

1
2
3
4
5
6
7
8
9

BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

5 In the matter of the Second Amended) FINAL ORDER FOR
6 Thermal Power Plant Site Certificate For) PARTIAL TRANSFER OF
7 The Coyote Springs Cogeneration Project) SITE CERTIFICATE (CHANGE OF
8 (Amendment No. 7)) DIRECT OWNERSHIP

10 **Summary**

11 The Energy Facility Siting Council ("Council") approves the request for a partial transfer
12 of the site certificate with amendments to the Site Certificate, as noted in this order.

13
14 **A. Summary and Background of the Request for Partial Transfer of the Site**
15 **Certificate**

16 Pursuant to Oregon Laws Chapter 469 and OAR 345-027-0100(6), Coyote Springs 2,
17 LLC ("CS2" or "Transferee") submitted on January 4, 2001, to the Council a request that it
18 approve the transfer of all of the ownership interests in CS2, and to make associated amendments
19 to the Second Amended Thermal Power Plant Site Certificate issued by the Council on June 23,
20 2000, (the "Site Certificate"), for the Coyote Springs Cogeneration Project ("Project").

21
22 The Site Certificate currently authorizes CS2 to construct, operate and retire Phase 2 of
23 the Project, and requires that Avista Power, LLC ("Avista Power") hold all necessary authority to
24 direct, compel and obligate CS2 to implement all actions required to meet CS2's obligations
25 under the Site Certificate. Avista Power, subject to the Council approval now requested,
26 proposes to transfer all of the ownership interests in CS2 to Avista Corporation, and to amend the
27 existing references to Avista Power in the Site Certificate to reflect Avista Corporation as the
28 owner of CS2. The requested transfer has no effect on PGE or its ability to own and operate
29 Phase 1.

30
31 **A.1. Name and Address of Transferee**

32
33 Coyote Springs 2, LLC
34 c/o Avista Power, LLC
35 201 W. North River Drive
36 Spokane, WA 99201

37
38 **A.2. Brief Description of the Project**

39
40 PGE owns and operates Phase 1 of the Project, which consists of a 241 megawatt, natural
41 gas-fired electricity generating facility, located on a 20-acre parcel within the Port of Morrow
42 Industrial Park, in Boardman, Oregon ("Phase 1"). Phase 1 is described in greater detail in the
43 Council's Final Order approving PGE's original Application for Site Certificate. Phase 1 was
44 constructed and permitted to accommodate the anticipated future development of a second

1 similar generating unit ("Phase 2"), to be constructed immediately adjacent to Phase 1 and which
2 will share and jointly own certain facilities in common with Phase 1.

3
4 The Council issued the original Site Certificate to PGE on September 16, 1994. To date,
5 the Site Certificate has been amended on six occasions. The Council granted PGE a first
6 amendment to the Site Certificate on December 6, 1996. Amendment No.1 incorporated into the
7 Site Certificate specific conditions that were originally commitments made by PGE in its site
8 certificate application and supporting documents. The Council's order approving the amendment
9 further approved an amendment to incorporate the applicability of then-current OAR 345-27-050
10 through OAR 345-27-080 and OAR 345-27-095.

11
12 The Council granted PGE a second amendment to the Site Certificate on March 7, 1997.
13 Amendment No. 2 allowed PGE to use #2 low-sulfur distillate oil for back-up fuel for the natural
14 gas-fired combustion turbines at Coyote Springs.

15
16 The Council granted a third amendment to the Site Certificate on August 28, 1998.
17 Amendment No. 3 removed the Site Certificate conditions relating to development of Phase 2 of
18 the Project that had required PGE to demonstrate either that the facility met the need for facility
19 standard or qualified for an exemption under former OAR 345-23-010(2). In place of the need
20 for facility standard, Amendment No. 3 imposed Site Certificate conditions ensuring compliance
21 with the applicable carbon dioxide (CO₂) emissions standard, ORS 469.503(2)(a). In addition,
22 Amendment No. 3 removed the authorization to use #2 low-sulfur distillate oil as back-up fuel
23 for Phase 2.

24
25 The Council granted PGE's fourth amendment to the Site Certificate, with modifications,
26 on October 22, 1998. The Council executed Amendment No. 4 in the form of the "First
27 Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Plant,"
28 which incorporated Amendment Nos. 1 through 4. In Amendment No. 4 PGE requested a
29 change to the Site Certificate conditions related to the construction completion date for Phase 2.
30 The amendment, as granted, extended the construction completion deadline for Phase 2 from
31 September 16, 1999, to September 16, 2001.

32
33 The Council granted Amendment No. 5. on June 15, 2000. Amendment No. 5 granted a
34 second extension of the construction completion deadline from September 16, 2001, to
35 September 16, 2003. In addition, it provided the option to use power augmentation (a "hybrid
36 plant"), as set forth in OAR 345-024-0550, to Phase 2 and applied the current CO₂ standard for
37 base load gas plants to Phase 2. It also clarified that the milestone for completion of construction
38 is the date of commercial operation of the facility.

39
40 On June 15, 2000, the Council also granted Amendment No. 6, immediately after
41 granting Amendment No. 5. Amendment No. 6 approved a partial transfer of the Site Certificate
42 from PGE to CS2 and amended the Site Certificate as needed to authorize the partial transfer.
43 Specifically, it transferred to CS2 the rights to own, construct, operate and retire Phase 2 and
44 required that Avista Power hold all authority necessary to ensure that CS2 meet its obligations
45 under the Site Certificate. The Council executed the "Second Amended Thermal Power Plant

1 Site Certificate for the Coyote Springs Cogeneration Project”, which incorporated Amendments
2 No. 1 through No. 6 on June 23, 2000. Under the current Second Amended Site Certificate, PGE
3 owns, operates and is responsible for Phase 1 while CS2 is authorized to construct, operate and
4 retire Phase 2.

5
6 **B. Procedural History**

7 **B.1. Transferees’ Request**

8 CS2 submitted its request for partial transfer of the Project’s Site Certificate to the
9 Council on January 4, 2001.

10
11 **B.2. Notice**

12 Pursuant to OAR 345-027-0100(8), the Office mailed notice on January 4, 2001, of its
13 receipt of the application for the transfer to all persons on the Council’s general mailing list and
14 persons on the special mailing list for the Project. That notice specified that the Council would
15 hold an informational hearing on the request at the Council meeting on January 19, 2001, in
16 Oregon City, Oregon, and that persons could submit comments in writing to the Council until 5
17 p.m. on January 26, 2001.

18
19 The Office mailed the request for partial transfer to Council members on January 9, 2001.
20 The Council listed the informational hearing in its published agenda for the January 19, 2001,
21 meeting, which the Office mailed to the Council and to the Council’s general mailing list on
22 January 9, 2001.

23
24 **B.3. Informational Hearing**

25 The Council conducted the informational hearing during its general meeting on January
26 19, 2001. Pursuant to OAR 345.027-0100(9), the informational hearing was not a contested case
27 hearing. The Office presented a summary of the request. Representatives of Avista Power, LLC
28 (“Avista Power”), the owner of CS2, and Avista Corporation, the prospective owner, presented
29 information about the reasons for the transfer, the managerial and technical expertise of Avista
30 Corporation and information about its financial condition. No member of the public made
31 comment at the informational hearing.

32
33 **B.4. Public Comments**

34 The close of the public comment period was 5 p.m. on January 26, 2001. The Council
35 received no written comments by the deadline.

36
37 **B.5. Draft Final Order**

38 The Office issued a Draft Final Order on February 6, 2001, and mailed it to the Council
39 on February 7, 2001. It gave notice to the public on February 7, 2001, that the Council would
40 make a decision on the transfer request at a telephone conference meeting on February 16, 2001.

41
42 **B.6. Council Decision Meeting**

43 The Council held a telephone conference meeting on February 16, 2001. During that
44 meeting it acted on the request for Amendments No. 7.

45
46 Representatives of CS2, Avista Power, Avista Corporation, PGE and the Office of
47 Energy participated in the conference meeting. At the meeting, the Office presented information

1 about the Draft Final Order. Following the presentation and comments by CS2 and Avista, the
2 Council approved the order for Amendment No. 7 and authorized the Office to prepare a final
3 order for the Chair's signature. The Council further directed its chair to execute an amended
4 Second Amended Site Certificate incorporating Amendment No. 7.

5
6 **C. General Findings of Fact Related to the Request for Partial Transfer**

7 **C.1. Description of the Proposed Transfer**

8 CS2 is a Delaware limited liability company. It is currently a wholly-owned, direct
9 subsidiary of Avista Power. Avista Power is a Washington limited liability company and is
10 currently a wholly-owned, indirect subsidiary of Avista Corporation.

11
12 Avista Power develops, owns and operates the non-regulated power generation facilities
13 of Avista Corporation. Avista Utilities, which is a division of Avista Corporation, operates the
14 regulated electricity and natural gas generation, transmission and distribution facilities of Avista
15 Corporation.

16
17 In order to provide a reliable and cost effective source of electricity generation for its
18 ratepayers, Avista Corporation would like to purchase all of the ownership interests in CS2 and
19 operate Phase 2 as an asset of its regulated utility division, Avista Utilities. In the request, Avista
20 Power states that upon Council approval of the transfer, it is prepared to transfer all of the
21 ownership interests in CS2 to Avista Corporation, in order to allow Avista Utilities to assume
22 control and direction of CS2.

23
24 Upon transfer of the ownership interests in CS2 to Avista Corporation, Avista
25 Corporation states that it is prepared to assume Avista Power's obligations under the Site
26 Certificate to hold all necessary authority to direct, compel and obligate CS2 to implement all
27 actions required to meet CS2's obligations under the Site Certificate. During the construction of
28 Phase 2, CS2 will remain the Site Certificate holder as the Site Certificate relates to Phase 2; CS2
29 will retain the existing contracts required for construction, operation and maintenance of Phase 2;
30 and CS2 will continue to be responsible for construction, operation and retirement of Phase 2.
31 However, under state and federal law, Avista Corporation may not operate Phase 2 as a regulated
32 facility through a subsidiary (such as CS2). Therefore, prior to operation, Avista Corporation
33 intends to "roll" CS2 into Avista Corporation, assume its responsibilities directly, and dissolve
34 CS2 as a legal entity.

35
36 By letter dated January 5, 2001, CS2 clarified its request to make clear that the requested
37 transfer of ownership will not have an adverse impact on PGE's ability to own and operate Phase
38 1.

39
40 **C.2. Anticipated Date of Transfer of Ownership**

41 Avista Power and Avista Corporation wish to close the transfer of the ownership interests
42 in CS2 as soon as possible following Council approval of the Request for Partial Transfer. OAR
43 345-027-0100(4) prohibits the parties from closing the transactions prior to that approval. Due to
44 the structure of the proposed transaction, the limitations and deadlines imposed by other
45 regulatory agencies and permits, and the desire to effect the transfer in order to obtain financing

1 and maintain the scheduled construction of Phase 2, Avista Power requested that the Council
2 make its final ruling on this Application for Partial Transfer in early February 2001.

3
4 **C.3. Request for Council Approval**

5 The Council's rules concerning site certificate transfers state:

6
7 "A transfer of ownership requires a transfer of the site certificate when the person who
8 will have the legal right to possession and control of the site or the facility does not have the
9 authority under the site certificate to construct, operate, or retire the facility." OAR 345-027-
10 0100(1)(a)."

11
12 PGE and CS2 are the current holders of the Site Certificate. PGE holds those rights, and
13 is responsible for those obligations, for all purposes relevant to Phase 1; CS2 holds those rights,
14 and is responsible for those obligations, for all purposes relevant to Phase 2. The requested
15 approval to transfer the ownership interests in CS2 from Avista Power to Avista Corporation
16 does not change any of the existing rights or responsibilities of CS2 under the Site Certificate
17 and CS2 will remain the holder of the Site Certificate for all purposes relevant to Phase 2.

18
19 However, Avista Power, along with CS2, is a signature to the Site Certificate and is
20 specifically required under the Site Certificate to hold all necessary authority to direct, compel
21 and obligate CS2 to implement all actions required to meet CS2's obligations under the Site
22 Certificate. Therefore, the requested transfer of ownership of CS2 from Avista Power to Avista
23 Corporation requires that the Council amend the Site Certificate to remove all references to
24 Avista Power and replace these with Avista Corporation.

25
26 **C.4. Requested Amendments to Site Certificate**

27 CS2 proposes to amend the Site Certificate as follows (language to be added is double
28 underlined; language to be deleted in ~~strikeout~~):

29
30 Section IV. Mandatory Conditions, Part 15:

31
32 (15) Before beginning construction of phase two of the facility, CS2 or
33 Avista ~~Power, LLC Corporation~~, shall submit to the State of Oregon through
34 the Council a bond, letter of credit or fully-funded escrow account naming
35 the State of Oregon, acting by and through the Council, as beneficiary or
36 payee in the amount of \$2,500,000 (in 1993 dollars). The calculation of 1993
37 dollars shall be made using the index set forth below in sub-section (b).

38 (a) The terms of the bond, letter of credit or fully-funded escrow account and
39 identity of the issuer shall be subject to approval by the Council, which
40 approval shall not be unreasonably withheld. The bond, letter of credit or
41 fully-funded escrow account shall not be subject to revocation or reduction
42 prior to the time CS2 or Avista ~~Power, LLC Corporation~~, has established the
43 financial mechanism or instrument described in Mandatory Condition IV(16)
44 and has fully funded the obligation.

1 Section IV. Mandatory Conditions, Part 16:

2 (16) Before beginning operation of phase two of the facility, CS2 or Avista ~~Power,~~
3 ~~LLC, Corporation~~ shall establish a bond, letter of credit or fully-funded escrow
4 account, satisfactory to the Council, assuring the availability of adequate funds
5 throughout the life of phase two of the facility to retire phase two of the facility and
6 restore the site to a useful, non-hazardous condition as described in OAR 345-022-
7 0130 (Feb. 2000). CS2 shall retire the facility according to an approved final
8 retirement plan, as described in OAR 345-027-0110 (Feb. 2000).
9

10 Section V. Conditions Issued Pursuant to EFSC Standards, Part B.3:

11 3. CS2 Corporate Authority

12
13 Prior to commencing construction of phase two and for the duration of this site
14 certificate, Avista ~~Power, LLC, Corporation~~ shall hold all necessary authority to
15 direct, compel and obligate CS2 to implement all actions required to meet CS2's
16 obligations under this site certificate. If Avista ~~Power Corporation~~ enters into a co-
17 ownership agreement of CS2 with other parties, CS2 shall identify to the Council the
18 co-owners and file with the Council a summary of a contractual agreement among
19 the co-owners demonstrating that Avista ~~Power Corporation~~ retains all necessary
20 authority to direct, compel and obligate CS2 to implement all actions required to
21 meet CS2's obligations under this site certificate. In its annual report submitted to
22 the Council, CS2 shall describe any withdrawal of a co-owner of CS2 other than
23 Avista ~~Power Corporation~~.
24

25 Closing Paragraph:

26 IN WITNESS WHEREOF, this Site Certificate has been executed by the State of
27 Oregon, acting by and through its Energy Facility Siting Council, Portland
28 General Electric, Coyote Springs 2, LLC and Avista ~~Power Corporation~~.
29

30
31
32 _____
33 Chair, Energy Facility Siting Council

34 Date: _____
35

36
37
38 _____
39 On behalf of Portland General Electric
40 Company

41 Date: _____
42

1
2
3 _____
4 On behalf of Coyote Springs 2, LLC

5 Date: _____
6
7

8
9 _____
10 On behalf of Avista ~~Power~~ Corporation

11 Date: _____
12

13 **C.5. Applicable Regulations**

14 OAR 345-027-0100(10) directs the Council to approve a transfer if the Council finds that
15 the Transferee meets the following standards:
16

17 (a) The transferee complies with the standards described in OAR
18 345-022-0010, OAR 345-022-0050 and, if applicable, OAR
19 345-024-0710(1);
20

21 (b) The transferee is lawfully entitled to possession or control of the site or
22 the facility described in the site certificate;
23

24 (c) The transferee agrees to abide by all the terms and conditions of the site
25 certificate to be transferred as determined by the Council; and
26

27 (d) The facility complies with the statutes, local government ordinances and
28 Council rules in effect on the date of the Council's order that the Council
29 decides should apply to the transferred facility based on the transferee's
30 consent or upon a clear showing of a significant threat to the public health,
31 safety or the environment. In the order, the Council shall include any new or
32 amended site certificate conditions necessary to assure compliance with these
33 statutes, local government ordinances and Council rules.
34

35 These standards are addressed below in Section D: "Compliance with Applicable
36 Regulations."
37

38 **D. Compliance with Applicable Regulations (OAR 345-027-0100(10))**

39 **D.1. Compliance with OAR 345-027-0100(10)(a)**

40 **D.1.1. Organizational, Managerial, and Technical Expertise (OAR 345-022-0010)**

41 The organizational, managerial and technical expertise standard has four sections.
42 Subsections (1) and (2) relate to applicant qualifications and capability. Subsections (3) and (4)
43 relate to third-party services and permits.
44

1 a. Applicant Qualification and Capability (OAR 345-022-0010(1) and (2))

2 Section (1) of this standard provides that:

3
4 To issue a site certificate, the Council must find that the applicant has the
5 organizational, managerial and technical expertise to construct and operate
6 the proposed facility. To conclude that the applicant has the organizational,
7 managerial and technical expertise to construct and operate the proposed
8 facility, the Council must find that the applicant has a reasonable probability
9 of successful construction and operation of the proposed facility considering
10 the experience of the applicant, the availability of technical expertise to the
11 applicant, and the past performance of the applicant in constructing and
12 operating other facilities, including, but not limited to, the number and
13 severity of regulatory citations, in constructing or operating a facility, type
14 of equipment, or process similar to the proposed facility.
15

16 **Discussion.** Transfer of the ownership interest in CS2 from Avista Power to Avista
17 Corporation will only affect the requirement that CS2's owner "hold all necessary authority to
18 direct, compel and obligate CS2 to implement all actions required to meet CS2's obligations
19 under the Site Certificate," by amending references in the Site Certificate to reflect Avista
20 Corporation, rather than Avista Power, as the owner of CS2. The change of CS2's ownership
21 will have no effect on PGE or its ability to own and operate Phase 1.
22

23 CS2 states in the request that after the transfer of ownership, it will retain the
24 organizational, managerial and technical expertise necessary to construct and operate Phase 2
25 that it possessed when the transfer of the Site Certificate to CS2 was initially approved. CS2
26 does not intend any change in its role or obligations as part of the requested transfer.
27

28 Transferee's In-House Expertise. CS2 will continue to be the holder of the Site
29 Certificate during construction of Phase 2. Its qualifications and capability will remain
30 unchanged since the Council approved the initial transfer of the Site Certificate to CS2.
31

32 As to the in-house expertise of Avista Corporation as the direct owner of CS2: Avista
33 Corporation is a diversified energy, information and technology company whose utility and
34 subsidiary operations focus on delivering products and services and providing solutions to
35 business and residential customers throughout North America. For over 100 years, Avista
36 Corporation and its predecessor, the Washington Water Power Company, have provided
37 electricity and natural gas service to customers in Idaho, Washington and Oregon.
38

39 Avista Corporation's affiliate companies include Avista Advantage, Avista
40 Communications, Avista Development, Avista Energy, Avista Energy Canada, Ltd., Avista
41 Fiber, Avista International, Avista Labs, Avista Power, Avista Services, and Avista Ventures, the
42 parent of Avista Development and Pentzer Corporation. **Exhibit A** of the Request for Partial
43 Transfer illustrates the current organizational structure of Avista Corporation. **Exhibit B**
44 provides a comprehensive history of Avista Corporation through 1989.
45

1 The experience of employees within Avista Corporation in all aspects of power plant
2 engineering, construction, procurement, operations and maintenance was an important part of the
3 Council's decision to approve the partial transfer of the Site Certificate to CS2 and the sale of
4 CS2 to Avista Power. That experience remains within Avista Corporation and will continue to
5 be made available to CS2.
6

7 Transferee's Power Facility Development History. CS2 will continue to be the holder of
8 the Site Certificate during construction of Phase 2. Its qualifications and capability remain
9 unchanged since the Council approved the partial transfer of the Site Certificate to CS2.
10

11 As to the power facility development history of Avista Corporation as the direct owner of
12 CS2: Over the past 25 years, the Avista companies have been involved in several thermal power
13 generation projects. In 1975, Avista Utilities' predecessor, Washington Water Power, developed,
14 licensed and managed the construction of a 70 MW aero-derivative gas turbine project in
15 Spokane (Northeast Combustion Turbine). From 1978-82 the utility developed the 50 MW
16 Kettle Falls wood-waste fired electric generating station, the first of its kind built in the United
17 States solely for the purposes of generating electricity. The utility's second gas turbine facility, a
18 180 MW project utilizing two GE model 7EA units operating in simple cycle, was developed and
19 constructed in Rathdrum, Idaho from 1992-94. Most recently, Avista Power and its project
20 partner, Cogentrix Energy, Inc. have developed, financed and commenced construction of a 260
21 MW combined cycle project in north Idaho. This facility, utilizing a GE model 7FA gas turbine,
22 will be nearly identical to the facility to be constructed by CS2 and is expected to be in
23 commercial operation in August 2001. **Exhibit C** of the request gives a complete generation
24 project portfolio. **Exhibit D** of the request provides a list of regulatory exceedences or violations
25 occurring at Avista Corporation's thermal generating facilities. It shows no violations that
26 undermine Avista Corporation's management qualifications.
27

28 Transferee's Access to and Management of Outside Expertise. Avista Corporation does
29 not intend any change in CS2's contractual relationships with NEPCO, the Engineering,
30 Procurement and Construction (EPC) contractor responsible for all phases of engineering,
31 design, procurement and construction of Phase 2, or with PGE, the Operation and Maintenance
32 (O&M) operator responsible for managerial and technical expertise to ensure the safe operation
33 of Phase 2, as a result of the transfer of CS2's ownership.
34

35 **Conclusion.** Approval of the transfer of CS2's ownership from Avista Power to Avista
36 Corporation satisfies the requirements of OAR 345-022-0010(1).
37

38 Section (2) of this standard provides that:
39

40 The Council may base its findings under section (1) on a rebuttable
41 presumption that an applicant has organizational, managerial and technical
42 expertise, if the applicant has an ISO 9000 or ISO 14000 certified program
43 and proposes to design, construct and operate the facility according to that
44 program.
45

1 **Discussion.** This subsection does not impose a requirement; rather, it provides a
2 rebuttable presumption of the managerial and technical expertise upon which an applicant may
3 rely. Neither CS2 nor Avista Power is ISO 9000 or ISO 14000 certified, so CS2 cannot rely on
4 this subsection.
5

6 **Conclusion.** The Council finds that OAR 345-022-0010(2) does not apply to this
7 transfer.
8

9 **b. Third-Party Services and Permits (OAR 345-022-0010(3) and (4)).**

10 Section (3) of this standard requires that:
11

12 If the applicant does not itself obtain a state or local government permit or
13 approval for which the Council would ordinarily determine compliance but
14 instead relies on a permit or approval issued to a third party, the Council, to issue
15 a site certificate, must find that the third party has, or has a reasonable likelihood
16 of obtaining, the necessary permit or approval, and that the applicant has, or has
17 a reasonable likelihood of entering into, a contractual or other arrangement with
18 the third party for access to the resource or service secured by that permit or
19 approval.
20

21 Additionally, the final section (4) of the standard provides:
22

23 If the applicant relies on a permit or approval issued to a third party and the third
24 party does not have the necessary permit or approval at the time the Council
25 issues the site certificate, the Council may issue the site certificate subject to the
26 condition that the certificate holder may not commence construction or operation
27 as appropriate until the third party has obtained the necessary permit or approval
28 and the applicant has a contract or other arrangement for access to the resource
29 or service secured by that permit or approval.
30

31 **Discussion.** Section V.B.2 of the Site Certificate identifies three third-party permits and
32 services on which the applicant is relying: industrial water supply from the Port of Morrow; use
33 of the Port of Morrow's industrial wastewater disposal system for process wastewater disposal;
34 and sanitary wastewater disposal into the City of Boardman's sewage treatment system. The
35 transfer of the ownership interests in CS2 will not effect these third-party permits and services,
36 which have already been obtained, or the Project's ability to continue to comply with the
37 conditions of these permits.
38

39 **Conclusion.** Approval of the transfer of CS2's ownership from Avista Power to Avista
40 Corporation satisfies the requirements of OAR 345-022-010(3) and (4).

1 **D.1.2. Financial Assurance (OAR 345-022-0050)**

2 The financial assurance standard provides:

3
4 To issue a site certificate, the Council must find that the applicant has a
5 reasonable likelihood of obtaining a bond or comparable security, satisfactory
6 to the Council, in an amount adequate to restore the site to a useful, non-
7 hazardous condition if the certificate holder either begins but does not
8 complete construction of the facility or permanently closes the facility before
9 establishing the financial mechanism or instrument described in OAR 345-
10 027-0020(9).

11
12 Further, Council rules, OAR 345-027-0020 in effect on this date (November 2000 edition
13 of Division 27), require the following mandatory conditions:

14
15 The Council shall impose the following conditions in every site certificate.
16 The Council may impose additional conditions.

17 ***

18 (8) Before beginning construction of the facility, the certificate holder shall
19 submit to the State of Oregon, through the Council, a bond or comparable
20 security, satisfactory to the Council, in an amount specified in the site
21 certificate. The Council shall specify an amount adequate to restore the site
22 to a useful, non-hazardous condition if the certificate holder either begins but
23 does not complete construction of the facility or permanently closes the
24 facility before establishing the financial mechanism or instrument described
25 in section (9). The certificate holder shall maintain the bond or comparable
26 security in effect until the certificate holder has established that financial
27 mechanism or instrument.

28
29 (9) Before beginning operation of the facility, the certificate holder shall
30 establish a financial mechanism or instrument, satisfactory to the Council,
31 assuring the availability of adequate funds throughout the life of the facility
32 to retire the facility and restore the site to a useful, non-hazardous condition
33 as described in OAR 345-022-0130. The certificate holder shall retire the
34 facility according to an approved final retirement plan, as described in OAR
35 345-027-0110.

36
37 **Discussion.** In its Final Order approving Amendment No. 6, the Council found that CS2
38 and Avista Power, through their affiliation with Avista Corporation, satisfied the requirements of
39 OAR 345-022-0050. The transfer of CS2 ownership from Avista Power to Avista Corporation
40 does not change this finding.

41
42 In addition, CS2 provided financial assurance for site restoration as required by OAR
43 345-027-0020(8) in the amount of \$2,968,846, in the form of a letter of credit, as approved by
44 the Council on November 17, 2000. Fleet National Bank issued the letter of credit on January 3,

1 2001, and the Office of Energy received it on January 4, 2001. No change in this letter of credit
2 will occur as a result of the requested approval.

3
4 Under Site Certificate Condition IV.(16), prior to beginning operation of Phase 2, CS2
5 must satisfy OAR 345-027-0020(9).

6
7 **Conclusion.** Approval of the transfer of CS2's ownership from Avista Power to Avista
8 Corporation satisfies the requirements of OAR 345-022-0050.

9
10 **D.1.3. CO₂ Emissions Standard (OAR 345-024-0710(1))**

11 The relevant portion of the cited standard provides,

12
13 If the applicant elects to meet the applicable carbon dioxide emissions
14 standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-
15 0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a
16 bond or comparable security in a form reasonably acceptable to the Council
17 to ensure the payment of the offset funds and the additional funds required
18 under section (4).***

19
20 **Discussion.** The Site Certificate as amended by Amendment No. 5 provides that Phase 2
21 may include a natural gas-fired duct burner with a generating capacity of about 20 MW. CS2
22 intends to operate Phase 2 as both a base load gas plant and as a peaking (non-base load) plant.
23 Therefore, both OAR 345-024-0560(3) (CO2 compliance for base load gas plants) and 345-024-
24 0600(3) (CO2 compliance for non-base load power plants) apply.

25
26 CS2 provided financial assurance for the calculated carbon dioxide emissions from Phase
27 2 in the form of a letter of credit naming the Oregon Climate Trust as beneficiary. The form and
28 amount of the letter of credit (\$2,382,207.96) were approved by the Council on November 17,
29 2000. Fleet National Bank issued the letter of credit on January 3, 2001. No change in this letter
30 of credit will occur as a result of the requested approval.

31
32 **Conclusion.** Approval of the transfer of CS2's ownership from Avista Power to
33 Avista Corporation satisfies the requirements of OAR 345-024-0710(1).

34
35 **D.2. Compliance with OAR 345-027-0100(10)(b): Transferee's Right to Possession and**
36 **Control of Site and Facility**

37 The proposed transfer of CS2's ownership from Avista Power to Avista Corporation will
38 not affect CS2's status as the party "lawfully entitled to possession or control of the site or the
39 facility described in the site certificate" as required by OAR 345-027-0100(10). CS2 will
40 continue to be the certificate holder with regard to Phase 2. PGE will continue to be the
41 certificate holder for Phase 1.

42
43 **Conclusion.** The Council finds that the proposed transfer of CS2's ownership from
44 Avista Power to Avista Corporation satisfies the requirements of OAR 345-027-0100(10)(b).

1 **D.3. Compliance with OAR 345-027-0100(10)(c): Compliance with Site Certificate**

2 The Site Certificate requires the facility to be designed, constructed, operated and retired
3 as described more specifically in various conditions in the Site Certificate. The only substantial
4 changes that will be brought about by the proposed transfer of CS2's ownership are identified in
5 the Request for Partial Transfer submitted by CS2 and described with specificity in Sections C.1.
6 "Description of the Proposed Transfer" and C.4. "Requested Amendments to Site Certificate" of
7 this order.

8
9 Avista Corporation is able and agrees to assume all of Avista Power's obligations under
10 the Site Certificate upon Council approval of the transfer of CS2 ownership to Avista
11 Corporation.

12
13 **Conclusion.** Approval of the transfer of CS2's ownership from Avista Power to Avista
14 Corporation satisfies the requirements of OAR 345-027-0100(10)(c).

15
16 **D.4. Compliance with OAR 345-027-0100(10)(d): Compliance with Other Statutes,**
17 **Ordinances, and Council Rules**

18 In its request, CS2 stated that it identified no other new or existing statutes, local
19 government ordinances, or Council rules that are applicable to this Site Certificate.

20
21 The Council considered and adopted amendments in Amendment No. 5 (June 2000) that
22 bring the Site Certificate up to date with current Council standards. The Council identified no
23 other new or existing statutes, local government ordinances, or Council rules that it proposes
24 should be applicable to this Site Certificate as a result of the requested change in ownership. The
25 Council's review of the transfer request identified no significant threat to the public health,
26 safety, or environment that would require new conditions for the Site Certificate.

27
28 **Conclusion.** The Council finds that the facility complies with the statutes, local
29 government ordinances and Council rules in effect on the date of this order and that no new
30 conditions are required to satisfy OAR 345-027-0100(10)(d).

31
32 **E. Conclusions about the Request for Partial Transfer and Amendment**

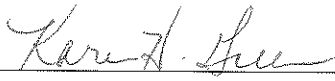
33 The Council finds that the Request for Partial Transfer of Site Certificate, to change the
34 ownership of CS2 from Avista Power to Avista Corporation, is consistent with current Council
35 rules, with other applicable state statutes and rules, and with statewide land use planning goals
36 and would not cause a significant adverse impact to public health and safety or the environment.
37 In preparing this order, the Council has considered state statutes, administrative rules, and local
38 government ordinances in effect at this time, and whether the facility complies with all Council
39 standards in effect at this time.

40
41 Based on the above findings, reasoning and conclusions, the Council amends the Second
42 Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project as
43 CS2 requests in its Request for Partial Transfer of Site Certificate for the Coyote Springs
44 Cogeneration Project and shown in the Council's attached proposed Second Amended Site
45 Certificate (Incorporating Amendments #1 Through #7).

1
2 **FINAL ORDER**
3

4 Based on the above findings of fact, discussions and conclusions of law, the Energy
5 Facility Siting Council approves the Coyote Springs 2, LLC, Request for Partial Transfer of Site
6 Certificate (Change of Direct Ownership of Site Certificate Holder) for the Coyote Springs
7 Cogeneration Project (Amendment No. 7). The Council Chair shall execute the site certificate
8 amendment in the form of the "Second Amended Thermal Power Plant Site Certificate for the
9 Coyote Springs Cogeneration Project," which shall incorporate Amendments No. 1 through No.
10 7.

11
12 Issued February~~22~~, 2001.
13
14

15 
16 _____
17 Karen H. Green
18 Chair
19 Energy Facility Siting Council
20
21

22 **Notice of the Right to Appeal**

23 You have the right to appeal this order to the Oregon Supreme Court pursuant to Oregon
24 Revised Statutes (ORS) 469.405. To appeal you must file a petition for judicial review with the
25 Supreme Court within 60 days from the day this order was served on you. If this order was
26 personally delivered to you, the date of service is the date you received this order. If this order
27 was mailed to you, the date of service is the date it was mailed, not the day you received it. If
28 you do not file a petition for judicial review within the 60-day time period, you lose your right to
29 appeal.
30