

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

IN THE MATTER OF THE REQUEST FOR AMENDMENT #10 OF  
THE SITE CERTIFICATE FOR THE PORT WESTWARD GENERATING  
PROJECT

FINAL ORDER ON  
AMENDMENT #10

Issued by

Oregon Energy Facility Siting Council  
625 Marion Street NE  
Salem OR 97301-3742

**August 23, 2013**

**Table of Contents**

I. INTRODUCTION ..... 1

    I.A. CERTIFICATE HOLDER ..... 1

    I.B. DESCRIPTION OF THE FACILITY..... 2

II. THE AMENDMENT PROCESS..... 4

    II.A. DESCRIPTION OF THE PROPOSED AMENDMENT ..... 4

        II.A.1. *Certificate Holder’s Proposed Changes to Site Certificate* ..... 4

        II.A.2. *Additional Changes to the Site Certificate Recommended by the Department* ..... 5

    II.B. APPLICABLE STANDARDS..... 6

        II.B.1. *Review Criteria for Proposed Amendments* ..... 6

        II.B.2. *Process for Changing the Site Boundary or Legal Description of a Site* ..... 7

    II.C. PROCEDURAL HISTORY ..... 7

        II.C.1 *Agency Comments on the Request for Amendment #10* ..... 8

        II.C.2 *Public Comments on the Request for Amendment #10* ..... 8

III. REVIEW OF THE PROPOSED AMENDMENT..... 8

    III.A. ENERGY FACILITY SITING STANDARDS..... 9

        III.A.1. *General Standard of Review* ..... 9

        III.A.2. *Organizational Expertise* ..... 10

        III.A.3. *Structural Standard* ..... 11

        III.A.4. *Soil Protection*..... 13

        III.A.5. *Land Use* ..... 14

        III.A.6. *Protected Areas* ..... 17

        III.A.7. *Retirement and Financial Assurance* ..... 20

        III.A.8. *Fish and Wildlife Habitat* ..... 21

        III.A.9. *Threatened and Endangered Species*..... 23

        III.A.10. *Scenic Resources*..... 25

        III.A.11. *Historic, Cultural, and Archaeological Resources* ..... 26

        III.A.12. *Recreation*..... 27

        III.A.13. *Public Services*..... 28

        III.A.14. *Waste Minimization* ..... 29

        III.A.15. *Carbon Dioxide Standard for Base Load Gas Plants* ..... 30

        III.A.16. *Carbon Dioxide Standard for Non-Base Load Power Plants* ..... 32

    III.B. OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION ..... 35

        III.B.1. *Noise Control Regulations*..... 35

        III.B.2. *Removal-Fill Law*..... 36

        III.B.3. *Water Right Transfer* ..... 38

        III.B.4. *Public Health and Safety*..... 39

        III.B.5. *Water Pollution Control Facilities Permit*..... 40

    III.C. REQUIREMENTS THAT ARE NOT UNDER COUNCIL JURISDICTION ..... 40

IV. PROPOSED CONCLUSION AND ORDER OF COUNCIL ..... 41

**Maps**

FIGURE 1. MAP OF PROPOSED ADDITIONAL “NORTH LAYDOWN AREA” ..... 3

FIGURE 2. MAP OF PROPOSED “SOUTH LAYDOWN AREA” ..... 3

FIGURE 3. MAP OF PROPOSED “BEAVER GENERATING PLANT LAYDOWN AREA” AND LAYDOWN AREA  
APPROVED THROUGH CHANGE REQUEST #1 ..... 4

**Appendices**

APPENDIX A: RFA #10, FIGURES 1-3.....-A1-  
APPENDIX B: HABITAT CATEGORIZATION LETTER .....-B1-  
APPENDIX C: EFSC CHAIR APPROVAL OF EXPEDITED REVIEW – 2013-06-14.....-C1-  
APPENDIX D: AGENCY COMMENTS ON RFA #10 .....-D1-

1 **I. INTRODUCTION**  
2

3 On May 28, 2013, Portland General Electric Company (PGE or the Certificate Holder) submitted  
4 to the Oregon Department of Energy (the Department or ODOE) its Request for the Tenth  
5 Amendment (“*RFA #10*”) to the Site Certificate for the Port Westward Generating Project  
6 (PWGP or facility).<sup>1</sup> PGE requests to expand the site boundary to include three temporary  
7 laydown areas for use in construction of Unit 2 of the facility  
8

9 (1) A 1.9-acre expansion of the previously approved laydown area at the north end of the  
10 site  
11

12 (2) A 5.7-acre expansion of the previously approved laydown area near the water intake  
13 structure at the south end of the site; and  
14

15 (3) An additional 3.3 acres of laydown area within the fence line of the PGE-owned Beaver  
16 Generating Plant  
17

18 In addition, *RFA #10* includes a Request for Expedited Review pursuant to OAR 345-027-0080.  
19 On June 14, 2013, the Chair of the Energy Facility Siting Council issued a determination granting  
20 expedited review for *RFA #10*.<sup>2</sup> Expedited review required certain timelines found in the general  
21 amendment review process, and allowed the Council to issue a temporary order amending the  
22 site certificate, pending the final amendment decision. A temporary order was issued on August  
23 2, 2013, which allowed for a 15-day period to submit to the department a request for a  
24 contested case. No requests were submitted to the Department during this period.  
25

26 Based upon the discussion and conclusions contained in this Final Order, the Energy Facility  
27 Siting Council (Council or EFSC) approves *RFA#10* and issues this Final order amending the site  
28 certificate for PWGP, subject to the terms and conditions set forth in this Final Order. The  
29 Council issues this order in accordance with ORS 469.405 and OAR 345-027-0080.  
30

31 Unless otherwise specified, the definitions in ORS 469.300 and OAR 345-001-0010 apply to  
32 terms used in this order.  
33

34 **I.A. Certificate Holder**  
35

36 Portland General Electric Company  
37 121 SW Salmon Street  
38 Portland, OR 97204  
39

---

<sup>1</sup> *Certificate Holder’s Request for the Tenth Amendment to the Site Certificate for the Port Westward  
Generating Project, May 28, 2013.*

<sup>2</sup> *“Determination from the Energy Facility Siting Council on Certificate Holder’s Request for Expedited  
Review of Port Westward Generating Projects request for Amendment 10.” June 14, 2013.*

1 The individual responsible for submitting the request:

2

3 Lenna Cope, PE  
4 Portland General Electric Company  
5 121 SW Salmon Street  
6 3WTC-BR05  
7 Portland, OR 97204

8

9 **I.B. Description of the Facility**

10

11 The PWGP is a natural gas-fired combustion turbine electric generating plant. EFSC approved  
12 the original site certificate for the facility on November 8, 2002, authorizing up to 650  
13 megawatts of generating capacity in two phases.<sup>3</sup> Construction on the first phase began in  
14 February 2005 and Unit 1 began operation in July 2007.

15

16 The certificate holder originally proposed Unit 2 as a second base load, natural gas-fired,  
17 combustion turbine combined cycle unit. The Council has subsequently approved nine  
18 amendments to the Site Certificate.<sup>4</sup> This requested amendment would be Amendment #10.

19

20 Relevant to this request, Amendment #7 authorizes the certificate holder to change Unit 2 from  
21 a base load to a variable load generating plant. The certificate holder designed Unit 2 as a  
22 combination of reciprocating and combustion turbines totaling 200 megawatts. The amended  
23 site certificate also authorized expansion of the energy facility site by 8.5 acres. Amendment #9  
24 extended the date for completing construction to May 8, 2015 and set a deadline for making  
25 full beneficial use of water under Transfer Application T-10955 of October 1, 2015. On April 29,  
26 2013, the Department approved a change request to allow the certificate holder to use a 9.13-  
27 acre graveled area within the fence line of the adjacent Beaver Generating Plant for laydown  
28 and staging area used in the construction of Unit 2.<sup>5</sup>

29

30 Amendment #10 expands the previously approved laydown area north of the energy facility site  
31 by approximately 1.9 acres; expands the previously approved laydown area to the south, in the  
32 vicinity of the water intake structure, by approximately 5.7 acres; and authorizes the certificate  
33 holder to use approximately 3.3 acres within the fence line of the Beaver Generating Plant as a  
34 laydown area. The following maps depict the locations of the three additions in relation to the  
35 previously approved laydown areas

36

---

<sup>3</sup> *Final Order on the Application for Site Certificate for Port Westward Generating Project ("Final Order on the Application")*, November 8, 2002.

<sup>4</sup> Final Orders were issued by the Council on the following amendments: Amendment #1 on December 5, 2003; Amendment #2 on September 24, 2004; Amendment #3 on January 28, 2005; Amendment #4 on May 19, 2006; Amendment #5 on September 29, 2006; Amendment #6 on February 23, 2009; Amendment #7 on January 13, 2010; Amendment #8 on August 19, 2011; and Amendment #9 on March 15, 2013.

<sup>5</sup> Determination from ODOE on Certificate Holder's Change Request #1 for Port Westward Generating Project, April 29, 2013.

1 **Figure 1. Map of proposed additional “North Laydown Area”**



2  
3

4 **Figure 2. Map of proposed “South Laydown Area”**



5  
6  
7  
8  
9  
10  
11  
12  
13

1 **Figure 3.** Map of proposed “Beaver Generating Plant Laydown Area” and laydown area  
2 approved through Change Request #1



3  
4

5 **II. THE AMENDMENT PROCESS**

6  
7  
8

7 **II.A. Description of the Proposed Amendment**

8  
9

9 **II.A.1. Certificate Holder’s Proposed Changes to Site Certificate**

10  
11  
12  
13  
14

PGE proposes the following amendments to conditions previously included in the Ninth Amended Site Certificate for the PWGP. Proposed additions are shown in double-underlined bold typeface and proposed deletions have a strikethrough.

15  
16

Condition E.1(3)(b), which concerns the staking of wetlands in the vicinity of Unit 2 construction activities, would be amended as follows:

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**Condition E.1.b(3):** The Certificate Holder shall clearly stake the wetland boundary adjacent to the spoils disposal area, ~~and~~ the wetland number 4 boundary adjacent to the construction laydown/staging areas in the vicinity of the energy facility, and the wetland boundary adjacent to the Beaver Generating Plant laydown/staging area prior to any ground disturbing activity in corresponding areas ~~the spoils disposal area or in the construction laydown/staging areas in the vicinity of the energy facility~~, and shall maintain the staking until all ground-disturbing activities in the corresponding areas ~~spoils disposal area and in the construction laydown/staging areas in the vicinity of the energy facility~~ have been completed. The Certificate Holder shall instruct all contractors disposing of soil in the spoils disposal area, ~~and~~ using the construction laydown/staging areas in the vicinity of the

1 energy facility, or at the Beaver Generating Plant laydown/staging area about the purpose  
2 of the staking and shall require them to avoid any impact to the wetlands.

3  
4 III.A.2. Additional Changes to the Site Certificate Recommended by the Department

5  
6 The Council adopts the certificate holder's proposed revisions to Condition E.1.b(3) as shown in  
7 Section II.A.2 above.

8  
9 In the *Proposed Order on Amendment #10*, the Department proposed additional changes to the  
10 site certificate, as described below. Proposed additions are shown in double-underlined bold  
11 typeface and proposed deletions have a strikethrough.

12  
13 (1) The description of the Temporary Construction Staging and Laydown Areas in Section  
14 C.1.b of the Site Certificate will be amended as follows:

15  
16 **Temporary Construction Staging and Laydown Areas.** Temporary construction staging and  
17 laydown areas totaling approximately 12.4 acres will be located around the energy facility site.  
18 Another laydown area of about 6 acres will be located on upland south of the existing PGE  
19 water intake structure. The areas will be used for storing equipment and materials and as  
20 staging areas for constructing the power plant. Construction laydown and staging areas are as  
21 depicted on Figure B-2 rev.1, submitted with the Fourth Request for Amendment on January  
22 18, 2006. [Amendment No. 4]

23  
24 In addition to the temporary construction staging and laydown areas approved through RFA #4  
25 and through the Change Order issued April 29, 2013, which allows the certificate holder to use  
26 a 9.13-acre graveled area within the fence line of the adjacent Beaver Generating Plant for  
27 laydown and staging area used in the construction of Unit 2, the site certificate holder is  
28 authorized to use an additional approximately 10.9 acres for temporary laydown, as depicted  
29 in Figures 1-3 of the Final Order approving RFA #10. Specifically, the previously approved  
30 laydown area north of the energy facility site is expanded by approximately 1.9 acres; the  
31 previously approved laydown area to the south, in the vicinity of the water intake structure, is  
32 expanded by approximately 5.7 acres; and the certificate holder is authorized to use  
33 approximately 3.3 acres within the fence line of the Beaver Generating Plant.

34  
35 (2) Adoption of a new **Condition D.3(16):**

36  
37 In the event that soils are removed from the temporary laydown areas approved through  
38 Amendment #10, the site certificate holder shall manage and dispose of the soil in a  
39 manner consistent with the *Hazardous Materials Management and Monitoring Plan* for  
40 Unit 2, and in accordance with state cleanup and solid waste statutes and rules.

41  
42 (3) Adoption of a new **Condition D.8(26):**

1 Within 120 days of completing construction of Unit 2, the certificate holder shall initiate  
2 restoration of all temporarily disturbed construction laydown areas by implementing the  
3 following measures:

4  
5 (1) Removal of gravel and fabric

6  
7 (2) Ground decompaction

8  
9 (3) Revegetation with an ODFW-approved native seed mix

10  
11 The certificate holder shall maintain and monitor revegetated areas and report on the  
12 status of revegetation efforts until the Department determines that the each revegetated  
13 area has demonstrated successful uplift for two consecutive years. The Department shall  
14 determine successful uplift in consultation with ODFW, based on the following percent  
15 cover targets:

- 16
- 17 • 60% cover by native grasses
- 18 • 10% cover by native forbs
- 19 • 10% cover by bare ground
- 20 • Not to exceed 20% cover by non-native plants

21  
22 (4) Adoption of new **Condition D.8(27)**:

23  
24 The certificate holder shall not use the South Laydown Area prior to October 1, 2013, unless  
25 a qualified biologist has determined that the adjacent osprey nest is inactive, and the  
26 Department has concurred with that determination in writing.

27  
28 (5) Revision to Condition D.8(20):

29  
30 The Certificate Holder shall monitor and control nuisance and invasive plant species  
31 annually for a period of five years in areas where vegetation removal and/or revegetation has  
32 occurred in (1) riparian areas and wetlands along the transmission line rights-of-way, and  
33 (2) in areas temporarily disturbed by construction of the raw water, gas, and process  
34 discharge lines, in all the temporary construction staging and laydown areas northwest of  
35 the energy facility site, and in the spoils disposal site.

## 36 37 **II.B. Applicable Standards**

### 38 39 II.B.1. Review Criteria for Proposed Amendments

40 OAR 345-027-0070(10) provides:

41  
42 *In making a decision to grant or deny issuance of an amended site certificate, the Council*  
43 *shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect*

1        *on the date the certificate holder submitted the request for amendment and all other state*  
2        *statutes, administrative rules, and local government ordinances in effect on the date the*  
3        *Council makes its decision.*

4  
5        **II.B.2. Process for Changing the Site Boundary or Legal Description of a Site**

6  
7            OAR 345-027-0070(10)(a) provides:

8  
9            *(a) For an amendment that would change the site boundary or the legal description of*  
10          *the site, the Council shall consider, for the area added by the amendment, whether the*  
11          *facility complies with all Council standards.*

12  
13        Section III.A below includes a discussion of compliance of the facility and the area added by the  
14        amendment with all Council standards.

15  
16        In addition, OAR 345-027-0070(10)(d) requires the Council to consider the adequacy of the  
17        approved amount of the bond or letter of credit. Section II.A.7 of this FinalOrder discusses the  
18        adequacy of the amount of the bond or letter of credit provided by the certificate holder.

19  
20        **II.C. Procedural History**

21  
22        On May 28, 2013, the Department received the certificate holder’s submittal of *RFA #10*,  
23        including a request for expedited review pursuant to OAR 345-027-0080.

24  
25        On June 14, 2013, the Council Chair issued a determination granting expedited review for *RFA*  
26        *#10*. In granting expedited review, the Chair found that the Council had already evaluated the  
27        impacts of laydown areas similar to those requested in *RFA#10* and, based on his review of  
28        potential impacts, concluded that the facility, with the proposed amendment, would not likely  
29        result in a significant new adverse impact.

30  
31        On June 20, 2013, the Department sent notice of the amendment request to all persons on the  
32        Council’s general mailing list, to the special list established for the facility, to an updated list of  
33        property owners supplied by the Certificate Holder, and to a list of reviewing agencies as  
34        defined in OAR 345-001-0010(52). The notice included a request for public comments and set a  
35        comment deadline of July 8, 2013, in accordance with the comment period of no more than 21  
36        days permitted under OAR 345-027-0080(3)(a). In addition to the mailing, the Department  
37        posted the notice on the agency website.

38  
39        The Department also sent copies of *RFA #10* to a distribution list, which included reviewing  
40        agencies, with a memorandum requesting agency comments by July 8, 2013. Public and  
41        reviewing agency comments on *RFA #10* are discussed in section II.C.1 and II.C.2 below, and in  
42        section III under applicable standards.

1 The Department issued a proposed order on July 22, 2013. On July 19, 2013, the Department  
2 issued a notice of proposed order in accordance with OAR 345-027-0070 and OAR 345-027-  
3 0080(5), specifying a July 31, 2013 deadline for written public comments and a August 19, 2013  
4 deadline for requests for a contested case proceeding.

5  
6 The Council adopted a temporary order amending the site certificate at its August 2, 2013  
7 meeting.

#### 8 9 II.C.1 Agency Comments on the Request for Amendment #10

10  
11 In response to the Memorandum to Reviewing Agencies on RFA #10, the Department received  
12 written comments from the reviewing agency staff listed below:

- 13
- 14 • Jerry Sauter, Oregon Department of Water Resources (June 25, 2013)
- 15 • Mike McCabe, Oregon Department of State Lands (July 1, 2013 and July 8, 2013)
- 16 • Jennifer Purcell, Oregon Department of Environmental Quality (July 3, 2013)
- 17 • Susan Barnes, Oregon Department of Fish and Wildlife (July 8, 2013 and July 12, 2013)
- 18 • Glen Higgins, Columbia County Land Development Services Department (July 3, 2013)
- 19

20 These comments are included as Appendix D to this final order, and specifically discussed as  
21 part of the Council’s analysis of relevant standards in Section III.

#### 22 23 II.C.2 Public Comments on the Request for Amendment #10

24  
25 The Department did not receive any public comments on *RFA #10*.

### 26 27 **III. REVIEW OF THE AMENDMENT REQUEST**

28  
29 The Council must decide whether the proposed amendment complies with the facility siting  
30 standards adopted by the Council. The Council is not authorized to determine compliance with  
31 regulatory programs that have been delegated to another state agency by the federal  
32 government.<sup>6</sup> Nevertheless, the Council may consider these programs in the context of its own  
33 standards to ensure public health and safety, resource efficiency, and protection of the  
34 environment.

35  
36 The Council has no jurisdiction over design or operational issues that do not relate to siting,  
37 such as matters relating to employee health and safety, building code compliance, wage and  
38 hour or other labor regulations, or local government fees and charges.<sup>7</sup>

39  
40 In making its decision on a site certificate amendment, the Council applies the applicable state  
41 statutes, administrative rules and local government ordinances that are in effect on the date

---

<sup>6</sup> ORS 469.401(2).

<sup>7</sup> ORS 469.401(4).

1 the Council makes its decision, except when applying the Land Use standard. In making findings  
2 on the Land Use standard, the Council applies the applicable substantive criteria in effect on the  
3 date the certificate holder submitted the request for amendment.<sup>8</sup>  
4

5 As described in section I.B of this Final Order, PWGP was originally approved as a base load  
6 facility, to be completed in two phases. The Certificate Holder originally proposed Unit 2 as a  
7 second base load, natural gas-fired, combustion turbine combined cycle unit. Amendment #7,  
8 approved in 2010, authorized the Certificate Holder to instead construct Unit 2 as a variable  
9 load generating plant totaling 200 megawatts. Amendment #7 also authorized expansion of the  
10 energy facility site by 8.5 acres.  
11

12 As a result, the Council’s review of the design, construction, and operation of the facility as  
13 proposed in *RFA #10* is contained primarily in the *Final Order on the Application for Site*  
14 *Certificate* and the *Final Order on the Request for Amendment #7*. The *Final Order on the*  
15 *Application for Site Certificate* contained findings based on the originally-proposed  
16 configuration of Unit 1 and Unit 2. These findings continue to apply when determining the  
17 compliance of Unit 1 with Council standards. The *Final Order on the Request for Amendment #7*  
18 contains findings on the reconfigured Unit 2. Accordingly, the review of compliance with  
19 Council standards in section III of this Proposed Order relies on Council findings from each of  
20 these previous orders.  
21

### 22 **III.A. Energy Facility Siting Standards**

#### 23 III.A.1. General Standard of Review

#### 24 **Council Standard: OAR 345-022-0000**

25  
26  
27  
28 *(1) To issue a site certificate for a proposed facility or to amend a site certificate, the*  
29 *Council shall determine that the preponderance of evidence on the record supports the*  
30 *following conclusions:*  
31

32 *(a) The facility complies with the requirements of the Oregon Energy Facility Siting*  
33 *statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards*  
34 *adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the*  
35 *facility outweigh the damage to the resources protected by the standards the facility*  
36 *does not meet as described in section (2);*  
37

38 *(b) Except as provided in OAR 345-022-0030 for land use compliance and except for*  
39 *those statutes and rules for which the decision on compliance has been delegated by*  
40 *the federal government to a state agency other than the Council, the facility*  
41 *complies with all other Oregon statutes and administrative rules identified in the*  
42 *project order, as amended, as applicable to the issuance of a site certificate for the*

---

<sup>8</sup> OAR 345-027-0070(9).

1            *proposed facility. If the Council finds that applicable Oregon statutes and rules, other*  
2            *than those involving federally delegated programs, would impose conflicting*  
3            *requirements, the Council shall resolve the conflict consistent with the public interest.*  
4            *In resolving the conflict, the Council cannot waive any applicable state statute.*

5            \* \* \* \* \*

6  
7 This final order addresses the requirements of OAR 345-022-0000 in the findings of fact,  
8 reasoning, recommended conditions, and conclusions of law discussed in the sections that  
9 follow.

10  
11            III.A.2. Organizational Expertise

12  
13            **Council Standard: OAR 345-022-0010**

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

26  
27            *(2) The Council may base its findings under section (1) on a rebuttable presumption that*  
28            *an applicant has organizational, managerial and technical expertise, if the applicant has*  
29            *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*  
30            *operate the facility according to that program.*

31  
32            *(3) If the applicant does not itself obtain a state or local government permit or approval*  
33            *for which the Council would ordinarily determine compliance but instead relies on a*  
34            *permit or approval issued to a third party, the Council, to issue a site certificate, must*  
35            *find that the third party has, or has a reasonable likelihood of obtaining, the necessary*  
36            *permit or approval, and that the applicant has, or has a reasonable likelihood of entering*  
37            *into, a contractual or other arrangement with the third party for access to the resource*  
38            *or service secured by that permit or approval.*

39  
40            *(4) If the applicant relies on a permit or approval issued to a third party and the third*  
41            *party does not have the necessary permit or approval at the time the Council issues the*  
42            *site certificate, the Council may issue the site certificate subject to the condition that the*  
43            *certificate holder shall not commence construction or operation as appropriate until the*

1            *third party has obtained the necessary permit or approval and the applicant has a*  
2            *contract or other arrangement for access to the resource or service secured by that*  
3            *permit or approval.*

4  
5    **Findings of Fact**

6    In the *Final Order on the Application*, the Council found that the certificate holder, PGE, has the  
7    organizational expertise to construct, operate and retire the Port Westward Generating Project  
8    in compliance with Council standards and the conditions of the Site Certificate. The Council  
9    adopted conditions in section D.2 of the Site Certificate to ensure compliance with the  
10   Organizational Expertise standard.

11  
12   *In the Final Order on Amendment #7*, the Council found that the certificate holder, PGE, has the  
13   organizational expertise to construct, operate, and retire Unit 2 in compliance with Council  
14   standards and the conditions of the Site Certificate.

15  
16   Those previous findings and conditions are incorporated here.

17  
18   The certificate holder provides an analysis of whether the facility, with the proposed changes,  
19   would comply with the Organizational Expertise standard in Section 3.6.2(a) of *RFA #10*. In that  
20   section the certificate holder notes that although a National Pollution Discharge Elimination  
21   System (NPDES) 1200-C permit obtained for construction of Unit 2 would apply to the  
22   additional laydown areas, the 1200-C permit is not issued to a third party.<sup>9</sup> Amendment #10  
23   does not transfer the site certificate to a new site certificate holder, and there has been no  
24   change of circumstances affecting the certificate holder’s qualifications.

25  
26   **Conclusion of Law**

27   For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
28   certificate holder continues to comply with the Organizational Expertise standard.

29  
30        III.A.3. Structural Standard

31  
32   **Council Standard: OAR 345-022-0020**

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

36  
37            *(a) The applicant, through appropriate site-specific study, has adequately*  
38            *characterized the site as to Maximum Considered Earthquake Ground Motion*  
39            *identified at International Building Code (2003 Edition) Section 1615 and maximum*  
40            *probable ground motion, taking into account ground failure and amplification for the*  
41            *site specific soil profile under the maximum credible and maximum probable seismic*  
42            *events; and*

---

<sup>9</sup> PGE, *RFA #10*, Section 3.6.2(a), p. 7.

1  
2 *(b) The applicant can design, engineer, and construct the facility to avoid dangers to*  
3 *human safety presented by seismic hazards affecting the site that are expected to*  
4 *result from maximum probable ground motion events. As used in this rule “seismic*  
5 *hazard” includes ground shaking, ground failure, landslide, liquefaction, lateral*  
6 *spreading, tsunami inundation, fault displacement, and subsidence;*

7  
8 *(c) The applicant, through appropriate site-specific study, has adequately*  
9 *characterized the potential geological and soils hazards of the site and its vicinity*  
10 *that could, in the absence of a seismic event, adversely affect, or be aggravated by,*  
11 *the construction and operation of the proposed facility; and*

12  
13 *(d) The applicant can design, engineer and construct the facility to avoid dangers to*  
14 *human safety presented by the hazards identified in subsection (c).*

15  
16 *(2) The Council may issue a site certificate for a facility that would produce power from*  
17 *wind, solar or geothermal energy without making the findings described in section (1).*  
18 *However, the Council may apply the requirements of section (1) to impose conditions on*  
19 *a site certificate issued for such a facility.*

20 \* \* \*

## 21 22 **Findings of Fact**

23 In the *Final Order on the Application*, the Council found that the design, construction and  
24 operation of PWGP would meet the Council’s Structural Standard.<sup>10</sup> The Council adopted  
25 conditions in section D.5 of the Site Certificate to ensure compliance with the Structural  
26 Standard.

27  
28 In the *Final Order on Amendment #7*, the Council found that the design, construction, and  
29 operation of the reconfigured Unit 2 would meet the Council’s Structural Standard, taking into  
30 account the conditions adopted in section D.5 of the Site Certificate.<sup>11</sup>

31  
32 Those previous findings and conditions are incorporated here.

33  
34 Section 3.6.2(b) of *RFA#10* includes an analysis to establish that the facility, with the proposed  
35 changes, would comply with the Structural standard. As discussed in that section, the  
36 amendment would not modify previously-approved structures or permit additional permanent  
37 structures as part of the facility.

38  
39  
40  
41  

---

<sup>10</sup> *Final Order on the Application*, pp. 56-64.

<sup>11</sup> *Final Order on Amendment #7*, pp. 11-12.

1 **Conclusion of Law**

2 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
3 certificate holder continues to comply with the Structural standard.

4

5 III.A.4. Soil Protection

6

7 **Council Standard: OAR 345-022-0022**

8

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

13

14 **Findings of Fact**

15 In the *Final Order on the Application*, the Council found that the design, construction and  
16 operation of the PWGP would not result in a significant adverse impact to soils. The Council  
17 adopted conditions in section D.6 of the Site Certificate to ensure compliance with the Soil  
18 Protection standard.<sup>12</sup>

19

20 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
21 operation of the reconfigured Unit 2 of PWGP would not likely result in significant adverse  
22 impacts to soils, taking into account the conditions adopted in section D.6 of the site  
23 certificate.<sup>13</sup>

24

25 The Council’s previous findings and conditions are incorporated here.

26

27 Section 3.6.2(c) of *RFA#10* provides an analysis to establish that the facility, with the proposed  
28 changes, would comply with the Structural standard. The certificate holder explains that  
29 Conditions D.6(1) to D.6(6) of the Site Certificate for the facility require soil erosion and  
30 sediment runoff control measures during any soil disturbing activities, use of native seed mixes  
31 to restore native vegetation, and to landscape disturbed portions of the site upon completion  
32 of soil disturbing activities. These conditions would also apply to soil disturbing activities in the  
33 additional laydown areas proposed in *RFA #10*.

34

35 In response to *RFA #10*, Oregon Department of Environmental Quality (DEQ) commented that  
36 residual soil contamination at the site may pose some risk to on-site workers and may be of  
37 concern of contamination threatening the Columbia River via stormwater. DEQ states that the  
38 most recent site investigation by the Environmental Protection Agency found elevated levels of  
39 several contaminants, but not at high enough levels to list the site as a Superfund site. In order  
40 to prevent contaminants from being transported offsite, DEQ recommended that the certificate

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<sup>12</sup> *Final Order on the Application*, pp. 64-70.

<sup>13</sup> *Final Order on Amendment #7*, pp. 12-13.

1 holder lay down a gravel working surface at each of the three proposed new laydown areas and  
2 manage any soils removed from the site according to State Cleanup and Solid Waste Rules.<sup>14</sup>

3  
4 The Council has reviewed these recommendations and notes that the certificate holder  
5 proposes to lay down gravel at the proposed North Laydown Area, but not at the proposed  
6 Beaver Generating Plant Laydown Area (which currently has some existing gravel overlay) or  
7 the proposed South Laydown Area. Because of the potential adverse impact to non-native  
8 grasslands in the Beaver Generating Plant Laydown Area and the South Laydown Area, the  
9 Council does not adopt a condition to require the certificate holder lay down a gravel working  
10 surface in these areas.

11  
12 Existing Site Certificate Condition D.3(8) requires the certificate holder to submit a materials  
13 management and monitoring plan that addresses the handling of hazardous substances. Prior  
14 to beginning construction of Unit 2, the certificate holder submitted a *Hazardous Materials*  
15 *Management and Monitoring Plan* that specifies that hazardous materials will be processes and  
16 managed in accordance with state and federal requirements. The Department reviewed and  
17 approved this plan on April 3, 2013.<sup>15</sup> In order to ensure that soil-disturbing activities on the  
18 proposed new laydown areas comply with the protection measures adopted in the *Materials*  
19 *Management and Monitoring Plan*, the Council adopts the following condition:

20  
21 **Condition D.3(16):** In the event that soils are removed from the temporary laydown areas  
22 approved through Amendment #10, the site certificate holder shall manage and dispose of  
23 the soil in a manner consistent with the *Hazardous Materials Management and Monitoring*  
24 *Plan* for Unit 2, and in accordance with state cleanup and solid waste statutes and rules.

25  
26 The proposed amendment would not alter the types of soil disturbance that are anticipated  
27 during construction and operation of PWGP.

### 28 29 **Conclusion of Law**

30 For the reasons discussed above, and subject to compliance with the recommended Condition  
31 D.3(16), the Council finds that with approval of Amendment #10, the facility continues to  
32 comply with the Soil Protection standard.

### 33 34 III.A.5. Land Use

#### 35 36 **Council Standard: OAR 345-022-0030**

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

41  

---

<sup>14</sup> Letter from Jennifer Purcell, DEQ, July 3, 2013.

<sup>15</sup> Email correspondence to Lenna Cope, PGE, April 3, 2013.

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

2                   \*\*\*

3  
4                   (b) *The applicant elects to obtain a Council determination under ORS*  
5                   *469.504(1)(b) and the Council determines that:*

6  
7                           (A) *The proposed facility complies with applicable substantive criteria as*  
8                           *described in section (3) and the facility complies with any Land Conservation*  
9                           *and Development Commission administrative rules and goals and any land*  
10                           *use statutes directly applicable to the facility under ORS 197.646(3);*

11  
12                           (B) *For a proposed facility that does not comply with one or more of the*  
13                           *applicable substantive criteria as described in section (3), the facility*  
14                           *otherwise complies with the statewide planning goals or an exception to any*  
15                           *applicable statewide planning goal is justified under section (4); or*

16  
17                           (C) *For a proposed facility that the Council decides, under sections (3) or (6),*  
18                           *to evaluate against the statewide planning goals, the proposed facility*  
19                           *complies with the applicable statewide planning goals or that an exception to*  
20                           *any applicable statewide planning goal is justified under section (4).*

21  
22           (3) *As used in this rule, the “applicable substantive criteria” are criteria from the affected*  
23           *local government’s acknowledged comprehensive plan and land use ordinances that are*  
24           *required by the statewide planning goals and that are in effect on the date the applicant*  
25           *submits the application. If the special advisory group recommends applicable*  
26           *substantive criteria, as described under OAR 345-021-0050, the Council shall apply them.*  
27           *If the special advisory group does not recommend applicable substantive criteria, the*  
28           *Council shall decide either to make its own determination of the applicable substantive*  
29           *criteria and apply them or to evaluate the proposed facility against the statewide*  
30           *planning goals.*

31  
32           (4) *The Council may find goal compliance for a proposed facility that does not otherwise*  
33           *comply with one or more statewide planning goals by taking an exception to the*  
34           *applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide*  
35           *planning goal pertaining to the exception process or any rules of the Land Conservation*  
36           *and Development Commission pertaining to the exception process, the Council may take*  
37           *an exception to a goal if the Council finds:*

38  
39                           (a) *The land subject to the exception is physically developed to the extent that the*  
40                           *land is no longer available for uses allowed by the applicable goal;*

41  
42                           (b) *The land subject to the exception is irrevocably committed as described by the*  
43                           *rules of the Land Conservation and Development Commission to uses not allowed by*

1 *the applicable goal because existing adjacent uses and other relevant factors make*  
2 *uses allowed by the applicable goal impracticable; or*

3  
4 *(c) The following standards are met:*

5  
6 *(A) Reasons justify why the state policy embodied in the applicable goal should*  
7 *not apply;*

8  
9 *(B) The significant environmental, economic, social and energy consequences*  
10 *anticipated as a result of the proposed facility have been identified and adverse*  
11 *impacts will be mitigated in accordance with rules of the Council applicable to*  
12 *the siting of the proposed facility; and*

13  
14 *(C) The proposed facility is compatible with other adjacent uses or will be made*  
15 *compatible through measures designed to reduce adverse impacts.*

16 \* \* \*

17  
18 **Findings of Fact**

19 In the *Final Order on the Application*, the Council found that PWGP was located entirely within  
20 the Rural Industrial (RIPD) zone in Columbia County. The Council found that PWGP complied  
21 with Columbia County’s “applicable substantive criteria” for that zone.<sup>16</sup> The Council adopted  
22 conditions in section D.4 of the Site Certificate to ensure compliance with the applicable  
23 substantive criteria.

24  
25 In the Final Order on Amendment #7, the Council found that no applicable changes to Columbia  
26 County’s substantive land use criteria affected the design, construction and operation of the  
27 reconfigured Unit 2 as proposed by the Certificate Holder.<sup>17</sup>

28  
29 The Council’s previous findings and conditions are incorporated here.

30  
31 In its consideration of a site certificate amendment request, the Council applies the “applicable  
32 substantive criteria,” as described in the rule above, that are in effect on the date the certificate  
33 holder submitted the amendment request. In accordance with ORS 469.504(5), the  
34 Department requested the Special Advisory Group to provide a list of the applicable substantive  
35 criteria.<sup>18</sup> Columbia County staff confirmed that the County has not made any changes to

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<sup>16</sup> *Final Order on the Application*, pp. 53-56.

<sup>17</sup> *Final Order on Amendment #7*, pp. 13-14.

<sup>18</sup> ODOE Memorandum to Reviewing Agencies on “Request for Comments and Recommended Conditions on the Request for the Tenth Amendment to the Site Certificate for Port Westward Generating Project,” June 20, 2013. On August 2, 2001, the Council appointed the Columbia County Board of Commissioners as Special Advisory Group for PWGP.

1 comprehensive plan policies or land use regulations that would impact the property since the  
2 effective date of Amendment #9.<sup>19</sup>

3  
4 Section 3.6.2(d) of RFA #10 includes an analysis to establish that the facility, with the proposed  
5 changes, would comply with the Land Use. As described in that section, the proposed  
6 amendment would not affect the Council’s previous findings or alter the proposed land use for  
7 the site. There has been no change in facts or circumstances that would affect the Council’s  
8 findings on the previously-approved site for PWGP.

9  
10 **Conclusion of Law**

11 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
12 facility continues to comply with the Land Use standard.

13  
14 III.A.6. Protected Areas

15  
16 **Council Standard: OAR 345-022-0040**

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

25  
26 *(a) National parks, including but not limited to Crater Lake National Park and Fort*  
27 *Clatsop National Memorial;*

28  
29 *(b) National monuments, including but not limited to John Day Fossil Bed National*  
30 *Monument, Newberry National Volcanic Monument and Oregon Caves National*  
31 *Monument;*

32  
33 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et*  
34 *seq. and areas recommended for designation as wilderness areas pursuant to 43*  
35 *U.S.C. 1782;*

36  
37 *(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon*  
38 *Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart*  
39 *Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath,*  
40 *Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper*  
41 *Klamath, and William L. Finley;*

42  

---

<sup>19</sup> Memorandum from Glen Higgins, Columbia County Planning Manager, July 3, 2013.

1 (e) National coordination areas, including but not limited to Government Island,  
2 Ochoco and Summer Lake;

3  
4 (f) National and state fish hatcheries, including but not limited to Eagle Creek and  
5 Warm Springs;

6  
7 (g) National recreation and scenic areas, including but not limited to Oregon Dunes  
8 National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon  
9 Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

10  
11 (h) State parks and waysides as listed by the Oregon Department of Parks and  
12 Recreation and the Willamette River Greenway;

13  
14 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage  
15 Areas pursuant to ORS 273.581;

16  
17 (j) State estuarine sanctuaries, including but not limited to South Slough Estuarine  
18 Sanctuary, OAR Chapter 142;

19  
20 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers  
21 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed  
22 as potentials for designation;

23  
24 (L) Experimental areas established by the Rangeland Resources Program, College of  
25 Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site,  
26 the Starkey site and the Union site;

27  
28 (m) Agricultural experimental stations established by the College of Agriculture,  
29 Oregon State University, including but not limited to:

30 .  
31 Coastal Oregon Marine Experiment Station, Astoria  
32 Mid-Columbia Agriculture Research and Extension Center, Hood River  
33 Agriculture Research and Extension Center, Hermiston  
34 Columbia Basin Agriculture Research Center, Pendleton  
35 Columbia Basin Agriculture Research Center, Moro  
36 North Willamette Research and Extension Center, Aurora  
37 East Oregon Agriculture Research Center, Union  
38 Malheur Experiment Station, Ontario  
39 Eastern Oregon Agriculture Research Center, Burns  
40 Eastern Oregon Agriculture Research Center, Squaw Butte  
41 Central Oregon Experiment Station, Madras  
42 Central Oregon Experiment Station, Powell Butte  
43 Central Oregon Experiment Station, Redmond

1                    *Central Station, Corvallis*  
2                    *Coastal Oregon Marine Experiment Station, Newport*  
3                    *Southern Oregon Experiment Station, Medford*  
4                    *Klamath Experiment Station, Klamath Falls;*  
5

6                    *(n) Research forests established by the College of Forestry, Oregon State University,*  
7                    *including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett*  
8                    *Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the*  
9                    *Marchel Tract;*

10  
11                    *(o) Bureau of Land Management areas of critical environmental concern,*  
12                    *outstanding natural areas and research natural areas;*

13  
14                    *(p) State wildlife areas and management areas identified in OAR chapter 635,*  
15                    *Division 8.*

16                    \* \* \*

17  
18                    **Findings of Fact**

19                    In the *Final Order on the Application*, the Council found that the design, construction and  
20                    operation of PWGP were not likely to result in significant adverse impacts to protected areas.<sup>20</sup>  
21                    The Council adopted conditions in section D.7 of the Site Certificate to ensure compliance with  
22                    the Protected Areas standard.

23  
24                    In the *Final Order on Amendment #7*, the Council found that no new protected areas had been  
25                    designated within the analysis area, but that Crim's Island, located approximately 0.3 miles east  
26                    of the energy facility site, had been added to the Julia Butler Hansen National Wildlife Refuge.  
27                    The Council considered the potential impacts of PWGP on all protected areas and found that  
28                    the design, construction and operation of the reconfigured Unit 2 was not likely to result in a  
29                    significant adverse impact to any protected area listed in OAR 345-022-0040, taking into  
30                    account the conditions adopted in section D.7 of the Site Certificate.<sup>21</sup>

31  
32                    The Council's previous findings and conditions are incorporated here.

33  
34                    Section 3.6.2(3) of *RFA #10* provides an analysis to establish that the facility, with the proposed  
35                    changes, would comply with the Protected Areas standard. As discussed in that section, the  
36                    proposed amendment would not affect the Council's previous findings or alter the potential  
37                    impacts of the facility on protected areas. There has been no change in facts or circumstances  
38                    that would affect the Council's findings on the previously-approved site for PWGP.

39  
40  
41  

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<sup>20</sup> *Final Order on the Application*, pp. 70-74.

<sup>21</sup> *Final Order on Amendment #7*, pp. 14-15.

1 **Conclusion of Law**

2 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
3 facility continues to comply with the Protected Areas standard.

4  
5 III.A.7. Retirement and Financial Assurance

6  
7 **Council Standard: OAR 345-022-0050**

8  
9 *(1) The site, taking into account mitigation, can be restored adequately to a useful, non-*  
10 *hazardous condition following permanent cessation of construction or operation of the*  
11 *facility.*

12  
13 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*  
14 *form and amount satisfactory to the Council to restore the site to a useful, non-*  
15 *hazardous condition.*

16  
17 In addition, under OAR 345-027-0070(10)(d), the Council must consider:

18  
19 *(d) For all amendments, the Council shall consider whether the amount of the bond*  
20 *or letter of credit required under OAR 345-022-0050 is adequate.*

21  
22 **Findings of Fact**

23 In the *Final Order on the Application*, the Council found that the PWGP site could be restored  
24 adequately to a useful, non-hazardous condition following permanent cessation of construction  
25 or operation of the facility. The Council found that \$9.305 million (1<sup>st</sup> Quarter 2010 dollars)  
26 adjusted annually as described in Condition D.3(5)(f), is a conservative estimate of the cost to  
27 restore the PWGP site, including Units 1 and 2, to a useful, non-hazardous condition. The  
28 Council found that the certificate holder had demonstrated a reasonable likelihood of obtaining  
29 a bond or letter of credit for that amount.<sup>22</sup> The Council adopted conditions in section D.3 of  
30 the Site Certificate to ensure compliance with the Retirement and Financial Assurance  
31 standard.

32  
33 Those previous findings and conditions are incorporated here.

34  
35 Section 3.6.2(f) of *RFA #10* provides an analysis to establish that the facility, with the proposed  
36 changes, would comply with the Retirement and Financial Assurance standard. Under existing  
37 site certificate condition D.8(18), the certificate holder must restore temporary laydown areas  
38 at the end of construction of Unit 2, rather than at cessation of operation of the facility. The  
39 certificate holder states that if construction ceased prior to completion of Unit 2, costs of  
40 restoring and reseeding 10.9 acres of temporary laydown area would represent a small fraction  
41 of the overall site restoration cost.<sup>23</sup>

---

<sup>22</sup> *Final Order on Amendment #7*, pp. 15-18.

<sup>23</sup> *RFA #10*, Section 3.6.2(f), p. 9.

1  
2 Because the proposed laydown areas are not proposed as a permanent facility component and  
3 the certificate holder is required to restore them prior to beginning operation, the Council finds  
4 that, with the changes proposed by the amendment, the bond or letter of credit required under  
5 OAR 345-022-0050 is adequate.

6  
7 **Conclusion of Law**

8 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
9 facility and the certificate holder continue to comply with the Retirement and Financial  
10 Assurance standard.

11  
12 III.A.8. Fish and Wildlife Habitat

13  
14 **Council Standard: OAR 345-022-0060**

15  
16 *(1) To issue a site certificate, the Council must find that the design, construction and*  
17 *operation of the facility, taking into account mitigation, are consistent with the fish and*  
18 *wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of*  
19 *September 1, 2000.*

20  
21 **Findings of Fact**

22 In the *Final Order on the Application*, the Council found that the design, construction and  
23 operation of PWGP would be consistent with the Oregon Department of Fish and Wildlife  
24 (ODFW) habitat mitigation goals and standards.<sup>24</sup> The Council adopted conditions in section D.8  
25 of the Site Certificate to ensure compliance with the Fish and Wildlife Habitat standard.

26  
27 In the *Final Order on Amendment #7*, the Council found that the design, construction, and  
28 operation of the reconfigured Unit 2 would meet the ODFW habitat mitigation goals and  
29 standards, taking into account conditions adopted in section D.8 of the site certificate.<sup>25</sup>

30  
31 Those previous findings and conditions are incorporated here.

32  
33 Section 3.6.2(g) of *RFA #10* provides an analysis of how the facility, with the proposed changes,  
34 would comply with the Fish and Wildlife Habitat standard. Section 3.6.2(g) states that the  
35 conditions adopted by the Council in the Ninth Amended Site Certificate to protect fish and  
36 wildlife habitat would apply to the additional laydown areas under the proposed Amendment  
37 #10. In Attachment #3 to *RFA #10* (included as Appendix B to this Final Order) the certificate  
38 holder provided a more detailed summary of the certificate holder's conclusion, based on  
39 surveys conducted by PGE for the proposed new laydown areas, that the additional laydown  
40 areas would not affect the Council's previous findings that the facility would comply with ODFW  
41 mitigation standards.

---

<sup>24</sup> *Final Order on the Application*, pp. 74-84.

<sup>25</sup> *Final Order on Amendment #7*, pp. 18-22.

1  
2 On July 3, 2013, ODFW staff, the certificate holder, and Department staff visited the PWGP to  
3 observe current conditions in the proposed new laydown areas and to verify the  
4 characterizations of wildlife conditions described by the certificate holder in Attachment #4 to  
5 *RFA #10*. ODFW’s written comment on *RFA #10* summarized observations and analysis from the  
6 site visit, concurred with the certificate holder’s characterization of the proposed new laydown  
7 areas as Category 4 habitat, and recommended conditions of approval.<sup>26</sup> ODFW staff concluded  
8 that, for the purpose of determining compliance with the mitigation goal of “no net loss” of  
9 Category 4 habitat, as required under OAR 635-415-0025(4)(a), “uplift in habitat value”  
10 resulting from the restoration, revegetation, and monitoring/maintenance of temporarily  
11 disturbed areas would offset up to two lost years of habitat that may result from use as a  
12 laydown area during the construction of Unit 2.<sup>27</sup> At the Department’s request, ODFW clarified  
13 this recommendation to include a definition of “successful uplift” based on measurable percent  
14 cover targets.<sup>28</sup> In order to ensure that the area added to the site by the amendment complies  
15 with mitigation goals for Category 4 habitat, the Council adopts the following condition:

16  
17 **Condition D.8(26):** Within 120 days of completing construction of Unit 2, the certificate  
18 holder shall initiate restoration of all temporarily disturbed construction laydown areas by  
19 implementing the following measures:

- 20  
21 1) Removal of gravel and fabric  
22 2) Ground decompaction  
23 3) Revegetation with an ODFW-approved native seed mix

24  
25 The certificate holder shall maintain and monitor revegetated areas and report on the  
26 status of revegetation efforts until the Department determines that the each revegetated  
27 area has demonstrated successful uplift for two consecutive years. The Department shall  
28 determine successful uplift in consultation with ODFW, based on the following percent  
29 cover targets:

- 30  
31 • 60% cover by native grasses  
32 • 10% cover by native forbs  
33 • 10% cover by bare ground  
34 • Not to exceed 20% cover by non-native plants

35  
36 ODFW comments also noted that laydown activities in the South Laydown Area could  
37 disturb an adjacent osprey nest observed during the July 3, 2013 site visit.<sup>29</sup> At the  
38 Department’s request, ODFW estimated the end date for the osprey nesting season. In

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<sup>26</sup> ODFW Comment on RFA #10, July 8, 2013.

<sup>27</sup> Letter from Susan Barnes, ODFW, July 8, 2013.

<sup>28</sup> Email correspondence from Susan Barnes, ODFW, July 12, 2013.

<sup>29</sup> Letter from Susan Barnes, ODFW, July 8, 2013.

1 order to ensure that laydown activities in the South Laydown Area do not impact existing  
2 use of adjacent habitat by nesting osprey, the Council adopts the following condition:

3  
4 **Condition D.8(27):** The certificate holder shall not use the South Laydown Area prior to  
5 October 1, 2013, unless a qualified biologist has determined that the adjacent osprey nest is  
6 inactive, and the Department has concurred with that determination in writing.  
7 In addition, Condition D.8(20) requires the certificate holder to monitor and control  
8 nuisance and invasive plant species in temporarily disturbed areas on site. In order to  
9 ensure that the certificate holder monitors and controls these species on all laydown areas,  
10 the Department recommends that the Council revise Condition D.8(20) as follows, with  
11 additions shown in double underline and deletions in strikethrough:

12  
13 **Condition D.8(20):** The Certificate Holder shall monitor and control nuisance and invasive  
14 plant species annually for a period of five years in areas where vegetation removal and/or  
15 revegetation has occurred in (1) riparian areas and wetlands along the transmission line  
16 rights-of-way, and (2) in areas temporarily disturbed by construction of the raw water, gas,  
17 and process discharge lines, in all the temporary construction staging and laydown areas  
18 ~~northwest of the energy facility site~~, and in the spoils disposal site.

#### 20 **Conclusion of Law**

21 For the reasons discussed above, and subject to compliance with the recommended conditions  
22 and condition revisions, the Council finds that, with approval of Amendment #10, the facility  
23 continues to comply with the Fish and Wildlife Habitat standard.

#### 25 III.A.9. Threatened and Endangered Species

#### 27 **Council Standard: OAR 345-022-0070**

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

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

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

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

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**Findings of Fact**

In the *Final Order on the Application*, the Council found that the design, construction and operation of PWGP would not have the potential to significantly reduce the likelihood or the survival or recovery of any threatened or endangered plant or wildlife species listed under Oregon law.<sup>30</sup> The Council adopted conditions in section D.8 of the Site Certificate to ensure compliance with the Threatened and Endangered Species standard.

In the *Final Order on Amendment #7*, the Council found that the design, construction, and operation of the reconfigured Unit 2 would not have the potential to significantly reduce the likelihood or the survival or recovery of any threatened or endangered plant or wildlife species listed under Oregon law.<sup>31</sup>

In the *Final Order on Amendment #9*, the Council revised Condition D.8(8) to include provisions for rescuing and relocating nongame protected wildlife prior to construction of Unit 2.<sup>32</sup>

Those previous findings and conditions are incorporated here.

Section 3.6.2(h) of *RFA #10* provides an analysis of how the facility, with the proposed changes, would comply with the Threatened and Endangered Species standard. The *Final Order on Amendment #7* addressed potential impacts from the reconfigured Unit 2 on two listed species in the vicinity of the site; the bald eagle and Columbia white-tailed deer. On March 9, 2012, the Oregon Fish and Wildlife Commission removed the bald eagle from the state endangered species list.<sup>33</sup> The bald eagle continues to receive protection under the federal Migratory Bird Treaty Act<sup>34</sup> and under the Bald and Golden Eagle Protection Act.<sup>35</sup> The certificate holder states that the proposed additional temporary laydown areas are consistent with current conditions in Section D.8 and are not located in identified habitat for Columbia white-tailed deer.<sup>36</sup> The proposed amendment would not change the size or number of PWGP components already authorized for construction. There has been no change in facts or circumstances that would affect the Council’s previous findings that the design, construction, and operation of PWGP would not have the potential to significantly reduce the likelihood of survival or recovery of any threatened or endangered plant or wildlife species addressed by OAR 345-022-0070.

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<sup>30</sup> *Final Order on the Application*, pp. 84-92.

<sup>31</sup> *Final Order on Amendment #7*, pp. 21-22.

<sup>32</sup> Oregon Energy Facility Siting Council, *Final Order on Amendment #9*, March 15, 2013, pp. 6-7.

<sup>33</sup> Oregon Department of Fish and Wildlife, “Bald eagle soars off Oregon’s Endangered Species List,” press release issued March 9, 2012. <http://www.dfw.state.or.us/news/2012/March/030912.asp> (accessed July 11, 2013).

<sup>34</sup> 16 U.S.C. §§ 703-712.

<sup>35</sup> 16 U.S.C. 668-668d)

<sup>36</sup> *RFA #10*, Section 3.6.2(h), p. 10.

1 **Conclusion of Law**

2  
3 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
4 facility continues to comply with the Threatened and Endangered Species standard.

5  
6 III.A.10. Scenic Resources

7  
8 **Council Standard: OAR 345-022-0080**

9  
10 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*  
11 *find that the design, construction and operation of the facility, taking into account*  
12 *mitigation, are not likely to result in significant adverse impact to scenic resources and*  
13 *values identified as significant or important in local land use plans, tribal land*  
14 *management plans and federal land management plans for any lands located within the*  
15 *analysis area described in the project order.*

16 \* \* \*

17  
18 **Findings of Fact**

19 In the *Final Order on the Application*, the Council found that the design, construction and  
20 operation of PWGP were not likely to result in significant impacts to identified significant or  
21 important scenic resources and values within the analysis area.<sup>37</sup> The Council adopted  
22 conditions in section D.10 of the Site Certificate to ensure compliance with the Scenic  
23 Resources standard.

24  
25 In the Final Order on Amendment #7, the Council considered applicable federal land  
26 management plans, local land use plans, and “key observation points” identified in the  
27 Application for Site Certificate. The Council found that the design, construction and operation  
28 of the proposed Unit 2 were not likely to result in any significant adverse impact to any scenic  
29 resources identified in federal, state, or local management plans as significant or important,  
30 taking into account the conditions adopted in section D.10 of the Site Certificate.<sup>38</sup>

31  
32 The Council’s previous findings and conditions are incorporated here.

33  
34 Section 3.6.2(j) of *RFA #10* provides an analysis to establish how the facility, with the proposed  
35 changes, would comply with the Scenic Resources standard. The certificate holder explains the  
36 use of “Key Observation Points” (KOPs) in the Application for Site Certificate to analyze  
37 potential visual effects of the facility. In discussing potential impacts to KOPs, the certificate  
38 holder describes the existing industrial facilities in close proximity to the proposed laydown  
39 areas, including the Beaver Generating Plant and Unit 1 of Port Westward Generating Project.  
40 In addition, the certificate holder states that no federal management plans apply to the areas  
41 proposed for the expansion of the site boundary, and no new scenic resources have been

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<sup>37</sup> *Final Order on the Application*, pp. 92-96.

<sup>38</sup> *Final Order on Amendment #7*, pp. 22-23.

1 added to the Columbia County Comprehensive Plan or other local management plans since the  
2 Council’s findings in the *Final Order on the Application*.<sup>39</sup>

3  
4 The proposed amendment does not alter the potential visual impacts of the PWGP components  
5 already authorized for construction. The proposed amendment would have no effect on the  
6 Council’s previous findings regarding the potential impacts of the facility on scenic resources.  
7 There has been no change in facts or circumstances that would affect the Council’s findings on  
8 the previously-approved site for PWGP.

9  
10 **Conclusion of Law**

11 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
12 facility continues to comply with the Scenic Resources standard.

13  
14 III.A.11. Historic, Cultural, and Archaeological Resources

15  
16 **Council Standard: OAR 345-022-0090**

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

21  
22 *(a) Historic, cultural or archaeological resources that have been listed on, or would likely*  
23 *be listed on the National Register of Historic Places;*

24  
25 *(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a),*  
26 *or archaeological sites, as defined in ORS 358.905(1)(c); and*

27  
28 *(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).*

29 \* \* \*

30  
31 **Findings of Fact**

32 In the *Final Order on the Application*, the Council found that the design, construction and  
33 operation of PWGP were not likely to result in significant adverse impacts to identified historic,  
34 cultural and archaeological resources (collectively referred to as “cultural resources”) for the  
35 area within the PWGP site boundary.<sup>40</sup> The Council adopted conditions in section D.11 of the  
36 Site Certificate to ensure compliance with the Historic, Cultural, and Archaeological Resources  
37 standard.

38  
39 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
40 operation of the proposed Unit 2 were not likely to result in significant adverse impacts to

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<sup>39</sup> RFA #10, Section 3.6.2(i), p. 11.

<sup>40</sup> *Final Order on the Application*, pp. 96-100.

1 identified historic, cultural and archaeological resource, taking into account the conditions  
2 adopted in section D.11 of the site certificate.<sup>41</sup>

3  
4 The Council’s previous findings and conditions are incorporated here.

5  
6 The certificate holder included evaluations of recent archaeological surveys conducted by  
7 Archaeological Investigations Northwest (AINW) as Attachment 4 to RFA #10. These evaluations  
8 do not recommend additional cultural resource surveys prior to the use of the proposed north  
9 and south laydown areas.<sup>42</sup> The certificate holder states that native soils in the proposed north  
10 laydown area expansion are overlain with approximately ten feet of fill and that native soils in  
11 the proposed south laydown expansion are overlain with approximately three feet of fill. RFA  
12 #10 states that the certificate holder provided copies of the AINW evaluations to the Oregon  
13 State Historic Preservation Office (SHPO) on May 17, 2013, in advance of submitting the  
14 amendment request to the Department.<sup>43</sup> SHPO did not submit comments to the Department  
15 on RFA #10.

16  
17 The findings of the AINW surveys submitted by the certificate holder and reviewed by the  
18 Department indicate that the proposed amendment would not alter the potential impacts of  
19 the facility on cultural resources. There has been no change in facts or circumstances that  
20 would affect the Council’s findings on the previously-approved site for PWGP.

21  
22 **Conclusion of Law**

23 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
24 facility continues to comply with the Historic, Cultural, and Archaeological Resources.

25  
26 III.A.12. Recreation

27  
28 **Council Standard: OAR 345-022-0100**

29  
30 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*  
31 *find that the design, construction and operation of a facility, taking into account*  
32 *mitigation, are not likely to result in a significant adverse impact to important*  
33 *recreational opportunities in the analysis area as described in the project order. The*  
34 *Council shall consider the following factors in judging the importance of a recreational*  
35 *opportunity:*

36  
37 *(a) Any special designation or management of the location;*

38  
39 *(b) The degree of demand;*  
40

---

<sup>41</sup> Final Order on Amendment #7, p. 23.

<sup>42</sup> RFA #10, Attachment #4.

<sup>43</sup> RFA #10, Section 3.6.2(j), p. 11.

1 (c) Outstanding or unusual qualities;

2  
3 (d) Availability or rareness;

4  
5 (e) Irreplaceability or irretrievability of the opportunity.

6 \* \* \*

7  
8 **Findings of Fact**

9 In the *Final Order on the Application*, the Council found that the design, construction and  
10 operation of PWGP were not likely to result in significant adverse impacts to recreational  
11 opportunities within a five-mile analysis area around the energy facility site and the  
12 transmission corridor. The Council adopted conditions in section D.12 of the site certificate to  
13 ensure compliance with the Recreation standard.<sup>44</sup>

14  
15 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
16 operation of the proposed Unit 2 were not likely to result in any significant adverse impact to  
17 important recreation opportunities, taking into account the conditions adopted in section D.12  
18 of the Site Certificate.<sup>45</sup>

19  
20 The Council's previous findings and conditions are incorporated here.

21  
22 Section 3.6.2(k) of *RFA #10* includes an analysis of how the facility, with the proposed changes,  
23 would comply with the Recreation standard.<sup>46</sup> As explained in the analysis, temporary impacts  
24 from the expanded laydown areas would only occur within an area already designated as an  
25 industrial park.<sup>47</sup> No previous Council orders have identified important recreation activities  
26 within the Port Westward Industrial Area, and the review and comment process for  
27 Amendment #10 did not result in the identification of any additional recreation opportunities.<sup>48</sup>  
28 There has been no change in facts or circumstances that would affect the Council's findings on  
29 the previously-approved site for PWGP.

30  
31 **Conclusion of Law**

32 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
33 facility continues to comply with the Recreation standard.

34  
35 III.A.13. Public Services

36  
37 **Council Standard: OAR 345-022-0110**

38  

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<sup>44</sup> *Final Order on the Application*, pp. 100-102.

<sup>45</sup> *Final Order on Amendment #7*, pp. 24-25.

<sup>46</sup> *RFA #10*, Section 3.6.2(k), p. 12.

<sup>47</sup> *RFA #10*, Figures 1-3.

<sup>48</sup> *Final Order on Amendment #7*, p. 24.

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

7           \* \* \*

### 9           **Findings of Fact**

10          In the *Final Order on the Application*, the Council found that, with the imposition of conditions  
11          in Section D.13, the design, construction, and operation of PWGP were not likely to result in  
12          significant adverse impacts to public services listed in OAR 345-022-0110(1).<sup>49</sup>

14          In the *Final Order on Amendment #7*, the Council found that, with the incorporation of a revised  
15          Condition D.13(2), the design, construction, and operation of Unit 2 were not likely to result in  
16          significant adverse impacts to public services listed in OAR 345-022-0110(1).<sup>50</sup>

18          The Council’s previous findings and conditions are incorporated here.

20          Section 3.6.2(k) of *RFA #10* provides an analysis to establish how the facility, with the proposed  
21          changes, would comply with the Public Services standard. The certificate holder states that the  
22          proposed laydown areas would only occupy land leased or owned by the certificate holder, and  
23          that the use of these additional areas would not increase demand for public services.<sup>51</sup>

25          Columbia County staff commented on *RFA #10* that the County did not have any public service  
26          concerns related to the proposed additional laydown areas.<sup>52</sup> There has been no change in facts  
27          or circumstances that would affect the Council’s previous findings on the previously-approved  
28          site for PWGP.

### 30          **Conclusion of Law**

31          For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
32          facility continues to comply with the Public Services standard.

### 34          III.A.14. Waste Minimization

#### 36          **Council Standard: OAR 345-022-0120**

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

<sup>49</sup> *Final Order on the Application*, pp. 103-114.

<sup>50</sup> *Final Order on Amendment #7*, p. 24.

<sup>51</sup> *RFA #10*, Section 3.6.2(l), p. 12.

<sup>52</sup> Memorandum from Glen Higgins, Columbia County Planning Manager, July 3, 2013.

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

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

9           \* \* \*

10  
11   **Findings of Fact**

12   In the *Final Order on the Application*, the Council found that the design, construction and  
13   operation of PWGP would comply with the Council’s Waste Minimization Standard.<sup>53</sup> The  
14   Council adopted conditions in section D.14 of the site certificate to ensure compliance with the  
15   Waste Minimization standard.

16  
17   In the *Final Order on Amendment #7*, the Council found that the design, construction and  
18   operation of the proposed Unit 2 would comply with the Waste Minimization standard, taking  
19   into account the conditions adopted in section D.14 of the Site Certificate.<sup>54</sup>

20  
21   The Council’s previous findings and conditions are incorporated here.

22  
23   Section 3.6.2(m) of *RFA #10* addresses how the facility, with the proposed changes, would  
24   comply with the Waste Minimization standard. The waste minimization plans presented by the  
25   certificate holder in Exhibit V of the Application for Site Certificate, and the conditions adopted  
26   in section D.14 of the Site Certificate would apply to the proposed laydown areas if the Council  
27   approved Amendment #10. The waste generated from the proposed expansion of laydown  
28   areas would be similar to that resulting from previously-approved laydown areas.

29   There has been no change in facts or circumstances that would affect the Council’s previous  
30   findings on the previously-approved site for PWGP.

31  
32   **Conclusion of Law**

33   For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
34   certificate holder continues to comply with the Waste Minimization standard.

35  
36   III.A.15. Carbon Dioxide Standard for Base Load Gas Plants

37  
38   **Council Standard: OAR 345-024-0550**

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

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<sup>53</sup> *Final Order on the Application*, pp. 114-117.

<sup>54</sup> *Final Order on Amendment #7*, p. 26.

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

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

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

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

31  
32 (a) The degree of certainty that the predicted quantity of carbon dioxide emissions  
33 reduction will be achieved by the offset;

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

38  
39 (c) The extent to which the reduction of carbon dioxide emissions would occur in the  
40 absence of the offsets;

41  
42 (4) Before beginning construction, the certificate holder shall notify the Department of  
43 Energy in writing of its final selection of a gas turbine vendor and shall submit a written

1            *design information report to the Department sufficient to verify the facility's designed*  
2            *new and clean heat rate and its nominal electric generating capacity at average annual*  
3            *site conditions for each fuel type. In the report, the certificate holder shall include the*  
4            *proposed limits on the annual average number of hours of facility operation on distillate*  
5            *fuel oil, if applicable. In the site certificate, the Council may specify other information to*  
6            *be included in the report. The Department shall use the information the certificate holder*  
7            *provides in the report as the basis for calculating, according to the site certificate, the*  
8            *amount of carbon dioxide emissions reductions the certificate holder must provide under*  
9            *OAR 345-024-0560.*

## 11 **Findings of Fact**

12 In the *Final Order on the Application*, the Council found that the design, construction and  
13 operation of PWGP would comply with the Council's Carbon Dioxide Standard for Base Load  
14 Gas Plants.<sup>55</sup> The Council adopted conditions in section D.15 of the site certificate to ensure  
15 compliance with the Carbon Dioxide standard.

17 The Council's previous findings and conditions are incorporated here.

19 PWGP Unit 1 was constructed as a base load gas plant and began operating in 2007. In its  
20 *Request for Amendment #7*, the Certificate Holder proposed PWGP Unit 2 as a non-base load  
21 power plant.<sup>56</sup> Compliance of Unit 2 with the Council's Carbon Dioxide Standard for Non-Base  
22 Load Power Plants is discussed separately in Section III.A.16 below.

24 The proposed amendment would not alter the Council's prior findings with respect to PWGP's  
25 compliance with the Carbon Dioxide Standard for Base Load Gas Plants. There has been no  
26 change in facts or circumstances that would affect the Council's previous findings.

## 28 **Conclusion of Law**

29 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
30 facility continues to comply with the Carbon Dioxide Standard for Base Load Gas Plants .

### 32 III.A.16. Carbon Dioxide Standard for Non-Base Load Power Plants

#### 34 **Council Standard: OAR 345-024-0590**

35 *To issue a site certificate for a non-base load power plant, the Council must find that the net*  
36 *carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon*  
37 *dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net*  
38 *electric power output measured on a new and clean basis. For a base load gas plant designed*  
39 *with power augmentation technology as defined in OAR 345-001-0010, the Council shall apply*  
40 *this standard to the incremental carbon dioxide emissions from the designed operation of the*

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<sup>55</sup> *Final Order on the Application*, pp. 117-130.

<sup>56</sup> Portland General Electric Company, *Request the Seventh Amendment to the Site Certificate for Port Westward Generating Project*, September 18, 2009.

1 power augmentation technology. The Council shall determine whether the carbon dioxide  
2 emissions standard is met as follows:

3  
4 (1) The Council shall determine the gross carbon dioxide emissions that are reasonably  
5 likely to result from the operation of the proposed energy facility. The Council shall base  
6 such determination on the proposed design of the energy facility, the limitation on the  
7 hours of generation for each fuel type and the average temperature, barometric  
8 pressure and relative humidity at the site during the times of the year when the facility is  
9 intended to operate. For a base load gas plant designed with power augmentation  
10 technology, the Council shall base its determination of the incremental carbon dioxide  
11 emissions on the proposed design of the facility, the proposed limitation on the hours of  
12 generation using the power augmentation technology and the average temperature,  
13 barometric pressure and relative humidity at the site during the times of the year when  
14 the facility is intended to operate with power augmentation technology. The Council  
15 shall adopt site certificate conditions to ensure that the predicted carbon dioxide  
16 emissions are not exceeded on a new and clean basis; however, the Council may modify  
17 the parameters of the new and clean basis to accommodate average conditions at the  
18 times when the facility is intended to operate and technical limitations, including  
19 operational considerations, of a non-base load power plant or power augmentation  
20 technology or for other cause \*\*\*

21  
22 \*\*\* (4) Before beginning construction, the certificate holder shall notify the Department  
23 of Energy in writing of its final selection of an equipment vendor and shall submit a  
24 written design information report to the Department sufficient to verify the facility's  
25 designed new and clean heat rate and its nominal electric generating capacity at  
26 average annual site conditions for each fuel type. For a base load gas plant designed  
27 with power augmentation technology, the certificate holder shall include in the report  
28 information sufficient to verify the facility's designed new and clean heat rate, tested  
29 under parameters the Council orders pursuant to section (1), and the nominal electric  
30 generating capacity at average site conditions during the intended use for each fuel type  
31 from the operation of the proposed facility using the power augmentation technology.  
32 The certificate holder shall include the proposed limit on the annual average number of  
33 hours for each fuel used, if applicable. The certificate holder shall include the proposed  
34 total number of hours of operation for all fuels, subject to the limitation that the total  
35 annual average number of hours of operation per year is not more than 6,600 hours. In  
36 the site certificate, the Council may specify other information to be included in the  
37 report. The Department shall use the information the certificate holder provides in the  
38 report as the basis for calculating, according to the site certificate, the gross carbon  
39 dioxide emissions from the facility and the amount of carbon dioxide emissions  
40 reductions the certificate holder must provide under OAR 345-024-0600;

41 (5)  
42

1           (a) Every five years after commencing commercial operation, the certificate holder  
2 shall report to the Council the facility's gross carbon dioxide emissions. The  
3 certificate holder shall calculate actual gross carbon dioxide emissions using the new  
4 and clean heat rate and the actual hours of operation on each fuel during the five-  
5 year period or shall report to the Council the actual measured or calculated carbon  
6 dioxide emissions as reported to either the Oregon Department of Environmental  
7 Quality or the U.S. Environmental Protection Agency pursuant to a mandatory  
8 carbon dioxide emissions reporting requirement.

9  
10          (b) The certificate holder shall specify its election of method used to measure or  
11 calculate carbon dioxide emissions in the notification report described at section (4)  
12 of this rule. That election, once made, shall apply for each five year period unless the  
13 site certificate is amended to allow a different election. If the certificate holder  
14 calculates actual carbon dioxide emissions using the new and clean heat rate and the  
15 actual hours of operation, the certificate holder shall also report to the Council the  
16 facility's actual annual hours of operation by fuel type. If the actual gross carbon  
17 dioxide emissions exceed the projected gross carbon dioxide emissions for the five-  
18 year period calculated under section (4), the certificate holder shall offset any excess  
19 emissions for that period and shall offset estimated future excess carbon dioxide  
20 emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or  
21 as approved by the Council.

## 22 23 **Findings of Fact**

24 In its *Request for Amendment #7*, the Certificate Holder proposed PWGP Unit 2 as a non-base  
25 load power plant.<sup>57</sup> In the Final Order on Amendment #7, the Council found that the design,  
26 construction and operation of Unit 2 would comply with the Council's Carbon Dioxide Standard  
27 for Non-Base Load Power Plants.<sup>58</sup> In approving Amendment #7, the Council adopted conditions  
28 in section D.15 of the Site Certificate to ensure compliance with the Carbon Dioxide Standard  
29 for Non-Base Load Power Plants.

30  
31 The Carbon Dioxide Standard and the monetary path rate have not been amended since  
32 approval of Amendment #7. The Council's previous findings and conditions are incorporated  
33 here.

34  
35 The proposed amendment would not alter the Council's prior findings with respect to PWGP's  
36 compliance with the Carbon Dioxide Standard for Non-Base Load Power Plants. There has been  
37 no change in facts or circumstances that would affect the Council's previous findings.

38  
39  
40  

---

<sup>57</sup> *Request for the Seventh Amendment to the Site Certificate for the Port Westward Generating Project*,  
September 18, 2009.

<sup>58</sup> *Final Order on Amendment #7*, pp. 39-54.

1 **Conclusion of Law**

2 For the reasons discussed above, the Council finds that, with the approval of Amendment #10,  
3 the facility continues to comply with the Carbon Dioxide Standard for Base Load Gas Plants.  
4

5 **III.B. Other Applicable Regulatory Requirements under Council Jurisdiction**

6  
7 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-  
8 0000), the Council must determine whether a facility complies with “all other Oregon statutes  
9 and administrative rules identified in the project order, as amended, as applicable to the  
10 issuance of a site certificate for the proposed facility.” The statutes and administrative rules  
11 that the Council has previously considered applicable to the site certificate for the PWGP  
12 include the Department of Environmental Quality (DEQ) noise control regulations, the  
13 regulations adopted by the Department of State Lands (DSL) for removal or fill of material  
14 affecting waters of the state, the Oregon Water Resources Department (OWRD) regulations for  
15 water rights and the Council’s statutory authority to consider protection of public health and  
16 safety.  
17

18 **III.B.1. Noise Control Regulations**

19  
20 **Noise Control Regulations for Industry and Commerce: OAR 340-035-0035**

21  
22 *(1) Standards and Regulations:*

23 \* \* \*

24  
25 *(b) New Noise Sources:*

26 \* \* \*

27  
28 *(A) New Sources Located on Previously Used Sites. No person owning or*  
29 *controlling a new industrial or commercial noise source located on a previously*  
30 *used industrial or commercial site shall cause or permit the operation of that*  
31 *noise source if the statistical noise levels generated by that new source and*  
32 *measured at an appropriate measurement point, specified in subsection (3)(b) of*  
33 *this rule, exceed the levels specified in Table 8, except as otherwise provided in*  
34 *these rules. For noise levels generated by a wind energy facility including wind*  
35 *turbines of any size and any associated equipment or machinery, subparagraph*  
36 *(1)(b)(B)(iii) applies.*

37 \* \* \*

38  
39 **Findings of Fact**

40 In the *Final Order on the Application*, the Council concluded that the PWGP would comply with  
41 the state noise control regulations.<sup>59</sup> The Council adopted conditions in section E.1.a of the Site  
42 Certificate to ensure compliance with state noise control regulations.

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<sup>59</sup> *Final Order on the Application*, pp. 133-141.

1  
2 In the *Final Order on Amendment #7*, the Council concluded that the reconfigured Unit 2 would  
3 comply with state noise control regulations, taking into account the conditions adopted in  
4 section E.1.a of the Site Certificate.<sup>60</sup>

5  
6 The Council’s previous findings and conditions are incorporated here.

7  
8 The proposed amendment to expand the site boundary to include additional laydown areas  
9 would not change the site certificate conditions that ensure compliance with the noise  
10 regulations. The proposed amendment would not change the type or number of potential noise  
11 sources already authorized for construction. There has been no change of facts or  
12 circumstances affecting the basis for the Council’s previous findings regarding compliance with  
13 the noise control regulations.

14  
15 **Conclusion of Law**

16 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
17 facility continues to comply with applicable noise control regulations in OAR 340-035-0035.

18  
19 III.B.2. Removal-Fill Law

20  
21 Pursuant to OAR 345-022-0000, the Council must determine compliance with applicable  
22 statutes, ORS 196.800-.990, and applicable Department of State Lands (“DSL”) regulations, OAR  
23 141-085-0005 *et seq.* relating to fill and other operations taking place within wetlands. These  
24 regulations require persons to obtain a removal/fill permit if more than 50 cubic yards of  
25 material will be removed or altered within “waters of the state.” The overall standard to be  
26 considered in granting a removal/fill permit is whether the proposed activity would not  
27 “unreasonably interfere with the paramount policy of this state to preserve the use of its  
28 waters for navigation, fishing and public recreation.”<sup>61</sup>

29  
30 **Findings of Fact**

31 In the *Final Order on the Application*, the Council found that the design, construction and  
32 operation of PWGP would comply with the Oregon Removal-Fill Law.<sup>62</sup> The Council adopted  
33 conditions in section E.1.b of the site certificate to ensure compliance with Removal-Fill  
34 requirements.

35  
36 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
37 operation of the reconfigured Unit 2 would comply with Removal-Fill requirements, taking into  
38 account the conditions adopted in section E.1.b of the Site Certificate.<sup>63</sup>

39  

---

<sup>60</sup> *Final Order on Amendment #7*, pp. 26-34.

<sup>61</sup> ORS 196.825(2).

<sup>62</sup> *Final Order on the Application*, pp. 141-150.

<sup>63</sup> *Final Order on Amendment #7*, p. 34.

1 The Council's previous findings and conditions are incorporated here.

2

3 Section 3.6.5(d) of *RFA #10* provides an analysis of how the facility, with the proposed changes,  
4 would comply with Removal-Fill requirements in. The certificate holder states that prior surveys  
5 have found that no wetlands are present each of the proposed expanded laydown areas. The  
6 certificate holder acknowledges that laydown areas north and northwest of the facility are  
7 close to wetlands, and notes that Condition E.1.b(3) of the Site Certificate requires the  
8 certificate holder to implement several precautions to protect wetlands. The certificate holder  
9 proposes to modify Condition E.1.b(3) to address staking of a wetland adjacent to the proposed  
10 new laydown area at the Beaver Generating Plant. The certificate holder requests to amend  
11 Condition E.1.b(3) as follows, with additions shown in double underline and deletions in  
12 strikethrough:

13

14 **Condition E.1.b(3):** The Certificate Holder shall clearly stake the wetland boundary adjacent  
15 to the spoils disposal area, ~~and~~ the wetland number 4 boundary adjacent to the  
16 construction laydown/staging areas in the vicinity of the energy facility, and the wetland  
17 boundary adjacent to the Beaver Generating Plant laydown/staging area prior to any  
18 ground disturbing activity in corresponding areas ~~the spoils disposal area or in the~~  
19 ~~construction laydown/staging areas in the vicinity of the energy facility,~~ and shall maintain  
20 the staking until all ground-disturbing activities in the corresponding areas ~~spoils disposal~~  
21 ~~area and in the construction laydown/staging areas in the vicinity of the energy facility~~ have  
22 been completed. The Certificate Holder shall instruct all contractors disposing of soil in the  
23 spoils disposal area, ~~and~~ using the construction laydown/staging areas in the vicinity of the  
24 energy facility, or at the Beaver Generating Plant laydown/staging area about the purpose  
25 of the staking and shall require them to avoid any impact to the wetlands. [Amendment No.  
26 3 & No. 10]

27

28 In order to ensure that the certificate holder stakes wetlands that occur near the Beaver  
29 Generating Plant laydown area, the Council adopts the revised Condition E.1.b(3) as proposed  
30 by the certificate holder.

31

32 The proposed amendment to expand the site boundary to include new construction laydown  
33 areas would not alter the Council's prior findings with respect to PWGP's compliance with  
34 Removal-Fill requirements. There has been no change in facts or circumstances that would  
35 affect the Council's previous findings.

36

### 37 **Conclusion of Law**

38 For the reasons discussed above, and subject to compliance with the revised Condition E.1.b(3),  
39 the Council finds that, with approval of Amendment #10, the facility continues to comply with  
40 Removal-Fill requirements.

41

42

43

1           III.B.3. Water Right Transfer

2  
3 Under ORS Chapters 537 and 540 and OAR Chapter 690, the Oregon Water Resources  
4 Department (OWRD) administers water rights for appropriation and use of the water resources  
5 of the state. The Council must determine whether the design, construction, and operation of  
6 PWGP complies with these statutes and administrative rules.

7  
8 **Requirement: OAR 690-380-6020**

9  
10           *(1) An order authorizing a water right transfer sets a time limit in which to beneficially*  
11 *use the water. If the transfer is not completed within the time limit, the owner may file*  
12 *an application for an extension of time. The application shall contain sufficient*  
13 *information for the director to determine reasonable diligence in the attempt to*  
14 *complete the project within the initial time allowed.*

15  
16           *(2) If multiple receiving owners are involved, a separate application is required from each*  
17 *receiving owner requesting an extension.*

18  
19           *(3) Extensions are granted for one year, from October 1 to October 1 of each year. An*  
20 *extension for up to five years may be granted for transfers involving municipal or quasi-*  
21 *municipal use. Extensions may be granted for longer time if the applicant can justify the*  
22 *need for a longer period of time by submission of pertinent evidence.*

23  
24           *(4) In reviewing an application for an extension of time, the director shall determine*  
25 *whether reasonable diligence was made by the applicant to complete the project within*  
26 *the time period established under OAR 690-380-5140. Reasonable diligence shall include,*  
27 *but is not limited to:*

28  
29                   *(a) The purchase and installation of water delivery system;*

30  
31                   *(b) The expansion or restructuring of the existing delivery system;*

32  
33                   *(c) Actual use of a portion of the water according to the terms of the transfer order;*  
34 *or*

35  
36                   *(d) For municipal, quasi-municipal and group domestic uses only, the continued*  
37 *increase in population and number of service connections.*

38  
39           *(5) Applications for succeeding extensions shall show reasonable diligence within the*  
40 *time allowed by the previous extension and shall be subject to the Department review*  
41 *based on section (4) of this rule.*

42           \* \* \*

1 **Findings of Fact**

2 In the *Final Order on Amendment #7*, the Council found the requested transfer in compliance  
3 with OWRD rules at OAR Chapter 690, Division 380, and instructed OWRD to issue a Final Order  
4 substantially consistent with the “Draft Preliminary Determination” issued by OWRD on  
5 December 7, 2009 on the matter of transfer application T-10955.<sup>64</sup> The Council adopted  
6 conditions in section D.13 of the Site Certificate to ensure compliance with OWRD rules at OAR  
7 Chapter 690, Division 380.

8  
9 In the *Final Order on Amendment #9*, the Council found that the certificate holder’s Application  
10 of Extension of Time for Transfer of a Water Right complies with OWRD rules at OAR 690-380-  
11 6020, and granted an extension of water right transfer T-10955.<sup>65</sup>

12  
13 The Council’s previous findings and conditions are incorporated here.

14  
15 The proposed amendment to expand the site boundary to include new construction laydown  
16 areas would not alter the Council’s prior findings with respect to PWGP’s compliance with  
17 water right transfer requirements. There has been no change in facts or circumstances that  
18 would affect the Council’s previous findings.

19  
20 **Conclusion of Law**

21 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
22 facility continues to comply with water right transfer requirements.

23  
24 III.B.4. Public Health and Safety

25  
26 Under ORS 469.310, the Council is charged with ensuring that the “siting, construction and  
27 operation of energy facilities shall be accomplished in a manner consistent with protection of  
28 the public health and safety.” Further, ORS 469.401(2) provides that “the site certificate shall  
29 contain conditions for the protection of the public health and safety.”

30  
31 **Findings of Fact**

32 In the *Final Order on the Application*, the Council found that the design, construction and  
33 operation of PWGP would protect public health and safety. The Council adopted conditions in  
34 section E.1.c of the site certificate to ensure protection of public health and safety.<sup>66</sup>  
35 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
36 operation of the reconfigured Unit 2 would protect public health and safety, taking into account  
37 the conditions adopted in section E.1.c of the Site Certificate.<sup>67</sup>

38  
39 The Council’s previous findings and conditions are incorporated here.

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<sup>64</sup> *Final Order on Amendment #7*, pp. 35-39.

<sup>65</sup> *Final Order on Amendment #9*, pp. 38-39.

<sup>66</sup> *Final Order on the Application*, pp. 150-158.

<sup>67</sup> *Final Order on Amendment #7*, p. 34.

1  
2 The proposed amendment would not alter the potential impacts of PWGP on public health and  
3 safety. There has been no change in facts or circumstances that would affect the Council’s  
4 previous findings.

5  
6 **Conclusion of Law**

7 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
8 facility continues to protect public health and safety in compliance with ORS 469.310.  
9

10 III.B.5. Water Pollution Control Facilities Permit

11  
12 **The Requirement**

13 The development of an onsite sewage treatment system incorporating a septic tank, dosing  
14 tank, and bottomless sand filter is considered a form of wastewater discharge that requires a  
15 Water Pollution Control Facilities (“WPCF”) permit from DEQ. The WPCF permit is a state level  
16 permit that falls under Council jurisdiction.  
17

18 **Findings of Fact**

19 In the *Final Order on the Application*, the Council determined that DEQ should issue a WPCF  
20 permit for PWGP.<sup>68</sup>  
21

22 The proposed amendment would not affect the issuance of or compliance with the WPCF  
23 permit. There has been no change in facts or circumstances that would affect the Council’s  
24 previous findings.  
25

26 The Council’s previous findings and conditions are incorporated here.  
27

28 **Conclusion of Law**

29 For the reasons discussed above, the Council finds that, with approval of Amendment #10, the  
30 facility continues to comply with the Water Pollution Control Facilities permit..  
31

32 III.C. Requirements That Are Not under Council Jurisdiction

33 The Council does not have jurisdiction for determining compliance with statutes and rules for  
34 which the federal government has delegated the decision on compliance to a state agency  
35 other than the Council.<sup>69</sup> Nevertheless, the Council may rely on the determinations of  
36 compliance and the conditions in the federally-delegated permits issued by these state  
37 agencies in deciding whether the proposed facility meets other standards and requirements  
38 under its jurisdiction.  
39

40 In the *Final Order on the Application*, the Council found that the certificate holder must obtain a  
41 federal Air Contaminant Discharge Permit (ACDP) from the Oregon Department of

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<sup>68</sup> *Final Order on the Application*, pp. 150-158.

<sup>69</sup> ORS 469.503(3).

1 Environmental Quality (DEQ) before beginning construction of the proposed facility.<sup>70</sup> The  
2 certificate holder must also comply with requirements of DEQ’s 1200-C General National  
3 Pollutant Discharge Elimination System (NPDES) Stormwater Discharge permit and an Erosion  
4 and Sediment Control Plan (ESCP) to minimize erosion at the site during construction  
5 operations.<sup>71</sup>  
6

7 **IV. Conclusion and Order of Council**

8 The Certificate Holder has submitted a request to amend the Site Certificate for the Port  
9 Westward Generating Project. The Council finds that, subject to compliance with the additional  
10 conditions discussed in this Final Order, a preponderance of evidence on the record supports  
11 the following conclusions:  
12

13 (1) The proposed Tenth Amended Site Certificate for Port Westward Generating Project  
14 complies with the requirements of the Oregon Energy Facility Siting statutes ORS 469.300 to  
15 469.520.  
16

17 (2) The proposed Tenth Amended Site Certificate for Port Westward Generating Project  
18 complies with the standards adopted by the Council pursuant to ORS 469.501.  
19

20 (3) The proposed Tenth Amended Site Certificate for Port Westward Generating Project  
21 complies with all other Oregon statutes and administrative rules applicable to the  
22 amendment of the site certificate that are within the Council’s jurisdiction.  
23

24 Based on the findings of fact and conclusions of law in this Final Order, the Council concludes  
25 that the site certificate holder has satisfied the requirements for issuance of the requested  
26 Tenth Amended Site Certificate for the Port Westward Generating Project, subject to  
27 compliance with the conditions stated in this Final Order and in previous orders and  
28 amendments.  
29  
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<sup>70</sup> *Final Order on the Application*, pp. 160-161.

<sup>71</sup> *Final Order on the Application*, pp. 160-161.

1 The Council approves Amendment #10 and issues this final order amending the site certificate,  
2 pursuant to OAR 345-027-0080(8). Before implementing any change approved by this final  
3 order, the Certificate Holder must submit an authorized acknowledgement that the certificate  
4 holder accepts all terms and conditions of the final order.<sup>72</sup>

5  
6 Issued this 23<sup>rd</sup> day of August, 2013.

7 THE OREGON ENERGY FACILITY SITING COUNCIL

8  
9  
10 By: W. Bryan Wolfe  
11 W. Bryan Wolfe, Chair  
12 Oregon Energy Facility Siting Council

13  
14  
15 Notice of the Right to Appeal

16 *You have a right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403. To*  
17 *appeal you must file a petition for judicial review with the Supreme Court within 60 days from*  
18 *the day this order was served on you. If this order was personally delivered to you, the date of*  
19 *service is the date you received this order. If this order was mailed to you, the date of service is*  
20 *the date it was mailed, not the date you received it. If you do not file a petition for judicial*  
21 *review within the 60-day time period, you lose your right to appeal.*

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<sup>72</sup> OAR 345-027-0080(7).