BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Fourth Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project (Amendment No. 9)

) FINAL ORDER FOR PARTIAL TRANSFER OF SITE CERTIFICATE

Summary
The Energy Facility Siting Council ("Council") approves the request for a partial transfer of the Site Certificate with amendments to the Site Certificate, as noted in this order.

A. Summary and Background of the Request for Partial Transfer of the Site Certificate

Pursuant to Oregon Revised Statutes Chapter 469 and OAR 345-027-0100(6), the Department received from Avista Corporation ("Avista") on October 25, 2004, a request to the Council that it approve the transfer of partial ownership interest in the Coyote Springs Cogeneration Project ("Project"), Phase 2 ("Phase 2"), and to make associated amendments to the Third Amended Thermal Power Plant Site Certificate ("Site Certificate"), as amended by the Council on Nov. 8, 2002, for the Project.

The Project consists of Phase 1, a 241-megawatt natural gas-fired electric generating facility owned by Portland General Electric ("PGE"), and Phase 2, a 280-megawatt, natural gas-fired electric generating facility jointly owned by Avista Corporation and Mirant Oregon, LLC ("Mirant"). The current Site Certificate authorizes Avista and Mirant to construct, operate and retire Phase 2. It also authorizes PGE to construct, operate and retire Phase 1 of the Coyote Springs Cogeneration Project.

Avista proposed to transfer Mirant’s one-half ownership interest in Phase 2 to Avista. As part of the transfer proposal, Avista proposed to amend the Site Certificate to reflect Avista as the sole owner of Phase 2.

The requested transfer would have no effect on PGE or its ability to own and operate Phase 1.

A.1. Name and Address of Transferee
Avista Corporation
1411 East Mission Avenue
Spokane, WA 99220

A.2. Regulatory Background
PGE owns and operates Phase 1 of the Project, which consists of a 241 megawatt, natural gas-fired electric generating facility, located on a 20-acre parcel within the Port of Morrow Industrial Park, in Boardman, Oregon. Phase 1 is described in greater detail in the Council’s
Final Order approving PGE’s original Application for Site Certificate. Phase 1 was constructed and permitted to accommodate the anticipated future development of a second similar generating unit (“Phase 2”), which was constructed immediately adjacent to Phase 1 and which shares and jointly own certain facilities in common with Phase 1. In 2000, the Council approved the transfer of ownership of Phase 2 from PGE to Avista. In 2002, it approved the transfer of one-half ownership interest in Phase 2 to Mirant.

Phase 2, which consists of a 280-megawatt, natural gas-fired electric generating facility, is now owned jointly by Avista and Mirant and operated by PGE. Construction of Phase 2 was completed on July 1, 2003, at which time Phase 2 commenced commercial operation.

The Council issued the original Site Certificate to PGE on September 16, 1994. To date, the Site Certificate has been amended on eight occasions. The Council granted PGE a first amendment to the Site Certificate on December 6, 1996. Amendment No.1 incorporated into the Site Certificate specific conditions that were originally commitments made by PGE in its Site Certificate application and supporting documents. The Council’s order approving the amendment further approved an amendment to incorporate the applicability of then-current OAR 345-27-050 through OAR 345-27-080 and OAR 345-27-095.

The Council granted PGE a second amendment to the Site Certificate on March 7, 1997. Amendment No. 2 allowed PGE to use #2 low-sulfur distillate oil for back-up fuel for the natural gas-fired combustion turbines at Coyote Springs.

The Council granted a third amendment to the Site Certificate on August 28, 1998. Amendment No. 3 removed the Site Certificate conditions relating to development of Phase 2 of the Project that had required PGE to demonstrate either that the facility met the need for facility standard or qualified for an exemption under former OAR 345-23-010(2). In place of the need for facility standard, Amendment No. 3 imposed Site Certificate conditions ensuring compliance with the applicable carbon dioxide (“CO₂”) emissions standard, ORS 469.503(2)(a). In addition, Amendment No. 3 removed the authorization to use #2 low-sulfur distillate oil as back-up fuel for Phase 2.

The Council granted PGE’s fourth amendment to the Site Certificate, with modifications, on October 22, 1998. The Council executed Amendment No. 4 in the form of the "First Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Plant," which incorporated Amendment Nos. 1 through 4. In Amendment No. 4, PGE requested a change to the Site Certificate conditions relating to the construction completion date for Phase 2. The amendment, as granted, extended the construction completion deadline for Phase 2 from September 16, 1999, to September 16, 2001.

The Council granted Amendment No. 5 on June 15, 2000. Amendment No. 5 granted a second extension of the construction completion deadline from September 16, 2001, to September 16, 2003. In addition, it provided the option to use power augmentation in Phase 2 (a "hybrid plant"), as set forth in OAR 345-024-0550, and applied the current CO₂ standard for base
load gas plants to Phase 2. It also clarified that the milestone for completion of construction is the date of commercial operation of the facility.

On June 15, 2000, the Council also granted Amendment No. 6, immediately after granting Amendment No. 5. Amendment No. 6 approved a partial transfer of the Site Certificate from PGE to Coyote Springs 2, LLC, an indirect wholly-owned subsidiary of Avista ("CS2"), and amended the Site Certificate as needed to authorize the partial transfer. Specifically, it transferred to CS2 the rights to own, construct, operate and retire Phase 2 and required that Avista Power, LLC ("Avista Power") hold all authority necessary to ensure that CS2 meets its obligations under the Site Certificate. The Council executed the "Second Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project," which incorporated Amendments No. 1 through No. 6 on June 23, 2000.

In February 2001, the Council granted Amendment No. 7, which transferred ownership interests in CS2 from Avista Power to Avista. Upon the Council’s approval of the transfer, Avista assumed sole authority and responsibility to ensure that construction of Phase 2 complied with the conditions of the Site Certificate. On February 22, 2001, the Council executed the "Second Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project," which incorporated Amendments No. 1 through No. 7.

On November 8, 2002, the Council granted Amendment No. 8, which transferred direct ownership of Phase 2 from CS2 to Avista and Mirant. The transfer placed equal responsibility on Avista and Mirant as one-half co-owners to ensure Phase 2 meets Site Certificate requirements. With the amendment, CS2 ceased to exist as an owner of Phase 2.

Under the current Third Amended Site Certificate, PGE owns, operates and is responsible for Phase 1 while Avista and Mirant, as co-owners, are authorized to construct, operate and retire Phase 2.

B. Procedural History
B.1. Transferees’ Request

B.2. Notice
Pursuant to OAR 345-027-0100(8), on November 12, 2004, the Department mailed a notice of its receipt of the application for the transfer to all persons on the Council’s general mailing list and persons on the special mailing list for the Project. That notice specified that the Council would hold an informational hearing on the request at the Council meeting on December 2, 2004, in Salem, Oregon, and that persons could submit comments in writing to the Council until November 30, 2004.

The Department mailed the request for partial transfer to Council members on November 17, 2004. The Council listed the informational hearing and planned Council decision on the transfer request in its published agenda for the December 2, 2004, meeting, which the
Department mailed to the Council, to the Council’s general mailing list and to the persons on the
special mailing list for the Project on November 22, 2004.

B.3. **Informational Hearing**
The Council conducted the informational hearing as part of its regularly scheduled
meeting on December 2, 2004. Pursuant to OAR 345-027-0100(9), the informational hearing was
not a contested case hearing. The Department presented a summary of the request. No member of
the public made comment at the informational hearing.

B.4. **Public Comments**
The close of the written public comment period was November 30, 2004. The Council
received no written comments.

B.5. **Draft Final Order**
The Department issued a Draft Final Order on November 23, 2004, and mailed it to the
Council on the same day. The Department gave notice to the public in the Council’s published
agenda for the December 2, 2004, meeting, that the Council would both hold an informational
hearing and make a decision on the transfer request at that meeting in Salem.

B.6. **Council Decision Meeting**
The Council held a meeting in Salem on December 2, 2004. At the meeting, the
Department presented information about the Draft Final Order. Following the presentation, the
Council approved the order for Amendment No. 9 in a vote of 5-0 and approved the Fourth
Amendment Site Certificate in a vote of 5-0.

C. **General Findings of Fact Related to the Request for Partial Transfer**

C.1. **Description of the Proposed Transfer**
Avista and Mirant jointly own Phase 2 and hold equal responsibility for ensuring that
Phase 2 meets Site Certificate requirements. As of this date, Mirant’s ultimate parent entity is
undergoing bankruptcy proceedings. As a result, Avista is pursuing approvals in several
regulatory arenas to assume Mirant’s one-half ownership interest in Phase 2, including approval
from the Council. The transfer would place sole responsibility on Avista for ensuring that Phase
2 meets Site Certificate requirements. Under 345-027-0100(1)(a), a Site Certificate amendment
is required when a transfer in ownership results in a request to also transfer responsibility for
meeting Site Certificate requirements.

In its transfer request to the Council, Avista provided a letter from Mirant dated October,
21, 2004, in which Mirant states it has agreed to sell its interest in Phase 2 to Avista and has
consented to the filing of the transfer request. Avista also provided a letter from PGE dated
October 22, 2004, in which PGE states that it has reviewed the transfer request and has consented
to its filing. The requested transfer has no effect on PGE or its ability to own and operate Phase
1.

C.2. **Anticipated Date of Transfer of Ownership**
Avista wishes to transfer Mirant’s one-half ownership interest in Phase 2 as soon as
possible. OAR 345-027-0100(3) and (4) prohibits the parties from closing the transactions prior
to Council approval. Avista must also receive other regulatory approvals prior to any transfer.
C.3. Request for Council Approval

The Council’s rules concerning Site Certificate transfers state:

“A transfer of ownership requires a transfer of the Site Certificate when the person who will have the legal right to possession and control of the site or the facility does not have the authority under the Site Certificate to construct, operate, or retire the facility.” OAR 345-027-0100(1)(a).”

PGE, Avista and Mirant are the current holders of the Site Certificate. PGE holds those rights, and is responsible for those obligations, for all purposes relevant to Phase 1. Avista and Mirant hold those rights, and are responsible for those obligations, for all purposes relevant to Phase 2. Avista and Mirant have joint and several liability as “co-owners” to the State of Oregon for performance of their responsibilities under the Site Certificate.

While Avista, as a “co-owner,” has the authority under the Site Certificate to construct, operate and retire Phase 2, it requests a partial transfer of the site certificate that will recognize Avista as solely liable to the State of Oregon for performance of the responsibilities related to Phase 2 under the Site Certificate. The requested approval to transfer ownership interests in Phase 2 will remove Mirant from the Site Certificate.

Such approval requires the Council to amend the Site Certificate to replace all references to the term “co-owners,” defined as Avista and Mirant, with “Avista.” Such approval also requires the Council to amend the Site Certificate to award Avista the sole authority to construct, operate and retire the facility.

C.4. Requested Amendments to Site Certificate

C.4.1 Applicant Proposals to be Approved by the Council

Avista proposed to amend the Site Certificate largely to replace language referring to “co-owners” with language referring solely to Avista. Avista also proposed clarifying language about the Department of Energy’s name changes over the past few years.

In addition, Avista proposed to amend the Site Certificate as follows. The Council approved amendment of the Site Certificate as described in this section.

I. SITE CERTIFICATION

The Co-owners shall appoint a Project Director to act as a single point of contact between the Co-owners and the Office of Energy. Prior to the transfer of the ownership interest in phase two to the Co-owners, the Co-owners shall provide the Office of Energy with the name and contact information for the initial Project Director. The Co-owners may change the Project Director at any time. Change in the Project Director does not require Council approval or amendment of this Site Certificate. The Co-owners shall notify the Office of Energy in writing of any change in the Project Director within 10 business days of such change. [Amendment 8]
IV. MANDATORY CONDITIONS

The following mandatory conditions are either specifically required by OAR 345-027-0020 or are appropriate under OAR 345-027-0020(4)(o) or OAR 345-027-0023 (Feb. 2000) to address project and site-specific conditions and requirements. These mandatory conditions shall apply in addition to, and should be read together with, the specific additional conditions provided in this Site Certificate to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22, 23 and 24.

(1) PGE, with respect to phase one, and Avista the Co-owners, with respect to phase two, shall comply with all applicable laws, regulations and ordinances of state, federal and local authorities, including all conditions contained in any permits, licenses and approvals issued by such authorities. PGE and Avista the Co-owners shall comply with the conditions of the Site Certificate. The duty of PGE and Avista the Co-owners to comply applies notwithstanding a failure or oversight in the proposed order or Site Certificate to identify all applicable laws, regulations and ordinances. PGE and Avista the Co-owners shall design, construct, operate and retire phases one and two, respectively, in accordance with the requirements of the Oregon Energy Facility Siting Statute, ORS 469.300 et seq., and EFSC rules applicable to the facility. Avista Corporation and Mirant Oregon each assume joint and several liability to the State of Oregon for performance of their responsibilities under the Site Certificate. [rev. Amendment 6, 8, 9]

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(19) The transfer of direct ownership of CS2 to the Co-owners shall not occur before January 1, 2003. The transfer of Mirant Oregon, LLC’s (“Mirant”) ownership interest in phase two to Avista shall not occur until (i) the Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) approves the sale of Mirant’s ownership interest in phase two to Avista, (ii) the waiting period required by 15 U.S.C. § 18a(a) for the consummation of the acquisition of Mirant’s ownership interest in phase two (the “Waiting Period”) has expired or has been terminated by the Federal Trade Commission and the Assistant Attorney General pursuant to 15 U.S.C. § 18a(b)(2), (iii) the Federal Energy Regulatory Commission has issued such approvals as are necessary for Avista to proceed with the acquisition of Mirant’s interest in phase two, and (iv) (a) Avista delivers to the Council evidence of the Bankruptcy Court’s approval of the sale of Mirant’s ownership interest in phase two to Avista, (b) the Waiting Period has expired or the Federal Trade Commission’s website indicates that the Waiting Period has been terminated, (c) Avista provides the EFSC with evidence that the Federal Energy Regulatory Commission has issued the approvals necessary for Avista to proceed with the acquisition of Mirant’s interest in phase two, and (d) Avista delivers to the Council a letter of credit that replaces any existing letter or letters of credit provided by Avista and/or Mirant to satisfy the Mandatory Condition 16.
C.5. **Applicable Regulations**

OAR 345-027-0100(10) directs the Council to approve a transfer if the Council finds that the Transferee meets the following standards:

(a) The transferee complies with the standards described in OAR 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1);

(b) The transferee is lawfully entitled to possession or control of the site or the facility described in the Site Certificate;

(c) The transferee agrees to abide by all the terms and conditions of the Site Certificate to be transferred as determined by the Council; and

(d) The facility complies with the statutes, local government ordinances and Council rules in effect on the date of the Council’s order that the Council decides should apply to the transferred facility based on the transferee’s consent or upon a clear showing of a significant threat to the public health, safety or the environment. In the order, the Council shall include any new or amended Site Certificate conditions necessary to assure compliance with these statutes, local government ordinances and Council rules.

These standards are addressed below in Section D: “Compliance with Applicable Regulations.”

D. **Compliance with Applicable Regulations (OAR 345-027-0100(10))**

**D.1. Compliance with OAR 345-027-0100(10)(a)**

**D.1.1. Organizational Expertise (OAR 345-022-0010)**

The organizational expertise standard has four sections. Subsections (1) and (2) relate to applicant qualifications and capability. Subsections (3) and (4) relate to third-party services and permits.

**a. Applicant Qualification and Capability (OAR 345-022-0010(1) and (2))**

Section (1) of this standard provides that:

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

Discussion. In its February 2001 amendment to the Site Certificate and in its November
2002 amendment to the Site Certificate, the Council found that Avista possessed the expertise
necessary to construct and operate Phase 2. Its qualifications and capability will remain
unchanged under the current proposed Site Certificate amendment.

Because construction of Phase 2 is complete, the portions of OAR 345-022-0010(1) that
require the Council to find that the applicant possesses the organizational expertise to construct
the proposed facility will have been satisfied under the current Site Certificate.

Transferee’s In-House Expertise. Avista’s qualifications and capability remain
unchanged since the Council approved the transfer of ownership interests from Avista Power to

Transferee’s Power Facility Development History. Avista’s qualifications and capability
remain unchanged since the Council approved the transfer of ownership interests from Avista
Power to Avista in February 2001.

Transferee’s Access to and Management of Outside Expertise. With the proposed
transfer, Avista does not intend any current change in its contractual relationship with PGE, the
Operation and Maintenance (“O&M”) operator responsible for managerial and technical
expertise to ensure the safe operation of Phase 2.

Conclusion. The Council finds that the transfer of one-half ownership interest in Phase 2
from Mirant to Avista satisfies the requirements of OAR 345-022-0010(1).

Section (2) of this standard provides that:

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

Discussion. This subsection does not impose a requirement; rather, it provides a
rebuttable presumption of the managerial and technical expertise upon which an applicant may
rely. Avista is not asking to rely on this subsection.

Conclusion. The Council finds that OAR 345-022-0010(2) does not apply to this
transfer.
b. Third-Party Services and Permits (OAR 345-022-0010(3) and (4)).

Section (3) of this standard requires that:

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

Additionally, the final section (4) of the standard provides:

If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the Site Certificate, the Council may issue the Site Certificate subject to the condition that the certificate holder 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. Section V.B.2 of the Site Certificate identifies three third-party permits and services on which the applicant is relying: industrial water supply from the Port of Morrow; use of the Port of Morrow’s industrial wastewater disposal system for process wastewater disposal; and sanitary wastewater disposal into the City of Boardman’s sewage treatment system. Avista and Mirant are currently beneficiaries of these third-party permits and services, and prior to the transfer of Mirant’s interest in Phase 2 to Avista, these third party permits and services will be assigned to Avista with respect to Phase 2. The transfer of ownership interests in Phase 2 will not affect the Project’s ability to continue to comply with the conditions of these permits.

Conclusion. The Council finds that the transfer of one-half ownership interest in Phase 2 from Mirant to Avista satisfies the requirements of OAR 345-022-0010(3) and (4).

D.1.2. Retirement and Financial Assurance (OAR 345-022-0050)

The retirement and financial assurance standard provides:

(1) To issue a Site Certificate, the Council must find that: The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.
(2) The applicant has a reasonable likelihood of obtaining a bond or letter of
credit in a form and amount satisfactory to the Council to restore the site
to a useful, non-hazardous condition.

Further, Council rule OAR 345-027-0020 requires the following mandatory conditions:

The Council shall impose the following conditions in every Site Certificate.
The Council may impose additional conditions.

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(8) Before beginning construction of the facility, the certificate holder shall
submit to the State of Oregon, through the Council, a bond or letter of credit,
satisfactory to the Council, in an amount specified in the Site Certificate to
restore the site to a useful, non-hazardous condition. The certificate holder
shall maintain a bond or letter of credit in effect at all times until the facility
has been retired. The Council may specify different amounts for the bond or
letter of credit during construction and during operation of the facility.

Discussion. The Council currently holds a letter of credit from Avista in the amount of
$1,537,355 that expires on December 31, 2004, and a letter of credit from Mirant in the amount
of $1,526,697 that expires on December 31, 2004. The draw certificates for both companies state
that each company must provide the Council with evidence of a successor letter of credit three
months prior to the expiration date of its current letter of credit. Because of the changes proposed
in Avista’s request, neither company has provided such evidence to the Council. On December 1,
2004, the Department issued a notice to Avista and to Mirant that each company was in violation
of the notice requirement. The letters initiated a 30-day “cure” period in which each company has
the ability to provide the evidence required before the Council can draw on the letters of credit.
That 30-day period expires on December 31, 2004. The Department determined such notice to be
prudent despite the fact that it anticipates that the security requirement will be satisfied before the
expiration dates of the current letters.

If the proposed transfer of Mirant’s one-half interest in Phase 2 is completed on or prior to
December 31, 2004, Avista proposed that the Council release each of the existing letters of credit
posted by Avista and Mirant in exchange for a single letter of credit from Avista in the amount of
$3,140,946, the amount needed to satisfy the Council’s regulatory requirements for the year
2005. Avista anticipates that the new letter of credit will be in substantially the same form as the
existing $1,537,355 letter of credit issued by the Union Bank of California and currently posted
with the Council and will be issued by the same financial institution. If the proposed transfer of
Mirant’s one-half interest in Phase 2 is completed after December 31, 2004, Avista anticipates
that Mirant and Avista will each post new letters of credit in the same form as each of their
existing letters of credit and otherwise satisfying the applicable requirements. Upon the
subsequent closing of the transfer, Avista proposed that the Council release each of the new
letters of credit posted by Avista and Mirant, and Avista will post a single letter of credit in the
required amount to satisfy the Council’s regulatory requirements.

The Council has on several previous occasions found that Avista satisfied the requirements of
OAR 345-022-0050. The transfer of partial ownership of Phase 2 from Mirant to Avista does not change this finding.

Conclusion. The Council approved the transfer on December 2, 2004. The Council finds that, if the transfer from Mirant to Avista closes before December 31, 2004, Avista must provide a letter of credit in the amount of $3,140,946 and issued by the Union Bank of California. The Council finds that if the transfer transaction does not close before December 31, 2004, the provisions of Condition 16 as written prior to this order remain in full force and effect.

The Council finds that if the transfer transaction closes after December 31, 2004, Avista must then provide a single letter of credit in the amount of $3,140,946 issued by Union Bank of California. Upon receipt of the substitute letter of credit for the full amount from Avista, the Council will release the letters of credit from Mirant and Avista as co-owners.

The Council finds that the transfer of one-half ownership interest in Phase 2 from Mirant to Avista satisfies the requirements of OAR 345-022-0050.

D.1.3. CO₂ Emissions Standard (OAR 345-024-0710(1))

The relevant portion of the cited standard provides,

If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a bond or letter of credit in a form reasonably acceptable to the Council to ensure the payment of the offset funds and the additional funds required under section (4).***

Discussion. CS2 provided financial assurance for the calculated carbon dioxide emissions from Phase 2 in the form of a letter of credit naming The Climate Trust as beneficiary. The Council approved the form and amount of the letter of credit ($2,382,207.96) on November 17, 2000. Fleet National Bank issued the letter of credit on January 3, 2001. That letter of credit has been fully disbursed to The Climate Trust as provided for in OAR 345-024-0710. However, Avista may owe the Climate Trust funds in the future depending on plant performance, including the amount of duct burning employed. The Site Certificate requires Avista to demonstrate that it has assumed sole responsibility of the Memorandum of Agreement with The Climate Trust.

Conclusion. The Council finds that the transfer of one-half ownership interest in Phase 2 from Mirant to Avista satisfies the requirements of OAR 345-024-0710(1).

D.2. Compliance with OAR 345-027-0100(10)(b): Transferee's Right to Possession and Control of Site and Facility

Avista and Mirant each own 50 percent of Phase 2 of the Project. After the proposed transfer of ownership, Avista will be the sole party "lawfully entitled to possession or control of the site or the facility described in the Site Certificate" as it applies to Phase 2 as required by OAR 345-027-0100(10).
Conclusion. The Council finds that the transfer of one-half ownership interest in Phase 2 from Mirant to Avista satisfies the requirements of OAR 345-027-0100(10)(b).

D.3. Compliance with OAR 345-027-0100(10)(c): Compliance with Site Certificate

The Site Certificate requires the facility to be designed, constructed, operated and retired as described more specifically in various conditions in the Site Certificate. The only substantial changes that will be brought about by the proposed transfer of Phase 2’s ownership are identified in the Request for Partial Transfer submitted by Avista and described with specificity in this order.

Avista is able and agrees to assume all of Mirant’s obligations under the Site Certificate upon Council approval of the transfer of partial ownership interest in Phase 2 from Mirant to Avista.

Conclusion. The Council finds that the transfer of one-half ownership interest in Phase 2 from Mirant to Avista satisfies the requirements of OAR 345-027-0100(10)(c).

D.4. Compliance with OAR 345-027-0100(10)(d): Compliance with Other Statutes, Ordinances, and Council Rules

In its request, Avista stated that it had identified no other new or existing statutes, local government ordinances, or Council rules that are applicable to this Site Certificate.

The Council considered and adopted amendments in Amendment No. 5 (June 2000) that bring the Site Certificate up to date with current Council standards. The Council identified no other new or existing statutes, local government ordinances, or Council rules that it proposed should be applicable to this Site Certificate as a result of the requested change in ownership. The Council’s review of the transfer request identified no significant threat to the public health, safety, or environment that would require new conditions for the Site Certificate.

Conclusion. The Council finds that the facility complies with the statutes, local government ordinances and Council rules in effect on the date of this order and that no new conditions are required to satisfy OAR 345-027-0100(10)(d).

E. Conclusions about the Request for Partial Transfer and Amendment

The Council finds that the Request for Partial Transfer of Site Certificate, to transfer one-half ownership interest in Phase 2 from Mirant to Avista, is consistent with current Council rules, with other applicable state statutes and rules, and with statewide 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 considered state statutes, administrative rules, and local government ordinances in effect at this time, and whether the facility complies with all Council standards in effect at this time.

Based on the above findings, reasoning and conclusions, the Council amends the Third

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2 As discussed previously, the combining of the Financial Assurance and Retirement standards under the Council’s April 2002 rulemaking provided no substantive changes and is not an issue here.
Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project as Avista requested in its Request for Partial Transfer of Site Certificate for the Coyote Springs Cogeneration Project and amended by the Council, and as shown in the Council’s attached proposed Fourth Amended Site Certificate (incorporating Amendments #1 through #9).
FINAL ORDER

Based on the above findings of fact, discussion and conclusions of law, the Energy Facility Siting Council approves Avista’s Request for Partial Transfer of Site Certificate (Transfer of Phase Two Ownership Interest in Site Certificate) for the Coyote Springs Cogeneration Project. The Council Chair shall execute the Site Certificate amendment in the form of the “Fourth Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project,” which shall incorporate Amendments No. 1 through No. 9.


Karen H. Green
Chair
Energy Facility Siting Council

Notice of the Right to Appeal
You have the right to appeal this order to the Oregon Supreme Court pursuant to Oregon Revised Statutes (ORS) 469.405. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.