



May 31, 1996

Chair Mike Katz and
Energy Facility Siting Task Force
c/o Pacific Energy Systems, Inc.
1600 SW Fourth Ave., Suite 770
Portland, OR 97201

Re: Position Paper

Dear Chair Katz and Task Force Members:

Hermiston Power Partnership ("HPP") is a partnership comprised of wholly-owned subsidiaries of Ida-West Energy Company (a wholly-owned subsidiary of Idaho Power), the J.R. Simplot Company and TransCanada PipeLines Limited. In April, HPP received a site certificate for a 460 MW natural gas-fired combined cycle cogeneration facility near the City of Hermiston in Umatilla County. HPP is also a participant in the contested case now underway to award the legislatively-created 500 MW exemption from the Energy Facility Siting Council's ("Council") Need for Facility Standard. HPP has reviewed a draft of the PacifiCorp/U.S. Generating Company position paper to this Task Force. HPP would like to strongly reinforce a number of points in that paper based on its own recent and ongoing experience with Oregon's siting process.

Need for Facility Standard. HPP agrees that the Need Standard is an anachronism in today's rapidly changing competitive world. HPP's case serves as a good illustration of the needless impediments created by the current Need Standard.

In March of 1992, the Bonneville Power Administration ("BPA") issued a request for energy option proposals. In June of 1993, BPA selected HPP's facility as one of three projects (out of a field of 64) for BPA's Resource Contingency Program. During the fall of 1992, HPP began the preparation of the documents necessary to secure a site certificate. In October of 1993, BPA and HPP entered into an Option Development Agreement. Under this Agreement, BPA may exercise its option for the output of the project any time between the present and June 30, 2000. If BPA exercises the option, HPP will construct the facility and sell its electrical output to BPA.

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*Hermiston Power Project is owned by affiliates of
Ida-West Energy Company, J.R. Simplot Company, TransCanada PipeLines Limited*

In November of 1994, the Council adopted an exemption from the Need Standard for facilities whose entire output is acquired by BPA if certain conditions are satisfied. One significant condition requires that the Northwest Power Planning and Conservation Council ("NPPC") review the acquisition for consistency with the 1991 Regional Plan. HPP secured its site certificate under this exemption. Unfortunately, circumstances have changed so rapidly since November of 1994 that HPP is unlikely to be able to satisfy the conditions of the exemption. There is no assurance that BPA will exercise its option; if it does, the 1991 Regional Plan may well be superseded by that time and the NPPC may in any event decline to review the acquisition.

Accordingly, HPP sought the 500 MW exemption after it was enacted by the 1995 Legislative Assembly and is now a participant in the contested case for award of the exemption. That proceeding will likely be decided based on the Council's view of the merits of the three contestants' proposed CO2 mitigation measures. In addition to the benefits of cogeneration, HPP has proposed a \$7.5 million CO2 mitigation fund, in 1996 dollars, to be paid over the 30-year life of the project. ODOE staff has recommended, however, that the exemption be awarded to a different project, one that does not yet have a complete site certificate application.

This leaves HPP with no way to satisfy the Need Standard. Indeed, as the PacifiCorp/U.S. Generating Company paper explains, an independent power producer like HPP simply cannot meet the current Need Standard. Since neither potentially applicable exemption now works for the project, HPP is left with no way forward despite three years in the permitting process; the expenditure of more than \$1 million in the process; Council findings of compliance with all other applicable state siting and local land use standards; and a project that, if built, would be the most efficient gas-fired project in the world today and would displace less efficient (and more polluting) fossil-fueled plants with higher marginal costs. Additionally, the project has satisfactorily completed the Environmental Impact Statement process under the National Environmental Policy Act and has secured Oregon Department of Environmental Quality permits for air and wastewater discharges.

One additional point is relevant to the Task Force's consideration of this issue. Even if there were no Need Standard, HPP's project would not be built unless HPP and its lenders were convinced there was a market for the facility's output. HPP and its investors would bear the risk of an erroneous market judgment. This provides, we think, an excellent illustration of the unnecessary roadblocks the Need Standard throws in the path of highly efficient IPP-sponsored resources seeking to site in Oregon.

Other Siting Standards. HPP's experience supports PacifiCorp/U.S. Generating Company's point that the Council's siting standards should be adopted by rule and that the standards applicable to a particular project should be fixed at the time a complete application is filed. HPP spent nearly three years and over \$1 million on the preparation of a site certificate application aimed at demonstrating compliance with the Council standards, other state standards and land use regulations in existence when the application was submitted. ODOE found the application complete and issued a proposed order that found compliance with all of those standards. In the contested case that ensued, 14 intervenors raised several dozen issues not relevant to any applicable standard. Not once, but twice, the Hearing Officer went to the Council asking whether it wished to adopt new standards relevant to these issues mid-case and apply them for the first time to HPP.

Fortunately, the Council declined. The exercise delayed the contested case, which exceeded the statutory timeline by 2½ months. However, it would have been far worse had the Council decided to adopt new standards. HPP would have had to wait out the adoption process, supplement its application to address the new standards, and risk denial based on a standard wholly unknown to it as it proceeded in good faith with all aspects of its project including the application process.

HPP also believes that the Council's siting standards should address only the specific impacts of a facility and that the Council should limit its consideration to impacts over which the State has jurisdiction. In HPP's contested case, intervenors urged the Council to consider the environmental impacts of natural gas exploration and pipeline construction in Canada. Neither HPP nor the State has any practical control over such activities in Canada or anywhere else outside of Oregon. Moreover, any attempt by the state to regulate such extra-jurisdictional impacts would violate basic principles of comity by ignoring the fact that Canada and other jurisdictions have their own environmental regulations. In short, the Council is neither in a position to assess environmental policies of other states or countries, nor authorized by statute to do so.

Process. HPP's first contested case illustrates that the current siting law allows ample public participation in the siting process. Individual notice was mailed to about 240 property owners near the facility site. The case drew 14 intervenors, including several statewide interest groups and a number of local property owners. Four public comment hearings were held in Hermiston and Umatilla. As noted, intervenors were allowed to address the Council twice about the adoption of new standards during the case. HPP reached agreements with the vast majority of the participants, resulting in their withdrawal from the case. The few remaining parties have the opportunity to appeal the Council's decision to the Supreme

Court. Public involvement is clearly adequate. No interest would be served by allowing strangers to the case to appeal the Council's decision.

HPP does have one small suggestion for changes to correct a problem with EFSC's notice requirements. The statute requires individual mailed notice to all property owners within a certain distance of the facility. Those owners are identified with reference to "the most recent property tax assessment roll where such property is located." ORS 469.370(2), by cross reference to ORS 197.763(2). An applicant is required by EFSC rule to provide those property owner names as a part of its site certificate application. Given the lapse of time between the submission of an application and mailed notice, the list provided by the applicant is likely to be out-of-date by the time notice is given. This creates a potential need for multiple, duplicative public hearings to accommodate landowners who did not receive the original notice.

The statute should be amended to identify the precise point in the Council process for preparation of the mailing list. The date the Department deems the application complete would, in our view, be an appropriate time. The statute should not require notice to individuals whose names are added to the tax rolls after that date.

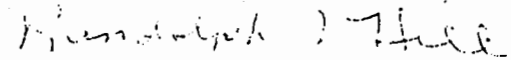
Global Warming. HPP strongly agrees with PacifiCorp/U.S. Generating Company that greenhouse gas emissions are an inappropriate subject for Council consideration in the siting process. The Council does not now have a global warming standard. Nonetheless, global warming was the most extensively litigated issue in HPP's contested case because: (1) intervenors raised and vigorously argued the issue; and (2) the Council decided it had jurisdiction to consider the issue under its general authority to impose site certificate conditions to protect public health and safety. However, the Council did not impose a condition requiring mitigation of CO2 emissions because it found that "the record does not show specific impact on global warming, or a resulting impact on public health/safety," from the proposed HPP facility's CO2 emissions. HPP Final Order at 89.

As the PacifiCorp/U.S. Generating Company paper notes, climate change is an inappropriate subject for a Council standard affecting only Oregon projects. For all of the same reasons (which we do not repeat here), the issue should not be brought in through the back door under the rubric of "public health and safety."

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Thank you for the opportunity to comment on some of the issues now facing the Task Force. HPP sincerely hopes that the Task Force will take this opportunity to improve Oregon's siting process by adopting the recommendations set forth above, as well as many of the recommendations in the PacifiCorp/U.S. Generating Company paper.

Very truly yours,



Randolph J. Hill

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