

1
2 **B. Description of the Facility**

3 The Council granted the Site Certificate for the facility on November 8, 2002, and
4 amended the Site Certificate on December 5, 2003. It issued the Final Orders for the Site
5 Certificate and the First Amended Site Certificates (“Final Orders”) on the same dates,
6 respectively.

7
8 The facility is a 560 megawatt (“MW”) natural-gas-fired, combined-cycle generating
9 facility. The facility will be located in Columbia County, Oregon, about seven miles by
10 road northeast of the City of Clatskanie. PGE has not begun construction of the facility.

11
12 **II. Description of the Proposed Amendment**

13 **1. Extension of Construction Commencement and Completion Dates.**

14 Pursuant to Section F.1(5) of the First Amended Site Certificate, the Certificate Holder is
15 required to begin construction of the energy facility by November 8, 2004. Pursuant to
16 Condition F.1(6), the Certificate Holder must complete construction of the facility by
17 May 8, 2007. The Certificate Holder requested that the deadline to begin construction of
18 the facility be extended to November 8, 2006 and that the deadline to complete
19 construction of the facility be extended to May 8, 2009.

20
21 **2. Optional Energy Facility Site Layout.**

22 PGE revised its amendment request on July 1, 2004, to incorporate an optional layout for
23 the energy facility site plan, Figure B-1. The optional layout for Figure B-1 was identified
24 as “Alternative-1, Preliminary Conceptual Design” in Attachment 5 to its letter of July 1,
25 2004. The option layout excludes from the energy facility site an area 180 feet wide. It
26 includes an existing road across the energy facility site.

27
28 The optional layout would permit PGE to develop Phase 1 of the facility without using any
29 portion of the 180-foot wide strip. The proposed amendment request would also give PGE
30 the option of deciding before beginning construction of Phase 2 about whether the 180-
31 foot strip would be included in that phase.

32
33 The Council has previously approved the entire area of the energy facility site in the Site
34 Certificate. This amendment provides an option of excluding part of the energy facility
35 site from development, but it does not enlarge move the approved energy facility site.
36 PGE noted that it might need to request further amendments before beginning construction
37 of Phase 2, depending on the final site layout and equipment it chooses, but it is too early
38 to anticipate what additional amendments it might request

39
40 **3. Columbia County’s Riparian Corridors, Wetlands, Water Quality, and Fish**
41 **and Wildlife Habitat Overlay Zone (“Riparian Overlay Zone”).**

42 At the request of the Department of Energy and the Department of Justice, the Certificate
43 Holder proposed amendments to two conditions to align them more closely with the
44 standards in the new Riparian Overlay Zone. It proposed to amend Condition D.8(12) to
45 make an explicit reference to the appropriate section of the County Zoning Ordinance and

1 to amend to Condition D.12(16) to clarify when vegetation clearing in the Riparian Zone
2 would be permitted.

3
4 **III. Procedural History**

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

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

7 PGE submitted the Request for Second Amendment to the Site Certificate for the Port
8 Westward Generating Project on May 7, 2004. It amended its request on July 1, and
9 August 10, 2004, and provided additional information in support of its amendment
10 requests.

11
12 **2. Extended Review of Amendment Request**

13 In a letter dated May 19, 2004, PGE requested that the Department approve an extended
14 review of the Certificate Holder's Request for Second Amendment to the Site Certificate
15 for the Port Westward Generating Project, pursuant to OAR 345-027-0070(2)(a). On
16 May 20, 2004, the Department extended the notice and review of the amendment request
17 while matters before the Public Utility Commission progressed and while PGE prepared
18 responses to questions that the Department raised in its initial review of the amendment
19 request.

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

22 The Department, pursuant to OAR 345-027-0070(1)(a), identified potentially affected
23 agencies, local governments, and tribes and asked them to review the request for
24 amendment. The Department mailed a copy of the amendment request along with a review
25 report form on July 2, 2004, to those agencies, local governments and tribes and asked
26 them to reply by July 26, 2004. The Department sent the request to the following
27 agencies, local governments and tribes:

28
29 Department of Geology and Mineral Industries Department of Fish and Wildlife
30 Department of State Lands Department of Agriculture
31 Water Resources Department Department of Parks and Recreation
32 State Historic Preservation Office Department of Environmental Quality
33 Office of State Fire Marshall Public Utilities Commission
34 Oregon Building Codes Division Department of Forestry
35 Northwest Power and Conservation Council Department of Transportation
36 Dept. of Land Conservation and Development Department of Aviation
37 City of Astoria City of Rainier
38 City of Saint Helens City of Clatskanie
39 City of Columbia City Columbia County
40 Confederated Tribes of the Grand Ronde Clatsop County
41 Confederated Tribes of the Warm Springs Chinook Indian Tribe
42 Confederated Tribes of the Siletz
43

1 **4. Replies**

2 No agency, local government, or tribe stated objections to the requested amendment or
3 recommended conditions.
4

5 **5. Initial Public Notice**

6 On July 2, 2004, the Department mailed a notice of the request for amendment to all
7 persons on the Council's general mailing list and persons on the Council's special mailing
8 list for the Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments
9 to the Department by July 26, 2004.
10

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

12 The Department received a telephone call from Ms. Pat Powell, who stated that she lives
13 adjacent to the transmission line easement between the energy facility site and the
14 Bonneville Power Administration's Allston Substation. She raised questions about the
15 safety of the natural gas line that is also in the easement for the transmission line and about
16 the effect of induced currents on that gas line. She was also concerned about a cedar tree
17 in the easement that she believed might be an endangered plant species. Ms. Powell did
18 not submit written comments.
19

20 The natural gas line is not an energy facility under the Council's jurisdiction. The Site
21 Certificate has conditions in Section E.1.c that relate to the safe construction of the
22 transmission line and induced currents. The Council reviewed threatened, endangered, and
23 sensitive plant species in the analysis area for the facility, including the transmission line
24 corridor between the Project and the Allston Substation, prior to granting the Site
25 Certificate. The Council did not identify a species of cedar in that corridor that was a
26 threatened, endangered, or sensitive species.
27

28 **7. Proposed Order**

29 The Department issued its proposed order on August 10, 2004.
30

31 **8. Public Notice of Proposed Order**

32 On August 10, 2004, the Department mailed a notice of its proposed order to all persons on
33 the Council's general mailing list and persons on the Council's special mailing list for the
34 Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments to the
35 Department by September 13, 2004.
36

37 **9. Comments on the Proposed Order**

38 There were no comments on the proposed order.
39

40 **B. Council Review Steps**

41 **1. Council Notice**

42 The Department mailed the request for amendment and a memo summarizing the request
43 to the Council on July 2, 2004. On August 10, 2004, the Department mailed the proposed
44 order to the Council and to persons who had requested it.
45

46 **2. Council Action on the Amendment Request**

1 On September 24, 2004, the Council took action on the amendment request during its
2 regular meeting in Tigard, Oregon.

3
4 **IV. Proposed Changes to Site Certificate**

5 OAR 345-027-0060(1)(d) requires that a certificate holder must include in a request for an
6 amendment to a Site Certificate “The specific language of the site certificate, including
7 affected conditions, that the certificate holder proposes to change, add or delete by an
8 amendment.”

9
10 **A. Site Certificate Holder’s Proposed Changes**

11 PGE proposed changes to specific conditions of the Site Certificate are shown below with
12 additions double-underlined and deletions shown by strikethrough.

13
14 1. Title Page and Page 1: ~~First~~Second Amended Site Certificate for the Port Westward
15 Generating Project.

16
17 2. Page 1, Section A, Introduction:

18 This site certificate for the Port Westward Generating Project (“PWGP or Project”)
19 is issued and executed in the manner provided by ORS Chapter 469, by and between
20 the State of Oregon (“State”), acting by and through its Energy Facility Siting
21 Council (“Council”), and the Portland General Electric Company (“PGE” or
22 “Certificate Holder”).

23 The findings of fact, reasoning and conclusions of law underlying the terms and
24 conditions of this site certificate are set forth in the following documents, which by
25 this reference are incorporated herein: (a) the Council’s Final Order in the Matter of
26 the Application for a Site Certificate for the Port Westward Generating Project,
27 which the Council granted on November 8, 2002; ~~and~~, (b) the Council’s Final Order
28 in the Matter of the Site Certificate for the Port Westward Generating Project
29 Request for Amendment No. One, which the Council granted on December 5, 2003;
30 ~~[Amendment No. 1]2003; and (c) the Council’s Final Order in the Matter of the Site~~
31 Certificate for the Port Westward Generating Project Request for Amendment No.
32 Two, which the Council granted on _____, 2004. [Amendment No. 2]

33
34 In interpreting this site certificate, any ambiguity shall be clarified by reference to,
35 and in the following priority: this Site Certificate, the record of the proceedings
36 which led to the Final Order, and the Application for a Site Certificate for the Port
37 Westward Generating Project. As used in this Site Certificate, the “application for
38 site certificate” or the “ASC” includes: (a) the Application for a Site Certificate for
39 the Port Westward Generating Project, which the Office of Energy (“Office”) filed
40 on April 11, 2002; ~~and~~ (b) the Certificate Holder’s Request for First Amendment to
41 the Site Certificate for the Port Westward Generating Project, which the Council
42 received on October 25, 2003; ~~[Amendment No. 1]2003; and (c) the Certificate~~
43 Holder’s Request for Second Amendment to the Site Certificate for the Port
44 Westward Generating Project, which the Council received on May 7, 2004.
45 [Amendment No. 2]

1 ***

2
3 **3. Page 8, Section C.2.a. The Energy Facility Site:**

4 The energy facility will be located about seven miles by road northeast of the city of
5 Clatskanie in Columbia County, Oregon. The energy facility site will be located on
6 an approximately 852-acre parcel leased to PGE by the Port of St. Helens in Section
7 15, Township 8 North, Range 4 West, Willamette Meridian. The energy facility site
8 will be fenced and will comprise about 17.5 acres of the larger parcel. ~~[Amendment~~
9 ~~No. 1]~~An alternative configuration of the energy facility site excludes a strip 180 feet
10 wide (50 feet south and 130 feet north of an existing road across the site). Under this
11 alternative, the Certificate Holder could choose to exclude this strip from the energy
12 facility site for Phase 1, if the Certificate Holder develops only Unit 1 or develops
13 Units 1 and 2 in two phases. If the strip is excluded during Phase 1, the Certificate
14 Holder will have to declare in writing to the Office of Energy before beginning
15 construction of Phase 2 whether the energy facility site for Phase 2 will include the
16 180-foot wide strip. [Amendment No. 2]

17 ***

18
19 **4. Page 20, Section D.8, Fish and Wildlife Habitat (12):**

20 The Certificate Holder shall not construct any structure, ~~(other than fences, and~~
21 ~~signs) and the water supply pipeline, within the riparian corridors established under~~
22 Columbia County Zoning Ordinance Section 1172. [Amendment No. 2] within 50 feet
23 of any Class I river, stream or the emergent vegetation adjacent to such a river or
24 stream or within 25 feet of any other rivers, streams, and sloughs or the emergent
25 vegetation adjacent to such a river, stream, or slough.

26
27 **5. Page 21, Section D.8, Fish and Wildlife Habitat (16):**

28 During construction of the transmission line(s) and maintenance of the rights-of-way,
29 the Certificate Holder shall limit clearing of vegetation in riparian areas and wetlands
30 to that needed to prevent contact with the transmission line and to meet clearance
31 standards for safety and transmission line reliability, as provided in the appropriate
32 sections of the National Electrical Code. [Amendment No. 2]

33
34 **6. Page 35, Section F.1, Mandatory Conditions in Site Certificates, Legal**
35 **Description (2):**

36 Before beginning construction of Phase 1 of the energy facility, the Certificate
37 Holder shall submit to the Office a legal description of the site, except as provided in
38 OAR 345-027-0023(6). ~~[Amendment No. 1]~~If the Certificate Holder develops only
39 Unit 1 or develops Units 1 and 2 in two phases, the legal description of the site for
40 purposes of beginning construction of Phase 1 may exclude the 180-foot wide strip
41 (50 feet south and 130 feet north of an existing road) immediately north of Unit 1. If
42 the strip is excluded from the legal description during Phase 1, the Certificate Holder
43 shall submit to the Office, before beginning construction of Phase 2 of the energy
44 facility, a legal description indicating whether the energy facility site for Phase 2 will
45 include the 180-foot wide strip. [Amendment No. 2]

1 7. Page 36, Section F.1, Mandatory Conditions in Site Certificates, Construction Rights
2 on Site (4):

3 Except as necessary for the initial survey or as otherwise allowed for transmission
4 lines or pipelines in this condition, the Certificate Holder shall not begin
5 construction, as defined in OAR 345-001-0010, or create a clearing on any part of the
6 site until the Certificate Holder has construction rights on all parts of the site. For the
7 purpose of this condition, “construction rights” means the legal right to engage in
8 construction activities. For transmission lines or pipelines, if the Certificate Holder
9 does not have construction rights on all parts of the site, the Certificate Holder may
10 nevertheless begin construction or create a clearing on a part of the site if:

11
12 (a) The Certificate Holder has construction rights on that part of the site; and,

13
14 (b) The Certificate Holder would construct and operate part of the facility on
15 that part of the site even if a change in the planned route of the transmission
16 line or pipeline occurs during the Certificate Holder's negotiations to
17 acquire construction rights on another part of the site.
18

19 For purposes of this condition, if the Certificate Holder develops only Unit 1 or
20 develops Units 1 and 2 in phases, the “site” for purposes of beginning construction of
21 Phase 1 may exclude the 180-foot wide strip (50feet south and 130 feet north of an
22 existing road) immediately north of Unit 1. [Amendment No. 2]
23

24 8. Page 36, Section F.1, Mandatory Conditions in Site Certificates, Beginning and
25 Completing Construction (5):

26 The Certificate Holder shall begin construction of the energy facility by November 8,
27 ~~2004,2006~~. Beginning construction of the Port Westward to BPA Allston Substation
28 Transmission Line shall not satisfy this requirement. [Amendment No. 2].

29 ***
30

31 9. Page 36-37, Section F.1, Mandatory Conditions in Site Certificates, Beginning and
32 Completing Construction (6):

33
34 The Certificate Holder shall complete construction of the facility by May 8,
35 ~~2007,2009~~. The completion of construction date is the day by which (1) the facility
36 is substantially complete as defined by the Certificate Holder's construction contract
37 documents; (2) acceptance testing is satisfactorily completed; and, (3) the energy
38 facility is ready to commence continuous operation consistent with the Site
39 Certificate. Completion of construction of the Port Westward to BPA Allston
40 Substation Transmission Line separately shall not satisfy this requirement.
41 [Amendment No. 2]
42

43 **B. Department of Energy’s Conforming Changes**

44 The Council adopts the amendments that PGE requested along with making certain
45 changes to the proposed conditions to simplify and clarify the conditions and to update the
46 Site Certificate. Section B.2, below, restores the condition and adds the proposed change

1 from PGE to ensure the general applicability of the condition. The changes the
2 Department proposed are highlighted.

3
4 **1. Page 8, Section C.2.a. The Energy Facility Site:**

5 The energy facility will be located about seven miles by road northeast of the city
6 of Clatskanie in Columbia County, Oregon. The energy facility site will be located
7 on an approximately 852-acre parcel leased to PGE by the Port of St. Helens in
8 Section 15, Township 8 North, Range 4 West, Willamette Meridian. The energy
9 facility site will be fenced and will comprise about 17.5 acres of the larger parcel.
10 ~~[Amendment No. 1]~~An alternative configuration of the energy facility site excludes a
11 strip 180 feet wide (50 feet south and 130 feet north of an existing road across the
12 site). Under this alternative, the Certificate Holder could choose to exclude this
13 strip from the energy facility site for Phase 1, if the Certificate Holder develops
14 only Unit 1 or develops Units 1 and 2 in two phases. If the strip is excluded during
15 Phase 1, the Certificate Holder ~~will have to~~ shall declare in writing to the
16 ~~Office~~Department of Energy before beginning construction of Phase 2 whether the
17 energy facility site for Phase 2 ~~will~~ includes the 180-foot wide strip. ~~[Amendment~~
18 No. 2]

19 ***

20 **2. Page 20, Section D.8, Fish and Wildlife Habitat (12):**

21 The Council restores the original language of the condition and adds the reference to the
22 Columbia County Zoning Ordinance to the end of the condition. In that way, the original
23 condition continues to apply to the area in the City of Rainier that is not covered by the
24 new County ordinance:

25
26 The Certificate Holder shall not construct any structure, ~~(other than fences, and~~
27 ~~signs)~~ and the water supply pipeline within 50 feet of any Class I river, stream or the
28 emergent vegetation adjacent to such a river or stream or within 25 feet of any other
29 rivers, streams, and sloughs or the emergent vegetation adjacent to such a river,
30 stream, or slough or within the riparian corridors established under Columbia County
31 Zoning Ordinance Section 1172, as appropriate for the local jurisdiction.
32 [Amendment No. 2]

33
34 **3. Page 35, Section F.1, Mandatory Conditions in Site Certificates, Legal**
35 **Description (2):**

36 Before beginning construction of Phase 1 of the energy facility, the Certificate
37 Holder shall submit to the Office a legal description of the site, except as provided
38 in OAR 345-027-0023(6). ~~[Amendment No. 1]~~If the Certificate Holder develops
39 only Unit 1 or develops Units 1 and 2 in two phases, the

40
41 (a) The legal description of the site for purposes of beginning construction of
42 Phase 1 may exclude the 180-foot wide strip (50 feet south and 130 feet
43 north of an existing road) immediately north of Unit-Phase 1.

44
45 (b) The Certificate Holder shall notify the Department in writing if it is
46 exercising the option to exclude the 180-foot wide strip from Phase 1.

1
2 (c) If the Certificate Holder excludes the strip is excluded from the legal
3 description during Phase 1, the Certificate Holder shall submit to the Office,
4 before beginning construction of Phase 2 of the energy facility, a legal
5 description indicating whether the energy facility site for Phase 2 will
6 include the 180-foot wide strip. [Amendment No. 2]
7

8 **4. Page 36, Section F.1, Mandatory Conditions in Site Certificates, Construction Rights**
9 **on Site (4):**

10 Except as necessary for the initial survey or as otherwise allowed for transmission
11 lines or pipelines in this condition, the Certificate Holder shall not begin
12 construction, as defined in OAR 345-001-0010, or create a clearing on any part of the
13 site until the Certificate Holder has construction rights on all parts of the site. For the
14 purpose of this condition, “construction rights” means the legal right to engage in
15 construction activities. For transmission lines or pipelines, if the Certificate Holder
16 does not have construction rights on all parts of the site, the Certificate Holder may
17 nevertheless begin construction or create a clearing on a part of the site if:

18
19 (a) The Certificate Holder has construction rights on that part of the site; and,

20
21 (b) The Certificate Holder would construct and operate part of the facility on
22 that part of the site even if a change in the planned route of the transmission
23 line or pipeline occurs during the Certificate Holder's negotiations to
24 acquire construction rights on another part of the site.
25

26 For purposes of this condition, if the Certificate Holder develops only Unit 1 or
27 develops Units 1 and 2 in phases, the “site” for purposes of beginning construction of
28 Phase 1 may exclude the 180-foot wide strip (50feet south and 130 feet north of an
29 existing road) immediately north of UnitPhase 1. [Amendment No. 2]
30

31 **5. Update**

32 The Council updates the entire Site Certificate by replacing “Office” with “Department” in
33 references to the Oregon Department of Energy and by indicating the appropriate
34 amendment number for changes to conditions.
35

36 **Discussion.** These proposed changes simplify the requested amendments to the Site
37 Certificate and correct an inadvertent change. They do not change the intent as proposed.
38

39 **Conclusion.** The Council adopts the amendments to Site Certificate descriptions and
40 conditions discussed in Section IV(A) and (B), pursuant to the findings in Section V.
41

42 **V. Compliance with Siting Standards**

43 In addressing the standards set forth in this section, the Council assesses the impacts of the
44 changes proposed in the amendment request and the compliance with applicable standards,
45 pursuant to OAR 235-027-0070(9).
46

1 OAR 345-027-0070(9) provides:

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

8
9 **A. Considerations for Extending Construction Deadlines**

10 OAR 345-027-0070(9)(b) identifies three factors the Council must consider when
11 considering an amendment that extends the deadlines for beginning or completing
12 construction. Each factor is discussed below:

13
14 “(A) Whether the Council has previously granted an extension of the deadline.”

15
16 The Council has not previously granted an extension of the deadline for beginning
17 construction or the deadline for completing construction for the Port Westward
18 Generating Project.

19
20 “(B) Whether there has been any change of circumstances that affects a previous
21 Council finding that was required for issuance of a site certificate or
22 amended site certificate.”

23
24 There is a discussion below of previous Council findings. Based on that
25 discussion, the Council finds that there is no change of circumstances that affects a
26 previous Council finding required for issuance of the Site Certificate or the First
27 Amended Site Certificate.

28
29 “(C) Whether the facility complies with all Council standards . . .”

30
31 The Council approved the Site Certificate for the Port Westward Generating
32 Project on November 8, 2002, and it approved the First Amended Site Certificate
33 on December 5, 2003. The Council has adopted substantive changes to the
34 applicable approval standards addressed in the Final Order for the Site Certificate.
35 It has not adopted substantive changes since it approved the Final Order and First
36 Amended Site Certificate. The following discussion of applicable standards,
37 substantive criteria, state statutes, administrative rules, and local government
38 ordinances addresses the current versions of Chapter 345, Divisions 22 and 24,
39 rules and other applicable criteria. The requested amendment would change the
40 construction beginning and completion dates and would provide an option of
41 excluding an area from the energy facility site, but would not affect other
42 geographical areas or human, plant or animal populations in any manner not
43 considered in the Final Orders.
44

1 **B. Updated List of Property Owners**

2 OAR 345-027-0060(1)(g) requires, for an amendment to extend the deadlines for
3 beginning or completing construction of the facility, “an updated list of the owners of
4 property located within or adjacent to the site of the facility, as described in OAR 345-021-
5 0010(1)(f).” PGE provided an updated list as part of its amendment request.

6
7 **C. Organizational Expertise Standard, OAR 345-022-0010**

8 This standard has four paragraphs. The first two paragraphs, -0010(1) and -0010(2), relate
9 to application qualifications and capability and the final two paragraphs, -0010(3) and
10 -0010(4), relate to third-party permits.

11
12 **1. Applicant Qualification and Capability, OAR 345-022-0010(1)**

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

25
26 **Discussion.** The proposed changes to the facility are within the scope of PGE’s overall
27 responsibilities to construct, operate, and retire the facility. The findings in the Final
28 Orders apply. The Council finds that this amendment will not impact PGE’s qualifications
29 as the Certificate Holder.

30
31 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
32 OAR 345-022-0010(1).

33
34 **2. Applicant Qualification and Capability OAR 345-022-0010(2)**

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

40
41 **Discussion.** OAR 345-022-0010(2) is not addressed herein because the Certificate Holder
42 does not have an ISO 9000 or 14000 certified program.

43
44 **3. Third-Party Services and Permits, OAR 345-022-0010(3)**

45 If the applicant does not itself obtain a state or local government permit or
46 approval for which the Council would ordinarily determine compliance but

1 instead relies on a permit or approval issued to a third party, the Council, to
2 issue a site certificate, must find that the third party has, or has a reasonable
3 likelihood of obtaining, the necessary permit or approval, and that the
4 applicant has, or has a reasonable likelihood of entering into, a contractual
5 or other arrangement with the third party for access to the resource or
6 service secured by that permit or approval.
7

8 **Discussion.** The Council finds that the proposed amendment will not change the findings
9 of the Final Orders regarding third party permits.
10

11 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
12 OAR 345-022-0010(3).
13

14 **4. Third-Party Services and Permits, OAR 345-022-0010(4)**

15 If the applicant relies on a permit or approval issued to a third party and
16 the third party does not have the necessary permit or approval at the time
17 the Council issues the site certificate, the Council may issue the site
18 certificate subject to the condition that the certificate holder shall not
19 commence construction or operation as appropriate until the third party
20 has obtained the necessary permit or approval and the applicant has a
21 contract or other arrangement for access to the resource or service secured
22 by that permit or approval.
23

24 **Discussion.** The Council finds that the request will not affect the findings in the Final
25 Orders or conditions in the Site Certificate relating to acquiring third party permits or
26 contracts.
27

28 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
29 OAR 345-022-0010(4).
30

31 **D. Retirement and Financial Assurance Standard, OAR 345-022-0050**

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

- 33 (1) The site, taking into account mitigation, can be restored adequately
34 to a useful, non-hazardous condition following permanent cessation
35 of construction or operation of the facility.
36 (2) The applicant has a reasonable likelihood of obtaining a bond or
37 letter of credit in a form and amount satisfactory to the Council to
38 restore the site to a useful, non-hazardous condition.
39

40 **Discussion.** The Council finds that the findings in the Final Orders regarding PGE's
41 ability to obtain a bond or letter of credit for retiring the energy facility apply to this
42 request.
43

44 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
45 OAR 345-022-0050.
46

1 **E. Structural Standard, OAR 345-022-0020**

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

4 (a) The applicant, through appropriate site-specific study, has
5 adequately characterized the site as to seismic zone and expected
6 ground motion and ground failure, taking into account
7 amplification, during the maximum credible and maximum
8 probable seismic events; and

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

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

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

23
24 **Discussion.** The Council finds that the findings in the Final Orders regarding the
25 Structural Standard apply to this request.

26
27 **Conclusion.** The Council finds that the proposed changes to the facility meet the
28 requirements of OAR 345-022-0020.

29
30 **F. Soil Protection Standard, OAR 345-022-0022**

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

37
38 **Discussion.** The Council finds that the findings in the Final Orders regarding the Soil
39 Protection Standard apply to this request.

40
41 **Conclusion.** The Council finds that the proposed changes to the facility meet the
42 requirements of OAR 345-022-0022.

1 **G. Land Use Standard, OAR 345-022-0030**

- 2 (1) To issue a site certificate, the Council must find that the proposed
3 facility complies with the statewide planning goals adopted by the
4 Land Conservation and Development Commission.
- 5 (2) The Council shall find that a proposed facility complies with section
6 (1) if:
- 7 (a) The applicant elects to obtain local land use approvals under
8 ORS 469.504(1)(a) and the Council finds that the facility has
9 received local land use approval under the acknowledged
10 comprehensive plan and land use regulations of the affected
11 local government; or
- 12 (b) The applicant elects to obtain a Council determination under
13 ORS 469.504(1)(b) and the Council determines that:
- 14 (A) The proposed facility complies with applicable
15 substantive criteria as described in section (3) and the
16 facility complies with any Land Conservation and
17 Development Commission administrative rules and goals
18 and any land use statutes directly applicable to the facility
19 under ORS 197.646(3);
- 20 (B) For a proposed facility that does not comply with one or
21 more of the applicable substantive criteria as described in
22 section (3), the facility otherwise complies with the
23 statewide planning goals or an exception to any
24 applicable statewide planning goal is justified under
25 section (4); or
- 26 (C) For a proposed facility that the Council decides, under
27 sections (3) or (6), to evaluate against the statewide
28 planning goals, the proposed facility complies with the
29 applicable statewide planning goals or that an exception
30 to any applicable statewide planning goal is justified
31 under section (4).***
- 32

33 **Discussion.** PGE submitted an “Analysis of Local and State Land Use Standards” in its
34 letter of July 1, 2004. At the request of the Department and the Department of Justice, it
35 submitted supplemental information on August 10, 2004. The purpose of the analysis was
36 to identify changes to the applicable county, city and state land use regulations and
37 standards adopted after October 2001, the date of the Application for a Site Certificate for
38 the Proposed Port Westward Generating Project (“ASC”).

39

40 As part of its periodic review process, Columbia County amended its Comprehensive Plan
41 and adopted new zoning standards for some Goal 5 resources during the summer of 2003.
42 The County elected to use the safe harbor provisions allowed by administrative rule to
43 comply with the Goal 5 rule. The County revised the following code sections: CCZO §
44 1170 - Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat
45 Overlay Zone; CCZO § 1180 - Wetland Area Overlay of their code; and CCZO § 1550 –
46 Site Design Review (minor changes only).

1
2 Columbia County’s new standards protect establish varying widths for riparian corridors,
3 depending on the nature of the water body. The County has not mapped those corridors as
4 an overlay zone on the County zoning map. Rather, the applicable riparian corridor width
5 must be determined, for streams, by determining whether the average annual stream flow is
6 greater or less than 1,000 cubic feet per second (“cfs”) and whether the stream segment at
7 issue is “fish bearing” or “non-fish bearing.” CCZO § 1172. The Columbia River and
8 Bradbury Slough are the only water bodies for which the riparian corridor boundary is 75
9 feet upland from the top of the bank due to classification as “fish-bearing and non-fish
10 bearing streams, rivers and sloughs (greater than 1,000 cfs).” See CCZO § 1172.A.3.

11
12 Streams along the transmission line corridor and alternative transmission line corridor are
13 shown as overlays on aerial photographs in Appendices J-4 and J-5 of the ASC. Those
14 aerial photographs also show approximate locations for towers. Streams are also shown on
15 Figures P-3a through P-3d in Exhibit P of the ASC. Riparian corridors along the
16 transmission line would be 50 feet from the top of the bank for fish-bearing streams and
17 25 feet upland from the top of the bank for all other streams. Most tower locations, as
18 shown, are not within several hundred feet of a stream. Given the flexibility available with
19 respect to tower spacing, the Certificate Holder is able to avoid constructing towers within
20 riparian corridors.

21
22 One perennial stream adjacent to the transmission line corridor, Fox Creek, is located
23 within the City of Rainier and, therefore, is not subject to the Columbia County Zoning
24 Ordinance standards for riparian corridors. See ASC, Figure P-3d. Therefore, in Section
25 IV.B(2) above, the Council retains the language of the original Condition D.8(12) and add
26 a reference to the new County ordinance so that the condition applies in both the City of
27 Rainier and in Columbia County.

28
29 Conditions D.8(15) and (16) already restrict clearing of vegetation. PGE proposed
30 revisions, as detailed in Section IV.A(4) and (5) and IV.B(2) above, to incorporate explicit
31 compliance with the riparian corridor standards and to clarify when vegetation clearing
32 will be necessary. The proposed amendment to Condition D.8(16) is consistent with
33 CCZO § 1175.A.1, which allows removal within the riparian corridor boundary of “trees
34 and vegetation in danger of falling and/or posing a hazard to life and property.”
35

36 Finally, the water supply pipeline is a water-related or water-dependent use allowed within
37 the riparian corridor. Pursuant to CCZO § 1175A.2, vegetation can be removed for a
38 water-related or water-dependent use, but must be “kept to a minimum necessary to allow
39 the water-dependent and water-related use.” Condition D.8(15) already requires that the
40 Certificate Holder clear no more riparian vegetation “than is necessary for the permitted
41 land use.”
42

43 Relevant changes to CCZO Section 1180 and the associated subsections address the
44 protection of significant wetlands within identified Wetland Areas.
45

46 *Section 1180: Wetland Area Overlay.*

1
2 *Section 1181: Purpose. The purpose of this zone is to protect significant wetland*
3 *within the identified Wetland Areas as shown on the State Wetland Inventory and*
4 *Local Wetland Inventories, from filling, drainage, or other alteration which would*
5 *destroy or reduce their biological value. The Wetland Area Overlay does not apply*
6 *to land legally used for commercial forestry operations or standard farm practices,*
7 *both of which are exempt from these wetland area corridor standards. The use of*
8 *land for commercial forestry is regulated by the Oregon Department of Forestry.*
9 *The use of land for standard farm practices is regulated by the Oregon Department*
10 *of Agriculture, with riparian area and water quality issues governed by ORS*
11 *568.210 to ORS 568.805.*

12
13 *Section 1182: Definition. A significant wetland is an area that is inundated or*
14 *saturated by surface water or ground water at a frequency and duration sufficient*
15 *to support, and that under normal circumstances does support, a prevalence of*
16 *vegetation typically adapted for life in saturated soil conditions. In case of dispute*
17 *over whether an area is of biological value and should be considered a significant*
18 *wetland, the County shall obtain the recommendation of the Oregon Department of*
19 *Fish and Wildlife, the Columbia County Soil and Water Conservation District, and*
20 *the Division of State Lands.*

21
22 Before it was amended in 2003, the Comprehensive Plan explicitly exempted the Port
23 Westward area from the Wetland Area Overlay Zone. The amendments to the
24 Comprehensive Plan deleted that exemption and extended the Wetland Area Overlay Zone
25 to all “significant” wetlands, as defined in CCZO Section 1182, within the “identified
26 Wetland Areas as shown on the State Wetland Inventory maintained by the Department of
27 State Lands (“DSL”), which includes the National Wetland Inventory and any Local
28 Wetland Inventory. Columbia County Comprehensive Plan, Article X(A)(2) . For
29 purposes of this order, the Council is assuming that the wetlands present on the Project site
30 are “significant wetlands” as that term is defined in CCZO Section 1182.

31
32 *Section 1183: Permitted Uses. Uses and development activities permitted outright*
33 *or conditionally in the underlying zone shall be permitted in the Wetland Area*
34 *Overlay Zone if they will not result in filling, drainage, removal of vegetation, or*
35 *other alteration which would destroy or degrade a significant wetland as defined in*
36 *Section 1182. Minor drainage improvements necessary to ensure effective*
37 *drainage on surrounding agricultural lands under Oregon Department of*
38 *Agriculture wetland rules shall be allowed where such an action has been fully*
39 *coordinated with the Oregon Department of Fish and Wildlife, the Columbia*
40 *County Soil and Water Conservation District, and the Division of Sate Lands.*
41 *Existing drainage ditches may be cleared to original specifications without County*
42 *review.*

43
44 In a letter dated August 30, 2004, PGE’s attorney noted an incorrect statement in his
45 earlier description of Wetland Overlay Zone requirements. The wetland area at the energy
46 facility site had be excluded from protected wetland areas by earlier versions of the

1 Columbia County Comprehensive Plan, but amendments that the County adopted on
2 September 17, 2003, removed the exclusion for that wetland area. Therefore, the
3 provisions of the Wetland Overlay Zone now apply to the facility site.
4

5 PGE argued that CCZO Section 1183's requirement that the permitted activity "not result
6 in filling, drainage, removal of vegetation, or other alteration which would destroy or
7 degrade a significant wetland" does not preclude an activity in the Wetland Area Overlay
8 Zone that is authorized by a removal-fill permit from DSL and the U.S. Army Corps of
9 Engineers. It argued that if an activity is permitted outright or conditionally in the
10 underlying zone, and any wetland fill or other impacts to significant wetlands included in
11 the Wetland Area Overlay Zone are authorized by a valid removal-permit, the activity is a
12 permitted use in the Wetland Area Overlay.
13

14 PGE submitted a copy of a letter that Columbia County assistant county counsel, Sarah
15 Tyson, sent to Adam Bless, Oregon Department of Energy, on August 23, 2004, that
16 supported PGE's interpretation of compliance with the Wetland Overlay Zone. In addition,
17 in a letter dated July 19, 2004, Mr. Todd Dugdale, director of the Columbia County
18 Department of Land Development Services, wrote that he concurred with the analysis of
19 land use standards that PGE submitted and concurred that the Project would comply with
20 new provisions protecting wetlands and riparian areas.
21

22 The Council finds compliance with the Wetland Overlay Zone through a separate analysis.
23 By virtue of an approved removal/fill permit, DSL, via the Council's original Final Order
24 and the First Amended Site Certificate, and the U.S. Army Corps of Engineers have
25 authorized the Certificate Holder to fill 0.43 acre of wetland on the Project site. Exhibit J
26 of the ASC, the Joint Removal-Fill Permit Application, and the original Final Order
27 provide a complete analysis of wetland impacts and compensatory mitigation. Included
28 with the authorizations for the removal/fill permit is the requirement that the Certificate
29 Holder mitigate for the wetland fill by enhancing 1.5 acres of palustine emergent wetlands
30 in the same wetland area. As a result, there will be no net destruction or degradation (by
31 loss of functional value) of the particular wetland area. Therefore, the Council finds that
32 the Certificate Holder complies with the pertinent requirements of CCZO Section 1183, as
33 amended.
34

35 There are no applicable changes to the City of Rainier Zoning Ordinance or the City of
36 Rainier Comprehensive Plan.
37

38 The Land Conservation and Development Commission revised OAR 660-033-0130,
39 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses. This
40 administrative rule has been changed to include requirements that are stated in ORS
41 215.275, which was addressed in the ASC and in the Final Order approving the Site
42 Certificate. This administrative rule simply mirrors that statute; therefore, the Council's
43 findings in the Final Order address the requirements of this rule. _
44

45 The Council finds that the analysis demonstrated that the facility complies with the new
46 regulations and standards.

1
2 **Conclusion.** The Council finds that the proposed changes to the facility meet the
3 requirements of OAR 345-022-0030.
4

5 **H. Protected Area Standard, OAR 345-022-0040**

- 6 (1) Except as provided in sections (2) and (3), the Council shall not
7 issue a site certificate for a proposed facility located in the areas
8 listed below. To issue a site certificate for a proposed facility located
9 outside the areas listed below, the Council must find that, taking into
10 account mitigation, the design, construction and operation of the
11 facility are not likely to result in significant adverse impact to the
12 areas listed below. Cross-references in this rule to federal or state
13 statutes or regulations are to the version of the statutes or regulations
14 in effect as of August 28, 2003:***
15

16 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
17 demonstrate compliance with the Protected Areas Standard.
18

19 **Conclusion.** The Council finds that the proposed changes to the facility meet the
20 requirements of OAR 345-022-0040.
21

22 **I. Fish and Wildlife Habitat Standard, OAR 345-022-0060**

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

28 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
29 demonstrate compliance with the Fish and Wildlife Habitat Standard.
30

31 **Conclusion.** The Council finds that the proposed changes to the facility meet the
32 requirements of OAR 345-022-0060.
33

34 **J. Threatened and Endangered Species Standard, OAR 345-022-0070**

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

- 37 (1) For plant species that the Oregon Department of Agriculture has listed
38 as threatened or endangered under ORS 564.105(2), the design,
39 construction, operation and retirement of the proposed facility, taking
40 into account mitigation:
41 (a) Are consistent with the protection and conservation program, if
42 any, that the Oregon Department of Agriculture has adopted
43 under ORS 564.105(3); or
44 (b) If the Oregon Department of Agriculture has not adopted a
45 protection and conservation program, are not likely to cause a

1 significant reduction in the likelihood of survival or recovery of
2 the species; and

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

9 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
10 demonstrate compliance with the Threatened and Endangered Species Standard.
11

12 **Conclusion.** The Council finds that the proposed changes to the facility meet the
13 requirements of OAR 345-022-0070.
14

15 **K. Scenic and Aesthetic Values Standard, OAR 345-022-0080**

- 16 (1) Except for facilities described in sections (2), to issue a site
17 certificate, the Council must find that the design, construction,
18 operation and retirement of the facility, taking into account
19 mitigation, are not likely to result in significant adverse impact to
20 scenic and aesthetic values identified as significant or important in
21 applicable federal land management plans or in local land use plans
22 in the analysis area described in the project order. ***
23

24 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
25 demonstrate compliance with the Scenic and Aesthetic Values Standard.
26

27 **Conclusion.** The Council finds that the proposed changes to the facility meet the
28 requirements of OAR 345-022-0080.
29

30 **L. Historic, Cultural, and Archeological Resources Standard, OAR 345-022-0090**

- 31 (1) Except for facilities described in sections (2) and (3), to issue a site
32 certificate, the Council must find that the construction, operation and
33 retirement of the facility, taking into account mitigation, are not
34 likely to result in significant adverse impacts to:
35 (a) Historic, cultural or archaeological resources that have been
36 listed on, or would likely be listed on the National Register
37 of Historic Places;
38 (b) For a facility on private land, archaeological objects, as
39 defined in ORS 358.905(1)(a), or archaeological sites, as
40 defined in ORS 358.905(1)(c); and
41 (c) For a facility on public land, archaeological sites, as defined
42 in ORS 358.905(1)(c). * * *
43

44 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
45 demonstrate compliance with the Historic, Cultural, and Archeological Resources
46 Standard.

1
2 **Conclusion.** The Council finds that the proposed changes to the facility meet the
3 requirements of OAR 345-022-0090.
4

5 **M. Recreation Standard, OAR 345-022-0100**

- 6 (1) Except for facilities described in section (2), to issue a site
7 certificate, the Council must find that the design, construction and
8 operation of a facility, taking into account mitigation, are not likely
9 to result in a significant adverse impact to important recreational
10 opportunities in the analysis area as described in the project order.
11 The Council shall consider the following factors in judging the
12 importance of a recreational opportunity:
13 (a) Any special designation or management of the location;
14 (b) The degree of demand;
15 (c) Outstanding or unusual qualities;
16 (d) Availability or rareness;
17 (e) Irreplaceability or irretrievability of the opportunity. ***
18

19 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
20 demonstrate compliance with the Recreation Standard.
21

22 **Conclusion.** The Council finds that the proposed changes to the facility meet the
23 requirements of OAR 345-022-0100.
24

25 **N. Public Services Standard, OAR 345-022-0110**

- 26 (1) Except for facilities described in sections (2) and (3), to issue a site
27 certificate, the Council must find that the construction and operation
28 of the facility, taking into account mitigation, are not likely to result
29 in significant adverse impact to the ability of public and private
30 providers within the analysis area described in the project order to
31 provide: sewers and sewage treatment, water, storm water drainage,
32 solid waste management, housing, traffic safety, police and fire
33 protection, health care and schools.***
34

35 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
36 demonstrate compliance with the Public Services Standard.
37

38 **Conclusion.** The Council finds that the proposed changes to the facility meet the
39 requirements of OAR 345-022-0110.
40

41 **O. Waste Minimization Standard, OAR 345-022-0120**

- 42 (1) Except for facilities described in sections (2) and (3), to issue a site
43 certificate, the Council must find that, to the extent reasonably practicable:
44 (a) The applicant's solid waste and wastewater plans are likely to
45 minimize generation of solid waste and wastewater in the
46 construction, operation, and retirement of the facility, and when

1 solid waste or wastewater is generated, to result in recycling and
2 reuse of such wastes;

- 3 (b) The applicant’s plans to manage the accumulation, storage, disposal
4 and transportation of waste generated by the construction and
5 operation of the facility are likely to result in minimal adverse
6 impact on surrounding and adjacent areas. ***
7

8 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
9 demonstrate compliance with the Waste Minimization Standard.
10

11 **Conclusion.** The Council finds that the proposed changes to the facility meet the
12 requirements of OAR 345-022-0120.
13

14 **P. Carbon Dioxide Standard**
15 **Standard for Base Load Gas Plants, OAR 345-024-0550**

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

27 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
28 demonstrate compliance with the Carbon Dioxide Standard. Specifically, the Certificate
29 Holder complies with the carbon dioxide standard in effect at the time of the Council’s
30 order on the amendment request, pursuant to OAR 345-027-0030(5).
31

32 **Conclusion.** The Council finds that the proposed changes to the facility meet the
33 requirements of OAR 345-024-0550 through -0710.
34

35 **Q. Noise OAR 340-035-0035(1)(b)(B)**

36 The Council applies and enforces the Department of Environmental Quality’s (“DEQ”)
37 noise standards for energy facilities under its jurisdiction. The DEQ noise regulations for
38 industrial and commercial noise sources apply to the Project. Under the DEQ regulations,
39 the generating facility would be located on a “previously unused industrial site” and
40 according to the regulations:
41

42 No person owning or controlling a new industrial or commercial noise
43 source located on a previously unused industrial or commercial site shall
44 cause or permit the operation of that noise source if the noise levels
45 generated or indirectly caused by that noise source increase the ambient
46 statistical noise levels, L₁₀ or L₅₀, by more than 10 dBA in any one hour, or

1 exceed the levels specified in Table 8, as measured at an appropriate
2 measurement point. OAR 340-035-0035(1)(b)(B)(i).

3
4 **Discussion.** DEQ noise regulations for industrial and commercial noise sources apply to
5 the energy facility. The Council finds that the findings in the Final Orders demonstrate
6 that the energy facility would meet the DEQ noise standards applicable to the facility,
7 OAR 340-035-0035(1)(b)(B)(i).

8
9 **Conclusion.** The Council finds that the proposed changes to the facility meet the
10 requirements of OAR 340-035-0035(1)(b)(B)(i).

11
12 **R. Wetlands, OAR 345-022-0000**

13 Pursuant to OAR 345-022-0000, the Council must determine compliance with applicable
14 statutes, ORS 196.800-.990, and applicable Department of State Lands (“DSL”) regulations,
15 OAR 141-085-0005 *et seq.* relating to fill and other operations taking place
16 within wetlands. These regulations require persons to obtain a removal/fill permit if more
17 than 50 cubic yards of material will be removed or altered within “waters of the state.”
18 The overall standard to be considered in granting a removal/fill permit is whether the
19 proposed activity would not “unreasonably interfere with the paramount policy of this state
20 to preserve the use of its waters for navigation, fishing and public recreation.”
21 ORS 196.825(2).

22
23 **Discussion.** In the Final Order for the Site Certificate, the Council found that the energy
24 facility would comply with OAR 345-021-0010(1)(j) and ORS 196.800-990, subject to
25 issuance of a Removal/Fill Permit substantially in the form of Attachment C to the Final
26 Order prior to commencement of construction of the facility. DSL amended its wetland
27 rules in 2003, following the issuance of the Site Certificate in 2002

28
29 The Department requested that PGE demonstrate that it could meet the wetland rules now
30 in effect. In its letter of July 1, 2004, PGE provided reports entitled “J.6: Evidence That
31 Fill and Removal Permits Can Be Issued” and “Wetland Assessment for the Port Westward
32 Generating Project.” The first report reviewed the criteria in statute and rule that must be
33 met to in order to demonstrate that a Removal-Fill permit can be issued and an explanation
34 of how each of the criteria is met by the Port Westward Generating Project. The second
35 report was a re-write of Appendix J-2 to the ASC to conform to DSL’s new rules regarding
36 wetland assessment.

37
38 Both the Department and DSL staff reviewed the two reports and found that they
39 demonstrated that the facility complies with DSL rules. The Council finds that the
40 findings in the Final Order for the Site Certificate and the Removal/Fill Permit, which is
41 Attachment C to the Amended Site Certificate, meet current DSL standards.

42
43 **Conclusion.** The Council finds that approval of this amendment request will satisfy the
44 Council’s obligation to determine compliance with DSL removal/fill permit requirements.

45
46 **S. Public Health and Safety, ORS 469.401(2)**

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

3
4 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
5 demonstrate compliance with the Public Health and Safety standard.

6
7 **Conclusion.** The Council finds that the proposed changes to the facility continue to meet
8 the Council’s conditions that protect public health and safety, pursuant to ORS 469.401(2).

9
10 **VI. Conclusions**

11 The Council finds that the actions in the Certificate Holder’s request are consistent with
12 current Council rules, with other applicable statutes and rules, and with statewide land use
13 planning goals and would not cause a significant adverse impact to public health and safety
14 or the environment. In preparing this proposed order, the Department limited its
15 consideration to the effects that may be produced by the proposed changes to the energy
16 facility site and the extension of construction deadlines as described in the Certificate
17 Holder’s Request for Second Amendment to the Site Certificate for the Port Westward
18 Generating Project, as amended. In considering those effects, the Department reviewed
19 state statutes, administrative rules, and local government ordinances.

20
21 Based on the above findings, the Council concludes that it should amend the First Amended
22 Site Certificate for the Port Westward Generating Project as the Certificate Holder requests
23 with modifications to the conditions as noted above in Section IV.

24
25 **FINAL ORDER**

26
27 Based on the above findings of fact, discussions and conclusions of law, the Energy
28 Facility Siting Council determines that it shall approve Amendment Number Two and that
29 the chairperson of the Council shall execute the Site Certificate Amendment in the form of
30 the “Second Amended Site Certificate for the Port Westward Generating Project.” This
31 incorporates Attachments to the First Amended Site Certificate for the Port Westward
32 Generating Project. The Second Amended Site Certificate for the Port Westward
33 Generating Project, with Attachments, is attached to this order and is incorporated by
34 reference into this order.

35
36 Approved this 24th day of September 2004.

37
38
39
40 /s/ _____
41 Karen H. Green, Chair
42 Oregon Energy Facility Siting Council
43

44 ATTACHMENT: **SECOND AMENDED SITE CERTIFICATE WITH ATTACHMENTS**
45

1 **NOTICE OF THE RIGHT TO APPEAL**

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

9 /

10 /

11 /

ATTACHMENT

**SECOND AMENDED SITE
CERTIFICATE**

FOR THE

**PORT WESTWARD
GENERATING PROJECT**

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