, seeding	\$233,731
<u>Underground Utility Removal</u>	
Remove firewater, sewer and gas lines, ductbank, vaults, tanks	\$68,242
<u>Concrete Wrecking</u>	
Slab on grade, foundations, superstructure	\$172,009
<u>Building Wrecking</u>	
Turbine generator building, control room and electrical equipment room, future warehouse and maintenance shop, water treatment building, cooling tower chemical building, fire protection pump house building, etc.	\$232,022
<u>Steel Wrecking</u>	
Superstructure and interiors	\$373,388
<u>Thermal Protection and Liners Wrecking</u>	
Pond liner and insulation	\$14,867
<u>Equipment Wrecking</u>	
Combustion turbine generators, inlet evaporative coolers, fuel heaters, HRSGs, turbine exhaust stacks, steam turbine generator, water-cooled surface condenser, feed water pumps, condensate pumps, miscellaneous pumps, air compressors, standby auxiliary boiler, gas metering station, raw water tank, demineralized water tank, condensate tank	\$246,570
<u>Mechanical Wrecking</u>	
Cooling water, gas, steam, raw water and fresh water piping	\$250,093
<u>Electrical Wrecking</u>	
Transformers, wiring, MCC, towers	\$82,303
<u>Load and Haul</u>	
Load and haul debris and scrap steel, tipping fees	\$550,931
<u>General Costs</u>	
Permits, mobilization, engineering, overhead, utility disconnects	\$515,695
<u>Subtotal</u>	
	\$2,787,237
Performance Bond	\$27,872
<u>Gross Cost</u>	
	\$2,815,109
Administration and Project Management (10%)	\$281,511
Future Developments Contingency (20%)	\$563,022
Environmental Assessment and Remediation	\$500,000
<u>Total</u>	\$4,159,642
Total Site Restoration Cost (rounded to nearest \$1,000)	\$4,160,000

C. Ability of KG to Obtain a Bond or Letter of Credit

1 In the Final Order on the Application, the Council found that KG had demonstrated a
2 reasonable likelihood of obtaining a bond or letter of credit, satisfactory to the Council, in an

1 amount adequate to restore the site to a useful, non-hazardous condition. The Council based
2 this finding on a letter from Safeco Surety (Safeco). The letter from Safeco stated that
3 “PacifiCorp and its affiliates/subsidiaries are valuable clients of Safeco Surety” and that there
4 is “reasonable likelihood that Safeco Surety would provide an annual bond” for the proposed
5 KGF in the amount of \$5.88 million in 2003 dollars.

6 Because KG’s parent company, PPM Energy, is no longer an affiliate of PacifiCorp,
7 the Department requested a new letter of assurance that KG would be able to obtain the
8 necessary financial assurance for the facility. KG provided a letter from The Royal Bank of
9 Scotland (Bank). The letter states that PPM Energy has “sufficient available letter of credit
10 capacity” to support a letter of credit of \$4.160 million (inflation adjusted on an annual basis)
11 “under its existing uncommitted financing arrangements with the Bank.” The letter states:
12 “There is a reasonable likelihood that the Bank would provide an annual letter of credit for
13 this project, should one be required.” Though this letter does not constitute a firm
14 commitment from the Bank to issue bonds or letters of credit in the amount the Council
15 determines necessary, it is credible evidence that KG could obtain the financial assurance
16 required under Condition 64 of the site certificate.

17 The Council modifies Condition 64 to reflect the revised financial assurance amount
18 as discussed in Revision 29 below at page 40.

Conclusions of Law

19 Based on the findings stated above and subject to the modification of Condition 64,
20 the Council concludes that KG would meet the Council’s Retirement and Financial Assurance
21 Standard if Amendment #1 were approved.

3. Standards about the Impacts of Construction and Operation

(a) Land Use

OAR 345-022-0030

22 *(1) To issue a site certificate, the Council must find that the proposed facility*
23 *complies with the statewide planning goals adopted by the Land Conservation and*
24 *Development Commission.*
25

26 *(2) The Council shall find that a proposed facility complies with section (1) if:*

27 *(a) The applicant elects to obtain local land use approvals under ORS*
28 *469.504(1)(a) and the Council finds that the facility has received local land use*
29 *approval under the acknowledged comprehensive plan and land use regulations of*
30 *the affected local government; or*

31 *(b) The applicant elects to obtain a Council determination under ORS*
32 *469.504(1)(b) and the Council determines that:*

33 *(A) The proposed facility complies with applicable substantive criteria as*
34 *described in section (3) and the facility complies with any Land Conservation and*
35 *Development Commission administrative rules and goals and any land use statutes*
36 *directly applicable to the facility under ORS 197.646(3);*

37 *(B) For a proposed facility that does not comply with one or more of the*
38 *applicable substantive criteria as described in section (3), the facility otherwise*
39 *complies with the statewide planning goals or an exception to any applicable*
40 *statewide planning goal is justified under section (4); or*

1 (C) For a proposed facility that the Council decides, under sections (3) or
2 (6), to evaluate against the statewide planning goals, the proposed facility
3 complies with the applicable statewide planning goals or that an exception to any
4 applicable statewide planning goal is justified under section (4).

5 (3) As used in this rule, the “applicable substantive criteria” are criteria from the
6 affected local government’s acknowledged comprehensive plan and land use
7 ordinances that are required by the statewide planning goals and that are in effect
8 on the date the applicant submits the application. If the special advisory group
9 recommends applicable substantive criteria, as described under OAR 345-021-
10 0050, the Council shall apply them. If the special advisory group does not
11 recommend applicable substantive criteria, the Council shall decide either to make
12 its own determination of the applicable substantive criteria and apply them or to
13 evaluate the proposed facility against the statewide planning goals.

14 (4) The Council may find goal compliance for a proposed facility that does not
15 otherwise comply with one or more statewide planning goals by taking an
16 exception to the applicable goal. Notwithstanding the requirements of ORS
17 197.732, the statewide planning goal pertaining to the exception process or any
18 rules of the Land Conservation and Development Commission pertaining to the
19 exception process, the Council may take an exception to a goal if the Council
20 finds:

21 (a) The land subject to the exception is physically developed to the extent
22 that the land is no longer available for uses allowed by the applicable goal;

23 (b) The land subject to the exception is irrevocably committed as described
24 by the rules of the Land Conservation and Development Commission to uses not
25 allowed by the applicable goal because existing adjacent uses and other relevant
26 factors make uses allowed by the applicable goal impracticable; or

27 (c) The following standards are met:

28 (A) Reasons justify why the state policy embodied in the applicable
29 goal should not apply;

30 (B) The significant environmental, economic, social and energy
31 consequences anticipated as a result of the proposed facility have been identified
32 and adverse impacts will be mitigated in accordance with rules of the Council
33 applicable to the siting of the proposed facility; and

34 (C) The proposed facility is compatible with other adjacent uses or will
35 be made compatible through measures designed to reduce adverse impacts.

36 * * *

Findings of Fact

37 In the Final Order on the Application, the Council found that the KGF complies with
38 the applicable substantive criteria from the affected local government’s acknowledged
39 comprehensive plan and land use ordinances. Under the statute, however, a land use
40 determination under ORS 469.504(1)(b)(A) also requires a finding that the facility complies
41 with “any Land Conservation and Development Commission administrative rules and goals
42 and any land use statutes that apply directly to the facility under ORS 197.646.” The Council
43 found that amendments to Statewide Planning Goal 11 in 1998 added a specific prohibition on
44 the “extension” of “sewer systems” outside of urban growth boundaries. Because Klamath

1 County had not amended its County Comprehensive Plan to incorporate this provision, the
2 Council found that the amended Goal 11 language is directly applicable to the land use
3 decision in this case.

4 Goal 11 prohibits the “extension” of a sewer system outside an urban growth
5 boundary. The Council found that the proposed sanitary wastewater and cooling water
6 discharge lines and interconnections for the KGF are prohibited under Goal 11 and its
7 implementing rules. Based on that finding, the Council considered whether an exception to
8 Goal 11 was justified. The Council found that an exception was justified under the “reasons”
9 analysis in ORS 469.504(2)(c).

10 Klamath County has not amended its Comprehensive Plan or Land Development Code
11 since 2002 in a manner that would affect the applicable substantive criteria for review of the
12 KGF.⁶ In the request for Amendment #1, KG has not proposed any change to the proposed
13 KGF facility. The Council finds that there have been no changes of facts or circumstances that
14 would affect the Council’s previous land use findings.

Conclusions of Law

15 Based on the findings stated above, the Council concludes that the KGF would comply
16 with the Council’s Land Use Standard if Amendment #1 were approved.

(b) Public Services

345-022-0110

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

25 * * *

Findings of Fact

26 In the Final Order on the Application, the Council found that the construction and
27 operation of the facility, subject to the conditions of the site certificate, were not likely to
28 result in significant adverse impact to the ability of public and private providers within the
29 analysis area described in the project order to provide: sewers and sewage treatment, water,
30 stormwater drainage, solid waste management, housing, traffic safety, police and fire
31 protection, health care and schools. Extending the deadlines for beginning and completing
32 construction, as requested in Amendment #1, would not change any of the facts about
33 construction or operation on which the Council relied in making its previous findings.

Conclusions of Law

34 For the reasons discussed above, the Council concludes that the KGF would comply
35 with the Public Services Standard if Amendment #1 were approved.

⁶ E-mail from Alwin Turiel, Klamath County Planning Director, June 21, 2007.

(c) Waste Minimization

345-022-0120

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

(a) The applicant’s solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(b) The applicant’s plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

** * **

Findings of Fact

In the Final Order on the Application, the Council found that KG’s solid waste and wastewater plans would minimize generation of solid waste and wastewater to the extent practicable during construction and operation of the facility. The Council found that KG’s solid waste and wastewater plans would result in recycling and reuse of such wastes. The Council found that KG’s plans to manage the accumulation, storage, disposal and transportation of waste generated by construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas. Extending the deadlines for beginning and completing construction, as requested in Amendment #1, would not change any of the facts about construction or operation on which the Council relied in making these previous findings.

Conclusions of Law

For the reasons discussed above, the Council concludes that the KGF would comply with the Waste Minimization Standard if Amendment #1 were approved.

(d) Structural Standard

345-022-0020

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

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from maximum probable ground motion events. As used in this rule “seismic hazard” includes ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

1 (c) *The applicant, through appropriate site-specific study, has adequately*
2 *characterized the potential geological and soils hazards of the site and its vicinity*
3 *that could, in the absence of a seismic event, adversely affect, or be aggravated by,*
4 *the construction and operation of the proposed facility; and*

5 (d) *The applicant can design, engineer and construct the facility to avoid*
6 *dangers to human safety presented by the hazards identified in subsection (c).*

7 * * *

Findings of Fact

8 In the Final Order on the Application, the Council found that the KG had adequately
9 characterized the proposed site of the KGF regarding “seismic zone and expected ground
10 response during the maximum credible and reasonably probable seismic events.” The current
11 Council standard does not refer to “seismic zone” as this method of site characterization is no
12 longer used by the Oregon Department of Geology and Mineral Industries (DOGAMI). At the
13 time of the application review, however, DOGAMI’s recommendations referred to the 2004
14 Oregon Specialty Code, which is based on the 2003 International Building Code. The 2003
15 International Building Code is the basis for the assessment required under the Council’s
16 current standard. Accordingly, the Council finds that its previous findings are consistent with
17 the current standard.

18 In the Final Order on the Application, the Council also found that KG had shown that
19 the KGF can be designed, engineered and constructed adequately to avoid potential dangers to
20 human safety presented by seismic hazards affecting the proposed site, including
21 amplification, that are expected to result from all reasonably probable seismic events. Site-
22 specific geological and geotechnical work would be performed before construction, as
23 required by Conditions 69 and 71.⁷ Extending the deadlines for beginning and completing
24 construction, as requested in Amendment #1, would not change any of the facts about
25 construction or operation on which the Council relied in making these previous findings.

Conclusions of Law

26 For the reasons discussed above, the Council concludes that the KGF would comply
27 with the Structural Standard if Amendment #1 were approved.

(e) Soil Protection

OAR 345-022-0022

28 *To issue a site certificate, the Council must find that the design, construction and*
29 *operation of the facility, taking into account mitigation, are not likely to result in a*
30 *significant adverse impact to soils including, but not limited to, erosion and*
31 *significant adverse impact to soils including, but not limited to, erosion and*
32 *chemical factors such as salt deposition from cooling towers, land application of*
33 *liquid effluent, and chemical spills.*

Findings of Fact

34 In the Final Order on the Application, the Council found that the design, construction
35 and operation of the KGF, subject to conditions in the site certificate, are not likely to result in
36 significant adverse impact to soils. In the request for Amendment #1, KG does not propose

⁷ These conditions also cite the 2003 International Building Code

1 any change in the location of facility components, and there would be no change in the
2 potential impacts to soils. Approval of Amendment #1 would not change the facts on which
3 the Council relied in its previous findings regarding impact to soils.

Conclusions of Law

4 For the reasons discussed above, the Council concludes that the KGF would comply
5 with the Council's Soil Protection Standard if Amendment #1 were approved.

(f) Protected Areas

OAR 345-022-0040

6
7 *(1) Except as provided in sections (2) and (3), the Council shall not issue a site*
8 *certificate for a proposed facility located in the areas listed below. To issue a site*
9 *certificate for a proposed facility located outside the areas listed below, the*
10 *Council must find that, taking into account mitigation, the design, construction*
11 *and operation of the facility are not likely to result in significant adverse impact to*
12 *the areas listed below. References in this rule to protected areas designated under*
13 *federal or state statutes or regulations are to the designations in effect as of May*
14 *11, 2007:*

15 *(a) National parks, including but not limited to Crater Lake National Park and*
16 *Fort Clatsop National Memorial;*

17 *(b) National monuments, including but not limited to John Day Fossil Bed*
18 *National Monument, Newberry National Volcanic Monument and Oregon Caves*
19 *National Monument;*

20 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C.*
21 *1131 et seq. and areas recommended for designation as wilderness areas pursuant*
22 *to 43 U.S.C. 1782;*

23 *(d) National and state wildlife refuges, including but not limited to Ankeny,*
24 *Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer*
25 *Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark,*
26 *Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch*
27 *Rocks, Umatilla, Upper Klamath, and William L. Finley;*

28 *(e) National coordination areas, including but not limited to Government*
29 *Island, Ochoco and Summer Lake;*

30 *(f) National and state fish hatcheries, including but not limited to Eagle Creek*
31 *and Warm Springs;*

32 *(g) National recreation and scenic areas, including but not limited to Oregon*
33 *Dunes National Recreation Area, Hell's Canyon National Recreation Area, and*
34 *the Oregon Cascades Recreation Area, and Columbia River Gorge National*
35 *Scenic Area;*

36 *(h) State parks and waysides as listed by the Oregon Department of Parks and*
37 *Recreation and the Willamette River Greenway;*

38 *(i) State natural heritage areas listed in the Oregon Register of Natural*
39 *Heritage Areas pursuant to ORS 273.581;*

40 *(j) State estuarine sanctuaries, including but not limited to South Slough*
41 *Estuarine Sanctuary, OAR Chapter 142;*

1 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic
2 rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and
3 rivers listed as potentials for designation;

4 (L) Experimental areas established by the Rangeland Resources Program,
5 College of Agriculture, Oregon State University: the Prineville site, the Burns
6 (Squaw Butte) site, the Starkey site and the Union site;

7 (m) Agricultural experimental stations established by the College of
8 Agriculture, Oregon State University, including but not limited to:

9 Coastal Oregon Marine Experiment Station, Astoria
10 Mid-Columbia Agriculture Research and Extension Center, Hood River
11 Agriculture Research and Extension Center, Hermiston
12 Columbia Basin Agriculture Research Center, Pendleton
13 Columbia Basin Agriculture Research Center, Moro
14 North Willamette Research and Extension Center, Aurora
15 East Oregon Agriculture Research Center, Union
16 Malheur Experiment Station, Ontario
17 Eastern Oregon Agriculture Research Center, Burns
18 Eastern Oregon Agriculture Research Center, Squaw Butte
19 Central Oregon Experiment Station, Madras
20 Central Oregon Experiment Station, Powell Butte
21 Central Oregon Experiment Station, Redmond
22 Central Station, Corvallis
23 Coastal Oregon Marine Experiment Station, Newport
24 Southern Oregon Experiment Station, Medford
25 Klamath Experiment Station, Klamath Falls;

26 (n) Research forests established by the College of Forestry, Oregon State
27 University, including but not limited to McDonald Forest, Paul M. Dunn Forest,
28 the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak
29 area and the Marchel Tract;

30 (o) Bureau of Land Management areas of critical environmental concern,
31 outstanding natural areas and research natural areas;

32 (p) State wildlife areas and management areas identified in OAR chapter 635,
33 Division 8.

34 * * *

Findings of Fact

35 In the Final Order on the Application, the Council found that the design, construction
36 and operation of the KGF, subject to the conditions of the site certificate, would not be likely
37 to result in significant adverse impact to protected areas. Amendment #1, would not involve a
38 change in the size or location of any KGF components. There has been no change of
39 circumstances that would affect the Council's earlier findings regarding potential impact of
40 the facility on protected areas.

Conclusions of Law

41 For the reasons discussed above, the Council concludes that the KGF would comply
42 with the Council's Protected Areas Standard if Amendment #1 were approved.

(g) Scenic Resources

345-022-0080

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

* * *

Findings of Fact

In the Final Order on the Application, the Council found that the proposed facility would be located on a 25-acre parcel of industrial-zoned land that has sparse vegetation and no trees. The site is adjacent to and south of the Klamath Cogeneration Project and east of the Klamath Generation Peakers facility. The Council found that the design, construction and operation of the KGF, taking into account mitigation and subject to the conditions stated in the orders, were not likely to result in significant adverse impacts to the identified scenic resources addressed by the standard. Because Amendment #1 would not involve any change in the size or location of any KGF components, the Council finds that there has been no change of circumstances that would affect the Council’s earlier findings regarding scenic resources.

Conclusions of Law

For the reasons discussed above, the Council concludes that the KGF would comply with the Council’s Scenic Resources Standard if Amendment #1 were approved.

(h) Historic, Cultural and Archaeological Resources

345-022-0090

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

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

* * *

Findings of Fact

All land within the analysis area for the KGF is within the boundaries of the Collins’ Products (formerly Weyerhaeuser) property. In the Final Order on the Application, the Council found that the site had been surveyed for historic, cultural and archaeological resources in 1995 during the site assessment for the Klamath Cogeneration Project (KCP). That survey found that, although the Weyerhaeuser property might be eligible for listing on the National Register of Historic Places (NRHP), “construction and operation of the proposed

1 KCP including the related or supporting facilities which are proposed to be located on the
2 former Weyerhaeuser property would not adversely affect those qualities of the Weyerhaeuser
3 site which make it eligible for listing on the NRHP.” The KGF site does not contain any
4 historic structures. Site certificate conditions require training of construction personnel in the
5 identification of cultural materials, cessation of ground-disturbing activity if archaeological
6 resources are discovered during construction and locating the KGF to avoid impact on
7 existing historical structures (Conditions 99, 100 and 101). The Council found that the
8 construction and operation of the KGF, taking into account mitigation, were not likely to
9 result in significant adverse impacts to historic, cultural or archaeological resources. Because
10 Amendment #1 would not involve any change in the size or location of any KGF components,
11 the Council finds that there has been no change of circumstances that would affect the
12 Council’s earlier findings regarding historic, cultural and archaeological resources.

Conclusions of Law

13 For the reasons discussed above, the Council concludes that the KGF would comply
14 with the Council’s Historic, Cultural and Archaeological Resources Standard if Amendment
15 #1 were approved.

(i) Recreation

OAR 345-022-0100

16
17 *(1) Except for facilities described in section (2), to issue a site certificate, the*
18 *Council must find that the design, construction and operation of a facility, taking*
19 *into account mitigation, are not likely to result in a significant adverse impact to*
20 *important recreational opportunities in the analysis area as described in the*
21 *project order. The Council shall consider the following factors in judging the*
22 *importance of a recreational opportunity:*

23 *(a) Any special designation or management of the location;*

24 *(b) The degree of demand;*

25 *(c) Outstanding or unusual qualities;*

26 *(d) Availability or rareness;*

27 *(e) Irreplaceability or irretrievability of the opportunity.*

28 * * *

Findings of Fact

29 In the Final Order on the Application, the Council found that the proposed facility
30 would have no direct impact on any important recreational facilities or opportunities in the
31 analysis area. The Council found the design, construction and operation of the KGF, taking
32 into account mitigation and subject to the conditions stated in the orders, were not likely to
33 result in significant adverse impacts to recreational opportunities in the analysis area.

34 An extension of the construction deadlines for the KGF would not involve any change
35 in the size, location or operation of the facility. The Council finds that there has been no
36 change of facts or circumstances that would affect the Council’s earlier findings regarding the
37 impacts of the KGF on recreational opportunities.

Conclusions of Law

1 For the reasons discussed above, the Council concludes that the KGF would comply
2 with the Council’s Recreation Standard if Amendment #1 were approved.

(j) Siting Standards for Transmission Lines

OAR 345-024-0090

3 *To issue a site certificate for a facility that includes any transmission line under*
4 *Council jurisdiction, the Council must find that the applicant:*

5
6 *(1) Can design, construct and operate the proposed transmission line so that*
7 *alternating current electric fields do not exceed 9 kV per meter at one meter above*
8 *the ground surface in areas accessible to the public;*

9 *(2) Can design, construct and operate the proposed transmission line so that*
10 *induced currents resulting from the transmission line and related or supporting*
11 *facilities will be as low as reasonably achievable.*

Findings of Fact

12 In the Final Order on the Application, the Council found that an electric transmission
13 line approximately 1,630 feet in length would carry power from the KGF gas turbine and
14 steam turbine generators to the switchyard of the Klamath Cogeneration Project. The
15 proposed transmission line would connect to the PacifiCorp Captain Jack to Meridian
16 transmission line at the western edge of the switchyard. The transmission interconnection lies
17 within the site boundaries of the KGF and the Klamath Cogeneration Project, and no occupied
18 structures are located within 200 feet of the line. The Council found that the certificate holder
19 could design and construct the transmission line components so that electric fields would not
20 exceed 9 kV per meter at one meter above ground surface in areas accessible to the public and
21 so that induced currents would be as low as reasonably achievable. Because Amendment #1
22 would not involve any change in the design, size or location of transmission lines, the Council
23 finds that there has been no change of circumstances that would affect the Council’s earlier
24 findings required under OAR 345-024-0090.

Conclusions of Law

25 For the reasons discussed above, the Council concludes that the KGF would comply
26 with the Council’s Siting Standards for Transmission Lines if Amendment #1 were approved.

4. Standards to Protect Wildlife

(a) Threatened and Endangered Species

OAR 345-022-0070

27 *To issue a site certificate, the Council, after consultation with appropriate state*
28 *agencies, must find that:*
29

30 *(1) For plant species that the Oregon Department of Agriculture has listed as*
31 *threatened or endangered under ORS 564.105(2), the design, construction and*
32 *operation of the proposed facility, taking into account mitigation:*

33 *(a) Are consistent with the protection and conservation program, if any, that*
34 *the Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

1 (b) If the Oregon Department of Agriculture has not adopted a protection and
2 conservation program, are not likely to cause a significant reduction in the
3 likelihood of survival or recovery of the species; and

4 (2) For wildlife species that the Oregon Fish and Wildlife Commission has listed
5 as threatened or endangered under ORS 496.172(2), the design, construction and
6 operation of the proposed facility, taking into account mitigation, are not likely to
7 cause a significant reduction in the likelihood of survival or recovery of the
8 species.

Findings of Fact

9 In the Final Order on the Application, the Council found that no threatened or
10 endangered plant species are known to exist within the site of the proposed facility. There are
11 no protection and conservation programs adopted under ORS 564.105(3) for threatened or
12 endangered plant species in the KGF area.

13 The applicant found records of sightings within the analysis area of four fish or
14 wildlife species listed by ODFW as threatened or endangered. There has been only one
15 recorded sighting of the kit fox, which was possibly an escaped or released pet. The observed
16 location was outside the expected range of the species in Oregon. Accordingly, the Council
17 found that the KGF was not likely to affect kit fox. The other species with recorded sightings
18 are two endangered fish species (shortnose and Lost River suckers) and the bald eagle.

19 In addition to the species listed above, the Western snowy plover (*Charadrius*
20 *alexandrinus nivosus*) and the American peregrine falcon (*Falco peregrinus anatum*) might
21 occasionally migrate through the area in fall or winter. The Western snowy plover is listed by
22 ODFW as a threatened species. The Council found that the snowy plover was unlikely to
23 occur in the analysis area, because it is a shorebird that prefers coastal dune ecosystems or,
24 inland, the shorelines of alkaline lakes. Alkaline lakes do not exist in the analysis area. The
25 American peregrine falcon was formerly a State-listed endangered species. It was removed
26 from the State list on April 13, 2007. No known peregrine falcon nest sites are located within
27 the analysis area, but these birds regularly visit the Klamath Basin in winter. The Council
28 found that the potential risk to peregrine falcons would be adequately mitigated by measures
29 to avoid bald eagle collisions, and therefore construction and operation of the KFG were not
30 likely to have a significant adverse effect on the species.

31 The bald eagle is a State-listed threatened species. It was a federally-listed threatened
32 species until the USFWS removed it from the list on June 28, 2007. The Council found that
33 bald eagles are present year-round in the analysis area. The KGF site does not lie across the
34 path of a bald eagle migration route. The KGF would be located away from high-risk areas
35 such as primary flyways, nesting territories and areas of dense fog. No potential roost trees
36 would be removed during construction. The nearest known nest site is several miles away.
37 KGF transmission structures would be confined to the heavily industrialized area in the
38 immediate vicinity. There would be no new transmission lines extending away from the
39 energy facility site. By “clustering” the proposed KGF with the existing KCP and KEP and
40 minimizing the need for overhead transmission lines, the three facilities together should
41 present a highly visible obstruction that birds would recognize and avoid. For these reasons,

1 the Council found that construction and operation of the KGF were not likely to have any
2 significant direct impact on bald eagles or their habitat.

3 The Council found that the shortnose and Lost River suckers are both state-listed and
4 federally-listed endangered species and that both species have been observed in the Klamath
5 River and its tributaries in the analysis area. The Council found that the KGF would have no
6 effect on the breeding habitat used by the shortnose and Lost River suckers. The Council
7 found that the potential reduction in habitat quantity (water flow) below Keno dam caused by
8 evaporative cooling at the proposed KGF was not expected to reduce the likelihood of the
9 survival or recovery of the endangered Lost River and shortnose suckers.

10 In the Final Order on the Application, the Council found that the design, construction
11 and operation of the KGF, taking into account mitigation, did not have the potential to
12 significantly reduce the likelihood of the survival or recovery of any threatened or endangered
13 plant or wildlife species listed under Oregon law. Because Amendment #1 would not involve
14 any change in the design, size or location of the KGF facilities, the Council finds that there
15 has been no change of facts or circumstances that would affect the Council's earlier findings.

Conclusions of Law

16 For the reasons discussed above, the Council concludes that the KGF would comply
17 with the Council's Threatened and Endangered Species Standard if Amendment #1 were
18 approved.

(b) Fish and Wildlife Habitat

OAR 345-022-0060

19 *To issue a site certificate, the Council must find that the design, construction and*
20 *operation of the facility, taking into account mitigation, are consistent with the fish*
21 *and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect*
22 *as of September 1, 2000.*
23

Findings of Fact

24 In the Final Order on the Application, the Council found habitat directly affected by
25 the construction and operation of the proposed facility is Category 6. The land is currently
26 zoned for industrial use and few wildlife species use the area. All temporarily disturbed areas
27 would be restored (Condition 11). The permanent footprint of the KGF would be limited to 25
28 acres, consistent with the ODFW goal of minimizing impacts on Category 6 habitat. The
29 certificate holder must revegetate the facility site after construction (Condition 91).

30 The Council found that potentially affected segments of the Klamath River are
31 Category 3 habitat. Under the evaporative cooling option, the facility would use reclaimed
32 wastewater for cooling. Consequently, there would be a reduction in the quantity of
33 wastewater effluent that otherwise would flow into the Klamath River from the outfall of the
34 wastewater treatment facilities. During operation, evaporation of water in the cooling tower
35 would reduce the amount of this effluent by an average 3.6 cfs (2.3 mgd) and an estimated
36 maximum of 4.8 cfs (3.1 mgd). After extensive discussion of this issue between the
37 Department, ODFW and the applicant during the site certificate review process, the applicant
38 proposed a water supply mitigation plan. Under the plan, the City would supply backup
39 (potable) water to substitute for the use of reclaimed water in the cooling tower whenever the

1 evaporative loss of reclaimed water could result in a significant loss of habitat quantity. If the
2 evaporative cooling option is chosen, the certificate holder would negotiate a detailed
3 agreement with the City of Klamath Falls, subject to the approval of the Department before
4 beginning construction of the KGF. A refined operations plan, detailing the communications
5 protocol and decision-making for activation and deactivation, would be developed before
6 beginning of construction. The refined operations plan would be subject to approval by the
7 Department and ODFW. The Council approved the water supply mitigation plan and
8 incorporated the plan in Condition 76, subject to certain understandings that are discussed at
9 page 94 of the Final Order on the Application.

10 The Council found that the design, construction and operation of the KGF were
11 consistent with ODFW's fish and wildlife habitat mitigation goals and standards (OAR 635-
12 415-0025). Amendment #1 would not involve any change in the design, size or location of the
13 KGF facilities. Therefore, the Council finds that approval of an extension of the construction
14 deadlines as requested in Amendment #1 is consistent with the ODFW habitat mitigation
15 goals and standards.

Conclusions of Law

16 For the reasons discussed above, the Council concludes that the KGF would comply
17 with the Council's Fish and Wildlife Habitat Standard if Amendment #1 were approved.

5. Carbon Dioxide Standard for Base Load Gas Plants

OAR 345-024-0550

18 *To issue a site certificate for a base load gas plant, the Council must find that the*
19 *net carbon dioxide emissions rate of the proposed facility does not exceed 0.675*
20 *pounds of carbon dioxide per kilowatt-hour of net electric power output, with*
21 *carbon dioxide emissions and net electric power output measured on a new and*
22 *clean basis. For a base load gas plant designed with power or augmentation*
23 *technology as defined in OAR 345-001-0010, the Council shall apply the standard*
24 *for a non-base load power plant, as described in OAR 345-024-0590, to the*
25 *incremental carbon dioxide emissions from the designed operation of the power*
26 *augmentation technology. The Council shall determine whether the base load*
27 *carbon dioxide emissions standard is met as follows:*

29 *(1) The Council shall determine the gross carbon dioxide emissions that are*
30 *reasonably likely to result from the operation of the proposed energy facility. The*
31 *Council shall base such determination on the proposed design of the energy*
32 *facility. The Council shall adopt site certificate conditions to ensure that the*
33 *predicted carbon dioxide emissions are not exceeded on a new and clean basis;*

34 *(2) For any remaining emissions reduction necessary to meet the applicable*
35 *standard, the applicant may elect to use any of the means described in OAR 345-*
36 *024-0560, or any combination thereof. The Council shall determine the amount of*
37 *carbon dioxide emissions reduction that is reasonably likely to result from the*
38 *applicant's offsets and whether the resulting net carbon dioxide emissions meet the*
39 *applicable carbon dioxide emissions standard;*

40 *(3) If the applicant elects to comply with the standard using the means described*
41 *in OAR 345-024-0560(2), the Council shall determine the amount of carbon*

1 *dioxide emissions reduction that is reasonably likely to result from each of the*
2 *proposed offsets. In making this determination, the Council shall not allow credit*
3 *for offsets that have already been allocated or awarded credit for carbon dioxide*
4 *emissions reduction in another regulatory setting. The fact that an applicant or*
5 *other parties involved with an offset may derive benefits from the offset other than*
6 *the reduction of carbon dioxide emissions is not, by itself, a basis for withholding*
7 *credit for an offset. The Council shall base its determination of the amount of*
8 *carbon dioxide emission reduction on the following criteria and as provided in*
9 *OAR 345-024-0680:*

10 *(a) The degree of certainty that the predicted quantity of carbon dioxide*
11 *emissions reduction will be achieved by the offset;*

12 *(b) The ability of the Council to determine the actual quantity of carbon*
13 *dioxide emissions reduction resulting from the offset, taking into consideration any*
14 *proposed measurement, monitoring and evaluation of mitigation measure*
15 *performance;*

16 *(c) The extent to which the reduction of carbon dioxide emissions would occur*
17 *in the absence of the offsets;*

18 *(4) Before beginning construction, the certificate holder shall notify the*
19 *Department of Energy in writing of its final selection of a gas turbine vendor and*
20 *shall submit a written design information report to the Department sufficient to*
21 *verify the facility's designed new and clean heat rate and its nominal electric*
22 *generating capacity at average annual site conditions for each fuel type. In the*
23 *report, the certificate holder shall include the proposed limits on the annual*
24 *average number of hours of facility operation on distillate fuel oil, if applicable. In*
25 *the site certificate, the Council may specify other information to be included in the*
26 *report. The Department shall use the information the certificate holder provides in*
27 *the report as the basis for calculating, according to the site certificate, the amount*
28 *of carbon dioxide emissions reductions the certificate holder must provide under*
29 *OAR 345-024-0560.*

Findings of Fact

30 In the Final Order on the Application, the Council found that the KGF would be a base
31 load gas plant as defined in ORS 469.503(2)(e).⁸ As required under OAR 345-024-0550, the
32 Council found that the net carbon dioxide (CO₂) emissions rate of the KGF would not exceed
33 0.675 pounds of carbon dioxide per kilowatt-hour (lb. CO₂/kWh) of net electric power output,
34 with carbon dioxide emissions and net electric power output measured on a new and clean
35 basis. The Council approved the use of power augmentation in the form of duct burning,
36 which uses additional natural gas. Under OAR 345-024-0590, the Council applies the CO₂
37 emissions standard for non-base load power plants to the incremental CO₂ emissions from the
38 designed operation of power augmentation. The Council found that the incremental emissions
39 for the KGF would not exceed 0.675 lb. CO₂/kWh of net electric power output, with CO₂
40 emissions and net electric output measured on a new and clean basis.

⁸ A more detailed discussion of the Council's findings regarding the Carbon Dioxide Emissions is included in the Final Order on the Application, pp. 96-106, incorporated herein by this reference except to the extent it is changed by the analysis here.

1 The Council approved a site certificate that allows the certificate holder to choose
2 between two designs for KGF. One would use evaporative cooling and the other would use
3 dry cooling. The Council’s findings regarding the Carbon Dioxide Emissions Standard
4 addressed both designs.

5 The certificate holder must comply with the CO₂ emissions standards of OAR 345-
6 024-0550 and OAR 345-024-0590 by making payments in compliance with the monetary path
7 payment requirement of OAR 345-024-0710. The certificate holder must provide the offset
8 funds, plus selection and contracting funds, and to The Climate Trust as allowed by OAR
9 345-024-0560(3) and OAR 345-024-0600(3).

10 Before beginning construction of KGF, the certificate holder must submit to the
11 Department an affidavit with the design parameters that are necessary to calculate the CO₂
12 emissions from KGF, as described in OAR 345-024-0550 and -0590. Those parameters
13 determine the specific amount of the monetary path payment for offset funds and for selection
14 and contracting funds. The Final Order on the Application included tables illustrating the
15 calculation of these payments (Tables 6 and 7 at pages 98 and 99).

16 To illustrate the method of calculation, Table 6 of the Final Order on the Application
17 shows an example for the KGF evaporative cooling option. The gross CO₂ emissions of
18 102,659 million pounds over 30 years are shown in Section F of the table (“Combined CO₂
19 Emissions”). The gross CO₂ emissions rate is expressed as pounds of CO₂ per kilowatt-hour
20 of net electric power output and is calculated by dividing gross CO₂ emissions by the
21 combined output. As illustrated in Table 6, the gross CO₂ emissions rate for the KGF
22 evaporative cooling option is 0.797 lb. CO₂/kWh.

23 ORS 469.503(2)(e) defines “net carbon dioxide emissions” as “gross carbon dioxide
24 emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or
25 sequestered by any combination of cogeneration or offsets.” To determine the amount of CO₂
26 that the certificate holder must offset under the standard, the Council must determine the
27 excess CO₂ emissions rate of the energy facility. “Excess CO₂ emissions” are those in excess
28 of the net CO₂ emissions allowed under the standard (0.675 lb. CO₂/kWh). As illustrated in
29 Table 6, the excess CO₂ emissions rate for the KGF under the evaporative cooling option
30 would be 0.122 lb. CO₂/kWh. The excess CO₂ emissions over 30 years are calculated by
31 multiplying the combined output by the excess emissions rate, resulting in 7.882 million tons
32 over 30 years.

33 Before beginning construction, the certificate holder must determine the actual
34 monetary path payment according to the site certificate conditions (Conditions 32 through
35 35). The Department will verify the monetary path payment. In the Final Order on the
36 Application, the Council’s findings included a sample calculation of the monetary path
37 payment, based on the then applicable offset rate of \$0.85 per ton of CO₂. Effective May 15,
38 2007, the Council amended OAR 345-024-0580 and established a new monetary offset rate of
39 \$1.27 per ton. Under OAR 345-027-0070(10) and OAR 345-027-0030(5), the Council applies
40 the rules in effect on the date the Council makes its decision on a request to amend a site
41 certificate. Accordingly, using the example shown in Table 6 of the Final Order on the
42 Application and applying the new offset rate, the offset funds needed for the monetary path
43 payment would be \$10.01 million (in 2007 dollars).

1 The tables then apply the formula in OAR 345-024-0710(4) to determine the selection
2 and contracting funds.⁹ The selection and contracting funds for the base load plant are \$0.458
3 million (in 2007 dollars) for the evaporative cooling option.

4 The initial monetary path payment is the combination of offset funds and the selection
5 and contracting funds. The initial monetary path payment requirement for the proposed KGF,
6 based on the estimated parameters of the facility with power augmentation, is \$10.468 million
7 (in 2007 dollars) for the evaporative cooling option. Before beginning construction, the
8 certificate holder must provide to The Climate Trust a letter of credit for the offset funds
9 (Condition 38). It must also pay the selection and contracting funds to The Climate Trust
10 before beginning construction (Condition 40).

11 When construction of the plant is complete, the certificate holder must perform tests
12 (“100-hour tests”) to ensure that the plant complies with the CO₂ standard on a new and clean
13 basis. For power augmentation, the Council may modify the parameters of the new and clean
14 basis to accommodate average conditions at the times when the facility is intended to operate
15 or to accommodate technical limitations, including operational considerations (OAR 345-024-
16 0590(1)). Because modification of the testing parameters is an engineering issue, the Final
17 Order on the Application authorized the Department to approve modification of the
18 parameters if circumstances warrant. To ensure adequate selection and contracting funds, the
19 Council found that, if there are excess emissions identified by the 100-hour tests, the payment
20 for selection and contracting funds should be 20 percent of the first \$250,000 in offset funds
21 and 4.286 percent of any offset funds over \$250,000.

22 In the Final Order on the Application, the Council found that if the site certificate
23 holder is required to provide supplemental offset funds following a 5-year reporting period
24 (OAR 345-024-0590(6)), the selection and contracting funds would be calculated based on the
25 supplemental offset funds alone. The Council found that in each 5-year reporting period in
26 which supplemental offset funds are required, the payment for supplemental selection and
27 contracting funds should be 20 percent of the first \$250,000 in offset funds and 4.286 percent
28 of any offset funds in excess of \$250,000.

29 Conditions 30 through 45 implement the requirements in OAR 345-024-0550 through
30 OAR 345-024-0710. The Council modifies these conditions to reflect the increase in the
31 monetary offset rate under OAR 345-024-0580, based on the Department’s recommendations,
32 which are discussed in Revisions 23 through 26, beginning at page 37 below.

Conclusions of Law

33 For the reasons discussed above and subject to the modifications of the site certificate
34 conditions described herein, the Council concludes that the KGF would comply with Carbon
35 Dioxide Emissions Standard if Amendment #1 were approved.

⁹ OAR 345-024-0710 requires the certificate holder to pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000.

V. OTHER APPLICABLE REGULATORY REQUIREMENTS: FINDINGS AND CONCLUSIONS

1. Requirements under Council Jurisdiction

1 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR
2 345-022-0000, the Council must determine that a facility complies with “all other Oregon
3 statutes and administrative rules identified in the project order, as amended, as applicable to
4 the issuance of a site certificate for the proposed facility.” In the Final Order on the
5 Application, the Council found that the other applicable Oregon statutes and administrative
6 rules were the Department of Environmental Quality noise control regulations, the regulations
7 adopted by the Department of State Lands for removal or fill of material affecting waters of
8 the state and the Council’s statutory authority to consider protection of public health and
9 safety.

(a) Noise Control Regulations

10 The applicable noise control regulations are as follows:

OAR 340-035-0035

Noise Control Regulations for Industry and Commerce

(1) Standards and Regulations:

* * *

(b) New Noise Sources:

16 *(A) New Sources Located on Previously Used Sites. No person owning or*
17 *controlling a new industrial or commercial noise source located on a previously*
18 *used industrial or commercial site shall cause or permit the operation of that noise*
19 *source if the statistical noise levels generated by that new source and measured at*
20 *an appropriate measurement point, specified in subsection (3)(b) of this rule,*
21 *exceed the levels specified in Table 8, except as otherwise provided in these rules.*
22 *For noise levels generated by a wind energy facility including wind turbines of any*
23 *size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii)*
24 *applies.*

* * *

Findings of Fact

26 The KGF is subject to the noise control requirements of OAR 340-035-0035(1)(b)(A)
27 as a new industrial or commercial noise source located on a previously used site. In the Final
28 Order on the Application, the Council found that, to meet the standard, the noise radiating
29 from the KGF equipment must not exceed an hourly L₅₀ noise level of 50 dBA at the
30 appropriate measurement point. Based on an analysis of predicted noise levels for the KGF
31 for both evaporative and dry cooling, the Council found that the facility would comply with
32 the standard.

33 To ensure compliance with the noise standard, Condition 106 requires the certificate
34 holder to install silencers on short-duration noise sources to reduce the noise impact of short-
35 duration noise events. Under Condition 107, the certificate holder must measure actual noise
36 levels when the facility is operating and report the results to the Department. If the results

1 show that noise from the facility exceeds the standard, the certificate holder must implement
2 additional noise-reducing measures.

3 Amendment #1 would not involve any change in the design, size or location of KGF
4 components. The Council finds that there has been no change of facts or circumstances that
5 would affect the Council’s earlier findings. The Council finds that no new or amended
6 conditions related to noise regulation are needed.

Conclusions of Law

7 Based on the findings above, the Council finds that the KGF would comply with the
8 applicable noise control regulations if Amendment #1 were approved.

(b) Removal-Fill Law

9 The Oregon Removal-Fill Law (ORS 196.800 through 990) and DLS regulations
10 (OAR 141-085-0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards
11 or more of material is removed, filled or altered within any “waters of the state” at the
12 proposed site.¹⁰

Findings of Fact

13 The applicant identified five wetlands that might qualify as waters of the state.
14 Condition 93 requires the certificate holder to locate the KGF and any temporary laydown and
15 parking areas so as to avoid direct impact to any of the identified wetlands. In the Final Order
16 on the Application, the Council found that a Removal/Fill Permit would not be needed for
17 construction of the facility. The applicant would mitigate potential indirect impact by erosion
18 control measures and revegetation (Conditions 89, 90 and 91) and would take steps to avoid
19 contamination of wetlands and waterways by hazardous substances (Condition 92).

20 Amendment #1 would not involve any change in the size or location of facility
21 components. The Council finds that there has been no change of facts or circumstances that
22 would affect the Council’s earlier findings regarding the Removal/Fill Law.

Conclusions of Law

23 Based on the findings discussed above, the Council concludes that a Removal/Fill
24 Permit would not be required for the KGF if Amendment #1 were approved.

(c) Public Health and Safety

25 Under ORS 469.310, the Council is charged with ensuring that the “siting,
26 construction and operation of energy facilities shall be accomplished in a manner consistent
27 with protection of the public health and safety....” State law further provides that “the site
28 certificate shall contain conditions for the protection of the public health and safety....” ORS
29 469.401(2).

Findings of Fact

30 In the Final Order on the Application, the Council made findings and adopted
31 conditions regarding cooling tower fogging and icing (Condition 112), potential adverse

¹⁰ OAR 141-085-0010(225) defines “Waters of this State.” The term includes wetlands and certain other water bodies.

1 public health effects from cooling tower drift (Condition 111), magnetic field effects
2 (Condition 58) and coordination with the Oregon Pubic Utility Commission (Condition 56).
3 In addition, several of the conditions set forth in OAR 345-027-0020 and 345-027-0023 and
4 incorporated in the KGF site certificate address matters of public health and safety.

5 In the Final Order on the Application, the Council found that the siting, construction
6 and operation of the proposed facility, subject to the conditions stated in order, were
7 consistent with protection of public health and safety. An extension of the construction
8 deadlines would not involve any change in the design, size, location or operation of the KGF.
9 Because Amendment #1 would not involve a change in the size or location of any KGF
10 components, the Council finds that there has been no change of facts or circumstances that
11 would affect the Council’s earlier findings regarding public safety.

Conclusions of Law

12 Based on the findings discussed above, the Council concludes that the KGF would
13 comply with requirements to protect public health and safety if Amendment #1 were
14 approved.

2. Requirements That Are Not Under Council Jurisdiction

(a) Federally-Delegated Programs

15 Under ORS 469.503(3), the Council does not have jurisdiction for determining
16 compliance with statutes and rules for which the federal government has delegated the
17 decision on compliance to a state agency other than the Council. Nevertheless, the Council
18 may rely on the determinations of compliance and the conditions in the federally-delegated
19 permits issued by these state agencies in deciding whether the proposed facility meets other
20 standards and requirements under its jurisdiction.

21 In the Final Order on the Application, the Council found that the certificate holder
22 must obtain a federal Air Contaminant Discharge Permit (ACDP) from the Oregon
23 Department of Environmental Quality (DEQ) before beginning construction of the proposed
24 facility. The certificate holder must also comply with requirements of DEQ’s 1200-C General
25 National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge permit and
26 an Erosion and Sediment Control Plan (ESCP) to minimize erosion at the site during
27 construction operations.

(b) Requirements That Do Not Relate to Siting

28 Under ORS 469.401(4), the Council does not have authority to preempt the
29 jurisdiction of any state agency or local government over matters that are not included in and
30 governed by the site certificate or amended site certificate. Such matters include
31 design-specific construction or operating standards and practices that do not relate to siting.
32 Nevertheless, the Council may rely on the determinations of compliance and the conditions in
33 the permits issued by these state agencies and local governments in deciding whether the
34 facility meets other standards and requirements under its jurisdiction.

VI. GENERAL APPLICATION OF CONDITIONS

1 The conditions referenced in this order include conditions that are specifically required
2 by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site
3 Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,
4 Division 26 (Construction and Operation Rules for Facilities). The conditions referenced in
5 this order, or that are added to the site certificate by this order, include conditions based on
6 representations in the request for amendment and the supporting record. The Council deems
7 these representations to be binding commitments made by the certificate holder. Also
8 included are conditions Council finds necessary to ensure compliance with the siting
9 standards of OAR Chapter 345, Divisions 22 and 24, or to protect public health and safety.

10 In addition to all other conditions referenced or included in this order, the site
11 certificate holder is subject to all conditions and requirements contained in the rules of the
12 Council and in local ordinances and state law in effect on the date the amended site certificate
13 is executed.¹¹ Under ORS 469.401(2), upon a clear showing of a significant threat to the
14 public health, safety or the environment that requires application of later-adopted laws or
15 rules, the Council may require compliance with such later-adopted laws or rules.

16 The Council recognizes that many specific tasks related to the design, construction,
17 operation and retirement of the facility will be undertaken by the certificate holder's agents or
18 contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents and
19 contractors comply with all provisions of the site certificate.

VII. GENERAL CONCLUSION

20 The proposed amendment would extend the construction beginning and completion
21 dates for the KGF. The Council adopts revisions to Conditions 2, 5, 8, 11, 13 through 17, 20
22 through 26, 28, 29, 32, 38, 42, 43, 46, 47 and 64. The Council removes Conditions 19 and 27.

23 Based on the findings and conclusions discussed above regarding the proposed
24 amendment, the Council makes the following findings:

- 25 1. The proposed Amendment #1 complies with the requirements of the Oregon
26 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to
27 469.619.
- 28 2. The proposed Amendment #1 complies with the applicable standards adopted by
29 the Council pursuant to ORS 469.501.
- 30 3. The proposed Amendment #1 complies with all other Oregon statutes and
31 administrative rules applicable to the amendment of the site certificate for the KGF
32 that are within the Council's jurisdiction.

33 Accordingly, the Council finds that the facility complies with the General Standard of
34 Review (OAR 345-022-0000). The Council concludes, based on a preponderance of the
35 evidence on the record, that the site certificate may be amended as requested by the certificate
36 holder subject to the revisions recommended by the Department and set forth below.

¹¹ With regard to land use, the applicable local criteria are those in effect on the date the certificate holder submitted the request for amendment.

1. The Department's Recommended Revisions

1 New text proposed by the Department is shown below with single underline. New text
2 proposed by KG with concurrence by the Department is shown with double underline.
3 Deletions are shown with a strikethrough.

Revision 1

4 *Page 1, lines 6-13:*

5 The findings of fact, reasoning and conclusions of law underlying the terms and conditions of
6 this site certificate are set forth in the following documents, incorporated herein by this
7 reference: (a) the Council's Final Order in the Matter of the Application for a Site Certificate
8 for the Proposed Klamath Generation Facility ("Final Order on the Application") issued on
9 September 27, 2005, and (b) the Council's Final Order on Amendment #1. [Amendment #1]

10 In interpreting this site certificate, any ambiguity will be clarified by reference to the
11 following, in order of priority: (1) this First Amended sSite eCertificate, (2) the Final Order on
12 Amendment #1, (23) the Final Order on the Application and ~~and~~ (34) the record of the
13 proceedings that led to the Final Orders on the Application and Amendment #1. [Amendment
14 #1]

Explanation

15 This revision adds a reference in the site certificate to the findings of fact, reasoning
16 and conclusions in support of the present amendment. The revision establishes the order of
17 priority in which the underlying documents should be considered in resolving any ambiguity.
18 The parenthetical reference at the end of the paragraph follows standard practice and provides
19 a historical reference of when these changes were made to the site certificate.

Revision 2

20 *Page 1, lines 24-30:*

21 3. This site certificate does not address, and is not binding with respect to, matters that were
22 not addressed in the Council's Final Orders on the Application and Amendment #1. These
23 matters include, but are not limited to: building code compliance, wage, hour and other
24 labor regulations, local government fees and charges and other design or operational
25 issues that do not relate to siting the facility (ORS 469.401(4)) and permits issued under
26 statutes and rules for which the decision on compliance has been delegated by the federal
27 government to a state agency other than the Council. ORS 469.503(3). [Amendment #1]

Explanation

28 The revision includes the Final Order on Amendment #1 in the scope of matters
29 addressed in the site certificate.

Revision 3

30 *At page 6, lines 31-33:*

31 (2) OAR 345-027-0020(2): Except as provided in OAR 345-027-0023(6), before beginning
32 construction, the ~~The~~ certificate holder shall submit to the Office of Energy a legal
33 description of the site to the Department of Energy within 90 days after beginning
34 operation of the facility. The legal description required by this rule means a description of
35 metes and bounds or a description of the site by reference to a map and geographic data

1 that clearly and specifically identifies the outer boundaries that contain all parts of the
2 facility. [Amendment #1]

Explanation

3 This revision modifies Condition 2 to conform to mandatory condition OAR 345-027-
4 0020(2) as revised by the Council effective May 15, 2007.

Revision 4

5 *Page 7, lines 10-22:*

6 (5) OAR 345-027-0020(5): Except as necessary for the initial survey or as otherwise allowed
7 for wind energy facilities, transmission lines or pipelines under this section, the certificate
8 holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing
9 on any part of the site until the certificate holder has construction rights on all parts of the
10 site. For the purpose of this rule, “construction rights” means the legal right to engage in
11 construction activities. For wind energy facilities, transmission lines or pipelines, if the
12 certificate holder does not have construction rights on all parts of the site, the certificate
13 holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a
14 clearing on a part of the site if the certificate holder has construction rights on that part of
15 the site and:

16 ~~—(a) The certificate holder has construction rights on that part of the site; and~~

17 (ba) The certificate holder would construct and operate part of the facility on that part
18 of the site even if a change in the planned route of ~~the~~ transmission line or pipeline
19 occurs during the certificate holder’s negotiations to acquire construction rights on another
20 part of the site; ~~or~~

21 (b) The certificate holder would construct and operate part of a wind energy facility
22 on that part of the site even if other parts of the facility were modified by amendment of
23 the site certificate or were not built.

24 [Amendment #1]

Explanation

25 This revision modifies Condition 5 to conform to mandatory condition OAR 345-027-
26 0020(5) as revised by the Council effective May 15, 2007.

Revision 5

27 *Page 7, lines 34-40:*

28 (8) OAR 345-027-0020(8): Before beginning construction of the facility, the certificate holder
29 shall submit to the State of Oregon, through the Council, a bond or letter of credit, in a
30 form and amount satisfactory to the Council, ~~in an amount specified in the site certificate~~
31 to restore the site to a useful, non-hazardous condition. The certificate holder shall
32 maintain a bond or letter of credit in effect at all times until the facility has been retired.
33 The Council may specify different amounts for the bond or letter of credit during
34 construction and during operation of the facility. (*See Condition (64).*) [Amendment #1]

Explanation

35 This revision modifies Condition 8 to conform to mandatory condition OAR 345-027-
36 0020(8) as revised by the Council effective May 15, 2007.

Revision 6

1 *Page 8, lines 6-11:*

2 (11) OAR 345-027-0020(11): Upon completion of construction, the certificate holder shall
3 restore vegetation to the extent practicable and shall landscape ~~portions of the site~~ all areas
4 disturbed by construction in a manner compatible with the surroundings and proposed use.
5 Upon completion of construction, the certificate holder shall ~~dispose of~~ remove all
6 temporary structures not required for facility operation and dispose of all timber, brush,
7 refuse and flammable or combustible material resulting from clearing of land and
8 construction of the facility. [Amendment #1]

Explanation

9 This revision modifies Condition 11 to conform to mandatory condition OAR 345-
10 027-0020(11) as revised by the Council effective May 15, 2007.

Revision 7

11 *Page 8, lines 17-23:*

12 (13) OAR 345-027-0020(13): The certificate holder shall notify the ~~Office of~~
13 Energy Department, the State Building Codes Division and the Department of Geology
14 and Mineral Industries promptly if site investigations or trenching reveal that conditions in
15 the foundation rocks differ significantly from those described in the application for a site
16 certificate. After the ~~Office~~ Department receives the notice, the Council may require the
17 certificate holder to consult with the Department of Geology and Mineral Industries and
18 the Building Codes Division and to propose mitigation actions. [Amendment #1]

Explanation

19 This revision modifies Condition 13 to conform to mandatory condition OAR 345-
20 027-0020(13) as revised by the Council effective May 15, 2007.

Revision 8

21 *Page 8, lines 24-27:*

22 (14) OAR 345-027-0020(14): The certificate holder shall notify the ~~Office~~ Department, the
23 State Building Codes Division and the Department of Geology and Mineral Industries
24 promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in
25 the vicinity of the site. [Amendment #1]

Explanation

26 This revision modifies Condition 14 to conform to mandatory condition OAR 345-
27 027-0020(14) as revised by the Council effective May 15, 2007.

Revision 9

28 *Page 8, lines 28-31:*

29 (15) OAR 345-027-0020(15): Before any transfer of ownership of the facility or ownership of
30 the site certificate holder, the certificate holder shall inform the ~~Office of~~
31 Energy Department of the proposed new owners. The requirements of OAR 345-027-0100
32 apply to any transfer of ownership that requires a transfer of the site certificate.
33 [Amendment #1]

Explanation

1 This revision modifies Condition 15 to conform to mandatory condition OAR 345-
2 027-0020(15) as revised by the Council effective May 15, 2007.

Revision 10

3 *Page 8, lines 32-43, and page 9, lines 1-4:*

4 (16) OAR 345-027-0020(16): If the Council finds that the certificate holder has permanently
5 ceased construction or operation of the facility without retiring the facility according to a
6 final retirement plan approved by the Council, as described in OAR 345-027-0110, the
7 Council shall notify the certificate holder and request that the certificate holder submit a
8 proposed final retirement plan to the Office within a reasonable time not to exceed 90
9 days. If the certificate holder does not submit a proposed final retirement plan by the
10 specified date, the Council may direct the ~~Office~~Department to prepare a proposed a final
11 retirement plan for the Council’s approval. Upon the Council’s approval of the final
12 retirement plan, the Council may draw on the bond or letter of credit described in section
13 (8) to restore the site to a useful, non-hazardous condition according to the final retirement
14 plan, in addition to any penalties the Council may impose under OAR Chapter 345,
15 Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual
16 cost of retirement, the certificate holder shall pay any additional cost necessary to restore
17 the site to a useful, non-hazardous condition. After completion of site restoration, the
18 Council shall issue an order to terminate the site certificate if the Council finds that the
19 facility has been retired according to the approved final retirement plan. [Amendment #1]

Explanation

20 This revision modifies Condition 16 to conform to mandatory condition OAR 345-
21 027-0020(16) as revised by the Council effective May 15, 2007.

Revision 11

22 *Page 9, lines 5-7:*

23 (17) OAR 345-027-0023(2): If the energy facility or related or supporting facility is a natural
24 gas pipeline, the certificate holder shall submit to the ~~Office~~Department copies of all
25 incident reports involving the pipeline required under 49 CFR §191.15.⁺ [Amendment #1]

Explanation

26 This revision modifies Condition 17 to conform to site specific condition OAR 345-
27 027-0023(2) as revised by the Council effective May 15, 2007. The revision deletes the
28 footnote text (“The PUC has advised that the reference in OAR 345-027-0023(2) to 49 CFR
29 §192.709 is in error. The correct reference is 49 CFR §191.15.”), which is no longer
30 necessary due to the revision of the Council rule.

Revision 12

31 *Page 9, lines 15-19:*

32 (19) ~~OAR 345-027-0023(4): If the energy facility or related or supporting facility is a~~
33 ~~transmission line, the certificate holder shall restore the reception of radio and television at~~
34 ~~residences and commercial establishments in the primary reception area to the level~~
35 ~~present prior to operations of the transmission line, at no cost to residents experiencing~~
36 ~~interference resulting from the transmission line.~~ [Condition removed by Amendment #1]

Explanation

1 This revision removes Condition 19 to conform to the Council’s revision of OAR 345-
2 027-0023 effective May 15, 2007.

Revision 13

3 *Page 9, lines 20-28:*

4 (20) OAR 345-027-0023(54): If the facility includes any ~~high-voltage~~ transmission line under
5 Council jurisdiction:

6 (a) The certificate holder shall design, construct and operate the transmission line in
7 accordance with the requirements of the National Electrical Safety Code (American
8 National Standards Institute, Section C2, 1997 Edition); and

9 (b) The certificate holder shall develop and implement a program that provides
10 reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or
11 structures of a permanent nature that could become inadvertently charged with electricity
12 are grounded or bonded throughout the life of the line.

13 [Amendment #1]

Explanation

14 This revision modifies Condition 20 to conform to site specific condition OAR 345-
15 027-0023 as revised by the Council effective May 15, 2007.

Revision 14

16 *Page 9, lines 29-39:*

17 (21) OAR 345-027-0023(65): If the proposed energy facility is a pipeline or a transmission
18 line or has, as a related or supporting facility, a pipeline or transmission line, the Council
19 shall specify an approved corridor in the site certificate and shall allow the certificate
20 holder to construct the pipeline or transmission line anywhere within the corridor, subject
21 to the conditions of the site certificate. If the applicant has analyzed more than one
22 corridor in its application for a site certificate, the Council may, subject to the Council’s
23 standards, approve more than one corridor. ~~Before beginning operation of the facility, the~~
24 ~~certificate holder shall submit to the Office a legal description of the permanent right of-~~
25 ~~way where the applicant has built the pipeline or transmission line within an approved~~
26 ~~corridor. The site of the pipeline or transmission line subject to the site certificate is the~~
27 ~~area within the permanent right of way.~~ [Amendment #1]

Explanation

28 This revision modifies Condition 21 to conform to site specific condition OAR 345-
29 027-0023(5) as revised by the Council effective May 15, 2007.

Revision 15

30 *Page 10, lines 1-3:*

31 (22) ~~OAR 345-027-0023(8): If the facility is a base load gas plant, the~~ The certificate holder
32 shall submit a written design information report to the ~~Office~~ Department, as described in
33 OAR 345-024-0550, before beginning construction. [Amendment #1]

Explanation

34 This revision modifies Condition 22. The Council amended OAR 345-027-0023,
35 effective May 15, 2007, to eliminate former section (8). This condition is still appropriate and

1 required under Condition 23, discussed below. The Council modified the Department's
2 recommendation by changing "Office" to "Department."

Revision 16

3 *Page 10, lines 4-8:*

4 (23) OAR 345-027-0023(417): If the facility is subject to a carbon dioxide emissions standard
5 adopted by the Council or enacted by statute, the Council shall include in the site
6 certificate appropriate conditions as described in OAR 345-024-0550, OAR 345-024-
7 0560, OAR 345-024-0590, OAR 345-024-0600, OAR 345-024-0620, OAR 345-024-0630
8 and OAR 345-024-0710. [Amendment #1]

Explanation

9 This revision modifies Condition 23 to conform to site specific condition OAR 345-
10 027-0023(7) as revised by the Council effective May 15, 2007.

Revision 17

11 *Page 10, lines 9-25:*

12 (24) OAR 345-027-0028: The following general monitoring conditions apply:

13 (a) The certificate holder shall consult with affected state agencies, local governments
14 and tribes and shall develop specific monitoring programs for impacts to resources
15 protected by the standards of ~~divisions~~ Divisions 22 and 24 of this chapter and resources
16 addressed by applicable statutes, administrative rules and local ordinances. The certificate
17 holder must submit the monitoring programs to the ~~Office~~ Department of Energy and
18 receive ~~Office~~ Department approval before beginning construction or, as appropriate,
19 operation of the facility.

20 (b) The certificate holder shall implement the approved monitoring programs
21 described in section (a) and monitoring programs required by permitting agencies and
22 local governments.

23 (c) For each monitoring program described in sections (a) and (b), the certificate
24 holder shall have quality assurance measures approved by the ~~Office~~ Department before
25 beginning construction or, as appropriate, before beginning commercial operation.

26 (d) If the certificate holder becomes aware of a significant environmental change or
27 impact attributable to the facility, the certificate holder shall, as soon as possible, submit a
28 written report to the ~~Office~~ Department describing the impact on the facility and any
29 affected site certificate conditions.

30 [Amendment #1]

Explanation

31 This revision modifies Condition 24 to conform to the Council's amendment of OAR
32 345-027-0028 effective May 15, 2007.

Revision 18

33 *Page 10, lines 26-37:*

34 (25) OAR 345-026-0048: Following receipt of the site certificate, the certificate holder shall
35 implement a plan that verifies compliance with all site certificate terms and conditions and
36 applicable statutes and rules. As a part of the compliance plan, to verify compliance with
37 the requirement to begin construction by the date specified in the site certificate, the
38 certificate holder shall report promptly to the ~~Office~~ Department of Energy when

1 construction begins. Construction is defined in OAR 345-001-0010. In reporting the
2 beginning of construction, the certificate holder shall describe all work on the site
3 performed before beginning construction, including work performed before the Council
4 issued the site certificate, and shall state the cost of that work. For the purpose of this
5 exhibit, “work on the site” means any work within a site or corridor, other than surveying,
6 exploration or other activities to define or characterize the site or corridor. The certificate
7 holder shall document the compliance plan and maintain it for inspection by the ~~Office of~~
8 Energy Department or the Council. [Amendment #1]

Explanation

9 This revision modifies Condition 25 to conform to the Council’s amendment of OAR
10 345-026-0048 effective May 15, 2007.

Revision 19

11 *Page 10, lines 38, through page 12, line 3:*

12 (26) OAR 345-026-0080: The certificate holder shall report according to the following
13 requirements:

14 (a) General reporting obligation for ~~non-nuclear~~ energy facilities under construction or
15 operating:

16 (i) Within six months after beginning construction, and every six months
17 thereafter during construction of the energy facility and related or supporting facilities, the
18 certificate holder shall submit a semiannual construction progress report to the
19 ~~Council~~ Department of Energy. In each construction progress report, the certificate holder
20 shall describe any significant changes to major milestones for construction. The certificate
21 holder shall include such information related to construction as specified in the site
22 certificate. When the reporting date coincides, the certificate holder may include the
23 construction progress report within the annual report described in this rule;

24 (ii) By April 30 of each year after beginning construction, ~~The~~ the certificate
25 holder shall, ~~within 120 days after the end of each calendar year after beginning~~
26 ~~construction,~~ submit an annual report to the ~~Council~~ Department addressing the subjects
27 listed in this rule. The Council ~~secretary~~ Secretary and the certificate holder may, by
28 mutual agreement, change the reporting date.

29 (iii) To the extent that information required by this rule is contained in reports the
30 certificate holder submits to other state, federal or local agencies, the certificate holder
31 may submit excerpts from such other reports to satisfy this rule. The Council reserves the
32 right to request full copies of such excerpted reports.

33 (b) In the annual report, the certificate holder shall include the following information
34 for the calendar year preceding the date of the report:

35 (i) Facility Status: An overview of site conditions, the status of facilities under
36 construction, and a summary of the operating experience of facilities that are in operation.
37 In this section of the annual report, the certificate holder shall describe any unusual events,
38 such as earthquakes, extraordinary windstorms, major accidents or the like that occurred
39 during the year and that had a significant adverse impact on the facility;

40 (ii) Reliability and Efficiency of Power Production: For electric power plants;
41 ~~_____ (A) The~~ the plant availability and capacity factors for the reporting year. ~~If~~ The
42 certificate holder shall describe any equipment failures or plant breakdowns had a
43 significant impact on those factors, the certificate holder shall describe them and its plans
44 to minimize or eliminate ~~their~~ the recurrence of such problems;

45 (iii) ~~(B)~~ Fuel Use: For thermal power plants:

1 _____ (A) The efficiency with which the power plant converts fuel into electric
2 energy. If the fuel chargeable to power heat rate was evaluated when the facility was sited,
3 the certificate holder shall calculate efficiency using the same formula and assumptions,
4 but using actual data; and

5 (B) The facility's annual hours of operation by fuel type and, every five
6 years after beginning operation, a summary of the annual hours of operation by fuel type
7 as described in OAR 345-024-0590(5);

8 (iii) Status of Surety Information: Documentation demonstrating that bonds or
9 letters of credit as described in the site certificate are in full force and effect and will
10 remain in full force and effect for the term of the next reporting period;

11 _____ (iv) Industry Trends: A discussion of any significant industry trends that may
12 affect the operations of the facility;

13 (v) Monitoring Report: A list and description of all significant monitoring and
14 mitigation activities performed during the previous year in accordance with site certificate
15 terms and conditions, a summary of the results of those activities, and a discussion of any
16 significant changes to any monitoring or mitigation program, including the reason for any
17 such changes;

18 (vi) Compliance Report: A description of all instances of noncompliance with a
19 site certificate condition. For ease of review, the certificate holder shall, in this section of
20 the report, use numbered subparagraphs corresponding to the applicable sections of the
21 site certificate;

22 (vii) Facility Modification Report: A summary of changes to the facility that the
23 certificate holder has determined do not require a site certificate amendment in accordance
24 with OAR 345-027-0050; and

25 (viii) Nongenerating Facility Carbon Dioxide Emissions: For nongenerating
26 facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual
27 hours of operation of the carbon dioxide emitting equipment as described in OAR 345-
28 024-0630(4).

29 [Amendment #1]

Explanation

30 This revision modifies Condition 26 to conform to the Council's amendment of OAR
31 345-026-0080 effective May 15, 2007.

Revision 20

32 *Page 12, lines 4-7:*

33 (27) ~~OAR 345-026-0100: The certificate holder shall promptly notify the Office of Energy of~~
34 ~~any changes in major milestones for construction, decommissioning, operation or~~
35 ~~retirement schedules. Major milestones are those identified by the certificate holder in its~~
36 ~~construction, retirement or decommissioning plan. [Condition removed by Amendment #1]~~

Explanation

37 This revision removes Condition 27 to conform to the Council's repeal of OAR 345-
38 026-0100 effective May 15, 2007.

Revision 21

39 *Page 12, lines 8-14:*

40 (28) ~~OAR 345-026-0105: The certificate holder and the Office~~Department ~~of Energy shall~~
41 ~~exchange copies of all correspondence or summaries of correspondence related to~~

1 compliance with statutes, rules and local ordinances on which the Council determined
2 compliance, except for material withheld from public disclosure under state or federal law
3 or under Council rules. The certificate holder may submit abstracts of reports in place of
4 full reports; however, the certificate holder shall provide full copies of abstracted reports
5 and any summarized correspondence at the request of the ~~Office of Energy~~Department.
6 [Amendment #1]

Explanation

7 This revision modifies Condition 28 to conform to the Council's amendment of OAR
8 345-026-0105 effective May 15, 2007.

Revision 22

9 *Page 12, lines 15-21:*

- 10 (29) OAR 345-026-0170: The certificate holder shall notify the ~~Office~~Department of Energy
11 within 72 hours of any occurrence involving the facility if:
12 (a) There is an attempt by anyone to interfere with its safe operation;
13 (b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-
14 caused event such as a fire or explosion affects or threatens to affect the public health and
15 safety or the environment; or
16 (c) There is any fatal injury at the facility.

17 [Amendment #1]

Explanation

18 This revision modifies Condition 29 to conform to the Council's amendment of OAR
19 345-026-0170 effective May 15, 2007.

Revision 23

20 *Page 12, lines 34-40, and page 13, lines 1-6:*

- 21 (32) For the purposes of the site certificate, "monetary path payment requirement" means the
22 amount of offset funds determined pursuant to OAR 345-024-0550, -0560, -0590 and
23 -0600 and the amount of the selection and contracting funds that the certificate holder
24 must disburse to The Climate Trust, as the qualified organization, pursuant to OAR 345-
25 024-0710 and the site certificate. The certificate holder shall calculate the monetary path
26 payment requirement using an offset fund rate of ~~\$0.85~~\$1.27 per ton of carbon dioxide in
27 20057 dollars.
28 (a) The certificate holder shall calculate 20057 dollars using the Index described in
29 Condition (64).
30 (b) The certificate holder shall increase the amount of the letter of credit described in
31 Condition (38) by the percentage increase in the Index. The certificate holder shall index
32 the funds from the date of the Council's approval of the site certificate to the date of
33 disbursement of funds to The Climate Trust.

34 [Amendment #1]

Explanation

35 This revision modifies Condition 32 to increase the monetary offset rate from \$0.85
36 per ton to \$1.27 per ton in the current year's dollars to conform to the Council's amendment
37 of OAR 345-024-0580 effective May 15, 2007.

Revision 24

Page 14, lines 1-14:

(38) Before beginning construction of the facility, the certificate holder shall submit to The Climate Trust a letter of credit in the amount of the offset funds of the monetary path payment requirement (~~in 2005 dollars~~) as determined under Condition (32).

(a) The certificate holder shall use a form of letter of credit that is substantially in the form of Appendix B to the MOU described in Condition (36). At the request of the certificate holder, the Council may approve a different form of a letter of credit without an amendment of the site certificate.

(b) The certificate holder shall use an issuer of the letter of credit approved by the Council.

(c) The certificate holder shall maintain the letter of credit in effect until the certificate holder has disbursed the full amount of the offset funds to The Climate Trust. The certificate holder may reduce the amount of the letter of credit commensurate with payments it makes to The Climate Trust. The letter of credit must not be subject to revocation before disbursement of the full amount of the offset funds.

[Amendment #1]

Explanation

This revision modifies Condition 38 to reflect the revision of Condition 32, which expresses the monetary path payment requirement in 2007 dollars.

Revision 25

Page 15, lines 32-44, and page 16, lines 1-3:

(42) Based on the data from the Year One Tests described in Condition (41), the certificate holder shall calculate an adjusted monetary path payment. The certificate holder shall submit its calculations to the Department for verification. If the adjusted amount exceeds the amount of the letter of credit provided according to Condition (38) before beginning construction, the certificate holder shall fully disburse the excess amount directly to The Climate Trust within 30 days of the Department’s verification of the calculations.

(a) The certificate holder shall include the appropriate calculations of the adjusted monetary path payment with its reports of the results of the Year One Tests required under Condition (41).

(b) For calculating the adjusted monetary path payment, the certificate holder shall use an offset fund rate of ~~\$0.85~~ \$1.27 per ton of carbon dioxide (in ~~2005~~ 2007 dollars) and shall calculate contracting and selecting funds based on 20 percent of the first \$250,000 in offset funds and 4.286 percent of any offset funds in excess of \$250,000 (in ~~2005~~ 2007 dollars).

(c) In no case shall the certificate holder diminish the value of the letter of credit it provided before beginning construction or receive a refund from The Climate Trust based on the calculations made using the Year One Capacities and the Year One Heat Rates.

[Amendment #1]

Explanation

This revision modifies Condition 42 to increase the monetary offset rate from \$0.85 per ton to \$1.27 per ton to conform to the Council’s amendment of OAR 345-024-0580 effective May 15, 2007.

Revision 26

Page 16, lines 4-37:

(43) The certificate holder shall use the Year One Capacity-2 and Year One Heat Rate-2 that it reports for the facility, as described in Condition (41)(b), to calculate whether it owes supplemental monetary path payments due to increased hours that it uses power augmentation.

(a) Each five years after beginning commercial operation of the facility (five-year reporting period), the certificate holder shall report to the Department the annual average hours the facility operated with power augmentation during that five-year reporting period, as required under OAR 345-024-0590(6). The certificate holder shall submit five-year reports to the Department within 30 days after the anniversary date of beginning commercial operation of the facility.

(b) If the Department determines that the facility exceeded the projected net total carbon dioxide emissions calculated under Conditions (33), (34) and (41), prorated for five years, during any five-year reporting period described in subsection (a), the certificate holder shall offset excess emissions for the specific reporting period according to paragraph (i) and shall offset the estimated future excess emissions according to paragraph (ii), as follows:

(i) In determining whether there have been excess carbon dioxide emissions that the certificate holder must offset for a five-year reporting period, the Department shall apply OAR 345-024-0600(4)(a). The certificate holder shall pay for the excess emissions at \$~~0.85~~1.27 per ton of carbon dioxide emissions (in 20057 dollars). The Department shall notify the certificate holder and The Climate Trust of the amount of supplemental payment required to offset excess emissions.

(ii) The Department shall calculate estimated future excess emissions for the remaining period of the deemed 30-year life of the facility using the parameters specified in OAR 345-024-0600(4)(b). The certificate holder shall pay for the estimated excess emissions at \$~~0.85~~1.27 per ton of carbon dioxide (in 20057 dollars). The Department shall notify the certificate holder of the amount of supplemental payment required to offset future excess emissions.

(iii) The certificate holder shall offset excess emissions identified in paragraphs (i) and (ii) using the monetary path as described in OAR 345-024-0710. The certificate holder shall pay selection and contracting funds of 20 percent of the first \$250,000 in offset funds and 4.286 percent of any offset funds in excess of \$250,000 (in 20057 dollars).

(c) The certificate holder shall disburse the supplemental selection and contracting funds and supplemental offset funds to The Climate Trust within 30 days after notification by the Department of the amount that the certificate holder owes.

[Amendment #1]

Explanation

This revision modifies Condition 43 to increase the monetary offset rate from \$0.85 per ton to \$1.27 per ton in current dollars to conform to the Council’s amendment of OAR 345-024-0580 effective May 15, 2007.

Revision 27

Page 17, lines 12-16:

(46) The certificate holder shall begin construction of the facility ~~within two years after the effective date of the site certificate~~by November 16, 2009. Under OAR 345-015-0085(9),

1 ~~a site certificate is effective upon execution by the Council Chair and the applicant. The~~
2 ~~Council may grant an extension of the deadline to begin construction in accordance with~~
3 ~~OAR 345-027-0030 or any successor rule in effect at the time the request for extension is~~
4 ~~submitted.~~

5 [Amendment #1]

6 Explanation

7 This revision modifies Condition 46 to extend the deadline for beginning construction
8 to November 16, 2009. This is a two-year extension as requested by the certificate holder in
9 Amendment #1. Because the effective date of the original site certificate is known, the
10 revision states the deadline by date, rather than by reference to the effective date of the site
certificate.

11 Revision 28

12 *Page 17, lines 17-25:*

13 (47) The certificate holder shall complete construction of the facility ~~within five years after the~~
14 ~~effective date of the site certificate~~ by November 16, 2012. Construction is complete when:
15 1) the facility is substantially complete as defined by the certificate holder's construction
16 contract documents, 2) acceptance testing has been satisfactorily completed and 3) the
17 energy facility is ready to begin continuous operation consistent with the site certificate.
18 The certificate holder shall promptly notify the Department of the date of completion of
19 construction. The Council may grant an extension of the deadline for completing
20 construction in accordance with OAR 345-027-0030 or any successor rule in effect at the
time the request for extension is submitted.

21 [Amendment #1]

22 Explanation

23 This revision modifies Condition 47 to extend the deadline for completing
24 construction to November 16, 2012. This is a two-year extension as requested by the
25 certificate holder in Amendment #1. Because the effective date of the original site certificate
26 is known, the revision states the deadline by date, rather than by reference to the effective date
of the site certificate.

27 Revision 29

28 *Page 19, lines 37-43, and page 20, lines 1-11:*

29 (64) Before beginning construction, the certificate holder shall submit to the State of Oregon
30 through the Council a bond or letter of credit in the amount of \$6.24.160 million (in 20056
31 dollars) naming the State of Oregon, acting by and through the Council, as beneficiary or
payee.

32 (a) The calculation of 20056 dollars shall be made using the U.S. Gross Domestic
33 Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of
34 Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor
35 agency (the "Index"). The certificate holder shall increase the amount of the bond or letter
36 of credit amount annually by the percentage increase in the Index and shall pro-rate the
37 amount within the year to the date of retirement. If at any time the Index is no longer
38 published, the Council shall select a comparable calculation of 20056 dollars.

39 (b) The certificate holder shall use a form of bond or letter of credit approved by the
40 Council.

1 (c) The certificate holder shall use an issuer of the bond or letter of credit approved by
2 the Council.

3 (d) The certificate holder shall describe the status of the bond or letter of credit in the
4 annual report submitted to the Council under Condition (26)(b).

5 (e) The bond or letter of credit shall not be subject to revocation or reduction before
6 retirement of the facility site.

7 [Amendment #1]

Explanation

8 This revision modifies Condition 64 to reduce the financial assurance amount to
9 \$4.160 million in 2006 dollars to reflect the recalculation of the site restoration cost estimate
10 as described herein.

VIII. ORDER

11 The Council approves Amendment #1 and issues an amended site certificate for the
12 Klamath Generation Facility subject to the terms and conditions set forth above.

Issued this 21st day of September, 2007.

THE OREGON ENERGY FACILITY SITING COUNCIL

By: _____

David Ripma, Chair
Oregon Energy Facility Siting Council

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.