

1 OREGON ENERGY FACILITY SITING COUNCIL

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3  
4 In the Matter of a Request for Exemption )  
5 from Energy Facility Siting Council ) ORDER GRANTING EXEMPTION  
6 Jurisdiction for the )  
7 Klamath Expansion Project )  
8  
9

10 On May 9, 2001, PacifiCorp Power Marketing (PPM), a wholly owned subsidiary of  
11 ScottishPower and an affiliate of PacifiCorp, submitted a request for an exemption from the  
12 Energy Facility Siting Council's ("Council") jurisdiction for the Klamath Expansion Project (the  
13 "Project"). Pacific Klamath Energy, Inc., an affiliate of PPM and the operator of the Klamath  
14 Cogeneration Project (KCP), will operate the Project.  
15

16 **A. Project Description**

17 The proposed Klamath Expansion Project is a natural gas-fired combustion turbine, simple-cycle  
18 power generation facility. The Project uses four natural gas-fired, aero-derivative combustion  
19 turbines (CTs) to generate electricity. The Project will have a nominal (new and clean) electric  
20 generating capacity of 100 megawatt ("MW") at intended annual average operating conditions.  
21 The Project will only use natural gas for fuel.  
22

23 The proposed Project will be located on approximately four acres of land leased from Collins'  
24 Products, LLC, in Klamath County, outside the city limits of Klamath Falls, Oregon. The  
25 Project site is in Section 18 of Township 39 South, Range 9 East, about one-half mile west of the  
26 US Highway 97 bridge over the Klamath River. The Project site is adjacent to the southwest  
27 corner of the KCP, which is currently under construction. Exhibits 1, 2 and 3 of the exemption  
28 request show the location, general arrangement of components, and the plan and elevation of the  
29 Project.  
30

31 The Project will consist of three major pieces of equipment: two CT-generator sets and one  
32 transformer. Each of the CT-generator sets consists of two Pratt & Whitney (P&W) model FT-8  
33 natural gas-fired combustion turbines linked to a single generator. Each of these two CT/one  
34 generator units is called a Twin Pac. The two Twin Pacs (four CTs/two generators in total) will  
35 generate electricity at 13.8 KiloVolts (kV). The Project's 13.8 - 540 kV transformer will connect  
36 the Project's output to the PacifiCorp 540 kV transmission line at the KCP switchyard immediately  
37 north of the Project site.  
38

39 Pacific Gas & Electric Gas Transmission's (PG&E GT's) Medford Lateral will provide natural gas  
40 through a new pipeline tap and meter/regulator facility located near the existing meter/regulator  
41 station for KCP. PG&E GT will extend piping to the Project's property line for interconnecting  
42 the new meter/regulator station to the Project.  
43

44 **B. Basis for Exemption**

45 In order to qualify for the exemption under ORS 469.320(2)(g), the Project must meet two  
46 criteria. First, it must be a "temporary energy generating facility" as defined in ORS

1 469.320(8)(b). Second, it must comply with applicable carbon dioxide (“CO<sub>2</sub>”) emissions  
2 standards.  
3

4 **B.1 Temporary Energy Generating Facility**

5 A “temporary energy generating facility” is defined in ORS 469.320(8)(b) as follows:  
6

7 ‘Temporary energy generating facility’ means an electric power generating  
8 facility, including a thermal power plant and a combustion turbine power plant,  
9 but not including a hydropower plant, with a nominal electric generating capacity  
10 of no more than 100 megawatts that is operated for no more than 24 months from  
11 the date of initial commercial operation.  
12

13 The Project is a combustion turbine electric power generating facility with a nominal electric  
14 generating capacity of 100 megawatts (“MW”). Exhibits 4a and 4b of the exemption request  
15 show the contracted performance guarantees from the supplier, pursuant to ORS 469.320(2)(g).  
16 Exhibit 4b of the exemption request provides the estimated performance and emission data for  
17 certain conditions.  
18

19 The exemption is based on the nominal electric generating capacity. Exhibit 4c shows the  
20 performance data for nominal electric generating capacity, calculated pursuant to OAR 345-001-  
21 0010(35). Nominal electric generating capacity is calculated using average annual conditions  
22 during the times of the year when the facility is intended to operate. Using that definition, the  
23 Project’s nominal electric generating capacity is just below 100 MW. However, the nominal  
24 electric generating capacity of the combustion turbine generating facility varies with ambient  
25 temperature such that it is possible for the new and clean capacity to exceed 100 MW at certain  
26 times. PPM will implement control limits to assure that the nominal electric generating capacity  
27 of the facility does not exceed 100 MW. The Council adopts Condition 1 to set that 100 MW  
28 limit as a requirement. Therefore, the Council finds that the Project has a nominal electric  
29 generating capacity of 100 MW.  
30

31 An owner must operate the Project pursuant to ORS 469.320(2)(g) for not more than 24 months  
32 from the date of initial commercial operation. The Council adopts Condition 2 to set that 24-  
33 month limit as a requirement.  
34

35 Section A of this order describes the Project. The Council adopts Condition 3 to ensure the  
36 owner builds the Project that the Council exempted.  
37

38 To grant an exemption, ORS 469.320(7)(a) requires the Council to make the exemption  
39 contingent on the owner acquiring local land use approvals and complying with statewide  
40 planning goals. The Council adopts Conditions 4 and 5 to implement this requirement.  
41

42 In its request for exemption, PPM indicated that it intends to transfer ownership of the Project to  
43 a special purpose subsidiary of PPM prior to commencement of operations. The Council adopts  
44 Condition 8 regarding the obligations of a new owner to abide by this order and its conditions.  
45

1 **B.2 Applicable Carbon Dioxide Emissions Standards**

2 Because the Project is a base load gas plant, the applicable CO<sub>2</sub> emissions standard is found at  
3 OAR 345-024-0550. This standard requires that the net CO<sub>2</sub> emissions rate from the Project not  
4 exceed 0.675 pounds of CO<sub>2</sub> per kilowatt hour of net electric power output. If emissions  
5 reductions are required, ORS 469.320(2)(g) requires the applicant to agree to provide appropriate  
6 funds to a qualified organization.  
7

8 Table 1 shows the applicable parameters for calculating the Project's CO<sub>2</sub> emissions. In contrast  
9 to the exemption criterion of 100 MW, which is based on nominal electric generating capacity,  
10 calculations for compliance with the carbon dioxide standard are based on net electric power  
11 output, calculated pursuant to OAR 345-001-0010(32). Net electric power output is calculated  
12 on the average annual condition for temperature, humidity and barometric pressure. Based on  
13 those conditions in this case, the Project's net electric power output is 101.039MW, as derived  
14 from the Net Generator Output vs. Ambient Temperature graph in Exhibit 4c. This net output is  
15 not inconsistent with the fact that the nominal electric generating capacity is 100MW; it simply  
16 reflects the fact that the definitions of net electric power output and nominal electric generating  
17 capacity use different measurement parameters.  
18

19 The new and clean heat rate is 10,199 Btu/kWh, higher heating value. This is a base-load plant,  
20 so the calculations show the annual hours of operation at 8,760.  
21

22 Table 1 shows the gross CO<sub>2</sub> emissions from the Project over two years at 2,112 million pounds,  
23 the gross CO<sub>2</sub> emissions rate of 1.193 lb. CO<sub>2</sub>/kWh, and the required CO<sub>2</sub> emissions reductions  
24 of 459,000 tons.  
25

26 Table 1 multiplies the excess tons of carbon dioxide for the base-load plant by the current offset  
27 fund rate, \$0.57, pursuant to OAR 345-024-0560(3). That determines the offset funds needed for  
28 the monetary path, \$261,478.  
29

30 Table 1 then applies OAR 345-024-0710(4) to determine the contracting and selection funds.  
31 However, the amount of required offset funds are significantly less than the amount for a  
32 standard base-load plant and the contracting and selection funds will be correspondingly smaller.  
33 In order to ensure adequate contracting and selection funds, the Council finds that the basis for  
34 the calculation for a temporary energy generating facility should be at the rate of 20 percent of  
35 the first \$250,000 in offset funds and 4.286 percent of the value of any offset funds in excess of  
36 that amount, pursuant to OAR 345-024-0710(4).  
37

38 Based on the calculations in Table 1, the Council finds that the total amount of required offset  
39 funds and contracting and selection funds ("Monetary Path Payment") that PPM must pay The  
40 Climate Trust prior to beginning construction is \$311,970 in 2001 dollars. The Council adjusts  
41 the Monetary Path Payment by the US Gross Domestic Product Implicit Price Deflator if PPM  
42 does not pay the Monetary Path Payment by July 31, 2001. The Council further requires that  
43 PPM submit any adjusted payment calculations to the Office of Energy for verification.  
44

45 The Council adopts Condition 6 regarding the PPM's obligation to pay the Monetary Path  
46 Payment to The Climate Trust, in a lump sum payment, prior to beginning construction of the  
47 Project.

1  
2 ORS 469.320(7)(c) provides for a "true-up" of compliance with the CO<sub>2</sub> standard once the  
3 Project ceases commercial operation, which must be no later than two years from beginning  
4 commercial operation. The Council adopts Condition 7 to implement the reporting and potential  
5 payment requirements of ORS 469.320(7)(c).  
6  
7

TABLE 1

**Application of CO<sub>2</sub> Standard to KEP Generating Plant**

Net Electric Power Output (kW)	101,039
Capacity Factor	100%
Fuel	Natural gas
Annual Hours of Operation	8,760
Annual Generation (million kWh/yr)	885
Deemed Life of Plant (years) by Statute	2
Total Plant Output (million kWh)	1,770
Heat Rate (Btu/kWh) HHV	10,199
CO <sub>2</sub> Emissions Rate (lb. CO <sub>2</sub> /Btu)	0.000117
Total CO <sub>2</sub> Emissions (million lb.)	2,112
Gross CO <sub>2</sub> Emissions rate (lb. CO <sub>2</sub> /kWh)	1,193
CO <sub>2</sub> Standard (lb. CO <sub>2</sub> /kWh)	0.675
Excess CO <sub>2</sub> Emissions (lb. CO <sub>2</sub> /kWh)	0.518
Excess Tons CO <sub>2</sub> (million tons)	0.459
Offset Fund Rate (\$/ton CO <sub>2</sub> )	\$0.57
Offset Funds Required	\$ 261,478
Contracting and Selection Funds	\$ 50,492
Total Monetary Path Requirement	\$ 311,970

8  
9 Attachment A to this order is in the form of a Memorandum of Understanding ("MOU") between  
10 PPM and The Climate Trust. By providing the MOU, the Council can facilitate the disbursement  
11 of the Monetary Path Payment by PPM to The Climate Trust. The Council adopts Attachment A  
12 to Conditions 6 and 7 and requires that PPM and The Climate Trust sign an MOU substantially in  
13 the form of Attachment A.  
14

15 **B.3. Qualified Organization.**

16 PPM proposes to provide offset funds and contracting and selection funds to The Climate Trust.  
17 The Council has previously found that The Climate Trust is a "qualified organization" in matters  
18 relating to the Klamath Cogeneration Project, the Hermiston Power Project, and the Coyote  
19 Springs Cogeneration Project, Unit 2. The Council finds that the Climate Trust continues to  
20 meet the requirements of a "qualified organization," as defined by OAR 345-001-0010(45).  
21

22 **C. Conditions**

23 The Council imposes the following conditions:

- 24  
25 1) KEP shall not exceed 100 megawatts nominal electrical generating capacity.  
26  
27 2) The Project Owner shall cease operation of KEP no later than 24 months after the date of  
28 first commercial operation of the facility or January 2, 2006, whichever is earlier.

- 1  
2 3) The Project Owner shall build and operate KEP as described in this order.  
3  
4 4) The Project Owner shall not begin construction of KEP before it has received the  
5 required land use approval under the applicable acknowledged comprehensive plan and  
6 land use regulations of Klamath County, Oregon.  
7  
8 5) The Project Owner shall not begin construction of KEP before it has complied with all  
9 statewide planning goals and applicable rules of the Land Conservation and Development  
10 Commission.  
11  
12 6) The Project Owner shall not begin construction of KEP before it has signed a  
13 Memorandum of Understanding ("MOU") with The Climate Trust, substantially in the  
14 form of Attachment A to this order, and has paid The Climate Trust \$261,478 in offset  
15 funds and \$50,492 in contracting and selection funds (jointly, "Funds" or "Monetary Path  
16 Payment") in 2001 dollars.  
17  
18 (a) If the Project Owner disburses the Funds to The Climate Trust later than July 31,  
19 2001, it shall adjust the amount of the Monetary Path Payment for 2001 dollars  
20 using the US Gross Domestic Product Implicit Price Deflator, as published by the  
21 US Department of Commerce, Bureau of Economic Analysis, or any successor  
22 agency ("the index"). The amount of the Monetary Path Payment shall increase  
23 annually by the percentage increase in the index and shall be pro-rated within the  
24 year to the date of disbursement to The Climate Trust from the date of this order.  
25 If at any time the index is no longer published, the Energy Facility Siting Council  
26 ("Council") shall select a comparable calculation of 2001 dollars.  
27  
28 (b) The Project Owner shall submit its calculations of the application of the index to  
29 the Office of Energy for verification prior to disbursing the Funds to The Climate  
30 Trust.  
31  
32 7) Within 30 days of ceasing operation of KEP pursuant to Condition 2, the Project Owner  
33 shall report to the Council the total net electric power production (kilowatt hours) by the  
34 facility and the amount of British thermal units of natural gas used to produce it.  
35  
36 (a) Based on those data and the data that the Council used to grant this exemption, the  
37 Council shall determine if the Project Owner owes additional offset funds and  
38 contracting and selection funds ("True-Up Monetary Path Payments") to The  
39 Climate Trust beyond what the Project Owner disbursed pursuant to Condition 6.  
40  
41 (b) If the Project Owner owes True-Up Monetary Path Payments, the Council shall  
42 index those funds to 2001 dollars, pursuant to Condition 6(a).  
43  
44 (c) If the Project Owner owes True-Up Monetary Path Payments, it shall pay such  
45 funds to The Climate Trust within 60 days of the Council's order determining the  
46 amount of True-Up Monetary Path Payments it owes.  
47

1 8) Project Owner may assign this exemption, provided that the new Project Owner agrees to  
2 all requirements and conditions of this exemption order; and, further provided that the  
3 new Project Owner signs an MOU with The Climate Trust for True-Up Monetary Path  
4 Payments substantially as provided in Attachment A.  
5

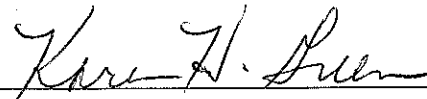
6 (a) The new Project Owner shall sign the MOU with The Climate Trust within 15 days of  
7 acquiring the KEP.  
8

9 (b) The new Project Owner shall report to the Council its acquisition of KEP and its  
10 compliance with Condition 8(a) within 20 days of acquiring KEP.  
11

12 **D. Conclusion.**

13 The Council finds that the Klamath Expansion Project is a temporary energy generating facility  
14 that is exempt from Council jurisdiction, pursuant to ORS 469.320(2)(g), and subject to the  
15 conditions stated in Section C.  
16

17 Ordered this 18<sup>th</sup> day of May, 2001.  
18  
19  
20

21   
22 \_\_\_\_\_

23 Karen H. Green, Chair  
24 Energy Facility Siting Council  
25

26 ATTACHMENT A: MEMORANDUM OF UNDERSTANDING  
27

28 **Notice of the Right to Appeal**

29 You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.405.

30 To appeal you must file a petition for judicial review with the Supreme Court within 60 days  
31 from the day this order was served on you. If this order was personally delivered to you, the date  
32 of service is the date you received this order. If this order was mailed to you, the date of service  
33 is the date it was mailed, not the day you received it. If you do not file a petition for judicial  
34 review within the 60-day time period, you lose your right to appeal.

**MEMORANDUM OF UNDERSTANDING**  
**THE CLIMATE TRUST AND PACIFICORP POWER MARKETING**  
**CARBON DIOXIDE STANDARD IMPLEMENTATION**  
**Monetary Path Payment Requirement**

THIS MEMORANDUM OF UNDERSTANDING ("Agreement"), entered into as of the \_\_\_\_\_ day of May, 2001, by and between PacificCorp Power Marketing (the "Project Owner") in its capacity as owner of the Klamath Expansion Project and The Climate Trust ("The Trust").

**RECITALS**

1. The Project Owner intends to design, finance, construct, own and operate a natural gas-fired, simple-cycle, combustion turbine, base-load, temporary energy generating facility with a nominal electrical generating capacity of 100 megawatts on about four acres of land it will lease from Collins' Products, LLC, in Klamath County, outside the city limits of Klamath Falls, Oregon. The facility, together with its ancillary systems, shall be referred to herein as the "Project." The Project is a "Temporary Energy Generating Facility" as defined in ORS 469.320(8)(b).
2. The State of Oregon, as a condition of exemption from the site certificate requirement of ORS 469.320(1) pursuant to ORS 469.320(2)(g), requires new Temporary Energy Generating Facilities to meet the carbon dioxide standard as described in ORS 469.503(2). As a further condition of the exemption from siting of the Project, the Project Owner is required to provide offset funds ("Offset Funds") and selection and contracting funds ("Selection and Contracting Funds") (jointly, "Monetary Path Payments") to The Trust.
3. On May 18, 2001, the Oregon Energy Facility Siting Council ("Council") issued its Order in the Matter of a Request for Exemption from Energy Facility Siting Council Jurisdiction for the Klamath Expansion Project ("Order"). The Order granted the request for exemption filed by the Project Owner pursuant to ORS 469.320(2)(g). The Order is incorporated by reference and made a part of this Agreement.
4. In accordance with ORS 469.320(2)(g) and the Order, the Project Owner shall pay the Monetary Path Payments to The Trust prior to commencing construction of the Project. The Project Owner may also be required to make a true-up monetary path payment ("True-Up Monetary Path Payment") after the Project ceases operations, as specified in ORS 469.320(2)(g) and ORS 469.320(7)(c). Under the terms and conditions of this Agreement, the Project Owner shall disburse the monetary path payments to The Trust as specified in the Order and then by The Trust as specified in ORS 469.503(2)(d)(A).
5. The Trust is a qualified organization within the meaning of ORS 469.503(2)(e)(K).

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, the parties hereto agree as follows:

Initial Monetary Path Payment.

- 1.1 The Order includes the results of the monetary path payment requirement calculations (the "Initial Monetary Path Payment") performed by the Council. The Project Owner and The Trust acknowledge that the calculation of the Initial Monetary Path Payment is correct and consistent with the Order. The Project Owner and The Trust further acknowledge that the Initial Monetary Path Payment may be adjusted to the date of disbursement to maintain its value in 2001 dollars, as provided by the Order and as may be shown in Appendix A.
- 1.2 The Project Owner shall pay to the Trust the amount of \$ 261,478 in Offset Funds and \$ 50,492 in Selection and Contracting Funds prior to commencing construction of the Project. If the Project Owner makes the Initial Monetary Path Payment later than July 31, 2001, it shall make its payment in 2001 dollars based on the calculations of the Initial Monetary Path Payment set forth in Appendix A, as verified by the Office of Energy pursuant to Condition 6(b) in the Order.

True-Up Monetary Path Payment.

- 2.1 When the Temporary Generating Facility ceases operations, the Office of Energy shall determine if the Project Owner owes any additional Offset Funds or Selecting and Contracting funds (in 2001 dollars), pursuant to Condition 7 of the Order.
  - 2.2 If any True-Up Monetary Path Payment is due, the Project Owner shall pay this amount directly to the Trust within 60 days of the Council order determining the amount of the True-Up Monetary Path Payment.
3. Undertaking by The Trust.
- 3.1 The Trust shall use the Initial Monetary Path Payment and the True-up Monetary Path Payments, if any, in accordance with ORS 469.503(2)(d)(A).
  - 3.2 With respect to the Offset Funds portions of any Initial Monetary Path Payment and any True-up Monetary Path Payment, The Trust shall spend at least 80 percent of the Offset Funds for contracts to implement offsets, and may use up to 20 percent of the Offset Funds for monitoring, evaluation, administration, and enforcement of contracts to implement offsets.
  - 3.3 The Selection and Contracting Funds portions of the Initial Monetary Path Payment and any True-up Monetary Path Payment shall compensate The Trust for its costs of selecting offsets and contracting for the implementation of offsets and administrative costs related to operating The Trust as a qualified organization.



- 3.4 The Trust shall use its best efforts to remain a qualified organization, as defined in ORS 469.503(2)(e)(K), until The Trust has used all funds received from the Project Owner.
4. Limited Obligation of Project Owner. The Trust acknowledges that (pursuant to ORS 469.503(2)(d)(A)(iii)) that the Project Owner and the Project shall have no obligation with regard to offsets for the Project.
5. Limited Participation by Project Owner in The Trust Decision Making. The Project Owner shall appoint one non-voting member to the Board of Directors of The Trust for a term lasting until The Trust has completed the contracting for the offset funds provided by the Project Owner. The Project Owner shall have no approval rights over The Trust's offset contracts, disbursement of Offset Funds, or other day-to-day operations of The Trust.
6. Project Owner Agreement to Indemnify and Hold The Trust Harmless. The Project Owner agrees to defend, hold harmless and indemnify The Trust from and against any and all claims, costs, liabilities and expenses of any nature whatsoever, including reasonable attorneys' fees, resulting from, or arising out of any failure by the Project Owner to make any payments required by this Agreement in a timely manner; PROVIDED, the maximum amount of the Project Owner's liability to The Trust for claims, costs, liabilities and expenses, including attorneys' fees, arising out of the failure to timely make a payment required by this Agreement shall not exceed twice the differential between the amount payable to The Trust on a particular date and the amount actually paid to The Trust on or before that date. FURTHER PROVIDED, The Trust must make reasonable efforts to mitigate any losses, liabilities or expenses for which it seeks indemnification from the Project Owner.
7. General Provisions.
- 7.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- 7.2 Interpretation. Any ambiguity that may arise under this Agreement shall be given a fair and reasonable construction in accordance with the intention of the parties and without regard to which party caused or is deemed to have caused such ambiguity to exist.
- 7.2 Amendments and Waivers. This Agreement may not be modified, supplemented, altered or amended, nor any provision hereof or rights hereunder be waived, except by an instrument in writing designated as an amendment or waiver under this Agreement and signed by both parties. The waiver of any particular breach or default hereunder will not constitute a waiver of any other breach or default. Failure or delay by any party to enforce any provision of this Agreement shall not in any way be construed as a waiver of such provision, nor shall it prevent such party from thereafter enforcing each and every provision of this Agreement.

- 7.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto as to the matters set forth herein, and all prior proposals, commitments, understandings and agreements, whether oral or in writing, as to such matters are superseded by this Agreement.
- 7.4 Assignment. The rights of the Project Owner under this Agreement may be assumed by any entity that acquires an ownership interest in the Project. Upon such assumption, such entity shall be deemed to be a party to this Agreement. The Trust may assign this Agreement only to a "qualified organization" as defined in ORS 469.503(e)(K) and any such assignment must have the prior consent of the Council.
- 7.5 Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective authorized successors and permitted assigns.
- 7.6 References to ORS provisions in this agreement are to those provisions as amended by 2001 Or. Laws Chapter \_\_\_\_\_ (SB 843)

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their respective duly authorized representatives, as of the day and year first above written.

**PACIFICORP POWER MARKETING**

**THE CLIMATE TRUST**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX A: CALCULATION OF VERIFIED INITIAL MONETARY PATH PAYMENT REQUIREMENT, IF DISBURSED LATER THAN JULY 31, 2001.

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