BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project Request for Amendment No. Three ) FINAL ORDER

Summary
The Energy Facility Siting Council ("Council" or "EFSC") approves this amendment request with modifications to the proposed site certificate conditions.

A. Summary and Background of the Request for Amendment
Pursuant to ORS 469.409, OAR 345-27-050, and OAR 345-027-0200, Portland General Electric Company ("PGE") requests that the Council amend the site certificate for the Coyote Spring Cogeneration Project ("CSCP"). PGE proposes 1) to remove the site certificate conditions relating to phase two that require the proposed facility to demonstrate that it either meets the need for facility standard or qualifies for an exemption under OAR 345-23-010(2) (April 1994 rule) before the Council can extend the deadline for completion of construction, and 2) to replace those requirements with conditions ensuring compliance with the applicable carbon dioxide ("CO₂") emissions standard, ORS 469.503(2)(a).

PGE's address is as follows:
Portland General Electric Company
121 SW Salmon Street
Portland, Oregon 97204

A.1. Description of the Facility
On September 16, 1994, the Council issued an Energy Facility Site Certificate to PGE for a natural gas-fired cogeneration facility and related and supporting facilities (collectively, the facility) located in the Port of Morrow Industrial Park in Boardman, Oregon. The facility is known as the Coyote Springs Cogeneration Project. CSCP is a two-unit, natural gas-fired, combined-cycle, electric power plant with a total capacity of 462 megawatts. The first phase is in operation. PGE has not begun construction of the second phase. (In its request, PGE referred to phase one as Unit 1 and phase two as Unit 2. Because the site certificate uses the phrases "phase one" and "phase two," this order adopts that convention.)

The Council granted PGE a first amendment to the CSCP site certificate on December 6, 1996. That amendment incorporated into the site certificate explicitly all
conditions, which it had originally incorporated by reference from the application for site certificate, and specified that the Council’s current rules for amending site certificates apply to future amendments of the CSCP site certificate.

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

B. Procedural History

B.1 Office of Energy ("Office") Review Steps

B.1.2 PGE’s Request

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

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

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

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

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

B.1.3.1 Replies

The Office received comments from state agencies, local governments and the public.
B.1.3.1.1 State Agencies
The Water Resources Department initially raised a question about future water use related to a specific permit. It later wrote that its records showed that the matter had been resolved, and it had no further concern about the matter. The Department of Transportation noted that it would only be concerned if there were any impacts to the highway system. There were no other comments.

B.1.3.1.2 Cities and Counties
The Cities of Boardman and Irrigon and Morrow County all supported the request for amendment and also requested that the Oregon Climate Trust give priority to spending offset funds in the region of the CSCP facility. The Cities of Boardman and Irrigon specifically stated that they were not asking the Council to impose conditions on the use of offset funds. However, all three wanted to make the Council and the Oregon Climate Trust aware of their interest in seeing some of the offset funds spent on local offset projects. The Office forwarded copies of the letters to the Oregon Climate Trust for its consideration if the Council grants this amendment request and if the facility is subsequently constructed.

B.1.3.1.3 Port of Morrow
The Port of Morrow supported the request for amendment, but raised two issues. First, the Port requested that the Council “investigate and possibly request the Oregon Climate Trust to spend offset funds in the Boardman area.” The Office has forward the letter to the Oregon Climate Trust, but the Council has no means to impose a requirement on the Oregon Climate Trust. Statute places requirements on a qualified organization about how it must spend offset funds. The Oregon Climate Trust will independently determine, within the law, how it will spend offset funds.

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

(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.
Second, the Port of Morrow asked for clarification on whether PGE intended to change its site certificate relating to cogeneration by the phase two plant. It noted that the calculations for demonstration of compliance with the carbon dioxide standard use the assumption of no steam for off-site use.

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

B.1.3.1.4 Umatilla Generating Company

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

B.1.3.1.5 Utility Reform Project ("URP"), Don’t Waste Oregon Council ("DWOC") and Lloyd K. Marbet

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

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

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

Second, Mr. Meek claims that ORS 469.409 is unconstitutional in several respects, including that it illegally precludes judicial review, violates the separation of powers
doctrine, and contains illegal delegations of legislative powers. In reviewing Mr. Meek's
claims, the Council relies on the presumption that duly enacted legislation, such as ORS
469.409, is valid; and, it bears in mind that its determination of the validity of ORS
469.409 is subject to review by the courts.

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

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

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

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

Among other things, this constitutional provision has been interpreted to prohibit the
delagation of legislative powers to non-governmental entities. There has been no
improper delegation here, however. While there are few Oregon cases discussing binding
arbitration, in other jurisdictions binding arbitration involving a government agency has
been upheld where the arbitrator has no personal interest in the outcome and the decision
is based on factors set out by the legislature. Here, both criteria are met.

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

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

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

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

B.1.4 Proposed Order
The Office issued its proposed order June 29, 1998.

B.1.5 Notice
On June 29, 1998, the Office mailed notice of the proposed order to the Council's general
mailing list, persons on the Council's mailing list for PGE's first site certificate
proceeding pursuant to OAR 345-027-0200(4)(b). The notice set a deadline for public
comments by July 29, 1998 and gave notice of the procedure for requesting binding
arbitration for challenges to the Council's final order.
B.1.6 Public Comments on Proposed Order

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

B.1.6.1 Portland General Electric

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

B.1.6.2 Confederated Tribes of the Umatilla Indian Reservation

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

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

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

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

In its letter about PGE’s Request for Amendment Number Three, CTUIR expressed concern that there was no detailed discussion of changes made at the site since the Council granted the original site certificate and how those changes might have affected cultural resources. CTUIR requested that the Council require a new cultural resources
study before any further disturbance of the site related to constructing phase two. CTUIR
requests that it be invited to participate in a new cultural resources study and in
monitoring during construction of phase two.

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

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

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

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

B.1.6.3 URP, DWOC, Lloyd K. Marbet, and Colleen O’Neil
Mr. Daniel Meek, attorney for URP, DWOC, Mr. Marbet and Ms. O’Neil, submitted
comments on their behalf. He requested that the Council not grant PGE’s requested
amendment.

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

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

Page 8 - Final Order, CSCP Request for Amendment No. 3 August 28, 1998
applicable carbon dioxide emissions standard.” The Council finds that this is not

different argument from the constitutional issues it discusses in B.1.3.1.5. The Council,
therefore, reaffirms that ORS 469.409 is a constitutional exercise of legislative power for
the reasons stated in Section B.1.3.1.5.

B.2 Council Review Steps
The Council held a public hearing on the proposed order at its meeting in Hermiston,
Oregon on August 21, 1998. During the hearing, the Office reviewed the proposed order
and recommended changes to one condition based on public comments. It also
summarized public comments. Mr. Robert Hall, representing PGE, answered Council
questions and made a brief comment. Mr. Daniel Meek had provided the Office two
telephone numbers where he might be reached during the Council’s consideration of the
request for amendment. Prior to beginning the public hearing on the request for
amendment, Mr. Terry Edvalson, chair of the Council, made three attempts to telephone
Mr. Meek at the telephone numbers he had provided. Mr. Meek was not at either
number. The Council then proceeded with the public hearing. The Council granted
PGE’s request for amendment with modifications to the conditions as noted below.

B.2.1 Council Notice
The Office mailed PGE’s request for amendment and a memo summarizing the request to
the Council on May 20, 1998. The Office staff and PGE presented information about the
request to the Council at its May 29, 1998 meeting.

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

B.2.1.1 Council Concerns
During the discussion of the amendment request, the Council raised the issue of the
interaction of 1) changes over time in the CO₂ standard and deemed rate of dollars per ton
of CO₂ for offset purposes and 2) the shelf life of a facility. The following discussion
applies to these issues only as it relates to the CSCP.

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

If the Council grants PGE a two-year extension on the construction deadline, that would
extend the deadline to September 2001, or about 35 months. Given the time necessary to
construct phase two, the time to begin construction would be about two years, or shorter.
The law permits the Council to change the CO₂ standard every two years and the offset
funds at that schedule after the first three years. The Council finds that it is appropriate to
allow a site certificate holder two years of certainty in the standard and the offset funds
rate. Therefore, the Council does not impose any additional conditions on CSCP that
relate to potential changes in the CO₂ standard or offset funds rate.
B.2.3 Council Hearing and Action

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

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

C.1 Summary of Changes to the Site Certificate

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

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

C.1.1. Need for Facility Conditions

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

V.A.2. Construction commencement and completion dates

(1) Applicant shall begin construction of phase one of the proposed facility within one year after the site certificate is executed. This one-year time period shall be tolled during any appeal that is taken of the Energy Facility Siting Council (EFSC) Order. Notwithstanding the tolling of the one-year time period for commencement of construction, Applicant shall complete construction of phase one within four years, and phase two within five years, of execution of the site certificate. EFSC may extend the four-year period for construction completion if the Applicant shows that the need for extension is caused by acts of God or force majeure events. EFSC anticipates such a request will be considered a minor amendment under OAR 345-27-080.

(2) Within one year of execution of the site certificate Applicant must affirm, by written notice to EFSC its intent to construct phase two. This notice to EFSC
shall include copies of correspondence to a vendor requesting commencement of bona fide negotiations to purchase the gas turbine. This one-year time period shall be tolled during any appeal taken of EFSC's Order. Such affirmation is required in order for Applicant to maintain a valid site certificate as to phase two.

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

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

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

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

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

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

C.1.2. Application of Carbon Dioxide Emissions Standard
The application of the CO₂ emissions standard to the PGE site certificate is authorized by
ORS 469.409, which provides:

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

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

C.1.2.1. Turbine Selection
The site certificate for CSCP specifies that PGE will use identical General Electric 7 FA
turbines for phase one and phase two (page 3, lines 22-26). PGE’s request for
amendment contains information demonstrating PGE’s compliance with the applicable
standard using data for a General Electric 7 FA combustion turbine for phase two.

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

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

(2) No Site Certificate amendment is required for:
(a) A change to an electrical generation facility that results in an increase
in the electrical generating capacity without increasing the number of
electric generators at the site, changing fuel type, increasing fuel
consumption by more than 10%, or enlarging the facility site, and that
does not violate any other conditions specified in the Site Certificate.
PGE requested no changes to the site certificate relating to the performance or impact of a similar turbine. Furthermore, it remains bound by all other conditions that might possibly be affected by a change in vendor.

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

C.1.3. Applicable Standard

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

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

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

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

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

The site certificate specifies a General Electric 7 FA turbine for phase two. PGE has provided information about the installed capacity and heat rate of that turbine. The Council, therefore, bases its calculations to determine gross carbon dioxide emissions on such information. However, PGE has not yet entered into a contract for the purchase of
plant equipment for phase two. As described in Section C.1.2.1, continuing
improvements in the performance of turbines and other equipment mean that, at the time
of equipment purchase and installation, the final installed capacity and heat rate of the
proposed facility may differ from current projections based on a General Electric 7 FA
turbine. The Council, therefore, adopts a two-step process to determine that PGE meets
the applicable CO₂ standard.

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

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

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

C.1.4.1 Step One: The Method of Calculation
For the purposes of demonstrating the calculation of the gross carbon dioxide emissions
for CSPC phase two, the Council uses the nominal generating capacity of 228 MW (net,
with no steam to off-site use) for a General Electric 7 FA turbine, as shown in Table 1.
To calculate estimated offset funds required, the Council uses 8,760 hours of annual
operation on natural gas. Table 1 illustrates the calculations, as does the following text.

The Council then calculates the total carbon dioxide (CO₂) emissions (lb. CO₂) that phase
two will produce using natural gas. The Council multiplies the nominal power of phase
two (228 MW, or 228,000 kW) while operating on natural gas by the annual average
hours of operation (8,760 hr); it then multiplies that product by 30 years to determine the
total net plant output for 30 years (59,918,400,000 kWh). It then multiplies total net
plant output by the heat rate while operating on natural gas (7,148 Btu/kWh) and by the
CO₂ emissions factor for natural gas (0.000117 lb. CO₂/Btu) to determine the total CO₂ emissions (50,110,716,614 lb.).

<table>
<thead>
<tr>
<th>Table 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illustration of Methodology for Determining</td>
</tr>
<tr>
<td>The Monetary Path Payment Requirement</td>
</tr>
<tr>
<td>CSCP Phase Two, No Cogeneration</td>
</tr>
</tbody>
</table>

**Annual Hours of Plant Operation**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total hours (load factor 100%)</td>
<td>8,760</td>
</tr>
</tbody>
</table>

**CO₂ Emissions from Operation on Natural Gas**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominal power (kW) (primary fuel)</td>
<td>228,000</td>
</tr>
<tr>
<td>Total net plant output (kWh for 30 years)</td>
<td>59,918,400,000</td>
</tr>
<tr>
<td>Primary heat rate (Btu/kWh)</td>
<td>7,148</td>
</tr>
<tr>
<td>CO₂ emissions factor (lb./Btu)</td>
<td>0.000117</td>
</tr>
<tr>
<td>Facility CO₂ emissions (lb.)</td>
<td>50,110,716,614</td>
</tr>
<tr>
<td>Facility CO₂ emissions rate (lb./kWh)</td>
<td>0.836316</td>
</tr>
</tbody>
</table>

**Calculation of Offset Funds**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility CO₂ emissions rate (lb./kWh)</td>
<td>0.836316</td>
</tr>
<tr>
<td>Standard (CO₂/kWh)</td>
<td>0.700000</td>
</tr>
<tr>
<td>Excess CO₂ emissions rate (lb. CO₂/kWh)</td>
<td>0.136316</td>
</tr>
<tr>
<td>Total CO₂ emissions that must be mitigated (tons)</td>
<td>4,083,918</td>
</tr>
<tr>
<td>CO₂ mitigation costs per ton of emissions</td>
<td>$0.57</td>
</tr>
<tr>
<td>Sub-Total: CO₂ offset funds required</td>
<td>$2,327,833</td>
</tr>
</tbody>
</table>

**Contracting and Selection Funds**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-Total: Contracting and selection funds required</td>
<td>$128,341</td>
</tr>
</tbody>
</table>

**Total: Full Monetary Path Payment Requirements**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total: Full Monetary Path Payment Requirements</td>
<td>$2,456,174</td>
</tr>
</tbody>
</table>

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

The Council multiplies the total plant output for 30 years by the excess CO₂ emissions rate. Then it divides that product by 2,000 pounds per ton to determine the total tons of CO₂ emissions that the site certificate holder must mitigate (4,083,918 tons).
PGE has selected the "monetary path" provided in ORS 469.503(2)(c)(C) to meet the net CO₂ standard. Under the monetary path, the payment by the site certificate holder of $0.57 is deemed to result in a reduction of one ton of CO₂ emissions. Therefore, the Council multiplies the tons of excess CO₂ emissions by the unit mitigation rate of $0.57 per ton of CO₂ to calculate the sub-total for the offset fund ($2,327,833).

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

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

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

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

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

C.1.5 Means of Securing Required Emissions Reductions

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

The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in
a reduction of one ton of carbon dioxide emissions. The council
shall determine the offset funds using the monetary offset rate and
the level of emissions reduction required to meet the applicable
standards.

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

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

C.1.6. Designation of the Qualified Organization
An applicant or site certificate holder proceeding under ORS 469.503(2)(c)(C) must
designate a qualified organization. The function of the qualified organization is to
receive carbon dioxide offset funds and use them to implement offset programs. PGE
designated the Oregon Climate Trust as the qualified organization.

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

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

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

(iii) Has in effect articles of incorporation that require that offset funds
receive pursuant to this section are used for offsets that will result in the
direct reduction, elimination, sequestration or avoidance of carbon dioxide
emissions, that require that decisions on the use of funds are made by a
body composed of seven voting members of which three are appointed by
the council, three are Oregon residents appointed by the Bullitt Foundation
or an alternative environmental nonprofit organization named by the body,
and one is appointed by the applicants for site certificates that are subject
to paragraph (d) of this subsection and the holders of such site certificates,
and that require nonvoting membership on the decision-making body for
holders of site certificates that have provided funds not yet disbursed
under paragraph (d)(A) of this subsection;

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

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

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

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

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

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

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

(iv) The Oregon Climate Trust filed its articles of incorporation on June 26,
1997. Mr. Peter West, chair of the Oregon Climate Trust, notified the Office of
Energy by letter dated July 22, 1998, that it has selected an accounting firm to
conduct its annual audit. However, the accounting firm recommended to the
Oregon Climate Trust that its first audit should coincide with the first full fiscal
year. The board of the Oregon Climate Trust accepted that recommendation.
Because the Oregon Climate Trust uses a calendar year for its fiscal year, it will not complete its first full fiscal year until December 31, 1998. It notified the Office that it will therefore complete its first annual audit in January 1999. The Council finds that the schedule for the annual audit follows generally accepted accounting procedures.

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

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

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

D. Amendments to Site Certificate

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

D.1. Mandatory Conditions

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

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

The Council agrees with the intent of the changes PGE proposed, but proposes to modify the language to eliminate ambiguity. The ambiguity arises in PGE’s proposal to limit the
application of the condition to Unit 1 (phase one) during the original schedule set forth in
the site certificate. PGE’s additional language clearly relates to phase two if PGE
requests an extension of the completion of construction deadline. However, the PGE’s
proposed condition is silent on the applicability of the original condition to phase two
within the original schedule. Therefore, the Council deletes the proposed reference to
phase one and clarifies the applicability of the new language for phase two and the
sequence of decision-making. The Council also makes formatting and editorial changes
to the proposed condition.

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

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

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

D.2 Construction Commencement and Completion Dates
PGE proposed the following changes to Condition V.A.2(4) relating to requesting an
extension of the construction completion deadline for phase two.

V.A.2. Construction Commencement and Completion Dates

(4) If Applicant requests an extension of the construction completion deadline for
phase two and Applicant does not meet the requirements of paragraph 3
above, the Applicant shall be required to demonstrate that the facility meets
EFSC’s appropriate carbon dioxide emissions standard in order for EFSC to
approve extending the deadline. Applicant will not be exempted from the
need showing under OAR 345-23-010(2) (adopted April 1994). EFSC
anticipates this demonstration of need will be considered a major amendment
under OAR 345-027-070.
The Council adopts PGE’s proposed Condition V.A.2(4) with the following editorial changes:

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

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

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

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

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

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

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

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

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

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

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

The Council makes two substantive changes to PGE's proposed Condition V.A.3(1), as well as several editorial changes and formatting changes. The first substantive change clarifies that this condition relates only to construction of phase two if the Council has granted the site certificate holder an extension of the construction completion deadline.
The second substantive change proposes that PGE provide a bond, letter of credit or escrow account pursuant to ORS 469.503(2)(d). PGE requested the option of providing a guaranty or a letter of credit to meet its monetary path payment requirement. However, it did not propose a third party that would guarantee its obligations. The Council requires a bond, letter of credit or escrow account because these are secure financial instruments that do not require the Council’s prior approval of detailed language that a guaranty would require. Therefore, the Council allows PGE to use one of these instruments in lieu of granting PGE an option of providing an unspecified guaranty. Further, if the site certificate holder places monetary path requirement funds in an escrow account, the Council requires that interest accruing in the escrow account that is equivalent to the 1998 dollar index adjustment be disbursed to the Oregon Climate Trust and that any interest beyond that amount be disbursed to the site certificate holder.

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

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

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

(a) In the event that the Council approves a new site certificate holder, the Council shall approve the bond, letter of credit or escrow account from the new site certificate holder(s) unless the Council finds that the proposed bond, letter of credit or escrow account does not provide comparable security to the bond, letter of credit or escrow account of the current site certificate holder. Such approval of a new bond, letter of credit or escrow account will not require a site certificate amendment. The bond, letter of credit or escrow account shall remain in effect until such time as the site certificate holder has disbursed the full amount of the monetary path payment requirement to the Oregon Climate Trust as provided in ORS 469.503(2)(d)(A).
(b) If the site certificate holder has provided a bond, letter of credit or escrow account prior to commencing construction and if calculations pursuant to Condition V.A.3.(6) demonstrate that the site certificate holder must increase its monetary path payments, the site certificate holder shall increase the bond, letter of credit or escrow account sufficiently to meet the adjusted monetary path payment requirement within the time required by Condition V.A.3.(4)(d). The site certificate holder may reduce the amount of the bond, letter of credit or escrow account commensurate with payments it makes to the Oregon Climate Trust.

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

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

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

(2) The site certificate holder shall disburse to the Oregon Climate Trust offset funds and contracting and selection funds as requested by the Oregon Climate Trust up to the monetary path payment requirement as determined by the calculations set forth in Condition V.A.3.(4) and based on the estimated heat rate and capacity certified pursuant to Condition V.A.3.(5) below (in 1998 dollars) and as adjusted in accordance with the terms of this site certificate.
pursuant to Condition V.A.3.(4)(d). Disbursements shall be made in response to requests from the Oregon Climate Trust in accordance with the requirements of ORS 469.503(2)(d)(A).

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

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

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

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

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

(B) The site certificate holder shall subtract the carbon dioxide standard of 0.7 lb. CO₂/kWh from the CO₂ emissions rate for the unit to determine its excess CO₂ emissions rate (lb. CO₂/kWh):
(C) The site certificate holder shall multiply the total net plant output (kWh) by the unit's excess CO\textsubscript{2} emissions rate (lb. CO\textsubscript{2}/kWh). It shall then divide that product by 2,000 pounds to determine the total tons of CO\textsubscript{2} emissions the site certificate holder must mitigate (tons); then,

(D) The site certificate holder shall multiply the total tons of CO\textsubscript{2} emissions it must mitigate by $0.57 per ton of CO\textsubscript{2} to determine the sub-total for the offset funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) To determine its monetary path payment requirement, the site certificate holder shall add the sub-total for the offset funds and the sub-total for the selection and contracting funds.
(d) When the site certificate holder submits the Year One Test report required in Condition V.A.3.(6), it shall increase its bond, letter of credit or escrow account for the monetary path payment requirement if the calculation using reported data shows that the adjusted monetary path payment requirement exceeds the monetary path payment requirement for which the site certificate holder had provided a bond, letter of credit or escrow account prior to commencing construction, pursuant to Condition V.A.3.(1).

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

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

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

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

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

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

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

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

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

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

(5) Prior to commencement of construction of phase two on an extended construction completion schedule pursuant to Condition V.A.2(4), the site certificate holder shall notify the Council in writing of its final selection of gas turbine vendor and shall submit written design information to the Council sufficient to verify phase two's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions. The report shall also include an affidavit or other evidence that the site certificate holder or a vendor has guaranteed the heat rate.
PGE proposed the following Conditions V.A.3(6) and (7):

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

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

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

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

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

The Office proposed an additional condition relating to cogeneration. The site certificate permits PGE to operate CSACP as a cogeneration project. However, as noted in Section C.1.5 above, PGE does not request any carbon dioxide emissions offset credit for cogeneration. The Office noted that it is necessary to ensure that any cogeneration that does occur for phase two will offset fossil fuel use or will provide steam to a new user that had not previously generated steam. Otherwise, natural gas burned at phase two could offset a biomass fuel instead of a fossil fuel. Under that scenario, the plant would increase carbon dioxide emissions rather than reduce them.
The Office proposed the following Condition V.A.3(8):

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

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

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

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

D.4 Conforming Amendments

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

D.4.1 Project Description

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

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

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

The Council adopts this proposed condition.
D.4.2 Limit on the Use of Distillate Fuel

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

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

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

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

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

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

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

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

XII.1. The CSCP shall not exceed permitted emission levels, total emissions or the allowable amount of distillate fuel use stated in its Air Contaminant Discharge Permit (amended for distillate fuel burning). The CSCP’s use of distillate fuel in its phase one combustion turbine in any year shall not exceed an amount of 10 percent of the expected total fuel use, on a Btu higher heating value basis.
XII.2. PGE shall not use #2 low sulfur distillate fuel oil in its phase one turbine at CSCP prior to receiving an amended Air Contaminant Discharge Permit from the Department of Environmental Quality authorizing it to burn distillate fuel.

D.5 Compliance with the Carbon Dioxide Emissions Standard
With the adoption of the conditions in Sections D.3 and D.4, the Council finds that CSCP meets the carbon dioxide emissions standard, ORS 469.503(2).

E. Compliance with Other Council Standards
OAR 345-27-070(6) sets forth the Council's general standard for review of a request by a site certificate holder for an amendment:

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

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

E.1 Standards Relating to the Applicant

E.1.1.1 Applicant Qualification and Capability, OAR 345-22-010(1)
To meet this paragraph of the standard, the Council must find that:

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

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

Conclusion. The Council finds that PGE has satisfied the requirements of OAR 345-22-010(1).
E.1.1.2 Third-Party Services and Permits, OAR 345-22-010(2)
The standard for organizational, managerial and technical expertise - third party services
and permits, effective November 10, 1994. This paragraph of the standard requires that:

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

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

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

E.1.1.3 Third-Party Services and Permits, OAR 345-22-010(3)
The third paragraph of the standard provides:

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

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

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

E.1.1.4 Financial Assurance Standard, OAR 345-22-050
The financial assurance standard requires the Council to find that:

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

(1) Begins but does not complete construction of the facility; or
(2) Permanently closes the facility before establishing a financial mechanism or instrument, satisfactory to the Council, that will assure funds will be available to adequately retire the facility and restore the site to a useful, non-hazardous condition.

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

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

E.2 Standards Relating to the Site and Structure

E.2.1 Structural Standard, OAR 345-22-020
The structural standard requires the Council to find:

(1) The applicant, through appropriate site specific study, has adequately characterized the site in terms of seismic zone and expected ground response during the maximum credible seismic event; and

(2) The facility can be designed, engineered and constructed adequately to avoid potential dangers to human safety presented by seismic hazards affecting the site, as defined in ORS 455.447(1)(d) and including amplification, that are expected to result from all reasonably probable seismic events.

Discussion. This amendment will not affect any Council finding relating to the structural standard.

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

E.2.2 Soil Protection Standard, OAR 345-22-022
The soil protection standard requires the Council to find “...that the design, construction and operation of the facility, taking into account mitigation, is not likely to result in a significant adverse impact to soils.”

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

Conclusion. The Council finds that CSCP meets the soil protection standard, OAR 345-22-022.
E.2.3 Land Use Standard, OAR 345-22-030(2)(a)

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

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

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

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

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

E.3 Standards Relating to the Impacts of Construction, Operation and Retirement

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

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

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

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

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

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

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

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

E.3.3 Threatened and Endangered Species, OAR 345-22-070
The threatened and endangered species standard requires that the Council find that the design, construction, operation and retirement of the facility, taking into account mitigation be consistent with any applicable conservation program adopted pursuant to ORS 496.172(3) or ORS 564.105(3). If no conservation program applies, the facility must not have the potential to reduce significantly the likelihood of the survival or recovery of any threatened or endangered species listed under ORS 496.172(2) or ORS 564.105(2).

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

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

E.3.4 Scenic and Aesthetic Standard, OAR 345-22-080
The scenic and aesthetic standard requires that the Council find that “the design, construction, operation and retirement of the proposed facility, taking into account mitigation, is not likely to result in significant adverse impact to scenic and aesthetic values identified as significant or important in the applicable federal land management plans or the local land use plan for the site or its vicinity.”

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

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

E.3.5 Historic, Cultural and Archeological Resources Standard, 345-22-090
The historic, cultural and archeological resources standard requires that the Council find that “the design, construction, operation and retirement of the facility, taking into account mitigation, is not likely to result in significant adverse impacts to:

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

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

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

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

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

E.3.6 Recreation Standard, OAR 345-22-100

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

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

Discussion. This amendment will not affect any Council finding relating to the recreation standard.

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

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

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

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

Conclusion. The Council finds that CSCP meets the socio-economic impacts standard, OAR 345-22-110.
E.3.8 Waste Minimization Standard, OAR 345-22-120
The waste minimization standard requires an applicant, "to the extent reasonably practicable...[to] minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, recycle and reuse such wastes. [In addition,] to the extent reasonably practicable, the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility must have minimal adverse impacts on surrounding and adjacent areas."

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

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

E.3.9 Retirement Standard, OAR 345-22-130
The retirement standard requires the Council to find that "the site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following facility retirement."

Discussion. This amendment will not affect any Council finding relating to the retirement standard.

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

E.4 Other Standards

E.4.1 Noise OAR 340-35-035(1)(b)(B)
The Council applies and enforces the Department of Environmental Quality's (DEQ) noise standards for energy facilities under its jurisdiction. The DEQ noise standard, OAR 340-35-035 (1)(b)(B), has two elements. The first element requires that industrial noise sources not increase the noise level by more than 10 dB above existing ambient noise levels. This maximum increase clause is known as the "ambient degradation rule." The second element limits the maximum noise levels that may be caused by the noise source, as measured at noise-sensitive properties. The limits allow a moderately higher level of noise in the daytime than at night.

Discussion. This amendment will not affect any Council finding relating to the noise standard.

Conclusion. The Council finds that CSCP meets the noise standard, OAR 340-35-035(1)(b)(B).
E.5 Other State and Local Regulations Within the Council's Jurisdiction

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

Discussion. This is not affected by the amendment request.

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

Discussion. This is not affected by the amendment request.

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

Discussion. This is not affected by the amendment request.

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

Discussion. This is not affected by the amendment request.

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

F. Conclusions

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

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

/  
/  
/  
/  
/  
/
FINAL ORDER

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


Terry Edvalson
Chair
Energy Facility Siting Council

Notice of the Right to Request Binding Arbitration
ORS 469.409 provides a process to amend an existing site certificate to change from the need for facility standard to the carbon dioxide emissions standard. That section also provides that arbitable disputes regarding the site certificate holder’s compliance with the carbon dioxide standard will be resolved by binding arbitration. Unlike other amendment proceedings, there is no opportunity for a judicial review of the Energy Facility Siting Council’s final order.

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

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

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

/