

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

In the Matter of the Application of)	
Hermiston Generating Company, L.P.)	ORDER APPROVING
for Amendment No. 2 to its)	AMENDMENT
Site Certificate)	

Introduction and Procedural History

On March 11, 1994, the Energy Facility Siting Council ("the Council") issued an Energy Facility Site Certificate ("Site Certificate") to the Hermiston Generating Company ("HGC") for a 474 megawatt natural gas fired cogeneration facility and related and supporting facilities (collectively, "the facility") to be located near Hermiston, OR. At HGC's request, the Site Certificate was amended on August 12, 1994 to reflect certain changes in the design of the facility.

On November 17, 1994, the Council adopted substantial revisions to Oregon Administrative Rules ("OAR") Chapter 345 Divisions 1 through 29. These revisions changed, among other things, the Council's rules for amending Site Certificates, the mandatory conditions that are required to be in Energy Facility Site Certificates, and the process for applying subsequent rules and statutes to existing site certificates. By Order dated November 17, 1994, the Council approved a request by HGC to make newly adopted rules OAR 345-27-050 (for amending site certificates) and OAR 345-27-095 (for applying subsequent laws or rules to existing site certificates) applicable to the HGC Site Certificate.

On October 26, 1995, the Council adopted further revisions to OAR 345 Divisions 1 through 27. These revisions were needed to implement new statutory requirements in 1995 Senate Bill 951.

On January 19, 1996, HGC submitted a Petition to Apply Subsequent Rules and Request for Amendment No. 2 ("petition"). The petition requests that the conditions in the HGC Site Certificate be amended to be consistent with the Mandatory Conditions at OAR 345-27-020(2)(a) and OAR 345-27-020(11), and that the Council's most recent rules at OAR 345-27-050 through 345-27-080 and 345-27-095 for amending site certificates be applied to the HGC Site Certificate.

Because the HGC petition includes a request to amend the site certificate and a request to apply subsequent rules, OAR 345-27-070 and OAR 345-27-095 are both applicable.

Pursuant to OAR 345-27-070(1) and OAR 345-27-095, the Oregon Office of Energy ("department") on January 30, 1996, issued notice of HGC's petition to persons on the Council's

general mailing list and to persons on the special mailing list for the review of the HGC Site Certificate Application . The notice stated that comments on the petition were due by March 4, 1996. The department also circulated the petition to reviewing agencies, affected local governments and tribal authorities as provided in OAR 345-20-040, with notice stating that comments were due by March 4, 1996. Dan Meek and Lloyd Marbet commented that they objected to the proposed amendment, but they did not state any basis for their objection. No other comments were received from members of the public or from any state agencies or affected local governments.

On March 6, 1995, a Proposed Order was issued pursuant to OAR 345-27-070(2) and OAR 345-27-095(3), containing the department's recommendation for approval of the petition, with conditions as described below.

Notice of the Proposed Order was sent on March 6, 1996 to the Council's mailing list and to the list of persons potentially affected by the facility. The notice stated that comments on the department's Proposed Order were due by the close of business on April 5, 1996. The notice also stated that petitions for contested case concerning this proposed amendment would be accepted until the close of business on April 5, 1996.

In a letter dated April 3, 1996 from Ray Hanley to Adam Bless, HGC commented on the Proposed Order, and suggested wording changes and clarifications. The department reviewed HGC's comments and finds them acceptable. The suggestions made by HGC in its April 3, 1996 letter clarify the conditions proposed by the department in its proposed order, and do not substantively change the proposed conditions. This final order reflects those comments. No other comments were received, and no petitions for contested case were received.

In this Order, all terms that are defined in OAR 345-01-010 have the meaning assigned in that rule unless otherwise noted.

Description of the Request for Amendment and Petition to Apply Subsequent Rules

Condition A.3 of the Site Certificate, as issued, requires HGC to design, construct, operate and retire the facility "*... as described in the application for site certificate, in EFSC contested case proceedings and in documents and representations made by HGC in support of the application for site certificate...*". This condition was required by OAR 345-27-020 as it was in effect in March, 1994, when the Site Certificate was issued. This condition requires HGC to comply with all detailed descriptions in the application and supporting documents. These documents contain some details that could be changed with no effect on the public, the environment, or compliance with Council standards. Under the current Site Certificate, any such changes require an amendment to the Site Certificate.

As adopted by the Council in November, 1994, OAR 345-27-020(2) requires only that the facility be designed, constructed, operated, and retired "*..substantially as described in the Site*

Certificate.." Under current rules, minor design details that are not addressed in the Site Certificate and do not have an adverse impact may be changed without a Site Certificate amendment, provided the requirements of OAR 345-27-050 are met. Current rules at OAR 345-27-020(11) further require that the department identify the representations in the application and supporting documents that should be binding on the applicant, and incorporate those representations into the site certificate.

HGC requests that condition A.3 of its site certificate be amended to be consistent with the current OAR 345-27-020(2). If approved, HGC would no longer be required to comply literally with the detailed descriptions in its Application, but would be required to comply with the terms and descriptions in the Site Certificate and the Council's Final Order of March 11, 1994, approving the Site Certificate ("Final Order").

HGC also requests an amendment to Section III.B of the Site Certificate, in which HGC warrants that it has the ability to construct, operate and retire the facility in a manner consistent with "its representations made in the application". HGC requests a change to the warranty to say that HGC has the ability to construct, operate and retire the facility "...substantially as described in the site certificate and in the order approving the site certificate..". The requested language is consistent with the current requirements of OAR 345-27-020(2). The Council notes that ORS 469, as amended by 1995 Senate Bill 951, and the rules in OAR Chapter 345, no longer require this warranty. However, HGC has requested that the warranty be amended, not deleted.

Finally, HGC requests that the Council apply its most recent procedural rules for amendments and petitions to apply subsequent rules (OAR 345-27-050 through OAR 345-27-080, and OAR 345-27-095) to this request and to any subsequent amendment requests or petitions by HGC.

Findings and Conclusions

HGC requests four separate actions, as follows:

A. Apply current rules OAR 345-27-020(2)(a) and 345-27-020(11) to the Site Certificate

In the petition, HGC states that its request is consistent with the policy decision made by the Council in November 1994 when it amended its Division 27 rules to drop the mandatory site certificate condition required for the HGC facility and replaced it with the mandatory condition required by the current OAR 345-27-020(2). The Council concurs with this statement.

HGC notes that its First Amendment Request, which was approved by the Council on August 12, 1994, contained 19 minor changes, including such details as the size of a warehouse building and slight changes to the dimensions in certain power plant components. Minor design changes are common in the construction of large engineering projects. HGC states, and the department concurs, that requiring prior Council approval on each detailed design change is likely to result in a large number of amendment requests, many of which have little or no bearing on any Council standard.

HGC's request does not effectuate any physical change to the facility, its design, construction, operation or retirement. Therefore, there would be no impact to the public health and safety, the environment, the resources protected by Council standards, or to the basis for any finding of compliance with Council standards.

If the current requirement of OAR 345-27-020(2) is applied, then HGC will be required to comply only with the terms and conditions of the Site Certificate and Final Order. The application contains certain statements that were important to the Council in its decision to issue the Site Certificate. Because rules in effect at the time required compliance with all representations made in the application, some of these statements were not explicitly incorporated into the Site Certificate as conditions. For this reason, the department recommends application of current OAR 345-27-020(11), which requires the department to identify statements in the application that it deems to be binding commitments on the applicant, and incorporate them as conditions to the Site Certificate. This is necessary to ensure that the representations which form the basis of the Council's decision to issue the Site Certificate remain binding on the certificate holder.

The Council finds that the first action requested by HGC's petition is consistent with Council policy, and that the application of 345-27-020(11) ensures that representations which the Council deems to be binding on HGC will be added to the Site Certificate as conditions. Therefore OAR 345-27-020(2) and 020(11) will be applied to the Site Certificate, as requested.

B. Amend Condition A.3 and Warranty B to reflect the current version of the mandatory conditions

Condition A.3 and Warranty B of the Site Certificate currently reflect the mandatory conditions as they were in effect in March of 1994. To apply the mandatory conditions contained in OAR 345-27-020(2) and 345-27-020(11), it is necessary to amend condition A.3 and Warranty B.

For reasons stated above, the Council has found that application of current mandatory conditions is consistent with Council policy and would not adversely affect the public, the environment, or resources protected by Council standards. Therefore, Condition A.3 and Warranty B will be amended to reflect the current mandatory conditions, as requested.

C. Determine what new conditions are required

Section III.A of this order applied OAR 345-27-020(11) to the Site Certificate. This rule requires the department to identify statements in the application that are deemed to be binding commitments and add them to the Site Certificate as Conditions. The application of this rule ensures that representations in the application that were the basis for the findings of compliance with Council standards remain binding on HGC.

Accordingly, the department reviewed the HGC application for site certificate and identified statements which it found to be binding commitments on HGC to ensure continued compliance with Council standards.

The site certificate incorporates the Final Order of March 11, 1994 by reference, rendering the representations and descriptions in that Final Order binding on HGC. The Council therefore finds that it is not necessary to add new conditions for statements that are already part of the Final Order.

The Council orders the conditions listed below to be added to the Site Certificate. The provisions of OAR 345-27-020(2)(a), effective November 1995, shall apply to the following conditions unless specifically noted within the particular condition. In the event of a conflict between the ASC and Amendment #1 to the Site Certificate, Amendment #1 to the Site Certificate shall be deemed controlling.

Exhibit A

This exhibit is used by the Council in determining the applicant's Organizational, Managerial and Technical Expertise. The Final Order describes the applicant only in limited detail, and primarily discusses HGC's ability to construct the facility. However, the Site Certificate should ensure that the certificate holder has the continuing ability to operate and retire the facility. The Council's finding of compliance with the Organizational, Managerial and Technical Expertise Standard was based in part on representations in this exhibit and exhibit D concerning the legal makeup of the partnership and the operating company that will be operating the facility. Therefore, the Council approves the following new conditions:

- (1) The department shall be notified of any modifications to the identity of the partners to the partnership agreement, or to the ownership of the controlling interest of the partnership.
- (2) Any change to the identity of the operator (USOSC) shall be reported to the Department.

Exhibit B

This exhibit describes the facility in detail. However, the Final Order specifically incorporates the maps showing the site boundary and routes for related and supporting facilities, and describes the facility in adequate detail to ensure that Council findings of compliance with its siting standards remain valid. Existing conditions in the Site Certificate ensure that findings based on plant operating characteristics such as heat rate and noise remain valid. The Council finds that the Final Order and Site Certificate contain the statements from Exhibit B that are binding on HGC, with certain exceptions described below:

Zero Discharge of Wastewater - ASC p. B-12a.2 through B-14.a.2

One exception concerns the design features proposed by HGC to achieve zero discharge of water. The zero discharge design was part of the basis for Council's finding of compliance with the Waste Minimization Standard. Also, in reviewing the application for compliance

with the Council's Fish and Wildlife Habitat Standard, the Oregon Department of Fish and Wildlife raised certain concerns about potential impacts from the use of discharge water for irrigation (see Project Order Addendum 2 paragraph II.G.2) These concerns were addressed in part by HGC's election to use a zero discharge design. The Final Order and Site Certificate do not contain descriptions or conditions requiring a zero discharge facility. The Council therefore adds a condition requiring HGC to construct and operate a zero discharge system as described on pages B-12.a.2 through B-14.a.2 of the ASC, as amended by the "Amendment to Application for Site Certificate" dated December 24, 1993 (at pages 1 and 4) and as further amended by the "Request for Amendment", at pages 6-8, submitted on June 3, 1994).

Stormwater Discharge - ASC p. B-14.a.2 and B-14.b.2

HGC has committed to collection of stormwater, which is one of the elements in the Council's Socio-Economic Standard. HGC's commitment is described in detail in Exhibit B, but does not appear in the Site Certificate or the Final Order. The description on pages B-14.a.2 and B-14.b.2 of the ASC is highly generalized. In its comments of April 3, 1996, HGC described the stormwater collection plans with more specificity, as follows:

The stormwater system for the site consists of two separate components. The first component relates to all process work areas where there is the potential for chemical releases. Each of these areas is drained to an oil/water separator and then to the cooling tower basin for reuse as cooling water make-up.

The second component of the stormwater systems relates to the non-process portions of the site. Stormwater from these areas (where there is no chemical storage or potential for stormwater contact with chemicals), is channeled to a detention basin designed to detain runoff from the 100 year, 24-hour storm event with approximately a 50 percent surplus capacity. Water from the detention basin will either evaporate, percolate into the ground, or will be discharged to the cooling tower basin to be used as cooling water make-up. There will be no stormwater discharge from the energy facility site to a public stormwater system.

The Council adds a condition that Roof and Stormwater Discharge be designed and constructed as described above.

Compliance with certain Safety Codes ASC B-23a through B-26.a

In the discussion under "Project Order, Paragraph 14.A, Addendum 2 Paragraph II.A" beginning on page B-23a, the application provides detailed commitments to comply with nationally approved codes for construction of the energy facility and related and supporting facilities, Structural Codes, Boiler and pressure Vessel Codes, and Fire and Life Safety Codes. Although compliance with these safety codes is addressed generally in the Site Certificate and Final Order, the description in Exhibit B provides important detail as to which codes apply. All of these codes are relevant to public health and safety. The Council therefore adds a condition requiring that the facility be designed and constructed in compliance with the commitment of pages B-23a through the first paragraph on page B-26a,

except that the reference in the ASC to NFPA 580 shall be replaced by the Uniform Fire Code, 1991 edition, with Oregon Amendments. Notwithstanding the provisions of OAR 345-27-020(2)(a), effective November 1995, HGC shall comply with the terms of this condition specifically as expressed herein.

Exhibit C

This exhibit describes the site location in detail and addresses its suitability for the project. The site location is already adequately described in the Final Order, and it is fixed by virtue of the fact that construction is nearly complete. Therefore no new conditions are recommended.

Exhibit D

This exhibit describes HGC's organizational, managerial and technical expertise. The Final Order contains the facts from this exhibit needed to find compliance with the Council's standard. No new conditions are recommended.

Exhibit E

This exhibit contains an outdated list of property owners adjacent to the HGC site. The list was compiled in 1992. The petition requests that future site certificate amendments be processed in accordance with the Council's most recent procedural rules. In the processing of Site Certificate applications, the Council has determined that adjacent property owners should receive written notice of Site Certificate applications. Therefore, the Council adds a condition requiring that an updated list of the adjacent property owners be provided with any amendment requests.

Exhibit F

This exhibit contains information on waste materials, which is relevant to several standards. The Council adds the following conditions:

- (1) In its discussion of the Waste Minimization Standard, the Final Order cites certain commitments by HGC but does not list them explicitly. For example, the use of licensed vendors for debris, sewage, solid waste and hazardous waste is not stated in the Final Order. The Council adds a condition requiring that solid waste materials be handled and disposed of substantially as described under "Solid Waste Materials" on p F-2a.2.
- (2) The concentration of additives in cooling tower water is relevant to HGC's analysis of cooling tower drift. Therefore, the Council adds a condition that "*constituents in the cooling water effluent will primarily be higher concentrations of native impurities. Concentrations of other additives should be below detectable levels*", as stated on P. F-4a.2
- (3) Page F-4a.2 also discusses storage of ammonia, the use of secondary containment, and periodic removal of spent SCR catalyst by the supplier. This page also discusses storage of sulfuric acid, use of FDA approved chemicals for boiler feedwater, and measures to

contain chemical spills. These measures are relevant to public safety, occupational safety, and site restoration. The Council adds a condition that chemicals associated with the SCR system and other chemicals be stored and handled as described on the last four paragraphs of p. F-4a.2 and the first four paragraphs of p. F-5a.2. HGC shall comply with the terms of this condition specifically as expressed herein, notwithstanding the provision of OAR 345-27-020(2)(a), effective November 1995.

(4) Storage of compressed gases is relevant to public health and safety. The Council adds a condition that compressed gases shall be stored substantially as described in the last paragraph of p.F-5.a.2 and Amendment #1 to the Site Certificate.

Exhibit G

This exhibit addresses site suitability. Geotechnical work needed to meet the Council's Seismic standard is described in existing conditions, and has already been deemed acceptable by the department. Mitigation steps from this exhibit are already conditions in the Site Certificate. The commitments in this exhibit are primarily construction related, and construction of the facility is nearly complete. Therefore, no new conditions are recommended.

Exhibit H

This exhibit demonstrates that there are no woodland impacts. Therefore no new conditions are recommended.

Exhibit I

This exhibit demonstrates compliance with the Council's land use standard. The exhibit contains many representations that are binding on HGC. Those representations are adequately quoted verbatim in the Final Order, which was incorporated into the Site Certificate. Therefore, no additional conditions are recommended.

Exhibit J

The Final Order states that the Protected Area standard is met because of the distance between the facility and any protected areas, and because of the shielding from light and glare which is provided by the topography of the area. These features are intrinsic to the site location and need not be made into conditions. The potential impact of cooling tower drift on protected areas is minimized by existing conditions in the Site Certificate as amended on August 12, 1994. Therefore, no new conditions are recommended.

Exhibit K

The standard in effect when the site certificate was issued addressed HGC's ability to finance the project. Since project construction is nearly complete, it is not necessary to add new conditions concerning HGC's ability to complete construction. The Financial Assurance Standard now in effect addresses the certificate holder's ability to restore the site in the event

that construction is not completed or the facility is retired earlier than projected. Existing conditions under the Council's retirement standard provide for contributions by HGC to a decommissioning fund of \$5 million. Therefore, no new conditions are recommended.

Exhibit L

This exhibit contains no commitments because HGC qualified for exemption from the Council's Need for Power standard. Therefore no new conditions are recommended.

Exhibit M

This exhibit contains no representations that are binding on HGC. It provides, for informational purposes, copies of applications for certain DEQ permits that are not under EFSC jurisdiction. Therefore, no new conditions from this exhibit are recommended.

Exhibit N

This exhibit described the native vegetation and soil cover. The statements in this exhibit which are binding commitments on HGC are presently conditions in the Site Certificate. Therefore, no new conditions from this exhibit are recommended.

Exhibit O

This exhibit describes HGC's provisions to procure water from the Port of Umatilla. Representations from this exhibit that are binding on HGC are conditions in the Site Certificate under the Managerial and Technical Expertise standard. Therefore, no new conditions are recommended.

Exhibit P

This exhibit discusses mitigation of indirect impacts from water withdrawal and wastewater discharge. The Oregon Department of Fish and Wildlife's concerns about indirect impacts from wastewater discharge were addressed by adding conditions based on statements in Exhibit B. No other representations in this exhibit were found that required new conditions in the Site Certificate.

Exhibit Q

This exhibit addressed the Council's recreational standard. It contains no statements that are commitments on the part of HGC. Therefore, no new conditions are recommended.

Exhibit R

This exhibit describes mitigation steps that HGC will take to ensure compliance with the Council's Fish and Wildlife Habitat and Endangered Species standards. These steps are primarily related to construction, which is nearly complete. Moreover, mitigation measures proposed on p. R-7a.2 of this exhibit were incorporated into the Site Certificate as conditions. Therefore, no new conditions are recommended.

Exhibit S

The mitigation steps proposed in this exhibit were incorporated into the Site Certificate as conditions. Therefore, no new conditions are recommended.

Exhibit T

The steps proposed in this exhibit for mitigation of impacts to cultural and archaeological resources were incorporated in the Site Certificate as conditions. Therefore no new conditions are recommended.

Exhibit U

This exhibit addresses the facility's socioeconomic impact. Many of the steps proposed by HGC to mitigate socioeconomic impact within the impact area set forth in the Project Order address the temporary increase in local population during construction. Construction is nearly complete, and the Council does not find it necessary to add further construction related conditions at this time.

However, the exhibit contains certain operations related commitments which are not included in the Final Order or the Site Certificate. Therefore, the Council adds the following three statements from this exhibit, as conditions:

- (1) *The Project will obtain process and cooling water from the Port of Umatilla's regional supply system. (p U-12a.2)*
- (2) *Water for domestic use will be supplied by Lamb Weston's existing water supply system. Lamb Weston's system will not require any modification to supply water to the Hermiston Generating Project other than a supply line from their facility to the Project. (p U-13a.2)*
- (3) *Fuel Oil will not be required for the project. (p U-17a.2)*

Exhibit V

This exhibit contains proposed steps by HGC to meet the Waste minimization standard. These steps are described generally in the Final Order but are not listed specifically. Therefore the Council adds the following statements from this exhibit as conditions:

- (1) *Periodic Audits will be conducted to ensure compliance with and evaluate the effectiveness of the waste minimization and recycling programs as described on p. V-3a.2 of the ASC.*
- (2) *HGC shall utilize water saving measures as practical, as described on p. V-4a.2 and V-5a.2 of the ASC.*

Exhibit W

This exhibit contains proposed mitigation steps. The mitigation steps described in this

exhibit were incorporated into the Site Certificate as conditions. No new conditions are recommended.

Exhibits X, Y and Z

All binding representations made by HGC in these exhibits were incorporated into the Site Certificate as conditions. Monitoring plans described in exhibit X are included in the Site Certificate. The schedule information in exhibit Y is for informational purposes, and is not binding. Site restoration measures discussed in exhibit Z are adequately addressed in existing Site Certificate Conditions.

D. Apply current OAR 345-27-050 through 080 and 345-27-095 to this request and to subsequent petitions by HGC.

OAR 345-27-050 through 080 and 345-27-095 are the rules which address amendments to the site certificate and application of subsequently adopted rules to existing site certificates.

HGC's request is consistent with the terms of the Site Certificate. Condition A.3 states that: "*HGC may request that modifications to the design, construction, operation or retirement of the facility be considered pursuant to the Division 27 rules in effect at the time the amendment is filed. A request to have the amendment considered pursuant to a later adopted version of Division 27 rules will be granted unless EFSC finds that applying later adopted rules would create a significant threat to public health, safety or the environment.*"

This request does not change the facility, its design, construction, operation or retirement. It applies the Council's current process to any design changes or amendment requests which HGC may propose in the future.

This amendment, if approved, may allow certain future design changes to the facility without prior Council approval. However, any such changes would have to meet the criteria of OAR 345-27-050, which requires a site certificate amendment for any changes which may:

- (a) Invalidate the basis for any finding required by divisions 22, 23 or 24 of this chapter that was made by the Council in its final order granting a Site Certificate;
- (b) Result in a significant adverse impact that was not evaluated by the Council in its final order granting a Site Certificate, to any resource protected by applicable standards in division 22 and 24 of this chapter;
- (c) Result in a significant adverse impact that was not evaluated by the Council in its final order granting a site certificate, to geographic areas or human, animal or plant populations;
- (d) Impair the certificate holder's ability to comply with a Site Certificate condition; or
- (e) Change a condition in the Site Certificate.

Moreover, the current OAR 345-27-050(3) and 345-27-050(4) require the certificate holders to evaluate in writing any modifications to the facility that it determines not to require a Site Certificate amendment. This evaluation is subject to inspection by the department at any time. Further, OAR 345-27-050(4) requires that all modifications to the facility that are made without amendment of the Site Certificate be described in the certificate holder's Annual Report to the Council. This rule also requires that the certificate holder provide the Council with a written record of the basis for its determination that an amendment to the Site Certificate was not required.

These requirements ensure that no changes which could adversely impact the public or the environment would take place without the Council's consideration. Failure to comply with these evaluation and reporting requirements would violate Council rules and the Site Certificate.

The Council concludes that the application of these current rules would not create a threat to public health and safety or to the environment. The Council therefore approves the HGC request to apply OAR 345-27-050 through 080 and 345-27-095 to its site certificate.

III. Summary

The Council finds that the actions requested in the petition are consistent with current Council policy and would not cause a significant adverse impact to public health and safety or the environment. The department has reviewed the application and identified statements from the application that it deems to be binding commitments upon HGC and which should be added as Site Certificate conditions in accordance with OAR 345-27-020(11). Based on the above findings, the Council amends the Site Certificate as requested by HGC, with additional conditions stated in section II.C of this order.

5/10/96

Date



Melvin Ferguson, Chair

Energy Facility Siting Council