

1 **THERMAL POWER PLANT**

2
3 **THIRD AMENDED SITE CERTIFICATE**

4
5 **for the**

6
7 **HERMISTON POWER PROJECT**

8 (Includes Amendment No. 1, March 19, 1998, Amendment No. 2, January 23, 1998,
9 Amendment No. 3, February 24, 2000, and Amendment No. 4, May 4, 2001)

10
11 This Site Certificate is made and entered into in the manner provided by ORS Chapter 469 by and
12 between the State of Oregon (State), acting by and through its Energy Facility Siting Council
13 ("EFSC" or "the Council"), and Hermiston Power Partnership ("HPP") an Oregon General
14 Partnership.

15
16 **I. SITE CERTIFICATION**

- 17
18 A. To the extent authorized by State law and subject to the conditions set forth herein, the State
19 approves and authorizes the construction, operation and retirement by HPP of a natural gas-
20 fired combustion turbine energy facility, together with certain related or supporting
21 facilities, at the site near Hermiston in Umatilla County, Oregon, in the manner described in
22 the EFSC's Final Order, which by this reference is incorporated herein. The terms used in
23 this Site Certificate shall have the meaning set forth in ORS 469.300 and Oregon
24 Administrative Rules OAR 345-01-010. The facts, reasoning, conclusions and conditions
25 relied on for approval are set out in EFSC's Final Order.

26
27 Subject to the conditions herein, this certificate binds the State and all counties, cities and
28 political subdivisions in this State as to the approval of the site and the construction,
29 operation and retirement of the facility, as to matters that are included in and governed by
30 this Site Certificate. The Site Certificate is not binding with respect to matters not governed
31 by and included in the Site Certificate, including permits issued under statutes and rules for
32 which the decision on compliance has been delegated by the Federal government to a state
33 agency other than EFSC.

- 34
35 B. Each affected state agency, county, city and political subdivision with authority to issue a
36 permit, license or other approval addressed in or governed by the Site Certificate or EFSC's
37 Final Order shall, upon submission by HPP of the proper application and payment of the
38 proper fees, issue such permit, license or other approval without hearing or other
39 proceeding, subject only to conditions set forth in the Site Certificate. Each state agency or
40 local government that issues a permit, license or other approval to HPP shall continue to
41 exercise enforcement authority over such permit, license or other approval.

1 For a permit, license or other approval addressed in the Site Certificate, HPP shall comply
2 with applicable state and federal laws adopted in the future to the extent that such
3 compliance is required under the respective state agency statutes and rules.
4

- 5 C. Both the State and HPP shall abide by local ordinances and state law and the rules of EFSC
6 in effect on the date the Site Certificate is executed. The EFSC rules in effect on the date
7 the Site Certificate is executed are attached as Exhibit B. In addition, upon a clear showing
8 of a significant threat to the public health, safety or the environment that requires
9 application of later-adopted laws or rules, EFSC may require compliance with such later-
10 adopted laws or rules.
11

12 **II. DESCRIPTION OF SITE AND FACILITY**

13

14 The Hermiston Power Project is a combined-cycle combustion turbine electric generating
15 plant, fueled primarily by natural gas, with a nominal capacity of 546 MW at annual average
16 conditions. Distillate (diesel) fuel will be used if needed as a backup fuel. In addition to the
17 generation of electricity, the facility will be designed to supply steam to the J.R. Simplot Company
18 potato processing plant. [Amendment No. 4]
19

20 *Energy Facility Site:* The energy facility site is located on a 17 acre site adjacent to the J.R.
21 Simplot ("Simplot") potato processing plant, approximately 3 miles south of Hermiston, Oregon.
22 The energy facility site is on land zoned Heavy Industrial (HI). The location of the energy facility
23 site is shown on the attached Figure 1.
24

25 *Power Plant Structures and Major Equipment:* The proposed energy facility will consist of
26 several structures: a turbine-generator building; two heat recovery steam generator (HRSG)
27 structures; two exhaust stacks approximately 195 feet in height; an administration/control building;
28 storage tanks for raw and demineralized water; an electrical substation occupying approximately
29 50,000 square feet; two above ground 1,000,000 gallon distillate storage tanks; and two five-cell
30 mechanical induced draft evaporative cooling towers, each with a height of approximately 42 feet.
31 The combustion turbine will be surrounded with an acoustically insulated enclosure to reduce noise
32 levels and to provide containment for automatic fire suppression equipment. The facility's water
33 system, including treatment, component cooling, fire protection and condensate return is described
34 in the ASC, Exhibit B, pp. 13 and 14a.
35

36 *Power Enhancement Technology:* The energy facility has peaking capability due to three
37 power enhancement technologies: duct burners within the HRSG, steam augmentation and inlet
38 fogging. The addition of these technologies allows the facility to produce approximately
39 100 MW of additional power during periods of peak demand. [Amendment No. 4]
40

41 *Related and Supporting Facilities:* Related and supporting facilities include two natural gas
42 pipelines that will bring natural gas to the energy facility from interstate pipelines, a water pipeline
43 which will carry raw water to the energy facility site, and one of two electrical transmission lines
44 that will deliver output from the power plant to the BPA McNary substation.

1
2 The two natural gas pipelines will deliver natural gas from the Pacific Gas Transmission
3 (PGT) and Northwest Pipeline (NWP) interstate pipeline systems. Each pipeline would be
4 approximately 12 inches in diameter and will be located underground. The PGT pipeline
5 connection will be approximately 4.1 miles long and the NWP pipeline will be approximately 8.8
6 miles long. Both pipelines are related and supporting facilities as defined in OAR 345-01-010.
7 HPP may construct one or both pipelines. The routes for these pipelines are described in the land
8 use section of the EFSC Final Order and shown on Figures I-4 and I-5 in the ASC.
9

10 The raw water supply line for the energy facility will be approximately 16 inches in
11 diameter and approximately 1.1 miles long. The route for the raw water supply line is shown on
12 Figure I-3 in the ASC. This line will connect the energy facility site to the Port of Umatilla water
13 supply project. HPP has an agreement to purchase water from the Port of Umatilla. The Port will
14 obtain the water from the Columbia River under an existing municipal water permit issued by
15 WRD, # 49497 ("Permit # 49497"). The Port's water supply project is not an energy facility and is
16 not subject to EFSC regulation.
17

18 This Site Certificate permits construction along either one of two transmission line routes.
19 Only one of the two will be built. The two transmission line routes include a 230 kV option and a
20 500 kV option.
21

22 The 230 kV option will be approximately 15.9 miles long. The route for the 230 kV
23 transmission line is shown on Figures I-7A, I-7B and I-7C in the ASC. Approximately 12.3 miles of
24 this would use the 230 kV transmission line route from the Westland Substation to the BPA
25 McNary Substation, which is a double circuit steel pole 230/115 kV line. The Hermiston
26 Generating Company L.P ("HGC") holds a Site Certificate for the 230 kV line in connection with
27 its energy facility. The Umatilla Electric Cooperative Association ("UECA") owns and will operate
28 the 230/115 kV line. If this option is chosen, HPP would replace UECA's 115 kV conductors and
29 insulators with 230 kV conductors and insulators, thereby upgrading the line to a 230/230 kV line.
30 No new right of way will be required for the 230 kV transmission line from the Westland
31 Substation to the McNary Substation. UECA may relocate portions of the displaced 115 kV line
32 along different routes elsewhere in Umatilla County. HPP intends to deed the 230 kV line to
33 UECA.
34

35 The 500 kV option would require construction of approximately 14.2 miles of new 500 kV
36 transmission line between the energy facility site and the McNary Substation. The route for the
37 500 kV transmission line is shown on Figures I-6A and I-6B in the ASC, as modified by Exhibit E
38 to the Fourth Request to Amend Site Certificate. Most transmission line structures would be
39 placed within existing BPA right of way with the remainder located on private lands. All
40 construction will be entirely within Umatilla County with a portion also located within the City of
41 Umatilla. The 500 kV line would be deeded to BPA. [Amendment No. 4]
42

43 Upon leaving the facility site, the 500 kV line will proceed north across the rail yard and
44 then proceed approximately due east paralleling the rail yard. On the east side of Hinkle Road

1 the 500 kV line will turn north and parallel Hinkle Road until it intersects Feedville Road. At
2 Feedville Road the line will proceed east for approximately 3.2 miles. At the intersection with
3 Canal Road the line will proceed north for approximately .9 miles to its intersection with the BPA
4 McNary-Roundup transmission line corridor. From this point the 500 kV line will parallel the
5 McNary-Roundup line within BPA's existing 250 foot right-of way, and head in a northwesterly
6 direction approximately 7.6 miles. Approximately 0.8 miles of this 7.6 mile section will include
7 construction of a double-circuit 500/230 kV line with PacifiCorp. As the line approaches the
8 McNary substation it will occupy existing double-circuit transmission structures now being used by
9 the BPA Slatt-McNary and McNary-Lower Monument 500 kV lines. [Amendment No. 4]

10
11 The existing BPA 500 kV McNary-Lower Monumental transmission line will be displaced
12 by the facility's 500 kV transmission line and will be relocated about 500 - 800 feet east of its
13 present location, as shown on document ODOE-285.3 of the contested case record. This relocated
14 section will be about one mile (5000 feet) in length. The relocation begins about 150 feet north of
15 the intersection of Margaret Avenue and Lind Road at the existing 500 kV McNary-Lower
16 Monumental transmission line to the east of Lind Road. The relocated line will then proceed north
17 generally paralleling Lind Road, crossing Highway 730, and continuing north across the existing
18 railroad tracks near the McNary Substation. After crossing the railroad tracks, the line would turn
19 northwest and proceed about 700 feet to the McNary Substation.

20
21 The corridor for the relocated BPA 500 kV line includes a currently occupied residence.
22 Pursuant to an agreement with the occupant of that residence, HPP will not place the centerline of
23 the relocated 500 kV line closer than 80 feet to that property if it is occupied as a residence at the
24 time of construction.

25
26 *Power Generation Process Description:* The Hermiston Power Project will consist of two
27 identical, natural gas-fired, combined-cycle units. A gas turbine-generator is essentially a jet engine
28 on a stationary mount that derives its power from the combustion of natural gas, which is used to
29 turn an electric generator. The high-temperature exhaust from the gas turbine-generator is ducted to
30 a heat recovery steam generator (HRSG) to generate steam. This steam, in turn, is used to drive a
31 steam turbine-generator. The term "combined-cycle power plant" describes the sequential use of the
32 fuel energy in both the gas turbine-generator and the steam turbine-generator.

33
34 The Hermiston Power Project will use approximately 4,136 million British thermal units
35 (MMBtu) of natural gas fuel per hour at full load. A BTU (British thermal unit) is the amount of
36 energy needed to heat one pound of water one degree Fahrenheit. Fuel for the turbines will
37 primarily be natural gas with distillate used only as backup fuel. [Amendment No. 4]

38
39 A power plant's steam cycle describes the process where water enters the heat recovery
40 steam generator (HRSG) as a liquid and is changed into a high-temperature, high-pressure vapor
41 (steam) whose energy can then be used to drive the steam turbine. In order to complete the steam
42 cycle, low-pressure, low-temperature steam exiting the steam turbine-generator must be cooled to
43 condense the steam back to liquid (water). The change from steam to liquid occurs in the

1 condenser. Cooling of the condenser is provided by a separate circulating water system known as
2 the condenser/cooling tower loop.

3
4 The cooling tower provides a flow of relatively cold water to the condenser and receives
5 heated water back from the condenser. The cooling tower is used to dissipate heat by evaporating a
6 portion of the water circulating within the loop. Water lost through evaporation is replaced by the
7 facility's cooling water makeup supply source. Cooling tower makeup water will be provided and
8 sold to the facility by the Port of Umatilla. The Port of Umatilla will obtain the water sold to the
9 Hermiston Power Project from the Columbia River under Permit # 49497. The evaporation rate
10 from the cooling tower will vary between 960 gallons per minute and 2,667 gallons per minute,
11 depending on steam turbine load and ambient weather conditions. The water use of the entire
12 energy facility under full load conditions, while operating at an average ambient temperature of 53
13 degrees Fahrenheit, will be approximately 2,422_gallons per minute. [Amendment No. 4]

14
15 The proposed power plant will produce wastewater from cooling tower blowdown,
16 demineralization system backwash and from sanitary wastewater. The combined wastewater
17 stream will be discharged to Simplot's existing wastewater discharge system, which reuses treated
18 wastewater for irrigation. Simplot has an existing Water Pollution Control Facility (WPCF) permit
19 administered by the Department of Environmental Quality ("DEQ"). Simplot has requested and
20 obtained a modification to its WPCF permit to accommodate the additional discharge from the
21 proposed energy facility. This permit is a "third party" permit under OAR 345-22-010(2).

22 23 **III. CONDITIONS**

24 25 **Carbon Dioxide Emissions Standard, ORS 469.503(2)**

26
27 (1) Prior to commencement of construction, the site certificate holder shall submit to the
28 State of Oregon through the Council a guaranty substantially in the form of Amended Exhibit
29 B-2, executed by Calpine Corporation in the amount of the monetary path payment requirement
30 (in 1998 dollars) as determined by the calculations set forth in Condition 4 and based on the
31 estimated heat rate and capacity certified pursuant to Condition 4(e) below and as adjusted in
32 accordance with the terms of this site certificate pursuant to Condition 4(d). For the purposes of
33 this site certificate, the "monetary path payment requirement" means the offset funds determined
34 pursuant to ORS 469.503(2)(c) and the selection and contracting funds determined pursuant to
35 ORS 469.503(2)(d)(A)(ii) that the site certificate holder must disburse to the Oregon Climate
36 Trust, as the qualified organization, pursuant to ORS 469.403(2)(d)(A). The calculation of
37 1998 dollars shall be made using the index set forth below.

38
39 The guaranty shall remain in effect until such time as the site certificate holder has
40 disbursed the full amount of the monetary path payment requirement to the Oregon Climate
41 Trust ("Oregon Climate Trust") as provided in ORS 469.503(2)(d)(A).

42
43 In lieu of the guaranty requirement set forth above that the site certificate holder must provide
44 prior to commencement of construction, the site certificate holder may instead provide a letter of

1 credit in the amount of the monetary path payment requirement as calculated pursuant to
2 Condition 4 below (in 1998 dollars) and based on the estimated capacity and heat rate of the
3 plant as certified by the site certificate holder pursuant to Condition 4(e). If the site certificate
4 holder has provided a letter of credit prior to commencing construction and if calculations
5 pursuant to Condition 4(d) demonstrate that the site certificate holder must increase its monetary
6 path payments, the site certificate holder shall increase the letter of credit sufficiently to meet the
7 adjusted monetary path payment requirement within the time required by Condition 4(d). The
8 site certificate holder may reduce the amount of the letter of credit commensurate with payments
9 it makes to the Oregon Climate Trust.

10
11 The calculation of 1998 dollars shall be made using the US Gross Domestic Product
12 Deflator for Total Non-Residential Fixed Investment, as published by the US Department of
13 Commerce, Bureau of Economic Analysis, or any successor agency ("the index"). The amount of
14 the letter of credit shall increase annually by the percentage increase in the index and shall be
15 pro-rated within the year to the date of disbursement to the Oregon Climate Trust. If at any time
16 the index is no longer published, the Council shall select a comparable calculation of 1998
17 dollars. The letter of credit shall not be subject to revocation prior to disbursement of the full
18 monetary path payment requirement, including any adjusted monetary path payment requirement.
19 The terms of the letter of credit and identity of the issuer shall be subject to approval by the
20 Council, which approval shall not be unreasonably withheld. [Amendment No. 3]

21
22 (2) The site certificate holder shall disburse to the Oregon Climate Trust offset funds and
23 contracting and selection funds as requested by the Oregon Climate Trust up to the monetary path
24 payment requirement as determined by the calculations set forth in Condition 4 and based on the
25 estimated heat rate and capacity certified pursuant to Condition 4(e) below (in 1998 dollars) and
26 as adjusted in accordance with the terms of this site certificate pursuant to Condition 4(d).
27 Disbursements shall be made in response to requests from the Oregon Climate Trust in
28 accordance with the requirements of ORS 469.503(2)(d)(A).

29
30 (3) Notwithstanding anything in this amended site certificate to the contrary, the site
31 certificate holder shall have no obligation with regard to offsets, the offset funds and the
32 selection and contracting funds other than to make available to the Oregon Climate Trust the
33 total amount required under this site certificate, nor shall any nonperformance, negligence or
34 misconduct on the part of the Oregon Climate Trust be a basis for revocation of this site
35 certificate or any other enforcement action by the Council with respect to the site certificate
36 holder.

37
38 (4) The site certificate holder shall use the following methodology to calculate the amount of
39 the monetary path payment requirement that it must make available to the qualified organization
40 pursuant to ORS 469.503(2)(d)(A). The same methodology shall apply to a one-unit or a two-
41 unit facility. All calculations shall be made assuming that no steam is supplied for cogeneration.
42 The site certificate holder shall use the contracted design parameters for capacity and heat rate for
43 the facility that it reports pursuant to Condition 4(e) to calculate the estimated monetary path
44 payment requirement. The site certificate holder shall use the Year One Capacities and Year One

1 Heat Rates that it reports for the facility pursuant to Condition 4(f) to calculate whether it owes
2 additional monetary path payments.

3
4 (a) To calculate the offset funds payment requirement as provided in ORS 469.503(2)(c), the
5 site certificate holder shall use the following methodology:

6
7 (A) The site certificate holder shall use the respective capacity, heat rate, and carbon
8 dioxide emission factor for each fuel. The carbon dioxide emission factor for natural gas
9 is 0.000117 lb. CO₂/Btu, and for distillate fuel it is 0.000161 lb. CO₂/Btu;

10
11 (B) The site certificate holder shall determine the time the plant will operate using each
12 fuel. For distillate fuel, the time shall be the average number of hours annually that this
13 site certificate permits the facility to use distillate fuel pursuant to Condition 4(g). The
14 site certificate holder shall determine the annual average hours of operation on natural gas
15 by subtracting the annual average hours on distillate fuel from 8,760 hours;

16
17 (C) The site certificate holder shall calculate the total CO₂ emissions (lb. CO₂) for each
18 fuel:

19
20 (i) First, the site certificate holder shall multiply the nominal power of the facility
21 (kW) while operating on natural gas by the annual average hours of operation on
22 natural gas. It shall then multiply that product by 30 years to determine the total
23 net plant output (kWh). It shall multiply the total net plant output by the heat rate
24 (Btu/kWh) while operating on natural gas and by the carbon dioxide emission
25 factor for natural gas (0.000117 lb. CO₂/Btu) to determine the total CO₂ emissions
26 (lb.) from operating on natural gas;

27
28 (ii) Second, the site certificate holder shall multiply the nominal power of the
29 facility (kW) while operating on distillate fuel by the annual average hours of
30 operation on distillate fuel. It shall then multiply that product by 30 years to
31 determine the total net plant output (kWh). It shall multiply the total net plant
32 output by the heat rate (Btu/kWh) while operating on distillate fuel and by the
33 carbon dioxide emission factor for distillate fuel (0.000161 lb. CO₂/Btu) to
34 determine the total CO₂ emissions (lb.) from operating on distillate fuel; then,

35
36 (D) The site certificate holder shall calculate the average CO₂ emissions rate
37 (lb. CO₂/kWh) for the two fuels. It shall add the total CO₂ emissions that each fuel
38 contributes for 30 years to determine the total combined CO₂ emissions from the facility
39 (lb.). Then, it shall add the total net plant output from operation on each fuel for 30 years
40 to determine the total combined plant output (kWh). Then it shall divide the total
41 combined CO₂ emissions by the total combined plant output to determine the average
42 CO₂ emissions rate for the facility (lb. CO₂/kWh);

1 (E) The site certificate holder shall subtract the carbon dioxide standard of 0.7 lb.
2 CO₂/kWh from the average CO₂ emissions rate for the facility to determine its excess
3 CO₂ emissions rate (lb. CO₂/kWh);
4

5 (F) The site certificate holder shall multiply the total combined plant output (kWh) by the
6 facility's excess CO₂ emissions rate (lb. CO₂/kWh). It shall then divide that product by
7 2,000 pounds to determine the total tons of CO₂ emissions it must mitigate (tons); then,
8

9 (G) The site certificate holder shall multiply the total tons of CO₂ emissions it must
10 mitigate by \$0.57 per ton of CO₂ to determine the sub-total for the offset funds.
11

12 (b) To calculate the selection and contracting funds sub-total as provided in ORS
13 469.503(2(d)(A)(ii), the site certificate holder shall subtract \$500,000 from the offset funds
14 subtotal; then multiply the remaining amount by 4.286 percent; then add \$50,000 to that product.
15

16 (c) To determine its monetary path payment requirement, the site certificate holder shall add
17 the sub-total for the offset funds and the sub-total for the selection and contracting funds.
18

19 (d) When the site certificate holder submits the Year One Test report required in Condition
20 4(f), it shall increase its guaranty or letter of credit for the monetary path payment requirement if
21 the calculation using reported data shows that the adjusted monetary path payment requirement
22 exceeds the monetary path payment requirement for which the site certificate holder had
23 provided a guaranty or letter of credit prior to commencing construction, pursuant to Condition 1.
24

25 (A) The site certificate holder shall make the appropriate calculations and increase its
26 guaranty or letter of credit, if necessary, within 30 days of filing its Year One Test report
27 with the Council.
28

29 (B) In no case shall the site certificate holder diminish the guaranty or letter of credit it
30 provided prior to commencing construction or receive a refund from the qualified
31 organization based on the calculations made using the Year One Capacities and the Year
32 One Heat Rates.
33

34 (e) Prior to commencement of construction, the site certificate holder shall notify the Council
35 in writing of its final selection of gas turbine vendor and shall submit written design information
36 to the Council sufficient to verify the facility's designed new and clean heat rate and its nominal
37 electric generating capacity at average annual site conditions for each fuel type. The information
38 that the site certificate holder submits shall include the proposed binding annual average number
39 of hours of facility operation on distillate fuel oil. The report shall also include an affidavit or
40 other evidence from the site certificate holder to confirm that the vendor has guaranteed the heat
41 rate and that the site certificate holder's contract with the vendor includes a liquidated damages
42 provision adequate to fund any increased monetary path payment requirement calculated under
43 Condition 4(d) resulting from vendor's failure to achieve the guaranteed heat rates or capacities.
44

1 (f) Within two months of completion of the first year of commercial operation, the site
2 certificate holder shall provide to the Council pursuant to ORS 469.503(2)(e)(G) a test report
3 (Year One Test) of the actual heat rates (Year One Heat Rates) and nominal generating capacities
4 (Year One Capacities) for each fuel type used, without degradation, assuming no steam is
5 supplied for cogeneration, as determined by a 100-hour test at full power completed during the
6 first 12 months of commercial operation, with the results adjusted for the average annual site
7 condition for temperature, barometric pressure and relative humidity and use of alternative fuels,
8 and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of
9 161 pounds of carbon dioxide per million Btu of distillate fuel.

10
11 (g) The combustion turbine units shall be fueled solely with natural gas or with synthetic gas
12 with a carbon content per million Btu no greater than natural gas, except that the site certificate
13 holder may use distillate fuel for no more than an average of 378 hours per year calculated on a
14 rolling average of the previous five years. For the first five years, distillate fuel use may
15 fluctuate, provided that the average use, when calculated at the end of five years, does not exceed
16 378 hours per year. However, if prior to the commencement of construction the site certificate
17 holder proposes in its written submission to the Council made pursuant to Condition 4(e) to use
18 distillate fuel more or less than 378 hours on average per year, the number proposed by the site
19 certificate holder shall replace 378 hours as the binding annual average number of hours for
20 distillate fuel use under this Condition 4(g) and for calculations of the monetary path payment
21 requirement.

22
23 Notwithstanding the number of hours permitted annually of distillate fuel use based on a
24 five-year rolling average or during the first five years, in no year shall the facility's use of
25 distillate fuel exceed 10 percent of its expected total annual fuel use in Btu, higher heating value.

26
27 **Shelf Life: OAR 345-27-020(3)**

28
29 (5) The Site Certificate holder shall begin construction of proposed facility by November 30,
30 2000 and shall complete construction by January 1, 2003.

31
32 (6) Construction completion of the facility shall be defined as the commercial operation date of
33 the facility. If the Site Certificate holder begins construction by November 30, 2000 but cannot
34 complete construction by January 1, 2003, then the Council may grant extensions of the
35 construction completion date in accordance with OAR 345-27-030.

36
37 **Organizational, Managerial And Technical Expertise: OAR 345-22-010**

38
39 (7) Prior to commencement of construction, the Site Certificate holder shall demonstrate to
40 ODOE that the Port has not forfeited its legal right to perfect the 2400 gpm contracted to HPP.

41
42 (8) Prior to commencement of construction, HPP shall have a contract or other agreement with
43 Simplot to accept and dispose of HPP's wastewater.

1 (9) Prior to construction, HPP shall identify for the Council's approval the EPC contractor
2 chosen to construct the facility. Prior to commercial operation, HPP shall identify for the Council's
3 approval the contractor chosen to operate the facility. Any such approval shall not be unreasonably
4 withheld.

5
6 (10) All modifications to the partnership agreement shall be submitted to the Department for
7 incorporation in the Site Certificate file.

8
9 (11) Any change of operator shall be reported to the Department.

10
11 (12) Any matter of non-compliance under this Site Certificate shall be the responsibility of the
12 partnership. Any notices of violation issued will be issued to the partnership. Any civil penalties
13 levied will be the responsibility of the partners jointly and severally.

14
15 (13) In the annual report submitted to the Council, the Site Certificate holder shall describe any
16 change in the membership or voting requirements of its management committee or any admission
17 or withdrawal of a partner not described in any earlier annual report previously submitted to the
18 Council. Any (a) such change in such membership or voting requirements resulting in a material
19 change to the Site Certificate holder's existing management structure and procedures; (b) such
20 admission resulting in a new partner's active participation in the business and affairs of the Site
21 Certificate holder; or (c) such withdrawal resulting in the complete removal of an existing partner
22 from its previously active participation in the business and affairs of the Site Certificate holder,
23 shall be subject to approval of the Council, which approval shall not be unreasonably withheld or
24 delayed.

25
26 (14) The Site Certificate holder shall contractually require the EPC contractor and all
27 independent contractors and subcontractors involved in the construction and operation of the
28 proposed facilities to comply with all applicable laws and regulations and with the terms and
29 conditions of the Site Certificate. Such contractual provision shall not operate to relieve the Site
30 Certificate holder of responsibility under the Site Certificate.

31
32 **Financial Assurance: OAR 345-022-0050**

33
34 (15) Prior to commencement of construction, the site certificate holder shall submit to the
35 State of Oregon through the Council, a guaranty substantially in the form of Second Amended
36 Exhibit A, executed by Calpine Corporation in the amount of \$8,202,000 (in 1995 dollars). The
37 calculation of 1995 dollars shall be made using the index set forth below. The guaranty shall
38 remain in effect until such time as the total security in the retirement fund described in Condition
39 16 below reaches \$8,202,000 (in 1995 dollars). For the purposes of this site certificate, "total
40 security in the retirement fund" means the total amount of all cash, letters of credit and
41 performance bonds deposited, issued or posted as security for the performance of the site
42 certificate holder's obligation under OAR 345-022-0130.

1 In the event that Calpine Corporation's long-term unsecured debt is rated below "BB" or its
2 equivalent by S&P and Moody's or their successors, the site certificate holder shall provide a
3 letter of credit in the amount of \$8,202,000 (in 1995 dollars) less all amounts then on deposit in
4 the retirement fund. The calculation of 1995 dollars shall be made using the U.S. Gross
5 Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S.
6 Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index").
7 The amount of the letter of credit shall increase annually by the percentage increase in the index.
8 If at any time the index is no longer published, the Council shall select a comparable calculation
9 of 1995 dollars. The letter of credit shall not be subject to revocation during the lifetime of the
10 facility. The terms of the letter of credit and identity of the issuer shall be subject to approval by
11 the Council, which approval shall not be unreasonably withheld. All funds received by the site
12 certificate holder from the salvage of equipment or buildings shall be committed to the
13 restoration of the facility site to the extent necessary to fund the approved restoration.

14 [Amendment No. 3]

15
16 (16) This condition shall apply only while the site certificate holder satisfies Condition 15
17 with a guaranty instead of a letter of credit.

18
19 Starting with the first year of commercial operation, the site certificate holder shall establish a
20 retirement fund and begin making commitments to the fund in the amount of \$800,000 (or more
21 if the site certificate holder chooses) in the form of a letter of credit, performance bond, or cash
22 ("annual commitments"). The terms of the security and identity of the issuer of a letter of credit
23 or performance bond shall be subject to approval by the Council, which approval shall not be
24 unreasonably withheld. Such annual commitments shall continue until the total security in the
25 retirement fund reaches \$8,202,000 (in 1995 dollars) in no event later than 10 years from the date
26 of commercial operation. The calculation of 1995 dollars shall be made using the U.S. Gross
27 Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S.
28 Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index").
29 After the security in the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase
30 annually by the percentage increase in the index. If at any time the index is no longer published,
31 the Council shall select a comparable calculation of 1995 dollars. In the event the security in the
32 retirement fund is less than \$8,202,000 (in 1995 dollars) at the time the site certificate holder
33 notifies the Council of its intent to retire the facility, the annual commitments to the retirement
34 fund shall be adjusted so as to assure that the total security in the funds is \$8,202,000 (in 1995
35 dollars) at the time of retirement. the site certificate holder shall describe the status of the fund in
36 the annual report submitted to the Council. All funds received by the site certificate holder from
37 the salvage of equipment or buildings shall be committed to the restoration of the facility site, to
38 the extent necessary to fund the approved restoration. [Amendment No. 3]

39
40 (17) In the event construction is begun but not completed by the deadlines set forth in the Site
41 Certificate, or the energy facility is closed permanently before the end of its useful life, HPP shall
42 restore the site to a useful condition. Restoration shall include but not be limited to the removal of
43 transmission line towers erected by the Site Certificate holder unless the Council determines that

1 such towers are likely to be used by another facility, electric utility or other entity that provides
2 electric service.

3
4 **Structural: OAR 345-22-020**
5

6 (18) Prior to the start of construction, HPP shall conduct an investigation as described by Mr. D.
7 Wermiel of DOGAMI in a letter dated May 9, 1995 to Mr. A. Bless, ODOE which would confirm
8 HPP's characterization of ground response to potential seismic events. The ground response
9 evaluation will include drilling one deep boring to bedrock and measuring downhole shear wave
10 velocity profile beneath the energy facility site. Based on the site-specific measurements, ground
11 response and amplification will be evaluated.
12

13 The geotechnical investigation shall be peer reviewed by the DOGAMI or by a private engineering
14 geologist or geotechnical engineer registered in the state of Oregon that is independent from HPP
15 and the HPP's contractors and subcontractors. If a private engineering geologist or geotechnical
16 engineer is used, the choice of peer reviewer shall be approved by ODOE in consultation with
17 DOGAMI.
18

19 (19) If the detailed survey reveals evidence that is not as described in the ASC, then the HPP
20 shall revise the facility design parameters to comply with corresponding Oregon Building Code
21 requirements. If pre-construction seismic analysis reveals features unique to the energy facility site
22 that justify enhanced seismic design, HPP shall design safety structures critical to public health or
23 safety in consultation with the Building Codes Division of the Department of Consumer and
24 Business Services ("DCBS"), subject to approval by ODOE. Critical structures include hazardous
25 material storage areas and control rooms.
26

27 (20) Except as provided for in condition 2 above, HPP shall design and construct the proposed
28 facility to be consistent with Seismic Zone 2b requirements, in compliance with the laws and
29 regulations administered by the DCBS.
30

31 (21) HPP shall place electrical transmission towers to avoid, to the greatest extent possible given
32 the existing alignment, the narrow strip of alluvium along the Umatilla River that may be subject to
33 liquefaction. If this strip cannot be avoided, the transmission towers shall be constructed so as to
34 otherwise mitigate for the risk of liquefaction. Mitigation measures shall be developed in
35 consultation with DOGAMI.
36

37 (22) HPP shall design the energy facility in accordance with a design basis seismic event of
38 magnitude 4.5 along the service Anticline at a distance of 1 km from the energy facility site, as
39 described on p. 14a of Exhibit G of the ASC, and in accordance with a Seismic Zone 2b
40 classification by the Oregon Building Code.
41

42 (23) HPP shall embed transmission line tower foundations below significant loose soils as
43 described on p. 16 of Exhibit G of the ASC.
44

1 (24) The PGT pipeline shall be embedded below loose soil deposits combined, if necessary with
2 the use of free draining, coarse granular backfill as described in the ASC, Exhibit G p. 17.

3
4 (25) Along the 500 kV transmission line right of way in the vicinity of Maxwell Canal, near
5 Diagonal Road, east and north of Hermiston, along the relocated BPA 500 kV McNary to Lower
6 Monumental line between Highway 730 and Power City Road, and in the area near Power City,
7 transmission line poles will be constructed in upland areas and/or on higher ground underlain by
8 dense granular soil with negligible liquefaction potential as described in ASC Exhibit G p. 17.

9
10 (26) Transmission pole and pipeline locations that could be subject to settling, slumping or
11 liquefaction shall be tested for soil properties prior to pole and pipe installation, as described on
12 page 19 on Exhibit G of the ASC.

13
14 **Soil Protection: OAR 345-22-022**

15
16 (27) Ground disturbing activities and incidental activities (e.g., personal vehicle parking, sanitary
17 facilities, temporary staging areas, etc.) for the facility shall be confined to a limited number of
18 locations identified by HPP and approved by the Department prior to commencement of
19 construction.

20
21 (28) Only existing roadways shall be used for access along the pipelines; access for transmission
22 line construction and maintenance shall utilize existing roads wherever practicable and temporary
23 transmission line access roads shall only be constructed where there is open terrain with no existing
24 access road; and no permanent impacts shall be associated with pipeline or transmission line access
25 road construction or maintenance.

26
27 (29) Topsoils and subsoils resulting from excavation for gas and water pipelines shall be
28 segregated and the topsoil restored to minimize impacts on soil fertility.

29
30 (30) The Site Certificate holder shall utilize site watering or other methods to reduce wind
31 erosion during site earthwork or construction. Post construction soil stabilization methods shall be
32 utilized as described on ASC Exhibit G p. 18.

33
34 **Protected Areas: OAR 345-22-040**

35
36 (31) The Site Certificate holder shall not operate the Circulating Water System at above 5,200
37 ppm, TDS equivalent on an annual average basis. Drift rate shall not result in solids carryover
38 exceeding the equivalent of 0.005% drift rate at 5,200 ppm, TDS.

39
40 **Fish and Wildlife: OAR 345-22-060**

41
42 (32) Any trimming, side cutting or other removal of riparian vegetation that may be required
43 under the proposed 500 kV transmission line shall be kept to a minimum and shall only be
44 conducted to meet National Electric Safety Code clearances.

1
2 (33) Construction and maintenance of the transmission lines and natural gas pipelines shall
3 avoid all wetlands, except for the two wetland areas (wetlands #4 and #15) that will be
4 unavoidably impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and the one
5 wetland area, wetland #13, that may be impacted by pole placement.
6

7 (34) No ground disturbing activities shall be conducted in the Umatilla River, no water
8 withdrawals from the Umatilla River shall occur, and the energy facility shall not discharge water
9 into the river (ASC, Exhibit P, p. 15).
10

11 (35) Non-wetland areas disturbed by construction of the energy facility, the equipment
12 storage/staging area and employee parking staging area, the natural gas pipelines, the water
13 supply pipeline, and the transmission lines shall be revegetated upon completion of construction.
14 Revegetation shall emphasize the use of native species and shall be conducted in accordance with
15 the Revegetation and Wetland Mitigation Plan, Hermiston Power Project, dated June 26, 1995.
16 [Amendment No. 4]
17

18 (36) Subject to Condition (37), if feasible, construction of the natural gas pipelines, water
19 supply line and transmission line shall occur outside of sensitive time periods (as described in the
20 ASC, Exhibit P/P-1, page 44a, and Exhibit L, Fourth Request to Amend Site Certificate) for the
21 following wildlife species of concern which were documented within the impact area of the
22 proposed natural gas pipelines, water supply line and transmission line: painted turtle, long-billed
23 curlew, grasshopper sparrow, Swainson's hawk, burrowing owl, bank swallow, loggerhead
24 shrike, *Lanius ludovicianus*, sagebrush lizard, *Sceloporus graciosus*, and white-tailed jackrabbit,
25 *Lepus townsendii*. [Amendment No. 4]
26

27 (37) Notwithstanding Condition (36), prior to construction of the gas pipelines, water supply
28 line and transmission line HPP shall provide to ODOE a construction schedule, including
29 activities and locations, if any, of planned construction of the gas pipelines, water supply line and
30 transmission line during the sensitive time periods for the species listed above. HPP shall consult
31 with ODFW to make every effort to schedule construction activities to avoid adverse impact on
32 the species listed above.
33

34 Not less than 60 days prior to the sensitive time periods for species listed above, HPP
35 shall notify ODOE in writing of any construction activities on the gas pipelines, water supply line
36 and transmission line scheduled for those time periods. If construction activities cannot be
37 scheduled to occur outside the sensitive time periods for the above listed species of concern, pre-
38 construction biological surveys shall be conducted by a wildlife biologist within the impact area
39 of the proposed natural gas pipelines, water supply line and transmission line to identify the
40 location of wildlife species of concern or their nest sites. HPP shall develop the methodology for
41 these pre-construction surveys in consultation with ODFW prior to conducting the surveys.
42 Mitigation for potential impacts to any wildlife species of concern and/or their nest sites found
43 during pre-construction surveys shall be developed by HPP prior to construction of the gas
44 pipelines, water supply line and transmission line and in consultation with ODFW. The

1 mitigation plan shall be submitted to ODFW and ODOE for review and approval prior to
2 construction of the gas pipelines, water supply line and transmission line. ODOE shall make a
3 final determination on the mitigation plan within 45 days of its submission.
4

5 (38) Upon completion of construction of the energy facility, two raptor perching poles shall be
6 placed near the outside edge of the 17 acre energy facility site. The design and location of these
7 raptor perching poles shall be developed in consultations with ODFW. Raptor perching poles
8 shall be located to benefit raptors without interfering with the energy facility plant operation and
9 maintenance.
10

11 (39) Transmission lines shall span the Umatilla River and associated riparian habitat in order
12 to avoid adverse impacts, as described in the ASC (Exhibit P, p. 15). The natural gas pipelines,
13 water supply line, and transmission lines shall be routed to avoid riparian areas and wetlands
14 adjacent to the Umatilla River. All permanent access routes shall be designed to be set back at
15 least 50 feet from the Umatilla River, as described in the ASC (Exhibit N, p. 7a).
16

17 (40) The following areas shall be flagged in the field prior to the start of construction to
18 delineate the maximum extent of project disturbance:
19

- 20 i. the natural gas pipeline and transmission line routes through wetlands #4, #13,
21 and #15;
- 22
- 23 ii. any natural gas pipeline, water supply line, and transmission line routes within 50
24 feet of the Umatilla River; and
- 25
- 26 iii. the transmission line crossings of the Umatilla River.
27

28 (41) Notification shall be provided to the ODFW's Pendleton District office at least one week
29 (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply
30 pipeline, and transmission lines.
31

32 (42) Measures taken to mitigate impacts to fish and wildlife and their habitats shall be
33 monitored by HPP. Monitoring methodologies and schedules shall be developed in consultation
34 with ODFW. A mitigation monitoring plan shall be submitted to ODFW and ODOE for review
35 and approval prior to issuance of a notice to proceed. If any mitigation measures are determined
36 by the HPP or ODFW to be unsuccessful, corrective actions shall be taken by the applicant after
37 consultation with ODFW.
38

39 (43) A minimum of ten (10) cottonwood (*Populus trichocarpa*) tree saplings shall be planted,
40 in an appropriate habitat area, and within the vegetation impact area for the natural gas pipelines
41 and electrical transmission lines for every cottonwood tree removed during construction of the
42 natural gas pipelines and electrical transmission lines.
43

1 (44) The project shall not impact any native vegetation within the U.S. Army's Umatilla
2 Ordinance Depot.

3
4 (45) HPP shall design transmission lines with a separation between conductors greater than 5
5 feet, and shall consider other techniques to reduce collision potential (e.g., clustering lines,
6 placing colored serial marker ball on the line, etc.)

7
8 (46) Top soils and subsoils resulting from excavation for gas and water pipelines shall be
9 segregated and the top soil restored.

10
11 (47) The Swainson's hawk nest south of the proposed energy facility (described in ASC Ex P,
12 page 19) shall be monitored during the two weeks prior to facility construction to determine if
13 the nest is active. If the nest is determined to be active, a qualified biologist shall be retained to
14 monitor the nest during facility construction and maintain contact with ODFW. If monitoring
15 indicates that facility construction is adversely impacting nesting Swainson's hawks or their
16 young, a mitigation plan shall be developed after consultation with ODFW.

17
18 **Threatened and Endangered Species: OAR 345-22-070**

19
20 (48) Raptor protection shall be employed in the design and construction of the transmission
21 towers and transmission lines following the methods described by Olendorf, R.L., A.D. Miller,
22 and R.N. Lehman, 1981, Suggested practices for raptor protection on power lines, Raptor
23 Research Foundation, University of Minnesota, St. Paul, Minnesota. A detailed design shall be
24 submitted to the ODFW for review and approval during the design phase of the project. All
25 energized transmission conductors shall be designed with adequate separation of a minimum of
26 five feet.

27
28 (49) Notification shall be provided to the ODFW's Pendleton District office at least one week
29 (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply
30 pipeline, and transmission lines.

31
32 (50) HPP shall conduct a pre-construction survey to determine if *Astragalus collinus var.*
33 *laurentii* is present along the route of the relocated BPA 500 kV transmission line where the
34 route crosses the slope that occurs north of Highway 730. The survey shall be conducted during
35 the appropriate field season (May through early July) by a qualified biologist. If the species is
36 found to occur in areas that might be affected by construction of the relocated BPA 500 kV line,
37 HPP shall contact ODOE and the Oregon Department of Agriculture, Plant Conservation biology
38 Program to develop a mitigation plan.

39
40 HPP shall conduct a pre-construction survey to determine if individuals of any rare plant
41 species (*Astragalus collinus var. laurentii*, *A. sclerocarpus*, *A. succumbens*, *Balsamorhiza rosea*,
42 *Cryptantha leucophaea*, and *Lomatium watsonii*) are present along the revised route of the HPP
43 500 kV transmission line described in the Fourth Request to Amend Site Certificate. The survey
44 shall be conducted during the appropriate field season (May or June) by a qualified biologist. If

1 individual plants of a rare species are found to occur in areas that might be affected by
2 construction of the rerouted HPP 500 kV transmission line, HPP shall contact the Office of
3 Energy and the Oregon Department of Agriculture, Native Plant Conservation Program, to
4 develop a mitigation plan prior to construction in the affected area. [Amendment No. 4]
5

6 **Scenic and Aesthetic Values: OAR 345-22-080**
7

8 (51) To minimize visual intrusion caused by the stacks, the stacks shall be painted in a matte
9 finished neutral color to minimize the potential for glare caused by reflective surfaces. Colors
10 shall be chosen to blend with the surrounding area, to the extent that the choice does not
11 compromise air traffic safety.
12

13 (52) Landscaping shall be used to screen the energy facility from the nearest residence and
14 roadways to the extent reasonably feasible. Shrubbery and trees planted along the perimeter of
15 the energy facility site and other landscaping shall be well-maintained and include low-
16 maintenance and indigenous plants.
17

18 (53) To minimize project visibility at night, outdoor lighting shall be limited to the extent
19 necessary to maintain safety conditions.
20

21 (54) HPP will not put up signs along Feedville Road without authorization from the County.
22 /
23 /
24 /

25 **Historic, Cultural, and Archaeological Resources: OAR 345-22-090**
26

27 (55) HPP shall consult with CTUIR before commencing construction. HPP shall allow tribal
28 monitoring by CTUIR of earth-moving activities within areas with a high potential for containing
29 archaeological remains. These areas are identified in Figure T-5 of the ASC.
30

31 (56) HPP shall notify the CTUIR before starting construction and shall provide the opportunity
32 for a CTUIR representative, knowledgeable in cultural resources of the area, to be available for
33 periodic on-site monitoring during construction activities.
34

35 (57) If resources are discovered during project construction or construction-related activities
36 that are likely to be eligible for listing on the National Register of Historic Places or to qualify as
37 archeological objects or sites, HPP shall stop all work in the immediate area of the find and
38 consult with the CTUIR and SHPO. HPP shall not restart work in the affected area until it has
39 complied with the archeological permit requirements administered by SHPO (currently set forth
40 in OAR Chapter 736, Division 51).
41

42 (58) HPP shall place the transmission towers/poles away from the banks of the Z, Maxwell, A-
43 Line and Feed canals, and the Hermiston and Stanfield Branch Furnish Ditches, and shall avoid

1 any disturbance at the canal crossings when electrical lines are strung, to avoid disturbance of the
2 canal features during construction and operation of the transmission line.

3
4 (59) If practicable, HPP shall avoid disturbance to the Feed Canal in construction of the NWP
5 pipeline. If construction cannot avoid the canal, HPP shall consult with SHPO and shall take
6 steps required by SHPO to mitigate adverse impacts to the canal. Fill excavated during any
7 construction at the canal shall be monitored by a professional historic archaeologist.

8
9 (60) HPP shall consult with the irrigation district in which the canal is located before
10 construction or the upgrading of the transmission line in the area of the canal to determine
11 whether there are any applicable restrictions.

12
13 **Recreation: OAR 345-22-100**

14
15 None

16
17 **Socio-Economic Impacts: OAR 345-22-110**

18 (61) HPP will hire as many local workers as is reasonably possible for both the construction
19 and operation of the Project. A "local" worker is one who resides within a 60 mile radius from
20 the project site encompassing part of Umatilla and Morrow Counties in Oregon and the part of
21 Benton, Franklin and Walla Walla counties in Washington. HPP will establish a single point of
22 contact with the Oregon Employment Department in Pendleton Oregon to coordinate
23 employment opportunities at the project site.

24
25 (62) During construction, contracted portable toilet facilities shall be used. During operation,
26 domestic wastewater will be treated by the Simplot Company treatment system.

27
28 (63) HPP shall retain stormwater on-site in a stormwater detention pond. During an extreme
29 event, excess stormwater will be discharged from the settlement basin to the natural drainage.
30 Prior to construction the Site Certificate holder will obtain from the Department of
31 Environmental Quality a general National Pollutant Discharge Elimination System (NPDES)
32 permit 1200-C for construction of the facility. Prior to operation the facility will obtain a general
33 NPDES permit 1200-H as administered by DEQ.

34
35 (64) The energy facility shall be constructed with fire hydrants and a sprinkler and deluge
36 system. An employee training program will be implemented and records maintained as described
37 in the ASC, Exhibit U p. 19. An early warning gas release system will be installed as described in
38 the ASC Exhibit U p. 19.

39
40 (65) During construction, HPP shall establish a housing clearing house at the energy facility
41 site for construction workers. The clearing house shall coordinate with local officials and housing
42 owners to place workers who need lodging as necessary. During construction, HPP shall monitor
43 the central vacancy rate in the cities of Umatilla, Stanfield and Hermiston. If the vacancy rate
44 falls below seven percent, the clearing house will begin its activity to locate available housing

1 outside of Umatilla, Stanfield and Hermiston so a listing of available housing outside of these
2 cities can be provided to temporary workers should the vacancy rate fall below five percent. If
3 the vacancy rate falls below five percent, HPP shall locate housing outside of Umatilla, Stanfield
4 and Hermiston, or offer temporary housing for any temporary workers that it hires from outside
5 the local area. HPP shall provide a plan of operation for the housing clearing house to ODOE
6 prior to the start of construction. HPP shall provide such a plan at least 60 days prior to the start
7 of construction and ODOE shall review and respond with its approval or comments not later than
8 30 days after the plan is submitted.

9
10 (66) Construction worker traffic patterns to the energy facility site will be coordinated with the
11 state, county and adjacent Simplot potato processing facility. If necessary, sight distances will be
12 improved and a left turn lane provided on Simplot's private access road at its intersection with
13 State Road 207.

14
15 (67) Rail delivery shall be used to the extent practical to minimize heavy-haul truck trips
16 during construction.

17
18 (68) HPP shall, in consultation with the Hermiston Rural Fire Protection District, establish a
19 pre-fire plan which shall be available to the local fire district. The plan shall describe key
20 entrances and exits, the floor plan of the energy facility, the location of hydrants and hoses, and
21 the location and description of any hazardous materials.

22
23 **Waste Minimization: OAR 345-22-120**

24
25 (69) During construction of the facility, HPP shall identify means of minimizing waste
26 generation and shall recycle waste to the extent reasonably practicable. HPP shall also implement
27 a waste minimization and recycling program to remain in effect throughout the life of the facility.

28
29 (70) HPP shall ship used batteries, spent demineralizer resins and spent oxidation catalysts to
30 vendor recycling facilities. Used SCR catalysts will be shipped to a metals reclaiming facility.

31
32 (71) During operation, all waste materials shall be contained on the energy facility site within
33 the site perimeter fence and screened from view. Process waste will be stored in closed
34 containers. Used batteries shall be stored indoors. Hazardous waste shall be stored and
35 transported in accordance with applicable state and federal law.

36
37 (72) HPP shall implement, to the extent reasonably practical, design features such as those
38 described in Exhibit V pages 4 through 6 to reduce unnecessary water consumption. Such
39 features may include but are not limited to controls to maximize demineralizer resin efficiency,
40 utilization of optimal cycles of concentration, selection of advanced gas turbines, sizing of the
41 condenser to condense all steam produced in the HRSG, recovery of filter backwash water,
42 reprocessing of filtrate from the sludge dewatering system, and incorporation of a two pass
43 Reverse Osmosis system.

1 (73) Non hazardous chemicals shall be selected for water treatment to allow use of waste
2 water for irrigation.

3
4 (74) Steam condensate that is recovered in the potato processing plant will be returned to the
5 energy facility for reuse.

6
7 (75) Upon completion of construction, HPP shall dispose of all temporary structures not
8 required for future operation of the facility and all used timber, brush, refuse, or flammable
9 material resulting from clearing of lands or from construction of the facility.

10
11 **Retirement: OAR 345-22-130**

12
13 (76) HPP shall manage all hazardous material in accordance with local and state regulatory
14 standards. Documentation will be maintained and hazardous materials will be handled by
15 qualified personnel. Hazardous waste will be stored on site no more than 90 days, followed by
16 transport to a licensed treatment storage disposal facility, as described in ASC, exhibit B p.15a.

17
18 (77) Storage and handling of flammable and combustible liquid chemicals shall be in
19 compliance with National Fire Protection Association Codes 30 and 321. Chemical storage areas
20 will have secondary containment. Storage tanks for distillate shall have secondary containment.
21 HPP shall comply with Uniform Building Code Chapters 79 for Hazardous Materials and 80 for
22 Flammable Liquids. Concrete basins will be provided at each of the large electrical transformers
23 to capture any insulating oil that might spill during a transformer failure or maintenance
24 operation. (ASC Exhibit F p.6) Foundations and slabs for equipment containing lubricating oil,
25 insulating oil or hydraulic fluid shall be designed to contain and collect any spill. Secondary
26 containment for hazardous material storage areas shall have volume equal to 100 percent of the
27 maximum chemical volume in primary containment (ASC Exhibit F p. 9)

28
29 (78) HPP shall prevent any condition over which the certificate holder has control from
30 developing on the site that would preclude restoration of the site to a useful condition. (OAR
31 345-27-020(9)).

32
33 (79) This condition shall apply only while the site certificate holder satisfies Condition 15
34 with a guaranty instead of a letter of credit.

35
36 Starting with the first year of commercial operation, the site certificate holder shall
37 establish a retirement fund and begin making commitments to the fund in the amount of
38 \$800,000 (or more if the site certificate holder chooses) in the form of a letter of credit,
39 performance bond, or cash (“annual commitments”). The terms of the security and identity of the
40 issuer of a letter of credit or performance bond shall be subject to approval by the Council, which
41 approval shall not be unreasonably withheld. Such annual commitments shall continue until the
42 total security in the retirement fund reaches \$8,202,000 (in 1995 dollars) in no event later than 10
43 years from the date of commercial operation. The calculation of 1995 dollars shall be made
44 using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed Investment, as

1 published by the U.S. Department of Commerce, Bureau of Economic Analysis, or any successor
2 agency ("the index"). After the security in the fund reaches \$8,202,000 (in 1995 dollars), the
3 fund shall increase annually by the percentage increase in the index. If at any time the index is
4 no longer published, the Council shall select a comparable calculation of 1995 dollars. In the
5 event the security in the retirement fund is less than \$8,202,000 (in 1995 dollars) at the time the
6 site certificate holder notifies the Council of its intent to retire the facility, the annual
7 commitments to the retirement fund shall be adjusted so as to assure that the total security in the
8 funds is \$8,202,000 (in 1995 dollars) at the time of retirement. The site certificate holder shall
9 describe the status of the fund in the annual report submitted to the Council. All funds received
10 by the site certificate holder from the salvage of equipment or buildings shall be committed to the
11 restoration of the facility site, to the extent necessary to fund the approved restoration.

12 | [Amendment No. 3]

13
14 (80) In the event construction is begun but not completed by the deadlines set forth in the Site
15 Certificate, or the energy facility is closed permanently before the end of its useful life, HPP shall
16 restore the site to a useful condition. Restoration shall include but not be limited to the removal
17 of transmission line towers erected by the Site Certificate holder unless the Council determines
18 that such towers are likely to be used by another facility, electric utility or other entity that
19 provides electric service.

20
21 (81) At least five years prior to planned permanent closure of the facility, HPP shall submit a
22 retirement plan to the Council for approval. The plan shall describe how the site will be restored
23 adequately to a useful condition, including options for post-retirement land use, information on
24 how impacts to fish, wildlife and the environment will be minimized during the retirement
25 process, measures to protect the public against risk or danger resulting from post-retirement site
26 conditions. The plan shall provide for restoration of vegetation to the maximum extent consistent
27 with the anticipated use of the site after the facility is retired.

28
29 (82) HPP shall retire the facility at the end of its useful life in accordance with the approved
30 final retirement plan, pursuant to OAR 345-27-110.

31
32 (83) The retirement plan shall provide for restoration of vegetation to the maximum extent
33 consistent with the anticipated use of the site after the facility is retired.

34
35 (84) Not later than four months before commencing construction of the transmission line, or
36 immediately before commencing construction of the energy facility (whichever is sooner) HPP
37 shall notify ODOE of which alternative transmission line route will serve the energy facility.
38 Once this election has been made, Council approval of the other alternative transmission line
39 shall terminate.

40
41 **Mandatory Conditions (General): OAR 345-27-020**

42
43 The following mandatory conditions are either specifically required by OAR 345-27-020 or are
44 appropriate under OAR 345-27-020(6) to address project and site specific conditions and

1 requirements. These mandatory conditions shall apply and should be read together with the
2 specific additional conditions in this Site Certificate to ensure compliance with the siting
3 standards of OAR 345 divisions 22, 23 and 24, and to protect the public health and safety.
4

5 (85) The Site Certificate holder shall submit to the department a legal description of the site to
6 be appended to the Site Certificate prior to construction.
7

8 (86) The facility shall be designed, constructed, operated and retired:
9

10 (a) Substantially as described in this Site Certificate and in the Final Order;
11

12 (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules,
13 and applicable state and local laws, rules and ordinances in effect at the time the Site Certificate
14 is issued; and
15

16 (c) In compliance with all applicable permit requirements of other state agencies.
17

18 (87) Construction of the facility must begin and be completed by dates specified in Condition
19 5 of this Site Certificate.
20

21 (88) No construction, including clearing of a right of way, except for the initial survey, may
22 commence on any part of the facility until the Site Certificate holder has adequate control, or has
23 the statutory authority to gain control, of the lands on which clearing or construction will occur.
24

25 (89) The certificate holder shall submit to the State of Oregon, through the Council, a bond or
26 comparable security, satisfactory to the Council, in an amount specified in the certificate
27 adequate to restore the site to a useful condition if the certificate holder:
28

29 (a) Begins but does not complete construction of the facility; or
30

31 (b) Permanently closes the facility before establishing a financial mechanism or
32 instrument, satisfactory to the Council, that will assure funds will be available to adequately
33 retire the facility and restore the site.
34

35 (90) If mitigation is required after an affirmative finding by the Council under any standards of
36 division 22 or division 24 of this chapter, the certificate holder, in consultation with affected state
37 agencies and local governments designated by the Council, shall develop specific mitigation
38 plans consistent with Council findings under the relevant standards. Such plans must be
39 approved by the department prior to the beginning of construction or, as appropriate, operation.
40

41 (91) The certificate holder shall prevent any condition over which the certificate holder has
42 control from developing on the site that would preclude restoration of the site to a useful
43 condition.
44

1 (92) Conditions related to facility retirement and site restoration:
2

3 (a) The certificate holder shall establish a financial mechanism or instrument, satisfactory
4 to the Council, that will assure funds will be available to adequately retire the facility and restore
5 the site;
6

7 (b) At least five years prior to planned retirement of the facility, the certificate holder
8 shall submit a retirement plan to the Council for approval. The plan shall describe how the site
9 will be restored adequately to a useful condition, including options for post-retirement land use,
10 information on how impacts to fish, wildlife and the environment will be minimized during the
11 retirement process and measures to protect the public against risk or danger resulting from post-
12 retirement site conditions; and
13

14 (c) The facility shall be retired after its useful life in accordance with the approved final
15 retirement plan, pursuant to OAR 345-27-110.
16

17 (93) The certificate holder shall restore vegetation to the extent practicable and shall landscape
18 portions of the site disturbed by construction in a manner compatible with its surroundings and/or
19 proposed future use. Upon completion of construction, the certificate holder shall dispose of all
20 temporary structures not required for future use and all timber, brush, refuse and flammable or
21 combustible material resulting from the clearing of land or from construction of the facility.
22

23 (94) The facility shall be designed, engineered and constructed to avoid potential dangers to
24 human safety presented by seismic hazards affecting the site as defined in ORS 455.447(1)(d),
25 and including amplification, that are expected to result from the reasonably probable seismic
26 event.
27

28 **Mandatory Conditions (Site-Specific): OAR 345-27-023**
29

30 (95) The certificate holder shall notify the department, the State Building Codes Division and
31 the Department of Geology and Mineral Industries promptly if site investigations or trenching
32 reveal that conditions in the foundation rocks differ significantly from those described in the
33 Application for Site Certificate. The Council may, at such time, require the certificate holder to
34 propose additional mitigating actions in consultation with the Department of Geology and
35 Mineral Industries and the Building Codes Division.
36

37 (96) The certificate holder shall notify the department, the State Building Codes Division and
38 the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers,
39 deformations or clastic dikes are found at or in the vicinity of the site.
40

41 **Mandatory Conditions (Monitoring): OAR 345-27-028**
42

43 (97) The certificate holder shall establish, in consultation with affected state agencies and local
44 governments, monitoring programs as required by the Site Certificate for impact on resources

1 protected by the standards of division 22 and 24 of this chapter, and to ensure compliance with
2 the Site Certificate.

3
4 (98) The certificate holder shall establish monitoring programs as required by permitting
5 agencies and local governments, as required by the Site Certificate.

6
7 (99) For each monitoring program that it establishes, the certificate holder shall have quality
8 assurance measures that are reviewed and approved by the department prior to commencement of
9 construction or commencement of commercial operation, as specified in the Site Certificate.

10
11 (100) If the certificate holder becomes aware of a significant environmental change or impact
12 attributable to the facility, the certificate holder shall submit to the department as soon as
13 possible a written report identifying the issue and assessing the impact on the facility and any
14 affected Site Certificate conditions.

15
16 (101) HPP shall report any material violation of any condition of the Site Certificate by HPP or
17 any of its contractors, subcontractors or agents to ODOE within 72 hours of discovery. HPP shall
18 report to ODOE within 24 hours of discovery if HPP or any of its contractors, subcontractors or
19 agents creates any condition by construction or operation of the facility that endangers the public
20 health or safety.

21
22 **Public Health & Safety: ORS 469.401(2)**

23
24 (102) The Site Certificate holder shall design, construct, operate and retire the facility in
25 accordance with all applicable statutes, rules, and ordinances.

26
27 (103) The pipelines shall be constructed in accordance with the requirements of the U.S.
28 Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192.

29
30 (104) The pipelines shall have mechanical structures that allow the pipeline to be sealed off, in
31 the event of leakage, in a manner that will minimize the release of flammable materials. This is
32 rebuttably presumed to be satisfied if the pipeline meets the requirements of Title 49, Code of
33 Federal Regulations, Part 192.

34
35 (105) The Site Certificate holder shall develop a program, or assure the development of a
36 program by the entity responsible for the pipelines, using the best available, practicable
37 technology to monitor the proposed pipeline to ensure protection of public health and safety.

38
39 (106) The transmission line shall be designed so that alternating current electric fields shall not
40 exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public
41 within the right of way.

42
43 (107) The transmission line shall be designed so that induced currents resulting from the
44 transmission line and related facilities will be as low as reasonably achievable. The Site

1 Certificate holder shall develop and implement a program which shall provide reasonable
2 assurance that all fences, gates, cattle guards, trailers, or other permanent objects or structures
3 ("structures") that could become inadvertently charged with electricity shall be grounded through
4 the life of the line. The Council interprets this requirement to apply to structures in existence
5 when the line is constructed.
6

7 (108) The transmission line shall be designed, constructed, and operated in a manner consistent
8 with the National Electrical Safety Code, Section C2, 1993 Edition (American National
9 Standards Institute), as well as the Rural Electrification Administration standards, where
10 applicable.
11

12 (109) HPP shall submit to the Department copies of all incident reports required under 49 CFR
13 §192.709 involving the related and supporting natural gas pipelines.
14 /
15 /
16 /

17 **Land Use**

18

19 (110) Following issuance of the Site Certificate and prior to commencement of construction,
20 HPP shall apply for and obtain all appropriate land use approvals from the County, as listed in
21 the Resolution of June 5, 1995 passed by the Umatilla County Board of Commissioners.
22

23 (111) HPP shall file with the County Planning Department a landscaping plan for the power
24 plant prior to issuance of a zoning permit. The landscaping plan shall be implemented and shall
25 provide screening and visual buffering for the power plant and its parking and loading areas to
26 the extent reasonably feasible.
27

28 (112) Prior to issuance of a building permit, HPP shall file a site plan with the County which
29 shall consist of a map showing the property lines, location of buildings, access roads and the
30 names of the owner and developer of the site. The site plan shall also show that county
31 ordinances related to parking and loading requirements, setbacks, signs and vision clearance are
32 satisfied.
33

34 (113) If the energy facility site will not be owned by Simplot, HPP shall file with the County an
35 application for a minor partition of the energy facility site from remainder of the adjacent
36 Simplot property in conformance with the information included in the ASC and file and record a
37 final plat in accordance with County ordinances.
38

39 (114) Prior to construction, HPP shall submit a plan acceptable to ODOE for responding to an
40 emergency at the Umatilla Army Depot. The plan shall be developed in consultation with the
41 Umatilla County Chemical Stockpile Emergency Preparedness Program.
42

43 (115) HPP shall take reasonable steps to reduce or manage exposure to electromagnetic fields
44 (EMF), consistent with EFSC findings presented in the "Report of the EMF Subcommittee to the

1 Energy Facility Siting Council," dated March 30, 1993. Prior to and during construction and
2 operation, HPP shall provide information to the public upon public request about EMF levels
3 associated with the power plant and related transmission lines.

4
5 (116) HPP shall enter into an Irrevocable Consent Agreement (ICA) with the County by which
6 HPP agrees to waive the right to oppose the formation of a Local Improvement District (LID) for
7 Co. Rd.No 1324.

8
9 (117) The power plant will incorporate an on-site fire suppression system and will be
10 constructed from fire retardant materials to the extent reasonably feasible. The power plant will
11 incorporate spill prevention and containment designs for the storage of all hazardous materials.
12 Fire suppression and hazardous material safety designs shall be established in consultation with
13 the Hermiston Fire Department and the State Fire Marshall.

14
15 (118) HPP shall provide adequate parking during construction.

16
17 (119) HPP shall coordinate construction traffic with the county Public Works Department. In
18 particular, a traffic plan shall be developed to coordinate peak construction traffic and peak
19 potato harvest traffic.

20
21 (120) The Site Certificate holder shall be responsible for any damages to County Road No.
22 1324 occurring as a result of construction or general operating activities.

23
24 (121) If the 500 kV transmission line alternative is constructed, HPP shall minimize the visual
25 impact of new transmission line structures in the City of Umatilla by the use of steel lattice and
26 wood frame structures, where feasible. Where new single steel pole structures must be installed
27 within the City of Umatilla, HPP shall use non glossy paint coverings in colors that will
28 minimize visual impacts.

29
30 **Noise**

31
32 (122) The Site Certificate holder shall design, select, locate, and/or orient components of the
33 energy facility and provide needed noise controls required to comply with OAR 340-35-035 for
34 new industrial sources located on previously unused industrial sites.

35
36 (123) The Site Certificate holder shall conduct a noise analysis of the final design to insure that
37 the facility will meet DEQ regulations. Results of the analysis shall be submitted to the
38 Department of Energy prior to issuing specifications for the equipment to be installed. The noise
39 study shall include a projection of noise to the noise sensitive properties identified along
40 Umatilla Meadows Road, the daycare facility, and residences west of the plant site west of
41 Highway 207 and south of the Umatilla River. The analysis shall include a listing of the major
42 noise sources and expected sound levels from each source at each receiver.

1 (124) The Site Certificate holder shall conduct a survey at locations mentioned in Condition
2 124 above within two months of startup of the first turbine, again within two months of full
3 power operation, within two months of startup of the second turbine, and again within two
4 months of full power operation of both units. Sound measurements of power operation shall be at
5 operation within 3% of full power. Measurements shall be made at each location during
6 atmospheric conditions best for sound propagation. Sound monitoring shall not be conducted
7 when winds are in excess of 5 mph.

8
9 (125) The Site Certificate holder shall consult with Umatilla County and City of Umatilla and
10 with neighbors around the energy facility to minimize the impacts of construction noise.

11
12 (126) The Site Certificate holder shall specify noise rated cooling towers.

13
14 (127) The Site Certificate holder shall design the HRSG and stack with resonant frequency
15 above the lowest natural frequency of the exhaust from the gas turbine.

16
17 (128) The Site Certificate holder shall specify combustion air inlet silencers to limit noise levels
18 to 46 dBA or less at 2900 feet.

19
20 **Wetlands**

21
22 (129) Prior to construction of the 500 kV transmission line, the Site Certificate holder shall
23 investigate, and where practicable, shall implement opportunities to design the tangent poles of
24 the transmission lines to be high enough to pull the line up so that vegetation maintenance
25 activities in riparian habitats can be minimized or avoided.

26
27 (130) Construction and maintenance of the transmission lines and natural gas pipelines shall
28 avoid all wetlands, except for the two wetland areas (wetlands 4 and 15) that will be unavoidably
29 impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and wetland #13, which may
30 be impacted by placement of the transmission line poles. The permanent impact at these wetlands
31 shall be limited to the area occupied by natural gas pipeline (wetland #4) and the pole
32 foundations and the earthen backfill placed at the base of the poles (wetlands #13 and 15).

33
34 (131) The following areas shall be flagged in the field prior to the start of construction to
35 delineate the maximum extent of project disturbance:

- 36
37 i. the natural gas pipeline and transmission line routes through wetlands 4, 13, and
38 15;
39
40 ii. any natural gas pipeline, water supply line, and transmission line routes within 50
41 feet of the Umatilla River; and
42
43 iii. the transmission line crossings of the Umatilla River.
44

1 Ground disturbing activities in all areas shall be confined to a predefined construction right-of-
2 way corridor. The corridor shall be no wider than is necessary for the safe and practicable
3 completion of the construction tasks. Incidental activities (i.e., personal vehicle parking, sanitary
4 facilities, temporary staging areas, etc.) shall be confined to a limited number of locations that
5 shall be predetermined prior to commencement of construction activities.

6
7 (132) At wetland #13, all ditch crossings shall be culverted with adequate culverts to maintain
8 year round flow.

9
10 (133) If pole placement avoids wetland #13 but is within 45 feet of it, HPP shall place a
11 temporary construction fence and temporary silt barrier at the border of the wetland in the area of
12 the pole to preclude incidental construction-related activity within the wetland and to minimize
13 surface runoff from the construction site into the wetland.

14
15 (134) At wetland #15, construction access for pole placement shall be restricted to the driest
16 period of the year (July through October); all waste and construction debris shall be removed
17 from the wetland area and disposed of on uplands; and construction disturbance shall be
18 restricted to the smallest area practicable.

19
20 (135) At wetland #4, a clay collar shall be placed on the down gradient side of the pipeline at
21 the wetland boundary at each crossing; the pipeline shall be backfilled and stockpiled topsoil
22 shall be replaced at the grade of the trench; and at the location of the outfall, fill material shall be
23 minimized and stabilized to prevent erosion.

24
25 (136) Disturbed wetland and riparian areas shall be revegetated upon completion of
26 construction with seed composition and vegetation species designed to enhance wetland and
27 riparian habitat values and composed only of species commonly associated with wetland and
28 riparian plant communities. Any wetland area that is lost due to project construction shall be
29 compensated by restoring wetland area at a 1:1 wetland impact:wetland restoration ratio, or by
30 creating wetland area at a 1:1.5 wetland impact:wetland creation ration, or by enhancing wetland
31 area at a 1:3.0 wetland impact:wetland enhancement ratio such that there shall be no net loss of
32 wetland habitat units or wetland habitat values. A wetland creation and revegetation plan shall be
33 developed prior to construction in consultation with ODFW and DSL. The wetland creation and
34 revegetation plan shall be submitted to ODOE for review and approval in consultation with
35 ODFW and DSL. HPP shall comply with the approved plan.

36
37 (137) Measures taken to mitigate impacts to wetlands shall be monitored by the Site Certificate
38 holder. Monitoring methodologies and schedules shall be developed in consultation with
39 ODFW, ODA, and DSL. Monitoring shall be conducted for a minimum of seven (7) years
40 following the completion of the restoration efforts unless ODOE, in consultation with DSL and
41 ODFW, approves a shorter monitoring period pursuant to its approval of a specific mitigation
42 monitoring plan. A mitigation monitoring plan shall be submitted to ODOE for review and
43 approval in consultation with ODFW and DSL, prior to the commencement of construction. If
44 any mitigation measures are determined by the Site Certificate holder or ODFW to be

1 unsuccessful, corrective actions shall be taken by the Site Certificate holder after consultation
2 with ODFW (as well as with ODOE and DSL if appropriate).

3
4 **Carbon Dioxide Emissions Standard for Operation with Power Augmentation**
5

6 Conditions 138 through 142 apply to duct burning and any other power augmentation or
7 enhancement technologies (“power augmentation technologies”) that increase the capacity and
8 heat rate of the facility above the capacity and heat rate that it can achieve as a base-load gas
9 plant on a new and clean basis, as reported pursuant to Condition 4(e). All provisions of these
10 conditions are in addition to the requirements of Conditions 1 through 4. The monetary path
11 payment requirement pursuant to Conditions 138 through 142 are supplemental to the monetary
12 path payment requirement pursuant to Conditions 1 through 4 and thus are referred to hereafter
13 as the “supplemental monetary path payment requirement.” [Amendment No. 4]
14

15 (138) Within 15 days after the effective date of the Final Order for Amendment Number Four,
16 the site certificate holder shall submit to the State of Oregon through the Council a guaranty
17 substantially in the form of Exhibit B-2(A), executed by Calpine Corporation. Exhibit B-2(A)
18 shall include a guaranty for the amount of the supplemental monetary path payment requirement
19 (in 2001 dollars) as determined by the calculations set forth in Condition 140. The site certificate
20 holder shall base the calculations for the supplemental monetary path payment requirement on
21 the estimated annual hours of operation and the estimated heat rate and capacity certified
22 pursuant to Condition 141 below. The guaranty also shall accommodate adjustments to the
23 amount of the guaranty in accordance with the terms of this site certificate pursuant to Conditions
24 140 and 142.
25

26 The site certificate holder shall maintain the supplemental monetary path payment
27 guaranty for 30 years or until such time as the site certificate holder has disbursed the full amount
28 of the supplemental monetary path payment requirement to the Oregon Climate Trust.
29

30 The calculation of 2001 dollars shall be made using the U.S. Gross Domestic Product
31 Implicit Price Deflator, as published by the U.S. Department of Commerce, Bureau of Economic
32 Analysis, or any successor agency (the “GDP-IPD index”). If at any time the GDP-IPD index is
33 no longer published, the Council shall select a comparable calculation of 2001 dollars. The
34 selection of a comparable calculation to the GDP-IPD index by the Council shall not require a
35 site certificate amendment.
36

37 In lieu of the guaranty requirement set forth above, the site certificate holder may instead
38 provide a letter of credit to the Oregon Climate Trust in the amount of the supplemental
39 monetary path payment requirement as described above. Furthermore, in the event that Calpine
40 Corporation’s long-term unsecured debt is rated below “BB” or its equivalent by S&P and
41 Moody’s or their successors, the site certificate holder shall provide a letter of credit to the
42 Oregon Climate Trust in the amount of supplemental monetary path payments required at that
43 time. If the site certificate holder has provided a letter of credit and subsequent calculations
44 pursuant to Conditions 140 and 142 demonstrate that the site certificate holder must increase its

1 supplemental monetary path payments, the site certificate holder shall increase the letter of credit
2 sufficiently to meet the adjusted supplemental monetary path payment requirement within the
3 time required by Condition 140.

4
5 The site certificate holder may reduce the amount of the letter of credit commensurate
6 with payments it makes to the Oregon Climate Trust. The terms of the letter of credit and
7 identity of the issuer shall be subject to approval by the Council, which approval shall not be
8 unreasonably withheld.

9
10 The amount of the letter of credit shall increase by the percentage increase in the GDP-
11 IPD index and shall be prorated within the year to the date of disbursement to the Oregon
12 Climate Trust. The letter of credit shall not be subject to revocation before disbursement of the
13 full supplemental monetary path payment requirement, including any adjusted supplemental
14 monetary path payment requirement. [Amendment No. 4]

15
16 (139) The site certificate holder shall disburse to the Oregon Climate Trust offset funds and
17 contracting and selection funds as requested by the Oregon Climate Trust up to the supplemental
18 monetary path payment requirement (in 2001 dollars) as determined by the calculations set forth
19 in Condition 140. Disbursements shall be made in response to requests from the Oregon Climate
20 Trust in accordance with the requirements of OAR 345-024-0710. [Amendment No. 4]

21
22 (140) The site certificate holder shall submit all supplemental monetary path payment
23 requirement calculations to the Oregon Office of Energy for verification. All calculations shall
24 be made assuming that no steam is supplied for cogeneration. The site certificate holder shall use
25 the estimated annual hours of operation for the power augmentation technologies and the
26 contracted design parameters for capacity and heat rate for the facility that it reports pursuant to
27 Condition 141 to calculate the estimated supplemental monetary path payment requirement. The
28 site certificate holder shall use the Year One Capacity and Year One Heat Rate that it reports for
29 the facility pursuant to Condition 142 to calculate whether it owes additional supplemental
30 monetary path payments following the Year One Test and in subsequent five-year periods,
31 pursuant to subsections (c) and (d).

32
33 (a) The net carbon dioxide emissions rate for incremental emissions for the facility
34 operating with power augmentation technologies shall not exceed 0.70 pounds of carbon
35 dioxide per kilowatt hour of net electric power output, with carbon dioxide emissions and
36 net electric power output measured on a new and clean basis, subject to any Council
37 modification pursuant to Condition 141.

38
39 (b) When the site certificate holder submits the Year One Test report required in
40 Condition 142, it shall increase its letter of credit, if one is in effect, for the supplemental
41 monetary path payment requirement if the calculation using reported data shows that the
42 adjusted supplemental monetary path payment requirement exceeds the supplemental
43 monetary path payment requirement for which the site certificate holder had provided a
44 guaranty or letter of credit, pursuant to Conditions 138 and 141.

1
2 (A) The site certificate holder shall make the appropriate calculations and
3 increase its letter of credit, if one is in effect, within 30 days after filing its Year
4 One Test report with the Council.
5

6 (B) In no case shall the site certificate holder diminish the guaranty or letter of
7 credit it provided, or receive a refund from the Oregon Climate Trust, based on
8 the calculations made using the Year One Capacity and the Year One Heat Rate or
9 payments required by calculations pursuant to subsections (c) and (d).
10

11 (c) Each five years after commencing commercial operation of the facility (“five-year
12 reporting period”), the site certificate holder shall report to the Office of Energy the
13 annual average hours the facility operated with power augmentation technologies during
14 that five-year reporting period, pursuant to OAR 345-024-0590(6). The site certificate
15 holder shall submit five-year reports to the Office of Energy within 30 days of the
16 anniversary date of beginning commercial operation.
17

18 (d) If the Office of Energy determines that the facility exceeds the projected
19 incremental net total carbon dioxide emissions, prorated for five years, during any five-
20 year reporting period described in subsection (c), the site certificate holder shall offset
21 excess emissions for the specific reporting period according to subsection (A) and shall
22 offset the estimated future excess emissions according to subsection (B) pursuant to
23 OAR 345-024-0600(4). The certificate holder shall offset excess emissions using the
24 monetary path as described in OAR 345-024-0710, except that contracting and selecting
25 funds shall equal 20 percent of the value of any additional offset funds up to the first
26 \$250,000 (in 2001 dollars) and 4.286 percent of the value of any offset funds in excess of
27 \$250,000 (in 2001 dollars). The site certificate holder shall make the funds available to
28 the Oregon Climate Trust within 30 days after notification by the Office of Energy of the
29 amount it owes.
30

31 (A) In determining the excess carbon dioxide emissions that the site certificate
32 holder must offset for a five-year period, the Office of Energy shall apply OAR
33 345-024-0600(4)(a). The certificate holder shall pay for the excess emissions at
34 \$0.57 per ton of carbon dioxide emission (in 2001 dollars). The Office of Energy
35 shall notify the certificate holder of the amount of payment required, using the
36 monetary path, to offset excess emissions.
37

38 (B) The Office of Energy shall calculate estimated future excess emissions and
39 notify the certificate holder of the amount of payment required, using the
40 monetary path, to offset them. To estimate excess emissions for the remaining
41 period of the deemed 30-year life of the facility, the Office of Energy shall use the
42 parameters specified in OAR 345-024-0600(4)(b). The certificate holder shall pay
43 for the estimated excess emissions at \$0.57 per ton of carbon dioxide emissions
44 (in 2001) dollars. [Amendment No. 4]

1
2 (141) Within 15 days of the effective date of this amendment, the site certificate holder shall
3 submit written design information to the Council sufficient to verify the facility's designed new
4 and clean heat rate and its nominal electric generating capacity at average annual site conditions
5 when operating with power augmentation technologies at full power. The site certificate holder
6 shall also specify the estimated annual average hours that it will operate the power augmentation
7 technologies. Based on such written design and operational information, pursuant to OAR 345-
8 024-0590(1), the Council may approve, upon a request by the site certificate holder, modified
9 parameters for testing the power augmentation technologies on a new and clean basis in a manner
10 that accommodates technical limitations of the equipment. The Council's approval of modified
11 testing parameters for power augmentation technologies shall not require a site certificate
12 amendment. [Amendment No. 4]

13
14 (142) Within the first 12 months of commercial operation, the site certificate holder shall
15 conduct a test at full power (Year One Test) of the actual heat rate at higher heating value (Year
16 One Heat Rate) and nominal generating capacity (Year One Capacity) for the facility operating
17 with power augmentation technologies, without degradation, assuming no steam is supplied for
18 cogeneration, with the results adjusted for the average annual site conditions for temperature,
19 barometric pressure and relative humidity and use of alternative fuels, and using a rate of
20 117 pounds of carbon dioxide per million Btu of natural gas fuel. The full power test shall be
21 100 hours' duration unless the Council has approved a different duration pursuant to Condition
22 141. Within two months of completing the Year One Test for the facility operating with power
23 augmentation technologies, the site certificate holder shall provide to the Council a report of the
24 results of the test. [Amendment No. 4]

25
26 **IV. AMENDMENT OF SITE CERTIFICATION AGREEMENT**

27
28 HPP and EFSC recognize that, because of the length of time that may pass between the
29 date on which this Agreement is executed and the date on which construction will commence,
30 and that will pass between the time construction is commenced and the energy facility is retired,
31 it may be necessary to amend this Agreement.

32
33 Amendments shall be made in accordance with EFSC rules applicable and in effect at the
34 time the amendment is sought.

35
36 **V. SUCCESSORS AND ASSIGNS**

37
38 No Site Certificate, or any portion thereof, may be transferred, assigned, or disposed of in
39 any other manner, directly or indirectly, except in compliance with OAR 345-27-100.

40
41 **VI. SEVERABILITY AND CONSTRUCTION**

1 If any provision of this agreement and certificate is declared by a court to be illegal or in
2 conflict with any law, the validity of the remaining terms and conditions shall not be affected,
3 and the rights and obligations of the parties shall be construed and enforced as if the agreement
4 and certificate did not contain the particular provision held to be invalid. In the event of a
5 conflict between the conditions contained in the Site Certificate and EFSC's Final Order, the
6 conditions contained in this Site Certificate shall control.
7

8 **VIII. GOVERNING LAW AND FORUM**
9

- 10 A. This agreement shall be governed by the laws of the State of Oregon.
11
12 B. Any litigation or arbitration arising out of this agreement shall be conducted in an
13 appropriate forum in Oregon.
14

15 **IN WITNESS WHEREOF**, this Site Certificate has been executed by the State of
16 Oregon, acting by and through its Energy Facility Siting Council, and Hermiston Power
17 Partnership.
18

19 ENERGY FACILITY SITING COUNCIL
20
21

22
23 By: _____ Date: May 4, 2001
24 Karen H. Green, Chair
25

26
27 CALPINE HERMISTON, INC.
28
29

30
31 By: _____ Date: _____
32
33 (Printed) _____
34

35
36 | CPN HERMISTON, INC.
37
38
39

40 By: _____ Date: _____
41
42 (Printed) _____
43
44

- 1 Second Amended Exhibit A on file.
- 2
- 3 /
- 4 /
- 5 /

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9 Oregon, acting by and through its Energy Facility Siting Council, and Hermiston Power
10 Partnership.

11
12 ENERGY FACILITY SITING COUNCIL

13
14
15 By: Karen H. Green Date: May 4, 2001
16 Karen H. Green, Chair
17
18

19
20 CALPINE HERMISTON, INC.

21
22
23 By: DL Kieta Date: May 9, 2001
24 Douglas L. Kieta
25 (Printed) Senior Vice President
26
27

28
29 CPN HERMISTON, INC.

30
31
32 By: DL Kieta Date: May 9, 2001
33 Douglas L. Kieta
34 (Printed) Senior Vice President
35
36

37
38 Second Amended Exhibit A on file.

39
40 /
41 /
42 /

AMENDED GUARANTY

This GUARANTY, dated as of _____, 2001, (this "Guaranty") is executed and delivered by Calpine Corporation, a Delaware corporation ("Guarantor"), in favor the Oregon Energy Facility Siting Council ("EFSC").

Recitals

A. The Guarantor has, through its wholly owned subsidiaries, formed Hermiston Power Partnership, an Oregon general partnership ("HPP"), for the purpose of developing, constructing, owning and operating a nominal 546 MW (net) natural gas-fired combined-cycle combustion turbine cogeneration plant and related and supporting facilities (the "Project") to be located near Hermiston, Oregon.

B. HPP previously filed an application with EFSC for a site certificate authorizing construction and operation of the Project in accordance with ORS Chapter 469 and the rules and regulations of EFSC promulgated thereunder.

C. On March 19, 1998, EFSC and HPP entered into an amended site certificate for the Project issued pursuant to HPP's application therefor. The amended site certificate requires HPP, prior to the commencement of construction of the Project, to obtain security, satisfactory to EFSC, in an amount sufficient to satisfy HPP's obligations under ORS 469.503(2)(d) relating to the monetary path payment requirement, which shall include estimated offset funds and selection and contracting funds and any increased amounts of those funds required to meet the monetary path payment requirement as calculated using data from the facility when it is tested on a new and clean basis pursuant to ORS 469.503(2)(e)(G). Effective July 28, 2001, Calpine provided EFSC with a guaranty in fulfillment of this obligation.

D. On May 4, 2001, EFSC and HPP entered into a third amended site certificate authorizing HPP to install duct burners in the Project and requiring HPP to obtain security in an amount (the "supplemental monetary path payment") necessary to meet the applicable carbon dioxide emissions standard, as is set forth in conditions 138-142 of the third amended site certificate.

E. To induce EFSC to amend the site certificate for the Project, and in consideration of EFSC's amending such site certificate, the Guarantor desires to execute and deliver this Amended Guaranty in favor of EFSC to enable HPP to satisfy conditions 1-4 and 138-142 in the site certificate for the Project described above relating to HPP's obligations under the applicable carbon dioxide emissions standards.

Accordingly, the Guarantor hereby covenants and agrees with EFSC as follows:

SECTION 1. The Guarantor hereby irrevocably, absolutely and unconditionally under any and all circumstances guarantees to EFSC the punctual and full performance

1 and payment of each and every obligation of HPP now existing or which may hereafter
2 arise under site certificate conditions 1-4 as in effect on the date hereof relating to the
3 payment of the monetary path requirement (in 1998 dollars calculated using the index
4 referred to in the amended site certificate for the Project relating to the calculation of the
5 monetary path payment requirement) and site certificate conditions 138-142 as in effect
6 as of the date hereof relating to the supplemental monetary path payment requirement (in
7 2001 dollars calculated using the index referred to in the third amended site certificate for
8 the Project relating to the calculation of the supplemental monetary path payment
9 requirement) (collectively, the "Guaranteed Obligations"), as may be increased by
10 calculations using data provided in the test of the facility on a new and clean basis
11 pursuant to those site certificate conditions, and agrees that, if for any reason whatsoever,
12 HPP shall fail or be unable duly, punctually and fully to perform or pay the Guaranteed
13 Obligations, the Guarantor shall forthwith perform or pay the Guaranteed Obligations, or
14 cause the Guaranteed Obligations to be performed or paid, without regard to any exercise
15 or non-exercise by EFSC of any right, power or privilege under or in respect of the
16 Guaranteed Obligations.

17
18 SECTION 2. This Guaranty shall be direct, immediate and primary and shall be
19 a guarantee of payment and performance and not of collection, and is not conditioned or
20 contingent upon any requirement that EFSC proceed against HPP or any other person or
21 pursue any other right or remedy in EFSC's power before proceeding against the
22 Guarantor or upon any other event, contingency or circumstance whatsoever.

23
24 SECTION 3. The Guarantor hereby unconditionally, absolutely and irrevocably
25 agrees to hold EFSC harmless and to indemnify EFSC from and against any and all
26 claims costs, liabilities and expenses of any nature whatsoever, including reasonable
27 attorneys' fees, resulting from, arising out of or relating to any failure by HPP to perform
28 the Guaranteed Obligations when due or any failure by the Guarantor to perform any of
29 their obligations hereunder when due and in accordance with the terms hereof.

30
31 SECTION 4. To the fullest extent permitted by law, the obligations of the
32 Guarantor under this Guaranty shall be absolute, irrevocable and unconditional, shall
33 remain in full force and effect, and shall not be affected by or subject to any reduction,
34 termination or other impairment by set-off, deduction, counterclaim, recoupment,
35 interruption or otherwise, and the Guarantor shall have no right to terminate this
36 Guaranty or to be released, relieved or discharged, in whole or in part, from their
37 payment or performance obligations referred to in this Guaranty for any reason
38 whatsoever, including without limitation, any one or more of the following:

39
40 (a) any amendment, supplement or modification to, waiver of, consent to
41 or departure from, or failure to exercise any right, remedy, power or privilege
42 under or in respect of, the Guaranteed Obligations or any other agreement or
43 instrument relating thereto;

44
45 (b) any insolvency, bankruptcy, reorganization, dissolution or liquidation
46 of, or any similar occurrence with respect to, or cessation of existence of, or

1 change of ownership of, any person, or any rejection of any of the Guaranteed
2 Obligations in connection with any Proceeding (as defined in Section 5 below) or
3 any disallowance of all or any portion of any claim by EFSC in connection with
4 any Proceeding;

5
6 (c) the failure to create, preserve, validate, perfect or protect any security
7 interest granted to, or in favor of, any person;

8
9 (d) any substitution, modification, exchange, release, settlement or
10 compromise of any security or collateral for or guarantee of any of the
11 Guaranteed Obligations, or failure to apply such security or collateral or failure
12 to enforce such guarantee; or

13
14 (e) any other event or circumstance whatsoever which might otherwise
15 constitute a legal or equitable discharge of a surety or guarantor, it being the
16 intent of the Guarantor that its obligations under this Guaranty shall be
17 irrevocable, absolute and unconditional under any and all circumstances.

18
19 This Guaranty and the obligations of the Guarantor hereunder shall continue to be
20 effective or be automatically reinstated, as the case may be, if at any time any payment by
21 or on behalf of HPP is rescinded or must otherwise be restored by EFSC for any reason,
22 including, but not limited to, as a result of any Proceeding with respect to HPP or any
23 other person, as though such payment had not been made.

24
25 SECTION 5. The Guaranteed Obligations shall include, without limitation,
26 interest accruing following the commencement by or against HPP of any case or
27 proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up,
28 liquidation, dissolution or composition or adjustment of debt (a "Proceeding"), whether
29 or not allowed as a claim in any such Proceeding.

30
31 SECTION 6. To the fullest extent permitted by law, the Guarantor hereby
32 waives (a) all set-offs, counterclaims, presentments, demands for performance, notices of
33 adverse change in the financial condition of HPP or of any other fact that might increase
34 Guarantor's risk hereunder, notices of nonperformance, protests, notice of any of the
35 matters referred to in Section 4, notices of presentation for payment, notices of demand
36 for performance, notices of protest, notices of dishonor, notice of any waivers or
37 indulgences or extensions, notice of the creation or existence of any Guaranteed
38 Obligations, notices of every kind which may be required to be given by any statute or
39 rule of law and notice of acceptance of this Guaranty; (b) diligence, presentment and
40 demand of payment, filing of claims with a court in connection with any Proceeding,
41 protest or notice with respect to the Guaranteed Obligations and all demands whatsoever;
42 (c) any and all statutes of limitations, all laws providing for the exemption of property
43 from execution or for valuation and appraisal upon foreclosure; and (d) any requirement
44 that any action or proceeding be brought against HPP or any other person, or any
45 requirement that any person exhaust any right, power or remedy or proceed against any
46 other person, prior to any action against the Guarantor under the terms thereof; (e) any

1 defense arising by reason of any disability or other defense of HPP or by reason of
2 cessation from any cause whatsoever of the liability of HPP with respect to the
3 Guaranteed Obligations (other than the defense that the Guaranteed Obligations have
4 been paid or performed in their entirety); (f) any right to assert against EFSC any defense
5 (legal or equitable), set-off against counterclaims, or claim which the Guarantor may now
6 or at any time hereafter claim against HPP or any other party liable to EFSC.

7
8 SECTION 7. The Guarantor consents and agrees that, without notice to or by the
9 Guarantor and without affecting or impairing the obligations of the Guarantor hereunder,
10 EFSC may, by action or inaction:

11
12 (a) compromise, settle, extend the duration or the time for the payment or
13 performance of, or discharge the performance of, or otherwise not enforce the
14 Guaranteed Obligations;

15
16 (b) release or substitute the Guarantor or any other guarantor, if any, of
17 the Guaranteed Obligations, or enforce, exchange, release, or waive any security
18 for the Guaranteed Obligations or any other guaranty of the Guaranteed
19 Obligations, or any portion thereof.

20
21 SECTION 8. Until all of the Guaranteed Obligations have been fully and
22 indefeasibly discharged, to the full extent necessary to prevent any payments or other
23 transfers from HPP or the Guarantor to EFSC from being made for the benefit of an
24 insider creditor in determining whether such payments or other transfers constitute
25 avoidable transfers or preferences under Section 547 of the Bankruptcy Code, the
26 Guarantor hereby waives (a) any right of subrogation or reimbursement Guarantor has or
27 may have as against HPP with respect to the Guaranteed Obligations; (b) any right to
28 proceed against HPP, now or hereafter, for contribution, indemnity, reimbursement and
29 any other suretyship rights and claims, whether direct or indirect, liquidated or
30 contingent, whether arising under express or implied contract or by operation of law,
31 which Guarantor may now have or hereafter have as against HPP with respect to the
32 Guaranteed Obligations, and (c) any rights to recourse to or with respect to any asset of
33 HPP.

34
35 SECTION 9. This Guaranty is a continuing guaranty, shall apply to all
36 Guaranteed Obligations whenever arising, shall be binding upon the Guarantor and its
37 respective successors and shall inure to the benefit of and be enforceable by EFSC and its
38 successors.

39
40 SECTION 10. All notices to be served under this Guaranty shall be in writing
41 and delivered personally or mailed by certified mail, postage prepaid and return receipt
42 requested, or by telegram or telecopier addressed as follows:

43
44 If to the Guarantor:
45

1
2 Calpine Corporation
3 50 West San Fernando Street
4 San Jose, California 95113
5 Attention of Chief Executive Officer
6 (408) 995-5115
7 (408) 995-0505

8
9 If to EFSC:

10
11 Energy Facility Siting Council
12 625 Marion Street NE, Suite 1
13 Salem, Oregon 97301-3742
14 Attention of Chair
15 (503) 378-6469
16 (503) 373-7806 [fax]

17
18 or at such other address as may from time to time be designated in writing in a notice
19 delivered as aforesaid. Notice given by personal delivery shall be effective upon actual
20 receipt. Notice given by certified mail, postage prepaid and return receipt requested shall
21 be effective three days after the date of mailing. Notice given by telegram or telecopier
22 shall be effective upon actual receipt if received during the recipient's normal business
23 hours, or at the beginning of the recipient's next business day after receipt if not received
24 during the recipient's normal business hours. All notices by telegram or telecopies shall
25 be confirmed promptly after transmission in writing by certified mail or personal
26 delivery.

27
28 SECTION 11. This Guaranty shall in all respect be governed by, and construed
29 in accordance with, the law of the State of Oregon without regard to principles of
30 conflicts of laws.

31
32 SECTION 12. The Guarantor represents and warrants to EFSC that: (a) the
33 Guarantor is a corporation duly organized, validly existing and in good standing under
34 the laws of the jurisdiction of its incorporation; (b) the execution and delivery of this
35 Guaranty and its performance have been duly authorized by all necessary corporate
36 action on the part of the Guarantor and do not require any other corporate actions or
37 proceedings or any stockholder approval or consent of any trustee or holder of any
38 indebtedness of the Guarantor; and (c) this Guaranty has been duly executed and
39 delivered by the Guarantor and constitutes the legal, valid and binding obligation of the
40 Guarantor, enforceable against the Guarantor in accordance with its terms, except as such
41 enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws
42 relating to or affecting the enforcement of creditors' rights generally or by general
43 principles of equity, regardless of whether such enforceability is considered in a
44 proceeding in equity or at law.

45

1 SECTION 13. The obligations and liabilities of the Guarantor under this
2 Guaranty shall terminate (subject to automatic reinstatement under Section 4) on the date
3 on which the Guaranteed Obligations have been paid and performed in their entirety (in
4 1998 dollars for the monetary path payment and 2001 dollars for the supplemental
5 monetary path payment calculated using the indices referred to in the site certificate for
6 the Project relating to the calculation of these requirements), but not before HPP has met
7 any additional obligations that it may incur based on calculations of the monetary path
8 payment requirement and supplemental monetary path payment requirement using data
9 from the facility when it is tested on a new and clean basis pursuant to site certificate
10 conditions 1-4 and 138-142.

11
12 SECTION 14. If any provision of this Guaranty shall for any reason be held
13 invalid, illegal or unenforceable in any respect, such invalidity, illegality or
14 unenforceability shall not affect any other provision of this Guaranty, and this Guaranty
15 shall be construed as if such invalid, illegal or unenforceable provision had never been
16 contained herein, but only to the extent of its invalidity, illegality or unenforceability.

17
18 SECTION 15. (a) The Guarantor hereby irrevocably agrees that any legal action
19 or proceeding against it arising out of or relating to this Guaranty or the Guaranteed
20 Obligations may be brought in any Oregon State or Federal court in the City of Salem or
21 the City of Portland in the State of Oregon and hereby irrevocably submits generally and
22 unconditionally to the non-exclusive jurisdiction of such courts.

23
24 (b) The Guarantor hereby unconditionally appoints Stoel Rives, LLP, as its
25 authorized agent to receive and acknowledge on its behalf service of any writ, summons,
26 order, judgment or other notice of legal process in Oregon and agrees that any writ,
27 summons, order, judgment or other notice of legal process shall be sufficiently served on
28 it if delivered to such agent for service at its address in Portland, Oregon whether or not
29 such agent gives notice thereof to the Guarantor. The Guarantor agrees that it will at all
30 times maintain an agent for service in Oregon with respect to its obligations under this
31 Section 15, and in the event that for any reason the agent named above (or its successor)
32 shall no longer serve as agent of any Guarantor to receive service of process as aforesaid,
33 the Guarantor shall promptly appoint a successor so to serve and shall notify EFSC
34 thereof.

35
36 (c) Nothing in this Section 15 shall limit the right of EFSC to commence any
37 legal action or proceeding or otherwise proceed against the Guarantor in any other
38 jurisdiction or to serve process in any manner permitted by applicable law nor shall the
39 taking of proceedings in any one or more jurisdictions preclude the taking of proceedings
40 in any other jurisdiction whether concurrently or not.

41
42 SECTION 16. Subordination. The Guarantor hereby agrees that any and all
43 present and future indebtedness of HPP owing to the Guarantor is postponed in favor of
44 and subordinated to, full and final payment and performance of the Guaranteed
45 Obligations in their entirety. In this regard, no payment of any kind whatsoever shall be

1 made with respect to such indebtedness so long as any Guaranteed Obligation remains
2 unpaid or unperformed.

3
4 SECTION 17. Attorneys' Fees and Costs. The Guarantor agrees to pay, on
5 demand, all reasonable attorneys' fees and all other costs and expenses which may be
6 incurred by EFSC in the enforcement of this Guaranty or in any way arising out of, or
7 consequential to the protection, assertion, or enforcement of the Guaranteed Obligations
8 whether or not suit is brought.

9
10 SECTION 18. Execution and Counterparts. This Guaranty may be executed in
11 several counterparts, all of which when taken together shall constitute one Guaranty
12 binding on all parties, notwithstanding that all parties are not signatories to the same
13 counterpart. Each copy of the Guaranty so executed shall constitute an original.

14
15 IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be
16 executed and delivered by its duly authorized officer as of the date first above written.

17
18
19 CALPINE CORPORATION
20 a Delaware corporation

21
22
23
24
25 By: _____
26 Name:
27 Title:

28
29
30 ACCEPTED:

31
32 OREGON ENERGY FACILITY SITTING COUNCIL

33
34
35
36
37 By: _____
38 Name:
39 Title:

40 /
41 /
42 /