

**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

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

I. INTRODUCTION.....3

I.A.Name and Address of Certificate Holder.....3

I.B.Description of the Facility3

II. THE AMENDMENT PROCESS.....3

II.A. Description of the Proposed Amendment.....3

II.A.1.Summary of Proposed Changes to Site Certificate Conditions.....3

II.A.2.Certificate Holder’s Proposed Changes to Site Certificate.....4

II.A.3.ODOE’s Recommended Changes to the Site Certificate.....5

II.B. Procedural History5

II.C. Reviewing Agency Comments on the Request for Amendment #107

II.D. Public Comments on the Request for Amendment #10.....7

II.E. Agency Comments on the Proposed Order on Amendment 108

II.F. Public Comments on the Proposed Order on Amendment 10.....8

II.G. Applicable Review Standards.....8

II.G.1.When an Amendment is Required.....8

II.G.2.Review Criteria for Proposed Amendments.....8

III. REVIEW OF THE PROPOSED AMENDMENT.....9

III.A. Energy Facility Siting Standards9

III.A.1.General Standards of Review.....10

III.A.2.Organizational Expertise.....10

III.A.3.Structural Standard.....12

III.A.4.Soil Protection13

III.A.5.Land Use.....13

III.A.6.Protected Areas.....15

III.A.7.Retirement and Financial Assurance.....18

III.A.8.Fish and Wildlife Habitat.....18

III.A.9.Threatened and Endangered Species.....19

III.A.10.Scenic Resources.....20

III.A.11.Historic, Cultural, and Archaeological Resources.....21

1	<u>III.A.12.Recreation</u>	21
2	<u>III.A.13.Public Services</u>	22
3	<u>III.A.14.Waste Minimization</u>	23
4	<u>III.A.15.Division 23 Standards</u>	23
5	<u>III.A.16.Division 24-Carbon Dioxide Standards</u>	23
6	III.B. Other Applicable Regulatory Requirements Under Council Jurisdiction	24
7	<i>III.B.1. Noise Control Regulations</i>	24
8	<i>III.B.2. Removal-Fill Law</i>	25
9	<i>III.B.3. Public Health and Safety</i>	25
10	III.C. Requirements that are not under Council Jurisdiction	26
11	<u>III.C.1.Federally-delegated programs</u>	26
12	<u>III.C.2.Requirements that do not relate to Siting</u>	26
13	<u>IV. PROPOSED CONCLUSION AND ORDER</u>	27
14		
15		
16	EXHIBITS	
17	Exhibit A <i>Redline Site Certificate</i>	
18	Exhibit B <i>Agency and Public Comments on Request for Amendment</i>	
19	Exhibit C <i>Agency and Public Comments on Proposed Order</i>	
20		

1 **I. INTRODUCTION**

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

8 **I.A. NAME AND ADDRESS OF CERTIFICATE HOLDER**

9 Portland General Electric Company
10 121 S.W. Salmon Street
11 Portland, OR 97204

12
13 Individual Responsible for Submitting this Request

14
15 Ray Hendricks
16 Portland General Electric
17 121 S.W. Salmon Street
18 Portland, OR 972014

19
20 **I.B. DESCRIPTION OF THE FACILITY**

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

30 **II. THE AMENDMENT PROCESS**

31 **II.A. DESCRIPTION OF THE PROPOSED AMENDMENT**

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

33 The current site certificate for the facility is the Fourth Amended Thermal Power Plant Site
34 Certificate for the Coyote Springs Cogeneration Project incorporating Amendments 1 through 9.
35 Amendment 10 requests the removal of three conditions in Section XI (Conditions Issued
36 Pursuant to Applicant Representations) that relate to NOx emissions and controls. NOx
37 emissions fall under the jurisdiction of the Oregon Department of Environmental Quality
38 (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.

1 The conditions proposed for deletion were not included in the facility's original site certificate.
2 The conditions, pulled from statements or representations made by the certificate holder in the
3 Application for Site Certificate (ASC) were added to the site certificate by the Council in
4 Amendment 1. Included within the Site Certificate Holder's ASC, these statements were deemed
5 to be binding commitments made by the applicant, and as such, pursuant to OAR 345-027-
6 0020(11),² the Council incorporated the commitments as conditions into the site certificate
7 Amendment 1. However, in the *Final Order on the Application*, the Council does not rely on any
8 statement by PGE concerning NO_x emissions or controls to find compliance with any Council
9 standard.³ Moreover, these statements have since been superseded by the requirements of the
10 Clean Air Act. The implementation and administration of the Clean Air Act was federally-
11 delegated to the ODEQ, and under ORS 469.503(3), the Council is not authorized to determine
12 compliance with regulatory programs that have been delegated by the federal government to
13 another state agency.⁴

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

26 **II.A.2. Certificate Holder's Proposed Changes to Site Certificate**

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

29 Page 28, lines 33-37; Page 29, lines 2-3

30 XI. Conditions Issued Pursuant to Applicant Representations

31 ***

32 ~~3. NO_x emission shall be controlled to 25 ppm on natural gas. (p. B-3).~~ **[deleted**
33 **amendment 10]**

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

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

³ Energy Facility Siting Council, *Final Order in the matter of the Application for Site Certificate of Portland General Electric Company for the Coyote Springs Cogeneration Project* (Sept. 16, 1994) [hereinafter *Final Order on the Application*].

⁴ (ORS 469.503(3)).

1 ***

2 ~~7. The low NOx burners on the auxiliary boiler shall control emissions to a maximum of~~
3 ~~40 ppm at the stack outlet. (p. B-12). Deleted amendment 10~~

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

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

7 **II.B. PROCEDURAL HISTORY**

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

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

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

19 The Council executed Amendment 3 on August 28, 1998. Amendment 3 removed site certificate
20 conditions that required PGE to demonstrate either that Phase 2 met the "need for facility"
21 standard or qualified for an exemption under former OAR 345-023-0010(2) (April 1994 rule)
22 before the Council could extend the deadline for completion of construction. In place of the
23 "need for facility" standard, amendment 3 imposed site certificate conditions that required Phase
24 2 to comply with the carbon dioxide emissions standard in ORS 469.503(2)(a). Further,
25 Amendment 3 restricted the use of the #2 low-sulfur distillate oil to Phase 1.⁸

⁵ Energy Facility Siting Council, *Final Order in the matter of the Application for Site Certificate of Portland General Electric Company for the Coyote Springs Cogeneration Project* (Sept. 16, 1994); *Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project* (Sept. 1994).

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.

⁷ EFSC, *Final Order in the Matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project Request for Amendment No. 2* (Mar. 7, 1997).

⁸ EFSC, *Final Order in the Matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project Request for Amendment No. 3* (Aug. 28, 1998).

1 On October 22, 1998, the Council executed Amendment 4 to the site certificate extending the
2 construction completion deadline for Phase 2.⁹

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

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

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

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

17 December 2, 2004, the Council granted Amendment 9. Amendment 9 transferred Mirant’s one-
18 half ownership interest in Phase 2 from Mirant to Avista. Avista is now the sole owner of Phase
19 2.¹⁴

20 The certificate holder submitted Request for Amendment 10 to the Department on September 19,
21 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).

¹¹ EFSC, *Final Order in the Matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project* (Amendment No. 6) (June 23, 2000). On June 23, 2000 the Council also executed the “Second Amended Thermal Power Plant Site Certificate for Coyote Springs Cogeneration Project,” incorporating Amendments 1 through 6.

¹² EFSC, *Final Order for Partial Transfer of Site Certificate (Change of Direct Ownership) in the matter of the Second Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project* (Amendment No. 7) (Feb. 2001). February 22, 2001 the Council executed the “Second Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project,” incorporating Amendments 1 through 7.

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.

¹⁴ EFSC, *Final Order for Partial Transfer of Site Certificate in the Matter of the Fourth Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project* (Amendment No. 9) (Dec. 2, 2004). December 2, 2004 the Council executed the “Fourth Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project,” incorporating Amendments 1 through 9.

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

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

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

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

14 15 **State Historic Preservation Office (Jason Allen, Historic Preservation Specialist)**

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

18 **City of Boardman**

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

22 **ODEQ (Mark Fisher, Senior Permit Writer)**

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

25 **Morrow County**

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

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

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

31 **Friends of the Columbia Gorge**

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

35 **Oregon Wild**

¹⁵ Certificate Holder's Request for Tenth Amendment to the Site Certificate for the Coyote Springs Cogeneration Project.

1 Oregon Wild expressed its concern that removal of the NOx conditions may weaken the air
2 quality standards causing the project to no longer be in the public interest.

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

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

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

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

8 **Friends of the Columbia Gorge**

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

13 **II.G. APPLICABLE REVIEW STANDARDS**

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

19 **II.G.1. When an Amendment is Required**

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

26 Amendment 10 requests the removal of three conditions relating to NOx emissions and controls.
27 The removal of the conditions will not result in a significant adverse impact affecting a resource
28 protected by Council standards that the Council has not addressed in an earlier order, or impair
29 the certificate holder’s ability to comply with a site certificate condition. The conditions
30 proposed for removal were not the basis for the Council’s finding of compliance with any
31 Council standard, and the condition content is now outside of the Council’s jurisdiction. The site
32 certificate holder is not seeking to change the facility design or operation, which could impair the
33 certificate holder’s ability to comply with a site certificate condition. Rather, the site certificate
34 holder seeks to remove conditions in the site certificate that are outside Council jurisdiction.
35 Nonetheless, an amendment to the Coyote Springs Site Certificate is necessary under OAR 345-
36 027-0050(c) because PGE, the certificate holder, proposes to “...operate [the] facility in a
37 manner different from the description in the site certificate, and the proposed amendment “could
38 require a new condition or a change to a condition in the site certificate.”

39 **II.G.2. Review Criteria for Proposed Amendment**

40 **OAR 345-027-0070(10)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 III. REVIEW OF THE PROPOSED AMENDMENT

42 III.A. ENERGY FACILITY SITING STANDARDS

43 The Council must determine whether the proposed amendment complies with the applicable
44 facility siting standards adopted by the Council. In the *Final Order on the Application*, the
45 Council made findings of compliance with the statutes and rules in effect at that time. As
46 discussed above, pursuant to OAR 345-027-0070(10)(c), the Council must review any impacts

1 the requested amendment may have on its previous findings. In addition, the Council must
2 impose conditions for the protection of the public health and safety, for the time for completion
3 of construction, and to ensure compliance with applicable standards, statutes and rules.¹⁶

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

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

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

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

20 *(a) The facility complies with the requirements of the Oregon Energy Facility Siting*
21 *statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards adopted by the*
22 *Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the*
23 *damage to the resources protected by the standards the facility does not meet as described in*
24 *section (2);*

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

33 ***

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

¹⁶ ORS 469.401(2)

¹⁷ ORS 469.503(3)

¹⁸ ORS 469.401(4)

¹⁹ OAR 345-027-0070(9)

1 ODEQ and consequently outside of EFSC's jurisdiction. Federally-delegated programs are
2 discussed in Section III.C. below.

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

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

14 *(2) The Council may base its findings under section (1) on a rebuttable presumption that an*
15 *applicant has organizational, managerial and technical expertise, if the applicant has an ISO*
16 *9000 or ISO 14000 certified program and proposes to design, construct and operate the facility*
17 *according to that program.*

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

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

31
32 **Findings of Fact**

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

38
39 In the *Final Order on the Application*, the Council noted that PGE operated a diversified
40 electrical generation, transmission and distribution system serving a population in excess of 1.3
41 million. Further, the Council found PGE to possess experience in the construction, management,
42 ownership and operation of generating facilities similar in size, fuel type, technology and
43 complexity to that proposed for Coyote Springs. Consequently, the Council concluded that PGE
44 had a reasonable probability of successful construction and operation of the facility and that PGE
45 possessed the required organizational, managerial and technical expertise to construct and

1 operate the Coyote Springs Cogeneration facility.²⁰ Request for Amendment 10 seeks the
2 removal of three conditions pertaining to NOx emission standards and controls that are regulated
3 under the facility's Title V Permit. PGE does not propose a transfer of ownership, new
4 construction, or other changes to the site or facility. There is no change of circumstance
5 impacting the certificate holder's qualifications. Amendment 10 would not affect the Council's
6 previous findings regarding PGE's organizational expertise.

7
8 **Conclusions**

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

11 **III.A.3 Structural Standard: OAR 345-022-0020**

12 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council*
13 *must find that:*

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

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

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

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

30 ***

31 **Findings of Fact**

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

36
37 In the *Final Order on the Application*, the Council found the certificate holder, subject to the
38 conditions in the site certificate, in compliance with the Structural Standard.²¹ Those previous
39 findings and conditions are incorporated by this reference. Both Phase 1 and Phase 2 are
40 constructed and in operation. The removal of three conditions relating to NOx emissions and
41 controls, as requested by Amendment 10, would not increase the risk of seismic hazards at the

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.

1 site or affect the Council's previous findings. Amendment 10 does not authorize any change in
2 the Coyote Springs facility nor do the conditions proposed for deletion concern the Council's
3 structural standard.

4
5 **Conclusion**

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

8 **III.A.4 Soil Protection: OAR 345-022-0022**

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

13 **Findings of Fact**

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

16
17 In the *Final Order on the Application*, the Council evaluated soil impacts for the power plant site
18 and the related transmission line, and concluded the construction, operation and retirement of the
19 CSCP facility would not result in significant adverse impacts to the soil.²² Additionally, to
20 further protect the resource, the Council included a condition in the Site Certificate requiring the
21 applicant and its subcontractors to make reasonable efforts to keep soil disturbances to a
22 minimum during construction.²³ Amendment 10 seeks the removal of three conditions related to
23 NOx emissions and controls, and does not authorize any physical change to the facility or site.
24 Additionally, the proposed amendment does not concern or eliminate the conditions in the site
25 certificate pertaining to the cooling tower and cooling tower drift.²⁴ Amendment 10 would not
26 affect the Council's previous findings.

27
28 **Conclusion**

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

31 **III.A.5. Land Use: OAR 345-022-0030**

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

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

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

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.*

1 (b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and
2 the Council determines that:

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

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

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

15 ***

16 **Findings of Fact**

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

23
24 In the *Final Order on the Application*, the Council concluded that the land use standard was
25 satisfied by PGE’s demonstrated receipt of necessary local land use approvals and compliance
26 with statewide planning goals.²⁵ The Council’s previous findings and conditions are
27 incorporated herein by this reference. When the site certificate was originally issued, the facility
28 was located in unincorporated Morrow County within the City of Boardman Urban Growth
29 Boundary. Both the City of Boardman and Morrow County signed a Land Use Compatibility
30 Statement for the proposed facility dated September 5, 1991. The statement indicated that the
31 city and the county believed the proposed facility to be consistent with their respective land use
32 plans. However, in the late 1990’s, annexation occurred and the facility is now located inside
33 Boardman City limits.

34
35 In accordance with ORS 469.504 and its consideration of a site certificate amendment request,
36 the Council must apply the “applicable substantive criteria,” as described in OAR 345-022-0030,
37 that are in effect on the date the certificate holder submitted the amendment request. Consistent
38 with ORS 469.504(5), ODOE requested the Special Advisory Group to provide a list of the
39 applicable substantive criteria.²⁶ The City of Boardman submitted a comment on the Request for
40 Amendment in support of the proposed amendment, but did not identify any applicable

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.

1 substantive criteria. Under ORS 469.504(5), if the special advisory group does not recommend
2 applicable substantive criteria within the time established in the department's request, the
3 Council may either determine and apply the applicable substantive criteria...or determine
4 compliance with the statewide planning goals..." Because the proposed amendment 10 is limited
5 to the removal of three conditions relating to NOx emissions and controls, and does not seek to
6 authorize any change to the facility, the site or the operation of the facility, the Council's
7 previous findings will not be impacted. The proposed amendment does not concern the facility's
8 compliance with the statewide planning goals, land use administrative rules or land use states.
9 Therefore, Amendment 10 would not affect the Council's previous findings of compliance with
10 the land use standard.

11 Conclusion

12 Based on the findings above, the Council finds that the facility, as amended, complies with the
13 Council's Land Use Standard in OAR 345-022-0030.
14

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

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

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

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

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

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

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

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

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

42 *(h) State parks and waysides as listed by the Oregon Department of Parks and*
43 *Recreation and the Willamette River Greenway;*

1 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas
2 pursuant to ORS 273.581;

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

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

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

11 (m) Agricultural experimental stations established by the College of Agriculture, Oregon
12 State University, including but not limited to: Coastal Oregon Marine Experiment
13 Station, Astoria Mid-Columbia Agriculture Research and Extension Center, Hood River

14 Agriculture Research and Extension Center, Hermiston Columbia Basin Agriculture
15 Research Center, Pendleton Columbia Basin Agriculture Research Center, Moro North
16 Willamette Research and Extension Center, Aurora East Oregon Agriculture Research
17 Center, Union Malheur Experiment Station, Ontario Eastern Oregon Agriculture
18 Research Center, Burns Eastern Oregon Agriculture Research Center, Squaw Butte
19 Central Oregon Experiment Station, Madras Central Oregon Experiment Station, Powell
20 Butte Central Oregon Experiment Station, Redmond Central Station, Corvallis

21 Coastal Oregon Marine Experiment Station, Newport Southern Oregon Experiment
22 Station, Medford Klamath Experiment Station, Klamath Falls;

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

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

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

30 ***

31 **Findings of Fact**

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

35
36 In the *Final Order on the Application*, the Council found the facility to have no significant
37 adverse impact on any protected areas. More specifically, the Council found that the air
38 emissions would not adversely affect the protected areas.²⁷ Because the air emissions expected
39 from the facility did not raise any particular concerns for the protected areas, the Council relied
40 upon ODEQ's review of the facility's air emissions, and did not conduct its own independent
41 review, with the exception of the cooling tower drift. With regard to ODEQ's air emissions

²⁷ EFSC, *Final Order on the Application*, supra note 3 at 50-51.

1 review, the agency reported that the facility would satisfy all federal primary and secondary
2 standards for air emissions; therefore, the Council found the facility to present no adverse impact
3 to the protected areas. Regarding the cooling tower drift, the Council conducted its own review
4 because no other agency was reviewing it and the drift had the potential to adversely impact the
5 surrounding area due to the cooling process used. However, the Council found that the cooling
6 tower drift would not adversely impact the protected areas given the protected areas' distance
7 from the site.²⁸ The Council's previous findings and conclusions are incorporated herein by
8 reference.

9
10 During the comment period on the Request for Amendment 10, ODOE received public
11 comments expressing concern that the removal of the three conditions relating to NOx emissions
12 and controls would adversely impact the Columbia River Gorge National Scenic Area
13 (CRGNSA).²⁹ The CRGNSA is a protected area under OAR 345-022-0040(1)(g). However, as
14 previously noted, the Council did not rely upon the three conditions under review to find
15 compliance with any Council standard including the Protected Areas standard. To find
16 compliance with the Protected Areas Standard, the Council relied upon the ODEQ's review of
17 the facility, and the Council did not conduct its own independent analysis, with the exception of
18 the cooling tower drift. As discussed above, the Council relied upon ODEQ's review of the air
19 emissions for the natural gas power plant, but because ODEQ's review did not include the
20 cooling tower drift, the Council did conduct its own review to ensure the facility did not impact
21 the surrounding areas. When the Council incorporated the three conditions in Amendment 1, the
22 Council applied OAR 345-27-020(11) to ensure that representations in the application that were
23 the basis for the Council's findings of the compliance with Council standards remained binding
24 on PGE. The Council "identified statements...to ensure continued compliance with Council
25 standards."³⁰ However, as is clear from the *Final Order on the Application*, the Council did not
26 in fact rely upon these particular statements in PGE's ASC to find compliance with any Council
27 standard, including the Protected Areas standard. The Council referred to ODEQ's review of air
28 emissions, and concluded that the cooling tower drift would not adversely impact the protected
29 areas given the distance. And, in the Proposed Order on Amendment 1, the Council did not
30 further substantiate its conclusion that the statements were a basis for the Council's findings of
31 compliance with its standards.

32
33 Further, the Council does not have jurisdiction over the federally-delegated Clean Air Act
34 program and concluded so in the *Final Order in the Application*.³¹ Implementation and
35 administration of the Clean Air Act has been federally-delegated to the ODEQ. The Title V
36 Operating Permit and its requirements and compliance therewith are consequently outside
37 Council jurisdiction. The Title V permit for the facility thoroughly addresses NOx emissions and
38 contains a number of conditions that require PGE to monitor, record, and report air emissions.
39 Moreover, the requirements in the Title V Permit appropriately address the objective of the
40 arbitrary conditions contained in the site certificate. Conditions 13.a and 14.a of the Title V

²⁸ *Id.* at 50-51.

²⁹ Letter from Friends of the Columbia Gorge, November 5, 2012; Email from Oregon Wild, November 05, 2012.

³⁰ ODOE, *Proposed Order Amendment 1*, 5-6 (Oct. 23, 1996).

³¹ EFSC, *Final Order on the Application*, *supra* note 3 at 77.

1 permit limit NO_x emissions from the combustion turbines to 4.5 ppm and 15 ppm, respectively.
2 The facility was originally permitted under the Prevention of Significant Deterioration rules and
3 Condition 13 was the specific emission limit established for the combustion turbines. Condition
4 14 is an applicable federal limit under the New Source Performance Standards. Under Title V, if
5 multiple emission limits apply, the permit holder must comply with the most restrictive limit;
6 therefore, the 4.5 ppm limit must be met. Also, Conditions 36 and 40 of the Title V permit
7 require the certificate holder to have a continuous emissions monitoring systems (CEMS) for
8 NO_x emissions from the combustion turbines, with specific compliance protocols and reporting
9 requirements. A selective catalytic reduction (SCR) device (which includes ammonia injection)
10 is installed to control nitrogen oxide emissions and CEMS are required to monitor the emissions.
11 Finally, Condition 19 of Title V sets forth a NO_x emissions limit for the auxiliary boiler of 0.20
12 pounds per million Btu heat input based on a 30-day rolling average.³²

13
14 Most importantly, as noted earlier, the site certificate conditions are not based on meeting
15 applicable air quality or emissions standards, nor did the Council rely on the conditions to find
16 compliance with any Council standard. The facility will remain subject to the Title V Operating
17 Permit, and the amendment does not impact the Council's previous findings of compliance in the
18 *Final Order on the Application*.

19
20 **Conclusion**

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

23 **III.A.7. Retirement and Financial Assurance: OAR 345-022-0050**

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

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

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

29 **Findings of Fact**

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

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

³² Certificate Holder's Request for the Tenth Amendment to the Site Certificate for the Coyote Springs Cogeneration Project 3 (Sept. 2012).

³³ *Final Order on the Application*, *supra* note 3 at 45.

³⁴ EFSC, *Fourth Amended Thermal Power Plant Site Certificate*, *supra* note 14 at 22-23.

1
2 Amendment 10 seeks the removal of three conditions regarding NOx emissions and controls.
3 The amendment does not request any physical change in the facility, nor do the conditions
4 proposed for deletion relate in any way to the cost of retiring the facility. Amendment 10, as
5 requested, would not impact the Council's previous findings.

6
7 **Conclusion**

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

10 **III.A.8. Fish and Wildlife Habitat: OAR 345-022-0060**

11 *To issue a site certificate, the Council must find that the design, construction, and operation of*
12 *the facility, taking into account mitigation, are consistent with the fish and wildlife habitat*
13 *mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.*

14 **Findings of Fact**

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

18
19 In the *Final Order on the Application*, the Council found that the facility could be constructed
20 and operated in a manner consistent with ODFW's fish and wildlife habitat mitigation goals and
21 standards as set forth in OAR 635-415-0025, with the implementation of mitigation measures
22 specified in the site certificate conditions.³⁵ The Council's previous findings and conditions are
23 incorporated by this reference.

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

28
29 **Conclusion**

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

32 **III.A.9. Threatened and Endangered Species: OAR 345-022-0070**

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

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

38 *(a) Are consistent with the protection and conservation program, if any, that the*
39 *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.

1 (b) If the Oregon Department of Agriculture has not adopted a protection and
2 conservation program, are not likely to cause a significant reduction in the
3 likelihood of survival or recovery of the species; and

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

8 **Findings of Fact**

9 The Threatened and Endangered Species Standard requires the Council to find that the design,
10 construction, and operation of the facility are consistent with plant protection and conservation
11 programs adopted by the Oregon Department of Agriculture under ORS 564.105(2). If the
12 Department of Agriculture has not adopted a protection and conservation program, the Council
13 must find that the facility is not likely to cause a significant reduction in the likelihood of
14 survival or recovery of the species. With respect to wildlife species, the Council must find that
15 the design, construction and operation of the facility, taking into account mitigation, are not
16 likely to cause a significant reduction in the likelihood of survival or recovery of species listed as
17 threatened or endangered by Oregon Fish and Wildlife Commission under ORS 469.172(2).
18

19 In the *Final Order on the Application*, the Council found the standard satisfied with regard to
20 plants and wildlife and required no additional conditions to ensure compliance beyond those
21 specified pursuant to the fish and wildlife standard.³⁶ The proposed amendment would remove
22 three conditions relating to NOx emissions and controls that are regulated under the Title V
23 Operating Permit, and would not affect the design, construction, or operation of the facility.
24 Therefore, the amendment as requested would not affect the Council's previous findings.
25

26 **Conclusion**

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

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

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

35 **Findings of Fact**

36 The Scenic Resources Standard requires the Council to find that the design, construction, and
37 operation of the facility are not likely to result in adverse impacts to scenic resources.
38

39 In the *Final Order on the Application*, the Council concluded that the facility, subject to the
40 mitigation measures included in the Site Certificate, would not result in a significant adverse
41 impact.³⁷ The Council's previous findings and conditions are incorporated by this reference.
42

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.

1 The proposed amendment seeks the removal of three conditions relating to NOx emissions and
2 controls, and this would not impact the Council's previous findings. The facility appearance and
3 cooling tower plumes are the factors that are generally most likely to affect scenic resources, and
4 as discussed previously, the amendment does not propose any change in the facility site nor does
5 the amendment alter or increase the potential visual impacts of the facility. The proposed
6 amendment does not concern the Council Scenic Resources standard, and it would not affect the
7 Council's previous findings.

8
9 **Conclusion**

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

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

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

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

18 *(b) For a facility on private land, archaeological objects, as defined in ORS*
19 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

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

21 **Findings of Fact**

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

24
25 In the *Final Order on the Application*, the Council found that the construction, operation and
26 retirement of the proposed facilities would not result in a significant adverse impact to historic,
27 cultural and archaeological resources based on the literature review, the site survey, the SHPO
28 review, and the lack of known historical, cultural or archaeological resources within the project
29 area.³⁸ The Council's previous findings and conclusions are incorporated by this reference.

30
31 Amendment 10 relates to NOx emissions, and as proposed, would have no affect on the
32 Council's previous findings regarding the historic, cultural and archaeological resources. The
33 proposed amendment does not seek to alter the operation or design of the facility.

34
35 **Conclusion**

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

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

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

³⁸ *Final Order on the Application*, supra note 3 at 61.

1 *analysis area as described in the project order. The Council shall consider the following factors*
2 *in judging the importance of a recreational opportunity:*

3 *(a) Any special designation or management of the location;*

4 *(b) The degree of demand;*

5 *(c) Outstanding or unusual qualities;*

6 *(d) Availability or rareness;*

7 *(e) Irreplaceability or irretrievability of the opportunity.*

8 **Findings of Fact**

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

11
12 In the *Final Order on the Application*, the Council found that the recreation areas, apart from
13 Messner Pond, would not be significantly affected by the project due to their distance from the
14 facility. However, the Council also concluded that the proposed tree buffer and the distance
15 between the site and the pond would prevent significant adverse impacts to recreational
16 opportunities at Messner Poner as well.³⁹ The Council's previous findings and conclusions are
17 incorporated by this reference.

18
19 Amendment 10, seeking the removal of three conditions relating to NOx emissions and controls,
20 has no impact on the factual basis for the Council's previous finding of compliance with the
21 Recreation Standard. The amendment does not seek to change the facility, the site or the
22 operation of the facility. Amendment 10 would not affect the Council's previous findings.

23
24 **Conclusion**

25 Based on the findings above, the Council finds that the facility, as amended, complies with the
26 Council's Recreation Standard.

27 **III.A.13 Public Services: OAR 345-022-0110**

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

34
35 **Findings of Fact**

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

39
40 This standard was previously titled the "Socio-Economic Impact Standard," and in the *Final*
41 *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.

1 Certificate, the construction and operation of the facility would cause no significant adverse
2 impacts on the community infrastructure and government services.⁴⁰ The Council’s previous
3 findings and conclusions are incorporated by this reference. Amendment 10, as proposed, does
4 not relate to the Council’s public service standard and would not impact the Council’s previous
5 findings. The removal of three conditions relating to NOx emissions and controls would not
6 adversely affect public services.

7
8 **Conclusion**

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

11 **III.A.14. Waste Minimization: OAR 345-022-0120**

12 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council*
13 *must find that, to the extent reasonably practicable:*

14 *(a) The applicant’s solid waste and wastewater plans are likely to minimize generation of*
15 *solid waste and wastewater in the construction and operation of the facility, and when*
16 *solid waste or wastewater is generated, to result in recycling and reuse of such wastes;*

17 *(b) The applicant’s plans to manage the accumulation, storage, disposal and*
18 *transportation of waste generated by the construction and operation of the facility are*
19 *likely to result in minimal adverse impact on surrounding and adjacent areas.*

20 **Findings of Fact**

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

24
25 In the *Final Order on the Application* the Council found the site certificate holder’s efforts at
26 wastewater reduction and reuse through the Port of Morrow’s land application disposal system or
27 by installation of an on-site, zero discharge system, and the commitment to implement programs
28 to reduce and recycle solid waste as adequate. Consequently, the Council concluded that the
29 waste minimization was satisfied, and to ensure future compliance, included conditions within
30 the site certificate.⁴¹ The Council’s previous conclusions and findings are incorporated by this
31 reference. The proposed Amendment 10, relating to NOx emissions and controls, does not result
32 in or authorize any physical or operational change in the facility itself. Waste at the facility will
33 not be impacted by the proposed amendment, and the Council’s previous findings will not be
34 affected.

35
36 **Conclusion**

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

39
40 **III.A.15. Division 23 Standards**

41 The Division 23 standards apply only to “nongenerating facilities” as defined in ORS
42 469.503(2)(e)(K), except non-generating facilities that are related or supporting facilities. The

⁴⁰ *Id.* at 69; EFSC, *Fourth Amended Thermal Power Plant Site Certificate*, *supra* note 14 at 21-22.

⁴¹ *Final Order on the Application*, *supra* note 3 at 72.

1 facility is not a nongenerating facility as defined in statute. Therefore, Division 23 is inapplicable
2 to the facility and the changes proposed.

3 **III.A.16 Division 24 Standards**

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

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

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

- 10 (1) *Can design, construct and operate the proposed transmission line so that alternating*
11 *current electric fields do not exceed 9 kV per meter at one meter above the ground*
12 *surface in areas accessible to the public;*
13 (2) *Can design, construct and operate the proposed transmission line so that induced*
14 *currents resulting from the transmission line and related or supporting facilities will be*
15 *as low as reasonably achievable.*

16 **Findings of Fact**

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

21
22 The facility includes one double-circuit looped 500-kilovolt (kV) transmission line. *In the Final*
23 *Order on the Application*, the Council found that as a matter of public health and safety, the line
24 should be required to satisfy EFSC's design standards for transmission lines and included
25 conditions in the Site Certificate requiring such.⁴² The Council's previous findings and
26 conclusions are incorporated by this reference. The proposed amendment seeks to remove three
27 conditions relating to NOx emissions and controls, and it does not concern or relate to the
28 transmission line or the transmission line standards. The proposed amendment would not affect
29 the Council's previous findings.

30
31 **Conclusion**

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

34 **III.B. OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION**

35 Under ORS 469.503(3) and under the Council's General Standard of Review (OAR 345-022-
36 0000), the Council must determine whether the proposed facility complies with "all other Oregon
37 statutes and administrative rules..., as applicable to the issuance of a site certificate for the
38 proposed facility." In evaluating this amendment, the Council must determine whether the
39 proposed amendment affects any finding made by the Council in earlier orders.⁴³ This section
40 addresses the applicable Oregon statutes and administrative rules that are not otherwise
41 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)

1 affecting waters of the state, regulations for appropriating ground water, and the Council's
2 statutory authority to consider protection of public health and safety.

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

4 (1) *Standards and Regulations:*

5 (b) *New Noise Sources:*

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

15 **Findings of Fact**

16 The noise control regulations provided by OAR 340-035-0035 apply to noise associated with
17 operation of the facility. In the *Final Order on the Application*, the Council concluded that the
18 operation of the facility plant, subject to the conditions listed in the site certificate, would have
19 no significant adverse impact on the noise level of the surrounding area.⁴⁴ The Council's
20 previous findings and conclusions are incorporated herein by this reference.

21
22 The proposed removal of three conditions relating to NOx emissions and control has no effect on
23 the factual basis for the Council's finding of compliance with the noise standards. The proposed
24 amendment does not authorize or request any physical changes to the facility or its operation.
25 The facility remains subject to the conditions in the site certificate pertaining to noise. The
26 facility remains subject to the Title V Operating Permit, and the amendment has no impact on
27 noise.

28
29 **Conclusion**

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

32 **III.B.2. Removal-Fill**

33 **Findings of Fact**

34 The Oregon Removal-Fill Law⁴⁵ and Department of State Lands (DSL) regulations⁴⁶ require a
35 Removal/Fill Permit if 50 cubic yards or more of material is removed, filled or altered within any
36 "waters of the state" at the proposed site. In the *Final Order on the Application*, the Council
37 concluded that a removal/fill permit was not required for the facility because the project did not
38 involve or alter any "waters of the state."⁴⁷ The Council's previous findings and conclusions are

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.

1 incorporated by this reference. The proposed removal of three conditions relating to NOx
2 emissions and controls does not involve any “waters of the state;” consequently, the proposed
3 amendment would not affect the Council’s earlier finding.

4
5 **Conclusion**

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

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

9 **Findings of Fact**

10 The Council is charged with ensuring that the “siting, construction, and operation of energy
11 facilities shall be accomplished in a manner consistent with the protection of public health and
12 safety ...”⁴⁸ State law further provides that “the site certificate ... shall contain conditions for the
13 protection of public health and safety.”⁴⁹ The Council has previously considered the protection of
14 public health and safety in the *Final Order on the Application* and found that the siting,
15 construction and operation of the facility, subject to the conditions in the Site Certificate, are
16 consistent with protection of public health and safety. The proposed amendment would not affect
17 the factual basis for the Council’s finding of compliance with the public health and safety
18 standard as the requested amendment only relates to NOx emissions and controls that are under
19 the jurisdiction of the Title V Operating Permit.

20
21 **Conclusion**

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

24
25 **III.C. Requirements that are not under Council Jurisdiction**

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

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

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

- 34
- 35 • The air contaminant discharge permit program administered by DEQ, which includes the
36 federally delegate new source review requirements of the Clean Air Act and the
37 Prevention of Significant Deterioration program. This authority is in ORS Chapter 468A;
38 OAR Chapter 340, Divisions 20, 21, 22, 25, and 31.
 - 39 • The national pollutant discharge elimination system, administered by DEQ-Water Quality
40 Division and Morrow County, which regulations and permits stormwater runoff from the
proposed project site

⁴⁸ ORS 469.310.

⁴⁹ ORS 469.401(2).

- 1 • The program regulating the design, operation, monitoring and removal of underground
2 storage tanks that contain certain toxic and hazardous materials, including petroleum
3 products, administered by DEQ, under ORS Chapter 466; OAR Chapter 340, Division
4 150.

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

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

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

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

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

33 Those regulatory programs continue to be exempt from Council jurisdiction.

34 **IV. PROPOSED CONCLUSION AND ORDER**

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

- 39 1. The proposed Amendment #10 complies with the requirements of the Oregon Energy
40 Facility Siting statutes, ORS 469.300 to ORS 469.570 and ORS 469.590 to ORS 469.619.
41 2. The proposed Amendment #10 complies with the applicable standards adopted by the
42 Council pursuant to ORS 469.501.

1 3. The proposed Amendment #10 complies with all other Oregon statutes and
2 administrative rules applicable to the amendment of the site certificate for the CSCP that
3 are within the Council's jurisdiction.

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

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

9
10
11 Issued this 3rd day of May, 2013.

12
13 Oregon Energy Facility Siting Council

14
15
16 By:



17 W. Bryan Wolfe, Chair

18 Oregon Energy Facility Siting Council
19

20 **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.