BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Request for Amendment #10
of the Site Certificate for the Coyote Springs
Cogeneration Project

FINAL ORDER
ON AMENDMENT #10

Issued by
Oregon Energy Facility Siting Council

May 03, 2013
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EXHIBITS

Exhibit A Redline Site Certificate
Exhibit B Agency and Public Comments on Request for Amendment
Exhibit C Agency and Public Comments on Proposed Order
I. INTRODUCTION

In September 2012, Portland General Electric (PGE) submitted to the Oregon Department of Energy (ODOE or Department) a Request for Amendment 10 of the Coyote Springs Cogeneration Project. The amendment seeks the removal of three conditions from the site certificate pertaining to the emissions of nitrogen oxide. Nitrogen oxide is a criteria pollutant regulated under the Clean Air Act and subject to the jurisdiction of the Oregon Department of Environmental Quality.

I.A. NAME AND ADDRESS OF CERTIFICATE HOLDER

Portland General Electric Company
121 S.W. Salmon Street
Portland, OR 97204

Individual Responsible for Submitting this Request

Ray Hendricks
Portland General Electric
121 S.W. Salmon Street
Portland, OR 972014

I.B. DESCRIPTION OF THE FACILITY

The facility site is located in the Port of Morrow Industrial Park, encompassing approximately 20 acres. The facility consists of two natural gas-fired electrical generating units: Phase 1 is a 241 megawatt (MW) combined-cycle combustion engine with cogeneration, and Phase 2 is a 280 MW combined-cycle combustion turbine with no cogeneration. Structures on-site include a turbine generator building, heat recovery steam generator structures, two 210-foot exhaust stacks, a water treatment and equipment building, auxiliary boilers, an administrative and control building, water treatment chemical tanks, and electrical transformation and substation facility structures. The facility is supplied with natural gas by a 15-mile pipeline from Ione, Oregon. Phase 1 went into operation in 1995 and Phase 2 in 2003.

II. THE AMENDMENT PROCESS

II.A. DESCRIPTION OF THE PROPOSED AMENDMENT

II.A.1. Summary of Proposed Changes to Site Certificate Conditions

The current site certificate for the facility is the Fourth Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project incorporating Amendments 1 through 9. Amendment 10 requests the removal of three conditions in Section XI (Conditions Issued Pursuant to Applicant Representations) that relate to NOx emissions and controls. NOx emissions fall under the jurisdiction of the Oregon Department of Environmental Quality (ODEQ) and are addressed in the facility’s Title V Operating Permit.¹

¹ Oregon Department of Environmental Quality, Oregon Title V Operating Permit and Acid Rain Permit, Permit Number: 25-0031-TV-01.
The conditions proposed for deletion were not included in the facility’s original site certificate. The conditions, pulled from statements or representations made by the certificate holder in the Application for Site Certificate (ASC) were added to the site certificate by the Council in Amendment 1. Included within the Site Certificate Holder’s ASC, these statements were deemed to be binding commitments made by the applicant, and as such, pursuant to OAR 345-027-0020(11), the Council incorporated the commitments as conditions into the site certificate Amendment 1. However, in the Final Order on the Application, the Council does not rely on any statement by PGE concerning NOx emissions or controls to find compliance with any Council standard. Moreover, these statements have since been superseded by the requirements of the Clean Air Act. The implementation and administration of the Clean Air Act was federally-delegated to the ODEQ, and under ORS 469.503(3), the Council is not authorized to determine compliance with regulatory programs that have been delegated by the federal government to another state agency.

PGE’s Title V Operating Permit addresses the facility’s compliance with applicable emissions and air quality standards, and thoroughly addresses NOx emissions and controls. The Title V Operating Permit contains a number of very specific conditions regulating NOx emissions, including averaging times, monitoring protocols, and specifications for periods of startup and shutdown. The conditions proposed for removal in the site certificate contain only absolute limits, without monitoring protocols, and were not crafted to comply with air quality and emission standards. Consequently, the conditions in the site certificate do not align with the requirements in the Title V Operating Permit. As the Title V Operating Permit dictates, the permittee is only “allowed to discharge air contaminants...in accordance with the requirements, limitations, and conditions of this permit.” Regardless of this amendment request; the facility will remain subject to all provisions of its Title V Operating Permit. A more detailed discussion of the Title V Operating Permit is found in Section III.C.

**ILA.2. Certificate Holder’s Proposed Changes to Site Certificate**

PGE proposes the following amendments to the Fourth Amended Site Certificate. Proposed deletions have a strikethrough.

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**XI. Conditions Issued Pursuant to Applicant Representations**

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3. NOx emission shall be controlled to 25 ppm on natural gas. (p. B-3). [deleted amendment 10]

4. Each heat recovery steam generator shall be provided with an ammonia injection system and selective catalytic reduction system to further reduce the NOx emissions at the stack outlet. (p. B-4). [deleted amendment 10]

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2 This requirement is now found at OAR 345-027-0020(10).


4 (ORS 469.503(3)).
7. The low NOx burners on the auxiliary boiler shall control emissions to a maximum of 40 ppm at the stack outlet. ([deleted amendment 10])

II.A.3. ODOE's Recommended Changes to the Site Certificate

ODOE recommends that the Council adopt PGE's proposed amendments to Section XI of the Site Certificate as shown in Section II.A.2 above.

II.B. PROCEDURAL HISTORY

On September 16, 1994, EFSC issued a site certificate to PGE for a 462-megawatt natural gas-fired cogeneration facility and related and supporting facilities to be located in the Port of Morrow Industrial Park in Boardman, Oregon.5

On December 6, 1996, the Council executed Amendment 1 to the Coyote Springs Site Certificate. Amendment 1 incorporated into the site certificate specific conditions that were originally commitments made by PGE in its site certificate application and supporting documents. Additionally, the amendment incorporated the Council's most current procedural rules.6

The Council granted PGE Amendment 2 to the site certificate on March 7, 1997. Amendment 2 permitted PGE to use #2 low-sulfur distillate oil for back-up fuel for the natural gas-fired combustion turbines at the facility.7

The Council executed Amendment 3 on August 28, 1998. Amendment 3 removed site certificate conditions that required PGE to demonstrate either that Phase 2 met the "need for facility" standard or qualified for an exemption under former OAR 345-023-0010(2) (April 1994 rule) before the Council could extend the deadline for completion of construction. In place of the "need for facility" standard, amendment 3 imposed site certificate conditions that required Phase 2 to comply with the carbon dioxide emissions standard in ORS 469.503(2)(a). Further, Amendment 3 restricted the use of the #2 low-sulfur distillate oil to Phase 1.8

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6 EFSC, Proposed Order in the matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project Request for Amendment No. 1 (Dec. 1996). On November 17, 1994, the Council adopted substantial revisions to OAR Chapter 345, Divisions 1 through 29. These revisions changed, among other things, the Council's rules for amending site certificates, the mandatory conditions that are required to be in Energy Facility Site Certificates, and the process for applying subsequent rules and statutes to existing site certificates. On October 26, 1995, the Council adopted further revisions to OAR 345 Divisions 1 through 27. These revisions implemented new statutory requirements in 1995 Senate Bill 951.


On October 22, 1998, the Council executed Amendment 4 to the site certificate extending the construction completion deadline for Phase 2.\(^9\)

The Council authorized amendments 5 and 6 on June 23, 2000. Amendment 5 applied the current carbon dioxide standard for base load gas plants to Phase 2 and granted a second extension of the construction completion deadline. In addition, it provided PGE the option to use power augmentation (a "hybrid plant"), as set forth in OAR 345-024-0550. Further, it clarified that the milestone for completion of construction is the date of commercial operation of the facility.\(^10\)

Amendment No. 6 approved a partial transfer of the Site Certificate for Phase 2 from PGE to Coyote Springs 2, LLC.\(^11\) Coyote Springs 2, LLC was a wholly-owned subsidiary of ENA. ENA sold its equity interest in Coyote Springs 2, LLC to Avista Power.

The Council issued Amendment 7 in February 2001. Amendment 7 transferred ownership interests in Coyote Springs 2, LLC from Avista Power to Avista Corporation.\(^12\)

On November 8, 2002, the Council executed Amendment 8, transferring direct ownership of Phase 2 from Coyote Springs 2, LLC to Avista and Mirant. The transfer placed equal responsibility on Avista and Mirant as one-half co-owners to ensure Phase 2 satisfied the site certificate requirements.\(^13\)

December 2, 2004, the Council granted Amendment 9. Amendment 9 transferred Mirant's one-half ownership interest in Phase 2 from Mirant to Avista. Avista is now the sole owner of Phase 2.\(^14\)

The certificate holder submitted Request for Amendment 10 to the Department on September 19, 2012.\(^15\) On October 3, 2012, ODOE issued public notice of the request to all persons on the

\(^9\) EFSC, Final Order in the Matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project Request for Amendment No. 4 (Oct. 22, 1998). Additionally, the Council issued the "First Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project" which incorporated all deletions and additions approved by amendment 1-4 into a single site certificate.

\(^10\) EFSC, Final Order in the Matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project Request for Amendment No. 5 (June 23, 2000).


\(^13\) EFSC, Final Order for Partial Transfer of Site Certificate (Change of Direct Ownership) in the matter of the Third Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project (Amendment No. 8) (Nov. 8, 2002). November 08, 2002 the Council executed the "Third Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project," incorporating Amendments 1 through 8.

Council’s general mailing list, to the established facility list, and to an updated list of property owners, as supplied by the certificate holder. ODOE requested comment on the Request for Amendment and specified a comment deadline of November 05, 2012. ODOE also posted notice on the agency website. Further, on October 03, 2012, the Certificate Holder sent copies of the Request and a memorandum from ODOE, to an ODOE approved list of reviewing agencies, requesting comment by November 05, 2012. Public and agency comments are summarized in the following sections, and, as applicable to Council standards, are addressed in Section III.

By email dated October 4, 2012, the Department notified PGE that the Proposed Order would be issued no later than January 14, 2013. However, per OAR 345-027-0070(4), on January 14, 2013 the Department notified PGE that additional time was necessary to prepare the Proposed Order.

II.C. REVIEWING AGENCY COMMENTS ON THE REQUEST FOR AMENDMENT #10

ODOE received four comments from reviewing agencies in response to the Request for Amendment 10. The following is a summary of the comments received.

State Historic Preservation Office (Jason Allen, Historic Preservation Specialist)

Mr. Allen submitted a comment on behalf of SHPO. Mr. Allen stated that as the amendment request relates only to Nitrous Oxide emission controls, it falls outside SHPO’s area of expertise.

City of Boardman

The Boardman City Council explained that it held a special meeting to hear the background and staff report of the amendment request, and noted that the Council voted to approve the amendment of PGE for the facility.

ODEQ (Mark Fisher, Senior Permit Writer)

Mr. Fisher verified the information provided in the RFA regarding NOx requirements for an Oregon Title V permit as accurate.

Morrow County

Morrow County expressed support for the amendment and had no concerns relative to the request.

II.D. PUBLIC COMMENTS ON THE REQUEST FOR AMENDMENT #10

ODOE received two public comments on the Request for Amendment 10. The following is a summary of comments received.

Friends of the Columbia Gorge

Friends expressed concern regarding the removal of the NOx conditions from the site certificate and its impact upon resources protected by Council Standards. Friends requested modeling of potential impacts to air quality to ensure compliance with the Council Standards.

Oregon Wild

15 Certificate Holder’s Request for Tenth Amendment to the Site Certificate for the Coyote Springs Cogeneration Project.
Oregon Wild expressed its concern that removal of the NOx conditions may weaken the air quality standards causing the project to no longer be in the public interest.

II.E. AGENCY COMMENTS ON THE PROPOSED ORDER ON AMENDMENT 10

ODOE did not receive any agency comments on the Proposed Order on Amendment 10.

II.F. PUBLIC COMMENTS ON THE PROPOSED ORDER ON AMENDMENT 10

ODOE received one public comment on the Proposed Order on Amendment 10. The following is a summary of the comment received.

Friends of the Columbia Gorge

Friends expressed concern regarding the removal of the NOx conditions from the site certificate and its impact upon resources protected by Council Standards, in particular the Protected Areas. Friends requested that the site certificate holder perform visibility impact analysis and modeling on emissions for the Columbia River Gorge National Scenic Area.

II.G. APPLICABLE REVIEW STANDARDS

Under ORS 469.405, “a site certificate may be amended with the approval of the Energy Facility Siting Council.” The Council has adopted rules for determining when a site certificate amendment is allowed (OAR 345-027-0030 and -0050) and rules establishing the procedure for amending or transferring a site certificate (OAR 345-027-0060-0070 and -0010). The proposed amendment is required under the current rules.

II.G.1. When an Amendment is Required

Under OAR 345-027-0050, an amendment is necessary when the certificate holder proposes to design, construct or operate a facility in a manner different from the description in the site certificate and the proposed change could (a) result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards; (b) impair the certificate holder’s ability to comply with a site certificate condition; or (c) could require a new condition or a change to a condition in the site certificate.

Amendment 10 requests the removal of three conditions relating to NOx emissions and controls. The removal of the conditions will not result in a significant adverse impact affecting a resource protected by Council standards that the Council has not addressed in an earlier order, or impair the certificate holder’s ability to comply with a site certificate condition. The conditions proposed for removal were not the basis for the Council’s finding of compliance with any Council standard, and the condition content is now outside of the Council’s jurisdiction. The site certificate holder is not seeking to change the facility design or operation, which could impair the certificate holder’s ability to comply with a site certificate condition. Rather, the site certificate holder seeks to remove conditions in the site certificate that are outside Council jurisdiction. Nonetheless, an amendment to the Coyote Springs Site Certificate is necessary under OAR 345-027-0050(c) because PGE, the certificate holder, proposes to “...operate [the] facility in a manner different from the description in the site certificate, and the proposed amendment “could require a new condition or a change to a condition in the site certificate.”

II.G.2. Review Criteria for Proposed Amendment

OAR 345-027-0070(10)
(10) In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision. The Council shall consider the following:

(a) For an amendment that would change the site boundary or the legal description of the site, the Council shall consider, for the area added to the site by the amendment, whether the facility complies with all Council standards;

(b) For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:

(A) Whether the Council has previously granted an extension of the deadline;

(B) Whether there been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and

(C) Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:

(i) The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;

(ii) The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;

(iii) The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and

(iv) The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment;

(c) For any amendment not described above, the Council shall consider whether the amendment would affect any finding made by the Council in an earlier order.

(d) For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

The Council finds that Subsection (a) and (b) above are not applicable to this amendment request. PGE's proposed amendment does not seek to change the site boundary or an extension of the construction deadline.

Subsection (c) is applicable and establishes the scope of review for this amendment. Under subsection (c), the Council must consider whether the proposed amendment affects any finding made by the Council in an earlier order. Compliance with Council standards and previous findings are discussed further in Section III.

With regard to Subsection (d), the Council finds the bond or letter of credit adequate as the amendment request proposes to remove three site certificate conditions that do not impact the certificate holder's ability to retire the facility and restore it to a useful, nonhazardous condition. PGE's retirement and financial assurance requirements are further discussed in Section III.A.

III. REVIEW OF THE PROPOSED AMENDMENT

III.A. ENERGY FACILITY SITING STANDARDS

The Council must determine whether the proposed amendment complies with the applicable facility siting standards adopted by the Council. In the Final Order on the Application, the Council made findings of compliance with the statutes and rules in effect at that time. As discussed above, pursuant to OAR 345-027-0070(10)(c), the Council must review any impacts
the requested amendment may have on its previous findings. In addition, the Council must
impose conditions for the protection of the public health and safety, for the time for completion
of construction, and to ensure compliance with applicable standards, statutes and rules.\textsuperscript{16}

The Council is not authorized to determine compliance with regulatory programs that have been
delegated to another state agency by the federal government.\textsuperscript{17} Nevertheless, the Council may
consider these programs in the context of its own standards to ensure public health and safety,
resource efficiency and protection of the environment. The Council has no jurisdiction over
design or operational issues that do not relate to siting; such matters include employee health and
safety, building code compliance, wage and hour or other labor regulations, or local government
fees and charges.\textsuperscript{18}

In making its decision on an amendment of a site certificate, the Council applies the applicable
state statutes, administrative rules and local government ordinances that are in effect on the date
the Council makes its decision, except when applying the Land Use standard. In making findings
on the Land Use standard, the Council applies the applicable substantive criteria in effect on the
date the certificate holder submitted the request.\textsuperscript{19}

III.A.1. General Standard of Review: OAR 345-022-0000

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council
shall determine that the preponderance of evidence on the record supports the following
conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting
statutes, ORS 469.500 to ORS 469.570 and 469.590 to 469.619, and the standards adopted by the
Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the
damage to the resources protected by the standards the facility does not meet as described in
section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for
those statutes and rules for which the decision on compliance has been delegated by the federal
government to a state agency other than the Council, the facility complies with all other Oregon
statutes and administrative rules identified in the project order, as amended, as applicable to the
issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon
statutes and rules, other than those involving federally delegated programs, would impose
conflicting requirements, the Council shall resolve the conflict consistent with the public interest.
In resolving the conflict, the Council cannot waive any applicable state statute.

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The requirements of OAR 345-022-0000 are discussed in the sections that follow. Applicable
statutes and rules of agencies other than EFSC are discussed below, in Section III.B. The
proposed amendment removes three conditions regarding emission levels for NOx that are
regulated under the Title V Operating permit. The Title V permit is federally-delegated to the

\textsuperscript{16} ORS 469.401(2)
\textsuperscript{17} ORS 469.503(3)
\textsuperscript{18} ORS 469.401(4)
\textsuperscript{19} OAR 345-027-0070(9)
ODEQ and consequently outside of EFSC’s jurisdiction. Federally-delegated programs are discussed in Section III.C. below.

**III.A.2. Organizational Expertise, OAR 345-022-0010**

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant’s experience, the applicant’s access to technical expertise and the applicant’s past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

**Findings of Fact**

Subsections (1) and (2) of the Council’s Organizational Expertise Standard require that the certificate holder demonstrate the ability to design, construct, and operate the facility in compliance with Council standards and all site certificate conditions, and the ability to restore the site to a useful, non-hazardous condition. Subsections (3) and (4) address third-party permits, those permits which the certificate holder relies on a contractor or other third party to obtain.

In the Final Order on the Application, the Council noted that PGE operated a diversified electrical generation, transmission and distribution system serving a population in excess of 1.3 million. Further, the Council found PGE to possess experience in the construction, management, ownership and operation of generating facilities similar in size, fuel type, technology and complexity to that proposed for Coyote Springs. Consequently, the Council concluded that PGE had a reasonable probability of successful construction and operation of the facility and that PGE possessed the required organizational, managerial and technical expertise to construct and
operate the Coyote Springs Cogeneration facility. Request for Amendment 10 seeks the removal of three conditions pertaining to NOx emission standards and controls that are regulated under the facility's Title V Permit. PGE does not propose a transfer of ownership, new construction, or other changes to the site or facility. There is no change of circumstance impacting the certificate holder's qualifications. Amendment 10 would not affect the Council's previous findings regarding PGE's organizational expertise.

Conclusions
Based on the findings above, the Council finds that the certificate holder complies with the Council's Organizational Expertise Standard.

III.A.3 Structural Standard: OAR 345-022-0020
(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from maximum probable ground motion events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and

(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in subsection (c).

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Findings of Fact
The Council's Structural Standard requires the applicant to characterize seismic and non-seismic risks at the facility site, and to demonstrate an ability to design, engineer, and construct the facility to avoid dangers to human safety as presented by those risks. These provisions relate directly to the physical configuration and construction of facility components.

In the Final Order on the Application, the Council found the certificate holder, subject to the conditions in the site certificate, in compliance with the Structural Standard. Those previous findings and conditions are incorporated by this reference. Both Phase 1 and Phase 2 are constructed and in operation. The removal of three conditions relating to NOx emissions and controls, as requested by Amendment 10, would not increase the risk of seismic hazards at the

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20 Final Order on Application, supra note 3 at 31.
21 Id. at 46-47; EFSC, Fourth Amended Thermal Power Plant Site Certificate supra note 14 at 18-19.
site or affect the Council’s previous findings. Amendment 10 does not authorize any change in
the Coyote Springs facility nor do the conditions proposed for deletion concern the Council’s
structural standard.

Conclusion
Based on the findings above, the Council finds that the facility, as amended, complies with the
Council’s Structural standard in OAR 345-022-0020.

IIIA.4 Soil Protection: OAR 345-022-0022

To issue a site certificate, the Council must find that the design, construction and operation of the
facility, taking into account mitigation, are not likely to result in a significant adverse impact
to soils including, but not limited to, erosion and chemical factors such as salt deposition from
cooling towers, land application of liquid effluent, and chemical spills.

Findings of Fact
The Soil Protection Standard requires the Council to find that the design, construction, and
operation of the facility are not likely to result in significant adverse impacts to soil.

In the Final Order on the Application, the Council evaluated soil impacts for the power plant site
and the related transmission line, and concluded the construction, operation and retirement of the
CSCP facility would not result in significant adverse impacts to the soil. Additionally, to
further protect the resource, the Council included a condition in the Site Certificate requiring the
applicant and its subcontractors to make reasonable efforts to keep soil disturbances to a
minimum during construction. Amendment 10 seeks the removal of three conditions related to
NOX emissions and controls, and does not authorize any physical change to the facility or site.
Additionally, the proposed amendment does not concern or eliminate the conditions in the site
certificate pertaining to the cooling tower and cooling tower drift. Amendment 10 would not
affect the Council’s previous findings.

Conclusion
Based on the findings above, the Council finds that the facility, as amended, complies with the
Council’s Soil Protection Standard in OAR 345-022-0022.

IIIA.5. Land Use: OAR 345-022-0030

(1) To issue a site certificate, the Council must find that the proposed facility complies with the
statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and
the Council finds that the facility has received local land use approval under the
acknowledged comprehensive plan and land use regulations of the affected local
government; or

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22 Final Order on the Application, supra note 3 at 47-48.
23 EFSC, Fourth Amendment Thermal Power Plant Site Certificate, supra note 14 at 19.
24 EFSC, Fourth Amended Thermal Power Plant Site Certificate, supra note 14 at 20.
(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

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Findings of Fact

The Land Use standard requires the Council to find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission. Under ORS 469.504(1)(b), the Council is authorized to make the determination whether the proposed facility complies with "applicable substantive criteria" and with any Land Conservation and Development Commission "administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3)."

In the Final Order on the Application, the Council concluded that the land use standard was satisfied by PGE’s demonstrated receipt of necessary local land use approvals and compliance with statewide planning goals. The Council’s previous findings and conditions are incorporated herein by this reference. When the site certificate was originally issued, the facility was located in unincorporated Morrow County within the City of Boardman Urban Growth Boundary. Both the City of Boardman and Morrow County signed a Land Use Compatibility Statement for the proposed facility dated September 5, 1991. The statement indicated that the city and the county believed the proposed facility to be consistent with their respective land use plans. However, in the late 1990’s, annexation occurred and the facility is now located inside Boardman City limits.

In accordance with ORS 469.504 and its consideration of a site certificate amendment request, the Council must apply the “applicable substantive criteria,” as described in OAR 345-022-0030, that are in effect on the date the certificate holder submitted the amendment request. Consistent with ORS 469.504(5), ODOE requested the Special Advisory Group to provide a list of the applicable substantive criteria. The City of Boardman submitted a comment on the Request for Amendment in support of the proposed amendment, but did not identify any applicable

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25 EFSC, Final Order on the Application, supra note 3 at 49.
26 Request for Comments on the Request for Amendment 10, October 03, 2012. EFSC appointed the Boardman City Council as a Special Advisory Group on September 27, 2012.
substantive criteria. Under ORS 469.504(5), if the special advisory group does not recommend
applicable substantive criteria within the time established in the department's request, the
Council may either determine and apply the applicable substantive criteria...or determine
compliance with the statewide planning goals...” Because the proposed amendment 10 is limited
to the removal of three conditions relating to NOx emissions and controls, and does not seek to
authorize any change to the facility, the site or the operation of the facility, the Council's
previous findings will not be impacted. The proposed amendment does not concern the facility’s
compliance with the statewide planning goals, land use administrative rules or land use states.
Therefore, Amendment 10 would not affect the Council’s previous findings of compliance with
the land use standard.

Conclusion
Based on the findings above, the Council finds that the facility, as amended, complies with the
Council’s Land Use Standard in OAR 345-022-0030.

III.A.6. Protected Areas: OAR 345-022-0040

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a
proposed facility located in the areas listed below. To issue a site certificate for a proposed
facility located outside the areas listed below, the Council must find that, taking into account
mitigation, the design, construction and operation of the facility are not likely to result in
significant adverse impact to the areas listed below. References in this rule to protected areas
designated under federal or state statutes or regulations are to the designations in effect as of
May 11, 2007:

(a) National parks, including but not limited to Crater Lake National Park and Fort
Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National
Monument, Newberry National Volcanic Monument and Oregon Caves National
Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq.
and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(d) National and state wildlife refuges, including but not limited to Arkeny, Bandon
Marsh, Basket Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart
Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath,
Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper
Klamath, and William L. Finley;

(e) National coordination areas, including but not limited to Government Island, Ochoco
and Summer Lake;

(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm
Springs;

(g) National recreation and scenic areas, including but not limited to Oregon Dunes
National Recreation Area, Hell’s Canyon National Recreation Area, and the Oregon
Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(h) State parks and waysides as listed by the Oregon Department of Parks and
Recreation and the Willamette River Greenway;
(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(ii) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR Chapter 142;

(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation.

(l) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to: Coastal Oregon Marine Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension Center, Hood River Agriculture Research and Extension Center, Hermiston Columbia Basin Agriculture Research Center, Pendleton Columbia Basin Agriculture Research Center, Moro North Willamette Research and Extension Center, Aurora East Oregon Agriculture Research Center, Union Malheur Experiment Station, Ontario Eastern Oregon Agriculture Research Center, Burns Eastern Oregon Agriculture Research Center, Squaw Butte Central Oregon Experiment Station, Madras Central Oregon Experiment Station, Powell Butte Central Oregon Experiment Station, Redmond Central Station, Corvallis Coastal Oregon Marine Experiment Station, Newport Southern Oregon Experiment Station, Medford Klamath Experiment Station, Klamath Falls;

(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;

(p) State wildlife areas and management areas identified in OAR chapter 635, Division 8.

**Findings of Fact**

The Protected Areas standard requires the Council to find that the design, construction, and operation of the facility are not likely to result in adverse impacts to protected areas, taking into account mitigation.

In the **Final Order on the Application**, the Council found the facility to have no significant adverse impact on any protected areas. More specifically, the Council found that the air emissions would not adversely affect the protected areas. Because the air emissions expected from the facility did not raise any particular concerns for the protected areas, the Council relied upon ODEQ’s review of the facility’s air emissions, and did not conduct its own independent review, with the exception of the cooling tower drift. With regard to ODEQ’s air emissions

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27 EFSC, Final Order on the Application, supra note 3 at 50-51.
review, the agency reported that the facility would satisfy all federal primary and secondary standards for air emissions; therefore, the Council found the facility to present no adverse impact to the protected areas. Regarding the cooling tower drift, the Council conducted its own review because no other agency was reviewing it and the drift had the potential to adversely impact the surrounding area due to the cooling process used. However, the Council found that the cooling tower drift would not adversely impact the protected areas given the protected areas’ distance from the site.\(^{28}\) The Council’s previous findings and conclusions are incorporated herein by reference.

During the comment period on the Request for Amendment 10, ODOE received public comments expressing concern that the removal of the three conditions relating to NOx emissions and controls would adversely impact the Columbia River Gorge National Scenic Area (CRGNSA).\(^{29}\) The CRGNSA is a protected area under OAR 345-022-0040(1)(g). However, as previously noted, the Council did not rely upon the three conditions under review to find compliance with any Council standard including the Protected Areas standard. To find compliance with the Protected Areas Standard, the Council relied upon the ODEQ’s review of the facility, and the Council did not conduct its own independent analysis, with the exception of the cooling tower drift. As discussed above, the Council relied upon ODEQ’s review of the air emissions for the natural gas power plant, but because ODEQ’s review did not include the cooling tower drift, the Council did conduct its own review to ensure the facility did not impact the surrounding areas. When the Council incorporated the three conditions in Amendment 1, the Council applied OAR 345-27-020(11) to ensure that representations in the application that were the basis for the Council’s findings of the compliance with Council standards remained binding on PGE. The Council “identified statements...to ensure continued compliance with Council standards.”\(^{30}\) However, as is clear from the \textit{Final Order on the Application}, the Council did not in fact rely upon these particular statements in PGE’s ASC to find compliance with any Council standard, including the Protected Areas standard. The Council referred to ODEQ’s review of air emissions, and concluded that the cooling tower drift would not adversely impact the protected areas given the distance. And, in the Proposed Order on Amendment 1, the Council did not further substantiate its conclusion that the statements were a basis for the Council’s findings of compliance with its standards.

Further, the Council does not have jurisdiction over the federally-delegated Clean Air Act program and concluded so in the \textit{Final Order in the Application}.\(^{31}\) Implementation and administration of the Clean Air Act has been federally-delegated to the ODEQ. The Title V Operating Permit and its requirements and compliance therewith are consequently outside Council jurisdiction. The Title V permit for the facility thoroughly addresses NOx emissions and contains a number of conditions that require PGE to monitor, record, and report air emissions. Moreover, the requirements in the Title V Permit appropriately address the objective of the arbitrary conditions contained in the site certificate. Conditions 13.a and 14.a of the Title V

\(^{28}\) \textit{Id.} at 50-51.

\(^{29}\) Letter from Friends of the Columbia Gorge, November 5, 2012; Email from Oregon Wild, November 05, 2012.


\(^{31}\) EFSC, \textit{Final Order on the Application}, supra note 3 at 77.
permit limit NOx emissions from the combustion turbines to 4.5 ppm and 15 ppm, respectively. The facility was originally permitted under the Prevention of Significant Deterioration rules and Condition 13 was the specific emission limit established for the combustion turbines. Condition 14 is an applicable federal limit under the New Source Performance Standards. Under Title V, if multiple emission limits apply, the permit holder must comply with the most restrictive limit; therefore, the 4.5 ppm limit must be met. Also, Conditions 36 and 40 of the Title V permit require the certificate holder to have a continuous emissions monitoring systems (CEMS) for NOx emissions from the combustion turbines, with specific compliance protocols and reporting requirements. A selective catalytic reduction (SCR) device (which includes ammonia injection) is installed to control nitrogen oxide emissions and CEMS are required to monitor the emissions. Finally, Condition 19 of Title V sets forth a NOx emissions limit for the auxiliary boiler of 0.20 pounds per million Btu heat input based on a 30-day rolling average.\textsuperscript{32}

Most importantly, as noted earlier, the site certificate conditions are not based on meeting applicable air quality or emissions standards, nor did the Council rely on the conditions to find compliance with any Council standard. The facility will remain subject to the Title V Operating Permit, and the amendment does not impact the Council’s previous findings of compliance in the Final Order on the Application.

Conclusion
Based on the findings above, the Council finds the facility, as amended, complies with the Council’s Protected Areas Standard in OAR 345-022-0040.


To issue a site certificate, the Council must find that:

(1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

Findings of Fact
The Council must find that the applicant has a reasonable likelihood of obtaining a bond or comparable security, satisfactory to the Council, in an amount adequate to restore the site to a useful, nonhazardous condition.

In the Final Order on the Application, the Council concluded that the certificate holder demonstrated a reasonable likelihood of obtaining the funds necessary to cover the estimated construction, operating and retirement costs for the design lifetime of the facility including related fuel-cycle costs.\textsuperscript{33} Additionally, the current site certificate requires PGE to restore its respective portion of the facility to a useful condition.\textsuperscript{34} The Council’s previous findings and conditions are incorporated by this reference.

\textsuperscript{32} Certificate Holder’s Request for the Tenth Amendment to the Site Certificate for the Coyote Springs Cogeneration Project 3 (Sept. 2012).

\textsuperscript{33} Final Order on the Application, supra note 3 at 45.

\textsuperscript{34} EFSC, Fourth Amended Thermal Power Plant Site Certificate, supra note 14 at 22-23.
Amendment 10 seeks the removal of three conditions regarding NOx emissions and controls. The amendment does not request any physical change in the facility, nor do the conditions proposed for deletion relate in any way to the cost of retiring the facility. Amendment 10, as requested, would not impact the Council’s previous findings.

Conclusion
Based on the findings above, the Council finds that the facility, as amended, complies with the Council’s Retirement and Financial Assurance Standard.

III.A.8. Fish and Wildlife Habitat: OAR 345-022-0060
To issue a site certificate, the Council must find that the design, construction, and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.

Findings of Fact
The Fish and Wildlife Standard requires the Council to find that the design, construction, and operation of the facility are consistent with fish and wildlife habitat mitigation goals as set forth in OAR 635-415-0025.

In the Final Order on the Application, the Council found that the facility could be constructed and operated in a manner consistent with ODFW’s fish and wildlife habitat mitigation goals and standards as set forth in OAR 635-415-0025, with the implementation of mitigation measures specified in the site certificate conditions. The Council’s previous findings and conditions are incorporated by this reference.

Request for Amendment 10 seeks the removal of three conditions relating to NOx emissions and controls. The proposed amendment would not affect the design, construction, or operation of the facility, and would not impact the Council’s previous findings regarding the Fish and Wildlife standard.

Conclusion
Based on the findings above, the Council finds the facility, as amended, complies with the Fish and Wildlife Habitat Standard.

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

35 Final Order on the Application, supra note 3 at 56; EFSC, Fourth Amended Thermal Power Plant Site Certificate, supra note 14 at 19-20.
(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Findings of Fact

The Threatened and Endangered Species Standard requires the Council to find that the design, construction, and operation of the facility are consistent with plant protection and conservation programs adopted by the Oregon Department of Agriculture under ORS 564.105(2). If the Department of Agriculture has not adopted a protection and conservation program, the Council must find that the facility is not likely to cause a significant reduction in the likelihood of survival or recovery of the species. With respect to wildlife species, the Council must find that the design, construction, and operation of the facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of species listed as threatened or endangered by Oregon Fish and Wildlife Commission under ORS 469.172(2).

In the Final Order on the Application, the Council found the standard satisfied with regard to plants and wildlife and required no additional conditions to ensure compliance beyond those specified pursuant to the fish and wildlife standard. The proposed amendment would remove three conditions relating to NOx emissions and controls that are regulated under the Title V Operating Permit, and would not affect the design, construction, or operation of the facility. Therefore, the amendment as requested would not affect the Council’s previous findings.

Conclusion

Based on the findings above, the Council finds the facility, as amended, complies with the Council’s Threatened and Endangered Species Standard.

III.A.10. Scenic Resources: OAR 345-022-0080

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

Findings of Fact

The Scenic Resources Standard requires the Council to find that the design, construction, and operation of the facility are not likely to result in adverse impacts to scenic resources.

In the Final Order on the Application, the Council concluded that the facility, subject to the mitigation measures included in the Site Certificate, would not result in a significant adverse impact. The Council’s previous findings and conditions are incorporated by this reference.

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36 Final Order on the Application, supra note 3 at 59.
37 Id. at 61; EFSC, Fourth Amended Thermal Power Plant Site Certificate, supra note 14 at 21.
The proposed amendment seeks the removal of three conditions relating to NOx emissions and controls, and this would not impact the Council’s previous findings. The facility appearance and cooling tower plumes are the factors that are generally most likely to affect scenic resources, and as discussed previously, the amendment does not propose any change in the facility site nor does the amendment alter or increase the potential visual impacts of the facility. The proposed amendment does not concern the Council Scenic Resources standard, and it would not affect the Council’s previous findings.

**Conclusion**

Based on the findings above, the Council finds the facility, as amended, complies with the Council’s Scenic Resources Standard.

**III.A.11. Historic, Cultural and Archaeological Resources: OAR 345-022-0090**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

   (a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

   (b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

   (c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

**Findings of Fact**

This standard requires the Council to evaluate whether the facility would have significant adverse impacts to historic, cultural, or archaeological resources.

In the Final Order on the Application, the Council found that the construction, operation and retirement of the proposed facilities would not result in a significant adverse impact to historic, cultural and archaeological resources based on the literature review, the site survey, the SHPO review, and the lack of known historical, cultural or archaeological resources within the project area.38 The Council’s previous findings and conclusions are incorporated by this reference.

Amendment 10 relates to NOx emissions, and as proposed, would have no affect on the Council’s previous findings regarding the historic, cultural and archaeological resources. The proposed amendment does not seek to alter the operation or design of the facility.

**Conclusion**

Based on the findings above, the Council finds that the facility, as amended, complies with the Council’s Historic, Cultural and Archaeological standard.

**III.A.12. Recreation: OAR 345-022-0100**

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the

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38 Final Order on the Application, supra note 3 at 61.
analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

(a) Any special designation or management of the location;
(b) The degree of demand;
(c) Outstanding or unusual qualities;
(d) Availability or rareness;
(e) Irreplaceability or irretrievability of the opportunity.

Findings of Fact
The Recreation Standard requires the Council to find that the design, construction, and operation of the facility are not likely to result in adverse impacts to important recreational opportunities.

In the Final Order on the Application, the Council found that the recreation areas, apart from Messner Pond, would not be significantly affected by the project due to their distance from the facility. However, the Council also concluded that the proposed tree buffer and the distance between the site and the pond would prevent significant adverse impacts to recreational opportunities at Messner Pond as well.\(^{39}\) The Council’s previous findings and conclusions are incorporated by this reference.

Amendment 10, seeking the removal of three conditions relating to NOx emissions and controls, has no impact on the factual basis for the Council’s previous finding of compliance with the Recreation Standard. The amendment does not seek to change the facility, the site or the operation of the facility. Amendment 10 would not affect the Council’s previous findings.

Conclusion
Based on the findings above, the Council finds that the facility, as amended, complies with the Council’s Recreation Standard.

III.A.13 Public Services: OAR 345-022-0110
(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

Findings of Fact
The Public Services Standard requires the Council to find that the construction and operation of the facility are not likely to result in significant adverse impacts to the ability of public and private providers to provide the services listed in the standard above.

This standard was previously titled the “Socio-Economic Impact Standard,” and in the Final Order on the Application, the Council concluded that, subject to conditions included in the Site

\(^{39}\) Id. at 63; EFSC, Fourth Amended Thermal Power Plant Site Certificate at 20.
Certificate, the construction and operation of the facility would cause no significant adverse impacts on the community infrastructure and government services.\textsuperscript{40} The Council’s previous findings and conclusions are incorporated by this reference. Amendment 10, as proposed, does not relate to the Council’s public service standard and would not impact the Council’s previous findings. The removal of three conditions relating to NOx emissions and controls would not adversely affect public services.

Conclusion
Based on the findings above, the Council finds that the facility, as amended, complies with the Council’s Public Services Standard.


\begin{enumerate}
\item Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:
\begin{enumerate}
\item The applicant’s solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;
\item The applicant’s plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.
\end{enumerate}
\end{enumerate}

Findings of Fact
The Waste Minimization Standard requires the Council to find that the certificate holder will minimize generation of solid waste and wastewater, and manage waste generated to result in minimal adverse impacts on the surrounding and adjacent areas.

In the \textit{Final Order on the Application} the Council found the site certificate holder’s efforts at wastewater reduction and reuse through the Port of Morrow’s land application disposal system or by installation of an on-site, zero discharge system, and the commitment to implement programs to reduce and recycle solid waste as adequate. Consequently, the Council concluded that the waste minimization was satisfied, and to ensure future compliance, included conditions within the site certificate.\textsuperscript{41} The Council’s previous conclusions and findings are incorporated by this reference. The proposed Amendment 10, relating to NOx emissions and controls, does not result in or authorize any physical or operational change in the facility itself. Waste at the facility will not be impacted by the proposed amendment, and the Council’s previous findings will not be affected.

Conclusion
Based on the findings above, the Council finds that the facility, as amended, complies with the Council’s Waste Minimization Standard.

\textbf{III.A.15. Division 23 Standards}
The Division 23 standards apply only to “nongenerating facilities” as defined in ORS 469.503(2)(e)(K), except non-generating facilities that are related or supporting facilities. The

\textsuperscript{40} \emph{Id.} at 69; EPSC, \textit{Fourth Amended Thermal Power Plant Site Certificate}, supra note 14 at 21-22.

\textsuperscript{41} \textit{Final Order on the Application}, supra note 3 at 72.
facility is not a nongenerating facility as defined in statute. Therefore, Division 23 is inapplicable
to the facility and the changes proposed.

III.A.16 Division 24 Standards

The Council’s Division 24 standards include specific standards for siting facilities including
wind, underground gas storage reservoirs, transmission lines and facilities that emit carbon
dioxide.

Siting Standards for Transmission Lines, OAR 345-024-0090

To issue a site certificate for a facility that includes any transmission line under Council
jurisdiction, the Council must find that the applicant:

(1) Can design, construct and operate the proposed transmission line so that alternating
current electric fields do not exceed 9 kV per meter at one meter above the ground
surface in areas accessible to the public;

(2) Can design, construct and operate the proposed transmission line so that induced
currents resulting from the transmission line and related or supporting facilities will be
as low as reasonably achievable.

Findings of Fact

The Siting Standards for Transmission Lines require the Council to find that the certificate
holder can design, construct and operate transmission lines so that electric fields in areas
accessible to the public do not exceed 9 kV per meter, and so that induced currents are
minimized.

The facility includes one double-circuit looped 500-kilovolt (kV) transmission line. In the Final
Order on the Application, the Council found that as a matter of public health and safety, the line
should be required to satisfy EFSC’s design standards for transmission lines and included
conditions in the Site Certificate requiring such. The Council’s previous findings and
conclusions are incorporated by this reference. The proposed amendment seeks to remove three
conditions relating to NOx emissions and controls, and it does not concern or relate to the
transmission line or the transmission line standards. The proposed amendment would not affect
the Council’s previous findings.

Conclusion

Based on the findings above, the Council concludes that the facility, as amended, complies with
the Council’s Siting Standards for Transmission Lines.

III.B. OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION

Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-
0000), the Council must determine whether the proposed facility complies with “all other Oregon
statutes and administrative rules..., as applicable to the issuance of a site certificate for the
proposed facility.” In evaluating this amendment, the Council must determine whether the
proposed amendment affects any finding made by the Council in earlier orders. This section
addresses the applicable Oregon statutes and administrative rules that are not otherwise
addressed, including noise control regulations, regulations for removal or fill of material

42 Id. at 86-87; EFSC, Fourth Amended Thermal Power Plant Site Certificate, supra note 14 at 23-24.
43 OAR 345-027-0070(10)(c)
affecting waters of the state, regulations for appropriating ground water, and the Council’s statutory authority to consider protection of public health and safety.

III.B.1. Noise Control Regulations: OAR 340-035-0035

(1) Standards and Regulations:

(b) New Noise Sources:

(A) New Sources Located on Previously Used Sites. No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as otherwise provided in these rules. For noise levels generated by a wind energy facility including wind turbines of any size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.

Findings of Fact

The noise control regulations provided by OAR 340-035-0035 apply to noise associated with operation of the facility. In the Final Order on the Application, the Council concluded that the operation of the facility plant, subject to the conditions listed in the site certificate, would have no significant adverse impact on the noise level of the surrounding area. The Council’s previous findings and conclusions are incorporated herein by this reference.

The proposed removal of three conditions relating to NOx emissions and control has no effect on the factual basis for the Council’s finding of compliance with the noise standards. The proposed amendment does not authorize or request any physical changes to the facility or its operation. The facility remains subject to the conditions in the site certificate pertaining to noise. The facility remains subject to the Title V Operating Permit, and the amendment has no impact on noise.

Conclusion

Based on the findings above, the Council finds that the facility, as amended, complies with the Noise Standard.

III.B.2. Removal-Fill

Findings of Fact

The Oregon Removal-Fill Law and Department of State Lands (DSL) regulations require a Removal/Fill Permit if 50 cubic yards or more of material is removed, filled or altered within any “waters of the state” at the proposed site. In the Final Order on the Application, the Council concluded that a removal/fill permit was not required for the facility because the project did not involve or alter any “waters of the state.” The Council’s previous findings and conclusions are

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44 Final Order on the Application, supra note 3 at 75; EFSC, Fourth Amended Thermal Power Plant Site Certificate, supra note 14 at 23.
45 ORS 196.800 through ORS 196.990
46 OAR 141-085-005 through OAR 141-085-0090
47 Final Order on the Application, supra note 3 at 76.
incorporated by this reference. The proposed removal of three conditions relating to NOx emissions and controls does not involve any “waters of the state;” consequently, the proposed amendment would not affect the Council’s earlier finding.

**Conclusion**

Based on the findings above, the Council finds that the facility, as amended, complies with the Removal-Fill regulations.

**III.B.3. Public Health and Safety**

**Findings of Fact**

The Council is charged with ensuring that the “siting, construction, and operation of energy facilities shall be accomplished in a manner consistent with the protection of public health and safety…” State law further provides that “the site certificate … shall contain conditions for the protection of public health and safety.” The Council has previously considered the protection of public health and safety in the Final Order on the Application and found that the siting, construction and operation of the facility, subject to the conditions in the Site Certificate, are consistent with protection of public health and safety. The proposed amendment would not affect the factual basis for the Council’s finding of compliance with the public health and safety standard as the requested amendment only relates to NOx emissions and controls that are under the jurisdiction of the Title V Operating Permit.

**Conclusion**

Based on the findings above, the Council finds that the facility, as amended, complies with Public Health and Safety standards.

**III.C. Requirements that are not under Council Jurisdiction**

**III.C.1. Federally-Delegated Programs**

The Council does not have jurisdiction over compliance with statutes and rules for which the federal government has delegated the decision on compliance to a state agency other than the Council. Nevertheless, the Council may rely on the determinations of compliance and the conditions in the federally-delegated permits issued by these state agencies in deciding whether the proposed facility meets other standards and requirements under its jurisdiction.

In the Final Order on the Application, the Council concluded that the following programs are exempt from EFSC jurisdiction:

- The air contaminant discharge permit program administered by DEQ, which includes the federally delegate new source review requirements of the Clean Air Act and the Prevention of Significant Deterioration program. This authority is in ORS Chapter 468A; OAR Chapter 340, Divisions 20, 21, 22, 25, and 31.
- The national pollutant discharge elimination system, administered by DEQ-Water Quality Division and Morrow County, which regulations and permits stormwater runoff from the proposed project site

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48 ORS 469.310.
49 ORS 469.401(2).
• The program regulating the design, operation, monitoring and removal of underground storage tanks that contain certain toxic and hazardous materials, including petroleum products, administered by DEQ, under ORS Chapter 466; OAR Chapter 340, Division 150.

As discussed previously, the administration of the Clean Air Act was federally-delegated to ODEQ, and as a federally-delegated permit, the Council does not have jurisdiction. The Title V Operating Permit contains provisions governing NOx emissions and controls; accordingly, NOx emissions and controls are outside Council jurisdiction.

III.C.2. Requirements that do not relate to Siting

Under ORS 469.401(4) the Council does not have jurisdiction over compliance with state regulatory programs that address design-specific construction or operating standards and practices that do not relate to specific siting requirements of the proposed facility.

In the Final Order on the Application, the Council concluded that the following state regulatory programs are exempt from EFSC jurisdiction:

• The oil spill contingency and prevention plan program, administered by DEQ Water Quality Division under ORS 468B and OAR Chapter 340, Division 47, which regulates the transport, storage, handling an spill control and prevention of petroleum products.
• Regulations of building, structure design and construction practices by the Building Code Agency.
• Various programs administering fire protection and fire safety and the storage, use, handling and emergency response for hazardous material, administered by the Oregon State Fire Marshal’s office.
• The program addressing design and safety standards for natural gas pipelines and electric transmission lines administered by the Oregon Public Utilities commission, Safety Section.
• Regulations on the size and weight of truck loads on state and federal highways administered by the Oregon Department of Transportation.
• The program regulating the possession, use and transfer of radioactive materials administered by the Oregon State Health Division.
• Regulations of domestic water supply systems regarding potability administered by OSHD.

Those regulatory programs continue to be exempt from Council jurisdiction.

IV. PROPOSED CONCLUSION AND ORDER

The proposed amendment deletes three conditions, Conditions IX.3, IX.4, and IX.7, from the Site Certificate for the Coyote Springs Cogeneration Project. Based on the findings and conclusions included in this order, the Council finds that a preponderance of the evidence on the record supports the following conclusions:

1. The proposed Amendment #10 complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and ORS 469.590 to ORS 469.619.
2. The proposed Amendment #10 complies with the applicable standards adopted by the Council pursuant to ORS 469.501.
3. The proposed Amendment #10 complies with all other Oregon statutes and
administrative rules applicable to the amendment of the site certificate for the CSCP that
are within the Council’s jurisdiction.

Accordingly, the Council finds that the proposed amendment complies with the General
Standard of Review (OAR 345-022-0000) and that, based on a preponderance of the evidence on
the record, that the site certificate may be amended as requested by the certificate holder.

The Council approves Amendment #10 and issues an amended site certificate for the Coyote
Springs Cogeneration Project, subject to the terms and conditions set forth above.

Issued this 3rd day of May, 2013.

Oregon Energy Facility Siting Council

By: W. Bryan Wolfe, Chair
Oregon Energy Facility Siting Council

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403.
To appeal you must file a petition for judicial review with the Supreme Court within 60 days
from the day this order was served on you. If this order was personally delivered to you, the date
of service is the date you received this order. If this order was mailed to you, the date of service
is the date it was mailed, not the day you received it. If you do not file a petition for judicial
review within the 60-day time period, you lose your right to appeal.