

1 conditions, which it had originally incorporated by reference from the application for site
2 certificate, and specified that the Council's current rules for amending site certificates
3 apply to future amendments of the CSCP site certificate.
4

5 The Council granted PGE a second amendment to the CSCP site certificate on March 7,
6 1997. That amendment allows PGE to use #2 low-sulfur distillate oil for back-up fuel for
7 the natural gas-fired combustion turbines at CSCP.
8

9 **B. Procedural History**

10
11 **B.1 Office of Energy ("Office") Review Steps**

12
13 **B.1.2 PGE's Request**

14 PGE submitted its Request for Amendment Number Three to the Council on
15 May 19, 1998.
16

17 **B.1.3 Review by Other Agencies, Local Governments and Tribes and Initial Public**
18 **Notice**

19 The Office, pursuant to OAR 345-027-0200(4)(a), identified potentially affected
20 agencies, local governments and tribes and asked them to review the request for
21 amendment. The Office mailed a copy of the amendment request along with a review
22 report form on May 21, 1998, to those agencies, local governments and tribes and asked
23 them to reply by June 22, 1998.
24

25 The reviewing agencies, local governments and tribes are the Oregon Department of
26 Geology and Mineral Industries (DOGAMI); the Oregon Department of Fish and
27 Wildlife (ODFW); the Division of State Lands (DSL); the Department of Agriculture
28 (ODA); the Department of Land Conservation and Development (DLCD); the Water
29 Resources Department (WRD); the Department of Parks and Recreation (ODPR); the
30 State Historic Preservation Office (SHPO); the Department of Transportation (ODOT),
31 the Department of Environmental Quality (DEQ), the Office of State Fire Marshall, the
32 Oregon Public Utilities Commission (OPUC), the Building Codes Division (BCD), the
33 Department of Forestry (ODF), the Northwest Power Planning Council (NWPPC), the
34 Cities of Boardman and Irrigon, Port of Morrow, Morrow County, the Confederated
35 Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of Warm Springs.
36

37 On May 21, 1998, the Office mailed a notice of PGE's request for amendment to all
38 persons on the Council's general mailing list and persons on the Council's mailing list for
39 PGE's initial site certificate proceeding, pursuant to OAR 345-027-0200(4)(a). The
40 notice asked for initial comments to the Office by June 22, 1998.
41

42 **B.1.3.1 Replies**

43 The Office received comments from state agencies, local governments and the public.
44 /

1 **B.1.3.1.1 State Agencies**

2 The Water Resources Department initially raised a question about future water use related
3 to a specific permit. It later wrote that its records showed that the matter had been
4 resolved, and it had no further concern about the matter. The Department of
5 Transportation noted that it would only be concerned if there were any impacts to the
6 highway system. There were no other comments.

7
8 **B.1.3.1.2 Cities and Counties**

9 The Cities of Boardman and Irrigon and Morrow County all supported the request for
10 amendment and also requested that the Oregon Climate Trust give priority to spending
11 offset funds in the region of the CSCP facility. The Cities of Boardman and Irrigon
12 specifically stated that they were not asking the Council to impose conditions on the use
13 of offset funds. However, all three wanted to make the Council and the Oregon Climate
14 Trust aware of their interest in seeing some of the offset funds spent on local offset
15 projects. The Office forwarded copies of the letters to the Oregon Climate Trust for its
16 consideration if the Council grants this amendment request and if the facility is
17 subsequently constructed.

18
19 **B.1.3.1.3 Port of Morrow**

20 The Port of Morrow supported the request for amendment, but raised two issues. First,
21 the Port requested that the Council “investigate and possibly request the Oregon Climate
22 Trust to spend offset funds in the Boardman area.” The Office has forward the letter to
23 the Oregon Climate Trust, but the Council has no means to impose a requirement on the
24 Oregon Climate Trust. Statute places requirements on a qualified organization about how
25 it must spend offset funds. The Oregon Climate Trust will independently determine,
26 within the law, how it will spend offset funds.

27
28 It does not appear that the Port of Morrow was requesting that the Council impose a site
29 certificate condition on PGE relative to the way the Oregon Climate Trust, the qualified
30 organization, spends offset funds. If it were requesting that the Council impose a
31 condition on the site certificate holder, the Council could not do so. ORS 469.503(2)
32 does not give the Council authority to impose conditions on a site certificate holder based
33 on the actions of a qualified organization. ORS 469.503(2)(d)(A)(iii) states:

34
35 (iii) Notwithstanding any provision to the contrary, a site certificate holder
36 subject to this subparagraph shall have no obligation with regard to offsets,
37 the offset funds or the funds required by sub-subparagraph (ii) of this
38 subparagraph other than to make available to the qualified organization the
39 total amount required under paragraph (c) of this subsection and sub-
40 subparagraph (ii) of this subparagraph, nor shall any nonperformance,
41 negligence or misconduct on the part of the qualified organization be a basis
42 for revocation of the site certificate or any other enforcement action by the
43 council with respect to the site certificate holder.

1 Second, the Port of Morrow asked for clarification on whether PGE intended to change
2 its site certificate relating to cogeneration by the phase two plant. It noted that the
3 calculations for demonstration of compliance with the carbon dioxide standard use the
4 assumption of no steam for off-site use.

5
6 The Office replied to Port of Morrow by letter on June 25, 1998. The Office noted that
7 PGE had not proposed to preclude cogeneration at phase two. However, the letter noted
8 that the Office proposes adding a condition (Condition V.A.3(8)) that requires that any
9 steam supplied to an off-site steam host from phase two go to a new user or replace steam
10 previously generated off-site by fossil fuels. This condition ensures that there will be no
11 net increase in carbon dioxide emissions from phase two if it cogenerates. Within that
12 restriction, PGE retains the right in the site certificate to cogenerate at phase two.

13 14 **B.1.3.1.4 Umatilla Generating Company**

15 Attorneys for the Umatilla Generating Company commented that their client is interested
16 in the proceeding, but they offered no comments specific to the amendment request.

17 18 **B.1.3.1.5 Utility Reform Project (“URP”), Don’t Waste Oregon Council 19 (“DWOC”) and Lloyd K. Marbet**

20 Mr. Daniel Meek, attorney for URP, DWOC and Mr. Marbet, submitted comments on
21 their behalf. He requested that the Council not grant PGE’s requested amendment. He
22 objected for two reasons.

23
24 First, he claimed that the amendment would “perpetuate and extend PGE’s anti-
25 competitive advantages in the field of power generation.” He further claimed that the
26 Council “should now end the government coercion of PGE ratepayers, which requires
27 them to pay rates to PGE based upon the cost of power plants that PGE builds, instead of
28 allowing them to pay the cost of the most efficient power plants available to PGE in the
29 market.” His written comments also included a three-page quote from his reply brief in
30 his failed appeal to the Oregon Supreme Court to overturn the Council’s decision to grant
31 PGE a site certificate for CSCP.

32
33 In his argument, Mr. Meek raised issues concerning what capital resources go into the
34 rate base for PGE and whether an investor-owned utility should be allowed to develop its
35 own power resources. These issues are the purview of the Oregon Public Utility
36 Commission. Mr. Meek has not identified a Council standard he claims addresses these
37 issues. These issues do not relate to the Council’s standards and are not the purview of
38 the Council. The Council finds that these issues are not relevant to the Council’s
39 determination of PGE’s compliance with the carbon dioxide emissions standard or any
40 other current Council standard and, therefore, are not relevant to PGE’s Request for
41 Amendment Number Three.

42
43 Second, Mr. Meek claims that ORS 469.409 is unconstitutional in several respects,
44 including that it illegally precludes judicial review, violates the separation of powers

1 doctrine, and contains illegal delegations of legislative powers. In reviewing Mr. Meek's
2 claims, the Council relies on the presumption that duly enacted legislation, such as ORS
3 469.409, is valid; and, it bears in mind that its determination of the validity of ORS
4 469.409 is subject to review by the courts.

5
6 Mr. Meek claims that ORS 469.409 violates constitutional guarantees to due process,
7 separation of powers, and "checks and balances" because ORS 469.409 provides that the
8 Council's order amending the site certificate to apply the carbon dioxide standard is not
9 subject to judicial review. It is well established that the legislature has the authority to
10 limit the jurisdiction of courts and that such limitations do not violate due process or
11 separation of powers. The only exception relates to constitutional challenges to the
12 statute or its implementation. Here, the provision only bars judicial review of the
13 Council's decisions relating to PGE's qualification under the statutory criteria, but does
14 not preclude Mr. Meek from making his constitutional arguments to a court.

15
16 Mr. Meek also claims that the statute delegates a judicial function to an arbitrator that the
17 Council selects. Mr. Meek incorrectly characterizes the Council's rules regarding the
18 selection of a neutral, qualified arbitrator, OAR 345-027-0200. The rules set forth an
19 open, multi-stage process in which the parties select the arbitrator. The Council has
20 adopted refinements to the process established by rule that provides the parties to
21 arbitration an incentive to agree among themselves on the arbitrator. If the parties cannot
22 agree among themselves on an arbitrator, it allows each party to strike and rank arbitrator
23 candidates independent of the other parties. Only after the parties have failed to find a
24 mutually acceptable arbitrator do the revised rules rely on the arbitration administrator as
25 a last resort to choose the arbitrator, based on the ranking of the remaining candidates not
26 stricken by the parties. This process is far removed from Mr. Meek's erroneous
27 characterization that the Council selects the arbitrator. Therefore, the Council finds that
28 the statute is not unconstitutional.

29
30 Mr. Meek next claims that the reliance in ORS 469.409 upon binding arbitration to settle
31 disputes "about the site certificate holder's demonstration of compliance with the
32 applicable carbon dioxide emission standard" violates the separation of powers doctrine
33 and Article 1, Section 21, of the Oregon Constitution, which provides:

34
35 No ex-post facto law, or law impairing the obligation of contracts shall ever
36 be passed, nor shall any law be passed, the taking effect of which shall be
37 made to depend upon any authority except as provided in this Constitution;
38 provided, that laws locating the Capitol of the State, locating County Seats
39 and submitting town, and corporate acts, and other local, and Special laws
40 may take effect, or not, upon a vote of the electors interested.

41
42 Among other things, this constitutional provision has been interpreted to prohibit the
43 delegation of legislative powers to non-governmental entities. There has been no
44 improper delegation here, however. While there are few Oregon cases discussing binding

1 arbitration, in other jurisdictions binding arbitration involving a government agency has
2 been upheld where the arbitrator has no personal interest in the outcome and the decision
3 is based on factors set out by the legislature. Here, both criteria are met.

4
5 Clearly the Oregon legislature has substituted binding arbitration for judicial review on a
6 narrow, fact-based issue. No policy questions have been left for the arbitrator to decide.
7 The neutral arbitrator's appropriate role is not likely to go much beyond resolving
8 disputes about competing mathematical calculations. Furthermore, the statute clearly sets
9 out the methodology for determining the carbon dioxide offsets, making the
10 determination largely ministerial. The arbitrator's role certainly does not extend to
11 making law, that is, setting standards of conduct applicable to other persons. ORS
12 469.409 and 469.503(2) contain a complete description of the requirements for
13 compliance with the carbon dioxide emissions standard, including the monetary path.
14 The Council finds that the binding arbitration provisions are not unconstitutional.

15
16 Mr. Meek also asserts that the "monetary path" is unconstitutional because it delegates
17 authority to a private agency over which the government has no control. Mr. Meek is
18 incorrect. The monetary path does allow a site certificate holder to meet its carbon
19 mitigation obligations by making payments to a "qualified organization." ORS 469.503.
20 However, the statute has delegated no state power to the qualified organization.

21
22 The legislature has neither given the qualified organization the power to determine how
23 much money the applicant must pay, nor the use to which those funds are put. The
24 Council determines the amount of money the applicant must make available. The funds
25 must be used for "the direct reduction, elimination, sequestration or avoidance of carbon
26 dioxide emissions." ORS 469.503(2)(e)(K)(iii). The Council finds that the use of the
27 qualified organization is not unconstitutional.

28
29 For the reasons outlined above, the Council finds that ORS 469.409 is a constitutional
30 exercise of legislative power.

31 32 **B.1.4 Proposed Order**

33 The Office issued its proposed order June 29, 1998.

34 35 **B.1.5 Notice**

36 On June 29, 1998, the Office mailed notice of the proposed order to the Council's general
37 mailing list, persons on the Council's mailing list for PGE's first site certificate
38 proceeding pursuant to OAR 345-027-0200(4)(b). The notice set a deadline for public
39 comments by July 29, 1998 and gave notice of the procedure for requesting binding
40 arbitration for challenges to the Council's final order.

41 /

1 **B.1.6 Public Comments on Proposed Order**

2 The Council received comments from Portland General Electric, the Confederated Tribes
3 of the Umatilla Indian Reservation, and Mr. Daniel Meek, attorney for URP, DWOC,
4 Lloyd K. Marbet, and Colleen O'Neil.

5
6 **B.1.6.1 Portland General Electric**

7 PGE recommended changes to proposed Condition V.A.3(8), which the Office had
8 proposed. The changes are for purposes of clarity only. The Council addresses PGE's
9 comments in its discussion of Condition V.A3(8) in Section D.3 below.

10
11 **B.1.6.2 Confederated Tribes of the Umatilla Indian Reservation**

12 The Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") commented on
13 the request for amendment. Because the Office received the comments during the
14 comment period for the proposed order, the Council will discuss the comments as
15 comments on the proposed order. CTUIR noted that the area around Boardman is of
16 great concern to CTUIR because it is within lands ceded to the United States by CTUIR
17 in the Treaty of June 9, 1855.

18
19 The Council recognizes the importance of conducting a thorough cultural resources study
20 at the site of a proposed energy facility. In order to comply with the standard, an
21 applicant must show that its proposed facility is not likely to result in significant adverse
22 impacts to historical, cultural or archeological resources. The Council then imposes
23 conditions to ensure that such resources are protected.

24
25 In the case of the CSCP site, PGE contracted with Archeological Investigations
26 Northwest, Inc. ("AINW"), to conduct a literature survey and a field survey of the
27 proposed site. (The AINW report is Appendix "T" to the Application for Site Certificate,
28 September 16, 1993). Mr. Dana Schneider was a crew representative for CTUIR during
29 the field survey.

30
31 In the original site certificate, the Council imposed conditions regarding the location
32 where three artifacts were found during the field survey. These artifacts were on the berm
33 to the north and northwest of the area to be disturbed by the construction. Based on the
34 AINW report, the Council concluded that these artifacts were "isolates" according to the
35 criteria of the State Historical Preservation Office (SHPO). The report determined that
36 the location of the isolates was in an area that was likely composed of redeposited
37 sediments. SHPO advised the Council that the isolates were not significant. In addition,
38 the study found the isolates in an area that is now outside of the fence for the site.
39 Construction for phase two, if it occurs, will be within the fenced area.

40
41 In its letter about PGE's Request for Amendment Number Three, CTUIR expressed
42 concern that there was no detailed discussion of changes made at the site since the
43 Council granted the original site certificate and how those changes might have affected
44 cultural resources. CTUIR requested that the Council require a new cultural resources

1 study before any further disturbance of the site related to constructing phase two. CTUIR
2 requests that it be invited to participate in a new cultural resources study and in
3 monitoring during construction of phase two.
4

5 While this proceeding is a necessary precursor to Council decisions that may result in the
6 eventual construction of phase two, the proceeding does not address such construction per
7 se. In this proceeding, the Council is addressing the substitution of the carbon dioxide
8 standard for the need for facility standard. OAR 345-27-070(6) defines the limit of the
9 Council's evaluation of an amendment request. It states:

10
11 In evaluating a request for amendment under this rule, the Council shall
12 limit its consideration to the effects which may be produced by the
13 proposed change or addition to the site or facility described in the request
14 for amendment.***
15

16 CTUIR is concerned with issues relating to the location of elements of the facility and
17 disturbance of the site. The facts at issue in this amendment request relate to the site
18 certificate holder's demonstration of compliance with the carbon dioxide standard. There
19 is no physical effect on the site or the location of phase two from the Council's
20 substitution of the carbon dioxide standard for the need for facility standard. There is no
21 change to the site boundary as a result of this amendment. Therefore, the Council states
22 in Section E.3.5 below where it address the historical, cultural and archeological
23 resources standard: "This amendment will not affect any Council finding relating to the
24 historical, cultural and archeological resources standard."
25

26 The Council finds that it is not appropriate in this proceeding to impose new conditions
27 on the site certificate holder relating to the historical, cultural and archeological resources
28 standard. CTUIR may again raise these issues in other proceedings relating to CSCP.
29

30 **B.1.6.3 URP, DWOC, Lloyd K. Marbet, and Colleen O'Neil**

31 Mr. Daniel Meek, attorney for URP, DWOC, Mr. Marbet and Ms. O'Neil, submitted
32 comments on their behalf. He requested that the Council not grant PGE's requested
33 amendment.
34

35 Except for one paragraph added at the end of the comments, Mr. Meek's comments
36 repeat the comments he submitted to the Office on June 22, 1998, for URP, DWOC, and
37 Mr. Marbet concerning PGE's request for amendment document. The Council has
38 addressed those comments in Section B.1.3.15 above and does not repeat that discussion
39 here.
40

41 The new paragraph in the comments on the proposed order claims that the statue "violates
42 the separation of powers by completely abolishing judicial review of the EFSC order
43 granting the amendment. The only 'review' available is arbitration, and that is limited to
44 '[a]ny dispute about the site certificate holder's demonstration of compliance with the

1 applicable carbon dioxide emissions standard.” The Council finds that this is not
2 different argument from the constitutional issues it discusses in B.1.3.1.5. The Council,
3 therefore, reaffirms that ORS 469.409 is a constitutional exercise of legislative power for
4 the reasons stated in Section B.1.3.1.5.

6 **B.2 Council Review Steps**

7 The Council held a public hearing on the proposed order at its meeting in Hermiston,
8 Oregon on August 21, 1998. During the hearing, the Office reviewed the proposed order
9 and recommended changes to one condition based on public comments. It also
10 summarized public comments. Mr. Robert Hall, representing PGE, answered Council
11 questions and made a brief comment. Mr. Daniel Meek had provided the Office two
12 telephone numbers where he might be reached during the Council’s consideration of the
13 request for amendment. Prior to beginning the public hearing on the request for
14 amendment, Mr. Terry Edvalson, chair of the Council, made three attempts to telephone
15 Mr. Meek at the telephone numbers he had provided. Mr. Meek was not at either
16 number. The Council then proceeded with the public hearing. The Council granted
17 PGE’s request for amendment with modifications to the conditions as noted below.

19 **B.2.1 Council Notice**

20 The Office mailed PGE’s request for amendment and a memo summarizing the request to
21 the Council on May 20, 1998. The Office staff and PGE presented information about the
22 request to the Council at its May 29, 1998 meeting.

24 The Office mailed the proposed order to the Council on July 1, 1998.

26 **B.2.1.1 Council Concerns**

27 During the discussion of the amendment request, the Council raised the issue of the
28 interaction of 1) changes over time in the CO₂ standard and deemed rate of dollars per ton
29 of CO₂ for offset purposes and 2) the shelf life of a facility. The following discussion
30 applies to these issues only as it relates to the CSCP.

32 Regarding this amendment request, staff anticipates that PGE will subsequently request a
33 two-year extension of the construction deadline for phase two of CSCP. The earliest that
34 the Council could act on such a request would be in October 1998. Both the site
35 certificate and Council rules, OAR 345-027-030, limit an extension to two years.

37 If the Council grants PGE a two-year extension on the construction deadline, that would
38 extend the deadline to September 2001, or about 35 months. Given the time necessary to
39 construct phase two, the time to begin construction would be about two years, or shorter.
40 The law permits the Council to change the CO₂ standard every two years and the offset
41 funds at that schedule after the first three years. The Council finds that it is appropriate to
42 allow a site certificate holder two years of certainty in the standard and the offset funds
43 rate. Therefore, the Council does not impose any additional conditions on CSCP that
44 relate to potential changes in the CO₂ standard or offset funds rate.

1 **B.2.3 Council Hearing and Action**

2 On August 21, 1998, the Council held a public hearing on the Request for Amendment
3 Number Three. At the conclusion of the hearing, the Council approved the request, with
4 modifications as detailed in this final order.

5
6 **C. General Findings of Fact Related to the Request for Amendment**

7
8 **C.1 Summary of Changes to the Site Certificate**

9 PGE requested a site certificate amendment that removes the site certificate condition that
10 requires PGE to demonstrate compliance with the need for facility standard before
11 extending the deadline for completion of construction of phase two and substitutes
12 conditions relating to the carbon dioxide emissions standard, pursuant to ORS 469.409
13 and ORS 469.503(2).

14
15 PGE submitted its amendment request pursuant to OAR 345-27-050 and OAR 345-027-
16 0200. OAR 345-27-050 requires site certificate holders to request amendments when
17 they propose to change an aspect of the facility in a way that would invalidate the basis
18 for a finding made by the Council in granting the site certificate. OAR 345-027-0200
19 details the process for amending a site certificate for demonstrating compliance with the
20 carbon dioxide standard in lieu of meeting the need for facility standard.

21
22 **C.1.1. Need for Facility Conditions**

23 At the time the Council issued PGE's site certificate for CSCP, Oregon law required
24 applicants to demonstrate a need for their proposed facilities under former ORS
25 469.501(L) and OAR 345 Division 23 in effect as of April 1994, or, in the alternative, to
26 demonstrate that the facilities were exempt from the need requirement. In its order
27 approving PGE's Application for a Site Certificate, the Council found that PGE qualified
28 for an exemption from the need standard because PGE met the criteria in OAR 345-23-
29 010(2). As a condition of the site certificate, the Council ordered:

30
31 **V.A.2. Construction commencement and completion dates**

- 32 (1) Applicant shall begin construction of phase one of the proposed facility within
33 one year after the site certificate is executed. This one-year time period shall be
34 tolled during any appeal that is taken of the Energy Facility Siting Council
35 (EFSC) Order. Notwithstanding the tolling of the one-year time period for
36 commencement of construction, Applicant shall complete construction of phase
37 one within four years, and phase two within five years, of execution of the site
38 certificate. EFSC may extend the four-year period for construction completion
39 if the Applicant shows that the need for extension is caused by acts of God or
40 force majeure events. EFSC anticipates such a request will be considered a
41 minor amendment under OAR 345-27-080.
- 42
43 (2) Within one year of execution of the site certificate Applicant must affirm, by
44 written notice to EFSC its intent to construct phase two. This notice to EFSC

1 shall include copies of correspondence to a vendor requesting commencement
2 of bona fide negotiations to purchase the gas turbine. This one-year time
3 period shall be tolled during any appeal taken of EFSC's Order. Such
4 affirmation is required in order for Applicant to maintain a valid site certificate
5 as to phase two.
6

7 (3) Applicant may request an extension of the five-year construction completion
8 deadline for phase two. If such a request is made during the first year after the
9 site certificate is executed (which period shall be tolled during any appeal taken
10 of EFSC's order), and Applicant shows that the need for the extension is caused
11 by acts of God or force majeure events. Applicant will not be required to
12 demonstrate that the facility meets EFSC's needs standard. EFSC anticipates
13 such a request will be considered a minor amendment under OAR 345-27-080.
14

15 (4) If Applicant requests an extension of the construction completion deadline for
16 phase two and Applicant does not meet the requirements of paragraph 3 above,
17 the Applicant shall be required to demonstrate that the facility meets EFSC's
18 need standard in order for EFSC to approve extending the deadline. Applicant
19 will not be exempted from the need showing under OAR 345-23-010(2)
20 (adopted April 1994). EFSC anticipates this demonstration of need will be
21 considered a major amendment under OAR 345-27-070.
22

23 (5) EFSC will grant a request under paragraph 4 only if the applicant demonstrates
24 that phase two is needed in accordance with EFSC's need for facility standard
25 in effect when the EFSC decision on the request is made. In no event will
26 EFSC grant an extension of the construction completion deadline for phase two
27 of more than two years from the five year deadline specified in applicant's
28 warranty. The construction completion deadline for phase two, as specified in
29 applicant's warranty, or as may later be extended, will not be tolled for reason
30 of appeal of the EFSC's Order.
31

32 PGE's site certificate required PGE to complete construction of phase one within four
33 years and phase two within five years of execution of the site certificate. PGE
34 constructed phase one and placed it in commercial service on November 26, 1995. In
35 accordance with Section V.A.2.(2) of the site certificate, PGE notified General Electric
36 by letter (Exhibit A in its Request for Amendment Number Three) that PGE intended to
37 enter into bona fide negotiations to purchase a gas turbine.
38

39 Section V of the site certificate requires that if the deadline to complete construction of
40 phase two is not met, the Council shall require PGE to demonstrate that the facility meets
41 the Council's need standard in order for the Council to approve extending the deadline.
42 PGE does not expect to complete construction of phase two of CSCP within the five year
43 period set forth in the site certificate; therefore, PGE would not be able to request an

1 extension of the construction completion deadline and proceed to construct phase two
2 unless it demonstrates need.

3
4 The Council finds that PGE is “required by its site certificate *** to demonstrate need.”
5

6 **C.1.2. Application of Carbon Dioxide Emissions Standard**

7 The application of the CO₂ emissions standard to the PGE site certificate is authorized by
8 ORS 469.409, which provides:
9

10 **469.409 Amendment of site certificate to demonstrate compliance with**
11 **carbon dioxide emissions standards; binding arbitration to resolve**
12 **disputes.** Any site certificate holder that is required by its site certificate or
13 by law to demonstrate need for the facility shall instead demonstrate
14 compliance with the carbon dioxide emissions standard applicable to the type
15 of facility subject to the site certificate before beginning construction. Such a
16 demonstration shall be made as an amendment to the site certificate.
17

18 The Council finds that ORS 469.409 applies to PGE for the reasons discussed in section
19 C.1.1.
20

21 **C.1.2.1. Turbine Selection**

22 The site certificate for CSCP specifies that PGE will use identical General Electric 7 FA
23 turbines for phase one and phase two (page 3, lines 22-26). PGE’s request for
24 amendment contains information demonstrating PGE’s compliance with the applicable
25 standard using data for a General Electric 7 FA combustion turbine for phase two.
26

27 In Section D, below, PGE requests an amendment to the language in Condition II.B.1 that
28 would allow it to select a different combustion turbine that may have both increased
29 power capacity and higher efficiency relative to the General Electric 7 FA in the event
30 improved technology is available when it purchases the turbine. If PGE selects an
31 alternate unit to the General Electric 7 FA, PGE would notify the Council in advance and
32 recalculate the projected emissions and CO₂ offset funds based on the unit selected,
33 pursuant to the proposed site certificate conditions.
34

35 The Council’s rules allow flexibility in the choice of turbines, within certain constraints.
36 OAR 345-27-050(2)(a) provides:
37

38 (2) No Site Certificate amendment is required for:

39 (a) A change to an electrical generation facility that results in an increase
40 in the electrical generating capacity without increasing the number of
41 electric generators at the site, changing fuel type, increasing fuel
42 consumption by more than 10%, or enlarging the facility site, and that
43 does not violate any other conditions specified in the Site Certificate.
44 /

1 PGE requested no changes to the site certificate relating to the performance or impact of a
2 similar turbine. Furthermore, it remains bound by all other conditions that might possibly
3 be affected by a change in vendor.

4
5 Because the site certificate specifies the General Electric 7 FA turbine, the Council uses
6 the capacity and heat rate data that PGE provided in the calculations that the Council
7 performs in this order to demonstrate compliance with the carbon dioxide standard.

8 9 **C.1.3. Applicable Standard**

10 PGE proposed in its amendment request that it will fuel phase two with natural gas
11 without using distillate as a backup fuel. (PGE proposed the elimination of the use of
12 distillate as a backup fuel for phase two in proposed Condition V.A.3(7), below.) PGE's
13 proposed amended site certificate contains no limits on phase two's hours of operation.
14 Thus, the Council finds that the facility is a base-load gas plant as that term is defined in
15 ORS 469.503(2)(e)(B). The applicable standard for a base-load gas plant is as follows:

16
17 The net carbon dioxide emissions rate of the proposed base load gas plant
18 shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of
19 net electric power output, with carbon dioxide emissions and net electric
20 power output measured on a new and clean basis. ORS 469.503(2)(a).

21
22 ORS 469.503(2)(c) first requires the Council to determine "the gross carbon dioxide
23 emissions that are reasonably likely to result from the operation of the proposed energy
24 facility." The Council must make the determination based upon the facility's proposed
25 design and must assume a 100 percent load factor (8,760 hours) and a 30-year facility
26 life. ORS 469.503(2)(e)(B). The statute requires the Council to use a rate of 117 lb. of
27 CO₂ emissions per MMBtu (0.000117 lb. CO₂/Btu) of natural gas fuel consumed.
28 ORS 469.503(2)(e)(G).

29 30 **C.1.4 Determining the Monetary Path Payment Requirement (Offset Funds and 31 Selection and Contracting Funds)**

32 The following discussion demonstrates the method the Council uses to determine the
33 monetary path payment requirement for the site certificate holder. The "monetary path
34 payment requirement" means the combination of offset funds as defined in ORS
35 469.503(2)(c)(C) and selection and contracting funds as defined in ORS
36 469.503(2)(d)(A)(ii), whether calculated based on the estimated heat rate and capacity for
37 phase two or calculated based on data ("Year One Heat Rate" and "Year One Capacity")
38 from the "Year One Test" report, conducted pursuant to ORS 469.503(2)(e)(G) and the
39 Council's adopted Condition V.A.3(6).

40
41 The site certificate specifies a General Electric 7 FA turbine for phase two. PGE has
42 provided information about the installed capacity and heat rate of that turbine. The
43 Council, therefore, bases its calculations to determine gross carbon dioxide emissions on
44 such information. However, PGE has not yet entered into a contract for the purchase of

1 plant equipment for phase two. As described in Section C.1.2.1, continuing
2 improvements in the performance of turbines and other equipment mean that, at the time
3 of equipment purchase and installation, the final installed capacity and heat rate of the
4 proposed facility may differ from current projections based on a General Electric 7 FA
5 turbine. The Council, therefore, adopts a two-step process to determine that PGE meets
6 the applicable CO₂ standard.

7
8 Step one develops a method by which the Council determines the appropriate amount of
9 the monetary path payments, based on PGE's proposed combustion turbine. This method
10 is then specified as conditions in Section V.A.3 in the amended site certificate.

11
12 Step two will use the method specified in the site certificate conditions to calculate the
13 required amount of the monetary path payment requirement. The site certificate holder
14 will use the methodology to calculate the estimated monetary path payment requirement
15 prior to beginning construction of phase two. This amount will be based on the final
16 contracted capacity and heat rate of phase two. The site certificate holder must submit
17 this information to the Council before it begins construction, pursuant to Condition
18 V.A.3(5). The site certificate holder will also use this methodology to determine whether
19 it must increase its monetary path payment requirement, based on calculations using Year
20 One Test data, as specified in Condition V.A.3(4)(d).

21
22 The Council uses this two-step process to ensure that the estimated monetary path
23 payment requirement that the site certificate holder must meet before beginning
24 construction of phase two closely matches the adjusted monetary path payment that may
25 be required after it has tested the operating facility. The condition allows no adjustment
26 that would reduce the bond, letter of credit or escrow account that the site certificate
27 holder must provide prior to beginning construction, even if the estimated monetary path
28 payment requirement exceeds the payment requirement calculated using Year One Test
29 data. Therefore, it is important that the amounts that the site certificate holder guarantees
30 prior to beginning construction of phase two be the most accurate estimate at the time.

31 32 **C.1.4.1 Step One: The Method of Calculation**

33 For the purposes of demonstrating the calculation of the gross carbon dioxide emissions
34 for CSCP phase two, the Council uses the nominal generating capacity of 228 MW (net,
35 with no steam to off-site use) for a General Electric 7 FA turbine, as shown in Table 1.
36 To calculate estimated offset funds required, the Council uses 8,760 hours of annual
37 operation on natural gas. Table 1 illustrates the calculations, as does the following text.

38
39 The Council then calculates the total carbon dioxide (CO₂) emissions (lb. CO₂) that phase
40 two will produce using natural gas. The Council multiplies the nominal power of phase
41 two (228 MW, or 228,000 kW) while operating on natural gas by the annual average
42 hours of operation (8,760 hr); it then multiplies that product by 30 years to determine the
43 total net plant output for 30 years (59,918,400,000 kWh). It then multiplies total net
44 plant output by the heat rate while operating on natural gas (7,148 Btu/kWh) and by the

1 CO₂ emissions factor for natural gas (0.000117 lb. CO₂/Btu) to determine the total CO₂
 2 emissions (50,110,716,614 lb.).
 3

Table 1	
Illustration of Methodology for Determining The Monetary Path Payment Requirement CSCP Phase Two, No Cogeneration	
Annual Hours of Plant Operation	
Total hours (load factor 100%)	8,760
CO₂ Emissions from Operation on Natural Gas	
Nominal power (kW) (primary fuel)	228,000
Total net plant output (kWh for 30 years)	59,918,400,000
Primary heat rate (Btu/kWh)	7,148
CO ₂ emissions factor (lb./Btu)	0.000117
Facility CO ₂ emissions (lb.)	50,110,716,614
Facility CO ₂ emissions rate (lb./kWh)	0.836316
Calculation of Offset Funds	
Facility CO ₂ emissions rate (lb./kWh)	0.836316
Standard (CO ₂ /kWh)	0.700000
Excess CO ₂ emissions rate (lb. CO ₂ /kWh)	0.136316
Total CO ₂ emissions that must be mitigated (tons)	4,083,918
CO ₂ mitigation costs per ton of emissions	\$ 0.57
Sub-Total: CO ₂ offset funds required	\$ 2,327,833
Contracting and Selection Funds	
Sub-Total: Contracting and selection funds required	\$ 128,341
Total: Full Monetary Path Payment Requirements	\$ 2,456,174

4
 5 The Council then calculates the CO₂ emissions rate for phase two by dividing the total
 6 CO₂ emissions by the total net plant output (0.836316 lb. CO₂/kWh). It then subtracts
 7 the carbon dioxide standard of 0.7 lb. CO₂/kWh from the CO₂ emissions rate to calculate
 8 the excess CO₂ emissions rate (0.136316 lb./ CO₂ kWh).
 9

10 The Council multiplies the total plant output for 30 years by the excess CO₂ emissions
 11 rate. Then it divides that product by 2,000 pounds per ton to determine the total tons of
 12 CO₂ emissions that the site certificate holder must mitigate (4,083,918 tons).

1 PGE has selected the "monetary path" provided in ORS 469.503(2)(c)(C) to meet the net
2 CO₂ standard. Under the monetary path, the payment by the site certificate holder of
3 \$0.57 is deemed to result in a reduction of one ton of CO₂ emissions. Therefore, the
4 Council multiplies the tons of excess CO₂ emissions by the unit mitigation rate of \$0.57
5 per ton of CO₂ to calculate the sub-total for the offset fund (\$2,327,833).
6

7 In addition to paying offset funds, the site certificate holder must pay the qualified
8 organization to compensate it for its costs of selecting and contracting for implementation
9 of offsets, as specified in ORS 469.503(2)(d)(A)(ii). To calculate the appropriate
10 selection and contracting fund amount, the Council subtracts \$500,000 from the offset
11 fund subtotal, then multiplies the remaining amount (\$1,827,833) by 4.286 percent, then
12 adds \$50,000 to that product to calculate the selection and contracting fund sub-total
13 (\$128,341).
14

15 The Council then adds the sub-totals of the offset fund and the selection and contracting
16 fund to calculate the site certificate holder's monetary path payment requirement for
17 phase two (\$2,456,174).
18

19 **C.1.4.2. Step Two: Calculating the Estimated and Adjusted Monetary Path** 20 **Payment Requirement**

21 For step two of the process, the site certificate holder shall use the contracted design
22 parameters for capacity and heat rate for the facility that it reports pursuant to Condition
23 V.A.3.(5) to calculate the estimated monetary path payment requirement. Likewise, PGE
24 shall use the Year One Capacity and Year One Heat Rate that it reports for phase two
25 pursuant to Condition V.A.3.(4)(d) to calculate whether it owes an additional monetary
26 path payment.
27

28 The Council finds that the methodology it employs in Sections C.1.4.1. and C.1.4.2 and
29 Table 1 accurately demonstrates the calculation method to determine the site certificate
30 holder's monetary path payment requirement to meet the carbon dioxide emissions
31 standard.
32

33 **C.1.5 Means of Securing Required Emissions Reductions**

34 ORS 469.503(2)(c) provides: "[F]or any remaining emissions reduction necessary to
35 meet the applicable standard, the applicant may elect to use any of the subparagraphs (A)
36 to (D) of this paragraph, or any combination thereof." PGE elects to use subparagraph
37 (C) of ORS 469.503(2)(c), which provides as follows:
38

39 The applicant or a third party agrees to provide funds in an amount
40 deemed sufficient to produce the reduction in carbon dioxide
41 emissions necessary to meet the applicable carbon dioxide emissions
42 standard, in which case the funds shall be used as specified in
43 paragraph (d) of this subsection. Unless modified by the council as
44 provided below, the payment of 57 cents shall be deemed to result in

1 a reduction of one ton of carbon dioxide emissions. The council
2 shall determine the offset funds using the monetary offset rate and
3 the level of emissions reduction required to meet the applicable
4 standards.
5

6 The Council approved cogeneration for the facility. In electing to use subparagraph (C),
7 PGE does not request any carbon dioxide emissions credit for cogeneration at its facility.
8 However, PGE states that it does not intend to waive, and expressly reserves, the right to
9 operate the project as a cogeneration project. It further states that any added carbon
10 dioxide offsets from such cogeneration would be an added benefit for the state, but PGE
11 does not seek credit under ORS 469.503(2)(c) for such offsets. In concurrence, the
12 Council provides a condition, Condition V.A.3(8) below, that requires that any
13 cogeneration by phase two must offset the use of fossil fuels or provide steam where none
14 was provided before.
15

16 PGE proposed to disburse the required mitigation funds to a qualified organization, as
17 described below, pursuant to the provisions of ORS 469.503(2)(d)(A). In addition, prior
18 to the commencement of construction, PGE proposed to provide a guaranty or letter of
19 credit executed sufficient to ensure payment of these funds. However, PGE did not
20 propose a third party that would guarantee its obligations through a guaranty. The
21 Council therefore provides in its conditions that PGE provide a bond or letter of credit or
22 place the mitigation funds in an escrow account. These are secure financial instruments.
23

24 **C.1.6. Designation of the Qualified Organization**

25 An applicant or site certificate holder proceeding under ORS 469.503(2)(c)(C) must
26 designate a qualified organization. The function of the qualified organization is to
27 receive carbon dioxide offset funds and use them to implement offset programs. PGE
28 designated the Oregon Climate Trust as the qualified organization.
29

30 The criteria that an entity must meet to be a qualified organization are set out in ORS
31 469.503(2)(e)(K). Under that section, a "qualified organization" means an entity that:

32
33 (i) Is exempt from federal taxation under section 501(c)(3) of the
34 Internal Revenue Code as amended and in effect on December 31, 1996;
35

36 (ii) Either is incorporated in the State of Oregon or is a foreign
37 corporation authorized to do business in the State of Oregon;
38

39 (iii) Has in effect articles of incorporation that require that offset funds
40 receive pursuant to this section are used for offsets that will result in the
41 direct reduction, elimination, sequestration or avoidance of carbon dioxide
42 emissions, that require that decisions on the use of funds are made by a
43 body composed of seven voting members of which three are appointed by
44 the council, three are Oregon residents appointed by the Bullitt Foundation

1 or an alternative environmental nonprofit organization named by the body,
2 and one is appointed by the applicants for site certificates that are subject
3 to paragraph (d) of this subsection and the holders of such site certificates,
4 and that require nonvoting membership on the decision-making body for
5 holders of site certificates that have provided funds not yet disbursed
6 under paragraph (d)(A) of this subsection;
7

8 (iv) Has made available on an annual basis, beginning after the first year
9 of operation, a signed opinion of an independent certified public
10 accountant stating that the qualified organization's use of funds pursuant to
11 this statute conforms with generally accepted accounting procedures
12 except that the qualified organization shall have one year to conform with
13 generally accepted accounting principles in the event of a nonconforming
14 audit;
15

16 (v) Has to the extent applicable, except for good cause, entered into
17 contracts obligating at least 60 percent of the offset funds to implement
18 offsets within two years after the commencement of construction of the
19 facility; and
20

21 (vi) Has to the extent applicable, except for good cause, complied with
22 paragraph (d)(A)(I) of this subsection."
23

24 The first four of six criteria in ORS 469.503(2)(e)(K) that an organization must meet in
25 order to be a qualified organization are applicable to this request. The Oregon Climate
26 Trust meets these four criteria as follows:
27

28 (i) The Oregon Climate Trust has received an exemption from federal taxation
29 under section 501(c)(3) of the Internal Revenue Code by a letter sent from the
30 Internal Revenue Service dated November 19, 1997. Under ORS 469.503(2)(d),
31 PGE may therefore identify the Oregon Climate Trust as a qualified organization
32 for purposes of this amendment request.
33

34 (ii) The Oregon Climate Trust is incorporated in the State of Oregon.
35

36 (iii) The Oregon Climate Trust has in effect articles of incorporation that comply
37 with this section.
38

39 (iv) The Oregon Climate Trust filed its articles of incorporation on June 26,
40 1997. Mr. Peter West, chair of the Oregon Climate Trust, notified the Office of
41 Energy by letter dated July 22, 1998, that it has selected an accounting firm to
42 conduct its annual audit. However, the accounting firm recommended to the
43 Oregon Climate Trust that its first audit should coincide with the first full fiscal
44 year. The board of the Oregon Climate Trust accepted that recommendation.

1 Because the Oregon Climate Trust uses a calendar year for its fiscal year, it will
2 not complete its first full fiscal year until December 31, 1998. It notified the
3 Office that it will therefore complete its first annual audit in January 1999. The
4 Council finds that the schedule for the annual audit follows generally accepted
5 accounting procedures.
6

7 (v) This criterion is not applicable because it relates to the operations of the
8 qualified organization after construction of a proposed facility has commenced
9 and a site certificate holder has made disbursements to the qualified organization.
10

11 (vi) This criterion is not applicable because it relates to the operations of the
12 qualified organization after construction of a proposed facility has commenced
13 and a site certificate holder has made disbursements to the qualified organization.
14

15 The Council finds that the Oregon Climate Trust meets the applicable criteria as a
16 qualified organization.
17

18 **D. Amendments to Site Certificate**

19 PGE requested the following amendments to the CSCP site certificate to apply the carbon
20 dioxide standard in lieu of demonstrating need for phase two. PGE's changes are shown
21 as strikeouts and double underlines. The Council's revisions show modifications to the
22 amended site certificate conditions as strikeouts and single underlines.
23

24 **D.1. Mandatory Conditions**

25 PGE proposed to modify Mandatory condition IV(5) on page 6 of the site certificate.
26 This condition is based on the need for facility standard; therefore, the amendment must
27 address it.
28

- 29 (5) Prior to construction of Unit 1, applicant shall submit certification that at least
30 80 percent of the capacity from the proposed CSCP shall be used by an energy
31 supplier in the Pacific Northwest Region as defined in 16 U.S.C. 839a(14).
32 The capacity and energy of the CSCP shall be used by applicant for the benefit
33 of its customers in its Oregon service territory. Except as required for
34 financing purposes, applicant shall not sell or lease the facility and shall not
35 contract for firm energy or firm capacity for the output of the facility for a
36 term exceeding five years. In the event applicant does not complete
37 construction of Unit 2 within five years from the execution of the site
38 certificate, and applicant requests an extension of its construction completion
39 date for Unit 2, applicant shall also be allowed to demonstrate compliance
40 with EFSC's applicable carbon dioxide emissions standard in lieu of
41 compliance with this Condition.
42

43 The Council agrees with the intent of the changes PGE proposed, but proposes to modify
44 the language to eliminate ambiguity. The ambiguity arises in PGE's proposal to limit the

1 application of the condition to Unit 1 (phase one) during the original schedule set forth in
2 the site certificate. PGE's additional language clearly relates to phase two if PGE
3 requests an extension of the completion of construction deadline. However, the PGE's
4 proposed condition is silent on the applicability of the original condition to phase two
5 within the original schedule. Therefore, the Council deletes the proposed reference to
6 phase one and clarifies the applicability of the new language for phase two and the
7 sequence of decision-making. The Council also makes formatting and editorial changes
8 to the proposed condition.

9
10 The Council adopts the following proposed Condition IV(5):

11
12 (5)(a) Prior to construction, the site certificate holder shall submit certification
13 that at least 80 percent of the capacity from the proposed CSCP shall be
14 used by an energy supplier in the Pacific Northwest Region as defined in 16
15 U.S.C. 839a(14). The capacity and energy of the CSCP shall be used by
16 the site certificate holder for the benefit of its customers in its Oregon
17 service territory. Except as required for financing purposes, the site
18 certificate holder shall not sell or lease the facility and shall not contract for
19 firm energy or firm capacity for the output of the facility for a term
20 exceeding five years.

21
22 (b) In the event the site certificate holder does not complete construction of
23 phase two within five years from the execution of the site certificate, prior
24 to EFSC granting the site certificate holder an extension of the construction
25 completion date for phase two, the site certificate holder shall demonstrate
26 compliance with ORS 469.503(2) in lieu of compliance with Condition
27 IV(5)(a).

28 29 **D.2 Construction Commencement and Completion Dates**

30 PGE proposed the following changes to Condition V.A.2(4) relating to requesting an
31 extension of the construction completion deadline for phase two.

32 33 V.A.2. Construction Commencement and Completion Dates

34
35 (4) If Applicant requests an extension of the construction completion deadline for
36 phase two and Applicant does not meet the requirements of paragraph 3
37 above, the Applicant shall be required to demonstrate that the facility meets
38 EFSC's appropriate carbon dioxide emissions standard in order for EFSC to
39 approve extending the deadline. ~~Applicant will not be exempted from the~~
40 ~~need showing under OAR 345-23-010(2) (adopted April 1994). EFSC~~
41 ~~anticipates this demonstration of need will be considered a major amendment~~
42 ~~under OAR 345-027-070.~~

1 The Council adopts PGE's proposed Condition V.A.2(4) with the following editorial
2 changes:

- 3
4 (4) If the site certificate holder requests an extension of the construction
5 completion deadline for phase two and the site certificate holder does not meet
6 the requirements of Condition V.A.2(3) above, the site certificate holder shall
7 demonstrate that the facility meets the requirements of ORS 469.503(2) in
8 order for EFSC to approve extending the deadline.

9
10 PGE proposed the following changes to Condition V.A.2(5):

- 11
12 (5) ~~EFSC will grant a request under paragraph 4 only if the applicant~~
13 ~~demonstrates that phase two is needed in accordance with EFSC's need for~~
14 ~~facility standard in effect when the EFSC decision on the request is made. In~~
15 no event will EFSC grant an extension of the construction completion
16 deadline for phase two of more than two years from the five year deadline
17 specified in applicant's warranty. The construction completion deadline for
18 phase two, as specified in applicant's warranty, or as may later be extended,
19 will not be tolled for reason of appeal of the EFSC's order.

20
21 The Council adopts PGE's proposed Condition V.A.2(5) as written.

22
23 **D.3 Carbon Dioxide Emission Standard for Phase Two: ORS 469.503(2)**

24 Prior to the Council granting an extension of the construction completion deadline for
25 phase two pursuant to proposed Condition V.A.2(4), PGE must demonstrate compliance
26 with the carbon dioxide emissions standard for phase two. PGE proposed the following
27 conditions for complying with the carbon dioxide emissions standard, which will be in a
28 new Section V.A.3 of the site certificate. The Council makes its determination following
29 each proposed condition or series of conditions, when appropriate.

30
31 V.A.3. Carbon Dioxide Emission Standard for Unit 2: ORS 469.503(2)

- 32
33 (1) Prior to commencement of construction, the site certificate holder shall submit
34 to the State of Oregon through the Council a guaranty or letter of credit
35 executed by the site certificate holder in the amount of the monetary path
36 payment requirement (in 1998 dollars) as determined by the calculations set
37 forth in Condition V.A.3.(4) and based on the estimated heat rate and capacity
38 certified pursuant to Condition V.A.3.(5) below and as adjusted in accordance
39 with the terms of this site certificate pursuant to Condition V.A.3(4)(d). For
40 the purposes of this site certificate, the "monetary path payment requirement"
41 means the offset funds determined pursuant to ORS 469.503(2)(c) and the
42 selection and contracting funds determined pursuant to ORS
43 469.503(2)(d)(A)(ii) that the site certificate holder must disburse to the
44 Oregon Climate Trust, as the qualified organization, pursuant to ORS

1 469.403(2)(d)(A). The calculation of 1998 dollars shall be made using the
2 index set forth below.

3
4 The site certificate holder may offer to substitute the guaranty of a new parent
5 corporation. In that event, the Council will approve the guaranty from the new
6 parent unless the Council finds that the proposed guaranty does not provide
7 comparable security to the guaranty of the site certificate holder. Such
8 approval will not require a site certificate amendment. The guaranty shall
9 remain in effect until such time as the site certificate holder has disbursed the
10 full amount of the monetary path payment requirement to the Oregon Climate
11 Trust ("Oregon Climate Trust") as provided in ORS 469.503(2)(d)(A).

12
13 In lieu of the guaranty requirement set forth above that the site certificate
14 holder must provide prior to commencement of construction, the site
15 certificate holder may instead provide a letter of credit in the amount of the
16 monetary path payment requirement as calculated pursuant to Condition
17 V.A.3.(4) below (in 1998 dollars) and based on the estimated capacity and
18 heat rate of the plant as certified by the site certificate holder pursuant to
19 Condition V.A.3.(5). If the site certificate holder has provided a letter of
20 credit prior to commencing construction and if calculations pursuant to
21 Condition A.A.3.(6) demonstrate that the site certificate holder must increase
22 its monetary path payments, the site certificate holder shall increase the letter
23 of credit sufficiently to meet the adjusted monetary path payment requirement
24 within the time required by Condition V.A.3.(4)(d). The site certificate holder
25 may reduce the amount of the letter of credit commensurate with payments it
26 makes to the Oregon Climate Trust.

27
28 The calculation of 1998 dollars shall be made using the US Gross Domestic
29 Product Deflator for Total Non-Residential Fixed Investment, as published by
30 the US Department of Commerce, Bureau of Economic Analysis, or any
31 successor agency ("the index"). The amount of the letter of credit shall
32 increase annually by the percentage increase in the index and shall be pro-
33 rated within the year to the date of disbursement to the Oregon Climate Trust.
34 If at any time the index is no longer published, the Council shall select a
35 comparable calculation of 1998 dollars. The letter of credit shall not be
36 subject to revocation prior to disbursement of the full monetary path payment
37 requirement, including any adjusted monetary path payment requirement. The
38 terms of the letter of credit and identity of the issuer shall be subject to
39 approval by the Council, which approval shall not be unreasonably withheld.

40
41 The Council makes two substantive changes to PGE's proposed Condition V.A.3(1), as
42 well as several editorial changes and formatting changes. The first substantive change
43 clarifies that this condition relates only to construction of phase two if the Council has
44 granted the site certificate holder an extension of the construction completion deadline.

1 The second substantive change proposes that PGE provide a bond, letter of credit or
2 escrow account pursuant to ORS 469.503(2)(d). PGE requested the option of providing a
3 guaranty or a letter of credit to meet its monetary path payment requirement. However, it
4 did not propose a third party that would guarantee its obligations. The Council requires a
5 bond, letter of credit or escrow account because these are secure financial instruments
6 that do not require the Council's prior approval of detailed language that a guaranty
7 would require. Therefore, the Council allows PGE to use one of these instruments in lieu
8 of granting PGE an option of providing an unspecified guaranty. Further, if the site
9 certificate holder places monetary path requirement funds in an escrow account, the
10 Council requires that interest accruing in the escrow account that is equivalent to the 1998
11 dollar index adjustment be disbursed to the Oregon Climate Trust and that any interest
12 beyond that amount be disbursed to the site certificate holder.

13
14 The Council adopts the following changes to proposed Condition V.A.3(1) and the title.

15
16 V.A.3. Carbon Dioxide Emissions Standard for Phase Two: ORS 469.503(2)

17
18 (1) Prior to commencement of construction of phase two on an extended
19 construction completion schedule pursuant to Condition V.A.2(4), the site
20 certificate holder shall submit to the State of Oregon through the Council a
21 bond, letter of credit or escrow account executed by the site certificate holder
22 in the amount of the monetary path payment requirement (in 1998 dollars) as
23 determined by the calculations set forth in Condition V.A.3.(4) and based on
24 the estimated heat rate and capacity certified pursuant to Condition V.A.3.(5)
25 below and as adjusted in accordance with the terms of this site certificate
26 pursuant to Condition V.A.3(4)(d). For the purposes of this site certificate,
27 the "monetary path payment requirement" means the offset funds determined
28 pursuant to ORS 469.503(2)(c) and the selection and contracting funds
29 determined pursuant to ORS 469.503(2)(d)(A)(ii) that the site certificate
30 holder must disburse to the Oregon Climate Trust, as the qualified
31 organization, pursuant to ORS 469.403(2)(d)(A). The calculation of 1998
32 dollars shall be made using the index set forth below in sub-section (c).

33
34 (a) In the event that the Council approves a new site certificate holder, the
35 Council shall approve the bond, letter of credit or escrow account from the
36 new site certificate holder(s) unless the Council finds that the proposed
37 bond, letter of credit or escrow account does not provide comparable
38 security to the bond, letter of credit or escrow account of the current site
39 certificate holder. Such approval of a new bond, letter of credit or escrow
40 account will not require a site certificate amendment. The bond, letter of
41 credit or escrow account shall remain in effect until such time as the site
42 certificate holder has disbursed the full amount of the monetary path
43 payment requirement to the Oregon Climate Trust as provided in ORS
44 469.503(2)(d)(A).

1
2 (b) If the site certificate holder has provided a bond, letter of credit or escrow
3 account prior to commencing construction and if calculations pursuant to
4 Condition V.A.3.(6) demonstrate that the site certificate holder must
5 increase its monetary path payments, the site certificate holder shall
6 increase the bond, letter of credit or escrow account sufficiently to meet
7 the adjusted monetary path payment requirement within the time required
8 by Condition V.A.3.(4)(d). The site certificate holder may reduce the
9 amount of the bond, letter of credit or escrow account commensurate with
10 payments it makes to the Oregon Climate Trust.

11
12 (c) The calculation of 1998 dollars shall be made using the US Gross
13 Domestic Product Deflator for Total Non-Residential Fixed Investment, as
14 published by the US Department of Commerce, Bureau of Economic
15 Analysis, or any successor agency ("the index"). The amount of the bond,
16 letter of credit or escrow account shall increase annually by the percentage
17 increase in the index and shall be pro-rated within the year to the date of
18 disbursement to the Oregon Climate Trust. If at any time the index is no
19 longer published, the Council shall select a comparable calculation of
20 1998 dollars. The bond, letter of credit or escrow account shall not be
21 subject to revocation prior to disbursement of the full monetary path
22 payment requirement, including any adjusted monetary path payment
23 requirement. The terms of the bond, letter of credit or escrow account and
24 identity of the issuer shall be subject to approval by the Council, which
25 approval shall not be unreasonably withheld.

26
27 (d) If the site certificate holder establishes an escrow account for the monetary
28 path payment requirement, the portion of any interest accruing in the
29 escrow account up to the time of disbursement to the Oregon Climate
30 Trust that is equivalent to the 1998 dollar index adjustment (described in
31 sub-section (c)) shall be for the benefit of the Oregon Climate Trust and
32 shall be disbursed to the Oregon Climate Trust for use as specified in ORS
33 469.503(2)(d)(A). Any remaining interest that exceeds the 1998 dollar
34 adjustment at the time of disbursement of funds to the Oregon Climate
35 Trust shall be disbursed to the site certificate holder on its request.

36
37 PGE proposed, and Council adopts, the following Conditions V.A.3(2) and (3).

38
39 (2) The site certificate holder shall disburse to the Oregon Climate Trust offset
40 funds and contracting and selection funds as requested by the Oregon Climate
41 Trust up to the monetary path payment requirement as determined by the
42 calculations set forth in Condition V.A.3.(4) and based on the estimated heat
43 rate and capacity certified pursuant to Condition V.A.3.(5) below (in 1998
44 dollars) and as adjusted in accordance with the terms of this site certificate

1 pursuant to Condition V.A.3.(4)(d). Disbursements shall be made in response
2 to requests from the Oregon Climate Trust in accordance with the
3 requirements of ORS 469.503(2)(d)(A).
4

5 (3) Notwithstanding anything in this amended site certificate to the contrary, the
6 site certificate holder shall have no obligation with regard to offsets, the offset
7 funds and the selection and contracting funds other than to make available to
8 the Oregon Climate Trust the total amount required under this site certificate,
9 nor shall any nonperformance, negligence or misconduct on the part of the
10 Oregon Climate Trust be a basis for revocation of this site certificate or any
11 other enforcement action by the Council with respect to the site certificate
12 holder.
13

14 PGE proposed the following Condition V.A.3(4).

15
16 (4) The site certificate holder shall use the following methodology to calculate the
17 amount of the monetary path payment requirement that it must make available
18 to the qualified organization pursuant to ORS 469.503(2)(d)(A). All
19 calculations shall be made assuming that no steam is supplied for
20 cogeneration. The site certificate holder shall use the contracted design
21 parameters for capacity and heat rate for the unit that it reports pursuant to
22 Condition V.A.3.(5) to calculate the estimated monetary path payment
23 requirement. The site certificate holder shall use the Year One Capacity and
24 Year One Heat Rate that it reports for the unit pursuant to Condition V.A.3.(6)
25 to calculate whether it owes additional monetary path payments.
26

27 (a) To calculate the offset funds payment requirement as provided in ORS
28 469.503(2)(c), the site certificate holder shall use the following
29 methodology:
30

31 (A) The site certificate holder shall multiply the nominal power of the
32 facility (kW) while operating on natural gas by the 8,760 hours. It
33 shall then multiply that product by 30 years to determine the total net
34 plant output (kWh). It shall multiply the total net plant output by the
35 heat rate (Btu/kWh) while operating on natural gas and by the carbon
36 dioxide emission factor for natural gas (0.000117 lb. CO₂/Btu) to
37 determine the total CO₂ emissions (lb.) from operating the unit. The
38 site certificate holder shall calculate the CO₂ emissions rate
39 (lb. CO₂/kWh) for the unit by dividing the total CO₂ emissions by the
40 total net plant output;
41

42 (B) The site certificate holder shall subtract the carbon dioxide standard of
43 0.7 lb. CO₂/kWh from the CO₂ emissions rate for the unit to determine
44 its excess CO₂ emissions rate (lb. CO₂/kWh);

1 (C) The site certificate holder shall multiply the total net plant output
2 (kWh) by the unit's excess CO₂ emissions rate (lb. CO₂/kWh). It shall
3 then divide that product by 2,000 pounds to determine the total tons of
4 CO₂ emissions the site certificate holder must mitigate (tons); then,

5
6 (D) The site certificate holder shall multiply the total tons of CO₂
7 emissions it must mitigate by \$0.57 per ton of CO₂ to determine the
8 sub-total for the offset funds.

9
10 (b) To calculate the selection and contracting funds sub-total as provided in
11 ORS 469.503(2)(d)(A)(i), the site certificate holder shall subtract \$500,000
12 from the offset funds subtotal; then multiply the remaining amount by
13 4.286 percent; then add \$50,000 to that product.

14
15 (c) To determine its monetary path payment requirement, the site certificate
16 holder shall add the sub-total for the offset funds and the sub-total for the
17 selection and contracting funds.

18
19 (d) When the site certificate holder submits the Year One Test report required
20 in Condition V.A.3.(6), it shall increase its guaranty or letter of credit for
21 the monetary path payment requirement if the calculation using reported
22 data shows that the adjusted monetary path payment requirement exceeds
23 the monetary path payment requirement for which the site certificate
24 holder had provided a guaranty or letter of credit prior to commencing
25 construction, pursuant to Condition V.A.3.(1).

26
27 (A) The site certificate holder shall make the appropriate calculations and
28 increase its guaranty or letter of credit, if necessary, within 30 days of
29 filing its Year One Test report with the Council.

30
31 (B) In no case shall the site certificate holder diminish the guaranty or
32 letter of credit it provided prior to commencing construction or receive
33 a refund from the qualified organization based on the calculations
34 made using the Year One Capacities and the Year One Heat Rates.

35
36 The Council adopts the proposed Condition V.A.3.(4) with the following editorial
37 changes for consistency with other conditions:

38
39 (4) The site certificate holder shall use the following methodology to calculate the
40 amount of the monetary path payment requirement that it must make available
41 to the qualified organization pursuant to ORS 469.503(2)(d)(A). All
42 calculations shall be made assuming that no steam is supplied for
43 cogeneration. The site certificate holder shall use the contracted design
44 parameters for capacity and heat rate for phase two that it reports pursuant to

1 Condition V.A.3.(5) to calculate the estimated monetary path payment
2 requirement. The site certificate holder shall use the Year One Capacity and
3 Year One Heat Rate that it reports for phase two pursuant to Condition
4 V.A.3.(6) to calculate whether it owes additional monetary path payments.
5

6 (a) To calculate the offset funds payment requirement as provided in ORS
7 469.503(2)(c), the site certificate holder shall use the following
8 methodology:
9

10 (A) The site certificate holder shall multiply the nominal power of phase
11 two (kW) while operating on natural gas by 8,760 hours. It shall then
12 multiply that product by 30 years to determine the total net plant
13 output (kWh) of phase two. It shall multiply the total net plant output
14 of phase two by the heat rate (Btu/kWh) while operating on natural
15 gas and by the carbon dioxide emission factor for natural gas
16 (0.000117 lb. CO₂/Btu) to determine the total CO₂ emissions (lb.)
17 from operating phase two. The site certificate holder shall calculate
18 the CO₂ emissions rate (lb. CO₂/kWh) for phase two by dividing the
19 total CO₂ emissions by the total net plant output for phase two;
20

21 (B) The site certificate holder shall subtract the carbon dioxide standard
22 of 0.7 lb. CO₂/kWh from the CO₂ emissions rate for phase two to
23 determine its excess CO₂ emissions rate (lb. CO₂/kWh);
24

25 (C) The site certificate holder shall multiply the total net plant output
26 (kWh) for phase two by phase two's excess CO₂ emissions rate (lb.
27 CO₂/kWh). It shall then divide that product by 2,000 pounds to
28 determine the total tons of CO₂ emissions the site certificate holder
29 must mitigate (tons); then,
30

31 (D) The site certificate holder shall multiply the total tons of CO₂
32 emissions it must mitigate by \$0.57 per ton of CO₂ to determine the
33 sub-total for the offset funds.
34

35 (b) To calculate the selection and contracting funds sub-total as provided in
36 ORS 469.503(2)(d)(A)(ii), the site certificate holder shall subtract \$500,000
37 from the offset funds subtotal; then multiply the remaining amount by
38 4.286 percent; then add \$50,000 to that product.
39

40 (c) To determine its monetary path payment requirement, the site certificate
41 holder shall add the sub-total for the offset funds and the sub-total for the
42 selection and contracting funds.
43 /

1 (d) When the site certificate holder submits the Year One Test report required
2 in Condition V.A.3.(6), it shall increase its bond, letter of credit or escrow
3 account for the monetary path payment requirement if the calculation
4 using reported data shows that the adjusted monetary path payment
5 requirement exceeds the monetary path payment requirement for which
6 the site certificate holder had provided a bond, letter of credit or escrow
7 account prior to commencing construction, pursuant to
8 Condition V.A.3.(1).

9
10 (A) The site certificate holder shall make the appropriate calculations and
11 increase its bond, letter of credit or escrow account, if necessary,
12 within 30 days of filing its Year One Test report with the Council.

13
14 (B) In no case shall the site certificate holder diminish the bond, letter of
15 credit or escrow account it provided prior to commencing
16 construction or receive a refund from the qualified organization based
17 on the calculations made using the Year One Capacity and the Year
18 One Heat Rate.

19
20 PGE initially proposed the following Condition V.A.3(5):

21
22 (5) Prior to commencement of construction, the site certificate holder shall notify
23 the Council in writing of its final selection of gas turbine vendor and shall
24 submit written design information to the Council sufficient to verify the
25 facility's designed new and clean heat rate and its nominal electric generating
26 capacity at average annual site conditions. The report shall also include an
27 affidavit or other evidence from the site certificate holder to confirm that the
28 vendor has guaranteed the heat rate and that the site certificate holder's
29 contract with the vendor includes a liquidated damages provision adequate to
30 fund any increased monetary path payment requirement calculated under
31 Condition V.A.3.(4)(d) resulting from vendor's failure to achieve the
32 guaranteed heat rates or capacities.

33
34 In a letter to the Office, dated June 25, 1998, PGE requested a modified Condition
35 V.A.3(5). (In this case, PGE's revisions are shown with strikeout and single
36 underlining.)

37
38 (5) Prior to commencement of construction, the site certificate holder shall notify
39 the Council in writing of its final selection of a gas turbine vendor and shall
40 submit written design information to the Council sufficient to verify the
41 facility's designed new and clean heat rate and its nominal electric generating
42 capacity at average annual site conditions. The report shall also include an
43 affidavit or other evidence ~~from~~ that the site certificate holder to confirm that
44 ~~theor~~ a vendor has guaranteed the heat rate and that the site certificate holder's

1 contract with the vendor includes a liquidated damages provision adequate to
2 fund any increased monetary path payment requirements calculated under
3 Conditions V.A.3(4)(d) resulting from vendor's failure to achieve the
4 guaranteed heat rates or capacities
5

6 In its letter requesting the changes, PGE explained that it may not rely on a single vendor
7 to build the facility. PGE may use different vendors for the various components of the
8 facility, such as the combustion turbine and the heat recovery steam generator. In that
9 case, the heat rate would be determined by the interaction of the components. There
10 would not be one vendor that could guarantee the heat rate for the facility. If it uses
11 multiple vendors, PGE will require the individual vendors to guarantee that their
12 components will meet PGE's design specifications, but only PGE would be in a position
13 to guarantee that the overall phase two facility will meet the heat rate as designed. The
14 Council allows the site certificate holder the flexibility to use multiple vendors if the site
15 certificate holder guarantees the heat rate.
16

17 PGE noted that its request relating to phase two of Coyote Springs Cogeneration Project
18 is different from other facilities that have met the CO₂ standard because there is already
19 an operating, revenue-generating, power plant (phase one) that is part of the same site
20 certificate. This ensures that there are resources available to enable the site certificate
21 holder to meet the obligations of proposed Condition V.A.3(4)(d) to increase its bond,
22 letter of credit or escrow account to cover any additional monetary path payment
23 requirement that may occur following the new and clean test.
24

25 Also, the liquidated damages provision envisions having a single vendor that will
26 guarantee the heat rate for the whole facility. Concurrent with allowing PGE an option to
27 use multiple vendors, it would not be feasible to require that any one vendor be
28 responsible for the liquidated damages provision for the heat rate. Council finds that the
29 fact that phase one is a commercially operating power plant and is an integral part of the
30 site certificate is sufficient to ensure that the site certificate holder will be able to meet its
31 obligations to increase its bond, letter of credit or escrow account as may be necessary
32 pursuant to its monetary path payment requirements.
33

34 The Council adopts the proposed Condition V.A.3.(5) with PGE's later proposed changes
35 and with editorial changes for consistency with other conditions:
36

37 (5) Prior to commencement of construction of phase two on an extended
38 construction completion schedule pursuant to Condition V.A.2(4), the site
39 certificate holder shall notify the Council in writing of its final selection of gas
40 turbine vendor and shall submit written design information to the Council
41 sufficient to verify phase two's designed new and clean heat rate and its
42 nominal electric generating capacity at average annual site conditions. The
43 report shall also include an affidavit or other evidence that the site certificate
44 holder or a vendor has guaranteed the heat rate.

1 PGE proposed the following Conditions V.A.3(6) and (7):

2
3 (6) Within two months of completion of the first year of commercial operation,
4 the site certificate holder shall provide to the Council pursuant to ORS
5 469.503(2)(e)(G) a test report (Year One Test) of the actual heat rate (Year
6 One Heat Rate) and nominal generating capacity (Year One Capacity) for the
7 unit, without degradation, assuming no steam is supplied for cogeneration, as
8 determined by a 100-hour test at full power completed during the first
9 12 months of commercial operation, with the results adjusted for the average
10 annual site condition for temperature, barometric pressure and relative
11 humidity and use of alternative fuels, and using a rate of 117 pounds of carbon
12 dioxide per million Btu of natural gas fuel.

13
14 (7) The second combustion turbine unit shall be fueled solely with natural gas or
15 with synthetic gas with a carbon content per million Btu no greater than
16 natural gas.

17
18 The Council adopts the proposed Conditions V.A.3.(6) and (7) with the following
19 editorial changes for consistency with other conditions:

20
21 (6) Within two months of completion of the first year of commercial operation of
22 phase two built on an extended construction completion schedule pursuant to
23 Condition V.A.2(4), the site certificate holder shall provide to the Council
24 pursuant to ORS 469.503(2)(e)(G) a test report (Year One Test) of the actual
25 heat rate (Year One Heat Rate) and nominal generating capacity (Year One
26 Capacity) for phase two, without degradation, assuming no steam is supplied
27 for cogeneration, as determined by a 100-hour test at full power completed
28 during the first 12 months of commercial operation, with the results adjusted
29 for the average annual site condition for temperature, barometric pressure and
30 relative humidity and use of alternative fuels, and using a rate of 117 pounds
31 of carbon dioxide per million Btu of natural gas fuel.

32
33 (7) The combustion turbine for phase two shall be fueled solely with natural gas
34 or with synthetic gas with a carbon content per million Btu no greater than
35 natural gas.

36
37 The Office proposed an additional condition relating to cogeneration. The site certificate
38 permits PGE to operate CSCP as a cogeneration project. However, as noted in Section
39 C.1.5 above, PGE does not request any carbon dioxide emissions offset credit for
40 cogeneration. The Office noted that it is necessary to ensure that any cogeneration that
41 does occur for phase two will offset fossil fuel use or will provide steam to a new user
42 that had not previously generated steam. Otherwise, natural gas burned at phase two
43 could offset a biomass fuel instead of a fossil fuel. Under that scenario, the plant would
44 increase carbon dioxide emissions rather than reduce them.

1 The Office proposed the following Condition V.A.3(8):
2

3 (8) If the site certificate holder operates phase two as a cogeneration facility, the
4 site certificate holder shall only use steam from phase two to replace steam
5 generated by a fossil fuel at a steam host or to provide steam to a steam host
6 that had not previously generated steam for itself.
7

8 In comments on the proposed order, PGE requested that the Council simplify the
9 language in the condition that the Office proposed. The language PGE proposed meets
10 the same intent as the original, but is more direct. The language makes it clear that steam
11 from the cogeneration plant shall not supplant steam that was generated at any time by
12 biomass.
13

14 (8) If the site certificate holder operates phase two as a cogeneration facility, the
15 site certificate holder shall not use steam from phase two to replace steam
16 generated by a biomass fuel at an off-site industrial facility.
17

18 The Council finds that the modifications PGE proposed improve the clarity of language
19 of the condition. Therefore, the Council adopts Condition V.A.3(8) with the
20 modifications PGE proposed.
21

22 **D.4 Conforming Amendments**

23 PGE proposed additional conforming amendments to the original site certificate and to
24 Amendment Number Two as a result of the changes PGE requested in its Request for
25 Amendment Number Three.
26

27 **D.4.1 Project Description**

28 PGE proposed the following changes to the second paragraph of the site certificate at
29 II.B.1, lines 23-26:
30

31 The CSCP power generation facilities will consist of two ~~identical~~ natural
32 gas-fired, combined combustion turbine cycle units. Primary power for
33 each unit will be supplied by either a General Electric 7FA gas turbine
34 generator rated at 172.7 MW or a similar model gas turbine.
35

36 The proposed conditions for meeting the carbon dioxide emissions standard, specifically
37 Conditions V.A.3(4) and (5), allow for flexibility in turbine selection while ensuring that
38 the site certificate holder meets the standard. This change gives the site certificate holder
39 the option of increasing the efficiency of phase two as a way to reduce its carbon dioxide
40 emissions. Avoiding emissions by increasing the efficiency of fuel use is the most certain
41 way to reduce carbon dioxide emissions of the paths available to a site certificate holder.
42 The Council adopts this proposed condition.
43 /

1 **D.4.2 Limit on the Use of Distillate Fuel**

2 PGE proposed that phase two would use only natural gas as a fuel. The current site
3 certificate allows both phases to use distillate as a back-up fuel. The proposed site
4 certificate conditions relating to demonstration of compliance with the carbon dioxide
5 standard are specific to the use of natural gas as the only fuel.
6

7 There are three conditions relating to the distillate fuel as a back-up for generation. PGE
8 proposed the following changes to them to limit the use of distillate fuel to phase one.
9 PGE requested the Council change the first sentence of Condition I.A. of Amendment
10 Number Two to the site certificate:

11
12 I.A. To the extent authorized by State law and subject to those warranties and
13 conditions set forth herein, the State approves and authorizes for construction,
14 operation and retirement by PGE of a natural gas-fired combustion turbine
15 energy facility, with oil firing back-up for Unit 1 (as defined in OAR 345-01-
16 010(33)), together with related or supporting facilities in Boardman, Oregon,
17 in the manner described in PGE's application for site certificate.***
18

19 It requested the Council change Amendment Number Two, Conditions XII.1 and 2:

20
21 XII.1. The CSCP shall not exceed permitted emission levels, total emissions or the
22 allowable amount of distillate fuel use stated in its Air Contaminant Discharge
23 Permit (amended for distillate fuel burning). The CSCP's use of distillate fuel
24 in its Unit 1 combustion turbine in any year shall not exceed an amount of
25 10 percent of the expected total fuel use, on a Btu higher heating value basis.
26

27 XII.2. PGE shall not use #2 low sulfur distillate fuel oil in its Unit 1 turbine at CSCP
28 prior to receiving an amended Air Contaminant Discharge Permit from the
29 Department of Environmental Quality authorizing it to burn distillate fuel.
30

31 The Council adopts the proposed conditions with the following editorial changes:

32
33 I.A. To the extent authorized by State law and subject to those warranties and
34 conditions set forth herein, the State approves and authorizes for construction,
35 operation and retirement by PGE of a natural gas-fired combustion turbine
36 energy facility, with oil firing back-up for phase one (as defined in OAR 345-
37 01-010(33)), together with related or supporting facilities in Boardman,
38 Oregon, in the manner described in PGE's application for site certificate.***
39

40 XII.1. The CSCP shall not exceed permitted emission levels, total emissions or the
41 allowable amount of distillate fuel use stated in its Air Contaminant Discharge
42 Permit (amended for distillate fuel burning). The CSCP's use of distillate fuel
43 in its phase one combustion turbine in any year shall not exceed an amount of
44 10 percent of the expected total fuel use, on a Btu higher heating value basis.

1 XII.2. PGE shall not use #2 low sulfur distillate fuel oil in its phase one turbine at
2 CSCP prior to receiving an amended Air Contaminant Discharge Permit from
3 the Department of Environmental Quality authorizing it to burn distillate fuel.
4

5 **D.5 Compliance with the Carbon Dioxide Emissions Standard**

6 With the adoption of the conditions in Sections D.3 and D.4, the Council finds that CSCP
7 meets the carbon dioxide emissions standard, ORS 469.503(2).
8

9 **E. Compliance with Other Council Standards**

10 OAR 345-27-070(6) sets forth the Council's general standard for review of a request by a
11 site certificate holder for an amendment:
12

13 In evaluating a request for an amendment under this rule, the Council shall
14 limit its consideration to the effects which may be produced by the
15 proposed change or addition to the site or facility described in the request
16 for amendment. In considering those effects, the Council shall apply state
17 statutes, administrative rules, and local government ordinances in effect on
18 the date the amended Site Certificate is executed.
19

20 The following discussion of applicable standards addresses the current (November 1995)
21 version of the OAR Chapter 345, Division 22 rules.
22

23 **E.1 Standards Relating to the Applicant**

24
25 **E.1.1.1 Applicant Qualification and Capability, OAR 345-22-010(1)**

26 To meet this paragraph of the standard, the Council must find that:
27

28 ...the applicant has the organizational, managerial and technical expertise to
29 construct and operate the facility. To conclude that the applicant has the
30 organizational, managerial and technical expertise to construct and operate
31 the proposed facility, the Council must determine that the applicant has a
32 reasonable probability of successful construction and operation of the
33 facility considering the experience of the applicant, the availability of
34 technical expertise to the applicant, and, if the applicant has constructed or
35 operated other facilities, the past performance of the applicant, including but
36 not limited to the number and severity of regulatory citations, in
37 constructing or operating a facility, type of equipment, or process similar to
38 the proposed facility.
39

40 **Discussion.** This amendment will not affect any Council finding relating to applicant
41 qualification and capability, OAR 345-22-010(1).
42

43 **Conclusion.** The Council finds that PGE has satisfied the requirements of OAR 345-22-
44 010(1).

1 **E.1.1.2 Third-Party Services and Permits, OAR 345-22-010(2)**

2 The standard for organizational, managerial and technical expertise - third party services
3 and permits, effective November 10, 1994. This paragraph of the standard requires that:

4
5 If the applicant will not itself obtain any state or local government permit or
6 approval for which the Council would ordinarily determine compliance with
7 applicable standards, but will rely on a permit or approval issued to a third
8 party, the Council must determine that the named third party has, or has a
9 reasonable likelihood of obtaining, the necessary permit or approval, and
10 that the applicant has, or has a reasonable likelihood of entering into, a
11 contractual or other arrangement with the third party for access to the
12 resource or service secured by that permit or approval.

13
14 **Discussion.** This amendment will not affect any Council finding relating to third-party
15 services and permits, OAR 345-22-010(2).

16
17 **Conclusion.** The Council finds that PGE meets the requirements of OAR 345-22-010(2)
18 for third-party services and permits.

19
20 **E.1.1.3 Third-Party Services and Permits, OAR 345-22-010(3)**

21 The third paragraph of the standard provides:

22
23 If any third party named by the applicant does not have the necessary permit
24 or approval at the time the Application for Site Certificate is approved, the
25 Council may require as a condition that the Site Certificate Holder may not
26 commence construction or operation as appropriate until the third-party has
27 obtained the necessary permit or approval and the applicant has a contract or
28 other arrangement for access to the resource or service secured by that
29 permit or approval.

30
31 **Discussion.** The requested amendment does not change any site certificate conditions
32 related to third parties obtaining permits pursuant to OAR 345-22-010(3).

33
34 **Conclusion.** The Council finds that PGE meets the requirement of OAR 345-22-010(3).

35
36 **E.1.1.4 Financial Assurance Standard, OAR 345-22-050**

37 The financial assurance standard requires the Council to find that:

38
39 ...the applicant has a reasonable likelihood of obtaining a bond or
40 comparable security, satisfactory to the Council, in an amount adequate to
41 restore the site if the site certificate holder:

- 42
43 (1) Begins but does not complete construction of the facility; or
44 /

- 1 (2) Permanently closes the facility before establishing a financial
2 mechanism or instrument, satisfactory to the Council, that will assure
3 funds will be available to adequately retire the facility and restore the
4 site to a useful, non-hazardous condition.
5

6 **Discussion.** The requested amendment does not change any site certificate conditions
7 related to the financial assurance standard for restoration of the site of the facility.
8

9 **Conclusion.** The Council finds that PGE meets the financial assurance standard, OAR
10 345-22-050.
11

12 **E.2 Standards Relating to the Site and Structure**

13 **E.2.1 Structural Standard, OAR 345-22-020**

14 The structural standard requires the Council to find:
15

- 16
- 17 (1) The applicant, through appropriate site specific study, has adequately
18 characterized the site in terms of seismic zone and expected ground
19 response during the maximum credible seismic event; and
20
- 21 (2) The facility can be designed, engineered and constructed adequately to
22 avoid potential dangers to human safety presented by seismic hazards
23 affecting the site, as defined in ORS 455.447(1)(d) and including
24 amplification, that are expected to result from all reasonably probable
25 seismic events.
26

27 **Discussion.** This amendment will not affect any Council finding relating to the structural
28 standard.
29

30 **Conclusion.** The Council finds that CSCP meets the structural standard, OAR 345-22-
31 020.
32

33 **E.2.2 Soil Protection Standard, OAR 345-22-022**

34 The soil protection standard requires the Council to find "...that the design, construction
35 and operation of the facility, taking into account mitigation, is not likely to result in a
36 significant adverse impact to soils."
37

38 **Discussion.** This amendment will not affect any Council finding relating to the soil
39 protection standard.
40

41 **Conclusion.** The Council finds that CSCP meets the soil protection standard, OAR 345-
42 22-022.
43 /

1 **E.2.3 Land Use Standard, OAR 345-22-030(2)(a)**

2 The land use standard requires that the facility be in compliance with “the statewide
3 planning goal adopted by the Land Conservation and Development Commission.” OAR
4 345-22-030(1)

5
6 (2) A proposed facility shall be found in compliance with section (1) of
7 this rule if:

8 (a) The facility has received local land use approval under the
9 acknowledged comprehensive plan and land use regulations of
10 the affected local government, or***

11
12 **Discussion.** This amendment will not affect any Council finding relating to the land use
13 standard.

14
15 **Conclusion.** The Council finds that CSCP meets the land use standard, OAR 345-22-
16 030.

17
18 **E.3 Standards Relating to the Impacts of Construction, Operation and**
19 **Retirement**

20
21 **E.3.1 Protected Area Standard, OAR 345-22-040**

22 The protected area standard prohibits the siting of an energy facility in any of the listed
23 protected areas. OAR 345-22-040(1). The standard permits the siting of a facility
24 outside the listed protected areas so long as the Council finds, “taking into account
25 mitigation, the design, construction and operation of the facility...is not likely to result in
26 significant adverse impact” to any of the listed protected areas.

27
28 **Discussion.** This amendment will not affect any Council finding relating to the protected
29 area standard.

30
31 **Conclusion.** The Council finds that CSCP meets the protected areas standard, OAR
32 345-22-040.

33
34 **E.3.2 Fish and Wildlife Habitat Standard, OAR 345-22-060**

35 The fish and wildlife habitat standard requires that the Council find that “the design,
36 construction, operation and retirement of the facility, taking into account mitigation, is
37 consistent with the fish and wildlife mitigation goals and standards of OAR 635-415-
38 030.” OAR 635-415-030 describes four categories of habitat in order of their value. The
39 rule then establishes mitigation goals and corresponding implementation standards for
40 each habitat category.

41
42 **Discussion.** This amendment will not affect any Council finding relating to the fish and
43 wildlife habitat standard.

44 /

1 **Conclusion.** The Council finds that CSCP meets the fish and wildlife habitat standard,
2 OAR 345-22-060.

3
4 **E.3.3 Threatened and Endangered Species, OAR 345-22-070**

5 The threatened and endangered species standard requires that the Council find that the
6 design, construction, operation and retirement of the facility, taking into account
7 mitigation be consistent with any applicable conservation program adopted pursuant to
8 ORS 496.172(3) or ORS 564.105(3). If no conservation program applies, the facility
9 must not have the potential to reduce significantly the likelihood of the survival or
10 recovery of any threatened or endangered species listed under ORS 496.172(2) or ORS
11 564.105(2).

12
13 **Discussion.** This amendment will not affect any Council finding relating to the
14 threatened and endangered species standard.

15
16 **Conclusion.** The Council finds that CSCP meets the threatened and endangered species
17 standard, OAR 345-22-070.

18
19 **E.3.4 Scenic and Aesthetic Standard, OAR 345-22-080**

20 The scenic and aesthetic standard requires that the Council find that “the design,
21 construction, operation and retirement of the proposed facility, taking into account
22 mitigation, is not likely to result in significant adverse impact to scenic and aesthetic
23 values identified as significant or important in the applicable federal land management
24 plans or the local land use plan for the site or its vicinity.”

25
26 **Discussion.** This amendment will not affect any Council finding relating to the scenic
27 and aesthetic standard.

28
29 **Conclusion.** The Council finds that CSCP meets the scenic and aesthetic values
30 standard, OAR 345-22-080.

31
32 **E.3.5 Historic, Cultural and Archeological Resources Standard, 345-22-090**

33 The historic, cultural and archeological resources standard requires that the Council find
34 that “the design, construction, operation and retirement of the facility, taking into account
35 mitigation, is not likely to result in significant adverse impacts to:

- 36
37 (1) Historic, cultural or archaeological resources that have been listed
38 on, or would likely be listed on the National Register of Historic
39 Places;
40
41 (2) For a facility on private land, archaeological objects, as defined in
42 ORS 358.905(1)(a), or archaeological sites, as defined in ORS
43 358.905(1)(c); and,
44 /

1 (3) For a facility on public land, archaeological sites, as defined in ORS
2 358.905(1)(c).

3
4 **Discussion.** This amendment will not affect any Council finding relating to the historic,
5 cultural and archeological resources standard.

6
7 **Conclusion.** The Council finds that CSCP meets the historic, cultural, and archeological
8 resources standard, OAR 345-22-090.

9
10 **E.3.6 Recreation Standard, OAR 345-22-100**

11 The recreation standard requires that the Council find that "design, construction and
12 operation of a facility, taking into account mitigation, is not likely to result in a
13 significant adverse impact to important recreational opportunities in the impact area.
14 Factors which will be considered in judging the importance of a recreational opportunity
15 include:

- 16 (1) Any special designation or management of the location,
- 17 (2) The degree of demand
- 18 (3) Uniqueness
- 19 (4) Outstanding or unusual qualities
- 20 (5) Availability or rareness, and
- 21 (6) Irreplaceability or irretrievability of the opportunity.

22
23 **Discussion.** This amendment will not affect any Council finding relating to the
24 recreation standard.

25
26 **Conclusion.** The Council finds that CSCP meets the recreation standard, OAR-345-22-
27 100.

28
29 **E.3.7 Socio-Economic Impacts Standard, OAR 345-22-110**

30 The socio-economic impacts standard requires the Council to find "that the construction
31 and operation of the facility, taking into account mitigation, is not likely to result in
32 significant adverse impact to the ability of communities within the study area to provide
33 the following governmental services: sewers and sewage treatment, water, stormwater
34 drainage, solid waste management, housing, traffic safety, police and fire protection,
35 health care and schools."

36
37 **Discussion.** This amendment will not affect any Council finding relating to the socio-
38 economic impacts standard.

39
40 **Conclusion.** The Council finds that CSCP meets the socio-economic impacts standard,
41 OAR 345-22-110.

42 /

1 **E.3.8 Waste Minimization Standard, OAR 345-22-120**

2 The waste minimization standard requires an applicant, "to the extent reasonably
3 practicable...[to] minimize generation of solid waste and wastewater in the construction
4 and operation of the facility, and when solid waste or wastewater is generated, recycle
5 and reuse such wastes. [In addition,] to the extent reasonably practicable, the
6 accumulation, storage, disposal and transportation of waste generated by the construction
7 and operation of the facility must have minimal adverse impacts on surrounding and
8 adjacent areas."
9

10 **Discussion.** This amendment will not affect any Council finding relating to the waste
11 minimization standard.
12

13 **Conclusion.** The Council finds that CSCP meets the waste minimization standard, OAR
14 345-22-120.
15

16 **E.3.9 Retirement Standard, OAR 345-22-130**

17 The retirement standard requires the Council to find that "the site, taking into account
18 mitigation, can be restored adequately to a useful, non-hazardous condition following
19 facility retirement."
20

21 **Discussion.** This amendment will not affect any Council finding relating to the
22 retirement standard.
23

24 **Conclusion.** The Council finds that CSCP meets the retirement standard, OAR 345-22-
25 130.
26

27 **E.4 Other Standards**
28

29 **E.4.1 Noise OAR 340-35-035(1)(b)(B)**

30 The Council applies and enforces the Department of Environmental Quality's (DEQ)
31 noise standards for energy facilities under its jurisdiction. The DEQ noise standard, OAR
32 340-35-035 (1)(b)(B), has two elements. The first element requires that industrial noise
33 sources not increase the noise level by more than 10 dB above existing ambient noise
34 levels. This maximum increase clause is known as the "ambient degradation rule." The
35 second element limits the maximum noise levels that may be caused by the noise source,
36 as measured at noise-sensitive properties. The limits allow a moderately higher level of
37 noise in the daytime than at night.
38

39 **Discussion.** This amendment will not affect any Council finding relating to the noise
40 standard.
41

42 **Conclusion.** The Council finds that CSCP meets the noise standard, OAR 340-35-
43 035(1)(b)(B).
44 /

1 **E.5 Other State and Local Regulations Within the Council's Jurisdiction**

2
3 **E.5.1. Oregon Department of Transportation (ODOT) - State Highways Rights-Of-Way**

4
5 **Discussion.** This is not affected by the amendment request.

6
7 **E.5.2. Oregon Division of State Lands (DSL) - Fill and Removal of Waters of the State**

8
9 **Discussion.** This is not affected by the amendment request.

10
11 **E.5.3. Oregon Department of Forestry (ODF) - Forest Lands, Practices**

12
13 **Discussion.** This is not affected by the amendment request.

14
15 **E.5.6 Oregon Department of Parks and Recreation (ODPR) - State Parks**

16
17 **Discussion.** This is not affected by the amendment request.

18
19 **Conclusion.** The Council finds that CSCP meets the Council's standards for other state
20 and local regulations for ODOT, DSL, ODF and ODPR.

21
22 **F. Conclusions**

23 The Council finds that the actions in PGE's request are consistent with current Council
24 rules, with other applicable statutes and rules, and with state-wide land use planning goals
25 and would not cause a significant adverse impact to public health and safety or the
26 environment. In preparing this order, the Council has limited its consideration to the
27 effects that may be produced by the proposed change to the facility described in PGE's
28 request for amendment to remove conditions related to the need for facility standard and
29 adopt conditions related to the carbon dioxide standard, dated May 19, 1998. In
30 considering those effects, the Council has reviewed state statutes, administrative rules, and
31 local government ordinances.

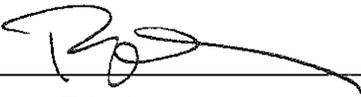
32
33 Based on the above findings, the Council concludes that it should amend the site
34 certificate for the Coyote Springs Cogeneration Project as PGE requests, with
35 modifications to the amendments as noted above.

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37 /
38 /
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40 /
41 /

1 **FINAL ORDER**

2
3 Based on the above findings of fact, discussions and conclusions of law, the Energy
4 Facility Siting Council determines that it shall approve Amendment Request Number
5 Three and that the chairperson of the Council shall execute the site certificate amendment
6 in the form of the "Amendment Number Three to the Thermal Power Plant Site
7 Certificate for the Coyote Springs Cogeneration Project." The Proposed Amendment
8 Number Three to the Site Certificate is attached and is incorporated by reference into this
9 order.

10
11 Issued: August 28, 1998.

12
13
14
15 
16 _____
17 Terry Edvalson
18 Chair
19 Energy Facility Siting Council
20

21
22 **Notice of the Right to Request Binding Arbitration**

23 ORS 469.409 provides a process to amend an existing site certificate to change from the
24 need for facility standard to the carbon dioxide emissions standard. That section also
25 provides that arbitrable disputes regarding the site certificate holder's compliance with
26 the carbon dioxide standard will be resolved by binding arbitration. Unlike other
27 amendment proceedings, there is no opportunity for a judicial review of the Energy
28 Facility Siting Council's final order.

29
30 The governing rules for this amendment process are at OAR 345-27-0200, as amended by
31 the Energy Facility Siting Council on July 10, 1998. The demonstration of compliance
32 with the applicable carbon dioxide emissions standard is the only issue that is subject to
33 binding arbitration.

34
35 You may only request binding arbitration if you submitted written comments on the
36 Office of Energy's Proposed Order by July 29, 1998 and you appeared at the Council
37 meeting on August 21, 1998, at which the Council adopted the final order on the
38 amendment request.

39
40 To request binding arbitration, you must submit a written request to the Office of Energy
41 within 15 days of the issuance of the Council's final order. If you do not file a petition
42 for binding arbitration within the 15-day time period, you lose your right to request
43 arbitration.

44 /