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BEFORE THE  
ENERGY FACILITY SITING COUNCIL  
OF THE STATE OF OREGON

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In the Matter of the Fourth Amended ) FINAL ORDER FOR  
Thermal Power Plant Site Certificate for ) PARTIAL TRANSFER OF  
the Coyote Springs Cogeneration Project ) SITE CERTIFICATE  
(Amendment No. 9) )

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**Summary**

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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.

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

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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.

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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

1 Final Order approving PGE's original Application for Site Certificate. Phase 1 was constructed  
2 and permitted to accommodate the anticipated future development of a second similar generating  
3 unit ("Phase 2"), which was constructed immediately adjacent to Phase 1 and which shares and  
4 jointly own certain facilities in common with Phase 1. In 2000, the Council approved the transfer  
5 of ownership of Phase 2 from PGE to Avista. In 2002, it approved the transfer of one-half  
6 ownership interest in Phase 2 to Mirant.

7  
8 Phase 2, which consists of a 280-megawatt, natural gas-fired electric generating facility,  
9 is now owned jointly by Avista and Mirant and operated by PGE. Construction of Phase 2 was  
10 completed on July 1, 2003, at which time Phase 2 commenced commercial operation.

11  
12 The Council issued the original Site Certificate to PGE on September 16, 1994. To date,  
13 the Site Certificate has been amended on eight occasions. The Council granted PGE a first  
14 amendment to the Site Certificate on December 6, 1996. Amendment No.1 incorporated into the  
15 Site Certificate specific conditions that were originally commitments made by PGE in its Site  
16 Certificate application and supporting documents. The Council's order approving the amendment  
17 further approved an amendment to incorporate the applicability of then-current OAR 345-27-050  
18 through OAR 345-27-080 and OAR 345-27-095.

19  
20 The Council granted PGE a second amendment to the Site Certificate on March 7, 1997.  
21 Amendment No. 2 allowed PGE to use #2 low-sulfur distillate oil for back-up fuel for the natural  
22 gas-fired combustion turbines at Coyote Springs.

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

32  
33 The Council granted PGE's fourth amendment to the Site Certificate, with modifications,  
34 on October 22, 1998. The Council executed Amendment No. 4 in the form of the "First Amended  
35 Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Plant," which  
36 incorporated Amendment Nos. 1 through 4. In Amendment No. 4, PGE requested a change to the  
37 Site Certificate conditions relating to the construction completion date for Phase 2. The  
38 amendment, as granted, extended the construction completion deadline for Phase 2 from  
39 September 16, 1999, to September 16, 2001.

40  
41 The Council granted Amendment No. 5. on June 15, 2000. Amendment No. 5 granted a  
42 second extension of the construction completion deadline from September 16, 2001, to  
43 September 16, 2003. In addition, it provided the option to use power augmentation in Phase 2 (a  
44 "hybrid plant"), as set forth in OAR 345-024-0550, and applied the current CO<sub>2</sub> standard for base

1 load gas plants to Phase 2. It also clarified that the milestone for completion of construction is the  
2 date of commercial operation of the facility.

3  
4 On June 15, 2000, the Council also granted Amendment No. 6, immediately after  
5 granting Amendment No. 5. Amendment No. 6 approved a partial transfer of the Site Certificate  
6 from PGE to Coyote Springs 2, LLC, an indirect wholly-owned subsidiary of Avista ("CS2"),  
7 and amended the Site Certificate as needed to authorize the partial transfer. Specifically, it  
8 transferred to CS2 the rights to own, construct, operate and retire Phase 2 and required that  
9 Avista Power, LLC ("Avista Power") hold all authority necessary to ensure that CS2 meet its  
10 obligations under the Site Certificate. The Council executed the "Second Amended Thermal  
11 Power Plant Site Certificate for the Coyote Springs Cogeneration Project," which incorporated  
12 Amendments No. 1 through No. 6 on June 23, 2000.

13  
14 In February 2001, the Council granted Amendment No. 7, which transferred ownership  
15 interests in CS2 from Avista Power to Avista. Upon the Council's approval of the transfer,  
16 Avista assumed sole authority and responsibility to ensure that construction of Phase 2 complied  
17 with the conditions of the Site Certificate. On February 22, 2001, the Council executed the  
18 "Second Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration  
19 Project," which incorporated Amendments No. 1 through No. 7.

20  
21 On November 8, 2002, the Council granted Amendment No. 8, which transferred direct  
22 ownership of Phase 2 from CS2 to Avista and Mirant. The transfer placed equal responsibility on  
23 Avista and Mirant as one-half co-owners to ensure Phase 2 meets Site Certificate requirements.  
24 With the amendment, CS2 ceased to exist as an owner of Phase 2.

25  
26 Under the current Third Amended Site Certificate, PGE owns, operates and is responsible  
27 for Phase 1 while Avista and Mirant, as co-owners, are authorized to construct, operate and retire  
28 Phase 2.

29  
30 **B. Procedural History**

31 **B.1. Transferees' Request**

32 On Oct. 25, 2004, the Department received Avista's request for partial transfer of the  
33 Project's Site Certificate, dated Oct. 22, 2004.

34  
35 **B.2. Notice**

36 Pursuant to OAR 345-027-0100(8), on November 12, 2004, the Department mailed a  
37 notice of its receipt of the application for the transfer to all persons on the Council's general  
38 mailing list and persons on the special mailing list for the Project. That notice specified that the  
39 Council would hold an informational hearing on the request at the Council meeting on December  
40 2, 2004, in Salem, Oregon, and that persons could submit comments in writing to the Council  
41 until November 30, 2004.

42  
43 The Department mailed the request for partial transfer to Council members on November  
44 17, 2004. The Council listed the informational hearing and planned Council decision on the  
45 transfer request in its published agenda for the December 2, 2004, meeting, which the

1 Department mailed to the Council, to the Council's general mailing list and to the persons on the  
2 special mailing list for the Project on November 22, 2004.  
3

4 **B.3. Informational Hearing**

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

10 **B.4. Public Comments**

11 The close of the written public comment period was November 30, 2004. The Council  
12 received no written comments.  
13

14 **B.5. Draft Final Order**

15 The Department issued a Draft Final Order on November 23, 2004, and mailed it to the  
16 Council on the same day. The Department gave notice to the public in the Council's published  
17 agenda for the December 2, 2004, meeting, that the Council would both hold an informational  
18 hearing and make a decision on the transfer request at that meeting in Salem.  
19

20 **B.6. Council Decision Meeting**

21 The Council held a meeting in Salem on December 2, 2004. At the meeting, the  
22 Department presented information about the Draft Final Order. Following the presentation, the  
23 Council approved the order for Amendment No. 9 in a vote of 5-0 and approved the Fourth  
24 Amendment Site Certificate in a vote of 5-0.  
25

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

27 **C.1. Description of the Proposed Transfer**

28 Avista and Mirant jointly own Phase 2 and hold equal responsibility for ensuring that  
29 Phase 2 meets Site Certificate requirements. As of this date, Mirant's ultimate parent entity is  
30 undergoing bankruptcy proceedings. As a result, Avista is pursuing approvals in several  
31 regulatory arenas to assume Mirant's one-half ownership interest in Phase 2, including approval  
32 from the Council. The transfer would place sole responsibility on Avista for ensuring that Phase  
33 2 meets Site Certificate requirements. Under 345-027-0100(1)(a), a Site Certificate amendment  
34 is required when a transfer in ownership results in a request to also transfer responsibility for  
35 meeting Site Certificate requirements.  
36

37 In its transfer request to the Council, Avista provided a letter from Mirant dated October,  
38 21, 2004, in which Mirant states it has agreed to sell its interest in Phase 2 to Avista and has  
39 consented to the filing of the transfer request. Avista also provided a letter from PGE dated  
40 October 22, 2004, in which PGE states that it has reviewed the transfer request and has consented  
41 to its filing. The requested transfer has no effect on PGE or its ability to own and operate Phase  
42 1.  
43

44 **C.2. Anticipated Date of Transfer of Ownership**

45 Avista wishes to transfer Mirant's one-half ownership interest in Phase 2 as soon as  
46 possible. OAR 345-027-0100(3) and (4) prohibits the parties from closing the transactions prior  
47 to Council approval. Avista must also receive other regulatory approvals prior to any transfer.

1 **C.3. Request for Council Approval**

2 The Council's rules concerning Site Certificate transfers state:

3  
4 "A transfer of ownership requires a transfer of the Site Certificate when the person who  
5 will have the legal right to possession and control of the site or the facility does not have  
6 the authority under the Site Certificate to construct, operate, or retire the facility." OAR  
7 345-027-0100(1)(a)."  
8

9 PGE, Avista and Mirant are the current holders of the Site Certificate. PGE holds those  
10 rights, and is responsible for those obligations, for all purposes relevant to Phase 1. Avista and  
11 Mirant hold those rights, and are responsible for those obligations, for all purposes relevant to  
12 Phase 2. Avista and Mirant have joint and several liability as "co-owners" to the State of Oregon  
13 for performance of their responsibilities under the Site Certificate.  
14

15 While Avista, as a "co-owner," has the authority under the Site Certificate to construct,  
16 operate and retire Phase 2, it requests a partial transfer of the site certificate that will recognize  
17 Avista as solely liable to the State of Oregon for performance of the responsibilities related to  
18 Phase 2 under the Site Certificate. The requested approval to transfer ownership interests in  
19 Phase 2 will remove Mirant from the Site Certificate.  
20

21 Such approval requires the Council to amend the Site Certificate to replace all references  
22 to the term "co-owners," defined as Avista and Mirant, with "Avista." Such approval also  
23 requires the Council to amend the Site Certificate to award Avista the sole authority to construct,  
24 operate and retire the facility.  
25

26 **C.4. Requested Amendments to Site Certificate**

27 **C.4.1 Applicant Proposals to be Approved by the Council**

28 Avista proposed to amend the Site Certificate largely to replace language referring to "co-  
29 owners" with language referring solely to Avista. Avista also proposed clarifying language about  
30 the Department of Energy's name changes over the past few years.  
31

32 In addition, Avista proposed to amend the Site Certificate as follows. The Council  
33 approved amendment of the Site Certificate as described in this section.  
34

35 **I. SITE CERTIFICATION**

36  
37 ~~E. The Co-owners shall appoint a Project Director to act as a single point of contact~~  
38 ~~between the Co-owners and the Office of Energy. Prior to the transfer of the~~  
39 ~~ownership interest in phase two to the Co-owners, the Co-owners shall provide the~~  
40 ~~Office of Energy with the name and contact information for the initial Project~~  
41 ~~Director. The Co-owners may change the Project Director at any time. Change in the~~  
42 ~~Project Director does not require Council approval or amendment of this Site~~  
43 ~~Certificate. The Co-owners shall notify the Office of Energy in writing of any change~~  
44 ~~in the Project Director within 10 business days of such change. [Amendment 8]~~  
45

1 IV. MANDATORY CONDITIONS  
2

3 The following mandatory conditions are either specifically required by OAR 345-027-  
4 0020 or are appropriate under OAR 345-027-0020(4)(o) or OAR 345-027-0023 (Feb.  
5 2000) to address project and site-specific conditions and requirements. These  
6 mandatory conditions shall apply in addition to, and should be read together with, the  
7 specific additional conditions provided in this Site Certificate to ensure compliance  
8 with the siting standards of OAR Chapter 345, Divisions 22, 23 and 24.  
9

10 (1) PGE, with respect to phase one, and Avista ~~the Co-owners~~, with respect to  
11 phase two, shall comply with all applicable laws, regulations and ordinances of  
12 state, federal and local authorities, including all conditions contained in any  
13 permits, licenses and approvals issued by such authorities. PGE and Avista ~~the~~  
14 ~~Co-owners~~ shall comply with the conditions of the Site Certificate. The duty of  
15 PGE and Avista ~~the Co-owners~~ to comply applies notwithstanding a failure or  
16 oversight in the proposed order or Site Certificate to identify all applicable laws,  
17 regulations and ordinances. PGE and Avista ~~the Co-owners~~ shall design,  
18 construct, operate and retire phases one and two, respectively, in accordance with  
19 the requirements of the Oregon Energy Facility Siting Statute, ORS 469.300 et  
20 seq., and EFSC rules applicable to the facility. ~~Avista Corporation and Mirant~~  
21 ~~Oregon each assume joint and several liability to the State of Oregon for~~  
22 ~~performance of the responsibilities of the Co-owners under the Site Certificate.~~  
23 [rev. Amendment 6, 8, 9]  
24

25 \*\*\*\*\*  
26

27 (19) ~~The transfer of direct ownership of CS2 to the Co-owners shall not occur~~  
28 ~~before January 1, 2003. The transfer of Mirant Oregon, LLC's ("Mirant")~~  
29 ownership interest in phase two to Avista shall not occur until (i) the Bankruptcy  
30 Court for the Northern District of Texas (the "Bankruptcy Court") approves the  
31 sale of Mirant's ownership interest in phase two to Avista, (ii) the waiting period  
32 required by 15 U.S.C. § 18a(a) for the consummation of the acquisition of  
33 Mirant's ownership interest in phase two (the "Waiting Period") has expired or  
34 has been terminated by the Federal Trade Commission and the Assistant Attorney  
35 General pursuant to 15 U.S.C. § 18a(b)(2), (iii) the Federal Energy Regulatory  
36 Commission has issued such approvals as are necessary for Avista to proceed with  
37 the acquisition of Mirant's interest in phase two, and (iv) (a) Avista delivers to the  
38 Council evidence of the Bankruptcy Court's approval of the sale of Mirant's  
39 ownership interest in phase two to Avista, (b) the Waiting Period has expired or  
40 the Federal Trade Commission's website indicates that the Waiting Period has  
41 been terminated, (c) Avista provides the EFSC with evidence that the Federal  
42 Energy Regulatory Commission has issued the approvals necessary for Avista to  
43 proceed with the acquisition of Mirant's interest in phase two, and (d) Avista  
44 delivers to the Council a letter of credit that replaces any existing letter or letters  
45 of credit provided by Avista and/or Mirant to satisfy the Mandatory Condition 16.

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2  
3 **C.5. Applicable Regulations**

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

6  
7 (a) The transferee complies with the standards described in OAR  
8 345-022-0010, OAR 345-022-0050 and, if applicable, OAR  
9 345-024-0710(1);

10  
11 (b) The transferee is lawfully entitled to possession or control of the site or  
12 the facility described in the Site Certificate;

13  
14 (c) The transferee agrees to abide by all the terms and conditions of the Site  
15 Certificate to be transferred as determined by the Council; and

16  
17 (d) The facility complies with the statutes, local government ordinances and  
18 Council rules in effect on the date of the Council's order that the Council  
19 decides should apply to the transferred facility based on the transferee's  
20 consent or upon a clear showing of a significant threat to the public health,  
21 safety or the environment. In the order, the Council shall include any new or  
22 amended Site Certificate conditions necessary to assure compliance with  
23 these statutes, local government ordinances and Council rules.  
24

25 These standards are addressed below in Section D: "Compliance with Applicable  
26 Regulations."

27  
28 **D. Compliance with Applicable Regulations (OAR 345-027-0100(10))**

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

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

31 The organizational expertise standard has four sections. Subsections (1) and (2) relate to  
32 applicant qualifications and capability. Subsections (3) and (4) relate to third-party services and  
33 permits.  
34

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

36 Section (1) of this standard provides that:

37  
38 To issue a Site Certificate, the Council must find that the applicant has the  
39 organizational expertise to construct, operate and retire the proposed facility  
40 in compliance with Council standards and conditions of the Site Certificate.  
41 To conclude that the applicant has this expertise, the Council must find that  
42 the applicant has demonstrated the ability to design, construct and operate the  
43 proposed facility in compliance with Site Certificate conditions and in a  
44 manner that protects public health and safety and has demonstrated the ability  
45 to restore the site to a useful, non-hazardous condition. The Council may

1 consider the applicant's experience, the applicant's access to technical  
2 expertise and the applicants' past performance in constructing, operating and  
3 retiring other facilities, including, but not limited to, the number and severity  
4 of regulatory citations issued to the applicant.  
5

6 **Discussion.** In its February 2001 amendment to the Site Certificate and in its November  
7 2002 amendment to the Site Certificate, the Council found that Avista possessed the expertise  
8 necessary to construct and operate Phase 2. Its qualifications and capability will remain  
9 unchanged under the current proposed Site Certificate amendment.  
10

11 Because construction of Phase 2 is complete, the portions of OAR 345-022-0010(1) that  
12 require the Council to find that the applicant possesses the organizational expertise to construct  
13 the proposed facility will have been satisfied under the current Site Certificate.  
14

15 Transferee's In-House Expertise. Avista's qualifications and capability remain  
16 unchanged since the Council approved the transfer of ownership interests from Avista Power to  
17 Avista in February 2001.  
18

19 Transferee's Power Facility Development History. Avista's qualifications and capability  
20 remain unchanged since the Council approved the transfer of ownership interests from Avista  
21 Power to Avista in February 2001.  
22

23 Transferee's Access to and Management of Outside Expertise. With the proposed  
24 transfer, Avista does not intend any current change in its contractual relationship with PGE, the  
25 Operation and Maintenance ("O&M") operator responsible for managerial and technical  
26 expertise to ensure the safe operation of Phase 2.  
27

28 **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
29 from Mirant to Avista satisfies the requirements of OAR 345-022-0010(1).  
30

31 Section (2) of this standard provides that:  
32

33 The Council may base its findings under section (1) on a rebuttable  
34 presumption that an applicant has organizational, managerial and technical  
35 expertise, if the applicant has an ISO 9000 or ISO 14000 certified program  
36 and proposes to design, construct and operate the facility according to that  
37 program.  
38

39 **Discussion.** This subsection does not impose a requirement; rather, it provides a  
40 rebuttable presumption of the managerial and technical expertise upon which an applicant may  
41 rely. Avista is not asking to rely on this subsection.  
42

43 **Conclusion.** The Council finds that OAR 345-022-0010(2) does not apply to this  
44 transfer.  
45

1       **b.       Third-Party Services and Permits (OAR 345-022-0010(3) and (4)).**

2       Section (3) of this standard requires that:

3  
4           If the applicant does not itself obtain a state or local government permit or  
5           approval for which the Council would ordinarily determine compliance but  
6           instead relies on a permit or approval issued to a third party, the Council, to issue  
7           a Site Certificate, must find that the third party has, or has a reasonable likelihood  
8           of obtaining, the necessary permit or approval, and that the applicant has, or has  
9           a reasonable likelihood of entering into, a contractual or other arrangement with  
10          the third party for access to the resource or service secured by that permit or  
11          approval.

12  
13       Additionally, the final section (4) of the standard provides:

14  
15           If the applicant relies on a permit or approval issued to a third party and the third  
16           party does not have the necessary permit or approval at the time the Council  
17           issues the Site Certificate, the Council may issue the Site Certificate subject to  
18           the condition that the certificate holder may not commence construction or  
19           operation as appropriate until the third party has obtained the necessary permit  
20           or approval and the applicant has a contract or other arrangement for access to the  
21           resource or service secured by that permit or approval.

22  
23       **Discussion.** Section V.B.2 of the Site Certificate identifies three third-party permits and  
24       services on which the applicant is relying: industrial water supply from the Port of Morrow; use  
25       of the Port of Morrow's industrial wastewater disposal system for process wastewater disposal;  
26       and sanitary wastewater disposal into the City of Boardman's sewage treatment system. Avista  
27       and Mirant are currently beneficiaries of these third-party permits and services, and prior to the  
28       transfer of Mirant's interest in Phase 2 to Avista, these third party permits and services will be  
29       assigned to Avista with respect to Phase 2. The transfer of ownership interests in Phase 2 will not  
30       affect the Project's ability to continue to comply with the conditions of these permits.

31  
32       **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
33       from Mirant to Avista satisfies the requirements of OAR 345-022-0010(3) and (4).

34  
35       **D.1.2. Retirement and Financial Assurance (OAR 345-022-0050)<sup>1</sup>**

36       The retirement and financial assurance standard provides:

- 37  
38           (1) To issue a Site Certificate, the Council must find that: The site, taking  
39           into account mitigation, can be restored adequately to a useful, non-  
40           hazardous condition following permanent cessation of construction or  
41           operation of the facility.

- 1 (2) The applicant has a reasonable likelihood of obtaining a bond or letter of  
2 credit in a form and amount satisfactory to the Council to restore the site  
3 to a useful, non-hazardous condition.  
4

5 Further, Council rule OAR 345-027-0020 requires the following mandatory conditions:  
6

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

9 \*\*\*

- 10 (8) Before beginning construction of the facility, the certificate holder shall  
11 submit to the State of Oregon, through the Council, a bond or letter of credit,  
12 satisfactory to the Council, in an amount specified in the Site Certificate to  
13 restore the site to a useful, non-hazardous condition. The certificate holder  
14 shall maintain a bond or letter of credit in effect at all times until the facility  
15 has been retired. The Council may specify different amounts for the bond or  
16 letter of credit during construction and during operation of the facility.  
17

18 **Discussion.** The Council currently holds a letter of credit from Avista in the amount of  
19 \$1,537,355 that expires on December 31, 2004, and a letter of credit from Mirant in the amount  
20 of \$1,526,697 that expires on December 31, 2004. The draw certificates for both companies state  
21 that each company must provide the Council with evidence of a successor letter of credit three  
22 months prior to the expiration date of its current letter of credit. Because of the changes proposed  
23 in Avista's request, neither company has provided such evidence to the Council. On December 1,  
24 2004, the Department issued a notice to Avista and to Mirant that each company was in violation  
25 of the notice requirement. The letters initiated a 30-day "cure" period in which each company has  
26 the ability to provide the evidence required before the Council can draw on the letters of credit.  
27 That 30-day period expires on December 31, 2004. The Department determined such notice to be  
28 prudent despite the fact that it anticipates that the security requirement will be satisfied before the  
29 expiration dates of the current letters.  
30

31 If the proposed transfer of Mirant's one-half interest in Phase 2 is completed on or prior to  
32 December 31, 2004, Avista proposed that the Council release each of the existing letters of credit  
33 posted by Avista and Mirant in exchange for a single letter of credit from Avista in the amount of  
34 \$3,140,946, the amount needed to satisfy the Council's regulatory requirements for the year  
35 2005. Avista anticipates that the new letter of credit will be in substantially the same form as the  
36 existing \$1,537,355 letter of credit issued by the Union Bank of California and currently posted  
37 with the Council and will be issued by the same financial institution. If the proposed transfer of  
38 Mirant's one-half interest in Phase 2 is completed after December 31, 2004, Avista anticipates  
39 that Mirant and Avista will each post new letters of credit in the same form as each of their  
40 existing letters of credit and otherwise satisfying the applicable requirements. Upon the  
41 subsequent closing of the transfer, Avista proposed that the Council release each of the new  
42 letters of credit posted by Avista and Mirant, and Avista will post a single letter of credit in the  
43 required amount to satisfy the Council's regulatory requirements.  
44

45 The Council has on several previous occasions found that Avista satisfied the requirements of

1 OAR 345-022-0050. The transfer of partial ownership of Phase 2 from Mirant to Avista does not  
2 change this finding.

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

9  
10 The Council finds that if the transfer transaction closes after December 31, 2004, Avista must  
11 then provide a single letter of credit in the amount of \$3,140,946 issued by Union Bank of  
12 California. Upon receipt of the substitute letter of credit for the full amount from Avista, the  
13 Council will release the letters of credit from Mirant and Avista as co-owners.

14  
15 The Council finds that the transfer of one-half ownership interest in Phase 2 from Mirant to  
16 Avista satisfies the requirements of OAR 345-022-0050.

17  
18 **D.1.3. CO<sub>2</sub> Emissions Standard (OAR 345-024-0710(1))**

19 The relevant portion of the cited standard provides,

20  
21 If the applicant elects to meet the applicable carbon dioxide emissions  
22 standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-  
23 0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a  
24 bond or letter of credit in a form reasonably acceptable to the Council to  
25 ensure the payment of the offset funds and the additional funds required  
26 under section (4).\*\*\*

27  
28 **Discussion.** CS2 provided financial assurance for the calculated carbon dioxide  
29 emissions from Phase 2 in the form of a letter of credit naming The Climate Trust as beneficiary.  
30 The Council approved the form and amount of the letter of credit (\$2,382,207.96) on November  
31 17, 2000. Fleet National Bank issued the letter of credit on January 3, 2001. That letter of credit  
32 has been fully disbursed to The Climate Trust as provided for in OAR 345-024-0710. However,  
33 Avista may owe the Climate Trust funds in the future depending on plant performance, including  
34 the amount of duct burning employed. The Site Certificate requires Avista to demonstrate that it  
35 has assumed sole responsibility of the Memorandum of Agreement with The Climate Trust.

36  
37 **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
38 from Mirant to Avista satisfies the requirements of OAR 345-024-0710(1).

39  
40 **D.2. Compliance with OAR 345-027-0100(10)(b): Transferee's Right to Possession and**  
41 **Control of Site and Facility**

42 Avista and Mirant each own 50 percent of Phase 2 of the Project. After the proposed  
43 transfer of ownership, Avista will be the sole party "lawfully entitled to possession or control of  
44 the site or the facility described in the Site Certificate" as it applies to Phase 2 as required by  
45 OAR 345-027-0100(10).

1           **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
2 from Mirant to Avista satisfies the requirements of OAR 345-027-0100(10)(b).  
3

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

5           The Site Certificate requires the facility to be designed, constructed, operated and retired  
6 as described more specifically in various conditions in the Site Certificate. The only substantial  
7 changes that will be brought about by the proposed transfer of Phase 2's ownership are identified  
8 in the Request for Partial Transfer submitted by Avista and described with specificity in this  
9 order.  
10

11           Avista is able and agrees to assume all of Mirant's obligations under the Site Certificate  
12 upon Council approval of the transfer of partial ownership interest in Phase 2 from Mirant to  
13 Avista.  
14

15           **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
16 from Mirant to Avista satisfies the requirements of OAR 345-027-0100(10)(c).  
17

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

20           In its request, Avista stated that it had identified no other new or existing statutes, local  
21 government ordinances, or Council rules that are applicable to this Site Certificate.  
22

23           The Council considered and adopted amendments in Amendment No. 5 (June 2000) that  
24 bring the Site Certificate up to date with current Council standards.<sup>2</sup> The Council identified no  
25 other new or existing statutes, local government ordinances, or Council rules that it proposed  
26 should be applicable to this Site Certificate as a result of the requested change in ownership. The  
27 Council's review of the transfer request identified no significant threat to the public health,  
28 safety, or environment that would require new conditions for the Site Certificate.  
29

30           **Conclusion.** The Council finds that the facility complies with the statutes, local  
31 government ordinances and Council rules in effect on the date of this order and that no new  
32 conditions are required to satisfy OAR 345-027-0100(10)(d).  
33

34 **E. Conclusions about the Request for Partial Transfer and Amendment**

35           The Council finds that the Request for Partial Transfer of Site Certificate, to transfer one-  
36 half ownership interest in Phase 2 from Mirant to Avista, is consistent with current Council rules,  
37 with other applicable state statutes and rules, and with statewide land use planning goals and  
38 would not cause a significant adverse impact to public health and safety or the environment. In  
39 preparing this order, the Council has considered state statutes, administrative rules, and local  
40 government ordinances in effect at this time, and whether the facility complies with all Council  
41 standards in effect at this time.  
42

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

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<sup>2</sup> 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.

1 Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project as  
2 Avista requested in its Request for Partial Transfer of Site Certificate for the Coyote Springs  
3 Cogeneration Project and amended by the Council, and as shown in the Council's attached  
4 proposed Fourth Amended Site Certificate (incorporating Amendments #1 through #9).  
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1 **FINAL ORDER**  
2

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

9  
10 Issued December 2, 2004.  
11

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15 Karen H. Green  
16 Chair  
17 Energy Facility Siting Council  
18  
19

20 **Notice of the Right to Appeal**

21 You have the right to appeal this order to the Oregon Supreme Court pursuant to Oregon  
22 Revised Statutes (ORS) 469.405. To appeal you must file a petition for judicial review with the  
23 Supreme Court within 60 days from the day this order was served on you. If this order was  
24 personally delivered to you, the date of service is the date you received this order. If this order  
25 was mailed to you, the date of service is the date it was mailed, not the day you received it. If  
26 you do not file a petition for judicial review within the 60-day time period, you lose your right to  
27 appeal.  
28