



Oregon

Kate Brown, Governor



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To: Oregon Energy Facility Siting Council

From: Sisily Fleming, Fiscal Analyst

Date: October 12, 2018

Subject: **Agenda Item K:** Annual Financial Assurance Update for the Retirement of Energy Facilities with Site Certificates for the October 25-26, 2018 EFSC Meeting

In May 2015 the Council approved a process for the annual approval of Bond and Letter of Credit templates and a pre-approved financial institution list for site certificate holder's use in obtaining the financial assurance instruments for the retirement of their facilities. An update is required annually to implement the procedure.

2019 Bond and Letter of Credit Templates

Senior Assistant Attorney General, Patrick Rowe, reviewed the Bond and Letter of Credit templates approved by Council for use in 2018, and offered substantive revisions to the Bond Template and grammatical revisions to the Letter of Credit templates. Revisions to these templates are detailed in the attached redline versions.

2019 Financial Institutions

Attached is staff's 2019 proposed list of Approved Financial Institutions. Staff researched credit ratings on October 3, 2018. The ↑ indicates the October 2018 rating is higher, and the ↓ indicates the October 2018 rating is lower, than the ratings on the list approved in January 2018. Ratings that were not found in October 2018 are left blank.

All of the institutions included in the proposed list have been previously approved by Council. Staff does not recommend adding or removing any entities from the list at this time.

Requested Council Action

Staff recommends Council approve the proposed Letter of Credit and Bond templates, and the list of proposed pre-approved financial institutions for use in 2019.

Attachments

- Proposed Bond Template
- Proposed Letter of Credit Template
- Proposed 2019 Pre-Approved Financial Institutions

SITE CERTIFICATE BOND

Bond No. DRAFT TEMPLATE

KNOW ALL PERSONS BY ~~THESE PRESENTS~~THIS INSTRUMENT, THAT WE

SITE CERTIFICATE HOLDER (Hereinafter called Principal), as Principal and **INSURANCE COMPANY**, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon (hereinafter called "Surety") as Surety, are held and firmly bound unto the STATE OF OREGON, acting by and through the ENERGY FACILITY SITING COUNCIL, (Hereinafter called "Obligee"), as Obligee, in the penal sum of **WRITE OUT AMOUNT** Dollars, **(\$X,XXX,XXX)** good and lawful money of the United States of America, to be paid to the Obligee, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has been granted a Site Certificate for the **Project Name** dated **Month day, Year** ("Site Certificate"), and

~~WHEREAS, the Principal is required to provide financial security to the Obligee in the amount of \$X,XXX,XXX (X Quarter, 20--dollars) under Condition Number of said Site Certificate as specified by the Obligee to be an adequate amount to retire the [Project Name] components and restore the [Project Name] site to a useful, non-hazardous condition. Retirement of the facility and restoration of the site shall be conducted according to a final retirement plan approved by the Council, as described in OAR 345-027-0110 or OAR 345-025-0006(16). --dollars under Condition Number of said Site Certificate as specified by the Obligee to be an adequate amount to retire the Project Name components of the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110;~~

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Principal shall comply with the conditions of the Site Certificate as referenced above,

OR, if the Principal shall obtain and provide alternate financial assurance approved by the Council within 90 (ninety) days after the date of notice of cancellation is received by the Obligee from the Surety, then this obligation shall be void, otherwise to remain in full force and effect until the expiration date set forth below.

~~The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above its obligation to retire the facility and restore the site.~~ Upon notification by the Obligee that the Principal has failed to perform as guaranteed by this bond, the Surety will be obligated to pay monies to the Obligee limited to the penal sum of this bond to fund any work required.

PROVIDED, HOWEVER, THAT THIS BOND IS EXECUTED BY THE PRINCIPAL AND SURETY AND ACCEPTED BY THE OBLIGEE SUBJECT TO THE FOLLOWING EXPRESS CONDITIONS:

1. It is understood by all parties to this Site Certificate that the term of this bond shall begin on **Month Day, Year** and shall expire on **Month Day, Year**.

2. The liability of the Surety shall in no event exceed the penal sum of the bond regardless of the number of extensions or years it may be in effect.
3. The Surety has no obligation to perform any remediation work and no responsibility to contract with any other party for remediation work at the site. The Surety's obligation under this bond consists solely of the payment of sums found to be due the Obligee and no other obligation.
4. No right of action shall accrue under this bond to or for the use or benefit of anyone other than the named Obligee or its successors or assigns. No assignment by the Principal shall be effective without the written consent of the Surety.
5. The Surety may cancel this bond at any time by giving the Obligee one hundred twenty (120) days written notice of the Surety's intent to cancel this bond, notice to be sent to:

Oregon Energy Facility Siting Council
c/o Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

~~6. All suits, actions on this bond must be brought within thirty (30) days of the termination of the Site Certificate or bond, whichever shall occur first.~~

6. If the Surety cancels the bond prior to the Principal fulfilling its obligation to retire the facility and restore the site, but Principal does not provide alternate financial assurance approved by the Council within 90 (ninety) days after the date of notice of cancellation is received by the Obligee from the Surety, the Oregon Department of Energy may take enforcement measures as described in OAR 345-029-0000 through OAR 345-029-0100.

7. If any conflict or inconsistency exists between the Surety's obligations as described in the bond and as described in the underlying Site Certificate, then the terms of the bond shall prevail.
8. No modification of the Site Certificate guaranteed by this bond shall be binding on the Surety or covered by this bond without the written consent of the Surety.
9. The Surety(ies) may issue a rider or riders annually to adjust the penal sum of the bond for inflation as consistent with **Condition Number** of the Site Certificate based on the U.S. Gross Domestic Product Implicit Price Deflator, chain weighted, as published in the Oregon Department of Administration Services' "Oregon Economic and Revenue Forecast," or by any successor agency ("the Index"). Any rider adjustment will be subject to normal underwriting procedures and approval by the Surety, and if approved by the Surety, will adjust the penal sum of the bond based on the percentage increase in the noted index. If at any time the index is no longer published, the Obligee shall select comparable calculation to adjust **#** Quarter **YEAR** dollars to present value under Condition **Number**.
10. The Surety(ies) agrees that it is liable for additional costs and expenses including reasonable attorneys' fees, awarded by a court to Obligee in successfully enforcing the obligation against the

Surety(ies) in the event Surety(ies) wrongfully fails to pay sums owed as required under the bond.

11. This bond shall not bind the Surety unless the bond is accepted by the Obligee. The acknowledgment and acceptance of such bond is demonstrated by signing where indicated below. If this obligation is not accepted by way of signature of the Obligee below, this bond shall be deemed null and void.

IN WITNESS WHEREOF, said Principal and Surety have caused ~~these presents~~ this instrument to be executed in their names and by their seals to be hereunder affixed on this XX day of Month 20XX.

Site Certificate Holder

ATTEST _____ BY _____

Principal

INSURANCE COMPANY

ATTEST _____ BY _____

Name
Witness as to Surety

Name, Attorney-in-Fact

The above terms and conditions of this bond have been reviewed and accepted by
 _____, the Obligee

Acknowledged and Accepted:

By: _____

Printed Name: _____

Title: _____

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [REDACTED]

Date

STATE OF OREGON
Acting by and through
The Energy Facility Siting Council
c/o Energy Siting Division Administrator
Oregon Department of Energy
550 Capitol St NE – 1st floor
Salem, Oregon 97301-3737

Ladies and Gentlemen:

At the request and for the account of [REDACTED], and on behalf of the [REDACTED] Name, we, [REDACTED] Financial Institution hereby establish effective immediately, in favor of you, the STATE OF OREGON, acting by and through The Energy Facility Siting Council ("Beneficiary") this Irrevocable Standby Letter of Credit Number [REDACTED] (the "Letter of Credit") in the amount of USD \$x,xxx,xxx (write out number) (as such amount may be reduced from time to time by partial draws hereunder, the "Stated Amount").

We are informed that this Letter of Credit is being issued in connection with the Site Certificate for the [REDACTED] Project Name with the STATE OF OREGON dated [REDACTED] month day, year, as may be amended from time to time.

This Letter of Credit is issued, presentable, and payable at our offices at [REDACTED] Financial Institution, address Attention: Standby Letter of Credit Department and expires with our close of business on [REDACTED] date (the "Expiration Date").

It is a condition of this Letter of Credit that it shall be automatically extended without amendment for successive one (1) year periods from the present or any future Expiration Date hereof, unless we provide you with written notice by overnight courier or registered mail of our election not to extend this Letter of Credit at least sixty (60) days prior to any such Expiration Date (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available at sight against your draft drawn on us bearing upon its face the clause "Drawn under [REDACTED] Financial Institution Letter of Credit Number [REDACTED] dated [REDACTED], 20[REDACTED]" and accompanied by the following documents:

1. The original of this Letter of Credit and all subsequent amendments, if any; and
2. Your sight draft drawn on us; and
3. A dated draw certificate ~~purportedly~~ signed by an authorized officer of the Beneficiary and on Beneficiary's letterhead in the form of attached Exhibit(s) A, B or C to this Letter of Credit (incorporated herein by reference and made an integral part hereof).

Partial drawing and multiple presentations are permitted under this Letter of Credit, provided that the Stated Amount of this Letter of Credit shall be permanently reduced by the amount of each such draw paid by us.

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

The **Financial Institution**, agrees that a draft drawn and presented in conformity with the terms of this Letter of Credit will be duly honored upon presentation. If a draft made by Beneficiary does not conform to the terms and conditions of this Letter of Credit, we will give Beneficiary prompt notice that the demand for payment will not be effected. Such notice will include a statement of reasons for the denial. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, Beneficiary may attempt to correct the nonconforming demand; provided, however, that any draft or document prescribed to correct such nonconforming demand must be provided on -or ~~on~~ prior to the Expiration Date.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the exhibits referred to hereby and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such exhibits.

Except as otherwise expressly stated herein, this Letter of Credit is issued subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590. As to matters not covered by the ISP98, this Letter of Credit shall be governed by the laws of the State of Oregon without regard to the principles of conflicts of laws thereunder.

Authorized Signature

Authorized Signature

[EFSC LETTERHEAD]

DRAW CERTIFICATE

[DATE]

Financial Institution

Address

City, State Zip

Attention: Standby Letter of Credit Department

Drawn under Irrevocable Standby Letter of Credit Number _____ dated __, 20__

Ladies and Gentlemen:

Any capitalized term used herein shall have the meaning defined for that term by the Letter of Credit.

The undersigned, the duly elected and acting _____ of the Beneficiary, hereby certifies as follows:

1. **Site Certificate Holder** has permanently ceased commercial operation of the energy facility described in the Site Certificate for the **Project Name**, as amended from time to time (the "Site Certificate").

2. Either [Select Applicable Provision]:

Site Certificate Holder has failed to submit to Beneficiary a retirement plan for the **Project Name** as required by OAR 345-027-0110.

Or

Beneficiary has issued a final order disapproving the final retirement plan proposed by **Site Certificate Holder** for the **Project Name**.

Or

Site Certificate Holder has failed to comply with the terms and conditions of the approved final retirement plan for the **Project Name** and Beneficiary's order authorizing retirement of the **Project Name**.

3. As a result of said breach of the Site Certificate, the Beneficiary is entitled pursuant to the provisions of the Site Certificate to make demand under the Letter of Credit in the amount of \$_____.

4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 3 above, which amount does not exceed the lesser of (a) the amount the

Beneficiary is entitled to draw pursuant to the provisions of the Site Certificate, and (b) the Stated Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.

5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the ____ day of _____, 20__.

STATE OF OREGON, acting by and through the Energy Facility Siting Council, as Beneficiary

By: _____

Title: _____

[EFSC LETTERHEAD]

DRAW CERTIFICATE

[DATE]

Financial Institution

Address

City, State Zip

Drawn under Irrevocable Standby Letter of Credit Number _____ dated __, 20__

Ladies and Gentlemen:

Any capitalized term used herein shall have the meaning defined for that term by the Letter of Credit.

The undersigned, the duly elected and acting _____ of the Beneficiary, hereby certifies as follows:

1. ~~Financial Institute~~ ~~Institution~~ has heretofore provided written notice to the Beneficiary of the ~~Bank's Financial Intitution's~~ intent not to renew the Letter of Credit following the present Expiration Date thereof.
2. ~~Site Certificate Holder~~ is required to deliver to the Beneficiary and keep in effect, a bond or letter of credit that satisfies the requirements of Condition ~~number~~ of the Site Certificate for the ~~Project Name~~, as amended from time to time (the "Site Certificate").
3. Neither ~~Site Certificate Holder~~ nor any person acting on its behalf has, at least thirty (30) days prior to the present Expiration Date of the Letter of Credit, delivered to Beneficiary a bond or letter of credit that satisfies the requirements of Condition ~~number~~ of the Site Certificate.
4. As a result of said breach of the Site Certificate, the Beneficiary is entitled pursuant to the provisions of the Site Certificate to make demand under the Letter of Credit in the amount of \$ ____.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Site Certificate, and (b) the Stated Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the _____ day of _____, 20_.

STATE OF OREGON, acting by and through the Energy Facility Siting Council, as Beneficiary

By: _____

Title: _____

[EFSC LETTERHEAD]

DRAW CERTIFICATE

[DATE]

Financial Institution

Address

City, State Zip

Attention: Standby Letter of Credit Department

Drawn under Irrevocable Standby Letter of Credit Number __dated __, 20__

Ladies and Gentlemen:

Any capitalized term used herein shall have the meaning defined for that term by the Letter of Credit.

The undersigned, the duly elected and acting _____of the Beneficiary, hereby certifies as follows:

1. **Site Certificate Holder** has begun construction of the project described in the Site Certificate for the Project Name, as amended from time to time (the "Site Certificate"), but has not completed construction by the deadline specified in Condition **Number** of the Site Certificate.
2. Neither **Site Certificate Holder** nor any successor has requested an amendment of the Site Certificate extending the construction completion deadline in compliance with applicable rules.
3. As a result of said breach of the Site Certificate, the Beneficiary is entitled pursuant to the provisions of the Site Certificate to make demand under the Letter of Credit in the amount of \$ _____.
4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Site Certificate, and (b) the Stated Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.
5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the ____ day of _____, 20__.

STATE OF OREGON, acting by and through the Energy Facility Siting Council, as Beneficiary

By: _____

Title: _____

Energy Facility Siting Council
Proposed Financial Institutions

Financial Institution	Credit Rating Institution			
	Moody's	S & P's	Fitch	A.M. Best
Letter of Credit				
Bank of Nova Scotia (NY Agency)	Aa2		AA-	
MUFG Union Bank, N.A.	A1 ↓	A ↓	A	
JP Morgan/Chase Bank, N.A.	Aa2		AAA ↑	
Wells Fargo Bank, N.A.	Aa1	AA-	A+ ↑	
Royal Bank of Scotland Connecticut Branch	Baa2 ↓	BBB+	BBB+ ↓	
Bank of America N.A.	Aa3 ↑	A+ ↑	AA- ↑	
CoBank		AA-	AA- ↑	
Bank of the West	Aa3	A-	A	
Helaba (NY Branch of Landesbank Hessen-Thueringen GZ)	Aa3	A	A+ ↓	
Bank of Tokyo-Mitsubishi, UFJ (NY Branch)	A1		A	
Natixis (NY Branch)	Aa3 ↑	A	A	
Royal Bank of Canada (NY Branch)	Aa2	AA-	AA	
Barclay's Bank, PLC (NY Branch)	A2	A	A	
Bond				
Federal Insurance Co	Aa3	AA	AA ↑	A++
Liberty Mutual Insurance Company	A2	A	BBB+	A
SAFECO Insurance Co of America	A2	A	A-	A
Westchester Fire Insurance Co	Aa3	AA	AA	A++
Fidelity & Deposit Co of MD		AA-		A+

Reviewed October 3, 2018