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

In the Matter of the Request for Amendment #6) FINAL ORDER ON
of the Site Certificate for the Port Westward) AMENDMENT #6
Generating Project)

OREGON ENERGY FACILITY SITING COUNCIL

March 27, 2009

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

7 **I. INTRODUCTION**
8

9 The Energy Facility Siting Council (EFSC or “the Council”) issues this order in
10 accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by
11 Portland General Electric Company (PGE) for Amendment #6 to its site certificate for the Port
12 Westward Generating Project (PWGP). The Port Westward Generating Project is a nominal 560-
13 megawatt natural gas-fired electric generating facility located about 4.5 miles north of
14 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 Oregon Department of Energy (ODOE or
30 “the Department”) a request for amendment of the site certificate (Amendment #6).¹ On
31 November 21, 2008, the Department sent copies of the amendment request to the reviewing
32 agencies. The Department requested agency comments by December 24, 2008. The Department
33 received no substantive comments from reviewing 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 a proposed 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 On March 27, 2009, the Council took action on the amendment request during its regular
44 meeting in Pendleton, Oregon.
45

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

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

4
5 In its amendment request, PGE explained the reason for the request as follows:

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

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

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

20
21 In a separate amendment request to be submitted later in 2009, PGE intends to modify
22 Unit 2 of Port Westward Generating Project to become a

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

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

38
39 **A. Amendment Procedure**

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

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 PORT WESTWARD GENERATING PROJECT
FINAL ORDER ON AMENDMENT #6 – March 27, 2009

1
2 **OAR 345-027-0030**

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

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

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

15
16 *(3) The Council shall review the request for amendment as described in OAR 345-027-*
17 *0070.*

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

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

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

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

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

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.

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

6
7 Under OAR 345-027-0070(10)(b), for an amendment that extends the deadlines for
8 beginning or completing construction, the Council must consider:

9
10 *“(A) Whether the Council has previously granted an extension of the deadline.”*

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

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

25
26 The Council finds that it has granted one extension of the deadline for beginning and
27 completing construction of the PWGP and that a second extension of the deadline for completing
28 construction of the PWGP under the conditions outlined by PGE would be reasonable.

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

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

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

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

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

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

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**]

1 **IV. THE COUNCIL’S SITING STANDARDS**

2
3 The Council must decide whether the amendment complies with the facility siting
4 standards adopted by the Council. In addition, the Council must impose conditions for the
5 protection of the public health and safety, for the time of commencement and completion of
6 construction, and for ensuring compliance with the standards, statutes and rules addressed in the
7 project order. ORS 469.401(2).
8

9 The Council is not authorized to determine compliance with regulatory programs that
10 have been delegated to another state agency by the federal government. ORS 469.503(3).
11 Nevertheless, the Council may consider these programs in the context of its own standards to
12 ensure public health and safety, resource efficiency and protection of the environment.
13

14 The Council has no jurisdiction over design or operational issues that do not relate to
15 siting, such as matters relating to employee health and safety, building code compliance, wage
16 and hour or other labor regulations, or local government fees and charges. ORS 469.401(4).
17

18 In making its decision on an amendment of a site certificate, the Council applies the
19 applicable state statutes, administrative rules and local government ordinances that are in effect
20 on the date the Council makes its decision, except when applying the Land Use standard. In
21 making findings on the Land Use standard, the Council applies the applicable substantive criteria
22 in effect on the date the certificate holder submitted the request for amendment. OAR 345-027-
23 0070(9).
24

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

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

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

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

43 * * *

44
45 The requirements of OAR 345-022-0000 are discussed in the sections that follow.
46 Applicable statutes and rules of agencies other than EFSC are discussed below, in section V.A of

1 this order. The proposed amendment does not affect any permits issued by agencies other than
2 the Council.

3
4 **B. Standards about the Applicant**

5
6 **1. Organizational Expertise OAR 345-022-0010**

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

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

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

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

39
40 **Discussion**

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

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 Council finds that the findings in the Final Orders are sufficient to demonstrate
7 compliance with the Organizational Expertise standard.
8

9 **Conclusion**

10 The Council finds that the PWGP meets the Council’s Organizational Expertise standard.
11

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

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

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

17
18 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
19 *form and amount satisfactory to the Council to restore the site to a useful, non-hazardous*
20 *condition.*
21

22 **Discussion**

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

27 **Conclusion**

28 The Council finds that the PWGP meets the Council’s Retirement and Financial
29 Assurance standard.
30

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

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

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

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

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

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

44 *(A) The proposed facility complies with applicable substantive criteria as*
45 *described in section (3) and the facility complies with any Land*
46 *Conservation and Development Commission administrative rules and*

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

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

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

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

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

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

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

32 (c) The following standards are met:

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

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

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

41 * * *

42 Discussion

43 The Council’s Final Order for the PWGP Amendment No. 2, dated September 24, 2004,
44 addressed changes in applicable land use provisions since issuance of the PWGP Site Certificate.
45 Since that decision, Columbia County and the City of Rainier have amended some of their land
46

1 use provisions, but those amendments do not affect any of the Council’s prior findings with
2 respect to the PGE’s ability to comply with the Land Use standard.

3
4 Because PGE has proposed no change to the site, the facility, or its construction or
5 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
6 compliance with the Land Use standard.

7
8 **Conclusion**

9 The Council finds that the PWGP complies with the Council’s Land Use standard.

10
11 **2. Public Services OAR 345-022-0110**

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

18 * * *

19
20 **Discussion**

21 Because PGE has proposed no change to the site, the facility, or its construction or
22 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
23 compliance with the Public Services standard.

24
25 **Conclusion**

26 The Council finds that the PWGP complies with the Public Services standard.

27
28 **3. Waste Minimization OAR 345-022-0120**

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

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

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

38 * * *

39
40 **Discussion**

41 Because PGE has proposed no change to the site, the facility, or its construction or
42 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
43 compliance with the Waste Minimization standard.

44
45 **Conclusion**

46 The Council finds that the PWGP complies with the Waste Minimization standard.

1
2 **4. Structural Standard OAR 345-022-0020**

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

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

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

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

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

23 * * *

24
25 **Discussion**

26 Because PGE has proposed no change to the site, the facility, or its construction or
27 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
28 compliance with the Structural standard.
29

30 **Conclusion**

31 The Council finds that the PWGP complies with the Structural standard.
32

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

34 *To issue a site certificate, the Council must find that the design, construction and*
35 *operation of the facility, taking into account mitigation, are not likely to result in a*
36 *significant adverse impact to soils including, but not limited to, erosion and chemical*
37 *factors such as salt deposition from cooling towers, land application of liquid effluent,*
38 *and chemical spills.*
39

40 **Discussion**

41 Because PGE has proposed no change to the site, the facility, or its construction or
42 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
43 compliance with the Soil Protection standard.
44

45 **Conclusion**

46 The Council finds that the PWGP complies with the Council’s Soil Protection standard.

1
2 **6. Protected Areas OAR 345-022-0040**

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

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

12 *(b) National monuments, including but not limited to John Day Fossil Bed*
13 *National Monument, Newberry National Volcanic Monument and Oregon Caves*
14 *National Monument;*

15 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131*
16 *et seq. and areas recommended for designation as wilderness areas pursuant to*
17 *43 U.S.C. 1782;*

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

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

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

27 *(g) National recreation and scenic areas, including but not limited to Oregon*
28 *Dunes National Recreation Area, Hell's Canyon National Recreation Area, and*
29 *the Oregon Cascades Recreation Area, and Columbia River Gorge National*
30 *Scenic Area;*

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

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

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

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

40 *(l) Experimental areas established by the Rangeland Resources Program, College*
41 *of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw*
42 *Butte) site, the Starkey site and the Union site;*

43 *(m) Agricultural experimental stations established by the College of Agriculture,*
44 *Oregon State University, including but not limited to: Coastal Oregon Marine*
45 *Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension*
46 *Center, Hood River*

1 *Agriculture Research and Extension Center, Hermiston Columbia Basin*
2 *Agriculture Research Center, Pendleton Columbia Basin Agriculture Research*
3 *Center, Moro North Willamette Research and Extension Center, Aurora East*
4 *Oregon Agriculture Research Center, Union Malheur Experiment Station,*
5 *Ontario Eastern Oregon Agriculture Research Center, Burns Eastern Oregon*
6 *Agriculture Research Center, Squaw Butte Central Oregon Experiment Station,*
7 *Madras Central Oregon Experiment Station, Powell Butte Central Oregon*
8 *Experiment Station, Redmond Central Station, Corvallis*
9 *Coastal Oregon Marine Experiment Station, Newport Southern Oregon*
10 *Experiment Station, Medford Klamath Experiment Station, Klamath Falls;*
11 *(n) Research forests established by the College of Forestry, Oregon State*
12 *University, including but not limited to McDonald Forest, Paul M. Dunn Forest,*
13 *the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak*
14 *area and the Marchel Tract;*
15 *(o) Bureau of Land Management areas of critical environmental concern,*
16 *outstanding natural areas and research natural areas;*
17 *(p) State wildlife areas and management areas identified in OAR chapter 635,*
18 *Division 8.*

19 * * *

20
21 **Discussion**

22 Because PGE has proposed no change to the site, the facility, or its construction or
23 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
24 compliance with the Protected Areas standard.

25
26 **Conclusion**

27 The Council finds that the PWGP complies with the Council's Protected Areas standard.

28
29 **7. Scenic Resources OAR 345-022-0080**

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

36 * * *

37
38 **Discussion**

39 Because PGE has proposed no change to the site, the facility, or its construction or
40 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
41 compliance with the Scenic Resources standard.

42
43 **Conclusion**

44 The Council finds that the PWGP complies with the Council's Scenic Resources
45 standard.

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

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

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

7 *(b) For a facility on private land, archaeological objects, as defined in ORS*
8 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

9 *(c) For a facility on public land, archaeological sites, as defined in ORS*
10 *358.905(1)(c).*

11 * * *

12
13 **Discussion**

14 Because PGE has proposed no change to the site, the facility, or its construction or
15 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
16 compliance with the Historic, Cultural and Archaeological Resources standard.

17
18 **Conclusion**

19 The Council finds that the PWGP complies with the Council’s Historic, Cultural and
20 Archaeological Resources standard.

21
22 **9. Recreation OAR 345-022-0100**

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

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

30 *(b) The degree of demand;*

31 *(c) Outstanding or unusual qualities;*

32 *(d) Availability or rareness;*

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

34 * * *

35
36 **Discussion**

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

40 **Conclusion**

41 The Council finds that the PWGP complies with the Council’s Recreation standard.

42
43 **D. Standards to Protect Wildlife**

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

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

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

7 *(a) Are consistent with the protection and conservation program, if any,*
8 *that the Oregon Department of Agriculture has adopted under ORS*
9 *564.105(3); or*

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

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

18
19 **Discussion**

20 Because PGE has proposed no change to the site, the facility, or its construction or
21 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
22 compliance with the Threatened and Endangered Species standard.
23

24 **Conclusion**

25 The Council find that the PWGP complies with the Council’s Threatened and
26 Endangered Species standard.
27

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

29 *To issue a site certificate, the Council must find that the design, construction and*
30 *operation of the facility, taking into account mitigation, are consistent with the fish and*
31 *wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of*
32 *September 1, 2000.*
33

34 **Discussion**

35 Because PGE has proposed no change to the site, the facility, or its construction or
36 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
37 compliance with the Fish and Wildlife Habitat standard.
38

39 **Conclusion**

40 The Council finds that the PWGP complies with the Council’s Fish and Wildlife Habitat
41 standard.
42

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

44 *To issue a site certificate for a base load gas plant, the Council must find that the net*
45 *carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of*
46 *carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide*

1 *emissions and net electric power output measured on a new and clean basis. For a base*
2 *load gas plant designed with power or augmentation technology as defined in OAR 345-*
3 *001-0010, the Council shall apply the standard for a non-base load power plant, as*
4 *described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the*
5 *designed operation of the power augmentation technology. The Council shall determine*
6 *whether the base load carbon dioxide emissions standard is met as follows:*

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

12 *(2) For any remaining emissions reduction necessary to meet the applicable*
13 *standard, the applicant may elect to use any of the means described in OAR 345-*
14 *024-0560, or any combination thereof. The Council shall determine the amount of*
15 *carbon dioxide emissions reduction that is reasonably likely to result from the*
16 *applicant's offsets and whether the resulting net carbon dioxide emissions meet*
17 *the applicable carbon dioxide emissions standard;*

18 *(3) If the applicant elects to comply with the standard using the means described*
19 *in OAR 345-024-0560(2), the Council shall determine the amount of carbon*
20 *dioxide emissions reduction that is reasonably likely to result from each of the*
21 *proposed offsets. In making this determination, the Council shall not allow credit*
22 *for offsets that have already been allocated or awarded credit for carbon dioxide*
23 *emissions reduction in another regulatory setting. The fact that an applicant or*
24 *other parties involved with an offset may derive benefits from the offset other than*
25 *the reduction of carbon dioxide emissions is not, by itself, a basis for withholding*
26 *credit for an offset. The Council shall base its determination of the amount of*
27 *carbon dioxide emission reduction on the following criteria and as provided in*
28 *OAR 345-024-0680:*

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

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

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

37 *(4) Before beginning construction, the certificate holder shall notify the*
38 *Department of Energy in writing of its final selection of a gas turbine vendor and*
39 *shall submit a written design information report to the Department sufficient to*
40 *verify the facility's designed new and clean heat rate and its nominal electric*
41 *generating capacity at average annual site conditions for each fuel type. In the*
42 *report, the certificate holder shall include the proposed limits on the annual*
43 *average number of hours of facility operation on distillate fuel oil, if applicable.*
44 *In the site certificate, the Council may specify other information to be included in*
45 *the report. The Department shall use the information the certificate holder*
46 *provides in the report as the basis for calculating, according to the site*

1 *certificate, the amount of carbon dioxide emissions reductions the certificate*
2 *holder must provide under OAR 345-024-0560.*
3

4 **Discussion**

5 The Council finds that the findings in the Final Orders are sufficient to demonstrate
6 PGE’s compliance with the Carbon Dioxide standard with respect to Phase 1 of the PWWP.
7 Specifically, the Certificate Holder complies with the carbon dioxide standard in effect at the
8 time of the Council’s order on the amendment request, pursuant to OAR 345-027-0030(5). With
9 respect to development of Phase 2 of the PWWP, the Council makes PGE subject to the currently
10 applicable offset fund rate for the monetary path payment in the amount of \$1.27 per ton of
11 carbon dioxide emissions (in 2007 dollars). At a meeting on September 26, 2008, the Council
12 authorized the Department to update the carbon dioxide standard to reflect improvements in
13 generating plant efficiency. ORS 469.503 authorizes the Council to increase the monetary path
14 rate every two years. The Council most recently increased the monetary path rate in May 2007
15 and may do so again in May 2009. Therefore, any future amendment authorizing construction of
16 Phase 2 may require compliance with an updated standard and monetary path rate.
17

18 **Conclusion**

19 For the reasons discussed above and subject to the modifications of the site certificate
20 conditions described herein, the Council finds that the PWWP complies with Carbon Dioxide
21 standard.
22

23 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS**

24
25 **A. Requirements under Council Jurisdiction**

26 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-
27 022-0000, the Council must determine that a facility complies with “all other Oregon statutes
28 and administrative rules identified in the project order, as amended, as applicable to the issuance
29 of a site certificate for the proposed facility.” In the Final Orders, the Council found that the
30 other applicable Oregon statutes and administrative rules were the Department of Environmental
31 Quality noise control regulations, the regulations adopted by the Department of State Lands for
32 removal or fill of material affecting waters of the state and the Council’s statutory authority to
33 consider protection of public health and safety.
34

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

36 *(1) Standards and Regulations:*

37 * * *

38 *(b) New Noise Sources:*

39 *(A) New Sources Located on Previously Used Sites. No person owning or*
40 *controlling a new industrial or commercial noise source located on a*
41 *previously used industrial or commercial site shall cause or permit the*
42 *operation of that noise source if the statistical noise levels generated by*
43 *that new source and measured at an appropriate measurement point,*
44 *specified in subsection (3)(b) of this rule, exceed the levels specified in*
45 *Table 8, except as otherwise provided in these rules. For noise levels*
46 *generated by a wind energy facility including wind turbines of any size*

1 *and any associated equipment or machinery, subparagraph (1)(b)(B)(iii)*
2 *applies.*

3 * * *

4
5 **Discussion**

6 DEQ noise regulations for industrial and commercial noise sources apply to the PWGP.
7 Because PGE has proposed no change to the site, the facility, or its construction or operation, the
8 Council finds that the findings in the Final Orders are sufficient to demonstrate compliance with
9 the DEQ noise standards applicable to the facility.

10
11 **Conclusion**

12 The Council finds that the PWGP complies with the applicable noise control regulations.

13
14 **2. Removal-Fill Law**

15 The Oregon Removal-Fill Law (ORS 196.800 through 990) and DLS regulations (OAR
16 141-085-0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of
17 material is removed, filled or altered within any “waters of the state” at the proposed site.

18
19 **Discussion**

20 Because PGE has proposed no change to the site, the facility, or its construction or
21 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
22 compliance with the DSL removal/fill permit requirements.

23
24 **Conclusion**

25 The Council finds that the PWGP complies with the applicable DSL removal/fill permit
26 requirements.

27
28 **3. Public Health and Safety**

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

33
34 **Discussion**

35 Because PGE has proposed no change to the site, the facility, or its construction or
36 operation, the Council finds that the findings in the Final Orders are sufficient to demonstrate
37 compliance with the Public Health and Safety standard.

38
39 **Conclusion**

40 The Council finds that the PWGP complies with the Public Health and Safety standard.

41
42 **B. Requirements That Are Not Under Council Jurisdiction**

43
44 **1. Federally-Delegated Programs**

45 Under ORS 469.503(3), the Council does not have jurisdiction for determining
46 compliance with statutes and rules for which the federal government has delegated the decision

1 on compliance to a state agency other than the Council. Nevertheless, the Council may rely on
2 the determinations of compliance and the conditions in the federally-delegated permits issued by
3 these state agencies in deciding whether the proposed facility meets other standards and
4 requirements under its jurisdiction.

5
6 In the Final Order on the Application, the Council found that the certificate holder must
7 obtain a federal Air Contaminant Discharge Permit (ACDP) from the Oregon Department of
8 Environmental Quality (DEQ) before beginning construction of the proposed facility. The
9 certificate holder must also comply with requirements of DEQ's 1200-C General National
10 Pollutant Discharge Elimination System (NPDES) Stormwater Discharge permit and an Erosion
11 and Sediment Control Plan (ESCP) to minimize erosion at the site during construction
12 operations.

13
14 **2. Requirements That Do Not Relate to Siting**

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

22
23 **VI. GENERAL APPLICATION OF CONDITIONS**

24 The conditions described in this order include conditions that are specifically required by
25 OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site
26 Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,
27 Division 26 (Construction and Operation Rules for Facilities). The conditions described in this
28 order, or added to the site certificate by this order, include conditions based on representations in
29 the request for amendment and the supporting record. The Council deems these representations
30 to be binding commitments made by the certificate holder. Also included are conditions Council
31 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions
32 22 and 24, or to protect public health and safety.

33
34 In addition to all other conditions described or included in this order, the site certificate
35 holder is subject to all conditions and requirements contained in the rules of the Council and in
36 local ordinances and state law in effect on the date the amended site certificate is executed.
37 Under ORS 469.401(2), upon a clear showing of a significant threat to the public health, safety
38 or the environment that requires application of later-adopted laws or rules, the Council may
39 require compliance with such later-adopted laws or rules.

40
41 The Council recognizes that many specific tasks related to the design, construction,
42 operation and retirement of the facility will be undertaken by the certificate holder's agents or
43 contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents and
44 contractors comply with all provisions of the site certificate.

1 **VII. GENERAL CONCLUSION**

2 The amendment proposed by PGE would extend the construction completion date for the
3 PWGP from May 9, 2009, to May 9, 2011, and amend the carbon dioxide emissions monetary
4 path payment requirement applicable to Phase 2 of the PWGP from \$0.85 per ton of carbon
5 dioxide (in 2002 dollars) to \$1.27 per ton of carbon dioxide (in 2009 dollars). The Council
6 adopts the revisions proposed by PGE. The Council adopts revisions to Conditions D.3.(5)(f),
7 D.15.(1), D.15.(5), D.15.(7)(b)(A), D.15.(7)(b)(B) and F.1.(6) as set forth in Section VII.A
8 below.

9
10 Based on the findings and conclusions included in this order, the Council makes the
11 following findings:

- 12
13 1. The proposed Amendment #6 complies with the requirements of the Oregon
14 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to
15 469.619.
16 2. The proposed Amendment #6 complies with the applicable standards adopted by
17 the Council pursuant to ORS 469.501.
18 3. The proposed Amendment #6 complies with all other Oregon statutes and
19 administrative rules applicable to the amendment of the site certificate for the
20 PWGP that are within the Council’s jurisdiction.
21

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

26
27 **A. The Department’s Recommended Revisions**

28
29 New text recommended by the Department is shown below in double-underlined bold
30 typeface and recommended deletions have a strikethrough. All changes recommended by the
31 Department are identical to the changes requested by the applicant with the following exception:

- 32
33 1. The Department recommends modification of Condition D.3.(5)(f) to provide
34 for adjustment of 2002, 2004 and 2009 dollars by reference to the U.S. Gross
35 Domestic Product Implicit Price Deflator to account for adjustment of carbon
36 dioxide emissions monetary path payment requirements as well as facility
37 retirement financial assurance requirements.
38

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

40
41 (5)f) *The calculation of 2004 dollars (or 2002 dollars and 2009 dollars in the case of the rate
42 applicable to carbon dioxide emissions monetary path payment requirements), shall be made
43 using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the
44 Oregon Department of Administrative Services’ “Oregon Economic and Revenue Forecast,” or
45 by any successor agency (the “Index”). If at any time the Index is no longer published, the
46 Council shall select a comparable calculation of 2002, 2004 and 2009 dollars. [Amendments No.
47 3 and 6]
48*

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 **and 2009** dollars
15 shall be made using the Index set forth in Condition D.3(5) and as required below in subsection
16 (g). [**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 (6)(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 (6)(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 **No. 2 & 6**]

1 **VIII. FINAL ORDER**

2 The Council approves Amendment #6 and issues an amended site certificate for the Port
3 Westward Generating Project subject to the terms and conditions set forth above.

4
5 Issued this 27th day of March, 2009.

6
7 **OREGON ENERGY FACILITY SITING COUNCIL**

8
9
10 By: _____
11 Robert Shiprack, Chair Date

12
13
14 **NOTICE OF THE RIGHT TO APPEAL**

15 You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.405.
16 To appeal, you must file a petition for judicial review with the Supreme Court within 60 days
17 from the day this order was served to you. If this order was personally delivered to you, the date
18 of service is the date you received this order. If this order was mailed to you, the date of service
19 is the date it was mailed, not the day you received it. If you do not file a petition for judicial
20 review within the 60-day time period, you lose your right to appeal.