BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project Request for Amendment No. 1

ORDER APPROVING AMENDMENT

I. Introduction and Procedural History

On September 16, 1994, the Energy Facility Siting Council (Council, or EFSC) issued an Energy Facility Site Certificate (site certificate) to the Portland General Electric Company (PGE) for a 462 megawatt natural gas-fired cogeneration facility and related and supporting facilities (collectively, the facility) to be located in the Port of Morrow Industrial Park in Boardman, Oregon. The facility is known as the Coyote Springs Cogeneration Project (CSCP).

On November 17, 1994, the Council adopted substantial revisions to Oregon Administrative Rules (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. The Council filed the revised rules with the Secretary of State on November 16, 1995, and the Secretary of State printed them in December 1995.

On October 15, 1996, PGE submitted a Request for Amendment No. 1 (request) to the Council. PGE requests that the Council amend conditions in the PGE site certificate for CSCP for three purposes:

1) to apply the Council’s current mandatory conditions found at OAR 345-27-020(2)(a) and 345-27-020(11) to the CSCP site certificate;

2) to amend the site certificate by substituting these mandatory conditions for the Council’s former mandatory conditions set forth at OAR 345-27-020(4)(1) (April 1994) and contained in the site certificate as Warranty 1 and Mandatory Condition 2; and,

3) to amend the site certificate to apply the Council’s current rules OAR 345-27-050 through OAR 345-27-080 and OAR 345-27-095 to any subsequent amendment or petition requests by PGE relating to the Coyote Springs Cogeneration Project.

The rules for amending the site certificate, OAR 345, Division 27 (April 1994), that were in effect at the time the Council granted the site certificate are applicable to these amendment requests. These rules distinguish between major and minor amendments and specify different procedures for each type.
In a memorandum dated October 15, 1996, Oregon Office of Energy (OE) staff notified the Council of PGE’s request for an amendment. The staff concluded that the request did not affect any issues listed in OAR 345-27-050 (4) (1994) for a major amendment; therefore, the staff concluded that the request was a minor amendment. The staff recommended that the Council grant the amendment request, incorporating all commitments from the application and contested case as site certificate conditions.

The Council held a first reading of the amendment request at its meeting on October 25, 1996. Staff provided the Council and those who attended the October 25, 1996 meeting a draft proposed order. After that meeting, OE sent out a notice of the request for amendment on October 28, 1996, as required by OAR 345-27-080(1) (1994). OE mailed notice of the request for the amendment to the site certificate holder, all parties who appeared at the site certificate contested case, adjacent property owners, local governments in the area of the facility, the Council’s general mailing list, and the special mailing list that OE developed during the review of the Application for a Site Certificate for CSCP per OAR 345-27-070(2) (1994).

The notice of October 28, 1996 provided a deadline for written comment at 5:00 p.m. on November 15, 1996. The Council received no requests for the draft proposed order and no written comments on the request for the amendment by the deadline. The Council held a public hearing on the request on December 6, 1996, with the Council acting as hearing officer.

II. Description of the Request for Amendment

Mandatory Condition 2 in Section IV of the site certificate currently requires PGE:

...to design, permit, construct, operate and retire the CSCP as described in the ASC [Application for Site Certificate], in EFSC proceedings and in documents and representations made by PGE in support of the application for site certificate, as modified or amended by the Site Certificate.

OAR 345-27-020(4)(1), which was in effect in September 1994 when the Council issued the site certificate, required this condition. This condition requires PGE to comply with all detailed descriptions in the application and supporting documents. These documents contain some details that could be changed with no effect on the public, the environment, or compliance with Council standards. Under the current site certificate, nevertheless, any such changes require an amendment to the site certificate.

As adopted by the Council in November 1994 and later revised in October 1995, OAR 345-27-020(2) requires:

The facility shall be designed, constructed, operated and retired:

(a) Substantially as described in the Site Certificate...

Under current rules, minor design details that the site certificate does not address and that do not have an adverse impact may be changed without a site certificate amendment, provided the requirements of OAR 345-27-050 are met. Current rules at OAR 345-27-020(11) further require
that the Council identify the representations in the application and supporting documents that 
should be binding on the applicant and incorporate those representations into the site certificate.

PGE requests that the Council amend Mandatory Condition 2 of its site certificate to be 
consistent with the current OAR 345-27-020(2). PGE proposes the following language for the 
amended Mandatory Condition 2:

   Applicant shall design, permit, construct, operate and retire the CSCP 
   substantially as described in the Site Certificate, as it may be amended from time 
   to time.

If the Council approves this amendment, the Council would no longer require PGE to comply 
literally with the detailed descriptions in its ASC, but the Council would require PGE to comply 
with the terms and descriptions in the site certificate, as amended by this order, and the Council's 
final order of September 16, 1994, approving the site certificate.

PGE also requests an amendment to Section III, Warranty 1 of the Site Certificate. The warranty 
currently states:

   Applicant represents and warrants that it has the present capabilities and resources 
to construct, operate and retire the CSCP, including the ability to finance and pay 
for the CSCP, in a manner consistent with its representations in the Application 
for Site Certificate (ASC), as modified in the proceeding leading to the execution 
of the site certificate, and with the terms and conditions of the site certificate.

PGE requests the Council amend Warranty 1 to state:

   Applicant represents and warrants that it has the present capabilities and resources 
to construct, operate and retire the CSCP, including the ability to finance and pay 
for the CSCP, substantially as described in the Site Certificate and in the order 
approving the Site Certificate, as they may be amended from time to time, and 
with the terms and conditions of the Site Certificate.

The requested language is consistent with the current requirements of OAR 345-27-020(2). PGE 
notes that ORS 469, as amended by 1995 Senate Bill 951, and the rules in OAR Chapter 345, no 
longer require this warranty. However, PGE requests that the Council amend the warranty, not 
that it delete it.

Finally, PGE requests that the Council apply its most recent procedural rules for amendments 
(OAR 345-27-050 through OAR 345-27-080 and OAR 345-27-095) to any subsequent 
amendment or petition requests by PGE. Section VII of the site certificate states:

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

Amendments shall be made in accordance with OAR Chapter 345, Division 27 or
EFSC rules applicable and in effect at the time the amendment is sought.

Although this section might appear to allow PGE to request that any amendment be processed
under the Council’s current rules, OAR 345-27-011 states that the Council’s current rules do not
apply to facilities for which a site certificate was executed before November 30, 1994, unless the
site certificate is amended to include the applicability of the rules in this division. This
amendment would clarify that OAR 345-27-050 through OAR 345-27-080 and OAR 345-27-095
apply to this site certificate.

III. Council Findings, Conclusions, and Recommendations

Before addressing the amendments PGE requests, the Council must determine whether the
amendments are major or minor. OAR 345-27-050(4)(a)(b) and (c) (April 1994) specify the
subjects for major amendments. These relate the changes in the design, location, or operation of
the facility. Because the requested amendments are procedural in nature, the Council finds that
these are minor amendments and that the review procedures in OAR 345-27-080 (April 1994) are
appropriate. It is, therefore, using the hearing procedure set forth in OAR 345-27-080
(April 1994) to review this amendment request.

PGE requests the following actions:

A. Apply current rules OAR 345-27-020(2)(a) and 345-27-020(11) to the site certificate

PGE states that its request is consistent with the policy decision made by the Council in
November 1994 when it amended its Division 27 rules. In that action, the Council dropped the
mandatory site certificate condition that it required for the PGE and other facilities and replaced
it with the mandatory condition required by the current OAR 345-27-020(2). OE concurs with
this statement.

It would benefit both the Council and PGE to define clearly what PGE is required to do with
respect to the design, construction, operation and retirement of the facility. Such definition is
now lacking for two reasons: (a) the sheer volume of materials submitted “in support of the
application” and in the contested case proceeding; and (b) the lack of clarity regarding what
“documents and representations” were made “in support of the application.” Many of the
materials included in the Coyote Springs record consist of design details and other background
information that had no direct bearing on whether particular siting standards were met. The ASC
and the supporting information provide thousands of pages of information about the facility.
Determining on an ongoing basis whether PGE’s actions are “as described” in these materials is
time consuming and may be subject to ambiguity.
The lack of definition regarding the siting basis of the facility has several practical consequences. Most importantly, it is difficult for PGE, OE and the Council to determine whether PGE is in compliance with everything that was submitted in support of the application. This, in turn, means that whenever there is a doubt on PGE’s part as to whether a particular action is consistent with every drawing, statement, table or other piece of information in the record, it must come to the Council to obtain its concurrence on the proposed action. From a policy and administrative perspective, it makes more sense for the Council to set forth, in explicit terms as site certificate conditions, those aspects of the facility’s design, construction, operation and retirement are of sufficient importance and relevance to Council standards to require monitoring and reporting for ongoing compliance.

PGE’s request does not cause any physical change to the facility, its design, construction, operation, or retirement. Therefore, there would be no impact to the public health and safety, the environment, the resources protected by Council standards, or to the basis for any finding of compliance with Council standards.

If the Council applies the current requirement of OAR 345-27-020(2), then PGE must comply only with the terms and conditions of the site certificate, as amended by this order, and the final order. The application contains certain statements that were important to the Council in its decision to issue the site certificate. Because rules in effect at the time required compliance with all representations made in the application, the Council did not incorporate all of these statements explicitly into the site certificate as conditions. For this reason, OE recommends application of current OAR 345-27-020(11), which requires the Council to identify statements in the application that it deems to be binding commitments on the applicant and incorporate them as conditions to the site certificate. This is necessary to ensure that the representations that form the basis of the Council’s decision to issue the site certificate remain binding on the certificate holder.

The Council finds that applying OAR 345-27-020(2) and 020(11) to the site certificate is consistent with Council policy. Further, it finds that the application of 345-27-020(11) ensures that Council will add representations that it deems to be binding on PGE to the site certificate as conditions.

B. Amend Mandatory Condition 2 and Warranty 1 to reflect the current version of the mandatory conditions

Mandatory Condition 2 and Warranty 1 of the site certificate currently reflect the mandatory conditions that were in effect in September 1994. To apply the mandatory conditions contained in OAR 345-27-020(2) and 345-27-020(11), the Council must amend Mandatory Condition 2 and Warranty 1.

For reasons stated above, the Council finds that application of current mandatory conditions is consistent with Council policy and would not adversely affect the public, the environment, or resources protected by Council standards. Therefore, the Council amends Mandatory Condition 2 and Warranty 1 to reflect the current mandatory conditions as PGE requests.
C. Determine what new conditions are required

In Section III.A of this order, the Council has decided to apply OAR 345-27-020(11) to the site certificate. This rule requires the Council to identify statements in the ASC and supporting documents that it believes are binding commitments that it should add to the site certificate as conditions. The application of this rule ensures that representations in the application that were the basis for the Council’s findings of compliance with Council standards remain binding on PGE.

OE has reviewed the PGE Application for Site Certificate and supporting documents. It has identified statements that it finds to be binding commitments on PGE to ensure continued compliance with Council standards. In some cases, OE suggests language for site certificate conditions where a simple reference to the text may not be adequate to explain the commitment.

The site certificate incorporates the final order, dated September 16, 1994, by reference, rendering the representations and descriptions in the final order binding on PGE. OE therefore finds that it is not necessary to add new conditions for statements that are already part of the final order.

OE’s recommended conditions are listed below. OE recommends the provisions of OAR 345-27-020(2)(a), effective November 1995, apply to the following conditions unless noted within a particular condition.

Exhibit A
This exhibit is used by the Council in determining the applicant’s organizational, managerial and technical expertise. The final order describes the applicant in limited detail. It primarily discusses PGE’s ability to construct the facility. However, the site certificate should ensure that the certificate holder has the continuing ability to operate and retire the facility. The Council based its finding of compliance with the organizational, managerial and technical expertise standard in part on representations in this exhibit and in exhibit D concerning the legal makeup of PGE. Therefore, OE recommends the following new conditions:

1. PGE shall notify the Council of any modifications to the ownership of the controlling interest of PGE.

2. PGE shall notify the Council of any change of the identity of the operator of the facility.

Exhibit B
This exhibit describes the facility in detail. OE recommends that the following commitments PGE made in Exhibit B be added by reference as site certificate conditions:

3. NOx emissions shall be controlled to 25 ppm on natural gas. (p. B-3)
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)

5. All chemicals listed in section 4.7 of Exhibit B shall be stored in approved storage containers consistent with industry standards for the particular chemical. All chemical storage systems shall have provisions for secondary containment to prevent uncontrolled spills to the environment. (p. B-8)

6. PGE shall implement fire protection and life safety design features as described at Section 4.10 of Exhibit B. (pp. B-9 and B-10)

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

8. All equipment drain wastewater shall be processed in an oil/water separator designed to remove oil contamination down to 10 ppm in the discharge water. Storm water collected within the fuel tank area shall be ... processed through the facility oil/water separator down to 10 ppm oil in the discharge water. (pp. B-11)

9. Code classifications and requirements described in Section 5.2 of Exhibit B shall apply to the energy facility and to any modifications. (p. B-14)

10. Aircraft warning lights shall be installed on the heat recovery boiler stacks if required by the FAA. (pp. B-22)

11. Equipment layout shall allow access for fire fighting or responses to any spills when required. (p. B-29)

12. The facility shall be designed, constructed, tested and operated in accordance with the codes and standards normally used for this type of facility. Where State of Oregon codes or local codes specify added or more stringent requirements, these requirements shall be incorporated into the facility design and construction. Codes listed in Exhibit B, Section 8.0 shall apply. (pp. B-30)

13. All of the equipment listed on Table B-2 may be constructed. PGE may construct the fuel oil-related equipment shown on Figure B-M10. However, PGE shall not use fuel oil for electric generation or steam production without prior Council approval.

Exhibit C
This exhibit describes the site location in detail and addresses its suitability for the project. The site location is adequately described in the final order. OE has no new conditions to recommend.
Exhibit D
This exhibit describes PGE’s organizational, managerial and technical expertise. The final order contains the facts from this exhibit needed to find compliance with the Council’s standard. OE has no new conditions to recommend.

Exhibit E
This exhibit contains a list of property owners adjacent to the PGE site. OE has no new conditions to recommend.

Exhibit F
This exhibit contains information on waste materials, which is relevant to several standards. OE recommends that the following commitments PGE made in Exhibit F be added by reference as site certificate conditions:

14. Acid and caustic shall each be stored in individual carbon steel storage tanks. The tanks shall be located above ground within a concrete containment bermed area. The bermed area shall contain sump pumps allowing any leakage to be transferred to the neutralization system. These tanks shall be located outdoors with appropriate weather protection. Handling of these materials shall be in accordance with approved industry standard practice as well as federal, state and local regulations. (p. F-4)

15. The ammonia storage system shall be designed to the requirements outlined in American National Standard Institute (ANSI) K61.1, Safety Requirements for the Storage and Handling of Anhydrous Ammonia. (p. F-4)

16. The hydrogen storage and transfer system shall comply with the guidelines established in section VII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and in ANSI B31.1 of the American National Standard Code for Pressure Piping. Other codes that shall be followed include the National Electrical Code (NEC) Article 500, NFPA 496, ANSI/AWS D1.1 The area immediately around the hydrogen generators and storage system area shall be an NFPA/NEC Class I, Division II, Group B Hazardous Area. (p. F-4)

17. For miscellaneous materials described in section 2.7 (p. F-6), appropriate safety measures shall be taken around the storage sites. Handling and storage of these items shall be strictly in accordance with approved procedures to provide safe storage of the substances. (p. F-5)

18. To ensure proper safe handling of the natural gas, the entire system shall be installed and operated in accordance with the NFPA 54; Natural Fuel Gas Code, Part 2; Gas Piping System Design, Materials and Components, Part 3; Gas Pipe installation, Part 4; and Inspection, Testing and Purging. The piping shall be designed in accordance with ANSI B31.8. (p. F-6)
19. Fuel control systems on the gas turbines shall include separate fuel shutoff valves to stop all fuel flow to the unit under shutdown conditions. Fuel flow shall restart when all permissive firing condition have been satisfied. Each fuel shutoff valve shall have a mechanical device for local manual tripping and a means for remote tripping. A vent valve shall be provided on the fuel gas system to vent automatically the piping downstream of the shutoff valve when the fuel shutoff valve closes. Gas shutoff valves shall be installed at the utility pipeline connection point as well as at the facility. The area immediately around the gas system shall be a NFPA/NEC Class I, Division II, Group D Hazardous Area. Operations in the area shall be in accordance with this classification and accepted industrial standards of practice and procedures. (p. F-7)

20. Management of non-fuel substances shall be conducted as described in section 3.2 of the ASC. (pp. F-6 and F-7)

21. Construction phase wastes shall be handled and disposed as described in Section 4.1 of the ASC. (pp. F-7 and F-8).

22. Hazardous waste shall be stored no more than 90 days and transported to a licensed treatment storage disposal facility. (p. F-9)

23. Waste oil shall be collected in a single underground storage tank and trucked offsite to an approved recycling and disposal facility. The underground tank shall be of fiberglass double wall construction to provide corrosion protection and secondary containment. Leakage monitoring shall also be provided. (p. F-10)

Exhibit G
This exhibit addresses site suitability. The commitments in this exhibit are primarily construction related. OE recommends that the following commitments PGE made in Exhibit G be added by reference as site certificate conditions:

24. PGE shall set back heavy plant facilities a minimum of 60 feet from the edge of the irrigation pond to the east of the facility site. (p G-6)

25. PGE shall plant fill slopes with vegetation to prevent surface erosion. (p. G-7)

26. PGE shall implement mitigation measures as described in section 4.0 of the ASC. (p. G-8)

Exhibit H
This exhibit demonstrates that there are no direct wetlands impacts. OE has no new conditions to recommend.

Exhibit I
This exhibit demonstrates compliance with the Council's land use standard. The exhibit contains many representations that are binding on PGE. Those representations are adequately stated in
the final order, which was incorporated into the site certificate. OE has no additional conditions
to recommend.

Exhibit J
The final order states that the facility will not have a significant adverse impact on any protected
areas. OE has no new conditions to recommend.

Exhibit K
This exhibit addresses PGE's ability to finance the project. OE has no new conditions to
recommend.

Exhibit L
This exhibit contains no commitments because PGE qualified for exemption from the Council's
need for power standard. OE has no new conditions to recommend.

Exhibit M
This exhibit contains no representations that are binding on PGE. It provides information about
applications for certain Department of Environmental Quality permits that are not under EFSC
jurisdiction. OE has no new conditions to recommend.

Exhibit N
This exhibit describes the native vegetation and soil types. OE recommends that the following
commitment PGE made in Exhibit N be added by reference as a site certificate condition:

27. PGE shall implement mitigation measures to vegetation impacts described in section
    6.0 of the ASC. (p. N-4)

Exhibit O
This exhibit describes PGE's provisions to procure water from the Port of Morrow. The final
order specifies average annual water use. OE has no new conditions to recommend.

Exhibit P
This exhibit discusses fisheries and wildlife resources within and adjacent to the facility area.
OE recommends that the following commitment PGE made in Exhibit P be added by reference
as a site certificate condition:

28. PGE shall implement mitigation measures described in section 5.0 of the ASC. (p. P-4)

Exhibit Q
This exhibit addressed the Council's recreational standard. OE has no new conditions to
recommend.
Exhibit R
This exhibit describes mitigation steps that PGE will take to ensure compliance with the
Council's threatened and endangered species standards. OE recommends that the following
commitment PGE made in Exhibit R be added by reference as a site certificate condition:

29. PGE shall implement mitigation measures described in section 5.0. (p. R-10)

Exhibit S
This exhibit addresses the facility's impacts on scenic and aesthetic areas. OE has no new
conditions to recommend.

Exhibit T
This exhibit address mitigation of impacts to historic, cultural and archaeological resources. OE
has no new conditions to recommend.

Exhibit U
This exhibit addresses the facility's socioeconomic impact. OE has no new conditions to
recommend.

Exhibit V
This exhibit contains proposed steps by PGE to meet the waste minimization standard. OE has
no new conditions to recommend.

Exhibit W
This exhibit contains various mitigation measures. OE recommends that the following
commitment PGE made in Exhibit W be added by reference as a site certificate condition:

30. PGE shall implement mitigation measures described in Exhibit W, unless those are
superseded by more detailed measures described in the Council's final order of
September 16, 1994 or in the site certificate.

Exhibits X, Y and Z
All binding representations made by PGE in these exhibits were incorporated into the site
certificate as conditions. The schedule information in exhibit X is for informational purposes,
and is not binding. Monitoring plans described in exhibit Y are included in the site certificate.
Site restoration measures discussed in exhibit Z are adequately addressed in existing site
certificate conditions. OE has no new conditions to recommend.

Exhibits AA, BB, and CC
These exhibits address conformance with other rules, natural gas pipeline alternative routes, and
additional information. OE has no new conditions to recommend.

The Council concurs that these are appropriate conditions to include in the site certificate.
D. Amend the site certificate to apply OAR 345-27-050 through OAR 345-27-080 and OAR 345-27-095 to it and to subsequent requests to amend the site certificate.

OAR 345-27-050 through OAR 345-27-080 and OAR 345-27-095 are the rules that address amendments to the site certificate and application of subsequently adopted rules to existing site certificates.

Section VII of the site certificate states:

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

Amendments shall be made in accordance with OAR Chapter 345, Division 27 or EFSC rules applicable and in effect at the time the amendment is sought.

Notwithstanding the latter statement in Section VII, OAR 345-27-011 states that the Council’s current rules in Division 27 do not apply to facilities for which a site certificate was executed before November 30, 1994, unless the site certificate is amended to include the applicability of the rules in this division. This amendment would apply the current rules at OAR 345-27-050 through OAR 345-27-080, and OAR 345-27-095 to this site certificate.

PGE’s request is consistent with the terms of the site certificate. It would be consistent with the other recommended amendments for the Council to amend the site certificate to incorporate specifically the applicability of OAR 345-27-050 through OAR 345-27-080 and OAR 345-27-095 to clarify that the Council will process subsequent requests for amendments or petitions by PGE under the Council’s most current procedural rules.

OE concludes that the application of these current rules would not create a threat to public health and safety or to the environment. OE supports this amendment. The Council agrees and finds that this amendment is appropriate.

IV. Conclusion and Conditions

The Council finds that the actions in the PGE request are consistent with current Council policy and would not cause a significant adverse impact to public health and safety or the environment. The Council has reviewed the statements from the application that OE recommends be binding commitments upon PGE and agrees that they should be added as site certificate conditions in accordance with OAR 345-27-020(11). Based on the above findings, the Council concludes that it should amend the site certificate for the Coyote Springs Cogeneration Project as PGE requests and should add the site certificate conditions recommended in section III.C of this order.
FINAL ORDER

Based on the above findings of fact, discussions and conclusions of law, the Energy Facility Siting Council has determined that it shall approve the amendment request number one and that the chairperson of the Council shall execute site certificate amendments in the form of the “Amendment Number One to the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project” attached to this order and which is incorporated by reference into this order.

Issued this sixth day of December, 1996.

Terry Edvalson, Chair
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 469.405. 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.