

BEFORE THE ENERGY FACILITY SITING COUNCIL  
OF THE  
STATE OF OREGON

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In the matter of the Application )  
for Site Certificate of Portland )  
General Electric Company for the ) FINAL ORDER  
Coyote Springs Cogeneration )  
Project )

On review of the entirety of record in this proceeding, the Energy Facility Siting Council issues this order.

I. INTRODUCTION

This final order addresses the application for a site certificate (ASC) for the construction and operation of a electrical generating facility submitted by the Applicant Portland General Electric Company (Applicant). The proposed facility is known as the Coyote Springs Cogeneration Project (CSCP).

The Energy Facility Siting Council (EFSC) of the State of Oregon is responsible for review and approval of the siting, construction, operation and retirement of large energy facilities within the State of Oregon. Oregon Revised Statute (ORS) chapter 469. EFSC is directed by this statutory authority to protect the public health and safety and oversee compliance with the state's energy policy and air, water, solid waste, land use and other environmental protection policies of this state. ORS 469.310.

In this process, EFSC determines whether an application satisfies the statutory and administrative standards for the siting of a facility and, in doing so, under what conditions the application would satisfy these standards. If the application does satisfy these standards, either unconditionally or subject to certain conditions, EFSC also determines what other requirements, limitations or conditions it should impose upon the Applicant as obligated or authorized under ORS chapter 469 (1993).

This order is based on the Hearings Officer's Proposed Order issued July 27, 1994, and the ODOE proposed order issued January 10, 1994.

II. PROCEDURAL HISTORY

On May 10, 1991, the Applicant's former subsidiary and predecessor in interest, PowerLink Corporation, submitted a Notice of Intent (NOI) for the proposed CSCP to EFSC. An addendum to the NOI was submitted on August 15, 1991, responding to a request from EFSC staff for additional information dated June 19, 1991.

On July 12, 1991, EFSC appointed the Morrow County Court as a special advisory group for the proposed CSCP. This appointment was made pursuant to ORS 469.480(1), which requires that EFSC appoint as a special advisory group the governing body of a city or county in which the site of a proposed energy facility is located.

On November 27, 1991, the Oregon Department of Energy (ODOE) notified the Applicant that the NOI process had been completed and specified issues, information and data requirements that were to be addressed and included in the ASC.

On January 20, 1993, the Applicant submitted an application for site certificate for the proposed CSCP, which was described as a net peak electrical output of 494 megawatts (MW), and natural gas-fired combined-cycle power plant with related facilities. The related facilities consisted of an electrical transmission line approximately 1.5 miles long, an electrical substation and approximately 41 miles of natural gas pipeline interconnecting the facility with two interstate natural gas transmission pipelines. On April 28, 1993, the Applicant withdrew the proposed natural gas pipelines from consideration under its application, based on an agreement to have a third party site, permit, construct, own and operate a single 15-mile-long natural gas pipeline to interconnect the facility with the interstate system. This third-party natural gas pipeline is to be permitted under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and is, therefore, beyond the jurisdiction of EFSC to review.

On May 3, 1993, ODOE issued a Project Order and Application Completeness Requirements to establish the applicable EFSC siting standards, all state statutes and administrative rules and city ordinances and all additional information requirements that were to be addressed in the application. The notice provided by the May 3, 1993, Project Order also included a request for additional information required for an application completeness determination. In response, the Applicant submitted revised application material on May 28, 1993. On June 11, 1993, ODOE issued its notice and finding that the ASC had been deemed complete.

The notice deeming the ASC complete, together with copies of the revised application, were sent to all involved state agencies, to local cities and counties and to the Confederated Tribes of the Umatilla Indian Reservation for their review and comment. Agency reports and other written comments received in response to circulation of the revised application for site certificate were included and considered by ODOE in its evaluation and in preparing its Proposed Order.

On August 2, 1993, the Governor of the State of Oregon signed into law Senate Bill (SB) 1016, which had been passed in both the Oregon

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Senate and House. SB 1016 is published in the session laws as 1993 Public Laws chapter 569. This statute made several significant changes in the substantive and procedural provisions regulating EFSC's review and processing of applications for the siting of energy facilities. The statute was specifically made retroactive to applications previously submitted to EFSC, including that of the Applicant.

On August 13, 1993, in response to the statutory changes, EFSC temporarily readopted and amended certain of its rules and standards, specifically the standards contained in OAR Chapter 345, Division 22 and the Need Standard of OAR 345, Division 23. These rules were readopted permanently in January 1994 and in April 1994.

The Applicant addressed changes in the statutory requirements and in EFSC rules and responded to issues raised by ODOE review of the application in a revised application filed on September 13 and 16, 1993.

On October 11, 1993, ODOE issued the Draft Staff Report for the CSCP. ODOE provided public notice of an informational hearing on the application for the proposed CSCP. The public informational hearing was held on October 28, 1993, at the Riverside High School in the City of Boardman, Oregon.

ODOE allowed the public to make further comments following the public information hearing by written submissions to the presiding officer no later than November 5. Public comments made orally at the hearing and submitted in writing were considered in the issuance of a final ODOE staff report on November 19, 1993 and this final order.

On January 6, 1994, the Applicant formally submitted an amendment to its application. The amendment addressed the possible installation of a zero-discharge wastewater system. On that same date, an order approving the amendment was issued by the Hearings Officer assigned to this case pursuant to OAR 345-21-090. On January 10, 1994, ODOE determined that the amended application was complete.

On January 10, 1994, ODOE issued a proposed order and draft site certificate. ODOE is statutorily obligated to submit a proposed order under ORS 469.370.

*Contested Case Process:*

The contested case process was initiated by filings on February 8 and 9. The initial filing was supplanted by a "revised request for

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contested case" submitted on February 9, 1994, on behalf of Colleen O'Neil (O'Neil) and the Don't Waste Oregon Council (DWOC).

On February 11, 1994, ODOE issued a public notice of the contested case which provided an opportunity to request participation in the contested case. Applicant filed its request to participate in the contested case on February 28, 1994. A petition to intervene was submitted by Colleen O'Neil, The Don't Waste Oregon Council and the Utility Reform Project on February 28, 1994. (Throughout the hearing record and this Order, the parties Colleen O'Neil, Don't Waste Oregon Council and Utility Reform Project are referred to collectively as Intervenors.)

The Oregon Department of Fish and Wildlife (ODFW) filed a request to participate on March 1, 1994. The Hearings Officer, by order dated March 1, 1994, granted the ODFW status as an interested agency under OAR 137-03-007(1).

The Hearings Officer issued the first prehearing order on March 1, 1994. The order set forth the matters to be discussed at the prehearing conference which included: (i) issues presented by the request for contested case; (ii) scheduling of the proceedings; (iii) testimony to be offered; and (iv) procedures for the contested case hearing. The Applicant and the Requesters each submitted objections to portions of the March 1 order.

A prehearing conference was held on March 8, 1994. At the March 8 conference, the Hearings Officer recognized the Applicant, the Requesters Colleen O'Neill and the Don't Waste Oregon Council and the Utility Reform Project as parties to the hearing. Also, at the March conference, ODOE requested status as an interested agency under OAR 137-03-007(1). By order dated March 9, 1994, ODOE was granted interested agency status in these proceedings.

On March 16, 1994, a prehearing conference order was issued that summarized the rulings and directions given at the March 8 conference. The order granted limited rights for the parties to engage in discovery, set a hearing schedule and contained a revised statement of contested issues.

On March 25, 1994, pursuant to the March 16 prehearing conference order, Applicant and ODOE submitted written direct examination and exhibits.

On March 29, 1994, Applicant filed a letter objecting to the statement of contested issues over the inclusion of the issue challenging the validity of the need standard.

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On April 4, 1994, Applicant filed a motion to supplement its initial direct examination indicating that the proposed supplemental testimony clarified that the project met the need for facility test set forth in OAR 345-23-020.

The parties also agreed to a stipulated protective order, the form of which was approved by the Hearings Officer. After the protective order was signed by all parties, the Hearings Officer entered the order on April 5, 1994.

By letter dated April 11, 1994, ODOE filed objections to the supplemental testimony offered by PGE. ODOE asserted that the issue of whether the facility met the need standard was not relevant in the proceedings, and that to establish need in the contested case would be contrary to the intent of the EFSC rules.

On April 11, 1994, Intervenors filed objections to Applicant's request to file additional testimony and to Applicant's March 29 request to strike the validity of the need standard from the statement of issues. Intervenors also filed a motion to compel immediate answers to discovery requests. Intervenors objected to Applicant's supplemental testimony because it would necessitate a change in the deadline for Intervenors' testimony. Intervenors further objected to the Applicant's submission of its Least-Cost Plan as proof under the need for facility standard.

The Hearings Officer issued an order dated April 12, 1994 in response to Intervenors' motion to compel, declining to rule until Intervenors complied with the guidelines which established procedures for the parties to file motions in the proceedings.

On April 12, 1994, Applicant filed a response to objections of Intervenors and ODOE. Applicant argued that ODOE had not timely filed its objections, and that Intervenors were not prejudiced by the filing of PGE's supplemental testimony, and therefore, it should be allowed into the record.

On April 15, 1994, the Hearings Officer issued a prehearing order allowing Applicant's supplemental direct examination and addressing the validity of the need exemption and challenges regarding the statement of contested issues. The April 15 Order stated that challenge to the validity of the need exemption was controlled by the ruling of EFSC in its Final Order in the Matter of the Application of U.S. Generating Company for a Site Certificate and that determination, unless overruled and later reversed, controlled that issue in this case.

Intervenors filed their direct testimony on April 19, 1994 through testimony of their experts, Kevin Bell and Jim Lazar.

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By letter dated April 21, 1994, ODOE moved to strike the testimony of Bell and Lazar and a motion to withdraw the supplemental testimony of PGE. ODOE stated in its motion that the testimony submitted by Bell and Lazar related solely to whether the project met the need standard in OAR 345-23-020, which was a moot issue in the proceedings. On April 21, 1994, Applicant joined ODOE's motion to strike Intervenor's testimony and the motion to withdraw PGE's supplemental testimony.

Intervenor's filed a motion to quash unauthorized discovery response deadline asserted by PGE on April 22, 1994. On that same date, Intervenor's also filed a response to ODOE's motion to strike the testimony of Kevin Bell and Jim Lazar.

On April 25, 1994, Applicant, filed a motion for extension of time for Applicant to submit rebuttal testimony, stating that additional time was necessary due to Intervenor's failure to produce documents and information requested in Applicant's second data request within the three-day period stated in the prehearing order of March 16, 1994.

By the April 26 prehearing order, the Hearings Officer (i) set the filing dates of the parties; (ii) ruled that the testimony of Bell, Lazar and Walt would not be stricken; and (iii) delayed, until April 29, resolving motions to withdraw PGE's supplemental testimony and motions to strike contested issues regarding the need standard.

Applicant moved for leave to file its second supplemental testimony of Thomas D. Walt and John J. Pizzimenti in Applicant's case on April 27, 1994. Applicant stated that testimony of Walt and Pizzimenti was required to complete the record of the proceeding regarding the Applicant's financial information, the threatened and endangered species standard and the noise section of Applicant's air contaminant discharge permit.

On April 27, 1994, Applicant requested a telephone conference to address the following issues: (i) Applicant's motion to file its second supplemental testimony; (ii) ODOE's motion to withdraw Applicant's supplemental testimony and motion to strike contested issues; (iii) clarification of the timing of discovery responses;

(iv) violations of the protective order; and (v) scheduling for future proceedings. No telephone conference was scheduled.

The Hearings Officer issued a prehearing order of April 29 finding: (i) contested issues regarding the need standard were excluded from the case; (ii) Applicant's motion to withdraw its supplemental testimony was granted; (iii) service of discovery was complete when received by opposing parties; (iv) responses to discovery requests

were due in three business days; and (v) the ruling on Applicant's motion for leave to submit its second supplemental direct testimony was delayed until May 3, 1994.

Applicant filed rebuttal testimony on April 29, 1994.

On May 2, 1994, Intervenors filed a motion for telephone conference to address various issues and a motion to compel immediate answers to discovery requests. Intervenors' requested a telephone conference hearing regarding: (i) violation of the protective order; (ii) failure to respond to discovery requests within prescribed time frame; (iii) whether testimony of Applicant or the ODOE should remain confidential; (iv) if Applicant should be compelled to answer discovery requests; and (v) whether issues pertaining to the need for facility standard should be stricken from the proceedings.

The Hearings Officer issued a prehearing order of May 5, granting Applicant's motion to submit its second supplemental testimony of Walt and Pizzimenti and accompanying exhibits. The order denied Intervenors' motion for telephone conference.

By order dated May 6, 1994, the Hearings Officer called for the filing of responses to Intervenors' motion to compel immediate answers to discovery requests by May 9, 1994.

Applicant filed its response to intervenors' motion to compel immediate answers to discovery requests on May 9, 1994.

On May 10, 1994, Applicant filed a motion to strike portions of both Applicant's and Intervenors' testimony and exhibits. Applicant stated in its motion that portions of the testimony of Bell and Lazar, the rebuttal testimony of Lesh, Mikolaitis and Dahlgran, Piro and Dyer and selected exhibits should be stricken as all addressed the issue of need for facility standard which was no longer an issue in the proceedings.

On May 11, 1994, a final prehearing conference was held. The parties and Hearings Officer addressed the scope of cross examination, scheduling of witnesses, post hearing briefing schedule, the time period for filing exceptions to the Hearings Officer's proposed order, and the Hearings Officer authority to close the hearing to the public. The Hearings Officer denied Intervenors' request for certain discovery finding it not relevant to the financial assurance standard.

On May 13, 1994, Intervenors filed a response to PGE's May 10 motion to strike testimony. Intervenors contended that the validity of the need for facility exemption had not been established and therefore should remain as an issue in the case.

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Intervenors further asserted that testimony PGE desired to strike also pertained to the cost-effectiveness of the proposed project and was relevant to the financial assurance standard.

By letter dated May 13, 1994, ODOE offered its opinion on (i) the type of testimony which may be admitted with respect to the financial assurance standard, OAR 345-33-050; (ii) the Hearings Officer's authority to modify the time for filing exceptions under OAR 345-15-085; and (iii) the authority of the Hearings Officer to close the hearing to the public.

By Order dated May 13, 1994, the Hearings Officer denied Applicant's motion to strike testimony filed May 10.

The contested case hearing commenced on May 16, 1994. At the May 16 hearing, the Hearings Officer received into the record written direct examination of PGE's witnesses and exhibits, and Intervenors had opportunity to cross-examine PGE witnesses. The Hearings Officer also received, upon the parties' stipulation, the receipt into the hearing record of ODOE written testimony and exhibits.

Intervenors filed their rebuttal testimony on May 16, 1994.

On May 18, 1994, ODOE requested reconsideration of the Hearings Officer's May 11 discovery rulings. Applicant joined that motion by written submission of May 19, 1994.

The hearing resumed on May 19. During the hearing, Applicant argued its motion for reconsideration of the Hearings Officer's earlier ruling denying certain discovery to Intervenors. Applicant stated that it had changed its previous position regarding the discovery requests in light of the position taken by the ODOE that certain of Intervenors' discovery requests might be relevant to the financial assurance standard. Applicant did not agree with the position advanced by ODOE, but offered to provide the information to avoid any possible error in the case. This motion was granted.

Intervenors objected to the granting of the motion after having prepared and submitted their rebuttal testimony without benefit of that discovery. The Hearings Officer therefore substantially revised the hearings schedule, delaying further submission of written direct examination and the cross-examination into late June, 1994, to accommodate the schedule of the Intervenors' counsel and experts.

Intervenors' also objected to Applicant designating any further production of documents as confidential under the protective order. Counsel for Intervenors revoked their signature to the stipulated protective order of April 5, 1994. Moreover, Intervenors made a

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motion to remove all confidentiality from Intervenors testimony, and challenged the Hearings Officer's authority to enforce the protective order. The Hearings Officer requested that Applicant respond to Intervenor's motion in writing, and a conference was scheduled for June 1 to take up the remaining discovery and confidentiality issues. The June 1 conference was continued to June 3 at Intervenors' request.

On June 1, 1994, the Hearings Officer issued an order addressing the oral motion raised by Intervenors at the May 19 hearing. The Hearings Officer denied Intervenors' motion requesting the removal of confidentiality from Intervenor's testimony.

At the conference held on June 3, the Hearings Officer heard arguments on Intervenor's motion filed May 25, 1994 to remove confidentiality from all of Applicant's testimony, and PGE's May 26 motion to terminate discovery. The Hearings Officer ruled that the information Applicant sought to protect as confidential did qualify under the definition found in ORCP 36(c)(7), which had been incorporated by reference into the protective order. The hearing officer declined to terminate discovery and provided the parties with an opportunity to agree to sign another protective order. Counsel for the Intervenors declined to sign the protective order. Therefore, the Hearings Officer ordered that discovery would proceed as to non-confidential material only, and confidential material would not be turned over to Intervenors until they agreed to sign the protective order. The Hearings Officer ruled that the remainder of the contested case hearing, when resumed, would be closed to the public given that the testimony to be received concerned Applicant's confidential information.

Additional written direct examination was submitted by Intervenors and Applicant in late June prior to the reconvening of the hearing.

The contested case hearing resumed on June 30, 1994. Testimony and exhibits offered by Applicant were received. The hearing remained open to the public until the cross-examination of James Piro, a witness called by the Applicant, began to address confidential business information. The Hearings Officer therefore ordered the public excluded from the hearing during the testimony of James Piro. At the request of the Applicant, the Hearings Officer ordered that the confidential portion of the transcript of Piro's testimony be sealed and made subject to the terms of the protective order.

Intervenors called Kevin Bell and James Lazar to testify, and their testimony and exhibits were received into evidence.

The hearing was terminated and the record closed, except for the submission of a revised PGE/Piro Exhibit 48, which was received and substituted for the original.

The parties submitted their opening briefs on July 8 and their rebuttal briefs on July 15, 1994. Exceptions by the parties to the Hearing Officer's proposed order were received on August 26, 1994 and Responses to those Exceptions were filed on September 9, 1994 by ODOE and Applicant and September 12, 1994 by Intervenors.

III. STATEMENT OF THE ISSUES:

In the prehearing conference order of March 16, 1994, the hearings officer issued the following statement of contested issues:

1. A. Is the need standard of OAR 345-23-020 (as amended) valid?
- B. Is the need exemption of OAR 345-23-010 (as amended) valid?
2. If the need standard and need exemption are valid:
  - (a) Is this project covered by the need exemption?
  - (b) Does the provision in the proposed order that permits the second unit to be built as late as 2005 contravene the purpose of the need exemption?
  - (c) Does the proposed order's schedule for the construction of the facility contravene the purpose of the need exemption?
  - (d) Are the proposed order's notice provisions regarding the construction of phase two unworkable and, hence, in violation of the need exemption.
3. If the need exemption were found to not apply to this project, the intervenors raise the following questions: Does the proposed CSCP facility satisfy the provisions of ORS 469.501(1)(L) and OAR Rule 345-23-010 relating to need --
  - A. in that the Applicant has not shown that the CSCP is cost effective or a least-cost resource, (1) when including the costs of air emissions and water consumption, (2) natural gas, (3) when the Applicant is avoiding the purchase of power from cogeneration facilities and (4) when considering the impact of the cost of construction of the CSCP on the Applicant's ability to fund conservation and

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- generation resources that are more economical and less harmful? 1  
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- B. in that the CSCP does not qualify as a preferred resource under the Pacific Northwest Electric Power Planning Conservation Act of 1980? 4  
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4. Is the Applicant able to satisfy the financial assurance standard where (a) the fuel cycle and fuel cycle costs are unknown because it is not known whether there's going to be any revenue from the additional use of steam and (b) there's no existing contract for a long-term supply of natural gas at fixed prices. 9  
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5. Did the proposed order properly apply the socio-economic impact standard of OAR 345-33-110 (as amended) in that it failed to consider the relative socio-economic impact of alternatives. 17  
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6. Did the proposed order properly apply the fish and wildlife, threatened endangered species and waste minimization standards under OAR Rule 345-22-060, 345-22-070 & 345-22-120 (as amended). 22  
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7. A. Is EFSC required to consider the plant's carbon dioxide emissions and the related costs in the siting process under ORS 469.501(1)(g) and (h), under the statutory policy set forth in ORS 469.060(e) or the Oregon Energy Plan? And, if so, were carbon dioxide emissions properly considered in the proposed order under these provisions? 27  
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- B. Did EFSC improperly fail to adopt standards to implement ORS 469.501(g) relating to the protection of the public health and safety. 36  
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- C. Did EFSC improperly fail to adopt standards to implement ORS 469.501(1)(h) relating to wastes. 40  
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8. Does the proposed order allow the site certificate to be amended related to emissions, water use or waste disposal without the kind of formal process that would otherwise be necessary? 43  
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9. Did ODOE fail to hold a public information hearing in the affected area under ORS 469.370(1)? 48  
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The parties were informed that, pursuant to OAR 345-15-083(1), the foregoing were the only issues subject to the contested case proceeding. They were also directed to submit any objections to this statement of issues within seven days. On March 29, Applicant objected to an issue asking whether the need standard was valid.

On April 15, the Hearings Officer issued an order striking the issue 1.B. ruling that the challenge to the validity of the need exemption had been addressed by EFSC in the Hermiston hearing.

Subsequently, the Applicant modified its position withdrawing its contention that, in the alternative, the CSCP satisfied the need standard of OAR 345-23-020. Accordingly, by the Prehearing Order of April 29, the Hearings Officer struck as moot issues 1.A., 3.A. and 3.B.

Although Intervenors raised issues 5 through 8 either in its Revised Request for Contested Case or at the prehearing conference, they offered no testimony and asserted no arguments regarding these issues in post-hearing briefs. These issues are considered to have been abandoned by the Intervenors.

During the hearing and in post-hearing briefs, Intervenors raised two other issues: (1) whether "the Hearings Officers rulings regarding confidentiality denied due process of law to the Intervenors[;]" and (2) a request to receive into evidence PGE's response to discovery requests 33, 45 and 46.

#### IV. PROCEDURAL RULINGS

The Hearings Officer issued numerous rulings in the hearing below:

*Ruling regarding the challenge to the validity of the need exemption:* By order of April 15, the Hearings Officer properly ruled that a controlling determination had already been made that the need exemption was a valid administrative rule. That determination was made by EFSC in its Final Order in the Matter of the Application of U.S. Generating Company for a Site Certificate (Hermiston). The Hearings Officer was bound to apply that determination in this subsequent matter, unless and until the authorizing statute changes, EFSC amends that rule, EFSC decides to revisit the issue or a reviewing body overrules that determination. Although the Final Order in Hermiston has been appealed and is pending before the Supreme Court, that Order stands and the Hearings Officer properly ruled that it controlled this case.

*Ruling regarding the application of the need standard to this case:* On April 29, the Hearings Officer properly ordered that issues

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related to the need standard be stricken from this case. The Applicant withdrew its contention that the CSCP satisfied the need standard. Although the Intervenor had properly raised the question in the contested case proceeding, the issue was rendered moot by the change in position taken by the Applicant.

An Applicant for a site certificate must satisfy the statutory requirement to show need for the power and can do so in one of two ways. An Applicant can establish that there is an actual need for the power to be generated by the plant--that is, satisfy the need standard. OAR 345-23-020. Alternatively, an Applicant can simply show that its project satisfies one of the many exemptions to the need standard. OAR 345-23-010.

In this contested case proceeding, the Applicant PGE initially sought to do both contending, in the alternative, that it satisfied both routes to certification. ODOE objected noting that throughout the application process PGE never offered information that supported a showing that the need standard was satisfied. The Applicant therefore modified its position regarding the need standard as follows: (1) it would not attempt to establish in this contested case proceeding that its application for a site certificate satisfies the need standard and (2) it would pursue the alternative route of showing that its application satisfies the need exemption.<sup>1</sup>

*Rulings regarding confidentiality:* The Hearings Officers' rulings regarding confidentiality were proper. The rulings addressed pricing information received from independent power producers (IPPs) and information related to PGE's estimates of the cost of power produced by its own operations.<sup>2</sup>

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<sup>1</sup> The Applicant also contended that it was preserving its right to later amend the application to show compliance with the need standard should it be determined that the need exemption is not satisfied. As to this contention, the Applicant's right to amend its application at any later date to show compliance with the need standard will be addressed at that time. This Order will not control any such amendment, rather it will be controlled by the agency regulations in effect at the time that the amendment is made.

<sup>2</sup> Intervenor now object that the hearings officer did not inspect the documents which the Applicant claimed were confidential. (Intervenor's Opening Brief, at 47.) To make such an objection now, Intervenor should have, but never did request the hearings officer to inspect the documents at issue. In any event, the parties in their oral and written arguments adequately explained the information that was at issue.

The Hearings Officer made these rulings pursuant to a protective order to which the parties had stipulated during the course of this proceeding. The protective order incorporated the confidentiality standards of Rule 36(c)(7) of the Oregon Rules of Civil Procedure. The parties voluntarily entered into that protective order without direction from the Hearings Officer.

Confidentiality was accorded to commercial information which the Applicant had established had been maintained as confidential. Although the Intervenors disputed the confidential nature of this information by showing that such information may eventually be made public or that similar type information had already been made public, they never established that the disputed information had been publicly distributed.

Intervenors also contend that PGE should not have been permitted to maintain as confidential its estimates related to the costs of CSCP. Intervenors suggest that since such information is not the actual construction and operating costs, but just an estimate, it is not worthy of protection. (Intervenors' Reply Brief, at 23.)

The Applicant satisfied the requisite showing of good cause by establishing that the confidential information, if distributed, would likely have an adverse effect on its or the IPPs' competitiveness. The disputed information constituted confidential pricing and cost information. Applicant established that in a competitive marketplace, as exists for power, PGE as a buyer would likely be disadvantaged the more such otherwise confidential information is disclosed to the public and becomes available to the those selling power. Because of this adverse effect, the Applicant established that there existed a good cause to maintain this information as confidential.

There existed compelling need to close a portion of the hearings of June 30 to persons not signing the Protective Order. First, there was examination of witnesses on trade secrets and other protected material at the hearing. Compelling need was also supplied by the need to secure proper and orderly conduct of the hearing. At the beginning of the hearing unidentified persons pushed past the security officer. Mr Marbet, a board member of Don't Waste Oregon Council stated on the record that he did not intend to abide by the Protective Order. Moreover, Intervenors issued a press release stating that Mr. Marbet would be arrested if that is the consequence of attending the meeting. The decision to close a portion of the hearing was confirmed when immediately after the hearing room was secured, a member of the Don't Waste Oregon Council opened a side door through which Mr. Marbet entered. Mr Marbet refused to leave until plans were made to reconvene the hearing at another location. After the hearing was subsequently closed, Intervenors did not request that it be reopened. All

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transcripts of the nonconfidential portion of the hearing are available for public review. The actions of the Hearing Officer were proper and properly balanced the need to keep trades secrets of Applicant confidential and the need for public access to the hearings. Moreover, the Hearing Officer's rulings were consistent with the relief requested by the Intervenor.

Once the need for confidentiality was established, the Hearings Officer appropriately ordered (1) that the information should be maintained as confidential, (2) that any such additional confidential information need not be produced, unless the requesting party signed an order agreeing to maintain it as confidential, (3) that portions of testimony addressing confidential information should be protected from disclosure and (4) that the public should be excluded from portions of the hearing addressing confidential information.

*Requests for official notice and late filed evidence:* Several requests for official notice have been made by Intervenor, Applicant and the Oregon Department of Energy. The requests for official notice, having been made after the close of the evidentiary record of this proceeding, implicate two EFSC rules that must be read together. The first is OAR 345-15-062, which governs reopening the record. It provides:

The Council or its hearing officer, on its own motion or for good cause shown, may reopen the hearing record for the taking of additional evidence while the proceeding is under advisement with the hearing officer or the Council. In addition to good cause, the moving party shall show that:

- (1) The evidence is material to the proceeding; or
- (2) The evidence would substantially affect the outcome of the proceeding.

Thus, no evidence may be received on motion of the parties once the record is closed except on a showing of good cause for doing so.

The second is rule OAR 345-15-046, which governs the taking of official notice. It provides:

- (1) In a contested case proceeding the Council may take official notice of the following:
  - (a) All facts of which the courts of the State of Oregon take judicial notice;
  - (b) Administrative rulings and reports of the Council and other governmental agencies;
  - (c) Facts contained in permits and licenses issued by the Council or any other government agency;

(d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and

(e) General, technical, or scientific facts within the Council's or department's specialized knowledge.

(2) At any time during the proceeding, or in any event prior to a final decision by the Council, the parties shall be notified of facts to be officially noticed and shall be afforded an opportunity to contest the facts to be so noticed.

Official notice is simply a mechanism for admitting items into evidence. Although the official notice rule states that official notice may be taken at any time prior to decision by EFSC, the rule must be read in conjunction with OAR 345-15-062, which limits introduction of evidence after the record has closed except upon a showing of good cause for doing so. OAR 345-15-062 requires a showing of good cause regardless of whether the means of introducing the evidence is by official notice or other means.

In applying this "good cause" standard, we expect parties to introduce evidence during the contested case hearing when the issue to which it is relevant is being addressed. Neither Applicant nor Intervenors have made any showing of why these documents could not have been introduced during the hearing. The issues to which they relate were raised and addressed in testimony during the hearing. The documents themselves were available at that time. Consequently, Applicant's and intervenors' requests for official notice are denied.

ODOE also requested, and the hearing officer's Proposed Order granted, official notice of an agency report on the Hermiston Generating Company's site certificate application (Appendix A to ODOE Responding Brief at 5.). No party's exceptions have challenged that ruling. In its exceptions ODOE points out that the issue to which that report is relevant was raised for the first time in this proceeding in post-hearing briefs. Therefore ODOE would have had no reason to introduce this document before that time. Moreover, the ODOE report on Hermiston is germane to address EFSC's interpretation of capacity as it related to the need for facility exemption. This constitutes good cause for reopening the record to receive the report. The agency report is material because it addresses an issue raised by DWOC; i.e., whether the CSCP was exempted under the earlier exemption from the need for power rule. ODOE's request for official notice of that report is granted.

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Even were we to find that good cause had been shown for taking official notice of the items requested, official notice would be properly limited to the fact in support of which the document had been offered. We have reviewed the facts listed and concluded that, for the reasons that follow, even had we taken notice of those facts, none would alter our findings or conclusions under any standard.

APPLICANT'S REQUEST FOR OFFICIAL NOTICE

1. 1994 Avoided Cost Information of Portland General Electric filed with the Public Utility Commission of Oregon.

"The approved avoided cost filing implements a natural gas market price index for the fuel portion of the cost." Applicant's Response Brief, p. 6.

Applicant offers this fact in support of its assertion that the OPUC will find its gas purchase strategy for CSCP to be prudent. Were we to take official notice of this fact, it would support our conclusion, drawn elsewhere in this order, of reasonable assurance that the OPUC will approve Applicant's gas purchase strategy for CSCP. See discussion under VI.C.2.a.

INTERVENOR'S REQUESTS FOR OFFICIAL NOTICE

1. PP&L 1994 Resource and Marketing Planning Program (RAMPP - 3) Report, April 1994, Intervenors Opening Brief

Intervenors seek official notice of this document in support of two factual assertions:

(a) "The short-term action plan in the Pacific Power & Light Co. (PP&L) April 1994 least-cost plan calls for 450 MW of gas-fired combustion turbines." Intervenors Opening Brief, p. 2, n. 7

(b) "The PacifiCorp document PGE witness Anderson was apparently referring to was that company's April 1994 RAMPP-3 Report, which presents a table showing the major gas price forecasts for 1993-2010 and PacifiCorp's own adoption of a medium forecast of 3.78% real escalation." Intervenors Reply Brief p. 2.

Fact (a) is offered to support Intervenors' argument that the need exemption is invalid. We have decided that issue in the Hermiston Generating Company contested case and we will not address it here. See Section IV.

Fact (b) is offered to support Intervenors' argument that Applicant has not satisfied the financial assurance standard. We

have discussed the question of gas price forecasts elsewhere in this proceeding, and PacifiCorp's projection would not alter our findings on the financial assurance standard. See discussion under VI.C.2.a.

2. Hermiston Generating Project Agency Record (Hermiston Record), Item 21, p. 553 and "all items in the Energy Facility Siting Council agency record [presumably of the Hermiston Generating Project] cited in this brief." Intervenors Opening Brief, p. 15, n. 11.

Intervenors seek official notice of this document in support of the following factual assertions:

(a) "The Agency Record shows that the nameplate rating of the HGP is 477 MW." Intervenors Opening Brief, p. 9.

(b) The October 1992 need exemption "was based on a calculating [sic] of Oregon's 30% share of the amount of gas-fired generation thought proper for the Pacific Northwest region by the Northwest Power Planning Council (NPPC)." Intervenors Opening Brief, p. 10.

(c) "That the 950 MW cap [in the October, 1992 need for power rule] included natural gas cogeneration facilities was confirmed by the Agency Record (HGP), Item 21, p. 553, which indicates that only 'Cogen that is biomass' was left out when the 950 MW figure was originally calculated." Intervenors Opening Brief, p. 15, n. 11.

(d) "It is clear that EFSC intended this exemption [the current need for power exemption under OAR 345-23-010(2)] to apply to the 2 specific plants it had in mind when adopting the exemption." Intervenors Opening Brief, p. 27.

The nameplate rating of the Hermiston Generating Plant is not relevant to any issue in this proceeding. The remaining factual assertions relate to the validity of the need exemption, and they do not alter our conclusion that the need exemption is valid.

3. Statement of Need, Principal Documents Relied On, and Statement of Fiscal Impact, April 15, 1992. Intervenors Opening Brief, p. 20, n. 20 and p. 21, n. 14.

Intervenors make several assertions of mixed law and fact that flow from the existence of this document. Intervenors Opening Brief, p. 20, n. 20 and p. 21, n. 14. All of the assertions relate to the validity of the need exemption, and none alters our conclusion that the need exemption is valid.

4. Natural Gas Supply and Price, Northwest Power Planning Council (July 1993). 1  
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Intervenors offer this document in support of the following fact: 3  
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"The NPPC report forecasts 3.36% real escalation in the price of gas for utility power generation during the period 1980-2015." 6  
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Intervenors Opening Brief, p. 39.

Applicant witness Anderson was cross-examined on the gas price forecast in this document. (Anderson, tr at 414-424). The information is in the record and is discussed elsewhere in this order. See discussion under VI.C.2.a. 11  
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5. Oregon Department of Energy gas price forecast. 16  
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Intervenors offer this document in support of the following fact: 18  
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"ODOE adopted the latest forecast from the U.S. Department of Energy (USDOE): an annual real escalation rate of 6.35% for the period 1990-2010 and 4.86% for the period 2000-2010." Intervenors Opening Brief, p. 42. 21  
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Applicant witness Anderson was also cross-examined on the gas price forecast in this document. (Anderson tr at 424-426). This information is in the record and is discussed elsewhere in this order. See discussion under VI.C.2.a. 26  
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6. The executive summary portion of Financial Impacts of Nonutility Power Purchases on Investor-Owned Electric Utilities, Energy Information Administration Information, Office of Coal, Electric and Alternate Fuels, U.S. Department of Energy, DOE/EIA-0580, June 1994. 31  
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7. Motion for Official Notice of a report, "Financial Impacts of Nonutility Power Purchases on Investor-Owned Electric Utilities," DOE/EIA-0580, July 19, 1994. 37  
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Item #6 is part of Item #7. Intervenors' factual assertions from this document appear at pages 11 and 12 of their Reply Brief. In short, Intervenors assert that the report concludes that "compared with utilities without significant power purchases, utilities with significant power purchases (as opposed to owned plants) did not have a different capitalization ration [sic], did not incur a higher cost of capital." Intervenors Reply Brief p. 11. 41  
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If admitted, this conclusion would relate to intervenors' argument that Applicant had no basis for adding a "penalty" to alternatives not owned by Applicant when it compared CSCP to other alternatives. We have discussed intervenors' argument on this point elsewhere in this order. We noted that the OPUC is currently considering whether the financial risk-adder is appropriate, but has not yet made a decision. We concluded there was a reasonable likelihood the OPUC would not disallow costs because of the addition of the risk-adder. The existence of the USDOE report, if admitted, would not change our conclusion on this issue. See discussion under VI.C.2.a.

Intervenors offered into evidence in their briefs several items which they had the opportunity to, but did not, offer during the course of the hearing:

1. Exhibits Int-Piro-1 and Int-Piro-2. Intervenors' Reply Brief, p. 10, n. 3.

Intervenors used both of these exhibits to cross-examine witness Piro. Tr 505. One of these exhibits was shown to the hearing officer and the parties during the hearing, but neither was offered or received into evidence. Intervenor clearly had the opportunity to offer the documents and did not do so. Absent a showing of good cause, we decline to admit those exhibits now that the record has closed.

Moreover, the information in support of which intervenors offer these documents is already in the record. Tr 518, 519.

2. Applicant's responses to discovery requests 33, 45 and 46.

Intervenors request that the record be reopened to receive into evidence Applicant's responses to discovery requests 33, 45 and 46. At the June 30 hearing, intervenors requested that Applicant make all responses to data requests part of the record. Tr 400. The hearing officer denied this request and allowed counsel for intervenors to examine Applicant's witnesses using these responses. Tr 402. Intervenor counsel then asked for leave to introduce the responses during briefing, after the close of the record, and that request was denied. Tr 401. The hearing officer did, however, authorize intervenors to introduce the responses at that time. Intervenor counsel declined to do so.

The hearing officer properly required intervenor counsel to introduce the responses at the hearing, during testimony to which they related. Intervenor counsel have not even attempted to establish good cause for their failure to do so. We decline to admit these items after the close of the record.

*Failure to hold public hearing within the PGE service territory:*  
Intervenors contend that ODOE should have held a public information hearing within PGE's service area and that it erred in failing to do so. (Contested issue 9 and Intervenors' Reply Brief, at 10.) The public information hearing is required by ORS 469.370(1). That provision states, "The Energy Facility Siting Council shall hold a public hearing in the affected area and elsewhere, as it deems necessary, on the application for a site certificate." The Intervenors object because the hearing was held in Boardman, Oregon, where the CSCP is to be located, and not within the PGE service area. EFSC interprets the phrase "affected area" used in ORS 469.370 to mean the area which is likely to bear a substantial part of the environmental and socio-economic effects associated with the physical plant. The city of Boardman is in the affected area.

After the conclusion of the hearing, and after briefs had been filed, DWOC asserted that the hearing officer had erred in the procedure used to review an amendment to the application. By failing to raise this issue in a timely manner, DWOC has waived any error with respect to the amendment process. Nevertheless, we find that the amendment at issue did not propose a substantial change to the application. The process adopted by the hearing officer assured that the parties, the public and affected state agencies were notified about the proposed amendment and gave them adequate opportunity to comment on the amendment. Therefore the process used by the hearing officer was appropriate.

All other rulings of the Hearing Officer have been reviewed and are correct.

#### V. GENERAL FINDINGS OF FACTS

The proposed CSCP is a natural gas-fired, combined-cycle combustion turbine electrical generating facility which has a nominal electric generating capacity of 460 Megawatts and a capacity of 462 MW (based on annual average ambient conditions). The proposed CSCP plant site consists of approximately 20 acres within the Port of Morrow Industrial Park.

In addition to the generation of electricity, the facility will be designed to supply steam to existing food processing operations and future industries within the Port of Morrow Industrial Park. When operating as a cogeneration facility, the CSCP would achieve higher fuel use efficiency, use less water and generate less process wastewater. However, the Applicant has requested that the facility be approved by EFSC assuming operation for power generation only. This request is based on the potential inability to obtain a commercially reasonable steam sale agreement and the possibility in

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the future that a steam user might close. Review of this project was based on the assumption that the proposed generation facility would not be supplying steam to local industries, which is a conservative scenario from the standpoint of resource use.

*The Site:* The Port of Morrow Industrial Park occupies 5700 acres of land east of the City of Boardman and along the Columbia River. Land within the industrial park is zoned Port Industrial (PI) under the Morrow County comprehensive plan. PI zoning specifically allows for heavy industry and utility power generating facilities. Present businesses and industries within the Port of Morrow Industrial Park include food processors, river barge terminal facilities, grain storage and loadout, log storage and shipment facilities and a concrete batch plant.

The plant site is situated approximately 1,500 feet due south of the Columbia River. It is immediately south of a bank and berm created by the Union Pacific Railroad east-west mainline. The power plant site has been extensively dredged for aggregate (rock and sand) and will require filling and leveling for the proposed power plant facilities. A pond created by an ongoing dredging operation lies along the eastern property line of the power plant site.

*Power Plant Structures, Major Equipment and Related Facilities:* The proposed CSCP plant facilities will consist of the several structures: a turbine-generator building; heat recovery steam generator (boiler) structures; 210-foot-high exhaust stacks; a water treatment and auxiliary equipment building; auxiliary boilers; an administration/control building; water treatment chemical tanks; and electrical transformation and substation facility structures.

Project-related facilities will include a double-circuit (loop), 500 kilovolt (kV) transmission line. The line will be approximately 1.5 miles long and connect the power plant substation with the Bonneville Power Administration (BPA) transmission system. The new transmission lines will occupy land owned by the Port of Morrow and the City of Boardman.

The natural gas pipeline needed to supply the primary fuel to the proposed power plant will be sited, permitted, constructed, owned and operated by a third party, Pacific Gas Transmission (PGT). The pipeline will be permitted through the Federal Energy Regulatory Commission (FERC), and is not considered to be a related facility under EFSC jurisdiction and siting review authority. The natural gas pipeline will run approximately 15 miles from the CSCP site to

Ione, Oregon. There, it will connect with the PGT interstate natural gas transmission line.

*Power Generation Process Description:* The CSCP power generation facilities are proposed to be built in two phases consisting of two identical, natural gas-fired, combined-cycle units. Primary power for a unit is produced by a General Electric (7FA) gas turbine-generator rated at 172.7 MW. A gas turbine-generator is essentially a jet engine on a stationary mount that derives its power from the combustion of natural gas, which is used to turn an electric generator. The high-temperature exhaust from the gas turbine-generator is ducted to a heat recovery steam generator (boiler) to generate steam. This steam, in turn, is used to drive a steam turbine-generator with an electrical generation rating of 79.3 MW. The term "combined-cycle power plant" describes the sequential use of the fuel energy in both the gas turbine-generator and the steam turbine-generator. The combined-cycle power plant proposed by the Applicant is considered to be state of the art in the power generation industry and has the highest fuel use efficiency when compared with other forms of fossil fuel power generation.

The proposed CSCP power plant (both units) will use up to 27,400,000 million British thermal units (MMBtu) of natural gas fuel per year. Btu (British thermal unit) provides a unit heating value for a given unit of fuel. As used here, 1,000 Btus equal 1 cubic foot of natural gas; 100,000 Btus equal 1 therm of natural gas.

A power plant's steam cycle describes the process where water enters the heat recovery steam generator (boiler) as a liquid and is changed into a high-temperature, high-pressure vapor (steam) whose energy can then be used to drive the steam turbine. In order to complete the steam cycle, low-pressure, low-temperature steam exiting the steam turbine-generator must be cooled to condense the steam back to liquid (water). The change from steam to liquid occurs in the condenser (heat exchanger). Cooling of the condenser is provided by a separate circulating water system known as the condenser/cooling tower loop.

The cooling tower provides a flow of relatively cold water to the condenser and receives heated water back from the condenser. The cooling tower is used to dissipate heat by evaporating a portion of the water circulating within the loop. Water lost through evaporation is replaced by the facility's cooling water makeup supply source. Cooling tower makeup water for the proposed CSCP facility will be provided and sold to the facility by the Port of Morrow from groundwater wells. The cooling tower makeup water requirement for the proposed CSCP facility, both units, will be

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2,668 gallons per minute (gpm; annual average basis without cogeneration steam supply).

In addition to the cooling tower makeup water requirement, the proposed facility will require approximately 23 gpm of makeup water for the boiler system, which also will be obtained from the Port of Morrow.

The proposed CSCP power plant will produce wastewater from the cooling tower and the water treatment system that will require disposal: 761 gpm from the cooling tower and 2 gpm from the water treatment system (annual average basis, without cogeneration steam supply). The combined wastewater stream will be discharged to the Port of Morrow's existing industrial wastewater discharge system, which reuses wastewater discharges from Port industries for crop irrigation.

The proposed CSCP power plant will generate combustion pollutants that will be released to the atmosphere. The proposed facility's design, combustion parameters, emissions control equipment, pollutant quantities and the limits placed on the quantities of pollutants allowable will be reviewed and set by the Air Contaminant Discharge Permit process administered by DEQ.

*Capacity:* The "capacity" for the proposed CSCP facility, as the term was used in applying former OAR 345-23-010(2), is 462 MW. The "capacity" of the Hermiston Generating Company's proposed facility is 474 MW. The combined "capacity" of the Coyote Springs facility and the Hermiston Generating Company facility is 936 MW. (ODOE/Exhibit 2A, Meehan, at 4.)

*Operating Statement:* The Applicant proposes to build the proposed CSCP in two phases. The first phase (Unit 1) is to be completed by December 31, 1996. The Applicant proposes to commence construction of the second phase (Unit 2) on or before December 31, 1997.

The installed capital cost of the proposed CSCP (both units) is estimated at more than \$373,000,000 (in 1992 dollars), based on information supplied by the Applicant for a generic natural gas-fired, combined-cycle power plant from Applicant's 1992 Integrated Resource Plan. The construction work force is expected to peak at 200 persons; there are expected to be 24-30 permanent operating positions.

The proposed CSCP is expected to generate approximately 3.6 million megawatt-hours per year (annual average basis, without cogeneration steam supply) that would be deliverable to the BPA system for the Applicant's account.

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The Applicant has represented that the purpose of this facility is to provide system power, which is used to meet the needs of customers in its service territory. At this time, the Applicant has no intent to dedicate a portion of the facility for sale or exchange. (PGE Exhibit 3/Walt--ASC Exhibit L.) Therefore, we place limitations on the Applicant's ability to sell the plant's output in mandatory condition no. 5. We recognize that if retail wheeling is approved by regulators, then PGE's load requirements may dramatically change. Under such changed conditions, PGE may need to have the flexibility to sell a portion of the output of the plant on a long term basis outside its service territory. In that event, PGE may seek amendment to the site certificate.

VI. DISCUSSION, ADDITIONAL FINDINGS OF FACTS, CONCLUSIONS OF LAW AND CONDITIONS REGARDING THE STANDARDS OF REVIEW

A. Introduction: general standard of review

Under ORS 469.503 and OAR 345-22-000(2), EFSC must determine, before issuing a site certificate, that the preponderance of the evidence on the record supports the following conclusions:

- (1) The facility complies with the requirements of the Oregon energy facility siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.621 and the administrative rules adopted pursuant to those statutes.
- (2) The facility complies with all other Oregon statutes and administrative rules applicable to the issuance of a site certificate for a proposed facility.
- (3) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

EFSC determines compliance with this general standard of review in the sections of this Order that follow.

EFSC is not authorized to determine compliance with regulatory programs that have been delegated to another state agency by the federal government. ORS 469.503(1)(b). EFSC also lacks authority to determine compliance with state regulatory programs that address construction or operating standards and practices that do not relate to siting the proposed facility. ORS 469.401(5). These exempt programs are listed in section IV.F.3. EFSC may, however, consider these programs in the context of its own standards to ensure public health and safety, resource efficiency and protection of the environment as discussed below.

VI. B. Need for the facility: OAR chapter 345, Division 23

EFSC standards must take into account the need for a proposed facility. ORS 469.501(1)(L). EFSC's need standard requires that there be need for the power output from a proposed facility before EFSC can approve the facility. OAR Chapter 345, Division 23.

VI. B. 1. Exemption: OAR 345-23-010

The Applicant has requested that its proposed facility be exempted from the need determination under OAR 345-23-010(2). This exemption states,

"Natural gas fired facilities with a fuel chargeable to power heat rate of 8000 Btu/kWh or less for which applications have been determined to be complete under OAR 345-21-030 on or before August 13, 1993 shall be exempt from the requirement to demonstrate need if all but 20 percent of the capacity will be used by energy suppliers operating in the Pacific Northwest Region as defined in 16 U.S.C. 839 a. (14)." OAR 345-23-010 (2).

EFSC adopted this exemption in response to a need for new electrical generation plants to meet demand in the region in the near future. EFSC determined that some of these new plants would be fueled by natural gas. EFSC also determined that approximately 950 megawatts of electricity was needed from these new natural gas-fired plants based on the Northwest Power Planning Council's 1991 Northwest Conservation and Electric Power Plan. Therefore, EFSC exempted up to 950 MW of new natural gas fired generation from further need determination provided they meet certain efficiency and regional use requirements. Because this amount was approximately equivalent to the capacity of proposed plants, whose applications had already been completed, EFSC amended its rules to replace the numerical limit with the calendar deadline of August 13, 1993. OAR 345-23-010 (2).

The exemption requires that the "fuel chargeable to power heat rate" of the facility be less than 8,000 Btu/kWh (British thermal units per kilowatt-hour). The proposed CSCP facility will be designed to operate at a fuel chargeable to power heat rate of 7,478 Btu/kWh (at standard conditions) without providing any steam to industrial steam users.

The exemption also requires that at least eighty percent of the output of a proposed facility be used by energy suppliers operating in the Pacific Northwest Region. This test is met because (1) the Applicant is an energy supplier, (2) the Applicant will be using

the energy output from this facility, and (3) the Applicant is operating within the Pacific Northwest.

The exemption is only available to proposed facilities which had applications determined to be complete by August 13, 1993. ODOE deemed the application for the CSCP complete on June 11, 1993.

*Objections raised by the Intervenors:* Intervenors argue that the combined generation capacity of the CSCP and the U.S. Generating Company's Hermiston facility exceeds the 950 MW standard of the 1992 version of this rule. Intervenors make this factual assertion in support of their argument that EFSC actually expanded the exemption from need for 950 MW of gas fired generation when it amended OAR 345-23-010(2) to provide that the exemption applied to any application filed by August 13, 1993. For the reasons that follow, intervenors are wrong.

Intervenors' argument relies on use of the nameplate rating, which is how the statute defines "nominal electric generating capacity." ORS 469.300(15) (1993) (formerly ORS 469.300(14)(1991)). EFSC obviously intended to refer to something other than nominal electric generating capacity or nameplate rating when it used only the term "capacity" in former OAR 345-23-010(2). EFSC interprets the term "capacity," as it was used in former OAR 345-23-010(2) (October 1992), to mean performance of the facility's generator or generators under its proposed configuration at annual average conditions for the site. Use of the term "capacity" in applying this former rule is both reasonable and has been consistently applied under this former rule.

The capacity of the CSCP is 462 MW and of the Hermiston facility, using the same method, is 474 MW for a combined operating capacity of 936 MW. Thus, the combined operating capacity of the two plants is well within the prior limit of the rules of 950 MW. (ODOE/Exhibit 2A, Meehan, at 4.) EFSC thus did not expand the exemption conferred by OAR 345-23-010(2) when it adopted the temporary rule in August, 1993 and readopted that rule permanently in January and April, 1994. Moreover, even if the rules adopted in August, 1993 and readopted in January and April of 1994 were invalid, as asserted by Intervenors, the CSCP would be entitled to an exemption under the rules adopted in 1992.

Intervenors also argue that the Application for Site Certificate for CSCP was not completed by August 13, 1993, as required under the current OAR 345-23-010(2). They note that the application processed in this proceeding was dated September 16, 1993 and that a package of amendments was filed on January 5, 1994.

Under the need exemption, the date that an application is "determined to be complete" is controlled by OAR 345-21-030. The application was determined to be complete under OAR 345-21-030 on June 11, 1993. That historic fact is not altered by subsequent amendments during the review process. Indeed, the rules anticipate and encourage the amendment of the application, even after completion. OAR 345-21-030(3) and OAR 345-21-090.

*Conclusion:* We therefore conclude that the Applicant has satisfied each of the three requirements of the exemption. Accordingly, Applicant need not otherwise establish need for the output of this facility.

Conditions:

Applicant shall, as part of the post-construction completion compliance status certification report required by Mandatory Condition 3, provide a capacity and heat rate performance test report to document the ability of the facility to meet the output and fuel efficiency measures as represented in the ASC.

VI. B. 2. Construction commencement and completion dates

EFSC must establish dates for commencement and completion of construction. ORS 469.370(7), obligates EFSC to specify "the date by which construction of the facility must begin." Under ORS 469.401(3), the site certificate shall also contain warranties as to Applicant's "time for completion of construction." OAR 345-27-020(2) states that "[t]he site certificate shall state the date . . . by which construction of the facility shall be completed."

In accordance with this authority, we review the Applicant's proposed construction schedule. The Applicant proposes to construct the CSCP in two phases. It proposes to commence the construction of the first unit as soon as possible after a site certificate is issued. The Applicant has proposed that completion of the second unit might be deferred until as late as December 31, 2005.

This possible deferral of phase two raises a significant concern. The exemption was adopted because of demonstrated need for an adequate power supply for the Pacific Northwest in the near future. That need will not be satisfied if we permit a delay of ten years for a facility exempted from a need determination.

In addition, we do not believe, as a general matter, that it is appropriate to site a facility such as this ten years before it is to be placed on line. While we conclude that the proposed plant is

an appropriate choice at this time, in ten years the situation may be far different. Power generation and emissions control technology is changing rapidly and efficiency standards and emissions limits are likely to change significantly during that period. Industrial development and growth in the local area may make the site less capable of absorbing and accommodating the proposed second phase. The required federally delegated permits for the facility are of limited duration. They might not be extended or reissued. In ten years, the electric transmission system may not be able to accommodate the output of the proposed second phase. Given the short time needed for site certification and other permitting, there is no need to bank a project for such an extended period before it is placed on line.

We conclude that, for unit one, construction should be completed no later than four years after the site certificate is executed. For unit two, construction should be completed no later than 5 years after the site certificate is executed. The Applicant's warranty shall so provide. In order for construction of this project to be completed within this time period, it is reasonable to condition the site certificate to require the Applicant to commence construction within one year after the site certificate is executed. The site certificate is executed when it has been signed by both the Applicant and the chair of EFSC.

Conditions:

- (1) Applicant shall begin construction of phase one of the proposed facility within one year after the site certificate is executed. This one-year time period shall be tolled during any appeal that is taken of the Energy Facility Siting Council (EFSC) Order. Notwithstanding the tolling of the one-year time period for commencement of construction, Applicant shall complete construction of phase one within four years, and phase two within five years, of execution of the site certificate. EFSC may extend the four-year period for construction completion if the Applicant shows that the need for extension is caused by acts of God or force majeure events. EFSC anticipates such a request will be considered a minor amendment under OAR 345-27-080.
- (2) Within one year of execution of the site certificate Applicant must affirm, by written notice to EFSC its intent to construct phase two. This notice to EFSC shall include copies of correspondence to a vendor requesting commencement of bona fide negotiations to purchase the gas turbine. This one-year time period shall be tolled during any appeal taken of EFSC's Order. Such

affirmation is required in order for Applicant to maintain a valid site certificate as to phase two.

(3) Applicant may request an extension of the five-year construction completion deadline for phase two. If such a request is made during the first year after the site certificate is executed (which period shall be tolled during any appeal taken of EFSC's order), and Applicant shows that the need for the extension is caused by acts of God or force majeure events. Applicant will not be required to demonstrate that the facility meets EFSC's needs standard. EFSC anticipates such a request will be considered a minor amendment under OAR 345-27-080.

(4) If Applicant requests an extension of the construction completion deadline for phase two and Applicant does not meet the requirements of paragraph 3 above, the Applicant shall be required to demonstrate that the facility meets EFSC's need standard in order for EFSC to approve extending the deadline. Applicant will not be exempted from the need showing under OAR 345-23-010(2) (adopted April 1994 ). EFSC anticipates this demonstration of need will be considered a major amendment under OAR 345-27-070.

(5) EFSC will grant a request under paragraph 4 only if the Applicant demonstrates that phase two is needed in accordance with EFSC's need for facility standard in effect when the EFSC decision on the request is made. In no event will EFSC grant an extension of the construction completion deadline for phase two of more than two years from the five year deadline specified in Applicant's warranty. The construction completion deadline for phase two, as specified in Applicant's warranty, or as may later be extended, will not be tolled for reason of appeal of the EFSC's Order.

VI. C. Standards relating to the Applicant

1. Organizational, managerial and technical expertise standard: OAR 345-22-010

a. Applicant Qualification and Capability: OAR 345-22-010(1)

The standard contained in OAR 345-22-010(1) provides:

"An Applicant shall have the organizational, managerial and technical expertise to construct and operate the

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facility. To conclude that the Applicant has the organizational, managerial and technical expertise to construct and operate the proposed facility, [EFSC] must determine that the Applicant has a reasonable probability of successful construction and operation of the facility considering the experience of the Applicant, and, where the Applicant has constructed or operated other facilities, the past performance of the Applicant, including but not limited to the number and severity of regulatory citations, in constructing or operating a facility, type of equipment, or process similar to the proposed facility."

The Applicant Portland General Electric Company (PGE) and its predecessors have operated a diversified electrical generation, transmission and distribution system for more than 100 years, serving a population base now in excess of 1.3 million.

According to the Applicant's December 31, 1991, Annual Report, PGE wholly owns 11 generating facilities and jointly owns four others. The Applicant owns and operates and supervised construction of the 534 MW Beaver natural gas-fired, combined-cycle plant, which among its generating resources most closely resembles the proposed CSCP facilities. In addition, PGE supervised the construction, operates and owns the majority of the 550 MW Boardman coal-fired plant.

The Applicant provided a regulatory compliance statement covering its thermal generating facilities. Of these thermal plants, the natural gas-fired Beaver Plant is most similar to the CSCP in fuel type, size, complexity and regulatory requirements. The regulatory histories for this facility indicated no monetary penalties for violation of state or federal regulation.

The Applicant states that it has many qualified and experienced employees, who can and will be provided to manage and supervise the construction of the proposed CSCP facilities and to operate those facilities upon completion.

Based on the foregoing, the Applicant has established that it possesses experience in the construction, management, ownership and operation of generating facilities similar in size, fuel type, technology and complexity to that proposed for the CSCP.

We conclude (1) that the Applicant has a reasonable probability of successful construction and operation of the facility and (2) that the Applicant possesses the required organizational, managerial and technical expertise to construct and operate the proposed facilities.

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*Applicant's contractors:* Although Applicant has established its expertise, much of the construction work involving the CSCP will be performed by contractors. For the construction of the CSCP, the Applicant has retained the services of Ebasco Constructors, Inc. (Ebasco), an engineer, procure and construct (EPC) contractor for the design, construction and start up of the proposed facilities. Ebasco has almost 100 years of experience providing engineering, construction and related services to the electrical generation industry. Since 1980, Ebasco has been involved as designer, constructor or both, with 48 gas-fired cogeneration projects totalling 9,086 MW.

While EFSC finds no fault with the Applicant's selection of the EPC contractor, EFSC wants to ensure that the EPC contractor, all other contractors and subcontractors maintain the standards required by EFSC. EFSC therefore finds it reasonable to require that all contractors and subcontractors comply with the applicable laws, regulations and terms and conditions of the site certificate.

Condition:

Applicant shall contractually require the EPC contractor and all independent contractors and subcontractors involved in the construction and operation of the proposed facilities to comply with all applicable laws and regulations and with the terms and conditions of the site certificate.

VI. C. 1. b. Third-Party Services and Permits: OAR 345-22-010(2)

The Organization, Managerial and Technical Expertise Standard includes the following provision regarding third parties:

"An Applicant shall have all necessary state permits and approvals to allow construction and operation of the facility. If the Applicant will not itself obtain any necessary state permit or approval, but will rely on a permit or approval issued to a third party, the Council must determine that the named third party has a reasonable likelihood of obtaining the necessary state permit or approval, and that the Applicant has a reasonable likelihood of entering into a contractual or other arrangement with the third party. If the third party named by the Applicant does not have the necessary state permit or approval at the time the site certificate application is approved, the Council may require as a condition that the site certificate holder may not commence construction, or operation, as appropriate,



until the third party has obtained the necessary permit or approval and the Applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval."

Under this standard, the Applicant must document agreements with the suppliers of those resources and services which require state or local permits or approvals and are necessary for the construction and operation of the CSCP as proposed in the ASC. Further, Applicant must provide reasonable assurance that the identified suppliers have or will have the necessary state permits and approvals to provide the resource and services as proposed.

As applied to CSCP, this standard requires an examination and evaluation of the likelihood of the following: 1) the Department of Water Resources' approval of pending applications from the Port of Morrow for the transfer of certain water rights and the Port's obtaining an additional groundwater permit; 2) the Department of Environmental Quality's approval of the industrial wastewater disposal permit requested by the Port; and 3) the permissibility of the use by the CSCP of the City of Boardman's sewage treatment facility.

VI. C. 1. b. (i) Water supply

The Applicant proposes to obtain the full process water requirement for the operation of the proposed CSCP facility from the Port of Morrow. Applicant's projected demand for process water is 2,691 gallons per minute based on annual average conditions without cogeneration process steam load. (PGE Exhibit 3/Walt--ASC Exhibit B.) Twenty-three gallons per minute of the above total will be required as makeup water to the boiler/steam turbine system. The remaining 2,668 gallons per minute will be required as makeup water to the condenser/cooling tower system to replace water lost primarily to evaporation.

The Applicant has entered an agreement with the Port of Morrow in which the Port will provide all water needed to operate the proposed CSCP.

The Port plans to obtain the necessary water for the CSCP from three sources: by transferring existing water rights associated with existing alluvial aquifer wells; from an existing deep aquifer groundwater well; and from the City of Boardman, as necessary.

The Port has applied to the Department of Water Resources (DWR) for approval to transfer three existing water rights from industrial and irrigation status to municipal status. The DWR has reviewed these applications and has approved the transfers. Water from two

of these transferred rights, Carlson Sump 1 and 2, and Port Well No. 3, is proposed to be used for the CSCP.

The Port has also applied to the DWR for approval to extend an existing water right for an existing deep aquifer groundwater well, Port Well No. 4. DWR has approved this extension. The Port plans to use some of the water from this well for the CSCP.

The Port also has an agreement with the City of Boardman in which the City will supply the Port up to 2,000 gallons of water per minute. The source of this water is the Columbia River. This water is obtained by the City pursuant to a municipal water right issued by DWR. The Port can use this water for the CSCP without obtaining further state approval.

DWR has reviewed the ASC in the context of the Port of Morrow's existing and pending water rights and the agreement with the City of Boardman. DWR has concluded that there appears to be adequate water to support the proposed CSCP. (ODOE Exhibit 2/Meehan--DWR report attached to Staff Report as Appendix A.12.; letter from DWR to ODOE dated January 4, 1994.)

In making its finding of adequate water for the CSCP, DWR cautioned that the permits that have been or will be issued for the deep aquifer groundwater wells will be conditioned making their use subordinate to earlier, superior water rights. Thus, if use of these wells were to draw down the aquifer and interfere with superior water rights, use of these wells could be restricted or discontinued. However, if the use of these wells were to be restricted, the CSCP could still obtain adequate water from other sources.

We conclude that the Applicant has an agreement with the Port of Morrow to supply the CSCP's process water requirement and that the Port has obtained necessary state permits to provide the CSCP's water requirements.

Conditions:

- (1) Applicant's water use shall not exceed the flow rates and maximum quantities specified in the ASC for the proposed CSCP nor shall the withdrawal rates exceed the limits imposed by the water right permits for the sources supplying the water.
- (2) Applicant shall install and operate a continuous, recording flow meter on the facility's process water intake line and maintain records of total process water use on a monthly and annual basis.

IV. C. 1. b. (ii) Process wastewater disposal

The Applicant proposes to discharge its process wastewater to the Port of Morrow industrial wastewater system. The Applicant and the Port of Morrow have entered into an agreement that provides for project process wastewater disposal by the Port of Morrow over the life of the project.

The Port currently disposes of the industrial wastewater by reusing it for agricultural irrigation. The disposal system is covered by DEQ Water Pollution Control Facility (WPCF) Permit No. 100252. The Port must obtain approval from DEQ to dispose of the wastewater from the CSCP facility through this system.

On July 2, 1993, DEQ issued a letter report that reviewed the ASC for the CSCP (ODOE Exhibit 2/Meehan--Staff Report, Appendix A.11). DEQ stated that if the Port's system can handle the process wastewater from CSCP, then no additional permits are required for the Applicant's process wastewater. The Port of Morrow is currently renewing and revising its existing WPCF permit to accommodate the estimated process wastewater discharge from the proposed CSCP facility. The annual average flow under normal operating conditions without providing steam for industrial use is estimated as 761 gallons per minute.

Applicant and the Port of Morrow are currently studying the issue. Applicant takes the position that preliminary studies and evaluations indicate that the Port of Morrow wastewater disposal system is capable of receiving and disposing of the facility's process wastewater without significant adverse impacts to groundwater or soil productivity. They have not yet, however, demonstrated the ability of the wastewater treatment process to satisfy DEQ requirements.

We conclude that the Applicant has an agreement with the Port of Morrow for the disposal of the facility's process wastewater, but cannot conclude that there is a reasonable likelihood that the Port of Morrow will be permitted to accept and dispose of the proposed CSCP process wastewater.

The purpose of the third party permit rule is to assure that a facility will be able to operate once constructed. It would be inappropriate for EFSC to site a facility which would not be operable due to lack of a necessary third party permit. In this case, however, the process wastewater permit is not necessary for the project's operation.

In the event that the Port of Morrow is not legally permitted by DEQ to dispose of the Applicant's process wastewater, the Applicant has committed to implement a zero-discharge treatment system.

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Under this system, the Applicant will treat the wastewater removing dissolved solids, thereby allowing the recycling and reuse of the water in the cooling tower and steam generation processes.

The zero-discharge treatment system would not require the involvement of a third party or the issuance of a governmental permit. Accordingly, this zero-discharge process need not satisfy this third party standard. The zero-discharge treatment system and potential impacts related to its use are considered elsewhere in this Order under other standards. The zero-discharge treatment system is found to satisfy these other standards, subject to certain conditions. As a result, the inability of the Applicant to satisfy the third party standard regarding wastewater disposal is not cause for denying the issuance of a site certificate.

The Applicant, however, will be required to either: 1) demonstrate that the Port has received DEQ approval to dispose of the CSCP's process wastewater; or 2) commit to install a zero-discharge treatment system. The Applicant must make this demonstration or commitment within six months of the date the site certificate is executed.

Conditions:

(1) Within six months of the date the site certificate is executed, the Applicant shall demonstrate that the Port of Morrow has received DEQ approval to dispose of the CSCP's process wastewater, or commit to install an on-site, zero-discharge water treatment system.

(2) If Applicant uses the Port of Morrow's industrial wastewater disposal system, Applicant shall not discharge into the Port's system at flow rates and quantities or in excess of water quality limitations or discharge any materials that would violate any applicable laws and regulations or the conditions of the Port of Morrow's WPCF permit.

VI. C. 1. b. (iii) Sanitary wastewater disposal

The Applicant proposes to discharge its sanitary wastewater to the City of Boardman sewage treatment facility. The City of Boardman operates its sewage treatment facility under Water Pollution Control Facility (WPCF) Permit No. 100345. This permit was issued by, and is enforced by DEQ. The July 2, 1993, DEQ report notes this and states that DEQ has no objection or concerns.

We conclude that the City and the Applicant have an agreement and that the Applicant's proposed use of the City of Boardman's

existing and permitted sewage treatment facility for the discharge of sanitary wastewater raises no issues of concern.

Conditions:

Applicant shall not discharge any materials into the City of Boardman sewage treatment system that would violate any applicable laws and regulations or the conditions of the City of Boardman's WPCF permit.

VI. C. 2. Financial assurance standard: OAR 345-22-050

OAR 345-22-050 provides:

"(1) The Applicant, together with all co-owners, collectively shall possess, or have reasonable assurance of obtaining, the funds necessary to cover the estimated construction, operating and retirement costs for the design lifetime of the facility including related fuel-cycle costs; and

(2) An Applicant and co-owners of the facility collectively will be capable of providing funds as needed to construct, operate, and retire the facility without violating their respective bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements."

VI. C. 2. a. Financial ability

Compliance with subsection (1) of this standard requires that the Applicant has "reasonable assurance" of obtaining funds to cover the construction, operating and retirement costs for the design life of the facility. The standard merely requires reasonable assurance and not a guarantee that funds will be available.

Although the Intervenors claimed to be challenging the Applicant's ability to raise the funds necessary to construct the plant, Intervenors presented no evidence on this point. The Applicant states that it will obtain construction funding through a variety of means, including internal cash flow, retained earnings, and short-term financing. Long-term financing is expected to be provided by issuing long-term first mortgage bonds, preferred stock, and long-term debt. (PGE Exhibit 3/Walt--Exhibit K of the ASC.) In reviewing the Applicant's 1991 Annual Report, ODOE reported that it revealed nothing that would prevent the Applicant from obtaining both construction and term funding by the means described in the ASC. (ODOE Exhibit 2/Meehan--staff report, at 31.)

No party questioned the financial ability of the Applicant to raise the estimated \$5 million dollars necessary to retire the plant. (PGE Exhibit 3/Walt--Exhibit Z of the ASC.) Such an amount is a small portion of the Applicant's annual operating revenues. (PGE Exhibit 6/Walt--1992 Annual Report, at 28.)

Intervenors focused on whether the Applicant, as a utility regulated by the Oregon Public Utilities Commission (OPUC), could offer reasonable assurance of covering operating costs through rate recovery, other means, or a combination of the two. By "operating," under this standard, we mean running the plant when it is economically reasonable to do so as part of Applicants power supply system.

*Consistency with the Integrated Resources Plan:* The Applicant is a regulated, investor-owned utility and intends to ask the OPUC to allow it to cover the debt, provide a return on investment and pay for ongoing costs of the CSCP through the electric rates that it charges its customers. This process is governed by statute and involves a careful review by the OPUC.

In considering such a request, the OPUC will consider whether the facility is used and useful for providing needed utility services. The OPUC will also decide whether the costs and expenses which the utility incurred to build and operate the facility were prudent. The OPUC will make these determinations only after a facility is built and in operation. It will not make such a decision before the facility is built. However, OPUC acknowledgement of the Applicant's Integrated Resource Plan (IRP), also referred to in this order as Applicant's "least-cost plan," which includes a similar type facility, can be used as evidence in a later OPUC prudence determination.

In the OPUC least-cost planning process, the regulated utility submits its plan for "acknowledgement." The OPUC reviews the plan and takes comment and recommendations from the interested public. It then makes the decision whether to acknowledge, which may include modifications to the plan. It is that modified plan that is then "acknowledged."

In Order No. 89-507, OPUC explained the relationship between the likelihood of recovery costs of plant construction and operation and the least-cost planning process. That order required least-cost planning among regulated utilities in Oregon and explained,

"Rate-making decisions will not be made in the Least-Cost Planning process. Decisions on whether to include in rates the costs associated with new resources

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can only be made in a rate filing under ORS 757.205, et seq. When a utility requests approval of expenditures or inclusion of a plant in rate base, the utility must demonstrate the justness and reasonableness of its rates at the time the resource comes on line. Under ORS 757.355, the cost of a resource may be included in rates only if the resource is "used and useful."

"If a resource is used and useful, the resource itself must be included in rate base. However, the full cost of the resource is not necessarily includable in rate base. For example, if a used and useful resource was constructed at unnecessarily high cost, only the cost deemed appropriate would be placed in rate base. Thus, the prudence of the utility's decisions regarding a resource are not relevant to the questions of inclusion in rate base, but are relevant in determining the valuation of the facility to be placed in rate base. Portland General Electric, Order No. 87-1017, at 10.

"Least-Cost Planning is therefore relevant to the question of rate-making treatment. Consistency of resource investments with least-cost planning principles will be an additional factor that the Commission will consider in judging prudence. When a plan is acknowledged by the Commission, it will become a working document for use by the utility, the Commission, and any other interested party in a rate case or other proceeding before the Commission, such as the review of avoided costs. Consistency with the plan may be evidence in support of favorable rate-making treatment of the action, although it is not a guarantee of favorable treatment. Similarly, inconsistency with the plan will not necessarily lead to unfavorable rate-making treatment, although the utility will need to explain and justify why it took an action inconsistent with the plan."

PGE Exhibit 32.1/Walt--IRP Appendices 1-2.6, 1-2.7.

OPUC will not guarantee that a utility can recover a facility's costs through rates solely on the basis that the facility was consistent with an acknowledged least-cost plan. But, consistency does establish that the facilities proposed in the plan were reasonable to OPUC when the plan was acknowledged.

Moreover, in Order no. 93-804, the acknowledgement order for the Applicant's least-cost plan, OPUC observed that "[i]n rate-making proceedings in which the reasonableness of resource acquisitions is considered, the Commission will give considerable weight to utility actions which are consistent with acknowledged least-cost plans."

PGE Exhibit 34/Walt, at 12. Thus, under the financial assurance standard a regulated utility may show that it meets the standard by showing that its proposed plant is consistent with its PUC approved least-cost plan. Unless the record demonstrates that, despite this consistency, the PUC is likely to disallow substantial costs associated with the plant and that the Applicant has no other reasonable sources of funds to cover the estimated costs for the facility, the plant meets the financial assurance standard. The acknowledgement order approves PGE's proposal to "replace Trojan power in the short-term with a mix of power purchases and, for the longer term, begin siting and licensing activities required to bring 500 MWa of cogeneration/gas turbine resources on line by 1995-1997." PGE Exhibit 34/Walt, at 3. The 462 MW Coyote Springs facility is such a project and, accordingly, is consistent with the least-cost plan acknowledged by the OPUC.

*Intervenors' objections:* Intervenors asserted various arguments in seeking to show that the Applicant could not satisfy the financial assurance standard:

1. Intervenors argued that the CSCP was not consistent with projects outlined in the Applicant's least-cost plan, formally entitled Integrated Resource Plan (IRP). For our purposes in determining whether the OPUC is likely to allow Applicant to recover costs of the CSCP, we consider the Applicant's least-cost plan to be its 1992 Integrated Resource Plan, including the February 1993 update, as modified by the accompanying Acknowledgement Order and recommendations of the OPUC. They note that the CSCP was not specifically identified in the plan nor was any facility based on the purchases of gas under the gas-purchasing strategy PGE proposes. These considerations are not sufficient to negate a showing of consistency with the plan. The least-cost plan is not so detailed a document as to call for acquisition of a particular plant by location. The plan does call for acquisition of a gas-fired combined-cycle combustion turbine resource such as the CSCP. With respect to fuel supply, in its acknowledgment order, the PUC directed PGE to "pursue a diverse mix of gas resources and pipeline capacity arrangements to reduce both upside and downside price risk." (PGE Exhibit 34/Walt, at 4). The gas purchasing strategy proposed by PGE is consistent with this directive. Without any citation to some authority that OPUC would find these arguments sufficient to negate consistency or otherwise deny or reduce rate recovery, we reject this argument.
2. Intervenors argued that the Applicant "has failed to prove the likelihood of being able to obtain any gas from Canada." (Intervenors' Opening Brief, at 42.) Intervenors rely on a



recent decision of the Supreme Court of Canada requiring the National Energy Board to consider "upstream environmental effects" in permitting export of natural gas. (Intervenors' Opening Brief, at 43.) While there was such a change in Canadian law, it is pure speculation to suppose that its application would undercut the ability of the Applicant to obtain natural gas from Canada.<sup>3</sup> In any event, unrebutted testimony offered by the Applicant established that it could secure adequate natural gas from domestic sources. (PGE Exhibit 50/Anderson, at 3, lines 9-12.)

3. Throughout Intervenors' case, they have contended that Applicant could have purchased power from Independent Power Producers (IPPs) at a more economical rate. The record does not support their assertion. The evidence in the record does not establish the superiority of IPP resources. Intervenors offered a comparison between the cost of power from CSCP and from IPPs that was made in 1993 and it shows that CSCP power was competitive. (Int Exhibit KB-7/Bell--Column C.)<sup>4</sup> Another comparison was drawn between projected costs of power purchased from Hermiston and power generated at CSCP. (PGE Exhibit 47/Piro--additional written direct rebuttal testimony--at 2-4; PGE Revised Exhibit 48/Piro.) Both comparisons show that CSCP power was competitive with IPP-generated power. Furthermore, IPP resources differ in important non-price

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<sup>3</sup> Intervenors specifically cited a pending NEB decision in Review GH-5-93. The decision was issued in June 1994 and a copy was provided by Applicant with their brief in response. In the June 1994 decision, the NEB did not apply its the directive to consider upstream effects to all export licenses and approved several export licenses.

<sup>4</sup> Both Intervenors and Applicant attempted to draw comparisons between the 1994 cost of power from CSCP and various IPPs extrapolating from the bids obtained in 1992 and adjusting for inflation and changes in gas prices and gas price forecasts. (See PGE Exhibit 37/Piro--rebuttal testimony--at 8, table; Int exhibit KB7/Bell--column E.) These comparisons are too speculative to be of any use.

Intervenors seek to make much of Applicant's failure to reevaluate the IPPs in light of its revised, lower gas price forecast in 1994. Applicant properly declined to do so. Such a revision would have required the Applicant to revise the IPPs' bids based on PGE's price forecasts without knowing all factors that entered into the IPPs bids. (PGE Exhibit 47/Piro--Piro's Additional Rebuttal Testimony--at 4-5.) Intervenors could have, but did not collect alternative current costs from IPPs.

- respects from the CSCP project and it is not appropriate to attempt to compare them solely on the basis of levelized costs. Other important features of any resource considered are compatibility with the power system and strategic flexibility. (PGE Exhibit 42/Dyer, at 2-4.)
4. Intervenors challenged Applicants' projections about long term gas prices. Intervenors noted that Applicant failed to offer any assurances that ratepayers would not have to carry the excess cost of natural gas purchased at a cost that exceeded Applicant's projections. (Intervenors' Opening Brief, at 34-41.) Intervenors, however, offer no explanation of how this argument fits into the financial assurance standard. This argument has nothing to do with whether the Applicant would "have reasonable assurance of obtaining the funds necessary to cover the estimated . . . operating . . . costs . . . ." OAR 345-22-050(1).<sup>5</sup>
5. Intervenors also argue that the risks of higher than forecast natural gas price increases preclude the facility's compliance with the financial assurance standard. Again, however, Intervenors fail to show how volatility in natural gas prices undercuts consistency with the IRP. They offer, as an alternative, that Applicant should purchase power from IPPs. There has, however, been no showing that the risks of higher prices are less with IPPs than with the gas purchasing strategy that Applicant intends to pursue for CSCP. Applicant's strategy is to pursue a mix of spot purchase and mid-term contracts of staggered length once the price of natural gas falls from near its seven year high. (Anderson, tr at 446-56.) Indeed, such a strategy seems to be consistent with a directive in OPUC's acknowledgment of the Applicant's IRP that "PGE should continue to evaluate and pursue a mix of gas resources and pipeline capacity arrangements to reduce both upside and downside price risk." (PGE Exhibit 34/Walt, at 4.)
6. Intervenors also contend that the possibility of carbon taxes undercuts the Applicants' ability to recover operating costs. However, the carbon tax risk was considered extensively by the OPUC when it acknowledged the Applicant's IRP. (PGE Exhibit

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<sup>5</sup> Intervenors proposed that the Site Certificate be conditioned on PGE shareholders carrying the risk of gas being purchased for the operation of CSCP at prices exceeding PGE's long-term price projections. Because there is no connection between the argument of who should bear the risk and compliance with the financial assurance standard, we decline to adopt such a condition.

32/Walt--Chapters 7, 9.)<sup>6</sup> OPUC acknowledged the plan, including the proposal to acquire 500 MWa of gas fired generation, despite the risk of increased gas prices or carbon taxes. Given that, the potential for such price increases or taxes does not undercut the facility's consistency with the IRP or compliance with the financial assurance standard.

7. Intervenors also argued that there was a greater risk in not recovering the costs of generation facilities than the risk of not recovering costs of IPP-generated power. Intervenors identified several power plants which resulted in write-offs to other utilities. However, none of these plants were combined cycle combustion turbine plants--or even relied primarily on natural gas for power generation. (Lazar, tr at 594-96; PGE Exhibit 56/Lazar--Lazar's response to PGE's production request.) On the other hand, the Applicant identified situations where other utilities had entered into long-term purchase power contracts and were forced to buyout contracts from the IPP. In addition, Intervenors' expert conceded that generally IPPs were thinly capitalized. (Lazar, tr at 594.)<sup>7</sup> In sum, the evidence did not show that risks of relying on utility-generated power is any greater or lesser than relying on purchased power from IPPs.

8. Intervenors have asserted that the OPUC may disallow costs associated with this plant because applicant applied "penalty" or a financial risk adder to alternate sources of power when comparing the costs of those alternate sources with CSCP. PGE applied this factor to account for various risks associated with purchased power which they assert would increase their cost of capital. DWOC asserted that the risk perceived by applicant is illusory and therefore the cost comparisons which use the adder are not valid.

We cannot predict with any degree of certainty how the OPUC would approach the use of the financial risk adder. This issue was raised in the OPUC acknowledgement process for applicant's least-cost plan. The OPUC reviewed the adder

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<sup>6</sup> Evaluation of risk and uncertainty is an essential feature of least cost planning. Increased gas price risk and carbon tax risk are just two of many uncertainties that the OPUC considered in the acknowledgment process.

<sup>7</sup> Lazar also was questioned specifically about Pioneer Energy Partnership (PEP), which was proposing to construct a cogeneration facility in Newberg, Oregon with Smurfit and had sought to sell the generated power to PGE. PEP's project was one which Intervenors contend PGE should have considered. (Lazar, tr at 594.)

concept proposed by applicant, but it neither supported nor rejected the approach. Instead, it opened a new docket to address this issue separately. Thus we do not have a firm basis from the OPUC acknowledgement for making a prediction about how a future OPUC would address this issue. However, we do not believe that the OPUC will penalize a utility for using a factor which a prior OPUC had an opportunity to, but did not, reject. We conclude after weighing the evidence in the record as a whole that the record does not demonstrate that a future OPUC will disallow costs of the CSCP based on the adder applied to purchased power options.

9. Intervenors have asserted that the OPUC may find that applicant's decision to build this plant rather than to purchase power was not prudent. In part, they base this claim on the fact that applicant has forecast that gas prices will increase within a range of 0% to 3.5% (real) rate and that when they compared the CSCP with IPP resources they used a 1% rate for CSCP. DWOC asserts that this is not a credible prediction and points to forecasts made by others, including ODOE and the Northwest Power Planning Council (NPPC), which range from 3% to 6%.

The central issue to Intervenors' argument is whether the OPUC will find that applicant had the opportunity to purchase similar power at less cost. Intervenors assert that EFSC should compare the costs of CSCP to IPP costs, and that it should compare them using the same gas price forecasts. They assert that if the same forecasts were used, CSCP would be shown to be to be more expensive than the IPP bids. The weight of evidence does not support this argument.

The record contains the prices at which IPP's were willing to commit to sell power to applicant in 1992. These prices are comparable to the power costs from the CSCP. The record does not, however, show what forecasts the IPP's were using in making their bids. Intervenors' assumption that IPPs used a higher gas price forecast was not supported by the record.

Intervenors appear to be asking EFSC to select a gas forecast, apply that forecast to the CSCP and the IPP bids, and make a comparison on that basis. There are at least three problems with this approach. First, we do not have enough information about how the bids were calculated in order to be able to substitute a new forecast into the bids. Second, such an exercise would be pure speculation as there is no reason to believe that the IPP's would be willing to sell to applicant at that arbitrarily selected rate. Third, even if we were able to determine the fuel price forecast used by IPP's and apply them to CSCP for comparison purposes, that would not be

the end of the analysis. The record would still need to show that the power which was produced by the IPP's was comparable in terms of reliability, dispatchability, and compatibility. The record does not establish this to be the case.

*Conclusion:* Although Intervenor presented several arguments, the record establishes that the CSCP is consistent with the Applicant's acknowledged IRP and does not demonstrate convincing reasons why PGE would not be permitted by OPUC to recover its costs through rates. We therefore conclude that the Applicant has reasonable assurance of obtaining the funds necessary to cover the estimated construction, operating and retirement costs for the design lifetime of the facility including related fuel-cycle costs.

VI. C. 2. b. Legal authority

In regard to subsection 2 of the standard, the Deputy General Counsel of the Applicant's parent company, Portland General Corporation, states that the Applicant has the legal authority to finance, construct, operate and retire the proposed CSCP without violating any bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements. (PGE Exhibit 4/Walt--ASC Exhibit K--Appendices.)

We conclude that the Applicant possesses the necessary authority to finance, construct, operate and retire the proposed facility based on the submission of the Applicant.

VI. D. Standards relating to the site and structure

VI. D. 1. Structural standard: OAR 345-22-020

OAR 345-22-020 states:

"1) The facility shall be designed to minimize vulnerability to seismic hazards as defined at ORS 455.447 (d); and

2) The facility shall be designed, constructed, operated and retired so as to avoid, to the greatest extent possible, adverse impacts on soils such as compaction, erosion, mass wasting and slumping."

This standard addresses both seismic hazards and adverse impacts on soils in the design, construction, operation and retirement of the facility.

VI. D. 1. a. Seismic hazards

With respect to the seismic standard of subsection (1), ORS 455.447 (1)(d) defines "seismic hazard" as:

". . . a geologic condition that is a potential danger to life and property which includes but is not limited to earthquake, landslide, liquefaction, tsunami flooding, fault displacement, and subsidence."

In order to evaluate seismic hazard potential for a proposed site, OAR 345-21-010 (1)(g) requires that the Applicant provide ". . . an assessment of seismic hazard . . ." at the site. Applicant's assessment was reviewed by Oregon Department of Geology and Mineral Industries (DOGAMI). (The DOGAMI evaluation is part of ODOE Exhibit 2/Meehan--Staff Report, Appendix A.2(a) & (b).)

DOGAMI concluded that Applicant's analysis and estimation of the site's seismic risk potential (a Richter magnitude 5.5, plus or minus 0.5, at a random distance of 25 kilometers) was an adequate and reasonable characterization of regional seismicity. Applicant's estimate of peak ground acceleration resulting from this estimated seismic event falls within the ground motions contemplated and covered by the existing seismic zone classification for the site: Seismic Zone 2B.

DOGAMI, nonetheless, recommended that the Applicant conduct additional field studies to characterize the amplification potential for the site itself. The Applicant agreed to do so. The Applicant committed to design and construct the facilities to address any estimate of peak ground acceleration exceeding that covered by seismic zone 2B. The Applicant shall be required to report the results of its additional studies to ODOE, DOGAMI and the state Building Codes Agency (BCA) and to design and construct the facility to address any peak ground acceleration estimated for the site beyond that covered by seismic zone 2B.

Pursuant to mandatory conditions 8 and 9, the Applicant will be required to notify ODOE, DOGAMI and the Oregon Department of Water Resources (DWR) in advance of further geotechnical investigations and trenching on the project site and notify them if different geologic conditions are discovered at the site than were anticipated.

We conclude that the structural standard requiring facility design to minimize vulnerability to seismic hazard has been satisfied with the following conditions.

Conditions:

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(1) Applicant shall design and construct the proposed facility in accordance with and in compliance with the laws and regulations administered by BCA.

(2) Before submitting building permit applications to BCA, Applicant shall re-evaluate peak ground acceleration for the site based on applying an amplification factor determined from its site-specific studies. The Applicant shall report the results of its reevaluation to ODOE, DOGAMI and BCA. The Applicant shall design and construct the facility to address any estimate of peak ground acceleration exceeding that covered by seismic zone 2B.

VI. D. 1. b. Adverse soil impacts

Regarding subsection (2), soil impacts have been evaluated separately for the power plant site and for the related transmission line.

The power plant facilities are to be sited on 20 acres of land that has been extensively mined for sand and gravel and is situated within an existing industrial park. It is anticipated that the plant site will be reclaimed for industrial use at the retirement of the proposed facility. Consequently, construction of the power plant is unlikely to cause further damage to the soil or cause adverse impact to the soil such that its use at retirement would be limited.

In addition, mass wasting is not anticipated at the plant site because it has gentle slopes, and there will be no cut and fill work. There is also a low potential for wind erosion during construction because sand and gravel will be used for fill at the site.

There is very little potential for slumping from unstable slopes for the following two reasons. First, the existing site will be filled, leveled, compacted and graded to the approximate pre-existing grade and the level of adjacent land. Second, although a small portion of the existing dredge pond will be filled and compacted, nothing will be constructed on this fill.

All but a small portion of the transmission line connecting the proposed power plant to the BPA transmission system lies in or immediately adjacent to existing road and utility corridor rights-of-way. The potential for adverse soil impacts related to siting and constructing transmission towers and foundations along this stretch of the transmission line corridor is not considered significant.

A section of transmission line connecting the power plant to the existing BPA transmission lines would be sited on and over land that has been or is under cultivation. Equipment used in the construction of the transmission lines will have no more adverse effect on the land than agricultural equipment. The transmission towers will be constructed on gently sloping land that does not raise slope stability concerns. There will be no adverse impact to the soil from the construction or operation of this part of the transmission line.

The transmission line should also not adversely affect the soil following the retirement of the facility. Transmission tower foundations will be readily removable so that the land can be reclaimed for agricultural use.

We conclude that no significant adverse impacts to soil will result from the construction, operation and retirement of the proposed facility.

Conditions:

During construction, the Applicant and its subcontractors shall make reasonable efforts to keep soil disturbances to a minimum.

VI. D. 2. Land use standard

To issue a site certificate, EFSC must determine that a proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission (LCDC). ORS 469.501(1)(c). The statute further provides that a proposed facility complies with the statewide planning goals if it has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government. ORS 469.503(2)(a).

In accordance with statute, EFSC's land use standard states,

"(1) A proposed facility shall be found in compliance with the statewide planning goals under OAR 345-22-000(2)(c) if: (a) the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or..." OAR 345-22-030.

The Oregon Department of Land Conservation and Development (DLCD) reported that Morrow County's comprehensive plan and land use regulations were acknowledged by the Land Conservation and Development Commission (LCDC) as complying with the statewide planning goals on January 30, 1986. The City of Boardman's comprehensive plan and land use regulations were acknowledged on



February 2, 1978. (See ODOE Exhibit 2/Meehan--Staff Report Appendix A.3.)

The site is located within the Port of Morrow Industrial Park and has been leased by the Applicant from the Port of Morrow. The site is in unincorporated Morrow County within the City of Boardman Urban Growth Boundary (UGB). The electrical transmission line route is also within Morrow County. A portion of transmission line route is within the City of Boardman UGB.

Morrow County has planning jurisdiction over all land required for both the plant site and the transmission line under the Boardman Urban Growth Area Joint Management Agreement which was signed by Morrow County, the Port of Morrow and the City of Boardman in March 1990.

Both the City of Boardman and Morrow County signed a Land Use Compatibility Statement for the proposed CSCP, dated September 5, 1991, as part of the DEQ air emissions permit process. This statement indicates that the city and county believe the proposed facility is consistent with their respective land use plans.

The power generation facility site is zoned PI, Port Industrial. Power generation and utility facilities are uses that are permitted outright in this zone. The proposed route of the transmission line will cross land zoned PI and MG, General Industrial. The transmission line needs a variance from Morrow County to cross the MG zoned land. The Applicant applied to Morrow County for this variance on September 13, 1993. Morrow County Planning Commission granted the variance, which contained two conditions, at a hearing on October 25, 1993. As a condition of the site certificate, Applicant shall be required to comply with the terms of this variance.

We conclude that the land use standard is satisfied by the Applicant's demonstrated receipt of necessary local land use approvals and compliance with statewide planning goals.

Conditions:

Applicant shall comply with the conditions in the variance for the CSCP transmission line granted to Applicant by Morrow County on October 25, 1993.

VI. E. Standards relating to the impacts of construction, operation and retirement

VI. E. 1. Protected Area Standard: OAR 345-22-040

OAR 345-22-040 provides:

"The facility will not be located in [identified protected areas]. Taking into account mitigation, the design, construction and operation of the facility located outside [protected areas] will not result in significant adverse impact to [the identified protected areas]."

Neither the power plant nor any of its related facilities is located in any of the protected areas designated by EFSC in OAR 345-22-040(1). Fourteen protected areas are within a 20-mile radius of the site. (PGE Exhibit 3/Walt--ASC Exhibit J.)

The two closest protected areas are the Umatilla National Wildlife Refuge and the Coyote Springs Wildlife Management Area, and these areas are not expected to be adversely affected in any respects by the project.

The Umatilla National Wildlife Refuge lies on both sides of the Columbia River and includes land within both Oregon and Washington. The McCormick unit of the Umatilla National Wildlife Refuge is located in Oregon. It is approximately 2.2 miles northeast of the proposed power plant site and approximately 2.3 miles north of the closest portion of the transmission line corridor.

The Coyote Springs Wildlife Management Area is managed by the state Department of Fish and Wildlife. It is approximately 2.0 miles southeast of the proposed power plant site and approximately 0.6 mile east of the closest portion of the transmission line corridor. The Coyote Springs Wildlife Management Area consists of 160 acres that abut I-84. A BPA transmission line corridor crosses the property. The land was formerly in agricultural crop production and is now managed for upland game bird habitat and regulated hunting.

There is already substantial transportation and industrial activity around the plant site at the Port of Morrow or between the plant site and these two protected areas. There is likely to be no additional adverse impacts from the construction or operation of the CSCP on these areas beyond that already felt from the currently existing intervening transportation and industrial activity. In addition, neither protected area is close enough to the CSCP facilities to be adversely impacted by its construction and operation in terms of aesthetics or noise--which are more fully discussed under other standards.

Air emissions from the CSCP should not adversely affect the protected areas either. DEQ is conducting a review of the CSCP's air emissions and has reported that the plant will satisfy all

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federal primary and secondary standards for air emissions. The primary standards were implemented to protect human health. The secondary standards, which are sometimes referred to as the welfare standard, were established to protect economic and environmental values, including agricultural, fish and wildlife. Because air emissions that can be expected from this natural gas powered plant do not raise any particular concerns for these protected areas, there is no reason for us to conduct a review of air emissions beyond that conducted by DEQ other than for cooling tower drift.

We consider cooling tower drift for two reasons. First, no other agency, including DEQ, is reviewing cooling tower drift from the CSCP. Second, cooling tower drift has the potential to adversely impact the surrounding area because of the cooling process used here. Cooling tower drift refers to water droplets from the circulating water in the cooling tower system that are entrained and discharged from the cooling tower by the action of the fans. The water droplets carry chemicals into the atmosphere that are found in the water as particulate matter.

Depending on wind speed, most of the drift will fall within close proximity to the cooling tower. Beyond 1500 feet, the amount of drift remaining airborne will be insignificant. Therefore, cooling tower drift will not adversely affect protected areas given their distance from the CSCP site.

The Applicant contacted representatives of the Umatilla National Wildlife Refuge who reviewed the ASC for the project and indicated no concern with potential impacts. Similarly, the Oregon Department of Fish and Wildlife raised no issues of concern regarding the proposed project in relation to any of the protected areas. Based on our review, we conclude that the CSCP will not significantly affect the two closest protected areas.

The remaining protected areas are a national wildlife refuge, a state park, two state fish hatcheries, three state wildlife management areas, two state natural heritage areas, a state agricultural research center and two Bureau of Land Management areas of critical concern. The nearest of these are the two hatcheries, which are about eight miles from the CSCP site. Given the distances to these protected areas and the nature of these areas, we conclude that the CSCP will also not affect these more distant protected areas.

We conclude therefore that the proposed facility will not have a significant adverse impact on any protected areas.

OAR 345-22-060 provides:

"(1) The design, construction, operation and retirement of a facility shall be consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-030."

"(2) This rule shall not apply to threatened or endangered species listed under ORS 469.172(2)."

*Mitigation goals and standards:* OAR 635-415-030 identifies four categories of fish and wildlife habitat and provides a separate mitigation goal and standard for each category. Habitat Category 1 is

"habitat of exceptional value for an evaluation species and is irreplaceable and unique; or is essential habitat of any State of Oregon listed threatened or endangered species; or is the critical habitat as defined in the Endangered Species Act of any federally listed threatened or endangered species." OAR 635-415-030(1).

Evaluation species are species "identified for the purposes of evaluating the impacts of . . . development . . . or developing or evaluating programs to mitigate those impacts." OAR 635-415-005(7).

For habitat category 1, the mitigation goal is "no loss of habitat units or habitat value." OAR 635-415-030(1)(a). Habitat value means "the relative ability of a habitat to support fish and wildlife populations." OAR 635-415-005(11).

The standards require that the Oregon Department of Fish and Wildlife (ODFW) act to protect category 1 habitats by avoiding impacts to developments through alternatives or not authorizing the development if no alternative exists. OAR 635-415-030(1)(b).

Habitat category 2 is

"habitat of high value for an evaluation species and is scarce or becoming scarce . . .; or is habitat essential to achieving policies or population objectives specified in a species management plan of the Fish and Wildlife Commission; or is essential habitat of any sensitive species listed by the Fish and Wildlife Commission." OAR 615-415-030(2).

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The mitigation goal is no net loss of habitat units or habitat value. OAR 635-415-030(2)(a). The standards require that this goal be achieved by avoiding the impacts of development through alternatives; mitigating the impacts, if the impacts can not be avoided; or not authorizing the development, if mitigation is not possible. Mitigation must use reliable, in-kind and on-site methods. OAR 635-415-030(2)(b).

Habitat category 3 is habitat of high to medium value for evaluation species and is abundant. OAR 635-415-030(3). The mitigation goal is no net loss of habitat units or habitat value. OAR 635-415-030(3)(a). The standards require that this goal be achieved by avoiding the impacts of development through alternatives; mitigating the impacts, if the impacts can not be avoided; or not authorizing the development, if mitigation is not possible. Mitigation may use reliable, in-kind or out-of-kind, and on-site or off-site methods. OAR 635-415-030(3)(b).

Habitat category 4 is habitat of low value to fish and wildlife. OAR 635-415-030(4). The mitigation goal is to minimize the loss fish and wildlife habitat value or to conserve or enhance fish and wildlife habitat. OAR 635-415-030(4)(a). Under the standards, ODFW must recommend or require mitigation measures to achieve that goal. OAR 635-415-030(4)(b).

*The expected impacts:* Although, the CSCP site is located approximately one-quarter mile from the Columbia River and 450 feet from Messner Pond, construction activities would not adversely impact fish or aquatic habitat. Construction activities would not cause effluent or sediment to enter either the Columbia River or Messner Pond. No explosives or harmful substances would be placed in any waters as the result of the proposed project.

The CSCP site is habitat category 4. Loss of this habitat will not constitute a significant adverse impact on wildlife habitat or species populations. Moreover, the Applicant has agreed to plant an area of trees between Messner Pond and the project site. This will enhance adjacent wildlife habitat and mitigate for the habitat taken by the facility.

Construction and operation of the CSCP could have some adverse effect on wildlife in the surrounding area, but certain steps described below will be taken to mitigate these impacts. (ODFW report attached and incorporated in Staff Report Appendix A.5--ODOE Exhibit 2/Meehan.)

Three state sensitive wildlife species may be found near the site. These are American white pelicans (*Pelecanus erythrorhynchos*), Franklin's gull (*Larus pipixcan*) and bank swallows (*Riparia*

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ripaia). (ODFW report attached to Staff Report as Appendix A.5--  
ODOE Exhibit 2/Meehan.) The pelican and gull species were only  
observed at Messner Pond. The Messner Pond habitat is habitat  
category 2. It will not be significantly affected by the  
construction and operation of the CSCP. It will be protected from  
auditory and visual impacts of the project by a tree buffer.

A small nesting colony of bank swallows is located along the south  
bank of the Union Pacific Railroad mainline, about 75 feet north of  
the facility site. This area therefore constitutes a habitat  
category 2 area. (See ODFW Report attached as appendix A5 to ODOE  
staff report--ODOE Exhibit 2/Meehan.)

Project construction and operation will not remove or alter the  
bank swallows' nesting area. In addition, the Applicant has  
committed to place a temporary fence between the project  
construction area and the bank swallow nesting area to minimize  
disturbance of the nesting colony during construction. ODFW does  
not believe that the operation of the CSCP will cause the swallows  
to abandon the site. The Applicant has further committed to  
monitor the swallow's activity at the site during construction and  
operation. For these reasons, ODFW mitigation standards and goals  
will be satisfied.

The transmission corridor crosses both habitat category 3 and 4.  
Construction of the transmission line would not result in  
significant impact to fish and wildlife habitat. No wetlands are  
located within the proposed transmission line corridor, and  
construction of the line would not affect any wetland areas. The  
Applicant has committed to take appropriate mitigation measures to  
minimize electrocution hazards to raptors from the transmission  
line. The Applicant has also committed to limit the construction  
disturbance area along the electrical transmission-line corridor.  
To the extent practicable, the Applicant will leave vegetation root  
systems intact within the disturbed areas to allow for  
regeneration. However, any vegetation which exceeds 12 feet in  
height, and all Russian olive trees, will be removed within the  
corridor. The root systems of removed Russian olive trees will be  
treated to prevent regrowth. The Applicant has agreed to reseed  
this area with woody shrubs and perennial grass in consultation  
with ODFW. The Applicant has further committed to reseeding  
disturbed areas along the transmission-line corridor using an  
upland bird cover habitat area mix. These mitigation measures  
satisfy ODFW's mitigation standards and goals.

The effects on fish and wildlife from noise is considered under the  
noise standard and is not expected to be a problem.

The Applicant studied the impact of cooling tower drift on Messner  
Pond. (See PGE Exhibit 4/Walt--Appendix to ASC Exhibit P

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containing a report entitled Estimated Potential Cooling Tower Drift Effects on the Water Quality and Vegetation at Messner Pond, Beak Consultants, Inc., September 7, 1993). The study was based on a drift factor of 0.002 percent (resulting in a drift rate of about 1.5 gpm) carrying a low concentration of total dissolved solids (TDS) of 2,084 parts per million (based on 3.9 cycles of concentration in the cooling tower system). At these levels, the salts will be below that level that would tend to be harmful or toxic to plants or wildlife. ODOE has reviewed this study and concluded that the study's results are reasonably supported given the low drift rates and water chemistry.

Applicant subsequently proposed installing a zero discharge wastewater treatment system that would eliminate wastewater discharges to the Port of Morrow wastewater disposal system. Applicant would install this system in the event that DEQ does not approve the Port of Morrow wastewater system for disposal of the CSCP wastewater.

In order to implement the zero discharge system, Applicant would need to increase the cycles of concentration in the cooling tower system. This would result in an increase in the TDS concentration in the cooling water. As presently designed, Applicant proposes 10 cycles of concentration with a TDS concentration of approximately 6,000 parts per million. Applicant submitted two supplemental reports (Beak Consultants, letter reports dated January 4 and 5, 1994) addressing potential impacts from cooling tower drift at this higher TDS concentration. The reports noted the possibility of excess algae and plant growth from high nutrient loadings, and riparian plant stress from salt deposition. The reports indicate that these conclusions are based on conservative assumptions that are not likely to occur. However, Applicant has agreed to monitor Messner Pond and the surrounding vegetation both before and during the operation of the CSCP. Applicant has committed to full mitigation in the event that adverse impacts from cooling tower drift are identified. Applicant's agreement is contained in the January 5, 1994 revision to the December 10, 1993 Ecological Monitoring Program that has been approved by ODFW and ODOE. Further, the site certificate shall be conditioned on a requirement that drift rates and water chemistry will be as represented in the above referenced September 7, 1993 study.

A maximum of 6 cubic feet per second (cfs) of water will be used by the CSCP. This water will come from existing water supply wells. Most of these wells rely on aquifers that have connection with the Columbia River and thus affect the water budget of the river up to a maximum of 6 cfs. The Applicant evaluated the possible effects of this reduction of water in the Columbia River on fish. A 6 cfs withdrawal, even under worst case conditions, would result in only a three one-thousandth of one percent (0.003%) change in the flow

of the Columbia River. It would not be possible to demonstrate effects on fish populations from this incremental reduction in flow because the magnitude of the change is so small compared to variations caused by other factors. (PGE/Exhibit 29 (revised), Pizzimenti, at 5-6.)

We conclude that the CSCP can be constructed and operated in a manner consistent with the requirements of the ODFW Fish and Wildlife Mitigation Policy, as contained in OAR Chapter 635,

Division 415, with the implementation of mitigation measures specified below.

Conditions:

(1) Applicant shall implement the vegetation, fish and wildlife mitigation measures as contained in its ASC (Exhibits N, P and R), and the following mitigation conditions of ODFW:

a. The Applicant shall design and construct the electrical transmission towers and lines in a manner appropriate for the protection of raptors.

b. Applicant shall reseed areas of disturbed soil using the seed composition and planting procedure described in ASC, Exhibit N. Applicant shall reseed areas where Russian olive trees or tall vegetation is removed using a mix of woody shrubs and perennial grasses to be jointly determined by ODFW and PGE.

c. Applicant shall plant trees between the west side of Messner Pond and the facility site, as described in the ASC, to enhance wildlife habitat around Messner Pond and to provide a visual and auditory buffer between the facility site and Messner Pond. The Applicant shall maintain trees in healthy condition and replace trees that die or become unhealthy.

d. The following activities shall be prohibited within 100 feet of the wetland associated with Messner Pond: storage of hazardous materials, chemicals, fuels and lubricating oils; refueling of construction equipment; and performing concrete coating activities.

e. Applicant shall insure that notification is provided to the ODFW representative in charge of the Heppner District Office at least one week prior to the start of construction for the power plant and transmission lines.

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f. Applicant shall leave a 50 foot buffer between the edge of construction and the high water line of the wetland area associated with Messner Pond

g. Applicant shall erect a temporary fence and signs to protect the bank swallow nesting colony from disturbance during construction.

(2) Applicant shall, as part of the post-construction completion compliance status certification report required by Mandatory Condition No. 3, provide documentation of the following: a) cooling tower drift rate, including manufacturer specifications and guaranty, and actual field testing of the CSCP cooling tower drift rate; and b) water analysis of the cooling tower circulation water representative of identified actual source water and cycles of concentration.

(3) Applicant shall install, operate and maintain a continuous monitoring system to measure and record the total dissolved solids (TDS) concentration of the cooling tower/condenser circulating water.

(4) Applicant's cooling tower drift factor shall not exceed 0.002 percent of the circulation rate. Applicant shall not allow the total dissolved solids concentration in the cooling tower/condenser system to exceed 2,084 parts per million.

(5) Applicant shall fully comply with the terms and conditions of the December 10, 1993 Ecological Monitoring Program, as revised on January 5, 1994, and shall take such actions as deemed appropriate by ODOE, in consultation with ODFW, to fully mitigate adverse impacts to the Messner Pond area, including but not limited to reducing the cycles of concentration in the cooling tower system.

VI. E. 3. Threatened and Endangered Species Standard:  
OAR 345-22-070

OAR 345-22-070 provides:

"After consultation with appropriate state agencies, [EFSC] shall find that:

(a) The design, construction, operation and retirement of the proposed facility is consistent with any applicable conservation program adopted pursuant to ORS 496.172(3) [fish and wildlife] or ORS 564.105(3) [plants]; or

(b) If no conservation program applies, the facility does not have the potential to appreciably reduce the likelihood of the survival or recovery of any threatened or endangered species listed under ORS 496.172(2) [fish and wildlife] or ORS 564.105(2) [plants]."

Under this standard, either the facility must be consistent with applicable conservation programs or, if none apply, the facility must not have the potential to appreciably damage the survival or recovery of threatened or endangered species.

*Plants:* Based on the results of the field survey for plant species, no threatened or endangered plant species would be affected by the facility. Conservation programs for such species are administered by the Oregon Department of Agriculture (ODA). ODA reported no significant issues with the proposed facility. We therefore conclude that the facility will be consistent with the threatened and endangered plant species protections of ORS chapter 564 and OAR Chapter 564.

*Animals:* Field surveys and a database search found no listed threatened or endangered animal species at the plant site. (See PGE Exhibit 3/Walt--ASC Exhibit R.)

Two threatened and endangered wildlife species listed under state law are known or suspected to occur in the power plant site area: the bald eagle (Haliaeetus leucocephalis) and peregrin falcon (Falco peregrinus). (PGE Exhibit 3/Walt--ASC Exhibit R). The power plant, however, would not result in the loss of any habitat for these species.

Eagles and falcons have been sighted at Messner Pond, although not as part of the field survey. Their use of Messner Pond will likely be affected only during the increased noise and activity accompanying the construction of the project. Once construction is completed, and the tree buffer is in place, the plant is not expected to have any long term negative effect on the use of the pond by raptors.

The transmission line could pose a risk to birds with large wing spans through electrocution. The lines, however, shall be designed and constructed to reduce the chance of electrocution pursuant to conditions set forth pursuant to the fish and wildlife standard.

Wildlife conservation programs are administered by the ODFW. The ODFW reported that the proposed project complies with the requirements of ORS chapter 495 and OAR Chapter 635, Division 100.

(ODFW report attached to Staff Report as Appendix A.5--ODOE Exhibit 2/Meehan.)

Currently, spring/summer and fall Snake River populations of chinook salmon (Oncorhynchus tshawytscha) are listed by the Oregon Department of Fish and Wildlife as threatened. These species pass through the Columbia River adjacent to the CSCP site during adult and juvenile migration. Fall Snake River chinook salmon may also rear in the John Day pool. (PGE/Exhibit 29 (revised), Pizzimenti, at 4.) A maximum of 6 cubic feet per second (cfs) of water will be used by the CSCP. This water will come from existing water supply wells. Most of these wells rely on aquifers that have connection with the Columbia River and thus affect the water budget of the river up to a maximum of 6 cfs.

The Applicant submitted evidence during the contested case regarding the proposed CSCP's potential impact on spring/summer and fall Snake River chinook salmon. A 6 cfs withdrawal, even under worst case conditions, would result in only a three one-thousandth of one percent (0.003%) change in the flow of the Columbia River and the John Day pool. It would not be possible to demonstrate effects on these fish populations from this incremental reduction in flow because the magnitude of the change is so small compared to variations caused by other factors. The incremental reduction in flow due to the CSCP would be negligible, and would have no effect on the survival or recovery of these threatened fish species (PGE/Exhibit 29 (revised), Pizzimenti, at 5-6 and 8.)

We conclude that this standard is satisfied with regards to plants and wildlife. No additional conditions are required to ensure compliance with this standard beyond those specified pursuant to the fish and wildlife standard.

VI. E. 4. Scenic and Aesthetic Standard: OAR 345-22-080

OAR 345-22-080 provides:

"The design, construction, operation and retirement of the facility, taking into account mitigation, will not result in significant adverse impact to scenic and aesthetic values identified as significant or important in the acknowledged local land use plan for the site or its vicinity."

The Applicant examined the area within a 30-mile radius of the site for potential impacts on scenic and aesthetic resources. This area extends through parts of Morrow, Umatilla and Gilliam counties. The Applicant reviewed land use plans and consulted with land use agencies in each of these three counties. The Applicant found no

scenic or aesthetic resources identified as significant or important from which the proposed facilities would be visible. 1  
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Moreover, the Applicant has committed to mitigate visual impacts by painting building structures and the exhaust stacks in neutral shades; minimizing exterior lighting and directing lights into the facility site; and establishing landscape screening of native vegetation along the perimeter of the proposed power plant site. 3  
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We conclude that the proposed CSCP facilities, with the incorporation of the proposed mitigation measures, will not result in a significant adverse impact to any locally identified important or significant scenic and aesthetic values. 9  
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Conditions: 14  
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Applicant shall implement and fulfill the mitigation proposals as contained in the ASC, including site perimeter landscaping with appropriate vegetation; painting building structures and the exhaust stacks in neutral shades; minimizing exterior lighting and directing lights into the facility site; and establishing landscape screening along the perimeter of the proposed power plant site. 16  
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VI. E. 5. Historic, Cultural, and Archaeological Standard: 24  
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OAR 345-22-090 provides:

"The construction, operation and retirement of the facility, taking into account mitigation, will:

1) Not result in significant adverse impacts to historic, cultural or archaeological resources which have been listed on, or have been determined by the State Historic Preservation Office to be eligible for listing on the National Register for Historic Places or the Oregon State Register of Historic Properties;

and

2) Comply with applicable state laws regarding Indian graves, removal of historic materials and archaeological objects and sites."

Both a literature search and a site survey were undertaken to identify historic, archaeological or cultural resources on the

power plant site and the transmission corridor. No resources of any significance were identified.

The survey did find three artifacts (an arrowhead, a core and a flaked cobble) dispersed along the berm that supports the Union Pacific Railroad tracks near the northern end of the power plant site. This area is not expected to be disturbed by the construction of the plant. These artifacts are considered "isolates" under the criteria of the State Historical Preservation Office (SHPO). They are not of sufficient significance to make the site eligible for protection. However, should construction of the proposed facilities disturb or affect the area on which the artifacts were found, that area should be examined by a qualified archaeologist pursuant to the requirements of ORS Chapters 358 and 390.

SHPO acknowledged the Applicant's survey and stated that there are no issues raised by the application that it considers significant. (SHPO memorandum attached to Staff Report as Exhibit A.7--ODOE Exhibit 2/Meehan.)

It is reasonable to place some conditions on the site certificate regarding the location where the artifacts were found and if any resources are covered during construction. In addition, pursuant to subsection (2) of this standard, the Applicant shall be required to comply with applicable state laws regarding Indian graves, removal of historic materials and archaeological objects and sites.

We conclude that the construction, operation and retirement of the proposed facilities will not result in a significant adverse impact to historic, cultural, or archaeological resources based on the literature review, the site survey, the SHPO review and the lack of known historic, cultural, or archaeological resources within the project area.

Conditions:

(1) If the area in which artifacts were found is to be disturbed by construction or operation, the Applicant shall obtain the recommendation of SHPO as to any clearance requirements for the affected area and shall comply with all applicable regulations and laws relating to historic, cultural, and archaeological resources.

(2) If historic, cultural or archaeological resources are found during project construction or construction-related activities, the Applicant shall stop all work in the vicinity of the find and consult with the SHPO. The Applicant shall not restart work in the area of the find until SHPO has

concluded that the Applicant has identified actions to minimize or avoid further impact.

(3) Applicant shall comply with all applicable state laws regarding Indian graves, removal of historic materials and archaeological objects and sites.

VI. E. 6. Recreation Standard: OAR 345-22-100

OAR 345-22-100 provides, in relevant part, that:

"The design, construction, and operation of a facility, taking into account mitigation, will not result in a significant adverse impact to important recreational opportunities in the impact area. Factors which will be considered in judging the importance of a recreational opportunity include:

- (a) Any special designation or management of the location,
- (b) The degree of demand,
- (c) Uniqueness,
- (d) Outstanding or unusual qualities,
- (e) Availability or rareness, and
- (f) Irreplaceability or irretrievability of the opportunity."

The Applicant conducted a survey of recreational facilities and opportunities within a 5-mile radius of the proposed site. The survey considered areas for hunting, fishing, picnicking, swimming, boating, and hiking. The Oregon Department of Parks and Recreation (ODPR) reviewed the application and survey and found no significant issues relating to recreation. (See ODPR report attached to Staff Report as Appendix A.8--ODOE Exhibit 2/Meehan.) With the exception of Messner Pond, the areas identified in the survey are more than one mile from the plant site and there are already industrial, commercial and transportation facilities between the plant site and these recreation sites. As discussed under the aesthetics and noise standards, none of these recreation areas are likely to be adversely affected by the addition of another facility within the industrial park.

Messner Pond is approximately 450 feet east of the proposed power plant site. Messner Pond and its associated wetlands consist of approximately 50 acres. Messner Pond is occasionally used for fishing, hiking, wildlife viewing and bird watching. Messner Pond was originally an uplands area that was inundated following completion of the John Day Dam. A paved portion of U.S.30 (Old Columbia River Highway) runs into and lies on the bottom of Messner Pond. The Port of Morrow and the Oregon Department of Fish and

Wildlife are cooperating in protecting Messner Pond and its associated wetlands from development activities within the Port of Morrow Industrial Park. As discussed under the fish and wildlife standard, Messner Pond is not expected to be adversely affected by cooling tower drift or from other air emissions from the plant.

The closest proposed facility to Messner Pond will be a runoff retention pond. It will be about 500 feet from the western edge of the pond. The next closest structure will be one of the combustion turbine generator buildings. It will be about 600 feet from the western edge of the pond. The Applicant has agreed to plant a buffer of trees between the site and the existing vegetation along the western edge of the pond. This proposed buffer and the distance between the site and the pond should significantly reduce impacts related to noise, light, glare and increased activity. Conditions regarding this buffer are adequately addressed in the section addressing the fish and wildlife standard. Based on the limited recreational opportunities and use of Messner Pond, the pond is not considered an important recreational area.

We conclude that the recreation areas, other than Messner Pond, are not close enough to be significantly affected by the project. We also conclude that the tree buffer and the distance between the site and the pond should prevent significant adverse impacts to recreational opportunities at Messner Pond.

VI. E. 7. Socio-Economic Impact Standard: OAR 345-22-110

OAR 345-22-110 provides:

"The construction and operation of the facility, taking into account mitigation, will not result in significant adverse impact to the ability of communities within the study area to provide essential governmental services, including sewers and sewage treatment, water, stormwater drainage, solid waste management, libraries, police and fire protection, health care and schools."

Under this standard, we review the effect of the proposed plant on the local community's ability to provide for government services.

Project construction would require a work force of about 200 people. The Applicant reports that approximately 50 members of the construction workforce are likely to be employed at site for a sufficiently long term to justify relocating their families to the area. The Applicant expects that the facility will have a permanent workforce of 27 employees. The average household in Oregon contains 2.5 persons. Using this average, we can expect a

total increase of no more than 275 temporary residents and 68 permanent additional residents.

These numbers represent a worst case scenario of all workers that would be hired from out of the area. The numbers of new residents will decrease should local residents be hired. Assuming that all CSCP employees are hired from out of the area and are dispersed in a pattern similar to that of those employed at the Applicant's Boardman Coal plant, the Applicant expects its workforce to increase population as follows:

	percent increase	
	temporary	permanent
Morrow County	2.0	0.5
Boardman	5.0	1.2
Irrigon	4.7	1.2
Umatilla County	0.2	0.04
Hermiston	0.8	0.2

VI. E. 7. a. Schools

The average household in Oregon contains 0.66 school aged children. Relocations into the area to fill these positions may affect any of the four school districts in the area. Assuming that these employees follow the same dispersal pattern as the Boardman Coal Plant, it is likely that the CSCP will affect the school districts as follow:

Morrow County School District has a enrollment of 1578 students<sup>8</sup> and may receive 20 additional students on a temporary basis from families relocating during the construction period and 11 additional students from families of permanent plant employees.

Hermiston School District has 2,913 students and is expected to receive 10 temporary and 6 permanent students.

Umatilla School District with 1024 students and Stanfield School District with 641 students will likely receive 3 temporary students and 1 permanent student.

The projected increase related to growth in these districts is small relative to overall enrollment. However, all schools in the

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<sup>8</sup> All enrollment numbers were obtained by applicant from the Oregon Department of Education and represent enrollment as of October 1, 1993.



Morrow County School District are at or exceed capacity and all schools, other than the high school are at or beyond capacity in the Hermiston School District. Both districts are seeking in March, 1994 approval of a bond issuance to fund future capital construction.

School capacity, however, can also be determined by another measure which is student/teacher ratio. Each of these districts have student/teacher ratios that are approximately equal to or below the state average for schools of similar size. The enrollment increases that may result from the relocations into the districts caused by the construction and operation of the CSCP facility are not likely to adversely affect these favorable student/teacher ratios.

Based on the foregoing, we conclude that the CSCP will not have a significant adverse impact on schools.

VI. E. 7. b. Libraries

Libraries are located in Hermiston, Umatilla and Boardman. The Hermiston library is new and has plans to expand. The Umatilla library has previously handled other influxes in population and does not expect a problem with any influx resulting from the CSCP. For the Boardman and Heppner libraries, the possible population increases are consistent with the growth projected by their short and long term plans.

We conclude that the CSCP is not likely to cause a significant adverse impact to libraries.

VI. E. 7. c. Water supply and wastewater

The Port of Morrow has adequate currently permitted water supplies for existing customers. The Port also has an agreement with the City of Boardman to supply additional water, which the Port can then provide to any of its water customers.

The City Manager of the City of Boardman states that the City of Boardman and the Port of Morrow have a cooperative agreement regarding water supply, industrial wastewater disposal and sanitary wastewater disposal. The city will provide sanitary wastewater disposal capacity to the Port of Morrow as needed. The city is also willing to increase both the supply and capacities of its systems to meet future requirements of the Port of Morrow should they be necessary for either the CSCP or other industrial developments.

The Port's industrial wastewater system is under permit from DEQ. DEQ is considering whether the system is adequate to accommodate the added wastewater from the CSCP. If DEQ determines that the Port's system cannot accommodate this added wastewater, the Applicant has committed to install an on-site, zero-discharge wastewater treatment system. This system would not require the use of either the Port's or the City of Boardman's facilities. Water resources, industrial and sanitary wastewater issues are discussed under the third party standard and made subject to certain conditions adequate to address any concerns pertinent to this standard (See IV. C. 1. b.).

We conclude that there will be no significant adverse impacts to the Port of Morrow and City of Boardman's water and wastewater facilities from the CSCP facility in light of the foregoing facts and conditions imposed under the third party standard.

VI. E. 7. d. Stormwater

The Applicant has obtained permits from Morrow County for diverting stormwater runoff from the CSCP site into the Port of Morrow irrigation/waste system. The system has capacity to utilize this runoff water. The runoff from the CSCP will replace well water or river water currently used for crop irrigation.

The stormwater runoff will be diverted into a lined sedimentation pond located on site. From there it will be pumped to a holding pond recently constructed by the Port of Morrow. The site's estimated annual runoff of 4.3 million gallons represents only 3 percent of the pond's holding capacity.

We therefore conclude that the CSCP will not cause an adverse effect on local stormwater disposal systems.

VI. E. 7. e. Solid waste

Nonhazardous solid waste from residences in Morrow County is shipped to the Finley Butte Landfill. If population increases because of CSCP to the maximum extent estimated and all solid waste produced by this increase were shipped to this landfill, then the solid waste going to this landfill would increase by no more than 0.03 percent. The landfill has an expected useful life of 50-200 years. Additional land is available for expansion. Therefore, we conclude that there is adequate capacity to handle increases to residential solid waste.

Applicant has committed to installing and operating a zero discharge wastewater treatment system in the event that the Port of

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Morrow does not receive DEQ approval for the disposal of the CSCP wastewater. The zero discharge system, if installed, would generate approximately 10 tons per day of dewatered sludge. This sludge would require disposal in an approved landfill. The sludge would consist of sediments and mineral salts that are removed from the circulating water in the cooling tower and boiler water treatment systems.

The Columbia Ridge Landfill and Recycling Center, located near Arlington, Oregon, has adequate capacity to receive and dispose of the CSCP sludge waste for a period in excess of 50 years. (Letter from Applicant to ODOE dated January 6, 1994). The sludge material must be tested to demonstrate that it is not hazardous material. Water treatment sludges from similar facilities have satisfied the non-hazardous criteria. ODOE has reviewed the water quality data from the various water sources for the CSCP. The water treatment sludges from the CSCP would most likely be determined to be non-hazardous based on Toxicity Characteristic Leaching Procedure (TCLP) testing which is required by DEQ.

The site certificate shall be conditioned to require that the Applicant conduct regular testing using the TCLP method and comply with all applicable laws and regulations governing generation, storage, transportation, and disposal of solid waste.

We therefore conclude that the CSCP will not cause significant adverse impact on the management of solid waste disposal services.

Condition:

Applicant shall, at a minimum, test its sludge waste and maintain records as required by DEQ and the landfill operator pursuant to applicable permits and licenses, including testing under the Toxicity Characteristic Leaching Procedure (TCLP), or equivalent per 40 CFR part 262.11, Hazardous Waste Determination.

VI. E. 7. f. Emergency services

The City of Boardman and the Boardman Rural Fire District are capable, trained and experienced in dealing with emergency conditions at industrial plants in the surrounding areas. All personnel of these two fire agencies have been trained to respond to hazardous material emergencies. Also, the city has cooperative agreements with other fire districts in the area. In addition, the Boardman coal plant maintains a 45-member fire brigade. Each member is qualified to fight industrial structure fires. In the event of a large fire at the CSCP facility, the Boardman coal

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plant's fire brigade would be made available to the City of Boardman volunteer fire department.

The State Fire Marshal states that as part of its review, evaluation and permitting of the proposed project, the State Fire Marshal will evaluate the capability of local fire protection agencies to respond to emergencies that involve hazardous, toxic and flammable materials. (See report attached to Staff Report as Appendix A.9--ODOE Exhibit 2/Meehan)

That review has not been completed. It is possible that the State Fire Marshall may require that local fire departments upgrade their training or equipment in order to respond to emergencies at the site. If so, the cost should be borne by the Applicant. A condition addressing this possibility is therefore appropriate.

There are four police services in the impact area. Each of these four police services experienced no adverse impact from the influx of 500 workers associated with the recent construction of the Pacific Gas Transmission interstate pipeline. Because the earlier influx did not adversely impact the provision of police services in the area, no adverse impact is expected from the CSCP either. Nor do we find anything involved with the CSCP that would likely have any appreciable impact on the provision of police services in the surrounding area.

We conclude that the CSCP will not cause any significant adverse impact on local emergency services, subject to the following condition.

Condition:

The Applicant shall reimburse the Boardman Fire Department for reasonable costs for new training and equipment which is specifically needed, as determined by the State Fire Marshall, to respond to an emergency at the CSCP.

VI. E. 7. g. Health care

The Hermiston Good Shepherd Hospital is the largest health care facility and the only hospital within the impact area. Its beds are, on average filled to only 41 percent of capacity. Two health care clinics within the impact area have the capacity to handle an additional 500 patients each month. We therefore conclude that the ability to provide health care in the area will not be adversely impacted by the CSCP.

VI. E. 7. h. Roadways

The CSCP and accompanying population increases will cause some increase in usage on roadways, especially between the site and nearby I-84 interchanges. The Morrow County Court which EFSC appointed as a Special Advisory Group, however, reported these impacts would not be so significant as to require that they be addressed in this process.

A computer model was run on the likely effect on road conditions of the cooling tower emissions. The model determined that fogging was likely to occur about 45 hours per year on roadways immediately adjacent to plant site and only 2 hours per year on local roadways within 1500 meters. It predicted that the cooling tower would not contribute to icing on the roadways. (See Potential Icing/Fogging Impacts from the Coyote Springs Cogeneration Facility Cooling Tower (Chester Environmental, September 1993) included in the ASC, Exhibit U Appendix--PGE Exhibit 4/Walt.) Based on these predictions from the computer modelling, no significant adverse fogging and icing conditions from the cooling tower are expected. Moreover, the Applicant commits to work with the Port to mitigate any conditions that create traffic hazards. It is expected that mitigation would be in the form of hazard signs, lighting and sanding of the roadways, and would not involve curtailment of operations.

We conclude that there will likely be no significant adverse impact on roadways that can not be adequately mitigated. We further conclude that there are likely to be no significant adverse impacts on community infrastructure and governmental services from the CSCP.

Conditions:

Applicant shall mitigate all fogging and icing impacts caused by CSCP to off-site roadways that create hazardous traffic conditions. Mitigation measures, if needed, shall be undertaken and implemented in consultation with the Port of Morrow and other responsible local agencies, and may include, but are not limited to: hazard warning signs, lighting and sanding.

We conclude that there are likely to be no significant adverse impacts on community infrastructure and government services caused by the CSCP.

VI. E. 8. Waste Minimization Standard: OAR 345-22-120

OAR 345-22-120 provides:

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"To the extent reasonably practicable, the Applicant shall reduce generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, recycle and reuse such wastes."

VI. E. 8. a. Solid waste

The Applicant has committed to implement a program for waste reduction and recycling. Given the nature of the natural gas fuel used by the facility, the facility will generate very little residual solid waste from the combustion process.

Construction of the facility will result in a substantial amount of waste packing materials and wood, piping and steel scrap. Applicant has committed to recycle these solid wastes to the extent reasonable and practical.

During operation, the facility is expected to generate used batteries. Used batteries will be shipped to vendor recycling facilities to minimize waste.

The plant will also generate hazardous waste in the form of oily rags and oil absorbent materials from the clean up of oil spills. The Applicant expects to minimize the amount of clean ups by relying on qualified and properly trained personnel.

The plant will also generate spent ion exchange resins used for demineralizing water. The Applicant intends to recycle these spent resins.

The Applicant also intends to recycle waste from the facility's office, including paper products, aluminum cans, glass and plastics to the extent practical. (See PGE Exhibit 3/Walt--ASC Exhibit V.)

As previously discussed (sections III. C.1.b. and IV. E.7.c.), Applicant has proposed a zero discharge wastewater treatment system as an alternative to the proposed Port of Morrow land application disposal method. The zero discharge system would remove suspended sediments and dissolved solids from the cooling tower and boiler water treatment systems. This would allow for the recycling and reuse of 98 percent of the water that would otherwise need to be discharged as wastewater. The sediments and mineral salts removed from the wastewater stream would be dewatered and trucked to an approved landfill for disposal. The Applicant estimates that the CSCP would produce about 10 tons of solid waste sludge each day it operates. However, the impact on landfill capacity and related resources would be offset by the significant reduction in the

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amount of water the CSCP would use and by eliminating the need to dispose of wastewater.

We conclude that the Applicant's commitment to implement programs to reduce and recycle solid waste is adequate given the types and quantities of hazardous and nonhazardous waste expected from the construction and operation of this type of facility.

Conditions:

Applicant shall minimize and recycle solid wastes generated during construction and operation whenever practical, including:

- a) packing materials, wood, piping and steel scrap during construction;
- b) spent ion exchange resins used for demineralizing water during plant operation;
- c) waste from the facility's office, including paper products, aluminum cans, glass and plastics.

VI. E. 8. b. Industrial wastewater

The Applicant proposes to discharge the plant's total industrial wastewater volume to the Port of Morrow's existing industrial wastewater disposal system. The system disposes of wastewater by reusing it for irrigation under a DEQ permit. In general, DEQ considers that the reuse of process wastewater for irrigation purposes is both reasonable and beneficial.

The plant cooling system has a substantial demand for water to makeup for evaporation of water during cooling. The makeup water requirement for the CSCP, when it operates with a 761 gpm wastewater discharge rate, is 2,691 gallons per minute. By reducing the cooling tower make-up water required, the plant would reduce the amount of industrial wastewater. The Applicant was asked to consider all practicable and reasonable means to conserve water, balancing cost, environmental and regulatory considerations, including other cooling processes for dissipating waste heat.

The Applicant conducted a study of alternative methods of condenser cooling systems. (Coyote Springs, Comparison of Cooling Systems (Stone & Webster Engineering Corp., September 30, 1993).) The Applicant concluded that it was not reasonably practicable to utilize a method other than the proposed wet evaporation (cooling tower) method of cooling. The conclusion was based on the relative costs of the various methods, their feasibility, the solid wastes

generated, the resources conserved and the waste minimized. Applicant's selection of the cooling tower method reflects a reasoned choice among the alternatives with due regard for the water resource.

The Applicant has stated it will reevaluate alternatives for reduction of its makeup water requirement if construction of either phase of the CSCP is delayed beyond two years. A condition requiring such reevaluation will be imposed.

The zero discharge wastewater treatment system proposed as an alternative to land application would both reduce facility water use and eliminate wastewater discharge. We do not, however, require a zero discharge system as a condition of the site certificate because: (1) the zero discharge system has a high capital and operating cost; and (2) the proposed land application system would be a beneficial reuse of the wastewater if it can be approved by DEQ.

We conclude that Applicant's efforts at wastewater reduction and reuse through the Port of Morrow's land application disposal system or by installation of an on-site, zero-discharge system are adequate.

We further conclude that the waste minimization standard is satisfied.

Condition:

If commencement of construction of either phase of the proposed CSCP is delayed beyond two years from the date the site certificate is executed, Applicant shall submit, prior to commencement of construction of that phase, a revised cooling system evaluation that addresses the then available technologies, their costs, savings and benefits.

VI. E. 9. Retirement Standard: OAR 345-22-130

OAR 345-22-130 provides:

"The site, taking into account mitigation, can be restored adequately to a useful condition following facility retirement."

The theoretical life of the proposed facility is at least 50 years, assuming proper repair and replacement. The assumed economic lifetime of the project is 25 years. The Applicant estimates that "depending on the scope of the decommissioning or facility removal work and the nature of the next use of the site, the cost of

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decommissioning is not expected to exceed \$5,000,000 (\$ 1993)." This cost could be reduced by the salvage value of facility equipment. (PGE Exhibit 3/Walt--ASC Exhibit Z).

The assumed best use for the site following removal of the proposed facility would be as an industrial site within the existing Port of Morrow Industrial Park. The site has already been disturbed by extensive aggregate extraction and will have to be filled and leveled for use by the proposed facility. Restoration for use as an industrial site is a reasonable and achievable goal. However, the actual goal would need to be consistent with whatever agreements are reached between the Applicant and the Port of Morrow regarding site restoration upon lease termination.

Applicant indicates that it has adequate financial resources to retire the facility and restore the site. (PGE Exhibit 3/Walt--ASC Exhibit Z.) This position is supported by the assessment of Applicant's financial capability under the financial assurance standard.

We conclude that the site can be restored to useful condition following retirement.

Conditions:

Upon retirement of the facility, the Applicant shall restore the CSCP site to a useful condition.

VI. F. Other regulatory standards and authorities

Under ORS 469.503(1)(b), EFSC must determine that the facility complies with all other Oregon statutes and rules applicable to the issuance of a site certificate for the proposed facility with certain exceptions. In reviewing compliance with specific EFSC standards, we have determined that the facility is in compliance with various other statutes and rules. In this section, we focus on those authorities not previously addressed.

VI. F. 1. Noise

ORS Chapter 467 authorizes DEQ to adopt regulations and standards to control noise sources and emissions and to enforce compliance with those rules. The noise control regulations adopted by DEQ are contained in OAR Chapter 340, Division 35. Because of budget constraints, DEQ does not routinely administer a noise control program, nor does it routinely enforce these regulations.

EFSC, however, applies and enforces DEQ's noise standards for energy facilities under its jurisdiction. Noise impacts related to the siting of energy facilities can be a significant area of potential public concern and should be addressed in the siting process.

The proposed CSCP is a new industrial noise source located on a previously unused industrial site. The applicable DEQ regulation is OAR 340-35-035. It provides both a noise limit and a noise standard. The noise limit provides an upper limit on the noise levels produced by a proposed facility that impact local receptors. The standard is a nondegradation standard. It limits the increase in ambient noise levels at specified local sensitive receptors, such as residences, to no more than 10 dBAs (A-weighted decibels).

The Applicant submitted a noise analysis for the proposed CSCP prepared by a registered acoustical engineer. The noise analysis report concluded that the project, as proposed, would not exceed any DEQ standards and would result in only insignificant increases in local ambient sound levels. As part of the analysis, the acoustical engineer monitored and measured existing noise levels at six sites surrounding the proposed CSCP power plant site: three residential sites within the City of Boardman, closest to the proposed facility; two industrial office sites within the Port of Morrow; and a site at the western edge of Messner Pond. The measured existing sound levels reflect the industrial character of the Port of Morrow and the proximity of I-84.

In order to determine noise level impacts that would result from operation of the proposed CSCP, the expected sound levels from the power plant were computer-modeled to predict the resultant sound levels at the six receptor sites. This analysis indicated that the noise from the CSCP would be in compliance with the DEQ noise limit. The predicted project-related noise levels at each of the residential sites are significantly below the existing noise levels at these sites. The relatively low predicted impacts on the residential receptors is largely because of the 3,200 to 4,800 foot distance between these sites and the proposed power plant site. Although not required by the DEQ regulations, the predicted impacts at the industrial office sites were also below the DEQ noise limit.

There are no applicable DEQ noise limits or standards for wildlife habitat such as Messner Pond. Therefore, the analysis used an Oregon Department of Transportation (ODOT) in-house wildlife noise criterion that is intended to minimize disruption of wildlife. The modeling analysis of noise impacts on Messner Pond indicated that project-related operational noises would not exceed the ODOT criteria.

The report also addressed the standard that limits sound level increases to no more than 10 dBA over existing levels. To do this, the projected sound levels from the proposed facility were added to the existing sound levels at each of the receptor sites. The combined sound levels showed no significant increase. No increase was shown for two of the residential sites, and a 1.2 dBA increase was shown at the third residential site. This compares with the DEQ degradation standard that allows an increase of up to 10 dBA. The predicted increases in sound levels at the two industrial office sites were below the threshold limits of perception.

As a general rule, humans can perceive a 3.0 dBA increase in sound levels in a quiet environment. In a noisy environment, such as that which exists in the area surrounding the proposed CSCP facility, a 6.0 dBA increase in sound levels is considered to be perceptually significant.

The proposed CSCP power plant will be equipped with pressure-release safety valves on its steam system. They will be periodically vented during start up, shutdown, and upset conditions. The Applicant proposes to install silencers on these valves to minimize noise-level impacts to surrounding areas.

Based on Applicant's commitment to design and operate the proposed facility so as to meet the noise standards and limits of OAR Chapter 340, Division 35, and based on the noise analysis report documenting the ability of CSCP to meet those standards and limits, the CSCP is capable of meeting the noise regulation standards and limits. In order to insure that the noise impact is kept to a minimum, we shall require ongoing compliance with the noise standard, the use of silencers on safety valves and an acoustical study following start up.

We conclude that the operation of the CSCP plant should cause no significant adverse impact on the noise level of the surrounding area, subject to the following conditions.

Conditions:

(1) Applicant shall comply with the noise standards and limits contained in OAR 340-35-035 (1)(b)(B).

(2) Applicant shall, by facility design and the installation of silencers and/or other devices, limit noise emissions from the facility's pressure-relief safety valves such that sound levels attributable to their use do not exceed the limits contained in OAR 340-35-035 (1)(b)(B).

(3) Applicant shall retain a registered acoustical consultant to conduct noise monitoring to determine compliance with

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conditions (1) and (2) above and provide a report of that monitoring to ODOE within 120 days after beginning commercial operation of the proposed facility.

VI. F. 2. Other state and local regulations within EFSC's jurisdiction.

Other than as discussed in examining compliance with the various EFSC standards, no other non-exempted state statutory or regulatory programs are applicable to the siting decision regarding CSCP.

The Oregon Department of Transportation (ODOT) regulates construction operations and other activities that affect state highway rights-of-way. ORS Chapter 818 and OAR Chapter 743, Division 82. The CSCP as proposed involves no facilities that would be constructed in or affect state highway rights-of-way.

The Oregon Division of State Lands (ODSL) regulates fill and removal activities in waters of the state, including wetland areas. ORS Chapter 196 and OAR Chapter 141, Division 85. Because the CSCP project does not involve construction in nor disturbance of waters of the state, no ODSL fill or removal permit will be required for the proposed project.

ODSL also regulates land ownership and activities involving state-owned lands. ORS Chapters 274 and 758, and OAR Chapter 141, Division 83. Because the CSCP project does not involve state-owned lands, it requires no ODSL permits.

The Oregon Department of Forestry indicated that the project did not involve state forest lands or forestry practices. Therefore, no Department of Forestry permitting requirements or rules are applicable to the proposed project. (See Staff Report Appendix A.13--ODOE Exhibit 2/Meehan.)

Oregon Department of Parks and Recreation (ODPR) manages and administers the regulation of state parks. ORS Chapter 390 and OAR Chapter 736. ODPR found that the project raised no significant concerns. (See ODOE Exhibit 2/Meehan--Staff Report Appendix A.8).

All county and city ordinances that relate to the CSCP have been satisfied as discussed in the preceding sections of this Order or are not subject to EFSC jurisdiction.

We conclude that the all state and local regulations, other than those exempted from EFSC jurisdiction are satisfied either unconditionally or subject to the conditions imposed by this Order.

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VI. F. 3. State and local regulations exempted from EFSC's jurisdiction. 1  
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Under ORS chapter 469, EFSC is not responsible nor does it have jurisdiction for determining compliance with federally delegated regulatory programs or with state regulatory programs that address design-specific construction or operating standards and practices that do not relate to specific siting requirements of the proposed facility. 4  
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We conclude that the following programs are exempt from EFSC jurisdiction because they are federally delegated programs: 10  
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(1) the Air Contaminant Discharge Permit program administered by DEQ, which includes the federally delegated new source review requirements of the Clean Air Act and the Prevention of Significant Deterioration (PSD) program. This authority is in ORS Chapter 468A; OAR Chapter 340, Divisions 20, 21, 22, 25, and 31. 13  
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(2) the National Pollutant Discharge Elimination System (NPDES), administered by DEQ - Water Quality Division and Morrow County, which regulates and permits stormwater runoff from the proposed project site; 20  
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(3) the program regulating the design, operation, monitoring and removal of underground storage tanks that contain certain toxic and hazardous materials, including petroleum products, administered by DEQ, under ORS Chapter 466; OAR Chapter 340, Division 150. 25  
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We conclude that, in regards to CSCP application, the following state regulatory programs are exempt from EFSC jurisdiction because the programs address design-specific construction or operating standards and practices not related to specific siting requirements of the proposed facility: 31  
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(1) the Oil Spill Contingency and Prevention Plan program, administered by DEQ Water Quality Division under ORS 468B and OAR Chapter 340, Division 47, which regulates the transport, storage, handling and spill control and prevention of petroleum products; 37  
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(2) regulations of building, structure design and construction practices by the Building Code Agency under ORS Chapters 447, 455, 460, 476, 479, and 480; OAR Chapter 918, Divisions 225, 290, 301, 302, 400, 440, 460, 750, 770, and 780; 43  
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(3) various programs addressing fire protection and fire safety and the storage, use, handling, and emergency response for hazardous materials and community right to know laws for hazardous materials, administered by the Oregon State Fire Marshal's Office, under ORS Chapters 453, 476, and 480; OAR Chapter 837, Divisions 40 and 90;

(4) the program addressing design and safety standards for natural gas pipelines and electric transmission lines administered by the Oregon Public Utilities Commission, Safety Section under ORS Chapter 757; OAR Chapter 860, Division 24;

(5) regulations on the size and weight of truck loads on state and federal highways administered by the Oregon Department of Transportation under ORS Chapter 818; OAR Chapter 743, Division 82;

(6) the program regulating the possession, use and transfer of radioactive materials administered by the Oregon State Health Division (OSHD) under ORS Chapter 453; OAR Chapter 333, Divisions 100-119;

(7) regulations of domestic water supply systems regarding potability administered by OSHD under ORS Chapter 448.

VII. DISCUSSION, ADDITIONAL FINDINGS OF FACTS, CONCLUSIONS OF LAW, CONDITIONS AND REQUIREMENTS INVOLVING OTHER ASPECTS OF EFSC AUTHORITY

In addition to determining that the Applicant for a site certificate has satisfied the statutory and administrative standards, EFSC must consider additional matters in the site certificate. Specifically, EFSC is authorized or required to impose on the Applicant through the site certificate process certain mandatory conditions, monitoring requirements and warranties as discussed below. EFSC is also authorized to review the proposal and impose additional conditions to protect the public health and safety where necessary.

VII. A. Mandatory conditions

The following mandatory conditions proposed for inclusion in the site certificate are either specifically required by OAR 345-27-020 or are appropriate under OAR 345-27-020(4)(o) to address project and site-specific conditions and requirements. These mandatory conditions shall apply in addition to and should be read together with, the specific additional conditions provided in this site certificate to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22, 23 and 24.

- (1) Applicant shall comply with all applicable laws, regulations and ordinances of state, federal and local authorities, including all conditions contained in any permits, licenses and approvals issued by such authorities, and Applicant shall comply with the conditions of the site certificate. The duty of Applicant to comply applies notwithstanding a failure or oversight in the proposed order or site certificate to identify all applicable laws, regulations and ordinances. Applicant shall design, construct, operate and retire the facility in accordance with the requirements of the Oregon Energy Facility Siting Statute, ORS 469.300 et seq., and EFSC rules applicable to the facility. 1  
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- (2) Applicant shall design, permit, construct, operate and retire the CSCP as described in the ASC, in EFSC proceedings and in documents and representations made by PGE in support of the application for site certificate, as modified or amended by the site certificate. 15  
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- (3) At construction completion and no later than 90 days following the beginning of commercial operation, Applicant shall submit to EFSC a written report certified by an Oregon registered structural engineer documenting the following: (a) facility construction consistent with the project description and operating statement of the ASC, as modified or amended by the site certificate; (b) fulfillment of and compliance with all design and construction-related conditions of the site certificate, including all applicable mitigation measures; and (c) compliance with or statement as to the ability to comply with all applicable state, federal and local permits, licenses and approvals issued for the project, including, but not limited to, compliance with Oregon Building Codes Agency (BCA) building permits and Oregon Public Utility Commission (OPUC)—Safety Section design requirements. 21  
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- (4) Applicant shall submit annual compliance status reports to EFSC providing a statement and documentation of Applicant's compliance with each and every condition of the site certificate. 37  
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- (5) Prior to construction, Applicant shall submit certification that at least 80 percent of the capacity from the proposed CSCP shall be used by an energy supplier in the Pacific Northwest Region as defined in 16 U.S.C. 839a(14). The capacity and energy of the CSCP shall be used by Applicant for the benefit of its customers in its Oregon service territory. Except as required for financing purposes, Applicant shall not sell or lease the facility and shall not 42  
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contract for firm energy or firm capacity for the output of the facility for a term exceeding five years.

(6) Applicant shall not commence construction on any part of the facility and related or supporting facilities (including clearing of rights-of-way, but excepting survey and geotechnical investigations), until Applicant has filed with EFSC documentation of ownership, control or access to the entire plant site and the entire transmission corridor.

(7) Applicant shall, to the extent practicable, restore vegetation and landscape portions of the site disturbed by construction in a manner which is compatible with its surroundings; and, upon completion of construction, dispose of all temporary structures not required for future use and all used timber, brush, refuse, or flammable material resulting from the clearing of lands or from construction of the facility.

(8) Applicant shall notify ODOE, Oregon Department of Geology and Mineral Industries (DOGAMI) and the Oregon Department of Water Resources (DWR) in advance of further geotechnical investigations and trenching on the project site to allow the opportunity for agency representatives to inspect the work.

(9) Applicant shall promptly notify ODOE, DOGAMI and DWR if further geotechnical investigations, trenching or construction activities reveal conditions that were not considered in or that differ from the conditions assumed in the agreed-upon seismic hazard classification, or if shear zones, artesian aquifers, deformations or clastic dikes are found near or beneath the project site. EFSC may require additional and/or higher design requirements as necessary to address site conditions not previously considered.

(10) Applicant shall prevent any condition from developing on the site that would preclude restoring the site to a useful condition.

(11) At least 5 years prior to facility retirement, Applicant shall submit a retirement plan to EFSC subject to review and approval by EFSC. The plan shall describe how the site will be restored adequately to a useful condition, including options for post-retirement land use, information on how impacts to fish, wildlife and the environment will be minimized during the retirement process and measures to protect the public against risk or danger resulting from post-retirement site conditions. The certificate holder shall restore the site to a useful condition following retirement.

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(12) This certificate shall expire at the end of the useful life of the energy facility. Application for termination of the site certificate shall be made in accordance with the provisions of OAR 345-27-110.

(13) The conditions in this site certificate may not be changed during the term of the site certificate except as provided in OAR Chapter 345, Division 27.

(14) If a visitor information facility is provided at the site, information regarding conservation of energy and the means by which it may be accomplished shall be included with any energy facility information provided.

VII. B. Monitoring requirements

OAR Chapter 345, Division 26 contains monitoring and reporting requirements for thermal power plants with site certificates. The following monitoring and reporting requirements shall be conditions of the site certificate. They are intended to achieve the purpose, expressed in OAR 345-26-005, "...to assure that the construction and operation of thermal power plants is accomplished in a manner consistent with the protection of the public health, safety and welfare, and the protection of the environment."

As provided in OAR 345-26-015(3), in the event that any of the specific monitoring or reporting conditions contained in the site certificate conflict or are inconsistent with the rules and requirements of OAR Chapter 345, Division 26, the site certificate conditions, shall be deemed to control.

(1) The Applicant shall submit to EFSC a report at least quarterly from the start of construction to commercial operation of the second unit. The report shall include, but is not limited to:

(a) an assessment of the construction schedule for each unit, including any changes to major milestones that affect the critical path for construction;

(b) an assessment of the then known costs and costs projections for the CSCP in relation to the Applicant's then current least-cost plan;

(c) an assessment of the construction staffing, including status of staffing and any staffing problems that may affect construction schedule;

(d) any significant work stoppage;

- (e) any noncompliance with the conditions of the site certificate, including the background of the causes of the noncompliance, the mitigation or correction of the noncompliance and the impact of the noncompliance on the project schedule or financing; 1  
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- (f) any noncompliance with the conditions of permits issued by any other federal, state or local authority; including the background of the causes of the noncompliance, the mitigation or correction of the noncompliance; and the impact of the noncompliance on the project schedule or financing; 7  
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- (g) any noncompliance with the conditions of permits issued to third parties that are known to the Applicant and that are significant and relevant to the construction or operation of the facility, such as Water Rights Permits or Water Pollution Control Facility Permits; including the background of the causes of the noncompliance, the mitigation or correction of the noncompliance, and the impact of the violation on the project schedule or financing; 14  
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- (h) copies of all correspondence and reports related to facility construction submitted to a federal, state, or local authority, except material withheld from public disclosure under federal or state law. Abstracts of reports may be submitted in place of full reports. However, full copies of abstracted reports must be provided at the request of ODOE or EFSC; 24  
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- (i) any other information that EFSC requests that is considered necessary to monitor and evaluate the Applicant's compliance with the terms and conditions of the site certificate. 32  
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- (2) The Applicant shall submit to the EFSC an annual report from the start of commercial operation of the first unit through retirement of the last operating unit. The annual report shall include, but is not limited to: 37  
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- (a) results of performance tests, including project efficiency testing, summaries of fuel use, average volume and mass of steam supplied to any cogeneration host and the estimated fuel used to generate any host steam load; 42  
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- (b) in the first report submitted after commencement of commercial operation, unit heat rate in Btu per kilowatt hour produced, corrected to ISO conditions and accounting for steam delivered to any steam host, and also facility 47  
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- capacity corrected to 52.8°F, 55% relative humidity, standard air pressure adjusted for elevation, no steam to process, natural gas fuel, and normal steam turbine exhaust pressure, net of plant auxiliary loads; 1  
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- (c) the power production by the facility by unit, by month, including peak capacity, average capacity, gross and net kilowatt hour production, availability, reasons and durations of planned and unplanned outages, plans to improve capacity and availability and to correct recurring problems; 6  
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- (d) an assessment of the operations staffing, including status of staffing and any staffing problems that may affect facility operation; 13  
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- (e) any noncompliance with the conditions of the site certificate, including the background of the causes of the noncompliance, the mitigation or correction of the noncompliance and the impact of the noncompliance on the project operation or financing; 17  
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- (f) any noncompliance with the conditions of permits issued by any other federal, state or local authority; including the background of the causes of the noncompliance, the mitigation or correction of the noncompliance, and the impact of the noncompliance on the project operation or financing; 23  
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- (g) any noncompliance with the conditions of permits issued to third parties that are known to the Applicant and that are significant and relevant for the operation of the facility, such as Water Right Permits or Water Pollution Control Facility Permits; including the background of the causes of the noncompliance the mitigation or correction of the noncompliance, and the impact of the noncompliance on the project operation or financing; 30  
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- (h) copies of all correspondence related to facility operation which was submitted to a federal, state, or local authority, except material withheld from public disclosure under federal or state law. Abstracts of reports may be submitted in place of full reports. However, full copies of abstracted reports must be provided at the request of ODOE or EFSC; 40  
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- (i) an assessment of the project's cost of operation in relation to the Applicant's then-current least-cost plan; 48  
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(j) any other information that EFSC requests that is considered necessary to monitor and evaluate the Applicant's compliance with the terms and conditions of the site certificate.

(3) Information To Be Reported Promptly

(a) The Applicant shall report to ODOE within 72 hours of receiving knowledge of noncompliance with the conditions of the site certificate arising from the acts or omissions of Applicant, its contractors, subcontractors or agents;

(b) The Applicant shall report to ODOE within 24 hours of receiving knowledge of any condition arising from the construction and operation of the facility that endangers public health and safety.

VII. C. Applicant warranties

ORS 469.401(3) requires that:

"The site certificate shall contain the warranties of the Applicant as to the ability of the Applicant to comply with standards of financial ability and to construct and operate the energy facility, the Applicant's provisions for protection of the public health and safety and for time of completion of construction."

The following warranties are necessary to meet the above statutory requirements and to ensure and facilitate compliance with and enforcement of EFSC standards and the policy directives of ORS 469.310.

(1) Applicant represents and warrants that it has the present capabilities and resources to construct, operate and retire the CSCP, including the ability to finance and pay for the CSCP, in a manner consistent with its representations in ASC, as modified in this proceeding leading to the execution of the site certificate, and with the terms and conditions of the site certificate.

(2) Applicant represents and warrants that Applicant can and will comply with all applicable state, federal and local laws, regulations and ordinances and with the conditions of the site certificate.

(3) Applicant represents and warrants that it will undertake and complete construction of Phase I and Phase II of the CSCP

according to the conditions of the construction commencement and completion dates at VI.B.2.

(4) Applicant warrants that it will take those actions, necessary to ensure that any third party contracting with Applicant during construction, operation or retirement of this facility and related and supporting facilities shall abide by the terms of this site certificate.

(5) Applicant warrants that it shall take all reasonable steps necessary to ensure the protection of the public health and safety during the construction, operation and retirement of the CSCP and related facilities.

VII. D. Public health and safety

Under ORS 469.401(2), EFSC may impose conditions in the site certificate for the protection of the public health and safety. Under this authority, we review the related natural gas pipeline and electrical transmission lines and the overall project.

VII. D. 1. Natural Gas Pipeline

A new natural gas pipeline will supply the CSCP facility. The pipeline will be approximately 15 miles in length running to the plant from a location near Ione, Oregon. The Applicant has entered into a agreement with a third party, Pacific Gas Transmission (PGT), to site, permit, build, own, and operate the pipeline.

PGT is the owner and operator of an interstate natural gas transmission system running between Alberta, Canada, and the Oregon/California border. The agreement provides that PGT will build a natural gas supply lateral pipeline from its existing interstate pipeline to the proposed CSCP facility. PGT will be responsible for obtaining all necessary permits for this pipeline.

Because PGT is an interstate pipeline company, the new lateral line will be under the jurisdiction of the Federal Energy Regulatory Commission (FERC). State law specifically exempts from EFSC jurisdiction construction of pipelines authorized by and subject to the regulatory authority of FERC. ORS 469.320(4).

We conclude therefore that the pipeline is not subject to EFSC's jurisdiction, to its review of the CSCP and to this Order.

VII. D. 2. Electric Transmission Line

A proposed one and one-half mile transmission line will be constructed to interconnect the CSCP facility with the BPA transmission system. The Applicant will design and build this line to meet BPA's specifications. Once the line is in service, it will be owned and operated by BPA as part of BPA's regional transmission system.

Because this transmission line is less than ten miles long, it is not considered an energy facility under ORS 469.020(7), as amended. The transmission line is, therefore, not subject to EFSC's specific standards for alternate siting under OAR 345-24-080 and regarding design under OAR 345-24-090.

The transmission line is, however, a related or supporting facility under ORS 469.020(13). It therefore falls within EFSC's review authority, including review for the protection of public health and safety. Public health and safety were obviously the intent of the design standards for transmission lines set forth in OAR 345-24-090. It is reasonable to apply those same standards to this interconnecting line. We note that EFSC's design standards for transmission lines contained in OAR 345-24-090 are generally consistent with the BPA specifications for the design and construction of transmission lines.<sup>9</sup>

We conclude that, as matter of public safety and health, the transmission line should be required to satisfy EFSC's design standards for transmission lines.

Conditions:

To the extent possible, consistent with BPA's specifications, Applicant shall design and construct the line in accordance with the requirements of OAR 345-24-090:

(a) The transmission line shall be designed so that alternating current electrical fields shall not exceed 9 kv per meter above the ground surface in areas accessible to the public;

(b) The transmission line shall be designed so that induced currents resulting from the transmission line and related facilities will be as low as reasonably

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<sup>9</sup> The transmission line is subject to other regulatory controls. First, it must be constructed in accordance with the OPUC - Safety Section design and safety standards discussed in Section V.D. of the ODOE's staff report. Second, BPA has determined that it must produce an Environmental Impact Statement regarding the line before agreeing to interconnect with the CSCP.

achievable. The Applicant agrees to a program which shall provide reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity shall be grounded through the life of the line; and

(c) The transmission line shall be designed and constructed, and operated in a manner consistent with the 1993 edition of National Electrical Safety Code (American National Standards Institute, Section C2, 1993 edition).

VII. D. 3. Overview of the proposal

We have undertaken an overall review of the application for this project for compliance and consistency with state regulations governing its siting, construction, operation and retirement. We have found that protection of the public health and safety will be met and be adequately ensured by: (1) the mandatory conditions; (2) the Applicant's warranties; (3) the monitoring requirements; (4) the other specific conditions; and (5) EFSC's ongoing authority to monitor the facility and enforce compliance.

The Applicant has addressed the issue of public health and safety throughout the Application, including, but not limited to, the discussions contained in the following exhibits:

Exhibit B: The design and operation of the proposed facility including the water system, chemical treatment facilities, fire protection and life safety systems, monitoring systems, building code compliance and security.

Exhibit F: Hazardous substance management, waste management, and waste oil management.

Exhibit G: Assessment and mitigation of seismic hazards.

Exhibit J: Facility-related hazardous materials management.

Exhibit M: Wastewater management.

Exhibit O: Water resources planning and use of supply.

Exhibit V: Minimization of waste.

Exhibit W: Mitigation plans.

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Exhibit Y: Monitoring plans.

We conclude that the public health and safety is being adequately and reasonably addressed in light of these various conditions, requirements and warranties.

VIII. CONCLUSION: THE GENERAL STANDARD OF REVIEW

In order to issue a site certificate, EFSC must determine that the preponderance of the evidence on the record supports the following conclusions:

"(a) The facility complies with the requirements of [the Oregon energy facility siting statutes] and the rules implementing [those statutes] applicable to the facility . . ."

"(b) . . . the facility complies with all other Oregon statutes and administrative rules applicable to the facility . . ."

"(c) The facility complies with statewide planning goals adopted by the Land Conservation and Development Commission." ORS 469.503(1).

The foregoing discussions, findings of facts, conclusions of law, having been based on a preponderance of the evidence on the record, establish that the proposed facility complies with these requirements. We therefore conclude that EFSC should issue a site certificate for the CSCP.

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FINAL ORDER

Based upon the above findings of facts, discussions and conclusions of law, the Energy Facility Siting Council has determined that the application for site certificate shall be approved and that the chairperson of the Council shall execute a site certificate in the form of the "Thermal Power Plant Certificate for the Coyote Springs Cogeneration Project" attached to this Order and which is incorporated by reference into this Order.

Issued the 16th day of September, 1994.

By:

  
Melvin Ferguson, Chair  
Energy Facility Siting Council

NOTICE OF THE RIGHT TO APPEAL

Any party to the contested case proceeding or any person adversely affected or aggrieved by this order may appeal the issuance of the site certificate. Judicial review may be obtained by filing a petition for review within 60 days after the date of service of this order. Judicial review is pursuant to the provisions of the ORS 469.403 to the Oregon Supreme Court.

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