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1
2
3 **PORT WESTWARD GENERATING PROJECT**
4 **SITE CERTIFICATE AMENDMENT #6**
5 **PROPOSED ORDER**
6

7 **I. INTRODUCTION**
8

9 The Oregon Department of Energy (Department) recommends that the Energy Facility
10 Siting Council (Council) issue this order in accordance with ORS 469.405 and OAR 345-027-
11 0070. This order addresses a request by Portland General Electric Company (PGE) for
12 Amendment #6 to its site certificate for the Port Westward Generating Project (PWGP). The Port
13 Westward Generating Project is a nominal 560-megawatt natural gas-fired electric generating
14 facility located about 4.5 miles north of Clatskanie, Oregon.
15

16 In its request for Amendment #6, PGE requests extension by 24 months the deadline for
17 completion of construction of the facility.
18

19 The Council issued the Final Order for the PWGP on November 8, 2002, and the Final
20 Orders for Amendment #1 on December 5, 2003, Amendment #2 on September 24, 2004,
21 Amendment #3 on January 28, 2005, Amendment #4 on May 19, 2006, and Amendment #5 on
22 September 29, 2006 (the “Final Orders”). This amendment is Amendment #6.
23

24 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this
25 order.
26

27 **II. PROCEDURAL HISTORY AND AMENDMENT PROCESS**
28

29 On November 7, 2008, PGE submitted to the Department a request for amendment of the
30 site certificate (Amendment #6).¹ On November 21, 2008, the Department sent copies of the
31 amendment request to the reviewing agencies. The Department requested agency comments by
32 December 24, 2008. The Department received no substantive comments from reviewing
33 agencies.
34

35 On November 21, 2008, the Department sent notice of the amendment request to all
36 persons on the Council’s general mailing list, to persons on the mailing list established for the
37 facility and to an updated list of property owners supplied by the certificate holder. The
38 Department requested public comments by December 24, 2008. The Department received public
39 comments from Bill and Marjie Castle, Linda LeBrun, Colin B. Coombs, and Daniel Serres,
40 Conservation Director of Columbia Riverkeeper.
41

42 Bill and Marjie Castle occupy a dwelling in Washington with a view of the PWGP and
43 adjacent energy and industrial facilities. In written comments dated December 18, 2008, they
44 expressed concerns about noise, lights and steam generated by construction and operation of

¹ Certificate Holder’s Request for Sixth Amendment to the Site Certificate for the Port Westward Generating Project.

1 Phase 1 of the PWGP and a recently constructed ethanol plant situated near the PWGP. They ask
2 that before consideration of any future expansion or construction at the Port Westward site the
3 Department give special attention to these issues. While these concerns do not bear upon PGE's
4 immediate request for extension of the deadline for completion of construction of the PWGP,
5 they do merit consideration during the Department's review of any forthcoming request for
6 amendment of the site certificate with respect to reconfiguring Phase 2 of the PWGP.
7

8 In written comments dated December 11, 2008, Linda LeBrun raised concerns about
9 adverse and uncorrected impacts to the road connecting Port Westward to Mayger and Mayger to
10 Alston during construction of Phase 1 of the PWGP, as follows: "Construction worker traffic
11 over the two years of construction reduced parts of the road to a series of potholes connected by
12 thin rims of asphalt. Other portions began to subside. This was probably because there were
13 approximately 400 construction workers driving over the roads between Port Westward and
14 Highway 30. Half of them must have been using the road that was not improved – between Port
15 Westward and Alston rather than Port Westward and Clatskanie – as they were coming from the
16 east instead of west and that road is a shortcut. Most of them were driving heavy vehicles,
17 generally very large pickups." While these concerns do not bear directly upon PGE's immediate
18 request for extension of the deadline for completion of construction of the PWGP, they do merit
19 consideration during the Department's review of any forthcoming request for amendment of the
20 site certificate with respect to reconfiguring Phase 2 of the PWGP.
21

22 Colin B. Coombs occupies a dwelling in Washington with a view of the PWGP. In
23 written comments dated December 17, 2008, he expressed concerns about any added noise that
24 could result from further expansion of the PWGP. While this concern does not bear directly upon
25 PGE's immediate request for extension of the deadline for completion of construction of the
26 PWGP, it does merit consideration during the Department's review of any forthcoming request
27 for amendment of the site certificate with respect to reconfiguring Phase 2 of the PWGP.
28

29 In written comments dated December 24, 2008, Daniel Serres, in behalf of Columbia
30 Riverkeeper, a "non-profit organization with a mission of protecting and restoring the water
31 quality of the Columbia River and all life connected to it", expressed concerns about additional
32 light and noise impacts associated with construction and operation of Phase 2 of the PWGP and
33 PGE's failure to address a number of specific issues associated with reconfiguration of Phase 2
34 of the PWGP. While these concerns do not bear directly upon PGE's immediate request for
35 extension of the deadline for completion of construction of the PWGP, they do merit
36 consideration during the Department's review of any forthcoming request for amendment of the
37 site certificate with respect to reconfiguring Phase 2 of the PWGP.
38

39 The Department issued this Order on February 23, 2009. On the same day, the
40 Department issued a notice of the proposed order in accordance with OAR 345-027-0070
41 specifying a deadline for public comments and requests for a contested case proceeding.
42

43 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

44

45 PGE requests an amendment to the site certificate to extend by 24 months the deadline
46 for completing construction of the PWGP. If approved, the amendment would extend the
47 deadline for completing construction from May 8, 2009, to May 8, 2011.

1
2 In its amendment request, PGE explained the reason for the request as follows:

3
4 The original Site Certificate authorized PGE to construct the facility in two phases. PGE
5 began construction of the first phase (Unit 1) of the facility prior to the deadline of
6 November 8, 2006, and that phase has been completed and is in commercial operation.

7
8 Unit 2 of the facility was intended to be a baseload natural gas-fired combustion turbine
9 combined-cycle unit. However, the Northwest has experienced growth in the
10 development of wind energy facilities, such as PGE's Biglow Canyon Wind Farm. As
11 PGE stated in its request for amendment:

12
13 "****When wind energy is added to a utility system, its natural variability and
14 uncertainty is combined with the natural variability and uncertainty of loads. As a
15 result, there is an increase in the need for system flexibility required to maintain
16 utility system balance and reliability."

17
18 In a separate amendment request to be submitted later in 2009, PGE intends to modify
19 Unit 2 of Port Westward Generating Project to become a

20
21 "****state-of-the-art, highly efficient and environmentally responsible power
22 plant consisting of multiple dual fuel reciprocating engine-generator sets or
23 aeroderivative combustion turbine generators and associated equipment with a
24 combined nominal generating capacity of up to 200 megawatts (MW). Unit 2 will
25 operate primarily on natural gas and will be capable of running on ultra-low sulfur
26 distillate fuel oil so it can ensure reliability during instances of natural gas
27 curtailment in the region.****"

28
29 PGE states that development of Unit 2 will require a number of changes to the Site
30 Certificate. In order to allow time to submit a request to amend the Site Certificate to
31 authorize construction of Unit 2 as newly configured, PGE is requesting an extension of
32 the deadline for completing construction of the facility. This proposed order for
33 amendment #6 only addresses the deadline extension request. It does not address design
34 changes to Unit 2. Any such design changes would be the subject of a separate request.

35
36 **A. Amendment Procedure**

37
38 OAR 345-027-0030, sets out the requirements for a certificate holder to request an
39 extension of the deadlines for beginning and completing construction.²
40

² 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 completing 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 **OAR 345-027-0030**

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

3
4 *(1) The certificate holder may request an amendment to extend the deadlines for*
5 *beginning or completing construction of the facility that the Council has specified in a*
6 *site certificate or an amended site certificate. The certificate holder shall submit a*
7 *request that conforms to the requirements of 345-027-0060 no later than six months*
8 *before the date of the applicable deadline, or, if the certificate holder demonstrates good*
9 *cause for the delay in submitting the request, no later than the applicable deadline.*

10
11 *(2) A request within the time allowed in section (1) to extend the deadlines for beginning*
12 *or completing construction suspends those deadlines until the Council acts on the*
13 *request.*

14
15 *(3) The Council shall review the request for amendment as described in OAR 345-027-*
16 *0070.*

17
18 *(4) If the Council grants an amendment under this rule, the Council shall specify new*
19 *deadlines for beginning or completing construction that are not more than two years*
20 *from the deadlines in effect before the Council grants the amendment.*

21
22 *(5) To grant an amendment extending the deadline for beginning or completing*
23 *construction of an energy facility subject to OAR 345-024-0550, 345-024-0590, or 345-*
24 *024-0620, the Council must find that the facility complies with the carbon dioxide*
25 *standard in effect at the time of the Council's order on the amendment.*

26
27 Pursuant to these rules, the Council may grant an extension of no more than two years
28 from the current deadlines. The Council rule requires the certificate holder to submit the request
29 “no later than six months before the date of the applicable deadline, or, if the certificate holder
30 demonstrates good cause for the delay in submitting the request, no later than the applicable
31 deadline.” Under the current site certificate, the deadline to complete construction of the PWGP
32 is May 8, 2009 (Condition F.1.(6)).³

33
34 PGE submitted its request to extend the deadline for beginning construction on
35 November 7, 2008, six months before the deadline. The Department recommends that the
36 Council find that the request to extend the construction deadline was timely filed.

37
38 OAR 345-027-0070(10) provides:

39 *In making a decision to grant or deny issuance of an amended site certificate, the Council*
40 *shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in*
41 *effect on the date the certificate holder submitted the request for amendment and all other*

³ Condition F.1.(6) states: “The Certificate Holder shall begin construction of the facility by May 8, 2009. The completion of construction date is the day by which (1) the facility is substantially complete as defined by the Certificate Holder’s construction contract documents; (2) acceptance testing is satisfactorily completed; and, (3) the energy facility is ready to commence continuous operation consistent with the Site Certificate....”

1 state statutes, administrative rules, and local government ordinances in effect on the date
2 the Council makes its decision.

3
4 Under OAR 345-027-0070(10)(b), for an amendment that extends the deadlines for
5 beginning or completing construction, the Council must consider:

6
7 “(A) Whether the Council has previously granted an extension of the deadline.”
8

9 When it approved Amendment #2 to the Site Certificate, the Council granted one
10 extension of the deadline for completing construction of the PWGP. Amendment #2 extended the
11 deadline for beginning construction from November 8, 2004, to November 8, 2006, and the
12 deadline for completing construction from May 8, 2007, to May 8, 2009.

13
14 After the Council’s approval of Amendment #2, PGE timely began and completed
15 construction of Phase 1 of the PWGP. Phase 1 of the PWGP includes related or supporting
16 facilities that are intended to serve both Phase 1 and Phase 2 of the PWGP. Upon submittal of a
17 future amendment application, PGE proposes to reconfigure Phase 2 to provide enhanced system
18 flexibility in support of the growth in renewable energy supplies, particularly in the form of wind
19 energy. Extension of the deadline for completing construction of the facility would allow time
20 for consideration of such an amendment and would preserve PGE’s ability to fully utilize the
21 energy facility site and the related or supporting facilities constructed in Phase 1.

22
23 The Department recommends that the Council find that it has granted one extension of
24 the deadline for beginning and completing construction of the PWGP and that a second extension
25 of the deadline for completing construction of the PWGP under the conditions outlined by PGE
26 would be reasonable.

27
28 “(B) Whether there has been any change of circumstances that affects a previous Council
29 finding that was required for issuance of a site certificate or amended site certificate.”
30

31 Based on the findings discussed under Sections IV and V below, the Department
32 recommends that the Council find that there has not been any change of circumstances that
33 affects a previous Council finding that was required for issuance of a site certificate or amended
34 site certificate.

35
36 “(C) Whether the facility complies with all Council standards...”
37

38 In Sections IV and V below, we discuss compliance of the facility with all Council
39 standards, as required under OAR 345-027-0070(10).
40

41 **B. Amendments to the Site Certificate as Proposed by PGE**
42

43 PGE proposes the following amendments to conditions included in the Fifth Amended
44 Site Certificate for the Port Westward Generating Project. Proposed additions are shown in
45 double-underlined bold typeface and proposed deletions have a strikethrough.
46

1 **D.15. Carbon Dioxide Standard**

2
3 (1) Before beginning construction of **Phase 1 and Phase 2** of the energy facility, **respectively**, the
4 Certificate Holder shall submit to the Climate Trust a bond or letter of credit in the amount of the
5 monetary path payment requirement (in 2002 dollars **for Phase 1 and in 2009 dollars for Phase**
6 **2**) as determined by the calculations set forth in Condition D.15(3) and based on the estimated
7 heat rates and capacities certified pursuant to Condition D.15(4) and adjusted in accordance with
8 the terms of this Site Certificate pursuant to Condition D.15(3)(c). For the purposes of this Site
9 Certificate, the “monetary path payment requirement” means the offset funds determined
10 pursuant to OAR 345-024-0550 and –0560 and the selection and contracting funds that the
11 Certificate Holder must disburse to The Climate Trust, as the qualified organization, pursuant to
12 OAR 345-024-0710 and this Site Certificate. The offset fund rate for the monetary path payment
13 requirement shall be \$0.85 per ton of carbon dioxide (in 2002 dollars) **for Phase 1 and \$1.27 per**
14 **ton of carbon dioxide (in 2009 dollars) for Phase 2**. The calculation of 2002 dollars shall be
15 made using the Index set forth in Condition D.3(5) and as required below in subsection (g).
16 [Amendments No. 1 **& 6**]

17
18 (5) Within the first 12 months of commercial operation **of each phase** of the energy facility, the
19 Certificate Holder shall conduct a 100-hour test at full power without power augmentation
20 technologies (“Year One Test-1”) and a test at full power with power augmentation technologies
21 (“Year One Test-2”). A 100-hour test performed for purposes of the Certificate Holder’s
22 commercial acceptance of the facility shall suffice to satisfy this condition in lieu of testing after
23 beginning commercial operation. **Amendment No. 6**

24
25 (7)(b)(A) In determining the excess carbon dioxide emissions that the Certificate Holder must
26 offset for a five-year period, the Department shall apply OAR 345-024-0600(4)(a) The
27 Certificate Holder shall pay for the excess emissions at \$0.85 per ton of carbon dioxide
28 emissions (in 2002 dollars) **for Phase 1 and \$1.27 per ton of carbon dioxide emissions**
29 **(in 2009 dollars) for Phase 2**. The Department shall notify the Certificate Holder and
30 The Climate Trust of the smount of the payment required, using the monetary path, to
31 offset excess emissions. **Amendment No. 6**

32
33 (7)(b)(B) The Department shall calculate estimated future excess emissions and notify the
34 Certificate Holder of the amount of payment required, using the monetary path, to offset
35 them. To estimate excess emissions for the remaining period of the deemed 30-year life of
36 the facility, the Department shall use the parameters specified in OAR 345-024-
37 0600(4)(b). The Certificate Holder shall pay for the estimated excess emissions at \$0.85
38 per ton of carbon dioxide (in 2002 dollars) **for Phase 1 and \$1.27 per ton of carbon**
39 **dioxide (in 2009 dollars) for Phase 2**. The Department shall notify the Certificate Holder
40 of the amount of payment required, using the monetary path, to offset future excess
41 emissions. **Amendment No. 6**

42
43 **F.1. Mandatory Conditions in Site Certificates**
44 **Beginning and Completing Construction**

45
46 (6) The Certificate Holder shall complete construction of the facility by May 8, ~~2009~~**2011**. The
47 completion of construction date is the day by which (1) the facility is substantially complete as
48 defined in the Certificate Holder’s construction contract documents; (2) acceptance testing is
49 satisfactorily completed; and, (3) the energy facility is ready to commence continuous operation
50 consistent with the Site Certificate. Completion of construction of the Port Westward to BPA
51 Allston Substation Transmission Line separately shall not satisfy this requirement. [Amendment
52 Nos. 2 **& 6**]

53
54 **IV. THE COUNCIL’S SITING STANDARDS**

1 The Council must decide whether the amendment complies with the facility siting
2 standards adopted by the Council. In addition, the Council must impose conditions for the
3 protection of the public health and safety, for the time of commencement and completion of
4 construction, and for ensuring compliance with the standards, statutes and rules addressed in the
5 project order. ORS 469.401(2).
6

7 The Council is not authorized to determine compliance with regulatory programs that
8 have been delegated to another state agency by the federal government. ORS 469.503(3).
9 Nevertheless, the Council may consider these programs in the context of its own standards to
10 ensure public health and safety, resource efficiency and protection of the environment.
11

12 The Council has no jurisdiction over design or operational issues that do not relate to
13 siting, such as matters relating to employee health and safety, building code compliance, wage
14 and hour or other labor regulations, or local government fees and charges. ORS 469.401(4).
15

16 In making its decision on an amendment of a site certificate, the Council applies the
17 applicable state statutes, administrative rules and local government ordinances that are in effect
18 on the date the Council makes its decision, except when applying the Land Use standard. In
19 making findings on the Land Use standard, the Council applies the applicable substantive criteria
20 in effect on the date the certificate holder submitted the request for amendment. OAR 345-027-
21 0070(9).
22

23 **A. General Standard of Review OAR 345-022-0000**

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

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

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

41 * * *

42
43 The requirements of OAR 345-022-0000 are discussed in the sections that follow.
44 Applicable statutes and rules of agencies other than EFSC are discussed below, in section V.A of
45 this order. The proposed amendment does not affect any permits issued by agencies other than
46 the Council.

1
2 **B. Standards about the Applicant**

3
4 **1. Organizational Expertise OAR 345-022-0010**

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

16
17 *(2) The Council may base its findings under section (1) on a rebuttable presumption that*
18 *an applicant has organizational, managerial and technical expertise, if the applicant has*
19 *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*
20 *operate the facility according to that program.*

21
22 *(3) If the applicant does not itself obtain a state or local government permit or approval*
23 *for which the Council would ordinarily determine compliance but instead relies on a*
24 *permit or approval issued to a third party, the Council, to issue a site certificate, must*
25 *find that the third party has, or has a reasonable likelihood of obtaining, the necessary*
26 *permit or approval, and that the applicant has, or has a reasonable likelihood of entering*
27 *into, a contractual or other arrangement with the third party for access to the resource or*
28 *service secured by that permit or approval.*

29
30 *(4) If the applicant relies on a permit or approval issued to a third party and the third*
31 *party does not have the necessary permit or approval at the time the Council issues the*
32 *site certificate, the Council may issue the site certificate subject to the condition that the*
33 *certificate holder shall not commence construction or operation as appropriate until the*
34 *third party has obtained the necessary permit or approval and the applicant has a*
35 *contract or other arrangement for access to the resource or service secured by that*
36 *permit or approval.*

37
38 **Discussion**

39 The standard has four sections. The first two sections deal with the certificate holder's
40 ability to construct, operate and retire the facility in accordance with Council standards and the
41 terms of the site certificate. PGE has proposed no change to the site, the facility, or its
42 construction or operation. We address retirement below, in the discussion of the Council's
43 Retirement and Financial Assurance standard.
44

1 Sections 3 and 4 of the standard address permits for which the applicant will rely on a
2 permit or approval issued to a third party. PGE has proposed no change to the site, the facility, or
3 its construction or operation that would rely on a permit or approval issued to a third party.
4

5 Because PGE has proposed no change to the site, the facility, or its construction or
6 operation, the Department recommends that the Council find that the findings in the Final Orders
7 are sufficient to demonstrate compliance with the Organizational Expertise standard.
8

9 **Conclusion**

10 The Department recommends that the Council find that the PWGP would meet the
11 Council's Organizational Expertise standard if Amendment #6 were approved.
12

13 **2. Retirement and Financial Assurance OAR 345-022-0050**

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

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

18
19 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
20 *form and amount satisfactory to the Council to restore the site to a useful, non-hazardous*
21 *condition.*
22

23 **Discussion**

24 Because PGE has proposed no change to the site, the facility, or its construction or
25 operation, the Department recommends that the Council find that the findings in the Final Orders
26 are sufficient to demonstrate compliance with the Retirement and Financial Assurance standard.
27

28 **Conclusion**

29 The Department recommends that the Council find that the PWGP would meet the
30 Council's Retirement and Financial Assurance standard if Amendment #6 were approved.
31

32 **C. Standards about the Impacts of Construction and Operation**

34 **1. Land Use OAR 345-022-0030**

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

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

39 *(a) The applicant elects to obtain local land use approvals under ORS*
40 *469.504(1)(a) and the Council finds that the facility has received local land use*
41 *approval under the acknowledged comprehensive plan and land use regulations*
42 *of the affected local government; or*

43 *(b) The applicant elects to obtain a Council determination under ORS*
44 *469.504(1)(b) and the Council determines that:*

45 *(A) The proposed facility complies with applicable substantive criteria as*
46 *described in section (3) and the facility complies with any Land*

1 Conservation and Development Commission administrative rules and
2 goals and any land use statutes directly applicable to the facility under
3 ORS 197.646(3);

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

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

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

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

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

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

33 (c) The following standards are met:

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

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

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

42 * * *

43 Discussion

44 The Council’s Final Order for the PWGP Amendment No. 2, dated September 24, 2004,
45 addressed changes in applicable land use provisions since issuance of the PWGP Site Certificate.
46

1 Since that decision, Columbia County and the City of Rainier have amended some of their land
2 use provisions, but those amendments do not affect any of the Council’s prior findings with
3 respect to the PGE’s ability to comply with the Land Use standard.
4

5 Because PGE has proposed no change to the site, the facility, or its construction or
6 operation, the Department recommends that the Council find that the findings in the Final Orders
7 are sufficient to demonstrate compliance with the Land Use standard.
8
9

10 **Conclusion**

11 The Department recommends that the Council find that the PWGP would comply with
12 the Council’s Land Use standard if Amendment #6 were approved.
13

14 **2. Public Services OAR 345-022-0110**

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

21 * * *

22
23 **Discussion**

24 Because PGE has proposed no change to the site, the facility, or its construction or
25 operation, the Department recommends that the Council find that the findings in the Final Orders
26 are sufficient to demonstrate compliance with the Public Services standard.
27

28 **Conclusion**

29 The Department recommends that the Council find that the PWGP would comply with
30 the Public Services standard if Amendment #6 were approved.
31

32 **3. Waste Minimization OAR 345-022-0120**

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

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

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

42 * * *

1 **Discussion**

2 Because PGE has proposed no change to the site, the facility, or its construction or
3 operation, the Department recommends that the Council find that the findings in the Final Orders
4 are sufficient to demonstrate compliance with the Waste Minimization standard.
5

6 **Conclusion**

7 The Department recommends that the Council find that the PWGP would comply with
8 the Waste Minimization standard if Amendment #6 were approved.
9

10 **4. Structural Standard OAR 345-022-0020**

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

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

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

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

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

31 * * *

32
33 **Discussion**

34 Because PGE has proposed no change to the site, the facility, or its construction or
35 operation, the Department recommends that the Council find that the findings in the Final Orders
36 are sufficient to demonstrate compliance with the Structural standard.
37

38 **Conclusion**

39 The Department recommends that the Council find that the PWGP would comply with
40 the Structural standard if Amendment #6 were approved.
41

42 **5. Soil Protection OAR 345-022-0022**

43 *To issue a site certificate, the Council must find that the design, construction and*
44 *operation of the facility, taking into account mitigation, are not likely to result in a*
45 *significant adverse impact to soils including, but not limited to, erosion and chemical*

1 *factors such as salt deposition from cooling towers, land application of liquid effluent,*
2 *and chemical spills.*

3
4 **Discussion**

5 Because PGE has proposed no change to the site, the facility, or its construction or
6 operation, the Department recommends that the Council find that the findings in the Final Orders
7 are sufficient to demonstrate compliance with the Soil Protection standard.

8
9 **Conclusion**

10 The Department recommends that the Council find that the PWGP would comply with
11 the Council's Soil Protection standard if Amendment #6 were approved.

12
13 **6. Protected Areas OAR 345-022-0040**

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

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

23 *(b) National monuments, including but not limited to John Day Fossil Bed*
24 *National Monument, Newberry National Volcanic Monument and Oregon Caves*
25 *National Monument;*

26 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131*
27 *et seq. and areas recommended for designation as wilderness areas pursuant to*
28 *43 U.S.C. 1782;*

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

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

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

38 *(g) National recreation and scenic areas, including but not limited to Oregon*
39 *Dunes National Recreation Area, Hell's Canyon National Recreation Area, and*
40 *the Oregon Cascades Recreation Area, and Columbia River Gorge National*
41 *Scenic Area;*

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

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

- 1 (j) State estuarine sanctuaries, including but not limited to South Slough
 2 Estuarine Sanctuary, OAR Chapter 142;
 3 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers
 4 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers
 5 listed as potentials for designation;
 6 (l) Experimental areas established by the Rangeland Resources Program, College
 7 of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw
 8 Butte) site, the Starkey site and the Union site;
 9 (m) Agricultural experimental stations established by the College of Agriculture,
 10 Oregon State University, including but not limited to: Coastal Oregon Marine
 11 Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension
 12 Center, Hood River
 13 Agriculture Research and Extension Center, Hermiston Columbia Basin
 14 Agriculture Research Center, Pendleton Columbia Basin Agriculture Research
 15 Center, Moro North Willamette Research and Extension Center, Aurora East
 16 Oregon Agriculture Research Center, Union Malheur Experiment Station,
 17 Ontario Eastern Oregon Agriculture Research Center, Burns Eastern Oregon
 18 Agriculture Research Center, Squaw Butte Central Oregon Experiment Station,
 19 Madras Central Oregon Experiment Station, Powell Butte Central Oregon
 20 Experiment Station, Redmond Central Station, Corvallis
 21 Coastal Oregon Marine Experiment Station, Newport Southern Oregon
 22 Experiment Station, Medford Klamath Experiment Station, Klamath Falls;
 23 (n) Research forests established by the College of Forestry, Oregon State
 24 University, including but not limited to McDonald Forest, Paul M. Dunn Forest,
 25 the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak
 26 area and the Marchel Tract;
 27 (o) Bureau of Land Management areas of critical environmental concern,
 28 outstanding natural areas and research natural areas;
 29 (p) State wildlife areas and management areas identified in OAR chapter 635,
 30 Division 8.

31 * * *

32
 33 **Discussion**

34 Because PGE has proposed no change to the site, the facility, or its construction or
 35 operation, the Department recommends that the Council find that the findings in the Final Orders
 36 are sufficient to demonstrate compliance with the Protected Areas standard.
 37

38 **Conclusion**

39 The Department recommends that the Council find that the PWGP would comply with
 40 the Council's Protected Areas standard if Amendment #6 were approved.
 41

42 **7. Scenic Resources OAR 345-022-0080**

43 (1) Except for facilities described in section (2), to issue a site certificate, the Council
 44 must find that the design, construction and operation of the facility, taking into account
 45 mitigation, are not likely to result in significant adverse impact to scenic resources and
 46 values identified as significant or important in local land use plans, tribal land

1 *management plans and federal land management plans for any lands located within the*
2 *analysis area described in the project order.*

3 * * *

4
5 **Discussion**

6 Because PGE has proposed no change to the site, the facility, or its construction or
7 operation, the Department recommends that the Council find that the findings in the Final Orders
8 are sufficient to demonstrate compliance with the Scenic Resources standard.

9
10 **Conclusion**

11 The Department recommends that the Council find that the PWGP would comply with
12 the Council's Scenic Resources standard if Amendment #6 were approved.

13
14 **8. Historic, Cultural and Archaeological Resources OAR 345-022-0090**

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

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

20 *(b) For a facility on private land, archaeological objects, as defined in ORS*
21 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

22 *(c) For a facility on public land, archaeological sites, as defined in ORS*
23 *358.905(1)(c).*

24 * * *

25
26 **Discussion**

27 Because PGE has proposed no change to the site, the facility, or its construction or
28 operation, the Department recommends that the Council find that the findings in the Final Orders
29 are sufficient to demonstrate compliance with the Historic, Cultural and Archaeological
30 Resources standard.

31
32 **Conclusion**

33 The Department recommends that the Council find that the PWGP would comply with
34 the Council's Historic, Cultural and Archaeological Resources standard if Amendment #6 were
35 approved.

36
37 **9. Recreation OAR 345-022-0100**

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

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

45 *(b) The degree of demand;*

46 *(c) Outstanding or unusual qualities;*

- (d) Availability or rareness;
- (e) Irreplaceability or irretrievability of the opportunity.

* * *

Discussion

Because PGE has proposed no change to the site, the facility, or its construction or operation, the Department recommends that the Council find that the findings in the Final Orders are sufficient to demonstrate compliance with the Recreation standard.

Conclusion

The Department recommends that the Council find that the PWGP would comply with the Council's Recreation standard if Amendment #6 were approved.

D. Standards to Protect Wildlife

1. Threatened and Endangered Species OAR 345-022-0070

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

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

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

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

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

Discussion

Because PGE has proposed no change to the site, the facility, or its construction or operation, the Department recommends that the Council find that the findings in the Final Orders are sufficient to demonstrate compliance with the Threatened and Endangered Species standard.

Conclusion

The Department recommends that the Council find that the PWGP would comply with the Council's Threatened and Endangered Species standard if Amendment #6 were approved.

2. Fish and Wildlife Habitat OAR 345-022-0060

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

1
2 **Discussion**

3 Because PGE has proposed no change to the site, the facility, or its construction or
4 operation, the Department recommends that the Council find that the findings in the Final Orders
5 are sufficient to demonstrate compliance with the Fish and Wildlife Habitat standard.
6

7 **Conclusion**

8 The Department recommends that the Council find that the PWGP would comply with
9 the Council's Fish and Wildlife Habitat standard if Amendment #6 were approved.
10

11 **E. Carbon Dioxide Standard for Base Load Gas Plants OAR 345-024-0550**

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

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

26 *(2) For any remaining emissions reduction necessary to meet the applicable*
27 *standard, the applicant may elect to use any of the means described in OAR 345-*
28 *024-0560, or any combination thereof. The Council shall determine the amount of*
29 *carbon dioxide emissions reduction that is reasonably likely to result from the*
30 *applicant's offsets and whether the resulting net carbon dioxide emissions meet*
31 *the applicable carbon dioxide emissions standard;*

32 *(3) If the applicant elects to comply with the standard using the means described*
33 *in OAR 345-024-0560(2), the Council shall determine the amount of carbon*
34 *dioxide emissions reduction that is reasonably likely to result from each of the*
35 *proposed offsets. In making this determination, the Council shall not allow credit*
36 *for offsets that have already been allocated or awarded credit for carbon dioxide*
37 *emissions reduction in another regulatory setting. The fact that an applicant or*
38 *other parties involved with an offset may derive benefits from the offset other than*
39 *the reduction of carbon dioxide emissions is not, by itself, a basis for withholding*
40 *credit for an offset. The Council shall base its determination of the amount of*
41 *carbon dioxide emission reduction on the following criteria and as provided in*
42 *OAR 345-024-0680:*

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

45 *(b) The ability of the Council to determine the actual quantity of carbon*
46 *dioxide emissions reduction resulting from the offset, taking into*

1 *consideration any proposed measurement, monitoring and evaluation of*
2 *mitigation measure performance;*

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

5 *(4) Before beginning construction, the certificate holder shall notify the*
6 *Department of Energy in writing of its final selection of a gas turbine vendor and*
7 *shall submit a written design information report to the Department sufficient to*
8 *verify the facility's designed new and clean heat rate and its nominal electric*
9 *generating capacity at average annual site conditions for each fuel type. In the*
10 *report, the certificate holder shall include the proposed limits on the annual*
11 *average number of hours of facility operation on distillate fuel oil, if applicable.*
12 *In the site certificate, the Council may specify other information to be included in*
13 *the report. The Department shall use the information the certificate holder*
14 *provides in the report as the basis for calculating, according to the site*
15 *certificate, the amount of carbon dioxide emissions reductions the certificate*
16 *holder must provide under OAR 345-024-0560.*

17
18 **Discussion**

19 The Department recommends that the Council find that the findings in the Final Orders
20 are sufficient to demonstrate PGE's compliance with the Carbon Dioxide standard with respect
21 to Phase 1 of the PWFP. Specifically, the Certificate Holder complies with the carbon dioxide
22 standard in effect at the time of the Council's order on the amendment request, pursuant to OAR
23 345-027-0030(5). With respect to development of Phase 2 of the PWGP, the Department
24 recommends that the Council make PGE subject to the currently applicable offset fund rate for
25 the monetary path payment in the amount of \$1.27 per ton of carbon dioxide emissions (in 2007
26 dollars). At a meeting on September 26, 2008 the Council authorized the Department to update
27 the carbon dioxide standard to reflect improvements in generating plant efficiency. ORS
28 469.503 authorizes the Council to increase the monetary path rate every two years. The Council
29 most recently increased the monetary path rate in May 2007 and may do so again in May 2009.
30 Therefore, any future amendment authorizing construction of phase 2 may require compliance
31 with an updated standard and monetary path rate.

32
33 **Conclusion**

34 For the reasons discussed above and subject to the modifications of the site certificate
35 conditions described herein, the Department recommends that the Council find that the PWGP
36 would comply with Carbon Dioxide standard if Amendment #6 were approved.

37
38 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS**

39
40 **A. Requirements under Council Jurisdiction**

41 Under ORS 469.503(3) and under the Council's General Standard of Review (OAR 345-
42 022-0000, the Council must determine that a facility complies with "all other Oregon statutes
43 and administrative rules identified in the project order, as amended, as applicable to the issuance
44 of a site certificate for the proposed facility." In the Final Orders, the Council found that the
45 other applicable Oregon statutes and administrative rules were the Department of Environmental
46 Quality noise control regulations, the regulations adopted by the Department of State Lands for

1 removal or fill of material affecting waters of the state and the Council’s statutory authority to
2 consider protection of public health and safety.

3
4 **1. Noise Control Regulations for Industry and Commerce OAR 340-035-0035**

5 *(1) Standards and Regulations:*

6 * * *

7 *(b) New Noise Sources:*

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

18 * * *

19
20 **Discussion**

21 DEQ noise regulations for industrial and commercial noise sources apply to the PWGP.
22 Because PGE has proposed no change to the site, the facility, or its construction or operation, the
23 Department recommends that the Council find that the findings in the Final Orders are sufficient
24 to demonstrate compliance with the DEQ noise standards applicable to the facility.

25
26 **Conclusion**

27 The Department recommends that the Council find that the PWGP would comply with
28 the applicable noise control regulations if Amendment #6 were approved.

29
30 **2. Removal-Fill Law**

31 The Oregon Removal-Fill Law (ORS 196.800 through 990) and DLS regulations (OAR
32 141-085-0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of
33 material is removed, filled or altered within any “waters of the state” at the proposed site.

34
35 **Discussion**

36 Because PGE has proposed no change to the site, the facility, or its construction or
37 operation, the Department recommends that the Council find that the findings in the Final Orders
38 are sufficient to demonstrate compliance with the DSL removal/fill permit requirements.

39
40 **Conclusion**

41 The Department recommends that the Council find that the PWGP would comply with
42 the applicable DSL removal/fill permit requirements if Amendment #6 were approved.

43
44 **3. Public Health and Safety**

45 Under ORS 469.310, the Council is charged with ensuring that the “siting, construction
46 and operation of energy facilities shall be accomplished in a manner consistent with protection of

1 the public health and safety....” State law further provides that “the site certificate shall contain
2 conditions for the protection of the public health and safety....” ORS 469.401(2).

3
4 **Discussion**

5 Because PGE has proposed no change to the site, the facility, or its construction or
6 operation, the Department recommends that the Council find that the findings in the Final Orders
7 are sufficient to demonstrate compliance with the Public Health and Safety standard.

8
9 **Conclusion**

10 The Department recommends that the Council find that the PWGP would comply with
11 the Public Health and Safety standard if Amendment #6 were approved.

12
13 **B. Requirements That Are Not Under Council Jurisdiction**

14
15 **1. Federally-Delegated Programs**

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

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

30
31 **2. Requirements That Do Not Relate to Siting**

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

39
40 **VI. GENERAL APPLICATION OF CONDITIONS**

41 The conditions described in this order include conditions that are specifically required by
42 OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site
43 Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,
44 Division 26 (Construction and Operation Rules for Facilities). The conditions described in this
45 order, or added to the site certificate by this order, include conditions based on representations in
46 the request for amendment and the supporting record. The Council deems these representations

1 to be binding commitments made by the certificate holder. Also included are conditions Council
2 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions
3 22 and 24, or to protect public health and safety.
4

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

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

17 **VII. GENERAL CONCLUSION**

18 The amendment proposed by PGE would extend the construction completion date for the
19 PWGP from May 9, 2009, to May 9, 2011, and amend the carbon dioxide emissions monetary
20 path payment requirement applicable to Phase 2 of the PWGP from \$0.85 per ton of carbon
21 dioxide (in 2002 dollars) to \$1.27 per ton of carbon dioxide (in 2009 dollars). The Department
22 recommends that the Council adopt the revisions proposed by PGE with one exception. Because
23 the rule increasing the carbon dioxide emissions monetary path payment requirement from \$0.85
24 to \$1.27 per ton of carbon dioxide was enacted in 2007, the Department recommends that the
25 Council find that the carbon dioxide monetary path payment requirement applicable to Phase 2
26 of the PWGP should be \$1.27 per ton of carbon dioxide (in 2007 dollars). The Department
27 recommends that the Council adopt revisions to Conditions D.3.(5)(f), D.15.(1), D.15.(5),
28 D.15.(7)(b)(A), D.15.(7)(b)(B) and F.1.(6) as set forth in Section VII.A below.
29

30 Based on the findings and conclusions included in this order, the Department
31 recommends that the Council make the following findings:
32

- 33 1. The proposed Amendment #6 complies with the requirements of the Oregon
34 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to
35 469.619.
- 36 2. The proposed Amendment #6 complies with the applicable standards adopted by
37 the Council pursuant to ORS 469.501.
- 38 3. The proposed Amendment #6 complies with all other Oregon statutes and
39 administrative rules applicable to the amendment of the site certificate for the
40 PWGP that are within the Council's jurisdiction.
41

42 Accordingly, the Department recommends that the Council find that the facility complies
43 with the General Standard of Review (OAR 345-022-0000). The Department recommends that
44 the Council find, based on a preponderance of the evidence on the record, that the site certificate
45 may be amended as requested by the certificate holder subject to the revisions recommended by
46 the Department and set forth below.

1
2 **A. The Department’s Recommended Revisions**
3

4 New text recommended by the Department is shown below in double-underlined bold
5 typeface and recommended deletions have a strikethrough. All changes recommended by the
6 Department are identical to the changes requested by the applicant with the following
7 exceptions:
8

- 9
- 10 1. The Department recommends modification of Condition D.3.(5)(f) to provide
11 for adjustment of 2002, 2004 and 2007 dollars by reference to the U.S. Gross
12 Domestic Product Implicit Price Deflator to account for adjustment of carbon
13 dioxide emissions monetary path payment requirements as well as facility
14 retirement financial assurance requirements.
 - 15 2. Because the Council adjusted the carbon dioxide emissions monetary path
16 payment requirement from \$0.85 to \$1.27 per ton of carbon dioxide in 2007,
17 the Department recommends that Conditions D.15.(2), D.15.(7)(b)(A) and
18 D.15.(7)(b)(B) be amended to require that the bond or letter of credit
19 applicable to the carbon dioxide emissions monetary path payment
20 requirement for Phase 2 be expressed in terms of 2007 dollars instead of 2009
21 dollars as requested by the certificate holder.
22

23 **D.3. Retirement and Financial Assurance**

24
25 (5)f) *The calculation of 2004 dollars (or 2002 dollars and 2007 dollars in the case of the rate
26 applicable to carbon dioxide emissions monetary path payment requirements), shall be made
27 using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the
28 Oregon Department of Administrative Services’ “Oregon Economic and Revenue Forecast,” or
29 by any successor agency (the “Index”). If at any time the Index is no longer published, the
30 Council shall select a comparable calculation of 2002, 2004 and 2007 dollars. [Amendments No.
31 3 and 6]
32*

33 **D.15. Carbon Dioxide Standard**

34
35 (2) *Before beginning construction of Phase 1 and Phase 2 of the energy facility, respectively, the
36 Certificate Holder shall submit to the Climate Trust a bond or letter of credit in the amount of the
37 monetary path payment requirement (in 2002 dollars for Phase 1 and in 2007 dollars for Phase
38 2) as determined by the calculations set forth in Condition D.15(3) and based on the estimated
39 heat rates and capacities certified pursuant to Condition D.15(4) and adjusted in accordance with
40 the terms of this Site Certificate pursuant to Condition D.15(3)(c). For the purposes of this Site
41 Certificate, the “monetary path payment requirement” means the offset funds determined
42 pursuant to OAR 345-024-0550 and –0560 and the selection and contracting funds that the
43 Certificate Holder must disburse to The Climate Trust, as the qualified organization, pursuant to
44 OAR 345-024-0710 and this Site Certificate. The offset fund rate for the monetary path payment
45 requirement shall be \$0.85 per ton of carbon dioxide (in 2002 dollars) for Phase 1 and \$1.27 per
46 ton of carbon dioxide (in 2007 dollars) for Phase 2. The calculation of 2002 and 2007 dollars
47 shall be made using the Index set forth in Condition D.3(5) and as required below in subsection
48 (g). [Amendments No. 1 & 6]
49*

50 (6) *Within the first 12 months of commercial operation of each phase of the energy facility, the
51 Certificate Holder shall conduct a 100-hour test at full power without power augmentation*

1 technologies (“Year One Test-1”) and a test at full power with power augmentation technologies
2 (“Year One Test-2”). A 100-hour test performed for purposes of the Certificate Holder’s
3 commercial acceptance of the facility shall suffice to satisfy this condition in lieu of testing after
4 beginning commercial operation. [Amendment No. 6]

5
6 (7)(b)(A) In determining the excess carbon dioxide emissions that the Certificate Holder must
7 offset for a five-year period, the Department shall apply OAR 345-024-0600(4)(a) The
8 Certificate Holder shall pay for the excess emissions at \$0.85 per ton of carbon dioxide
9 emissions (in 2002 dollars) for Phase 1 and \$1.27 per ton of carbon dioxide emissions
10 (in 2007 dollars) for Phase 2. The Department shall notify the Certificate Holder and
11 The Climate Trust of the amount of the payment required, using the monetary path, to
12 offset excess emissions. [Amendment No. 6]

13
14 (7)(b)(B) The Department shall calculate estimated future excess emissions and notify the
15 Certificate Holder of the amount of payment required, using the monetary path, to offset
16 them. To estimate excess emissions for the remaining period of the deemed 30-year life of
17 the facility, the Department shall use the parameters specified in OAR 345-024-
18 0600(4)(b). The Certificate Holder shall pay for the estimated excess emissions at \$0.85
19 per ton of carbon dioxide (in 2002 dollars) for Phase 1 and \$1.27 per ton of carbon
20 dioxide (in 2007 dollars) for Phase 2. The Department shall notify the Certificate Holder
21 of the amount of payment required, using the monetary path, to offset future excess
22 emissions. [Amendment No. 6]

23
24 **F.1. Mandatory Conditions in Site Certificates**
25 **Beginning and Completing Construction**

26
27 (6) The Certificate Holder shall complete construction of the facility by May 8, ~~2009~~2011. The
28 completion of construction date is the day by which (1) the facility is substantially complete as
29 defined in the Certificate Holder’s construction contract documents; (2) acceptance testing is
30 satisfactorily completed; and, (3) the energy facility is ready to commence continuous operation
31 consistent with the Site Certificate. Completion of construction of the Port Westward to BPA
32 Allston Substation Transmission Line separately shall not satisfy this requirement. [Amendment
33 Nos. 2 & 6]

34
35 **VIII. ORDER**

36 The Department recommends that the Council does approve Amendment #6 and issue an
37 amended site certificate for the Port Westward Generating Project subject to the terms and
38 conditions set forth above.

39
40 Issued this 23rd day of February, 2009.

41
42 OREGON DEPARTMENT OF ENERGY

43
44
45 By: _____
46 Thomas M. Stoops
47 Siting Manager, Oregon Department of Energy
48

49 Notice of the Right to Appeal
50 [Text to be added to Final Order]