

ISSUED : March 25, 1996

**BEFORE THE  
ENERGY FACILITY SITING COUNCIL**

In the Matter of an Application by the Hermiston )  
Power Project for an Energy Facility Siting )  
Certificate. )

FINAL  
ORDER

SUMMARY

This order approves the application subject to conditions.

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*Procedural Overview*

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## HPP'S PROPOSAL

HPP proposes to construct a nominal 460 net Megawatt (mW), natural gas-fired, combined-cycle power plant consisting of two 230 mW turbine units. It would construct the energy facility on 17 acres of industrial land adjacent to the Simplot potato processing plant south of Hermiston. HPP also proposes to construct the following related/supporting facilities:

- Two natural gas pipelines to bring gas from interstate pipelines to the energy facility;
- A water pipeline to bring raw water from the Columbia River to the energy facility;
- One of two prospective electrical transmission lines to deliver electricity from the energy facility to the Bonneville Power Administration ("BPA") at BPA's McNary Substation near the Columbia River. (One line would carry electricity at 500 kilovolts (kV) and the other at 230 kV.)

HPP asks the Council to approve both transmission line routes. That would enable BPA to select the route which best meets its need at the time HPP builds the plant.

The plant is part of BPA's resource contingency program, which means that HPP (1) does not propose to build the plant at any specific time, and (2) will not build it unless BPA exercises an option to acquire the net output from the plant. The option expires in 2003, and HPP would like a commensurate shelf life for the certificate.

## BIFURCATION

The intervenors consisted of several local property owners who raised issues concerning the impact on their property; several individuals and groups with environmental and other generic concerns about the project; and another generating facility developer with concerns relating to an exemption from the need standard and access to a transmission line. The local and generic/developer issues had virtually nothing in common—either in terms of impacts or participants—so the Hearings Officer bifurcated the case into a "Hermiston Issue Group" for the local property impact issues and a "Salem Issue Group" for the generic/developer issues.

## THE PARTIES

### General Parties

*HPP.* The applicant is the Hermiston Power Partnership (HPP). The partners are SimGen, Inc. (a wholly-owned subsidiary of J. R. Simplot Company); TCPL Hermiston, Ltd. (a wholly-owned subsidiary of TransCanada Pipelines Limited); and Hermiston Power Company (a wholly-owned subsidiary of Ida-West Energy Company which, in turn, is a wholly-owned subsidiary of Idaho Power Company).

*The Department.* The Oregon Department of Energy acts as the Council's staff. The Department became the "Office of Energy" in the Department of Consumer and Business Services when HB 3455 from the 1995 Legislature took effect. The Legislature did not change the agency's functions so, for consistency with earlier references to the agency in the record for this case, this order will continue to refer to the agency as the "Department."

*UGC.* Umatilla Generating Company is another generating facility project developer. It is likely to compete with HPP for the 500 mW exemption which became available last year under SB 951. It also may compete with HPP for access to a 230 kV transmission line which Umatilla Electric Cooperative Association (UECA) owns and operates.

### Hermiston Issue Group Parties

#### Active at the End of the Case

*Allen Lambert.* Mr. Lambert owns property on the 230 kV transmission line route.

#### Withdrew During the Case

*City of Umatilla.* The city raised legal issues relating to the need to obtain consent from adjacent property owners when the Council, rather than the local government, resolves local land use issues.

*Ms. Connell.* Reta Connell owned property adjacent to the proposed location for the generating facility.

*Ms. Neilson.* Laura Neilson's company (Buck's Consumer Supply, Inc.) and her mother (Laura DePietro) own property on the route for a section of 500 kV transmission line which HPP would construct for the Bonneville Power Administration (BPA) to enable HPP to run part of its 500 kV line along the existing BPA route.

*Mr. & Mrs. Schell.* James and Edna Schell own property on the route for the 500 kV transmission line which HPP would relocate for BPA.

*Mr. Shafer and Berean Society International.* John Shafer and the society own property on the 230 kV transmission line route.

**Inactive**

*Mr. Willhoft.* James Willhoft requested party status, but did not participate.

**Salem Issue Group Parties**

*DUCM.* This acronym refers to a group of intervenors with common representation. The group consists of the Don't Waste Oregon Council; the Utility Reform Project, Colleen O'Neil; and Lloyd Marbet. The DUCM group raised a variety of issues relating to the need standard and environmental impacts. It was the only consistently active intervenor for the Salem Issue Group.

*NWEA.* Northwest Energy Advocates raised issues similar to DUCM's issues.

*End of Section*

## PROCEDURAL HISTORY

### Department Review Steps

**Notice of Intent.** Ida-West filed the Notice of Intent for this project on February 23, 1993. It supplemented the notice on May 6, 1993, in response to a department request for additional information. The Department deemed the Notice of Intent complete on June 18, 1993.

**Consultation with Other Agencies.** The Department, pursuant to OAR 345-21-050, identified potentially affected agencies/local governments and asked them to review the notice of intent. The reviewing agencies/local governments include 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 ("DLCDD"); the Water Resources Department ("WRD"); the Department of Economic Development; the Department of Parks and Recreation; the State Historic Preservation Office ("SHPO"); the Cities of Stanfield, Hermiston, Echo, and Umatilla; and Umatilla County.

**Special Advisory Group.** On June 4, 1993, the Council appointed the Umatilla County Board of Commissioners to serve as the Special Advisory Group pursuant to ORS 469.480(1).

**Project Order.** The Department issued the Project Order on November 10, 1993, and amended it on July 18, 1994. (The Project Order specifies necessary contents for the application.)

**The Application.** HPP filed the Application for Site Certificate on November 30, 1994.

**Addendum to Project Order.** The Department issued an addendum to the Project Order on January 30, 1995. The addendum requested additional information.

**Revised Application.** HPP filed a revision to the application on April 12, 1995.

**Department Review.** The Department deemed the application complete on April 14, 1995. This action starts the clock running for the 9 month statutory deadline for department review and a Council decision on the application.

**Notice.** Pursuant to OAR 345-15-190, the Department published legal notice in two newspapers of general circulation in the Hermiston area: The Hermiston Herald and The East Oregonian. The Department also mailed individual notice to (1) all persons on the Council's mailing list, and (2) all affected property owners.

**Review by Other Agencies & Local Governments.** The Department asked the other agencies and local governments which had identified potential impacts at the Notice of Intent stage to review the application. While some agencies and local governments

suggested conditions, none identified problems which the agency/local government felt should result in denial of the application.

Statutory Change. SB 951 became effective on July 5, 1995. It made significant substantive and procedural changes to the siting process. Among them was a new requirement that intervenors raise all of their issues—and with sufficient specificity—before the end of a Public Comment Hearing on the Department's Draft Proposed Order. Another significant change was an exemption from the need standard for 500 mW of natural gas-fired capacity.

**Draft Proposed Order.** The Department issued its Draft Proposed Order on August 4, 1995.

**Notice.** When the Department issued the Draft Proposed Order, it included notice of the Public Comment Hearing pursuant to ORS 469.370(2).

**Public Comment Hearing.** The Hearings Officer held the Public Comment Hearing during the evening of August 24, 1995, in Hermiston. At the end of the Public Comment Hearing, the deadline for raising issues expired.

### **Council Review Steps**

**1<sup>st</sup> Reading.** The Department presented its Draft Proposed Order to the Council at the Council's September 11, 1995, public meeting. At that meeting, the Council also accepted an amendment which HPP had filed on July 7, 1995. The amendment asks the Council to allocate 460 mW of SB 951's 500 mW exemption to HPP. The Council decided to consider HPP's request in a separate proceeding which would occur after the Council adopted rules for allocating the exemption.

**Proposed Order.** On September 22, 1995, the Department issued its Proposed Order. (ODOE-201<sup>1</sup>) There were no substantive changes from the Draft Proposed Order.

**Bifurcation.** On September 22, 1995, the Hearings Officer split the case into the "Hermiston Issue Group" for local property impact issues and the "Salem Issue Group" for other issues. (HO-7)

**1<sup>st</sup> Prehearing Conferences.** The 1<sup>st</sup> Prehearing Conference for the Hermiston Issue Group took place in Hermiston on October 3, 1995, and the 1<sup>st</sup> Conference for the Salem Issue Group took place in Salem on October 4, 1995. Those were the respective deadlines for requesting party status under the new SB 951 procedure.

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<sup>1</sup> The Hearings Officer used a "Bates" numbering system to keep track of documents during the case. The "ODOE" part of "ODOE-201" indicates that the Oregon Department of Energy submitted the document. The Department's pre-hearing record is ODOE-1 through ODOE-172, so "201" is the first Department document in the Council review phase. The second page of the Proposed Order would be "ODOE-201.2."

**Compliance with ORS 183.413(2) and ORS 183.415.** The Hearings Officer's notice and agenda for the first prehearing conferences included notice of the items in ORS 183.413(2) and ORS 183.415. (HO-10)

**Target Council Order Date.** HPP proposed a schedule which would allow the Council to meet the 9 month statutory deadline by deciding the case at its January 1996 public meeting. Since this is the first case the Department/Council has reviewed under SB 951, and the new statute took effect during the Department's review, the Department asserted that it needed an additional month to adequately address the Salem Issue Group issues.

Even the one month delay would violate specific instructions the Council gave the Hearings Officer about meeting the statutory deadline, so the Hearings Officer presented the issue to the chair and the council member who had given the instruction. The chair and council member reluctantly authorized, due to the unique circumstances of this case, a one month delay with the understanding that the Hearings Officer would present a ruling on legal issues for Council review at the Council's December public meeting, a proposed order for the Hermiston Issue Group at the Council's January public meeting, and a proposed order for the Salem Issue Group at the February meeting. The Hearings Officer adopted schedules for the two issue groups to meet those deadlines. (*See* HO-24)

**Issues.** At the Public Comment Hearing, no one had had experience with the raise-it-or-waive-it provisions of SB 951. While the provisions prevent intervenors from raising new issues late in the process, they added steps to this case because the intervenors raised their issues in typical public comment fashion by presenting oral or written statements consisting of arguments on various topics. This required the Hearings Officer to review a large volume of material (164 pages in DUCM's case) and draft specific issues for the parties and Council to address. This, in turn, led to arguments about whether the Hearings Officer's issue statement accurately captured the issue the party desired to raise; whether the party actually raised the issue the party later said it intended to raise; *etc.* After those arguments, the Hearings Officer issued a Interim Issue List for each issue group. (HO-22 and HO-23)

**Motions to Strike.** HPP and the Department moved to strike some of the issues on the interim issue lists, primarily on the grounds that:

- The Council lacks authority to consider the issue;
- The issue does not relate to an existing standard in the Council's rules and does not relate to public health/safety considerations that the Council could address through conditions to the certificate;
- The issue relates to an existing standard, but is not relevant to this particular case. (For example, Issue S-14 relates to the need standard, but HPP proposes to obtain the certificate through an exemption so need for the plant is not relevant.); or
- The issue lacks sufficient specificity because it does not state what is wrong with the draft proposed order.

Issues in the second category are discretionary for the Council, and the Hearings Officer had no policy to guide him in resolving them. He and the parties presented the

issues to the Council at a special meeting on November 2 (for the Salem Issue Group) and at the Council's regular meeting on December 8 (for the Hermiston Issue Group). At both meetings, the Council decided against adopting new standards and applying them to this case.

**Amendment to Application.** SB 951 broadened the definition of "related and supporting facilities" to include a one mile segment of 500 kV transmission line that HPP would construct for the purpose of relocating a BPA line. HPP filed an amendment to include the one mile segment on November 8, 1995.

**Notice of 500 kV Line Amendment.** On November 10, 1995, the Hearings Officer accepted the amendment and authorized the Department to publish notice. (*See* OAR 345-21-090 and HO-109) The Department issued draft amendments to its Proposed Order and published notice, pursuant to ORS 469.370(2), on November 10, 1995.

**Public Comment Hearing (500 kV Line).** The Hearings Officer held a Public Comment Hearing for the 500 kV line amendment on November 30, 1995, in Hermiston. The amendment resulted in several additions to the Issue List for the Hermiston Issue Group. (*See* HO-140)

**Motions to Strike (500 kV Line).** HPP and the Department moved to strike some of the 500 kV Line issues and the Hearings Officer granted part of the motions. (HO-159) The remainder of the 500 kV Line issues eventually disappeared when Ms. Neilson settled with HPP and withdrew from the case. (*See* HO-171)

**HPP Proposal to Change Transmission Corridor (500 kV Line).** In part to accommodate Ms. Neilson, HPP proposed to the Department a change in the corridor for the 500 kV line HPP would build to relocate a BPA line. The proposal was to (1) shift the portion of the line north of Highway 730 150 feet to the east, and (2) expand the corridor for the remaining portion. The proposal did not affect additional property owners and, after review, the Department concluded that the new corridor also complied with the applicable standards, rules, and ordinances. The Department suggested amendments to its Proposed Order to include the 500 kV line in the new corridor. Those amendments are part of this order.

**Argument on Legal Issues.** DUCM's issues included a broad legal attack on HPP's ability to meet the "need" standard through the exemption in OAR 345-23-010(3) rather than a showing of actual demand for power from the facility. Those issues, and others which the Council could resolve either without facts or under the factual assertions most favorable to the losing party, moved on an early track to provide the Council with an opportunity to agree, or disagree, with the Hearings Officer's ruling and about the lack of need to take evidence on the issues. Schedule slippage prevented adequate opportunity for Council review, so case proceeded on the assumption that the Council would adopt the rulings. (*See* HO-167) The Council incorporates the rulings (HO-129) into this order.

**Cross-examination Hearings.** The direct testimony in this case took the form of either written testimony or transcripts of oral comments, so the "hearing" for each issue group focused on cross-examination. The cross-examination hearing for the Salem Issue

Group took place on December 19 and 20. The cross-examination hearing for the Hermiston Issue Group took place on January 4 via telephone.

**Defective Notice (Schell).** When the Department served notice of the 500 kV line amendment to James & Edna Schell, its mailing list showed their address as Rt. 1 Box 4 rather than the actual Rt. 1 Box 40. The Schell's became aware of HPP's proposal and called the Hearings Officer. The Hearings Officer scheduled a Public Comment Hearing for them.

**Public Comment Hearing (Schell).** The Public Comment Hearing for the Schell's took place on January 18, 1996. At that point, the Schell's withdrew from participation in the case.

**Briefs.** Both Issue Groups filed their closing briefs on January 22.

**Defective Notice (75 Others).** When the Department served notice of its Draft Proposed Order in August 1995, there were two problems with the notice. One was that the Department used a mailing list which HPP had submitted in April 1995 and, between April and August, 24 tax lots changed hands. The other was that the Department dropped 51 names from the mailing list. Those problems resulted in another notice which the Hearings Officer issued on January 27.

**Proposed Orders.** The Hearings Officer had issued a proposed order for the Salem Issue Group on January 23. He issued his proposed Order for the Hermiston issue Group, at the Department's instruction, on February 6. He reviewed exceptions and replies to those proposed orders, and made some modifications, in preparing an Integrated Draft Order for the Council's consideration. The Integrated Draft Order concluded that the Council should approve the application subject to:

- The conditions which the Department proposed in its Proposed Order;
- The conditions which the Department proposed as part of the resolution for issues in the contested case; and
- The conditions which HPP's stipulations required.

**4<sup>th</sup> Public Comment Hearing.** On February 16, the Hearings Officer held the Public Comment Hearing for recipients of the January 27 notice. The hearing resulted in a new issue regarding the impact on housing during construction. There was no need for another prehearing conference because HPP and Ken Parrish, the prospective intervenor, stipulated to a resolution of the issue. The Council adopts the stipulation on page 18.

**Amendment to Application.** On March 1, 1996, HPP submitted to the Department a second 500 mW amendment to its application, as part of its request for the 500 mW exemption the Council will award under OAR 345-23-010(2).

**Council Decision.** The Council reviewed the integrated draft order at a public meeting in Salem on March 7. The Council adopted this order.

EVIDENTIARY STANDARD

The Council bases findings of fact in this order on the preponderance of the evidence.

DEFINITIONS

In this order, when the Council uses a term defined in ORS 469.300 or OAR 345-01-010, the Council intends to use the term as it is defined in the statute or rule.

End of Section

General Findings of Fact

CHAPTER CONTENTS

*The Energy Facility* \_\_\_\_\_ **10**

*Related & Supporting facilities* \_\_\_\_\_ **12**

*Power Generation Process* \_\_\_\_\_ **14**

Note: The Council has imported this chapter, without substantive modification, from the Department's Proposed Order.

THE ENERGY FACILITY

*Capacity:* The proposed Hermiston Power Project is a combined-cycle turbine electric generating plant, fueled primarily by natural gas, with a nominal capacity of 460 MW at annual average conditions. Distillate (diesel) fuel would be used if needed as a backup fuel.

In addition to the generation of electricity, the facility will be designed to supply steam to the J.R. Simplot Company potato processing plant.

*Location:* The energy facility would be located on a 17 acre site adjacent to the J.R. Simplot ("Simplot") potato processing plant, approximately 3 miles south of Hermiston, Oregon. The Energy Facility Site is on land currently zoned Heavy Industrial (HI) under the Umatilla County comprehensive plan and zoning ordinance. The land is owned by Simplot. It has not yet been developed for industrial use and is currently planted in alfalfa.

*Power Plant Structures and Major Equipment:* The proposed energy facility would consist of several structures: a turbine-generator building; two heat recovery steam generator (HRSG) structures; two 195-foot-high exhaust stacks; an administration/control building; storage tanks for raw and demineralized water; an electrical substation occupying approximately 50,000 square feet; two above ground 1,000,000 gallon distillate storage tanks; and two five-cell mechanical induced draft evaporative cooling

towers, each cell being approximately 45 feet by 50 feet with a height of approximately 42 feet. The combustion turbine will be surrounded with an acoustically insulated enclosure to reduce noise levels and to provide containment for automatic fire suppression equipment. The facility's water system, including treatment, component cooling, fire protection and condensate return is described in the ASC, Exhibit B, pp 13 and 14a.

### RELATED & SUPPORTING FACILITIES

Related and supporting facilities include two natural gas pipelines that will bring natural gas to the energy facility from interstate pipelines, a water pipeline which will carry raw water to the energy facility site, and one of two electrical transmission lines that will deliver output from the power plant to the BPA McNary substation.

The two natural gas pipelines will deliver natural gas from the Pacific Gas Transmission (PGT) and Northwest Pipeline (NWP) interstate pipeline systems. Each pipeline would be approximately 12 inches in diameter and will be located underground. The PGT pipeline connection will be approximately 4.1 miles long and the NWP pipeline will be approximately 8.8 miles long. Both pipelines are related and supporting facilities as defined in OAR 345-01-010. Neither pipeline, standing alone, is an energy facility as defined in ORS 469.300(10). HPP proposes to construct both pipelines. The routes for these pipelines are described in the land use section of this order and shown on Figures I-4 and I-5 in the ASC.

The raw water supply line for the energy facility would be approximately 16 inches in diameter and approximately 1.1 miles long. The route for the raw water supply line is shown on Figure I-3 in the ASC. This line will connect the energy facility site to the Port of Umatilla water supply project. HPP has an agreement to purchase water from the Port of Umatilla. The Port will obtain the water from the Columbia River under an existing municipal water permit issued by WRD, # 49497 ("Permit # 49497"). The Port's water supply project is not an energy facility and is not subject to EFSC regulation.

HPP has requested that the Site Certificate permit construction along either one of two transmission line routes. Only one of the two would be built. The two transmission line routes include a 230 kV option and a 500 kV option.

The 230 kV option would be approximately 15.9 miles long. The route for the 230 kV transmission line is shown on Figures I-17A, I-7B and I-7C in the ASC. Approximately 12.3 miles of this would use the existing 230 kV transmission line route from the Westland Substation to the BPA McNary Substation which is currently under construction as a double circuit steel pole 230/115 kV line. The Hermiston Generating Company, L.P. (HGC) holds a site certificate for the 230 kV line in connection with its energy facility. The Umatilla Electric Cooperative Association ("UECA") owns and will operate the 230/115 kV line. If this option is chosen, HPP would replace UECA's 115 kV conductors and insulators with 230 kV conductors and insulators, thereby upgrading the line to a 230/230 kV line. No new right of way will be required for the 230 kV transmission line from the Westland Substation to the McNary Substation. UECA may

relocate portions of the displaced 115 kV line along different routes elsewhere in Umatilla County. HPP intends to deed the 230 kV line to UECA.

The 500 kV option would require construction of approximately 14.2 miles of new 500 kV transmission line between the energy facility site and the McNary Substation. The route for the 500 kV transmission line is shown on Figures I-6A and I-6B in the ASC. Most transmission line structures would be placed within existing BPA right of way with the remainder located on private lands. All construction would be entirely within Umatilla County with a portion also located within the City of Umatilla. The 500 kV line would be deeded to BPA.

Upon leaving the energy facility site, the 500 kV option would proceed north and east approximately 1.5 miles to Feedville Road. This portion of the route is primarily occupied by an existing Pacific Power & Light 69 kV transmission line. A new transmission line would be constructed as a double circuit 69/500 kV in this section. At Feedville Road the line would proceed east for approximately 3.2 miles. At the intersection with Canal Road the line would proceed north for approximately .9 miles to its intersection with the BPA McNary-Roundup transmission line corridor. From this point the 500 kV line parallels the McNary-Roundup line within BPA's existing 250 foot right-of way, and heads in a northwesterly direction approximately 7.6 miles. Approximately 0.8 miles of this 7.6 mile section will include construction of a double-circuit 500/230 kV line with PacifiCorp. As the line approaches the McNary substation it would occupy existing transmission structures now being used by the BPA Slatt-McNary and McNary-Lower Monument 500 kV lines.

The existing BPA 500 kV McNary to Lower Monumental transmission line will be displaced by the facility's 500 kV transmission line and will be relocated about 500-800 feet east of its present location, as shown on ODOE-285.3. This relocated section will be about one mile (5000 feet) in length. The relocation begins about 150 feet north of the intersection of Maragret Avenue and Lind Road at the existing 500 kV McNary to lower Monumental transmission line to the east of Lind Road. The relocated line will then proceed north generally paralleling Lind Road, crossing Highway 730, and continuing north across the existing railroad tracks near the McNary Substation. After crossing the railroad tracks, the line would turn northwest and proceed about 700 feet to the McNary Substation.

The corridor for the relocated BPA 500 kV line includes a currently occupied residence. Pursuant to an agreement with the occupant of that residence, HPP will not place the centerline of the relocated 500 kV line closer than 80 feet to that property if it is occupied as a residence at the time of construction.

## POWER GENERATION PROCESS

The Hermiston Power Project would consist of two identical, natural gas-fired, combined-cycle units. A gas turbine-generator is essentially a jet engine on a stationary mount that derives its power from the combustion of natural gas, which is used to turn an electric generator. The high-temperature exhaust from the gas turbine-generator is ducted

to a heat recovery steam generator (HRSG) to generate steam. This steam, in turn, is used to drive a steam turbine-generator. The term "combined-cycle power plant" describes the sequential use of the fuel energy in both the gas turbine-generator and the steam turbine-generator. The combined-cycle power plant proposed by HPP has higher fuel efficiency than forms of fossil fuel power generation that use only a single cycle.

The proposed Hermiston Power Project will use 3,400 million British thermal units (MMBTU) of natural gas fuel per hour at full load. A BTU (British thermal unit) is the amount of energy needed to heat one pound of water one degree Fahrenheit. Fuel for the turbines will primarily be natural gas with distillate used only as backup fuel.

A power plant's steam cycle describes the process where water enters the heat recovery steam generator (HRSG) as a liquid and is changed into a high-temperature, high-pressure vapor (steam) whose energy can then be used to drive the steam turbine. In order to complete the steam cycle, low-pressure, low-temperature steam exiting the steam turbine-generator must be cooled to condense the steam back to liquid (water). The change from steam to liquid occurs in the condenser. Cooling of the condenser is provided by a separate circulating water system known as the condenser/cooling tower loop.

The cooling tower provides a flow of relatively cold water to the condenser and receives heated water back from the condenser. The cooling tower is used to dissipate heat by evaporating a portion of the water circulating within the loop. Water lost through evaporation is replaced by the facility's cooling water makeup supply source. Cooling tower makeup water for the proposed Hermiston Power Project will be provided and sold to the facility by the Port of Umatilla. The Port of Umatilla will obtain the water sold to the Hermiston Power Project from the Columbia River under Permit # 49497. The evaporation rate from the cooling tower will vary between 1,300 gallons per minute and 2,000 gallons per minute, depending on steam turbine load and ambient weather conditions. The water use of the entire energy facility under full load conditions, while operating at an average ambient temperature of 53 degrees Fahrenheit, is 1969 gallons per minute.

The proposed power plant will produce wastewater from cooling tower blowdown, demineralization system backwash and from sanitary wastewater. The combined wastewater stream will be discharged to Simplot's existing wastewater discharge system, which reuses treated wastewater for irrigation. Simplot has an existing Water Pollution Control Facility (WPCF) permit administered by the Department of Environmental Quality ("DEQ"). Simplot has requested and obtained a modification to its WPCF permit to accommodate the additional discharge from the proposed energy facility. This permit is a "third party" permit under OAR 345-22-010(2).

The proposed Hermiston Power Project will generate combustion pollutants that will be released to the atmosphere. The proposed facility's design, combustion parameters, emissions control equipment, pollutant quantities and the limits placed on the quantities of pollutants allowable will be reviewed and set by the Air Contaminant Discharge Permit process administered by DEQ. Because this is a permit issued under a delegation

from the federal government, it is not within the scope of the siting process. ORS 469.503(1)(b).

End of Section

### Stipulations

#### CHAPTER CONTENTS

<i>Issues S-4 &amp; S-5</i>	<u>15</u>
<i>Issue H-24.</i>	<u>19</u>

#### ISSUES S-4 & S-5

##### The Issues

The lead issue in each series is:

- S-4. Who controls access to UECA's 230 kV transmission line?
- S-4. May/must/should the Council consider the impact on UGC's transmission line routing opportunities in determining whether the Council should authorize the UECA 230 kV option?

##### The Stipulation

HPP and UGC, to resolve these issues, stipulated to the following changes to the Department's Proposed Order:

1. At ODOE 201.3 (lines 18 and 19) delete: "The route selected would be chosen by BPA, based on BPA system requirements at the time."
2. At ODOE 201.5 (lines 34 to 40) revise to read:

The 230 kV option would be approximately 15.9 miles long. Approximately 12.3 miles of this would use the existing 230 kV transmission line route from the Westland Substation to the BPA McNary Substation ~~which currently under construction by the Hermiston Generating Company. The Hermiston Generating Co. received a site certificate to construct this line on March 11, 1994. This transmission line route is currently under construction being built as a double circuit steel pole 230/115 kV line. The Hermiston Generating Company, L.P. (HGC) holds a site certificate for the 230 kV line in connection with its energy facility will operate a 230 kV line on one side. The Umatilla Electric Cooperative Association ("UECA") owns and will operate the 230/115 kV line currently plans to operate a 115 kV line on the other side.~~ If this option is chosen, HPP would replace

UECA's 115 kV conductors and insulators with 230 kV conductors and insulators, thereby upgrading the line to a 230/230 kV line. No new right of way will be required for the 230 kV transmission line from the Westland Substation to the McNary Substation. UECA may relocate portions of the displaced 115 kV line along different routes elsewhere in Umatilla County. HPP intends to deed the 230 kV line to UECA.

3. At ODOE-201.45 (lines 1 to 4) revise to read:

Most of the 230 kV transmission line alternative would utilize transmission line poles currently under construction. These poles are a part of the transmission facilities for by the Hermiston Generating Company (HGC) energy facility, which received under a separate Site Certificate which was executed in March of 1994. The One constructed, the transmission facilities are owned and will be operated by line currently under construction by HGC will become the property of the Umatilla Electric Cooperative Association (UECA).

4. At ODOE-201.45 (lines 27 to 28) revise to read:

The transmission line currently under construction by HGC will run from the Westland Substation to the McNary Substation.

5. At ODOE-201.45 (line 37) revise to read:

The 230 kV option between the Westland Substation and the McNary Substation is contingent on completion of construction of the 230/115 kV electrical transmission line between the same substations and built by HGC and UECA.

6. At ODOE-201.45 (line 37) add the following paragraph:

HPP and Umatilla Generating Company (UGC) have both made good faith requests for wheeling services from UECA for the use of UECA's transmission facilities between the Westland Substation and the McNary Substation in connection with the energy facilities proposed by HPP and UGC. UECA is undertaking a study to determine whether it can accommodate both HPP's and UGC's requests. Access to the UECA transmission facilities will be determined by UECA, following completion of the study. If either UGC or HPP is denied access to the UECA transmission facilities, or if the terms and conditions associated with either party's use of the transmission facilities are inappropriate, UGC or HPP may seek a determination from the Federal Energy Regulatory Commission that directs UECA to provide the requested wheeling services on appropriate terms and conditions. Access to the UECA transmission facilities is not controlled by the EFSC, and approval of a site certificate for HPP does not mean that a site certificate could not be granted for another applicant seeking use of the same UECA transmission facilities. Nor does it mean that HPP's site certificate

would have to be amended in order for another application using the same transmission facilities to proceed.

7. At ODOE-201.94 (lines 2 and 3) revise to read:

(9) No later than four months before commencing construction of the transmission line, HPP shall notify ODOE of which alternative transmission line route will serve the energy facility~~it has elected to use~~. Once this election has been made, Council approval of the other alternative transmission line shall terminate.

### **Reaction from Other Parties**

No party objected to the HPP/UGC proposal for revisions to the Department's Proposed Order.

### **Council Decision**

The Council prefers the following for paragraph 7:

Not later than four months before commencing construction of the transmission line, or immediately before commencing construction of the energy facility—whichever is sooner<sup>3</sup>/<sub>4</sub> HPP shall notify ODOE of which alternative transmission line route will serve the energy facility. Once this election has been made, Council approval of the other alternative transmission line shall terminate.

With that change, the language HPP and UGC ask the Council to adopt more accurately characterizes the situation arising from UECA's ownership of the line and the two requests for wheeling services. The Council adopts the language in the stipulation and has inserted at the appropriate places in this order.

*End of Section*

ISSUE H-24.

**The Issue**

H-24. What conditions, if any, should the Council impose to avoid an artificial temporary elevation of real estate values arising from the need for temporary housing during construction.

**The Stipulation**

HPP, the Department, and Mr. Parrish agreed to the following terms for a condition:

During construction, HPP shall establish a housing clearing house at the energy facility site for construction workers. The clearing house shall coordinate with local officials and housing owners to place workers who need lodging as necessary. During construction, HPP shall monitor the central vacancy rate in the cities of Umatilla, Stanfield and Hermiston. If the vacancy rate falls below seven percent, the clearing house will begin its activity to locate available housing outside of Umatilla, Stanfield and Hermiston so a listing of available housing outside of these cities can be provided to temporary workers should the vacancy rate fall below five percent. If the vacancy rate falls below five percent, HPP shall locate housing outside of Umatilla, Stanfield and Hermiston, or offer temporary housing for any temporary workers that it hires from outside the local area. HPP shall provide a plan of operation for the housing clearing house to ODOE prior to the start of construction. HPP shall provide such a plan at least 60 days prior to the start of construction and ODOE shall review and respond with its approval or comments not later than 30 days after the plan is submitted.

**Council Decision**

The additional condition addresses a legitimate concern within the Council's authority. The Council will add the condition to the conditions under its socio-economic impact standard. *See* Page 160.

*End of Section*

## *Process Issues*

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### RECEIPT OF APPLICATION INTO EVIDENCE

#### **The Issue**

DUCM asserts that the Hearings Officer erred by receiving the contents of HPP's application into the record as evidence.

#### **Applicable Law**

OAR 345-15-240 provides that the Department's record shall be part of the Council's record.

#### **Procedural Events**

*Availability of the Record.* On August 4, when the Department issued notice of its Draft Proposed Order, the Department noted that members of the public could inspect copies of the application at various locations and obtain copies at reasonable cost. The Department subsequently transferred its entire record (including the application) to the Hearings Officer. He sent a copy of the entire record to each party on October 21.

*Introduction of the Record.* The Department formally offered the application, and the remainder of its record, into evidence at the end of the cross-examination hearing for

the Salem Issue Group. It did not have witnesses available because no party had expressed a desire for cross-examination.

*Receipt of the Record.* When DUCM objected to the Hearings Officer receiving the Department's record into evidence, the Hearings Officer gave the Department and HPP an opportunity to confer about providing one or more witnesses. HPP and the Department decided against a delay for that purpose, and the Hearings Officer resolved the dispute by receiving the documents.

*Post Hearing Events.* Shortly after the hearing, the Department wrote to the Hearings Officer and offered to make witnesses available under specific circumstances. The Department represented that HPP had concurred with the Department's proposal. The specific proposal, and the immediate subsequent events, are in the letter the Hearings Officer wrote to establish a procedure for implementing the offer:

December 27, 1995
<i>To:</i> Salem Issue Group Parties
<i>Re:</i> HPP Siting Application
At 12:46 p.m. on December 22, 1995, I received a fax from Ms. Reeves relating to documents APP-1 through APP-29 and ODOE-1 through ODOE-170 (actually ODOE-172). Ms. Reeves stated that the Department was willing to provide a witness or witnesses for Mr. Meek to cross-examine about those documents under the following circumstances:
<ul style="list-style-type: none"> <li>· Mr. Meek identifies, by a date certain, the specific materials he wants to address;</li> </ul>
<ul style="list-style-type: none"> <li>· Mr. Meek relates the cross-examination to a specific issue or issues on the issue list;</li> </ul>
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<ul style="list-style-type: none"> <li>· The opportunity for cross-examination does not delay the Council's decision.</li> </ul>
Ms. Reeves represented that HPP supported this course of action. She also represented that she talked to Mr. Meek on the morning of December 22 to inform him that she would be filing the request.
Mr. Meek responded with a fax which I received at 1:26 p.m. on December 22. He notified the parties that his law office would be closing for the holidays at 1:30 p.m. that afternoon until January 16. The body of the notice stated that he would be in the office on January 5, 1996, and would be "out of Oregon again until January 16 at the earliest but more likely until January 22."
To accommodate Mr. Meek's plans, I will schedule cross-examination for 2:00 p.m. on January 5 with document/issue identification due by 10:00 a.m. on January 3; a response by 10:00 a.m. on January 4; and briefing pursuant to the existing schedule. The result is the schedule in HO-184.

Very truly yours,
Karl Craine

The Hearings Officer served the letter on DUCM pursuant to the service rules he established for the case. He also notified DUCM's counsel by leaving a voice mail message. He posted the letter on the computer bulletin board the Department set up for the case so that DUCM's counsel could obtain it from a remote location.

After receiving the letter, DUCM characterized the Department/HPP offer as a "motion" and objected to the Hearings Officer "granting" the motion within two business days without giving DUCM time to respond. DUCM identified APP-12 (Exhibit L to the Application) as a subject for cross-examination. DUCM stated that APP-12 was the only document it could identify at the time.

APP-12 relates to the need standard and contains information tending to show that HPP qualifies under OAR 345-23-010(3) for exemption from that standard. There were no factual issues relating to the need standard at that point because the Hearings Officer had ruled, as a matter of law under the facts most favorable to DUCM, that HPP qualifies for the exemption. (*See* HO-129) The Hearings Officer sustained a HPP objection to cross-examination regarding APP-12. (*See* HO-197.2)

The Hearings Officer's ruling eliminated the need for an additional cross-examination hearing because APP-12 was the only topic DUCM had specified for cross-examination. The Hearings Officer canceled the additional hearing. (*See* HO-197.2)

## Resolution

**Admissibility.** OAR 345-15-240 automatically makes the Department's record a part of the Council's contested case record. There was no need for the Department to call supporting witnesses for the application, or any other part of the Department's record, because the documents automatically become part of the Council's record. For that matter, it is not even necessary for the Department to formally offer the documents, or for the Hearings Officer to formally receive them, because the Department does not have discretion to refrain from introducing the public part of its record<sup>2</sup> and the Hearings Officer does not have discretion to refrain from receiving part of the public record. The Hearings Officer did not err by receiving the documents.

**Absence of Witnesses.** The Hearings Officer sent DUCM a copy of the application on October 21, so DUCM had plenty of time to review the application and identify topics for cross-examination. If DUCM had wanted to cross-examine someone about information in the application, DUCM should have enabled other parties to arrange for witnesses by notifying them before the hearing.

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<sup>2</sup> The Department's complete record also contains some documents, such as attorney-client communications, which are exempt from the public records law.

There was no reason for DUCM to reasonably assume that the Department would automatically arrange for witnesses, because the Hearings Officer specified written testimony and no party expressed interest in cross-examining anyone other than witnesses submitting written testimony. The absence of witnesses was DUCM's fault rather than the Department's fault.

**Opportunity for Cross-examination.** Neither HPP nor the Department had an obligation to provide witnesses after the hearing, and the Hearings Officer had no obligation to establish a procedure to enable cross-examination to happen. The Hearings Officer properly declined to characterize the Department's December 22 offer as a "motion" and properly established a procedure without waiting for DUCM to respond.

DUCM could not reasonably expect the Hearings Officer to delay the case for a month in response to a last minute fax announcing that its counsel would not be available. The Hearings Officer accommodated DUCM to the extent he could, and gave DUCM an opportunity which DUCM could not claim as a matter of right. That was more than he had to do to give DUCM a fair hearing.

*Need for Cross-examination.* The only document DUCM identified related to the need for power standard and the Hearings Officer had ruled, as a matter of law under the facts most favorable to DUCM, that HPP qualified for an exemption from the need standard. The Hearings Officer properly sustained HPP's objection to cross-examination on that topic because, under his ruling, there was no factual issue to resolve.

The ruling was not final because the Council had not reviewed or adopted it. There was a risk that the Council would disagree with the ruling. There also was a risk that Council disagreement would make cross-examination on the topic relevant. That has not happened because the Council, at pages 55 through 63, adopts the Hearings Officer's ruling. Even if it did happen, there would not be a problem in this case because DUCM should have expressed its desire to cross-examine witnesses about information in the application sufficiently long before the cross-examination hearing to give the Department an adequate opportunity to arrange witnesses.

DUCM should bear the consequences of its failure to notify the other parties. There should not be adverse consequences to HPP in the form of a delay in the Council's decision. There also should not be adverse consequences to the Department in the form of additional activity on this case when the Department has other work to do. There is no showing of unfairness to DUCM.

*End of Section*

## RECEIPT OF TOOLSON TESTIMONY

**The Issue**

DUCM asserts that the Hearings Officer should have stricken Eric Toolson's testimony on the grounds that HPP failed to provide DUCM with information about Mr. Toolson's computer model.

**Procedural Events**

*The Toolson Testimony.* The parties filed direct written testimony on December 4 and reply testimony on December 14. The December 14 filing included testimony from Eric Toolson which HPP submitted for the purpose of showing that its plant would reduce total carbon emissions by displacing "dirtier" coal and gas plants. Mr. Toolson presented a computer electric generating plant dispatch model in his testimony.

*DUCM's Request.* At the cross-examination hearing, DUCM wanted to put Mr. Toolson's entire computer model into the record; HPP offered to make the model available to DUCM subject to confidentiality agreements which Mr. Toolson's company and the model's owner require; and the Hearings Officer ruled that HPP's offer was sufficient unless DUCM discovered a flaw in the data, the model, or the way Mr. Toolson ran the model.

*Post Hearing Events.* On December 21, HPP's counsel faxed a letter to DUCM's counsel asking DUCM to identify who would be reviewing the model; the same day, DUCM's counsel faxed a reply to HPP requesting confidentiality agreements for both DUCM's counsel and Mr. Bell; HPP sent the agreement to Mr. Bell with a copy to DUCM's counsel on December 27; on January 18 Mr. Bell called HPP's counsel asking for the confidentiality agreement so he could review the model; on January 19, in a single sentence on page 11 of its reply brief, DUCM moved to strike the Toolson testimony.

The Hearings Officer did not address DUCM's motion in the proposed order he issued on January 23 for the Salem Issue Group. DUCM pursued the matter in its exceptions, so the Hearings Officer addressed the motion in the integrated draft order.

**Resolution**

In light of the weekend and Christmas holiday between December 21 and 27, HPP promptly delivered the confidentiality agreements, and DUCM should have more promptly followed up on it. DUCM will not suffer any real harm under this order because the Council finds the Toolson testimony unpersuasive. DUCM's belated motion to strike is denied.

*End of Section*

## HPP'S CONTRACT WITH BPA

### **The Issue**

DUCM excepts to the Hearings Officer's refusal to compel discovery or take evidence relating to the actual terms of HPP's contract with BPA.

### **Resolution**

Evidence relating to the exact terms of the contract is not relevant because DUCM did not contest the existence of an option contract in its initial comments. An option is sufficient to comply with OAR 345-23-010(3). *See* Page 55.

*End of Section*

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### **The Issue**

DUCM objects to a Department request for the Hearings Officer to make a variety of small changes to the Department's Proposed Order which the Department submitted during the briefing period.

### **Resolution**

The changes the Department proposed update the conditions to reflect changes to the mandatory condition rule which the Council made in November 1995, add clarification, correct typographical errors, and accomplish similar tasks which do not significantly change the Department's Proposed Order or relate to contested issues. There is no apparent harm from making the changes, so DUCM's objection is overruled.

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## *Process Issues*

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**Resolution**

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### **Resolution**

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## HOUSEKEEPING

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### **Resolution**

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*End of Section*

## Scope of Proceeding Issues

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### SB 951 PROVISIONS

*Note:* The Council sets forth the following language from the Hearings Officer's HO-89, HO-103, HO-118, and HO-156 rulings as its policy for resolving motions to strike under the new SB 951 raise-it-or-waive-it procedure.

#### **Specificity**

**Applicable Law.** SB 951 amended ORS 469.370(3) to state:

Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the department, and the applicant an adequate opportunity to respond to each issue.

ORS 197.763(1) imposes the same limitation on parties desiring to pursue issues before the Land Use Board of Appeals (LUBA). The LUBA statute requires parties to (1) actually raise the issue, and (2) to do so with sufficient specificity for the local government and other parties to respond to it in the local proceeding. *Bolt v. Clackamas Co.*, 107 Or App 619, 623-624 (1991); *Schellenger v. Polk Co.*, 22 LUBA 673 (1992).

**Discussion.** Specificity questions necessarily require issue-by-issue analysis to determine whether the Council/Department/applicant can respond to the issue. The level of specificity for a particular issue will depend on the subject matter and the Department's treatment of the subject in the draft proposed order. If the Department does not address an issue, it may be sufficient to simply state that the Department should consider the impact.

If the Department cursorily addresses the issue, it may be sufficient to state that the topic deserves more attention. If the Department addresses the issue in detail, the party raising the issue may need to identify very specific errors or omissions.

There is a similar range in the complexity of the subject matter. A very technical subject, such as the probability of an earthquake exceeding a certain severity, is likely to require much more specific criticism than a less technical one, such as the relative aesthetic impact of different paint color options for transmission line poles. (See HO-89, HO-103, HO-118, and HO-159)

### Recreation/Scenic/Aesthetic Values

**Applicable Law.** SB 951 changed ORS 469.501 as follows:

(1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of [*energy*]<sup>4</sup> facilities. The standards [*shall take into account at least*] **may include but need not be limited to<sup>5</sup> the following:**

(a) ¼

(i) [*The characteristics of any site, including but not limited to the aesthetics of the site and the environment and the impact on present and future use of adjacent areas.*] **Impacts of the facility on recreation, scenic and aesthetic values.**

(j) ¼ .

**Ruling.** SB 951 may have removed the reference to "site" and "adjacent areas" in ORS 469.501(1)(i), but it also changed the introductory text for ORS 469.501(1) to convert the list from minimum requirements to suggestions. SB 951 does not require the Council to develop standards with broader geographical scope than its current standards.

The Council's current rules have no geographical scope for impacts relating to OAR 345-22-060 (Fish and Wildlife Habitat), OAR 345-22-070 (Threatened and Endangered Species), or OAR 345-22-090 (Recreation). The rule, rather than the project order, controls the geographical scope of the standard. The existing standards allow the Council to address impacts from the energy facility and related/supporting facilities under OAR 345-22-060, OAR 345-22-070, and OAR 345-22-090 regardless of where they occur. (See HO-103)

### Related/Supporting Facilities

**Applicable Law.** SB 951 changed ORS 469.501(1) to read:

The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of [*energy*] facilities. ¼ .

---

<sup>4</sup> [*Italics in brackets shows text SB 951 deleted from the statute.*]

<sup>5</sup> **Bold is text SB 951 added to the statute.**

SB 951 changed ORS 469.300 to define a facility as:

**(13) 'Facility' means an energy facility together with any related or supporting facilities.**

SB 951 changed the definition of related or supporting facilities in ORS 469.020(13) and ORS 469.300(23) as follows:

'Related or supporting facilities' means any structure, **proposed by the applicant, to be constructed or substantially modified in connection with the construction of** [*adjacent to and associated with*] an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures [*proposed to be built in connection with the energy facility*]. 'Related or supporting facilities' does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

**Ruling.** SB 951 requires the Council to adopt standards only for energy facilities and related or supporting facilities. While SB 951 may have expanded the definition in ORS 469.020(23) and ORS 469.300(13) to include more facilities, ORS 469.501(1) does not require the Council to adopt standards for related/supporting facilities outside the previous definition.

Even if it did, natural gas exploration/production/transmission facilities would not be related/supporting facilities unless the applicant proposes to construct or substantially modify them in connection with construction of the energy facility. The applicant in this case, HPP, is not proposing to construct or substantially modify natural gas exploration, production, or transmission facilities beyond the two local supply pipelines the Department addressed in its proposed order.

HPP also is not proposing for anyone else to construct or substantially modify any specific natural gas facilities in connection with the energy facility. Any coincidental construction or modification of gas facilities—whether in Oregon, other parts of the United States, or in Canada—is outside the Council's jurisdiction. The Council cannot set standards for—or consider impacts from—construction, operation, or retirement of facilities when there is no reasonably direct cause-and-effect relationship between the applicant's project and construction of specific other facilities. (*See* HO-103)

*End of Section*

## INTERPRETATION OF STANDARDS IN EXISTING RULES

**In General**

**Applicable Law.** ORS Chapter 469 establishes a one-stop permitting process for energy facilities with the Council making decisions about the facility's compliance with statutory and administrative requirements for most state agencies. ORS 469.503(1)(b). ORS 469.501 directs the Council to adopt siting standards and lists a variety of topics the Council may consider. The Council has done so. (*See, as relates to the issues in this case*, OAR Chapter 345, Division 22.) The Council may adopt standards relating to additional topics if it desires to do so.

For an individual application, ORS 469.330 starts the process with:

- A Notice of Intent which describes the site and project in general terms;
- **Error! Bookmark not defined.Error! Bookmark not defined.**Public notice and comment;
- Notice to, and a possible conference with, state agencies and local governments with regulatory or advisory responsibilities relating to the facility; and then
- A project order which establishes the statutes, administrative rules, council standards, local ordinances, application requirements, and study requirements for the site certificate application.

The project order defines what an applicant must show to obtain a certificate. It is not a final order and the Department may amend it at any time. ORS 469.330.

After the applicant files the application, the Department again notifies the public and the appropriate government bodies. ORS 469.350(2). The Department reviews the application to determine whether it is complete in terms of the project order's requirements. If it is, the Department notifies the applicant, the public, and the appropriate government bodies. ORS 469.350(3). This event starts a statutory clock which gives the Department and Council a total of 9 months for departmental review and council decision. ORS 469.370(9)(b).

The Council must base its approval or rejection of the application on the project order. ORS 469.370(7). Before it can issue a certificate, ORS 469.503(1) requires the Council to find that the facility complies with:

- (a) The Council's standards or, to the extent it does not comply with the standards, that the benefits to the public outweigh the damage to the resources protected by the standards the facility does not meet;
- (b) The project order's list of statutes and rules relating to other agencies; and

(c) The Land Conservation and Development Commission's statewide planning goals.

ORS 469.503 does not state that the Council *must* grant the application if it finds compliance.

After the Council grants an application, it issues a site certificate. The certificate is a binding agreement between the State of Oregon and the applicant. ORS 469.300(25). The certificate must contain any conditions the Council finds are necessary to protect the public health and safety. ORS 469.401(2).

**Discussion.** The structure of Oregon's facility siting process strikes a balance between:

- An applicant's need to know siting requirements in advance and to obtain a speedy decision after it files the application;
- **Error! Bookmark not defined.Error! Bookmark not defined.**The public's need for notice, an opportunity to comment, and a thoughtful review of the proposal; and
- The reality that (1) the Council cannot foresee every contingency when it conducts rulemaking proceedings to adopt standards; and (2) that the Department cannot identify every impact which deserves attention when it issues the initial project order after reviewing only a general description of the project in the notice of intent.

The concepts of (1) pre-existing standards; (2) the initial filing of only a Notice of Intent; (3) a project order specifying, before the applicant files the application, the showing the applicant will have to make to obtain a certificate; (4) the early cut-off date for intervenor issues; and (5) the statutory time limit suggest that the Legislature desired to emphasize a stationary target for the applicant and speedy resolution. They also suggest that the Legislature wants the Council to expand the scope of the case only if the Council determines that an issue is important and urgent enough to warrant a project order amendment. Given the strong legislative desire to give the applicant a stationary target, it would not be appropriate to stretch existing standards to cover situations beyond the plain meaning of the standard.

Standards are different than conditions. Conditions may be modifications to the proposal which are necessary for the facility to comply with the Council's standards. They also may be modifications which the Council concludes are necessary to protect the public health and safety. In the latter case, the Council may consider an issue even though the issue does not relate to a standard (including any existing public health and safety standards).

The two components, standards and conditions, suggest a two-step sequence for the Council's decision. The first step is to determine compliance with standards (in light of any conditions the Council concludes are necessary for compliance with the standard). This step is critical for the applicant because failure to meet a standard results in denial of

the application unless the applicant can show public benefits outweighing resource damage.

After an applicant survives the first step, the Council takes the second step of looking at public health and safety impacts to determine whether it should impose additional conditions to protect the public health and safety. (*See* HO-89, HO-103, HO-118, and HO-159)

### **OAR 345-22-000**

**The Standard.** OAR 345-22-000 is the Council's "General Standard of Review." Section (1) provides:

In order to issue a Site Certificate for a proposed facility the Council must determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the rules implementing ORS 469.300 to ORS 469.570 and 469.590 to 469.619 applicable to the facility,

(b) Except as provided in OAR 345-22-030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules applicable to the issuance of a Site Certificate for the proposed facility. If compliance with applicable Oregon statutes and rules, other than those involving federally delegated programs, would result in conflicting conditions in the Site Certificate, the Council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

**Discussion.** ORS 469.503(1) is silent with respect to denial when an applicant has made the minimum showing necessary for the Council to grant the application. The Council's rule also merely specifies minimum findings. There is no cumulative effects standard, so Council's existing standards do not permit it to decide that the cumulative effects of weak showings on a variety of standards warrant denial. (*See* HO-89)

### **OAR 345-22-010**

**The Standard.** This is the Council's "Organizational, Managerial, and Technical Expertise" standard. Its first section is the one applicable here:

To issue a Site Certificate, 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.** OAR 345-22-010 covers only situations involving similar facilities. It also does not cover the purchasing, marketing, and cost control skills necessary to obtain fuel, sell the output, and operate at a profit. (*See* HO-89)

#### **OAR 345-22-050**

**The Standard.** This is the Council's "Financial Assurance" standard. The following part of its introductory section is applicable here:

To issue a Site Certificate, the Council must 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  $\frac{1}{4}$ .

**Discussion.** The standard only extends to the applicant's ability to offer assurance that it will be able to restore the site. (*See* HO-89)

#### **OAR 345-22-060**

**The Standard.** This is the Council's "Fish and Wildlife Habitat" standard:

To issue a Site Certificate, the Council must find that the design, construction, operation and retirement of the facility is consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-030.

**Discussion.** The standard addresses only impacts from the facility. It does not address impacts from third party responses to any change in electric or gas prices resulting from the plant. (*See* HO-89)

*End of Section*

## CONDITIONS TO PROTECT PUBLIC HEALTH & SAFETY

**Applicable Law.** ORS 469.401(2) requires the Council to put any conditions it concludes are necessary to protect the public health and safety into the site certificate. The statute does not contain geographical restrictions on the public health and safety impacts the Council may consider. The Council may consider all public health and safety impacts of the facility.

**In General.** Some environmental issues involve public health and safety impacts. To the extent the intervenors raised environmental issues with public health and safety impacts in this case, the Council—to the extent it can alleviate the impact through conditions—must consider the issues.

**Ruling.** The Council only has jurisdiction over energy facilities and related/supporting facilities which meet the statutory definition. The siting statutes do not address "upstream" impacts in any context, so it would not be appropriate to imply a broader definition of a facility for public health and safety impacts than the definition applicable to conditions the Council imposes to mitigate impacts in other "global" subject areas such as wildlife habitat or endangered species. (*See HO-103.*)

*End of Section*

*Discovery Issues*

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*Note: The Council sets forth the following language from the Hearings Officer's HO-193 motion to compel ruling as the Council's approach to controlling discovery. The language contains enough material about the discovery issue in this case to put the approach in context.*

## IDENTIFYING RELEVANT MATERIAL

**Applicable Law**

OAR 137-03-025(5)<sup>6</sup> provides that discovery requests must be "reasonably likely to produce information that is generally relevant to the case."

"Relevant" information "tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the information." OEC 401

**Applicable Factual Issue**

The issue is:

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<sup>6</sup> The Council, in OAR 345-15-002, has adopted by reference the Attorney General's model rules of procedure.

- S-23. May/must/should the Council require HPP to provide financial statements for Simplot and Ida-West?
- S-23.1. If the Council must, or may and should, do the records cast doubt on HPP's ability to decommission the plant?:
- S-23.1. If the records cast doubt, is it serious enough for the Council to deny the application?
- S-23.1. If the doubt is not serious enough to warrant denial, may/must/should the Council require HPP to deposit \$8.2 million in escrow at the start of construction?

The issue arises under OAR 345-22-050 (the Council's "Financial Assurance" standard) which requires an applicant to offer a "bond or comparable security" to ensure that it will adequately restore the site. In lieu of a bond, HPP offered joint and several guarantees from the parents of its owners: Simplot (which owns SimGen, Inc.); TransCanada (which owns TCPL Hermiston, Ltd.) and Ida-West (which owns Hermiston Power Company). HPP supplied financial statements for TransCanada (APP-11.17 through APP-11.77) and references for Simplot from two banks (ODOE-171 and ODOE-172).

The TransCanada financial statements show:

	<b>TOTAL REVENUES</b>	<b>NET INCOME</b>	<b>EQUITY</b>
<b>1993</b>	\$4,500,000,000	\$355,600,000	\$2,300,000,000
<b>1994</b>	5,200,000,000	358,600,000	2,500,000,000

Those figures, in the Department's opinion, show that TransCanada could cover \$8.2 million of expected retirement costs without contribution from the other guarantors. *See* ODOE-201.29. In addition, the Department cited bank references and other information for Simplot attesting to Simplot's financial viability.

### **Discussion**

The ultimate fact at issue is whether the guarantees are "comparable to a bond" and satisfactory to the Council for ensuring that HPP will adequately restore the site. *See* OAR 345-22-050. The TransCanada guarantee alone may be sufficient to satisfy the Department, but the Department's decision to rely on financial statements from only one parent does not make the financial standing of the other parents irrelevant. Their financial statements would have a tendency to make it more or less probable that resources will be available to restore the site. The financial statements pass that part of the relevancy test.

The relevancy test also specifies that the fact must be "of consequence to the determination of the action" and the Department clearly concluded that additional financial statements would not make a difference in the outcome. There again, the Council is not bound by the Department's conclusion.

The Council has before it DUCM's proposal for an \$8.2 million escrow account in addition to HPP's guarantee proposal. HPP's proposal depends on the financial strength of the parent corporations, and weak financial standings for the domestic parents might

make it more likely for the Council to adopt the escrow account proposal, so the financial statements are at least marginally "of consequence" to the outcome of the case. They clear the threshold at tree-top level.

**Ruling**

The financial statements are relevant.

*End of Section*

## DECIDING WHETHER TO COMPEL PRODUCTION OF RELEVANT MATERIAL

### Introduction

HPP and the Department suggest different decision-making sequences for determining whether to compel production of relevant information. The two sequences put different initial burdens on the parties:

*HPP.* When a request "appears" burdensome, the party seeking the information has the burden of showing that the information is necessary or at least likely to facilitate resolution of the case.

*The Department.* The party resisting discovery has the burden of showing that the information qualifies for protection under ORCP 36C.

The Department's approach merges analysis under OAR 137-03-025 into analysis under ORCP 36C, while HPP's approach considers ORCP 36C only for discovery requests which survive analysis under OAR 137-03-025. The resulting difference in the decision-making sequences is shown on the decision flow chart at the end of this chapter (page 41).

### Applicable Law

OAR 137-03-025(1) provides:

In its discretion, the agency may order discovery by the agency and any party in appropriate cases. This rule does not require the agency to authorize any discovery. If the agency does authorize discovery, the agency shall control the methods, timing and extent of discovery, but nothing in this rule prevents informal exchanges of information.

OAR 137-03-025(5) provides:

Any discovery request must be reasonably likely to produce information that is generally relevant to the case. If the relevance of the requested discovery is not apparent, the agency may require the party requesting discovery to explain how the request is likely to produce relevant information. If the request appears to be unduly burdensome, the agency may require an explanation of why the requested information is necessary or is likely to facilitate resolution of the case.

ORCP 36C provides:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following: (1) that the discovery not be had;

(2) \_; (7) that trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; \_.

### Attorney Generals' Official Commentary

The Attorney General's Official Commentary for OAR 137-03-025 states:

In contrast to civil litigation governed by Oregon Rules of Civil Procedure, discovery under Model Rule 137-03-025 is not available as a matter of right in every case. *Attorney General's 1995 Administrative Law Manual* at 99.

It further states:

The agency need not authorize discovery in every case; when it does, the agency need not allow all of the discovery methods listed in the rule. The scope of discovery should be tailored to the agency's and parties' needs in a particular case or type of case. *1995 Administrative Law Manual* at 101.

### Discussion

**General Context.** Procedural rules are process management tools which assist forums in resolving disputes. As a forum, the Council has adopted the Attorney General's model rules to govern typical situations arising in administrative proceedings, developed procedural rules of its own to govern unique situations arising from its unique regulatory responsibilities, and borrowed ORCP 36C from the civil courts to govern disclosure of trade secrets and other sensitive information. The origin of the rules is important for putting them in context because the civil rules, in particular, reflect an environment fundamentally different than Council review of a facility siting application.

When a civil case reaches the court, the court knows nothing about it, each party knows its side of the case, and each party must rely on discovery to develop information about the other side. When an application case reaches the Council, the Council has published specific standards for reviewing that type of case in the form of rules, its staff (the Department) has gathered what it feels is enough information to evaluate the application in light of the standards, and the Department provides the information to the other parties. There is much less need for discovery in a Council proceeding because an extensive—and public—information base already exists.

The Council, and other agencies performing similar functions, also are in a better position than a court to determine whether a particular piece of information would be useful in resolving the case. The typical court case has "fuzzier" decision-making criteria than the specific criteria in an agency's rules. It is easier to determine whether information is useful in relation to specific criteria, and an agency's focus on deciding cases under its own criteria gives it subject matter expertise that a court of general jurisdiction lacks.

**Council Control of Discovery.** The presence of public information in the form of an agency record makes it reasonable for the Attorney General to base its model rules on the concept that there is no "right" to discovery in administrative proceedings. Agency control of discovery is particularly appropriate for the Council because it publishes specific standards to guide the Hearings Officer in identifying the types of information that are useful for determining whether it should grant an application, impose conditions, or deny the application. There is no reason to believe that the Council, in developing its own procedural rules or borrowing from civil court procedures, intended to give away control it could exercise under the Attorney General's model rules.

**Scope of Control.** OAR 137-03-025 envisions the broadest possible control over discovery. While "no discovery" is an option under the rule, it would not be an appropriate option in all cases and the Official Commentary instructs the Council to tailor discovery to meet its needs and the parties' needs for the particular case. The Council has a statutory mandate to process site certificate applications within 9 months after the Department deems the application complete. That mandate creates an agency need for an efficient process and a lean case. The agency's mandate is compatible with the applicant's desire for a speedy and inexpensive decision, but may conflict with Council and intervenor needs for more information.

The solution to this dilemma lies in the general tenor of OAR 137-03-025. It suggests that agencies allow discovery of information which is important to the outcome of the case and avoid wasting time and resources on other information.

OAR 137-03-025(5) focuses on burdens an agency may impose on a party desiring information. It prevents discovery of irrelevant information by requiring a showing of relevance. It avoids trivial disputes over relevant information by requiring at least the appearance of undue burden before the agency takes the time to evaluate the importance of the information. It then provides good guidance for identifying burdensome information which the agency should require a party resisting discovery to produce in the form of the "necessary or likely to facilitate resolution of the case" test.

The scope of reasonable discovery will be broader for technical subjects, such as seismic hazards, than for less technical subjects, such as the best color transmission pole for blending into the surroundings. The scope also will be broader for central issues than peripheral issues because central issues are more important to resolution of the case. Even under the widest scope, an agency retains more control over discovery than a civil court. That makes it appropriate for an agency to evaluate the importance of all types of information under OAR 137-03-025 before applying ORCP 36C.

**Role of ORCP 36C.** ORCP 36C is important in civil proceedings for determining whether discoverable information needs protection from public disclosure. It plays the same role in Council and other agency proceedings involving sensitive information, but does not limit the agency's ability to control discovery. The agency retains the ability to first determine whether the information is discoverable under OAR 137-03-025.

### **Most Appropriate Sequence**

The most appropriate sequence is to control discovery pursuant to OAR 137-03-025 and then, if necessary, address protection from public disclosure under ORCP 36C.

### **"Unduly Burdensome" Requests**

OAR 137-03-025 states that when a request appears "unduly burdensome" the agency may require the party requesting the information to show that it is important to the case. Burdens take different forms, so it is appropriate to interpret this general term broadly enough to include adverse impacts from disclosing sensitive information. That interpretation is consistent with the list of burdens in ORCP 36C.

### **Analysis Under OAR 137-03-025**

The discussion in this case has focused on Simplot's financial information. Simplot submitted an affidavit from its treasurer stating that Simplot numbers each copy of its financial statements and discloses them internally only to a few senior managers and externally only when necessary to conduct business (and then under a confidentiality agreement). With that level of protection, the information clearly is sensitive for Simplot and it is appropriate to inquire into the need for the information before requiring Simplot to disclose it.

Simplot, according to the affidavit, offers bank references to most entities requesting proof of its financial standing and two bank references (ODOE-171 and ODOE-172) are in the record. It is not likely that the actual financial statements would lead the Council to a different conclusion regarding Simplot's financial viability than the banks—which have loaned money to Simplot—reached after reviewing the information. It also is not likely that even adverse information would change the Council's opinion of the guarantee concept when TransCanada's 1994 income was 44 times HPP's plant retirement obligation and TransCanada's 1994 shareholder equity was 304 times the obligation.

If the Council rejects the guarantee concept, it is more likely to be for some policy reason relating to the inherent nature of guarantees. It is unlikely that discovery of Simplot or Ida-West financial information would be useful in resolving the issue. The information certainly is not necessary for the Council to make a good decision.

### **Ruling**

The Council should not require discovery because (1) production of the information appears to be unduly burdensome for Simplot; and (2) DUCM failed to show that the information is either necessary or likely to facilitate resolution of the case. There is no need for analysis under ORCP 36C.

*End of Section*

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DISPUTE RESOLUTION DIAGRAM

*Legal Issues*

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## INTRODUCTION

**Scope of this Section**

The Issue List for the Salem Issue Group (HO-92) contains two issues which the Council can resolve (1) without taking evidence, or (2) under the facts most favorable to the losing party. The two issues are:

- S-1. May/must/should the Council reject the application because HPP did not submit an "affidavit of Authenticity" with Revision 1 to the application?
- S-2. Is the Council precluded from applying the BPA 6(c) exemption because:  
S-2.1.¼ .

**Procedural Summary**

HPP and the Department filed opening briefs on November 6, DUCM filed a response on November 20, and there was an oral argument on November 21.

## **Preliminary Issue**

### **DUCM's Position**

DUCM contends that legal issues must await briefing until after the hearing because the Council's rules do not specifically provide a summary judgment mechanism for resolving issues without a hearing. DUCM cited a Employment Relations Board case in which the court ruled that the agency could not summarily proceed to a vote without specific authority in its procedural rules for a summary judgment process. *OACE v. Eaglepoint School Dist. No. 9*, 99 Or App 347 (1989).

### **Response**

*The Department.* The Department contends that *Eaglepoint* does not apply to this situation because (1) the Council is in the midst of a hearing; and (2) nothing prevents the Council from considering purely legal issues in an interlocutory way.

*HPP.* HPP additionally contends that there is little substantive difference between (1) the Council considering legal issues early in the case; and (2) the Council considering them after taking evidence on the other issues.

### **Discussion**

This point is moot because the Council did not consider the Hearings Officer's legal analysis at its December public meeting.

*End of Section*

## ISSUE S-1

### **The Issue**

- S-1. May/must/should the Council reject the application because HPP did not submit an "affidavit of Authenticity" with Revision 1 to the application?

### **Applicable Law**

OAR 345-21-010(2) states in relevant part:

The original application shall be accompanied by an affidavit from the person submitting the application that, to that person's best knowledge and belief, the information in the application is true and accurate.

### **Findings of Fact**

Revision 1 to the application contains redlining showing additions to the initial filing. It also retains the original paging sequence by designating additional pages as "b", "c", *etc.* There is nothing in the correspondence relating to the filing of Revision 1 to show that HPP intended to withdraw the initial filing and make an entirely new one. For example, when HPP sent 10 copies of the application after the Department deemed it complete, HPP referred to the document as an "updated" application. ODOE-109.

HPP filed an affidavit for Revision 1 after DUCM raised the issue. The affidavit attests to, to the best of the signatory's knowledge, that the information in Revision 1 is true and accurate.

### **Discussion**

OAR 345-21-010(2) requires an affidavit only with the original application, and HPP included an affidavit (APP-29) with its initial filing, so the question here is whether Revision 1 is a second original application. The appearance of the document shows that HPP merely integrated new text into the old text to make a coherent package for the Department and Council to review. It is not a second original application.

Even if it was a second original, the omission of the affidavit is the type of minor defect which the Council may allow an applicant to correct. The affidavit HPP submitted after DUCM raised the issue would be sufficient even after commencement of the contested case. DUCM did not show any harm from the omission, so it should have no impact on the Council's decision on the application.

### **Ruling**

The Council may not base rejection of the application on HPP's failure to submit an affidavit of authenticity with Revision 1 to the application.

*End of Section*

## ISSUE S-2.1.1

### **The Issue**

- S-2. Is the Council precluded from applying the BPA 6(c) exemption because:
  - S-2.1 The Council must refrain from applying OAR 345-23-010(3) because:
    - S-2.1.1 There is a pending appeal?

### **Applicable Law**

ORS 183.355(2) provides that a rule becomes effective when the agency files it with the Secretary of State (unless the rule specifies a later date or a statute requires a later date).

### **Findings of Fact**

For the purpose of this ruling, the Council assumes that there is a pending appeal.

### **Discussion**

DUCM did not assert that a court has stayed OAR 345-23-010(3) and did not assert that an appeal automatically stays a rule. It merely asserted that an appeal is pending. An appeal, by itself, has no effect on a rule's effective date.

### **Ruling**

This pending appeal does not preclude the Council from applying OAR 345-23-010(3) because the court has not stayed the rule.

*End of Section*

## ISSUE S-2.1.2

### The Issue

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.1 The Council must refrain from applying OAR 345-23-010(3) because:

S-2.1.2 The Council did not prepare an adequate fiscal impact statement?

### Applicable Law

ORS 183.335(2)(b)(E) requires agencies to include in their rulemaking notices:

A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.  $\frac{1}{4}$ .

### Findings of Fact

**The Rulemaking.** The Council adopted the BPA 6(c) exemption in November 1994 as part of a larger rulemaking which amended various provisions in OAR Chapter 345 relating to energy facility siting. The Council filed a fiscal impact statement for that rulemaking with the Secretary of State in August 1994.

The statement identified the state agencies, units of local government, and members of the public that could be economically affected by the various changes to OAR Chapter 345. The statement projected possible significant economic effects from the various changes on businesses (including cost-of-compliance effects on small business) to the extent the Council saw them. The statement attempted to quantify effects to the extent the Council had information which would allow the Council to do so. When the Council did not have information, the statement explained that the absence of information quantification.

The statement did not specifically address the BPA 6(c) exemption, because that particular exemption was not part of the Council's initial rule proposal, but the statement did address similar changes to Division 23. The statement addressed impacts on applicants from those changes as follows:

Proposed changes to Division 23 which afford a rebuttable presumption of need to certain facilities and exempt certain others from needs consideration will provide a small decrease in costs for those applicants. The Council does not have information available to it on which

to base an estimate of the potential savings associated with these changes. August 1994 Fiscal Impact Statement at 7.

The statement included similar language addressing the impact on consumers:

Changes to OAR 345 division 23 are also expected to have minimal fiscal impact. The proposed rules provide exemptions from EFSC jurisdiction for certain very high efficiency energy producers, and from the requirement to demonstrate need for power for some energy facilities which utilize renewable resources, which will reduce costs for those facilities. EFSC does not have information available upon which to base a more precise estimate of the incremental impact of the proposed rules compared with the rules currently in effect. August 1994 Fiscal Impact Statement at 9.

**Flaws in the Statement.** DUCM merely asserted that the statement was "inadequate." It did not identify any specific errors or omissions.

## Discussion

DUCM cited a case in which the Oregon Supreme Court invalidated an agency rule after concluding that the agency had failed to use available information to project the rule's fiscal/economic impact. See *Dika v. Dept. of Ins. and Finance*, 312 Or 106 (1991). However, DUCM did not cite authority for the proposition that an agency cannot apply a rule pending a court ruling on compliance with ORS 183.335(2)(b)(E).

DUCM did not identify any specific problem with the Council's August 1994 fiscal impact statement. The Council's statement, unlike the statement in the *Dika* case, identified and quantified fiscal/economic impacts to the extent possible. That is sufficient to comply with ORS 183.335 under the *Dika* case.

It is sufficient even though the BPA 6(c) exemption was not a part of the Council's initial proposal. See *Bassett v. State Fish and Wildlife Commission*, 27 Or App 639, 642, 556 P2d 1382 (1976). The Council was considering other amendments to the same subject—its need standards and exemptions—in the context of a broad rulemaking. The nature of the rulemaking and existence of other need amendments were sufficient for the statement to notify people with an economic interest in need standards and exemptions to evaluate their position. See *Oregon Funeral Dirs. Assn. v. Oregon State Mort. & Cem. Bd.*, 132 Or App 118 at 123-124, 888 P2d 104 (1995).

## Ruling

The Council's August 1994 fiscal impact statement complied with ORS 183.335. The Council may apply OAR 345-23-010(3) pending appeal of the rulemaking.  
*End of Section*

### ISSUE S-2.1.3.1

#### The Issue

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.1 The Council must refrain from applying OAR 345-23-010(3) because:

S-2.1.3 The Council adopted the rule for the purpose of exempting HPP from the need standard and:

S-2.1.3.1 Should have conducted a contested case hearing to determine the need for the plant?

#### Applicable Law

ORS 469.501(1) includes need for the facility in the list of suggested topics for Council standards. ORS 469.501(2), as it existed in 1994, provided:

The Council may *adopt* exemptions, except for coal or nuclear power plants, from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010, 469.190 and 469.310 and the council's consideration of the implementation of the strategy prepared under ORS 469.060 for reducing the emission of gases that contribute to global warming. *Emphasis added.*

OAR 345-23-010(3) exempts, from the requirement of showing need, the following:

Electric generation facilities, except coal or nuclear, for which all the net electric output is contracted to the Bonneville Power Administration and which have a fuel chargeable to power heat rate of 8000 But per kWh or less, provided the Council finds that the Pacific Northwest Electric Power and Conservation Planning Council is authorized to review the acquisition of the output of the facility for consistency with the 1991 Northwest Conservation and Electric Power Plan under section 6(c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act ¼ .

#### Findings of Fact

The Council's rulemaking record contains the following:

*November 10, 1994, Supplemental Hearings Officer's Report.* At page 1, the Hearing Officer states:

Staff proposes this exemption because it believes that review by EFSC under its need-for-facility standard is duplicative of the review by the Power Planning Council under the Regional Power Act. The staff believes it is good

government policy to reduce duplication. Staff believes that it is good energy policy because the standards and criteria applied by both EFSC and the NPPC are essentially the same. Both are applied before the facility is built. Further, staff believes that in the case of optioned facilities, the NPPC review will be made at the most appropriate time, the time BPA calls for construction of the proposed facility.

### **Discussion**

ORS 469.501 contemplates exemptions via rulemaking. The exemption in OAR 345-23-010(3) applies to any facility contracting its net output to BPA under any circumstances involving Power Planning Council review of the acquisition. Even though HPP may be the only present candidate for the exemption, the rule addresses any situation in which Oregon's siting process would duplicate Power Planning Council review of the need for a resource. The rule, on its face, does not address the type of situation in which an adjudicative process is necessary to support the agency's decision.

Situations requiring an adjudicative process involve not only a focus on a specific individual, group of individuals, or set of circumstances, but also a dispute involving facts, inferences, or predictions with preexisting criteria governing resolution of the dispute. *Strawberry Hill 4 Wheelers v. Benton Co. Bd. Of Comm.*, 287 Or 591, 602-603 (1979). A dispute over which of two applicants for an exemption best meets its criteria would be a good candidate for a contested case to ensure a correct decision on the facts and provide both applicants with a fair opportunity to present the facts most favorable to them. That is not the type of issue the Council faced in exempting all facilities contracting to sell their net output to BPA and subject to review by the Power Planning Council.

The Council used a rule proceeding to adopt a previous exemption when only two identifiable applicants would be affected by the rule. The rule survived appeal to the Supreme Court. The Court held that the regulatory decisions to adopt need-for-power exemptions, and establish parameters for the exemptions, are "characteristic exercises" of the Council's rulemaking authority. *Don't Waste Oregon Comm. v. Energy Facility Siting Council*, 320 Or 132, 148-150 (1994).

This case may involve only a single identifiable applicant, but the propriety of legislating rather than adjudicating new exemptions remains the same. The rulemaking was an appropriate process.

### **Ruling**

The Council's decision to use a rulemaking process rather than a contested case process does not invalidate the exemption.

*End of Section*

ISSUE S-2.1.3.2

**The Issue**

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.1 The Council must refrain from applying OAR 345-23-010(3) because:

S-2.1.3 The Council adopted the rule for the purpose of exempting HPP from the need standard and:

S-2.1.3.2 Should not have created the exemption without first determining that the exemption would be consistent with the energy policies in ORS Chapter 469?

**Applicable Law**

ORS 469.501(2) provides:

The Council may adopt exemptions, except for coal or nuclear power plants, from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310.

**Findings of Fact**

The Council's rulemaking record contains the following:

*October 21, 1994, Memo from David Stewart-Smith Requesting Comments.* Mr. Stewart-Smith asked people on the Council's list of people with an interest in participating in the Council's rulemaking proceedings to brief the following questions:

- May EFSC, consistent with ORS Chapter 469 and the Oregon Constitution, exempt from the need determination facilities that are subject to review by the Northwest Power Planning Council (NPPC) under section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 USCA § 839 (1980)?
- Is the NPPC review process of BPA acquisitions under section 6(c) consistent with Oregon's energy policy set out at ORS 469,010, 469.190, and 469.310?

*November 10, 1994, Supplemental Hearings Officer's Report.* At page 3, the Hearings Officer states:

In response to EFSC's second question staff prepared a side-by-side comparison of the EFSC's need for facility standard and the NPPC's policy and decision criteria. This comparison demonstrates the two are similar standards with

respect to key elements of state energy policy as well as consideration of global warming and that the two are similarly clear and objective.

### **Discussion**

The rule need not recite the Council's underlying consideration of state energy policy. *Don't Waste Oregon Comm. v. Energy Facility Siting Council*, 320 Or 132, 152-153 (1994). The Council's briefing request and Hearings Officer's report both show that the Council considered state energy policy in compliance with ORS 469.501(2).

Even if the Hearings Officer's report did not address the issue, the critical question is whether the rule actually is consistent with the state's energy policy. The presence or absence of agency language to that effect is of little consequence in determining actual compliance. Actual compliance is clear from the Department's "side-by-side" comparison of the Council's need-for-facility standards with the policies/decision criteria the Power Planning Council would apply under its review process.

### **Ruling**

There was no failure to consider state energy policy which would preclude the Council from applying OAR 345-23-010(3). OAR 345-23-010(3) is, in fact, consistent with the state's energy policy.

*End of Section*

## ISSUE S-2.1.4

### The Issue

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.1 The Council must refrain from applying OAR 345-23-010(3) because:

S-2.1.3 The Council's decision to create the exemption is not consistent with the policy the 1993 Legislature expressed in SB 1016 when it exempted only "high efficiency cogeneration" plants with heat rates equal to 6,000 Btu/kWh or below?

### Applicable Law

ORS 469.320(2) states: No site certificate shall be required for:

(a)  $\frac{1}{4}$

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

**Error! Bookmark not defined.Error! Bookmark not defined.**(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d)  $\frac{1}{4}$ .

ORS 469.501(2) provides:

The Council may adopt exemptions, except for coal or nuclear power plants, from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310.

### Discussion

DUCM asserts that the exemption in ORS 469.320(2)(c) precludes the Council from adopting the OAR 345-23-010(3). DUCM's theory, expressed in Latin as *ejusdem*

*generis*, is that a specific exemption limits the scope of general exemption authority to exemptions of the same kind.

The theory might apply if the Council sought to exempt lower efficiency gas cogeneration facilities from the entire certification process. The Council has not attempted to do that. It adopted an entirely different type of exemption (an exemption from part of the certification process *vs.* the entire certification process). It also did so for a different group of facilities (any type of facility, other than coal or nuclear, with a heat rate for 8,000 Btu per kWh which contracts its net output to BPA *vs.* high efficiency cogeneration facilities regardless of the entity purchasing their output). Those differences make DUCM's *ejusdem generis* argument irrelevant.

DUCM took its *ejusdem generis* argument to the Oregon Supreme court in its appeal of a previous exemption under ORS 469.501(2). The Court concluded: "Petitioners seek to have an exemption for apples preclude an exemption for oranges." ***Don't Waste Oregon Comm. v. Energy Facility Siting Council***, 320 Or 132, 148 (1994).

### **Ruling**

The exemption in ORS 469.320(2)(c) does not preclude the Council from adopting or applying the exemption in OAR 345-23-010(3).

*End of Section*

### ISSUE S-2.2.1.1

#### The Issue

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.2 The project fails to qualify for the BPA 6(c) exemption because:

S-2.2.1 BPA has not contracted for all the net output of the plant because:

S-2.2.1.1 BPA merely acquired an option to purchase all of the net output?

#### Applicable Law

OAR 345-23-010(3) exempts, from the requirement of showing need, the following:

Electric generation facilities, except coal or nuclear, for which all the net electric output is contracted to the Bonneville Power Administration  $\frac{1}{4}$ .

OAR 345-27-020(6)(d)(A) requires, for facilities exempt from demonstrating need under OAR 345-23-010(3), the following condition in the site certificate:

A long term power sales contract with the Bonneville Power Administration for all the net electric output of the facility;  $\frac{1}{4}$ .

#### Findings of Fact

In its comments on the Department's Draft Proposed Order, DUCM conceded the existence of an option contract and merely argued that an option contract is not sufficient to qualify for the BPA 6(c) exemption:

The exemption applies only to a facility "for which all the net electric output is contracted to the Bonneville Power Administration." None of the output of the HPP project (*sic*) has yet been contracted to BPA. Instead, BPA merely has an option, which it may exercise in the future, to contract for the output. In no legal sense can it be concluded that the output has been contracted to BPA. ODOE-166.7.

For the purpose of this ruling, the Council assumes that HPP's contract with BPA does not involve anything more than an exclusive option for BPA to purchase the facility's net output.

#### Discussion

The *raison d'etre* for the OAR 345-23-010(3) exemption is to avoid duplicating Power Planning Council review of the need for power from a facility. The Power Planning Council's review covers only BPA's acquisition of power from the facility, so a

requirement that BPA acquire all the net output is necessary to ensure that the Power Planning Council review covers the entire net output from the facility.

The Power Planning Council would review the need for facilities participating in BPA's Resource Contingency Program at the time BPA asserts a need for power. The Contingency Program, and the resulting probable preliminary nature of the initial contract with BPA, were factors the Council considered in adopting OAR 345-23-010(3). The Council explicitly recognized the possible absence of a power sales agreement during the siting phase by using the vague "contracted with" language in OAR 345-23-010(3) rather than the specific "long term power sales agreement" language in the conditions for actual construction in OAR 345-27-020(6)(d)(A).

The difference in language reflects the reality of participation in BPA's options program while ensuring that a power sales contract is in place before actual construction. Especially for an options facility, a contract—such as an exclusive option contract—which ensures that none of the output will go to another purchaser is all that is necessary.

### **Ruling**

The existence of an option contract rather than a long term power sales agreement does not preclude the Council from applying OAR 345-23-010(3).

*End of Section*

## ISSUE S-2.2.1.2

### **The Issue**

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.2 The project fails to qualify for the BPA 6(c) exemption because:

S-2.2.1 BPA has not contracted for all the net output of the plant because:

S-2.2.1.2 BPA did not commit to a price?

### **Applicable Law**

OAR 345-23-010(3) exempts, from the requirement of showing need, the following:

Electric generation facilities, except coal or nuclear, for which all the net electric output is contracted to the Bonneville Power Administration  $\frac{1}{4}$ .

### **Findings of Fact**

For the purpose of this ruling, the Council assumes that HPP's contract with BPA does not contain a price or formula for calculating a price. The parties would have to agree on a price before executing a power sales contract.

### **Discussion**

Here again, in terms of satisfying OAR 345-23-010(3), an applicant merely must show that it has a contract with BPA in which the applicant promises to sell power from the facility only to BPA. There is no showing that the eventual price for the power is an essential term for an option contract.

### **Ruling**

The absence of a price-for power-term in the option contract does not preclude the Council from applying OAR 345-23-010(3).

*End of Section*

## ISSUE S-2.2.2

### The Issue

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.2 The project fails to qualify for the BPA 6(c) exemption because:

S-2.2.2 BPA is not likely to exercise its option?:

### Applicable Law

OAR 345-23-010(3) exempts, from the requirement of showing need, the following:

Electric generation facilities, except coal or nuclear, for which all the net electric output is contracted to the Bonneville Power Administration  $\frac{1}{4}$ .

OAR 345-27-020(6)(d) requires, for facilities exempt from demonstrating need under OAR 345-23-010(3), the following condition in the site certificate:

- A long term power sales contract with the Bonneville Power Administration for all the net electric output of the facility; and
- A final, non-appealable determination by the Pacific Northwest Electric Power and Conservation Council, under the criteria identified in OAR 345-23-010(3), that the Bonneville Power Administrator's decision to acquire output from the proposed facility is consistent with the 1991 Northwest Conservation and Electric Power Plan and is in accordance with the criteria identified in OAR 345-23-010(3)(a), (b) and (c). If such a determination is not provided, the certificate holder shall not commence construction of the facility unless it demonstrates need in a process conforming to the requirements of OAR 345-27-070, except that the Council shall hold a contested case hearing if requested under OAR 345-27-070(3). The issue at the hearing shall be limited to whether the facility complies with Division 23 of these rules.

### Findings of Fact

For the purpose of this ruling, the Council assumes that BPA is not likely to exercise the option.

### Discussion

OAR 345-23-010(3) does not require an applicant to show that BPA is likely to exercise an option for the net electric output. The lack of a requirement will not prevent the Council from avoiding an unnecessary facility because, if the facility does not obtain both a power sales contract with BPA and Power Planning Council approval at the time BPA asserts a need for the power, HPP must show need pursuant to the Council's Division 23 rules before building the facility.

**Ruling**

The possibility, or even probability, that BPA will not exercise its option does not preclude the Council from applying OAR 345-23-010(3).

*End of Section*

## ISSUE S-2.2.3.1

**The Issue**

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.2 The project fails to qualify for the BPA 6(c) exemption because:

S-2.2.3 NPPC has not, and will not, review acquisition of the facility for consistency with the 1991 Northwest Conservation and Electric Power Plan because:

S-2.2.3.1 NPP cannot conduct a review until BPA actually acquires the output?

**Applicable Law**

OAR 345-23-010(3) does not authorize an exemption unless:

¼ the Council finds that the Pacific Northwest Electric Power and Conservation Planning Council is authorized to review the acquisition of the output of the facility for consistency with the 1991 Northwest Conservation and Electric Power Plan under section 6(c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 USCA §839d.(c)(2) (1980), and for consistency with the criteria in: ¼ .

Section 6(c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, authorizes the Power Planning Council to review BPA proposals to acquire "major resources" for consistency with the Regional Electric Power and Conservation Plan. Section 3(12) defines "major resources" to include the size and type of facility HPP proposes to build. HPP's facility is one of the "major resources" in BPA's Resource Contingency Program. *In the Matter of Proposed Payment of Preconstruction and Investigation Expenses to Selected Sponsors of Major Resources Pursuant to the Resource Contingency Program*, Administrator's Record of Decision, Attachment B (December 1992). (APP-12.61).

**Discussion**

DUCM asserts that the Power Planning Council does not have authority to review acquisition of the facility's output because BPA will not present acquisition to the Power Planning Council for review until BPA exercises the option. That interpretation is inconsistent with the nature of an options program, and BPA's Resource Contingency Program was something the Council had in mind when it adopted OAR 345-23-010(3). It is much more reasonable to interpret the rule as meaning the *type of facility* the Council has authority to review.

The HPP facility would be a major resource and, as a major resource, is the type of facility subject to Power Planning Council review under existing law. That is all that OAR 345-23-010(3) requires an applicant to show.

**Ruling**

HPP's facility is the type of facility that the Power Planning Council may review if BPA decides to exercise its option, so the timing of the review does not preclude the Council from applying OAR 345-23-010(3).

*End of Section*

### ISSUE S-2.2.3.2

#### **The Issue**

S-2. Is the Council precluded from applying the BPA 6(c) exemption because:

S-2.2 The project fails to qualify for the BPA 6(c) exemption because:

S-2.2.3 NPPC has not, and will not, review acquisition of the facility for consistency with the 1991 Northwest Conservation and Electric Power Plan because:

S-2.2.3.2 NPP will have replaced the 1991 plan with another one by the time BPA needs the output?

#### **Applicable Law**

OAR 345-23-010(3) does not authorize an exemption unless:

¼ the Council finds that the Pacific Northwest Electric Power and Conservation Planning Council is authorized to review the acquisition of the output of the facility for consistency with the 1991 Northwest Conservation and Electric Power Plan ¼ .

OAR 345-27-020(6)(c) requires, for facilities exempt from demonstrating need under OAR 345-23-010(3), the following condition in the site certificate:

(A) ¼ ; and

(B) A final, non-appealable determination by the Pacific Northwest Electric Power and Conservation Council, under the criteria identified in OAR 345-23-010(3), that the Bonneville Power Administrator's decision to acquire output from the proposed facility is consistent with the 1991 Northwest Conservation and Electric Power Plan ¼ .

#### **Findings of Fact**

For the purpose of this ruling, the Council assumes that the Power Planning Council is likely to have replaced the 1991 plan with another plan before BPA exercises its option.

#### **Discussion**

Here again, it is only reasonable to interpret OAR 345-23-010(3) and OAR 345-27-020(6)(d) in light of BPA's Resource Contingency Program. The rules necessarily mention the 1991 Northwest Conservation and Electric Power Plan because it was the one existent at the time the Council adopted the rules and the only plan the Council could review for consistency with Oregon's energy policies. If another plan comes into existence, and the Power Planning Council cannot review a BPA decision to acquire the output of the HPP facility under the 1991 plan, this Council will have to amend its rules

(and HPP will have to ask the Council to amend its site certificate) to permit construction upon a Power Planning Council finding of consistency with the new plan.

The new plan may not be consistent with Oregon's energy policies, but that is a risk HPP must take. HPP may have to come back to this Council and show need for the facility pursuant to Division 23 of this Council's rules. Whether or not that occurs, the Council can issue a site certificate in reliance on the current Power Planning Council plan without creating a situation in which HPP obtains authority, at this point in time, to build an unnecessary facility.

That is the critical issue—avoidance of an unnecessary facility—and the Council's rules prevent construction of unnecessary facilities. The rules do so in a way that enables the Council to avoid duplicating Power Planning Council review of BPA's resource acquisitions. They also do so in a way that allows BPA to pursue its plan for rapid response to regional demand growth through an inventory of facilities which have siting authority and can come on line after a relatively short lead time. While BPA may have selected an option resource which DUCM disfavors, BPA's options program is an appropriate policy for BPA to pursue and the Council's rules are an appropriate response to the program. The overall effect of the exemption is not inconsistent with the Council's regulatory responsibilities.

### **Ruling**

The possibility, or even probability, that the 1991 Northwest Conservation and Electric Power Plan will be out of date at the time BPA exercises its options does not preclude the Council from applying OAR 345-23-010(3).

*End of Section*

## *Local Issues*

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### ISSUE H-3 (ELECTROMAGNETIC FIELDS)

#### **The Issue**

Mr. Lambert raised the following primary issue and a Council member raised Issue H-3.1.1:

H-3. Do electromagnetic fields pose a threat to adjacent property owners or people using adjacent property?

H-3.1 ~~If there is a threat, is it serious enough for the Council to deny the application?~~ *Note: The Hearings Officer struck this issue because the Council has no EMF standard in its existing rules and decline to adopt new standards for the purpose of applying them to this application.*

H-3.2 If there is a threat, what conditions (if any) should the Council impose to mitigate the adverse impact on adjacent property owners?

H-3.1.1 Will phasing a second 230 kV circuit on the 230 kV line reduce electromagnetic field effects? (*Council*)

#### **Applicable Standard**

OAR 345-24-090 addresses electric fields, but the focus is on preventing shock or other direct effects of exposure to electric current. There is no rule addressing magnetic fields.

#### **Department's Proposed Order**

The Department's Proposed Order incorporates, as binding commitments, the routing and design/loading features which HPP described in its application. The Department concluded that those efforts were sufficient to show prudent avoidance.

**Existing Council Policy**

The Council went through the following steps in developing its existing EMF policy:

*Scientific Review Panel.* In 1988, the Council responded to EMF concerns arising from construction of a PacifiCorp transmission line by commissioning a panel of scientists to study the issue. The panel spent about a year reviewing the credible scientific information and conducted a public comment hearing. The result was a report which the panel issued in April 1990. The report:

- Found a basis for concern;
- Found that the scientific evidence was weak, inconsistent, and inconclusive;
- Concluded that the evidence did not provide an adequate basis for conducting a risk assessment; and
- Concluded that the topic needed more good quality research.

*Council Action.* In response to a petition from the group that initially raised concerns about the transmission line, the Council reviewed the situation and concluded that the existing scientific evidence:

- was not sufficiently convincing to make a health-based standard appropriate; and
- provided no basis for deciding what an appropriate standard might be.

The Council also did not believe that the scientific evidence showed a clear threat to public health or safety which would justify unilateral amendment of PacifiCorp's site certificate. The Council adopted a Department suggestion for informal discussions which resulted in PacifiCorp voluntarily agreeing to redesign the line to minimize EMF emissions.

*Ongoing Review.* In late 1990, the Council established a subcommittee of Council members into follow EMF developments. The subcommittee evolved into an Electric and Magnetic Field Committee after the 1991 Legislature passed SB 861. SB 861 directed the Council to establish a committee with representatives from the public, utilities, manufacturers, and state agencies. The committee's charge was to "monitor information being developed on electric and magnetic fields and report the committee's findings to the Council." The Council received instructions to report the committee's findings to the Legislature. See ORS 469.480(4).

The Council organized the committee and it started working in 1991. It worked through 1992 and until March 1993 when the Council endorsed the committee's report. The Council then forwarded the report to the Legislature. The report concluded with three recommendations:

1. The EMF Committee should continue to monitor the EMF issue and report to the Council.
2. The EMF Committee encourages exploration of low-cost ways to reduce or manage EMF exposure during this time of uncertainty.
3. The EMF Committee believes it is premature to set "health based" limits for exposure to low levels of 60 Hertz EMF at this time.

*Prudent Avoidance.* The "low-cost ways to reduce or manage EMF" language became the "prudent avoidance" approach which the Council has endorsed for responding to public health/safety issues arising from magnetic field exposure.

### **Additional Findings of Fact**

#### **Post 1993 Scientific Studies**

*HPP's Expert.* Richard Cole, M. D. is a Professor of Epidemiology at the University of Alabama School of Public Health. He also is a Senior Scientist at the University's Comprehensive Cancer Center. Dr. Cole's research interests include the health effects of electromagnetic fields. He published on that topic several times between 1989 and 1994.

*The Department's Expert.* Tom Meehan Ph.D. is a member of the department's staff. Dr. Meehan served on the 1993 EMF committee and has continued monitoring the EMF issue for the Department.

*Epidemiological Studies.* Epidemiological studies, such as the ones Dr. Cole conducts, compare the rate of a specific disease in a population experiencing certain conditions (like exposure to high EMF levels) with the rate of disease in a control group. It is not possible to (1) completely measure exposures, (2) control exposures to other factors that could explain any difference in disease rates, or (3) gather completely accurate data in human populations. That makes it difficult to establish causation through epidemiological studies. The studies normally only establish "associations" between factors and diseases. When an epidemiological study shows an association, scientists typically follow up with "in vitro" or "in vivo" laboratory studies to determine whether the condition actually causes a biological change which results in the disease.

*"In Vitro" and "In Vivo" Studies.* In vitro laboratory studies measure the effect of exposure to a condition (such as EMF emissions) on cells, while in vivo studies measure the effect on living animals. Both occur under laboratory conditions which seek to eliminate any "confounding" factors<sup>7</sup> which would prevent the study from reaching conclusive results. The laboratory methodology helps determine whether an epidemiological association is biologically plausible. Even with the tight controls of good laboratory studies, replication in other laboratories is necessary to scientifically establish a cause/effect relationship.

*General Post-1993 Results.* Scientific study of EMF since the 1993 committee report has not produced a consensus regarding health impacts from EMF. Some studies find no effects. Others do, but it is difficult to replicate their results and, to date, no biologically plausible explanation for an EMF impact on health has emerged. That does not settle the question, but it does mean that there is no scientific basis, at this time, for selecting a maximum "safe" value for magnetic field strength.

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<sup>7</sup> A "confounding" factor is some other potential cause of any adverse impact the study reveals. Eliminating confounding factors makes results conclusive by eliminating other possible explanations for the adverse impacts.

*Swedish Residential Study.* The "Feychting"<sup>8</sup> epidemiological study, which the media widely reported as showing "positive results" (*i.e.* harmful effects), actually consisted of seven sub-studies. Six of the seven component studies showed negative, and in some cases strongly negative, results. The remaining component showed a positive relationship with childhood leukemia. However, it was a weak showing because there was no consistent "dose-response" effect and there were other inconsistencies.<sup>9</sup> The lack of a consistent dose-response effect is particularly important because dose-response is a critical factor in epidemiology. A lack of dose-response suggests a lack of cause-effect.

*Large Scale Occupational Studies.* There have been three large scale occupational studies since 1992. All focused on cancer. They have the following features in common:

- They are large;
- They focused on people with heavy exposure to EMF in an occupational setting;
- The researchers measured EMF strength instead of estimating it; and
- Experienced, well-respected epidemiologists conducted the studies.

None of the studies shows any consistent positive association between EMF and cancer in adults.

*Other Studies.* The other post-1993 studies which Dr. Cole specifically mentioned focused on other health problems such as depression, miscarriage, and congenital malformation. Those studies show "negative results" (*i.e.* no harmful effects) in most cases. None of them provide a good basis for concluding that there is any adverse health effect from EMF.

### **The Camas Ordinance**

Mr. Lambert introduced an EMF committee majority report and the resulting ordinance which the City of Camas, Washington, adopted in July 1995. The ordinance governs the location and design of transmission lines within the city. Its provisions include specific setback requirements for child-intensive locations.

In the ordinance, the City Council made the following findings:

1. There is a need for adequate electric power facilities to serve existing uses and to supply anticipated growth.
2. Electrical facilities generate electric and magnetic fields.
3. While there is scientific evidence that suggests exposure to electric and/or magnetic fields may have adverse health benefits, including increased risk of cancer and leukemia, the scientific community has not reached a definitive conclusion. Existing studies have not been able to categorically establish or

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<sup>8</sup> "Feychting" is the name of the senior author.

<sup>9</sup> For example, the study shows an association between EMF and leukemia for children in single family residences, but not for children with similar exposure levels in apartments.

eliminate any connection between electromagnetic fields and such health risk.

4. Overhead electric transmission lines may negatively impact real property values due to both undesirable aesthetic effects and to public concerns over health-related risk associated with electrical transmission lines.
5. The potential negative impact on property values and the exposure to electromagnetic fields may be eliminated or greatly reduced by utilization of prudent avoidance measures.
6. Emanation of electromagnetic fields from electrical transmission facilities on abutting property may constitute an involuntary imposition of risk on those who reside, work, attend school, or otherwise occupy or use such abutting property.
7. It has been determined that exposure to electrical fields should be a factor considered when developing land, and target levels to minimize exposure should, where reasonable, not exceed four (4) milligauss for magnetic fields and 1.6 kilovolts per meter for electrical fields.
8. It is an appropriate exercise of the police power to adopt regulations designed to eliminate or minimize health and safety risk, to preserve property values, and to promote the general welfare by enhancing the livability of the community.

The City Council adopted the ordinance after considering the majority report which Mr. Lambert put into the record in this case. It also had available for consideration a minority report which HPP and the Department submitted. The content of the two reports shows a lack of consensus among Camas' EMF committee members.

The majority of the committee reported that, "in alarmingly increasing regularity, the studies are showing a link between EMF exposure and many types of cancer." AL-11.7 The few post-1993 studies the committee relied upon included the Swedish residential study that did not really show the results the media reported. The older studies comprised essentially the same list that Oregon's EMF committee reviewed. The Oregon committee, and the minority of the Camas committee, did not see the "alarming" trend that the Camas majority reported.

The Camas majority appears to have been concerned, at least in part, about the potential for a reduction in property values from the mere physical presence of transmission lines. While the committee heard anecdotal evidence of lower property values, it apparently declined to consider a recent large BPA study covering both Oregon and Washington. The study controlled for many factors to compare the market value (actual sale prices) of houses near transmission lines with comparable houses which are not near transmission lines. It shows an average decrease of only 0.58 percent with a maximum decrease of only 1.5 percent. Those results are consistent with the results of similar studies in Florida (1992) and Kansas (1993).

### **Mitigation Efforts**

HPP's EMF mitigation efforts include:

*230 kV Line Routing.* The route HPP selected is primarily uninhabited and includes only 3.6 miles of new construction. For the remainder of the line, HPP will convert an existing double circuit 115/230 kV line to a 230/230 kV line.

*500 kV Line Routing.* This route also makes maximum use of existing power line corridors and avoids congested urban areas. There will be 14.2 miles of new construction. Most of the new construction will be within an existing BPA corridor and share an existing right-of-way with an existing BPA 230 kV line. Most of the remaining construction will be along county roads. In one area where a property owner expressed concern about the proposed line's proximity to her home, HPP moved the proposed location 200 feet farther away. That change did not adversely affect other property owners or require notice to additional owners.

*Design Features.* HPP proposes single-shaft tubular steel poles, except where it is feasible to use steel lattice and wood frame structures in the City of Umatilla to blend in with existing transmission lines. Single pole construction offers better EMF characteristics than multiple poles (e.g. H-type) or lattice structures. The pole-top configuration will be a vertically stacked "delta" configuration. A "delta" conductor arrangement offers better EMF characteristics than "flat" or "crossarm" arrangements. Conductors will be at "close compaction" clearances pursuant to the National Electrical Safety Code. "Close compaction" clearances, which vary from pole to pole depending on conduction height and span length, minimize both electric and magnetic fields.

*Loading Considerations.* EMF is a function of the current in a given power line. Current has both a magnitude and an angle. The combination of those features makes it possible to alter EMF emissions by arranging individual phase conductors (wires) on the structure to reduce the emissions. Where multiple power lines occupy common right-of-way, HPP will reduce EMF emissions through these "phasing cancellation" techniques.

### **Impact on Mr. Lambert's Property**

As it relates to Mr. Lambert's property, HPP's 230 kV line would replace an existing 115 kV line. The 115 kV line shares single-shaft tubular steel poles with an existing 230 kV line.

Two 230 kV lines can cancel each other's EMF emissions better than a 115/230 pair, so HPP's line actually would reduce EMF levels along Mr. Lambert's property. The reduction, according to a computer model the industry uses for simulating EMF emissions, is largest on the east side of the line. (*See the graphs on page 77.*) The east side is the one facing Mr. Lambert's property.

### **Disposition**

**EMF In General.** This record does not contain information which (1) the EMF committee did not consider in 1993 and (2) would invalidate the findings/conclusions that the EMF committee and Council made at that time. For future cases, the Council does not

see a need to reconsider the EMF issue unless a party is able to present (1) scientific developments which the Council has not considered which (2) advance the state of knowledge in this area enough to give the Council a scientific basis for selecting a "safe" EMF emission limit. In the mean time, the Council will continue to endorse prudent avoidance and monitor new developments.

**Impact on Mr. Lambert's Property.** The record shows that phasing cancellation will actually reduce EMF emissions from the existing 115/230 kV line, especially on the eastern side facing Mr. Lambert's property.

**Prudent Avoidance.** The Department suggests that the Council add language incorporating the additional information on EMF avoidance which HPP provided during the contested case process. The Department first suggests that the Council insert the following after the period on line 9 of ODOE-201.44:

Whenever feasible, the pole-top configuration will be a vertically stacked "delta" configuration. Conductors will be spaced at "close compaction" clearances. Actual conductor separation for any section of the power line will be based on conductor height and span length. Where multiple power lines occupy common right-of-way, HPP will employ "phasing cancellation" techniques, *i.e.* arrangement of individual phase conductors on the structures such that the EMF is reduced rather than increased.

The department also suggests adding the language in bold to the first full paragraph on ODOE-204.102:

The Applicant has consciously designed the lines to reduce ground EMF levels and has undertaken modeling to estimate the actual ground EMF levels. The planned vertical arrangement of the transmission line conductors exhibit significantly less electrical and magnetic field impact at ground level than the more common horizontally arranged conductors. The vertical design achieves a partial EMF canceling effect. **Conductors will be spaced at "close compaction" clearances. Actual conductor separation for any section of the power line will be based on conductor height and span length. "Close compaction" techniques will aid in minimizing the electric and magnetic fields produced by the transmission line. In addition, where multiple power lines occupy common right-of-way, applicant will employ "phasing cancellation" techniques. Since EMF is a function of the current in a given power line and that current possesses both a magnitude and an angle, it is possible to alter the resultant EMF from a give power line. Where multiple circuits are involved it is possible to arrange the individual phase conductors (wires) on the structures such at the EMF is reduced rather than increased.** The electrical field expected to be emitted by the proposed transmission line is well under the state safety standard at the edge of the right-of-way.

Both suggestions improve the accuracy of the order, so the Council adopts them.

*End of Section*

## EMF EMISSION DIAGRAM

## EMF TECHNICAL APPENDIX

Electrical and magnetic fields ("EMF") are generated by all electrical devices. The earth has naturally occurring steady-state magnetic and electrical fields. When an alternating current (ac) flows through a conductor, an alternating magnetic field is created around the conductor. Areas of equal magnetic field intensity can be envisioned as concentric cylinders with the conductor at the center. The magnetic field intensity drops rapidly with the distance from the conductor. Overhead ac transmission lines carry power over three conductors with currents that are 120 degrees out of phase with each other. The magnetic fields from these conductors tend to cancel out because of the phase difference. Other conductors in the immediate vicinity, such as distribution lines and static or shield wires, can impact the amount of magnetic field. Their impact can be either additive or have the effect of cancellation. When a person stands on the right-of-way under a transmission line, one conductor is closer and will contribute a net uncanceled magnetic field at the person's location. The strength of the magnetic field depends on the current in the conductor, the geometry of the structure, and the degree of cancellation from the other conductors in the immediate vicinity.

Electrical and magnetic fields are found around any electrical wiring, including household wiring and electrical appliances and equipment. Throughout a home, the electrical field strength from wiring and appliances is typically less than 0.01 kV/m. However, fields of 0.1 kV/m and higher can be found very close to electrical appliances. The average background magnetic field level measured in the center of rooms in 992 homes throughout the United States was 0.9 mG (Zanfanella, 1993). In 15 percent of the homes, the magnetic field was greater than 2.1 mG. Fields very close to electrical appliances are much stronger than these levels, but appliance fields decrease in strength with distance very rapidly. When appliances and other electrical devices are operated, levels higher than this may be experienced. Typical electrical and magnetic field strengths for some common electrical appliances are given in the following table.

Typical Electrical and Magnetic field Strengths 30.5 cm (1 ft) from Common Appliances.

Appliance	Electrical Field (kV/m)	Magnetic Field <sup>1/</sup> (mG)
Coffee Maker	.030	1-1.5
Electric Range	.004	4-40
Hair Dryer	.040	0.1-70
Television	.030	0.4-20
Vacuum Cleaner	.016	20-200

Electric Blanket<sup>2/</sup> .01-1.0

15-100

1/ By 1 to 1.5 m (3 to 5 ft), the magnetic field from appliances is usually decreased to less than 1 mG.

2/ Values are for distances from a blanket in normal use, not 30.5 cm (1 ft) away.

Source: Miller, 1974 and Gauger, 1985.

It is currently not possible to state with absolute scientific certainty what are safe or unsafe levels of exposure to EMF. There is ongoing controversy about whether or not exposure to EMF is a human health hazard. Today, most concern about potential adverse health effects is focused on exposure to magnetic fields. Some studies suggest that people who live or work near electrical equipment or power lines have an increased incidence of cancer or other illnesses, while other studies find no increased risks. The Bonneville Power Administration has published a document entitled *Electrical and Biological Effects of Transmission Lines: A Review* which discusses the worldwide research on EMF. Two other documents published by BPA that discuss the EMF issue are *What We Know and Don't Know About EMF* and *Electrical Power Lines: Questions and Answers on Research into Health Effects*. These documents are available from BPA on request by calling 1-800-622-4520.

Electrical fields dissipate when they encounter vegetation or structures; magnetic fields do not. Therefore, recent health concerns relating to EMF have mainly focused on magnetic fields. Because public concern is increasing over potential health effects of EMF, and because a clear course of action still cannot be determined from present scientific evidence, BPA has developed interim guidelines on EMF. The applicant is using BPA's guidelines to keep EMF exposures as low as are reasonably achievable, considering social, economic and environmental factors. The Energy Facility Siting Council, in adopting the March 1993 Report of the EMF Committee, concluded that it was premature to set "Health Based" limits for exposure to EMF. Furthermore, they encouraged the exploration of low cost ways to reduce or manage EMF exposure until such limits are established.

In light of these considerations, the Applicant has included EMF reduction in its design philosophy for the project. The Applicant has selected the project site and transmission line route alternates to minimize potential EMF impacts on populated areas. The transmission line routes make maximum use of existing powerline rights-of-way to minimize the construction of new transmission corridors.

The Applicant has consciously designed the lines to reduce ground EMF levels and has undertaken modeling to estimate the actual ground EMF levels. The planned vertical arrangement of the transmission line conductors exhibit significantly less electrical and magnetic field impact at ground level than the more common horizontally arranged conductors. The vertical design achieves a partial EMF canceling effect. Conductors will be spaced at "close compaction" clearances. Actual conductor separation for any section of the power line will be based on conductor height and span length. "Close compaction" techniques will aid in minimizing the electric and magnetic fields produced by the transmission line. In addition, where multiple power lines occupy common right-of-way, applicant will employ "phasing cancellation" techniques. Since EMF is a function of the

current in a given power line and that current possesses both a magnitude and an angle, it is possible to alter the resultant EMF from a give power line. Where multiple circuits are involved it is possible to arrange the individual phase conductors (wires) on the structures such at the EMF is reduced rather than increased. The electrical field expected to be emitted by the proposed transmission line is well under the state safety standard at the edge of the right-of-way.

To characterize changes in the magnetic field environment, the applicant uses industry-accepted computer modeling techniques. For this project, estimated annual average magnetic fields have been calculated with a computer program to determine the anticipated magnetic field levels. In the case of either proposed transmission line, the effects of EMF will be mitigated to a minimum level by design of the line to take maximum advantage of the cancellation effects offered by phase location on the pole, coordination of phasing between transmission and distribution circuits, and the location of static wires.

A magnetic field exposure assessment was accomplished from the project using the BPA Corna3 computer program. This program uses industry-accepted computer modeling techniques by first estimating what magnetic levels would be without the proposed power line. This analysis serves a baseline measurement to estimate the possible change in field levels assuming the proposed project is constructed. The structures analyzed were those identified a typical in Exhibit B (Figures B-7 and B-8). The expected magnetic field for a typical single 230 kV transmission structure as between the cogeneration facility and the Westland substation is shown on Figure I-10. The expected magnetic field for a typical single 230/230 kV transmission structure as between the Westland substation and the McNary substation is shown in I-11. The expected magnetic field for a typical single 500 kV transmission structure as between the cogeneration facility and the BPA Roundup-McNary corridor is shown in Figure I-12. The expected magnetic field for a typical single 500 kV transmission structure adjacent to BPA's McNary-Roundup 230 kV transmission line approaching the McNary substation is shown in Figure I-13. The calculated magnitudes of the magnetic fields are decreased by maximizing the opportunity to place two circuits on the same structure, utilizing existing transmission corridors and optimizing the placement of conductor phase arrangements on the poles. Both the 230 kV transmission alternative and the 500 kV transmission alternative will meet all state of Oregon standards for noise and electrical fields.

*End of Section*

## ISSUES H-10, 11, & 12 (LINE ROUTING)

### The Issues

The City of Umatilla raised the following issues:

H-10. If property owner consent for transmission line routing necessary because:

H-10.1 The Council must obtain consent

H-10.2 The Council does not need consent, but the local government must obtain consent before issuing local permits?

H-11. May/should the Council require land owner consent as a matter of policy?

Mr. Shafer and The Berean Society raised the following issue:

H-12. May/must/should the Council require that the actual routing of transmission lines, width of easements, number of poles, location of poles, and the overall impact on adjacent property owners be the same as the representations the applicant has made?

### Evidence/Argument

Mr. Shafer and The Berean Society withdrew from the case on November 2 and the City of Umatilla withdrew from the case on November 9. No other intervenor presented evidence or argument on these issues.

### Disposition

At the time of the initial Public Comment Hearing and initial prehearing conferences for this case, the Council had not adopted procedural rules to implement the new procedures in SB 951. In the absence of procedural rules during issue raising phase of the case, the Hearings Officer ruled that "generic" issues would stay on the issue list as long as any party pursued them. *See* the HO-22.1 and HO-23.1 interim issue lists (for, respectively, the Hermiston Issue Group and the Salem Issue Group).

The Hearings Officer's ruling is not consistent with the procedural rules which the Council subsequently adopted in that the Council's rules allow a party to pursue only the issues that the party raised. *See* OAR 345-15-083(1) and OAR 345-15-014(2)(b). While the Council's new rules technically apply to this application, the Council made no reference to changing the Hearings Officer's ruling and the Hearings Officer felt it would not be appropriate to change the ruling in the middle of the case.

Under the Hearings Officer's ruling, the Council need consider a generic issue, such as one of these, only if a party is pursuing it. No intervenor presented evidence or argument on these issues, so the Hearings Officer struck them in his proposed order and

the Council affirms that ruling. The result is the same as the result would have been under the Council's new rules.

*End of Section*

## ISSUE H-15 (CITY OF UMATILLA RECOMMENDATION)

### The Issue

Mr. Lambert raised the following issue:

- H-15. What weight should the Council give to the City of Umatilla's recommendation that the Council find compliance with local land use standards?

### The Department's Proposed Order

The Department's Proposed Order notes that the Department asked Umatilla County and the cities of Hermiston, Stanfield, and Umatilla to review HPP's application for the purpose of identifying the "applicable substantive criteria" from each government's comprehensive plan and land use regulations. The Department also asked the Department of Land Conservation and Development to review the application in light of applicable statutes, statewide planning goals, and administrative rules. All of those entities reported that HPP had correctly identified and interpreted the applicable criteria. All also expressed their opinion that HPP had complied with their requirements. Some of them recommended conditions which the Department incorporated into its Proposed Order.

The Department's discussion of land use compliance in the body has the following major sections:

1. Location Of The Proposed Energy Facility and Related and Supporting Facilities (ODOE-201.42 through ODOE-210.45)
2. Compliance With Standards (ODOE-210.45 through ODOE-210.47)
3. Conclusion (ODOE-201.47)
4. Conditions (ODOE-201.48 and ODOE-201.49)

The "Compliance With Standard" section sets out legal requirements, reviews the Department's information gathering steps, notes the various recommendations, and concludes with the following:

The discussion of land use provisions in the ASC, which the Cities, the County and DLCD relied upon in making their findings, demonstrates that the energy facility, the gas pipelines, the water pipeline and the alternative transmission lines (*sic*) routes would all in compliance with such provisions. That discussion, with minor modifications, is attached as Appendix I. ODOE-201.47 (Appendix I is ODOE-204).

ODOE-204 contains 102 pages identifying all applicable land use requirements and analyzing HPP's compliance with each one.

The "Conclusion" section consists of the following:

We find that the Council's land use standard is met, based on the evidence provided in the ASC, the review by affected local governments as listed above, and review by DLCD.

### **Applicable Law**

ORS 469.503(1)(c) requires an applicant to show that the proposed facility would comply with the Land Conservation and Development Commission's statewide planning goals. ORS 469.503(2) allows the applicant to make the showing by obtaining local land use approval from the applicable local governments. It also allows the applicant to make the showing to the Council as part of the Council's siting process. When an applicant chooses Council review, as HPP did in this case, the *Council* applies "applicable substantive criteria" from the local government's land use regulations in determining compliance. The Council also applies any applicable state administrative rules, goals, and land use statutes. *See* OAR 345-22-030. The *Council* is the decision-maker rather than the local government. ORS 469.503(2)(b)(A).

### **Additional Findings of Fact**

HPP's transmission lines will pass through the City of Umatilla with no franchise fee or tax payments directly to the city. HPP decided to voluntarily mitigate the impact of another transmission line passing through the city by agreeing to make a \$10,000 annual payment to the city for the first 20 years of plant operation.

### **Council Decision-Making Process**

Mr. Lambert contends that the Council should not give any weight to the City of Umatilla's recommendation because the \$10,000 annual payment improperly influenced the City's decision to recommend approval of the application. In responding to that concern, it is useful to outline a local government's role in determining land use compliance when the applicant has elected to present the issue to the Council.

**Step 1: Identifying Criteria.** When HPP submitted the application, it included a 208 page analysis of what it asserted to be the applicable substantive criteria from Umatilla County and the City of Umatilla. (Umatilla County's jurisdiction includes the urban growth areas for the cities of Hermiston, Stanfield, and Umatilla.) The Department sent copies of the application to the county, the three cities, and DLCD for review and comment. That was an appropriate step for identifying any potential issues for the Department and Council to address.

The Council had appointed the Umatilla County Board of Commissioners as a Special Advisory Group for identifying the "applicable substantive criteria" for HPP's facility. *See* ORS 469.480. When a facility passes through more than one jurisdiction, or more than three zones in one jurisdiction, the Council must consult with the Special Advisory Group to determine whether to apply the local government criteria, the statewide planning goals, or a combination of the two. ORS 469.503(6). The Council, through the Department, did that.

**Step 2: Interpreting Criteria (When Necessary).** Local governments are the experts on their own land use requirements, so the Department typically asks them to interpret ambiguous provisions. In this case, Umatilla County and the City of Stanfield passed resolutions interpreting portions of their zoning ordinances, and the Department applied those interpretations. *See* ODOE-204-5 and ODOE-204.89. Local government interpretations are entitled to deference during judicial review. *See* ORS 197.829; *Clark v. Jackson County*, 313 Or 508, 836 P2d 170 (1992). If the courts defer to local interpretations, Department and Council should consider them and may also defer to them.

**Step 3: Applying Criteria.** In applying criteria, the Department must make an independent recommendation and the Council must make an independent decision. Those obligations do not prevent the Department or Council from asking local governments for their opinions about compliance. Local government opinion is useful in the following ways:

- To the extent the local government opines that the applicant has not met a criteria, the Department and Council will know that they need to pay particular attention to that criteria.
- To the extent the local government explains its reasoning, the analysis may be useful to the Department and Council in doing their own evaluations.
- To the extent the local government interprets a provision, it provides the Department and Council with guidance in applying the provision.

The key to an independent determination is independent analysis. When there is independent analysis, the presence or absence of local government opinion is irrelevant.

## Resolution

The short answer to the question this issue presents—what weight the Council should give the City of Umatilla's recommendation—is "none." That makes any influence on the city's recommendation from HPP's agreement to make mitigation payments irrelevant.

While the Department's Proposed Order includes any analysis of local land use compliance, it would be better for the order to more clearly show that the Council is making its own analysis instead of relying on the city's recommendation (or, for that matter, any other recommendation). That requires some structural and language changes to the Department's Proposed Order. The changes clarify that the Council merely relies on DLCDC and local government comments for help in identifying applicable criteria and interpreting the applicable statutes, rules, or ordinances. There was no assertion that HPP failed to meet any specific requirement, so the Council's revisions to the Department's discussion of land use compliance simply appear in the "Local Land Use Requirements" section of this order. *Go to* Page 178.

## Compliance

**HPP's Method for Showing Compliance.** ORS 469.503(2) allows an applicant to demonstrate compliance with the statewide planning goals either by obtaining local land use approvals or by showing compliance with applicable state and

local land use criteria to the Council~~EFSC~~. HPP has elected to show compliance through the latter method.

**Applicable Date for Criteria.** ORS 469.503(2)(b) states that the applicable local land use regulations are those that were in effect when the ASC was submitted. The ASC was submitted on November 30, 1994.

**Applicable Local Governments.** The local governments with land use jurisdiction over the facility's components are Umatilla County (the "County") and the City of Umatilla ("Umatilla"). Portions of the facility are also in the urban growth areas (the "UGA") of the cities of Hermiston ("Hermiston") and Stanfield ("Stanfield"). The County has jurisdiction over land use decisions within the UGA's of Hermiston, Stanfield and Umatilla pursuant to adopted joint management agreements between the County and the cities. All applicable local governments jurisdictions have comprehensive plans and land use regulations acknowledged by LCDC.

**Applicable Criteria.** ~~The Department ODOE asked the Department of Land Conservation (DLCD) to review the ASC and identify any directly applicable statewide planning goals, administrative rules, and land use statutes. The Department also asked the Umatilla County, and the cities of Hermiston, Umatilla and Stanfield (the "Cities"), to review the ASC and identify the applicable substantive criteria from each government's acknowledged comprehensive plan and land use regulations. The DLCD, the County, and the Cities have responded that the ASC correctly identifies, interprets and complies with the applicable substantive criteria and regulations. None of them identified criteria which they felt HPP failed to meet.~~

**Interpretation of Criteria.** By August 5, 1995, letter, the Umatilla County Board of Commissioners confirmed that HPP's facility would be a "utility facility" under UCDO Section 3.192(15)

On July 11, 1995, the City of Stanfield adopted a resolution concluding that: (1) the 500 kV line and gas pipelines would be permitted uses in the City's Transportation-Industrial ("TI") and Industrial-Service Commercial ("ISC") zones because they are similar to permitted uses in those zones; and (2) the transmission line and pipeline within the City's Exclusive Farm Use ("EFU") zone are "utility distribution lines" permitted outright in that zone.

**Suggestions for Conditions.** The Department received suggestions for conditions to a site certificate as follows:

*Umatilla County.* By Resolution adopted on June 5, 1995, the Umatilla County Board of Commissioners found that the facility complies with all applicable County land use standards and voted to recommend approval of the Site Certificate subject to recommended that the Council impose eleven conditions on any approval of HPP's application. The specific conditions are set forth in the condition section.

*City of Umatilla.* On June 20, 1995, the City of Umatilla adopted Resolution 43-95. The Resolution finds that HPP properly identified, and that the facility complies with, applicable substantive criteria from the City's Comprehensive Plan and Zoning Ordinance. The City recommended that approval be contingent on a condition recommends that, if the 500 kV

transmission line is constructed, ~~the Council require HPP to HPP shall~~ use steel lattice or wood pole construction where feasible and use non-glossy paint coatings to minimize visual impact.

~~The County's and the City's recommendations are included in the conditions which follow this discussion. The cities of Hermiston and Stanfield had no additional conditions to recommend.~~

~~In addition, DLCD reviewed the ASC in light of applicable statutes, statewide planning goals and administrative rules, and found that the facility complies with the statutes, goals and rules to the limited extent they may apply directly to the facility.~~

Compliance with Applicable Criteria. ~~The HPP's discussion of land use criteria provisions in the ASC, which the Cities, the County and DLCD relied upon in making their findings, demonstrates that the energy facility, the gas pipelines, the water pipeline and the alternative transmission lines routes would all be in compliance with such provisions~~ accurately analyses the facility's compliance with applicable substantive land use criteria. That discussion, which the Department adopted with minor modifications, was is attached to the Department's Proposed Order as Appendix I. The Department's discussion, which the Council adopts in this order, is part of the main body of this order to clearly show that the Council has independently reviewed HPP's compliance with each specific applicable substantive criteria.

*Note: The Council's discussion of applicable criteria will appear here.*

## **Conclusion**

~~We find that the Council's land use standard is met, based on the evidence provided in the ASC, the review by affected local governments as listed above, and review by DLCD. The foregoing analysis shows that HPP meets all of the applicable substantive criteria, statewide planning goals, and DLCD rules..~~

*End of Section*

## Other Intervenor Issues

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### ISSUE S-6 (FISH & WILDLIFE HABITAT), ISSUE S-7 (THREATENED/ENDANGERED SPECIES) & ISSUE S-8 (RECREATION)

#### The Issues

DUCM and NWEA raised the following issues:

*Issue S-6.* The lead issue in this series is:

- S-6. Did the parties identify, in their comments, any impacts from the facility on fish and wildlife habitat which require a change in the Department's proposed order?

*Issue S-7.* The lead issue in this series was:

- S-4. Did the parties identify, in their comments, any impacts from the facility on threatened or endangered species (pursuant to the official Oregon list) which require a change in the Department's proposed order?

*Issue S-8.* The lead issue in this series is:

- S-6. Did the parties identify, in their comments, any impacts from the facility on recreation which require a change in the Department's proposed order?

#### Applicable Standards

The Council has standards specifically addressing these impacts:

*Fish & Wildlife Habitat.* OAR 345-22-060

*Threatened & Endangered Species.* OAR 345-22-070

*Recreation.* OAR 345-22-100.

### **Department's Proposed Order**

The Department's Proposed Order addresses all three standards and recommends conditions. It concludes that, with the conditions, HPP meets the standards. *See* ODOE-201.54 through ODOE-210.66 and ODOE-201.72 through ODOE-201.75.

### **Evidentiary Record**

DUCM's initial comments addressed these issues in the context of "upstream" impacts from natural gas exploration, production, and transportation in Canada. The comments also addressed them in the context of global warming. Other than the initial comments, DUCM did not actively pursue these issues. No party specifically focused testimony on them.

### **Proposals for Additional Conditions**

No party proposed additional conditions specifically for the purpose of addressing any subject of these standards.

### **Disposition**

DUCM asserted in its exceptions that it presented evidence of adverse impacts on the subjects of these standards. DUCM primarily raised issues under these standards in the context of environmental impacts from "upstream" natural gas exploration, production, and transportation in Canada. "Upstream" impacts did not survive the motion-to-strike phase because the Hearings Officer ruled that they did not involve related/supporting facilities and, therefore, lay outside the Council's jurisdiction. *See* Page 28.

The ruling reduced the scope of evidentiary inquiry under these standards to impacts from the generating plant, local gas pipelines, and transmission lines. The generating plant would emit CO<sub>2</sub>, and DUCM made assertions about adverse impacts from CO<sub>2</sub>'s contribution to global warming. Global warming impacts are the subject of the next section. In that section, the Council concludes that this record does not enable the Council to identify a specific impact on any subject of these three standards.

### **Conclusion**

The Council concludes that HPP's proposal complies with OAR 345-22-060; OAR 345-22-070; and OAR 345-22-100.

*End of Section*

## ISSUE S-9 (GLOBAL WARMING)

### The Issue

DUCM and NWEA raised this issue:

S-9. What is the impact on public health and safety resulting from the facility's impact (if any) on global warming?

S-9.1 If there is an adverse impact, what conditions (if any) should the Council impose to mitigate the adverse impact.

### Applicable Standards

The Council does not have a standard addressing global warming impacts.

### Department's Proposed Order

The Department's Proposed Order does not address global warming impacts.

### Findings of Fact

#### CO<sub>2</sub> Emissions from the Plant

The plant would emit about 1.57 million tons of CO<sub>2</sub> per year. At that emission level, the plant would be more efficient (in terms of CO<sub>2</sub> emissions per kilowatt hour) than coal plants and older gas plants.

HPP's 1.57 million tons of CO<sub>2</sub> per year equals 0.43 million tons of carbon and 1.14 million tons of oxygen. At that rate, HPP's carbon emissions would be about 1/100<sup>th</sup> of one percent of current projected world-wide carbon emissions from fossil fuels of six billion tons per year.

#### Net Impact on CO<sub>2</sub> Emissions

Eric Toolson, a consultant in the area of resource planning and market forecasting for the electric utility industry, predicted dispatch for the HPP facility using the MULTISYM computer simulation model. MULTISYM is a model many dispatchers in the Western Systems Coordinating Council region<sup>10</sup> use to assist them in making short-term dispatching decisions. The model also has gained widespread regulatory acceptance for simulating those decisions.

The simulation assumed that available resources would be existing resources and the new resources which regional utilities have projected through 2004 in their least cost plans. That assumption limits the simulation's analysis to current resources and resources

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<sup>10</sup> The region includes British Columbia and Alberta in Canada, the western part of the continental United States, and the northwest corner of Mexico.

which would come on line before 2005. The simulation does not consider resources that would come on line during the remainder of the plant's life.

The simulation Mr. Toolson ran for this case produced an hourly plant-by-plant listing of all generation which HPP would displace during the years 2000, 2005, and 2010. It did not project displacement for the remainder of the plant's useful life. If the plant comes on line in 2003 (as it could under HPP's contract with BPA) and operates for a useful life of 30 years, that would require analysis at least through 2033 to show the impact on net regional CO<sub>2</sub> emissions for the life of the plant.

### **CO<sub>2</sub> and Global Warming**

**CO<sub>2</sub> as a Greenhouse Gas.** CO<sub>2</sub> is a greenhouse gas. Greenhouse gases absorb some of the infrared energy radiating from the earth and reflect part of it back into the atmosphere. This "greenhouse" effect helps warm the earth and make it habitable. An increase in greenhouse gas<sup>11</sup> concentrations tends to increase average global temperature. The main greenhouse gas, water vapor, increases in response to global warming and accentuates it. It currently is not possible to separate and quantify the impact of a change in a single global warming factor (such as a change in CO<sub>2</sub> concentrations).

**CO<sub>2</sub>'s General Impact on Global Climate.** Any increase in CO<sub>2</sub> will enhance the greenhouse effect, resulting on average in an additional warming of the Earth's surface. It currently is not possible to predict exactly how much warming will occur from a specific amount of CO<sub>2</sub> emission.

Concentration of CO<sub>2</sub> is rising about 0.5 percent per year due to anthropogenic activities, mostly from burning fossil fuels and deforestation. It takes atmospheric CO<sub>2</sub> fifty to 200 years to adjust to changes in sources and sinks. CO<sub>2</sub> emitted today will influence the atmospheric concentration of CO<sub>2</sub> for centuries.

The Intergovernmental Panel on Climate Change (IPCC), convened by the United Nations Environmental Program and the World Meteorological Organization, consists of approximately 400 of the world's leading climate experts. The IPCC predicted in 1990 that, assuming a "business as usual" scenario for emission of greenhouse gases, global mean temperatures will likely rise at a rate of 0.3 degrees C per decade. Recent reexamination of records indicates that the IPCC estimate is reliable, for the rise is documented in three independent sets of data: air temperatures over land, air temperatures over the ocean, and sea surface temperatures. We accept the IPCC estimate.

At the rate of increase per decade predicted by the IPCC, global temperature would rise about 1 degree C by 2025 and 3 degrees C by the end of the next century.

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<sup>11</sup> The primary greenhouse gas is water vapor. Others are CO<sub>2</sub>, methane, nitrous oxide, and halocarbons.

**HPP's Impact on Global Warming.** Current science cannot quantify the specific incremental temperature increase that would result from the 1.57 million tons of CO<sub>2</sub> per year from the HPP facility.

### **Global Warming & Public Health/Safety**

**Impacts from Global Warming.** There is no clear scientific consensus regarding the nature and severity of global warming impacts on public health and safety.

*DUCM's Testimony.* DUCM's witness, Kevin Bell, holds a bachelor's degree in energy policy. He is a consultant specializing in energy policy issues and has worked in the energy policy field for 16 years. He presented the "conventional wisdom" that CO<sub>2</sub> increases will lead, at some point, to large adverse impacts in a wide variety of areas important to public health and safety. Those areas include food production, survival of important animal and plant species, ozone depletion (which would increase skin cancer rates), and the incidence/severity of natural disasters such as forest fires and hurricanes.

*HPP's Testimony.* HPP's witness, Dr. Robert Balling, holds a doctorate in climatology and directs the Office of Climatology at Arizona State University. He presented the "skeptic's" view by noting an absence of hard scientific evidence of either warming or the adverse impacts which Mr. Bell identified.

*Department Studies.* The Department has been following scientific and policy developments relating to global warming since 1988. It has published several reports and introduced the following into the record:

- "State of Oregon Fourth Biennial Energy Plan, January 1991, Oregon Department of Energy" (ODOE-253);
- "Fifth Biennial Oregon Energy Plan '93, Oregon Department of Energy" (ODOE-254);
- "Report on reducing Oregon's Greenhouse Gas Emissions" (ODOE-255) which the Department issued on March 31, 1995; and
- The 1990 report of the Oregon Task Force on Global Warming, which consisted of 12 state agencies, including the Department.

The Department documents note the possibility of large regional impacts including smaller snow packs, more winter precipitation; changes in the number and duration of summer droughts; further weakening of forests susceptible to degradation; an increase in frequency and severity of forest fires; disruption of the current operating regime for Pacific Northwest water resources; and impacts on fish, power generation, irrigation, and navigation.

Coastal flooding is another potential global warming impact. We accept the IPCC's 1990 Scientific Assessment prediction of a rise of about 20 cm in global mean sea level by 2030 and 65 cm by 2100. The state has predicted some of the potential impacts from this sea level change. We accept as potential impacts those identified by the 1990 Report of the Oregon Task Force on Global Warming, which notes the possibility of permanent flooding of low-lying areas, causing estuaries and open coastal areas to retreat inland or disappear; and exaggeration of the impact of coastal storms, which could cause damage to buildings and highways. The report notes the possibility that Highway 101

would have to be moved in places, that parts of Garibaldi would be flooded, and that Tillamook would have a waterfront.

The Oregon Progress Board has adopted a benchmark to stabilize the rate of CO<sub>2</sub> emissions at the 1990 level. The United States has joined more than 150 other countries in signing the U.N. Framework Convention on Climate Change, which commits governments to voluntary reduction of greenhouse gases aimed at stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous changes in the climate system. Signatory countries are developing plans to stabilize greenhouse gas emissions at the 1990 rate.

Oregon's 1990 CO<sub>2</sub> emissions totaled 55.322 million tons. As of March, 1995, Oregon's 1995 emissions were forecast to be 58.992 millions tons. If the HPP facility had been operating during 1995, its annual CO<sub>2</sub> emissions of 1.57 million tons would have represented 42.78 percent of the increase over 1990 levels in Oregon emissions, assuming that the HPP facility was not also displacing other natural gas-fired or coal-fired energy facilities that emit higher levels of CO<sub>2</sub> than HPP's facility.

The documents also extensively note the uncertainty of predicting actual impacts in the region.

**Impact from HPP.** Neither witness attempted to quantify the impact on public health/safety from HPP's impact on global warming.

### **Proposals for Additional Conditions**

DUCM proposes full mitigation of greenhouse gas emissions.

### **Disposition**

The Council may require mitigation of CO<sub>2</sub> emissions only as a condition to protect the subject of an existing standard or the public health and safety. That, in the context of the global warming issue in this case, requires a preponderance of evidence showing that:

- The plant will emit CO<sub>2</sub>;
- The CO<sub>2</sub> emissions will have a specific impact on global warming;
- The resulting impact on global warming will have a specific adverse impact on public health/safety; and
- It is appropriate to require mitigation for the purpose of protecting public health/safety.

### **Existing Standards**

DUCM describes catastrophic potential impacts from global warming on forests and a variety of wildlife species. While the potential may exist, the record does not allow the Council to identify any specific impacts.

### **Public Health/Safety**

**CO<sub>2</sub> Emissions from the Plant.** The record clearly shows emissions of about 1.57 million tons per year from the plant.

**Net CO<sub>2</sub> Emissions.** HPP attempted to show, through the MULTISYM computer model, that there would be lower net regional emissions over the life of the plant.

*The Evidence.* MULTISYM is a short term dispatching model which has two limitations when it comes to forecasting displacement over a 30 year period starting as late as 2003:

- The simulation did not consider resources that would come on line after 2005; and
- It did not project displacement beyond 2010.

Those limitations prevent the Council from accepting the MULTISYM results.

*Conclusion.* The record does not show that net impact of the facility would be less than 1.57 million tons per year.

**Impact on Global Warming.** As a general proposition, CO<sub>2</sub> is a greenhouse gas and greenhouse gases warm the earth. As a specific proposition, this record does not allow the Council to identify the amount of global warming that would result from the emissions from this facility.

**Impact on Public Health/Safety.** The record shows that warming of the earth has serious potential public health and safety impacts. However, the record does not show any identifiable health and safety impacts from the increase in CO<sub>2</sub> from this facility.

### **Conclusion**

**For this Case.** This record does not allow the Council to require mitigation of CO<sub>2</sub> emissions because the record does not show specific impact on global warming, or a resulting impact on public health/safety.

**For the Future.** DUCM argues that the failure to impose a global warming mitigation condition "would seriously undermine the Council's rule requiring competition for the 500 megawatt exemption based upon superior mitigation of global warming gas emissions." (DUCM-111.11) That is not the case. DUCM's analysis would merge two types of Council regulatory activity, adjudicating a contested case and conducting a rulemaking. An adjudication requires a factual predicate, with fact finding based on a preponderance of the evidence. Adoption of a rule does not.

In this proceeding, the Council must make findings of fact based on a preponderance of the evidence on a record created by the parties and must draw conclusions based on that record. The Council is charged under ORS 469.401(2) to impose conditions "to protect public health or safety." In order for the Council to do so,

the record in this proceeding must show a public health or safety threat directly from this facility. The record here does not make that showing.

That conclusion says nothing, however, about the Council's authority to adopt a global warming mitigation standard in a rulemaking proceeding. The Council could conclude in a rulemaking proceeding that, despite the scientific uncertainty associated with the global warming debate, enough certainty exists to conclude that continued burning of fossil fuels poses a long-term public health or safety threat, or poses a long-term threat to fish or wildlife habitat. The nature of a rulemaking is legislative—the Council may make decisions in that forum that the record may not support in an adjudicative forum.

The Council's decision on this issue does not mean that the Council takes the global warming issue lightly. The Council views potential harm from global warming as a serious concern and will continue to monitor the situation for new scientific developments. At an appropriate time, the Council expects to address the topic again through a rulemaking.

*End of Section*

## ISSUES S-15 & 16 (HPP'S LEGAL AUTHORITY)

### **The Issue**

DUCM raised the following issues:

- S-15. Do HPP and its owners have legal authority to construct and operate the project?
- S-16. If not, may/must/should the Council deny the application?

### **Applicable Law**

OAR 345-21-010(1)(k)(A)(i) requires an applicant for a site certificate to submit an opinion of legal counsel that it can construct and operate the facility without violating its "bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements." In this case, the partnership agreement among HPP's owners would be the applicable document.

No Council standard requires actual legal authority to construct/operate the facility.

### **Department's Proposed Order**

The Department's Proposed Order does not address legal authority to construct/operate the facility.

### **Findings of Fact**

Exhibit K to the application includes a letter from Randolph Hill (a member of the Idaho State Bar) who is Vice President, General Counsel, and Secretary of Ida-West Energy Company. He acted as counsel to HPP in connection with the General Partnership Agreement among HPP's owners. Mr. Hill expressed his opinion that, subject to compliance with applicable laws/regulations and the partnership agreement, HPP and its owners have legal authority to construct and operate the facility. In rendering that opinion, Mr. Hill disclaimed expertise in Oregon law. APP-11.5.

The opinion which OAR 345-21-010(1)(k)(A)(i) requires once supported provisions in OAR 345-22-050 which required an applicant to show that it is "capable of providing funds as needed to construct, operate, and retire the facility without violating their respective bond indenture provisions, articles of incorporation, common stock covenants or similar agreements." The current financial standard, which the Council adopted in November 1994, does not include those requirements.

### **Disposition**

DUCM argues that the letter is inadequate because Mr. Hill disclaimed expertise in Oregon law. The letter is sufficient to meet the filing requirement because it does not require expertise.

The filing requirement is a holdover from a financial standard which the Council repealed in 1994. The Council may not deny the application for failure to meet a standard which no longer exists. That makes the disclaimer of expertise irrelevant.

*End of Section*

## ISSUE S-23 (SIMPLOT/IDA-WEST FINANCIAL STATEMENTS)

**The Issue**

DUCM raised the following issue:

S-23. May/must/should the Council require HPP to provide financial statements for Simplot and Ida-West?

**Applicable Standard**

This issue arises under OAR 137-22-050 (the Council's "Financial Assurance" standard) which requires an applicant to offer a "bond or comparable security" to ensure that it will adequately restore the site.

**Department's Proposed Order**

In lieu of a bond, HPP offered joint and several guarantees from the parents of its owners: Simplot (which owns SimGen, Inc.); TransCanada (which owns TCPL Hermiston, Ltd.) and Ida-West (which owns Hermiston Power Company). HPP supplied financial statements for TransCanada (APP-11.17 through APP-11.77) and references for Simplot from two banks (ODOE-171 and ODOE-172).

That was sufficient, in the Department's opinion, to show compliance with the standard. The Department's Proposed Order states:

Although we accept a guaranty as the security instrument required under the standard in part because the three guarantors are jointly and severally liable, the joint and several liability would allow us to make a finding of compliance based on the financial strength of any one of the guarantors, or based on the collective strength of the three guarantors. We find that the financial information for the *[sic]* Simplot and TransCanada demonstrates that they both have the financial strength to meet an obligation estimated to be approximately \$8 million. ODOE-201.29.

**Department Record**

The TransCanada financial statements show:

	<b>TOTAL REVENUES</b>	<b>NET INCOME</b>	<b>EQUITY</b>
<b>1993</b>	\$4,500,000,000	\$355,600,000	\$2,300,000,000
<b>1994</b>	5,200,000,000	358,600,000	2,500,000,000

**Contested Case Record**

No party submitted evidence that would cast doubt on TransCanada's ability to fulfill the obligation.

**Disposition**

*May.* The Council *may* require HPP to provide financial statements for Simplot and Ida-West because the statements would shed light on their ability to cover their obligations under the guaranty.

*Must.* With joint and several liability, the Council may find compliance with the standard if *any* of the guarantors has adequate resources to fulfill the obligation. When the record shows that one has adequate resources, the Council need not require financial statements for the others. The record shows that an \$8 million obligation represents only a small fraction of TransCanada's annual income and an even smaller fraction of its shareholder equity. That is a clear showing of financial ability.

*Should.* The Council should decline to require the financial statements for the same reason the Hearings Officer declined to compel discovery. *See* Page 37.

*End of Section*

## ISSUE S-25 (PARTICIPATION BY HOST FACILITY)

### **The Issue**

NWEA raised the following issue:

S-25. May/must/should the Council make a site certificate dependent on actual participation by the host facility?

### **Applicable Standard**

The OAR 345-23-010(3) exemption from the need for power standard includes an efficiency requirement. The exemption is available only to facilities with a fuel chargeable to power heat rate of 8000 Btu/kWh or less.

### **Department's Proposed Order**

The Department addressed the facility's heat rate in its Proposed Order. It concluded that the HPP facility would qualify for the exemption without cogeneration.

### **Department Record**

The Department's record shows that all four generation turbines which HPP described in the application as options for eventual selection have projected heat rates no greater than 7,200 Btu/kWh, without cogeneration, at site specific conditions.

### **Contested Case Record**

No party submitted evidence to controvert information in the Department's record.

### **Disposition**

*Compliance with Standards.* The type of equipment HPP proposes to install qualifies for the exemption, and therefore meets the heat rate requirement of the need standard, without cogeneration. The need standard does not provide a basis for requiring actual cogeneration.

*Public Health/Safety.* The Council could require actual cogeneration as a condition to protect public health/safety. The only public health/safety impact applicable to this case relates to the global warming issue. The record does not demonstrate any specific public health or safety impact from global warming. *See* Page 90. The Council declines to require actual cogeneration at this time.

*End of Section*

## Council Member Issues

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### ISSUE H-2 (CHEMICAL DISCHARGES)

#### **The Issue**

A Council member raised this issue:

H-2. Will chemical discharges damage the soil on adjacent property?

H-2.1 If the adverse impact is not serious enough to warrant denial, what conditions (if any) should the Council impose to mitigate the adverse impact on adjacent property owners?

#### **Applicable Standard**

OAR 345-22-022 requires an applicant to show that the design, construction, and operation of the facility is not likely to cause significant adverse impact to soils. The standard takes mitigation into account.

#### **Department's Proposed Order**

The department's proposed order characterized soil types and focused the potential for soil erosion. It did not specifically address chemical discharges.

#### **Additional Findings of Fact**

The potential for chemical pollution of soils arises from wastewater discharges rather than combustion emissions. Wastewater discharges, as the Department's Proposed Order noted in its discussion of third party permits, must comply with DEQ regulations and the record shows that Simplot has obtained an amendment to its discharge permit which will allow HPP to discharge its wastewater under Simplot's existing permit.

HPP and the Department presented evidence showing that HPP's wastewater would be substantially the same, in terms of chemical composition, as Simplot's existing potato process wastewater. The wastewater will contain lower levels of trace elements

than native plants and surrounding soils. At those trace element levels, HPP can add its wastewater to Simplot's wastewater without adverse effects on soils.

Simplot discharges its wastewater through land irrigation. Irrigation in arid and semi-arid areas has the potential to raise the salinity of the soil to toxic levels because plants absorb water and leave salts behind. If the salts stay in the root zone, they eventually reduce site productivity.

This is a common problem in agricultural irrigation and DEQ requires (1) controlled leaching to move salts beyond the root-zone; and (2) a monitoring plan to check for salinity levels at various soil depths. It also requires soil moisture monitoring and irrigation scheduling which reflects seasonal movement of the moisture front. Those measures, which are requirements under Simplot's permit, are sufficient avoid adverse impacts on soils from salt accumulations.

### **Disposition**

The Council concludes that wastewater discharges will not have an adverse impact on soils, either in terms of trace element levels or salt levels. The Council adopts the Department's suggestion that the Council make the following amendments to the Department's Proposed Order:

Impacts on soils are evaluated by the Council because of related impacts to farmland, cropland, pasture land, native vegetation, fish and wildlife habitat, and water quality. Relevant under this standard are the facility's impact on the potential for conditions such as erosion, compaction, mass wasting, ~~and~~ slumping, **and the impact of land application of wastewater on soil quality.** (ODOE-201.39)

**DEQ has approved a modification to Simplot's WPCF permit to accommodate HPP's wastewater. The permit authorizes land application of HPP's wastewater along with Simplot's. DEQ found that HPP's wastewater would be substantively equivalent in characteristics to Simplot's potato process wastewater. The only soil quality concern raised by this land application is potential salt accumulation in the root zone, which could cause plant stress or toxicity. DEQ found, and we concur, that concerns about soil salinity resulting from the wastewater are alleviated by a condition in the WPCF permit requiring (1) controlled leaching to move salts beyond the crop root-zone; (2) a monitoring plan check for salinity levels in soil at various depths; and (3) monitoring of soil moisture for water balance, proper irrigation scheduling, and to trace the seasonal movement of the moisture front. These conditions are sufficient to protect against significant adverse impact to soil quality.** (Insert at ODOE-201.41 at Line 16).

*End of Section*

ISSUE H-3 (ELECTROMAGNETIC FIELDS)

**The Issue**

A Council member raised Issue H-3.1.1:

H-3.1.1 Will phasing a second 230 kV circuit on the 230 kV line reduce electromagnetic field effects? (*Council*)

**Response**

The short answer is yes. (The Council addresses Issue H-3.1.1, starting on page 64, with the other EMF issues.)

*End of Section*

## ISSUE H-13 (FOGGING/ICING)

### **The Issue**

A Council member raised the following issue:

- H-13. Should the Council impose fogging/icing conditions for HPP equivalent to the ones it imposed for the Coyote Springs project?

### **Coyote Springs Order**

The Council's final order for the Coyote Springs Project contains the following language relating to fogging/icing impacts on nearby roads:

A computer model was run on the likely effect on road conditions of the cooling tower emissions. The model determined that fogging was likely to occur about 45 hours per year on roadways immediately adjacent to plant site and only 2 hours per year on local roadways within 1500 meters. It predicted that the cooling tower would not contribute to icing on the roadways.

The Council imposed the following condition:

Applicant shall mitigate all fogging and icing impacts caused by CSCP to off-site roadways that create hazardous traffic conditions. Mitigation measures, if needed, shall be undertaken and implemented in consultation with the Port of Morrow and other responsible local agencies, and may include, but are not limited to: hazard warning signs, lighting, and sanding.

### **Additional Findings of Fact**

The potential impact on public roads from the Coyote Springs project differs from HPP's potential impact because the Coyote Springs plant is immediately adjacent to Ullman Road. Ullman Road is a public road which features a railroad overpass within the computer model's range for significant fogging impacts. In contrast, the computer model for HPP predicts an insignificant increase in fogging or icing beyond the Simplot property.

### **Disposition**

The HPP plant would not have the same proximity to public roads as the Coyote Springs plant. Unlike Coyote Springs, HPP does not pose a fogging/icing threat to the public. The absence of a threat eliminates the need to attach an equivalent condition to HPP's certificate.

*End of Section*

## ISSUE H-14 (LOCAL TAX REVENUE)

### **The Issue**

A Council member raised the following issue:

H-14. Does the [Department's] Proposed Order, at page 82 [ODOE-201.82], accurately state the impact on local tax revenue?

### **Applicable Standard**

OAR 345-22-110 provides:

To issue a Site Certificate, the council must 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, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care, and schools.

### **The Department's Proposed Order**

The Department's Proposed Order, in its discussion of socio-economic impact standard in OAR 345-22-110, states:

*Finally, HPP estimates that the facility will generate approximately \$200,000 annually in payroll-related taxes and, after 3 years of operation, will contribute approximately \$5 million annually in property taxes. Demands on schools and other government services in the impact area will therefore be at least partially offset by tax revenues.*  
ODOE-201.82 (italics added)

### **Additional Findings of Fact**

No party presented additional evidence relating to the statements in italics. The existing evidence does not contain calculations showing cost/revenue impacts for specific service providers.

### **Disposition**

The Council member's concern arose from the possibility that laws governing local property taxes might prevent schools and local governments from collecting any additional total revenues from the addition of the HPP's facilities to the local tax base. Regardless of whether schools and local governments acquire more revenues, the Department's analysis in the Proposed Order shows that the HPP facility will not have a significant adverse impact on any of the local services on the list in OAR 345-22-110. The analysis is complete without the sentences in italics, so the Council adopts the HPP/Department suggestion to simply delete it.

*End of Section*

### ISSUE S-10.2.1 (WETLAND MITIGATION)

#### **The Issue**

A council member raised the following issue during the Council's first reading of the Department's Draft Proposed Order:

S-10.2.1. Should the [wetland] mitigation ratio be greater than 1:1?

#### **Department's Proposed Order**

The Department's Proposed Order currently provides:

(7) Disturbed wetland and riparian areas shall be revegetated upon completion of construction with seed composition and vegetation species designed to enhance wetland and riparian habitat values and composed only of species commonly associated with wetland and riparian plant communities. *Any wetland areas that is lost due to project construction shall be compensated by creating new wetland area at a minimum 1:1 wetland creation: wetland impact ratio such that there shall be no net loss of wetland habitat units or wetland habitat values.* A wetland creation and revegetation plan shall be developed prior to construction in consultation with ODFW and DSL. The wetland creation and revegetation plan shall be submitted to ODOE for review and approval in consultation with ODFW and DSL. HPP shall comply with the approved plan. ODOE-201.107. (Italics added)

#### **Contested Case Record**

No party presented evidence tending to show that the conditions in the Department's Proposed Order are inadequate.

#### **OAR 141-85-135**

OAR 141-85-135 governs compensatory mitigation ratios. It provides in relevant part:

- (1) Compensatory mitigation shall be conducted, in proportion to the impacts expected to result from a particular project, according to the following ratios, unless modified by the director:
  - (a) 1.0 acre of wetland restored for each acre of wetland impacted,
  - (b) 1.5 acre of wetland created for each acre of wetland impacted,
  - (c) 3.0 acres of wetland enhanced for each acre of wetland impacted.

**Proposed Change to Department's Proposed Order**

The Department suggests the revising the italicized sentence to read:

\_ Any wetland area that is lost due to project construction shall be compensated by restoring wetland area at a 1:1 wetland impact: wetland restoration ratio, by creating wetland area at a 1:1.5 wetland impact: wetland creation ratio, or by enhancing wetland area at a 1:3.0 wetland impact: wetland enhancement ratio such that there shall be no net loss of wetland habitat units or wetland habitat values. \_

**Disposition**

HPP did not object to the Department's proposal and it more accurately follows the rule. It is adopted.

*End of Section*

### ISSUE S-13 (CONSTRUCTION SCHEDULING)

#### The Issue

A council member raised the following issue during the Council's first reading of the Department's Draft Proposed Order:

S-13. Should the Council require HPP to undertake the most careful construction scheduling practicable in light of mating seasons for the various species in and near the project site?

#### Department's Proposed Order

The Department's Proposed Order imposes 15 conditions to ensure compliance with the fish and wildlife habitat standard and the threatened/endangered species standard. Conditions 5 and 6 relate to Issue S-13. The conditions require HPP to conduct constructions activities outside of sensitive time periods when feasible. HPP also must consult with the Oregon Department of Fish and Wildlife. Both the Department of Fish & Wildlife and the Department (of Energy) must approve HPP's mitigation plans. ODOE-201.61.

#### Contested Case Record

No party presented evidence tending to show that the conditions in the Department's Proposed Order are inadequate.

#### Proposed Change to Department's Proposed Order

The Department suggests, and HPP agrees to, the following minor changes<sup>12</sup> to Condition 6:

(5) Subject to Condition (6), [If **if** feasible, construction of the natural gas pipelines, water supply line[s] and transmission line[s] shall occur outside of sensitive time periods (as described in the ASC, Exhibit P/P-1, page 44a) for the following wildlife species of concern which were documented within the impact area of the proposed natural gas pipelines, water supply line[s] and transmission line[s]: painted turtle, long-billed curlew, grasshopper sparrow, Swainson's hawk, burrowing owl, and bank swallow.

(6) Notwithstanding Condition (5), prior to construction **of the gas pipelines, water supply line and transmission line** HPP shall provide to **ODOE** [the Department] a construction schedule, including activities and locations, if any, of planned construction **of the gas pipelines, water supply line and transmission line** during the sensitive time periods for the species listed above. **HPP** [Applicant] shall consult with **ODFW to**

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<sup>12</sup> **Additions are bold** and [deletions are in brackets].

**make** [in making] every effort to schedule construction activities **to avoid adverse impact on the species listed above.** [in locations where impact on the above species is minimized.]

Not less **than** [that] 60 days prior to the sensitive time periods for species listed above, HPP shall notify **ODOE** [the Department] in writing of any construction activities **on the gas pipelines, water supply line and transmission line** scheduled for those time periods. If construction activities cannot be scheduled to occur outside the sensitive time periods for the above listed species of concern, pre-construction biological surveys shall be conducted by a wildlife biologist within the impact area of the proposed natural gas pipelines, water supply line[s] and transmission line[s] to identify the location of wildlife species of concern or their nest sites. **HPP shall develop the methodology for these pre-construction surveys in consultation with ODFW prior to conducting the surveys.** Mitigation for potential impacts to any wildlife species of concern and/or their nest sites found during pre-construction surveys shall be developed **by HPP** prior to construction **of the gas pipelines, water supply line and transmission line** and in consultation with ODFW. The mitigation plan shall be submitted to ODFW and ODOE for review and approval **prior to construction of the gas pipelines, water supply line and transmission line.** **ODOE shall make a final determination on the mitigation plan within 45 days of its submission.**

**Disposition**

The proposal provides greater assurance that construction, when feasible, will not interfere with mating. It is adopted.

*End of Section*

*Compliance with Council Standards*

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### GENERAL STANDARD FOR REVIEW

Under ORS 469.503 and OAR 345-22-000(1), the Council must determine, before issuing a site certificate, that a preponderance of the evidence on the record supports the following conclusions:

- (1) The facility complies with the standards adopted by the Council pursuant to ORS 469.501;
- (2) Except as provided in ORS 469.503(2) and OAR 345-22-030 for land use compliance, and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified by the project order as applicable to the issuance of a Site Certificate for the proposed facility; and
- (3) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

The Council must also impose conditions for the protection of the public health and safety, for the time of commencement and completion of construction, and to ensure compliance with the standards, statutes and rules addressed in this order. ORS

469.370(12), 469.401(2). The Council is not authorized to determine compliance with regulatory programs that have been delegated to another state agency by the federal government. ORS 469.503(1)(b). The Council also lacks jurisdiction over design or operational issues that do not relate to siting, such as matters relating to employee health and safety, building code compliance, wage and hour or other labor regulations, or local government fees and charges. ORS 469.401(4). Some of these exempt programs are listed in section "Regulations Exempt from EFSC's Jurisdiction". See Page 269. The Council may, however, consider these programs in the context of its own standards to ensure public health and safety, resource efficiency and protection of the environment as discussed below.

## NEED FOR THE FACILITY

### **In General**

OAR Chapter 345, Division 23, addresses the need for a proposed facility. It includes exemptions from the requirement to demonstrate need for certain types of facilities. Among them is exemption for facilities the output of which is contracted to BPA. In addition, SB 951, effective July 5, 1995, provides that up to 500 megawatts of natural gas-fired facilities shall be exempt from the requirement to demonstrate need, provided the application for such a facility is deemed complete on or before July 1, 1997. The Council has issued notice for a rulemaking proceeding that will include consideration of how to implement the provision exempting up to 500 megawatts of gas-fired generation ("the 500 MW exemption").

In its application, which was deemed complete on April 14, 1995, HPP claimed the exemption set out in OAR 345-23-010(3) for facilities the output of which is contracted to BPA. On July 7, 1995, HPP filed a request to amend its application to claim both the BPA exemption and the 500 megawatt exemption.

For the reasons that follow, we conclude that the facility qualifies for the BPA exemption in OAR 345-23-010(3). We reach no conclusion with respect to HPP's claim to the exemption authorized under SB 951, pending the Council's decision on that issue in the rulemaking.

### **The BPA Exemption: OAR 345-23-010(3)**

OAR 345-23-010 exempts

"electric generation facilities, except coal or nuclear, for which all the net electric output is contracted to the Bonneville Power Administration and which have a fuel chargeable to power heat rate of 8000 Btu per kWh or less, provided the Council finds that the Pacific Northwest Electric Power and Conservation Planning Council is authorized to review the acquisition of the output of the facility for consistency with the 1991 Northwest Conservation and Electric Power Plan under section 6 (c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 USCA 839d(c)(2) (1980) [the "Act"], and for consistency with the criteria in :

- (a) The Pacific Northwest Electric Power and Conservation Planning Council Statement of Policy Implementing Section 6(c) of the Northwest Electric Power Planning and Conservation Act, November 12, 1986;
- (b) Document No. 92-25, Process and Criteria To Be Used in 6(c) Review, Statement of Policy, August 17, 1992; and
- (c) The letter from Stan Grace, Chair, Northwest Power Planning Council, to Randall W. Hardy, Administrator, Bonneville Power Administration, dated July 28, 1993, setting out issues that are likely to be of particular concern to the Power Planning Council in future 6(c) reviews.

The facility qualifies for the exemption for the following reasons:

1. It is a non-coal, non-nuclear energy generating facility.
2. The entire net electric output of the facility, a total of approximately 460 megawatts, is subject to an options contract between BPA and HPP, executed October 7, 1993, Contract No. DE-MS79-93B94164, Procurement No. 56777, into which has been incorporated the provisions of a Power Purchase Agreement, Contract No. DE-MS79-94BP94301, Procurement No. 56797 (collectively, the "Contract").
3. The exemption requires that the "fuel chargeable to power heat rate" of the facility be less than 8,000 Btu/Kwh (British thermal units per kilowatt-hour). "Fuel Chargeable to Power Heat Rate" is defined at OAR 345-01-010(21), which provides:

"Fuel Chargeable to Power Heat Rate" means the net heat rate of electric power production during the first twelve months of commercial operation. Fuel chargeable to power heat rate shall be calculated by the following formula with all factors adjusted to ISO conditions. ISO means standard conditions as defined by the International Standards Organization. The standard conditions used shall be 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent relative humidity."

$FCP = (FI - FD)/P$ , where

FCP = Fuel chargeable to power heat rate,

FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value),

FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value), and

P = Annual Net electric output of the cogeneration facility in kilowatt hours.

HPP is working with four different vendors for supply of the gas turbine. The four vendors are General Electric, Asea Brown-Boveri, Siemens, and Westinghouse. The final

selection will be made only if BPA decides to acquire the output of the facility. The exact fuel chargeable to power heat rate is dependent on the vendor selected. HPP has provided plant heat rate information for each of the four vendors with no credit taken for steam to the steam host, at HHV of fuel. The information was provided for actual ambient temperature and elevation at the plant site and at ISO conditions as defined in OAR 345-01-010(21). In all cases, the adjustment from plant actual conditions to ISO conditions resulted in a change to the Heat Rate of 200 BTU/kwh or less. In no case did the design heat rate exceed 7200 BTU/kwh, with no credit for cogeneration benefit (steam to the steam host).

We conclude the facility meets the requirement for a fuel chargeable to power heat rate of 8000 BTU/kwh or less.

4. The Northwest Electric Power and Conservation Planning Council ("NPPC") is authorized to review the acquisition of the output of the facility for consistency with the 1991 Plan, under Section 6 (c) (2) of the Act.

In order to acquire a "major resource," BPA must evaluate the proposed acquisition for consistency with the Regional Electric Power and Conservation Plan ("Plan") then in effect. Act, Section 6 (c) (1) (D) (i). Section 6 (c) (2) of the Act states:

"Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1) (D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator--

"(A) that the proposal is either consistent or inconsistent with the plan, or

"(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4 (e) (1) and the considerations of section 4 (e) (2)."

A "major resource" is any resource that "has a planned capability greater than fifty average megawatts" and, if acquired by BPA, "is acquired for a period of more than five years." Act, Section 3(12).

The facility has a planned capability of 460 average megawatts and may be constructed in two phases of 230 average megawatts each. The Contract prohibits HPP from selling project output to any purchaser other than BPA during the term of the option granted under the Contract (*i.e.*, until June 30, 2000). If BPA exercises its option and acquires one phase or both phases, the Contract calls for acquisition of the output of the facility for a period of at least 20 years. The Plan currently in effect is the 1991 Northwest Conservation and Electric Power Plan (the "1991 Plan"). Accordingly, the NPPC is authorized by Section 6(c) of the Act to review the acquisition of the facility's output for consistency with the 1991 Plan.

5. The NPPC has specified how it will determine whether an acquisition is consistent with the 1991 Plan by adopting clarifying policies and criteria.

On November 12, 1986, the NPPC issued a Statement of Policy Implementing Section 6(c) of the Northwest Electric Power Planning and Conservation Act. Exhibit L-1. On August 17, 1992, the NPPC issued Document No. 92-25, Process and Criteria To Be

Used in 6(c) Review. Exhibit L-2. Finally, by a letter to Randall W. Hardy, Administrator of BPA, dated July 28, 1993 and signed by Stan Grace as Chair of the NPPC, the NPPC enumerated a list of factors that the NPPC will take into account in future 6(c) reviews.

These three statements of policy and criteria are now in effect and, until superseded, will be applied by the NPPC in its 6(c) review.

### **Conclusion**

For these reasons we conclude that HPP has satisfied each of the requirements of the BPA exemption. Accordingly, HPP need not otherwise establish need for the output of this facility.

### **Conditions**

- (1) Prior to commencement of construction, applicant shall notify the Council in writing of the final selection of gas turbine vendor.
- (2) Prior to commencement of construction, the site certificate holder shall submit design information to the Department sufficient to verify that the facility's actual design fuel chargeable to power heat rate under ISO conditions as defined in OAR 345-01-010(21) is less than 8,000 Btu/Kwh, with no credit taken for steam to the steam host.
- (3) Within six months of completion of the first full year of commercial operation, Applicant shall provide a test report of the capacity and unit heat rate in BTU per kilowatt hour produced, corrected to ISO conditions and accounting for steam delivered to the steam host, averaged over the first full year of operation, to document that the facility achieves a fuel chargeable to power heat rate of less than 8,000 Btu/Kwh.
- (4) In accordance with the Mandatory Condition requirement in OAR 345-27-020(6)(d), the Applicant shall provide to the Council, prior to commencement of construction:
  - (A) A long term power sales contract with the Bonneville Power Administration for all the net electric output of the facility; and
  - (B) A final, non-appealable determination by the Pacific Northwest Electric Power and Conservation Planning Council, under the criteria identified in OAR 345-23-010(3), that the Bonneville Power Administrator's decision to acquire output from the proposed facility is consistent with the 1991 Northwest Conservation and Electric Power Plan and is in accordance with the criteria identified in OAR 345-23-010(3)(a), (b), and (c). If such a determination is not provided, the certificate holder shall not commence construction of the facility unless it demonstrates need in a process conforming to the requirements of OAR 345-27-070, except that the Council shall hold a contested case hearing if requested under OAR 345-27-070(3). The issue at the hearing shall be limited to whether the facility complies with OAR Chapter 345, division 23.

The site certificate holder must demonstrate compliance with the need for facility standard in effect at the time the decision on the request to amend is made.

### **Construction commencement and completion dates**

The Council must establish dates for commencement and completion of construction. ORS 469.370(12) obligates the Council to specify "the date by which construction of the facility must begin." ORS 469.401(2) obligates the Council to specify the "time for completion of construction." OAR 345-27-020(3) states that "construction of the facility must begin and be completed by dates specified in the Site Certificate."

The BPA holds an exclusive option on the facility under its Resource Contingency Program ("RCP"). BPA can call for construction of the facility anytime between late 1995 and June 30, 2000.

The criteria for the exemption from the Council's Need for Power standard set forth in OAR 345-23-010(3) are satisfied only if the entire output of the facility is contracted to BPA. The Council finds that the shelf life of the Site Certificate should match the dates in the BPA Contract.

### **Conditions**

- (5) Applicant shall begin construction of proposed facility by November 30, 2000 and shall complete construction by January 1, 2003.
- (6) Construction completion of the facility shall be defined as the commercial operation date of the facility. If Applicant begins construction by November 30, 2000 but cannot complete construction by January 1, 2003, then the Council may grant extensions of the construction completion date in accordance with OAR 345-27-030.

### **The 500 megawatt exemption**

In the amended portion of the application submitted with HPP's request to amend, HPP claims both the BPA exemption and the 500 megawatt exemption. It claims the 500 megawatt exemption for the following reasons:

- "1. The facility is a `natural gas fired facility'.
2. The entire net electric output of the facility, approximately 460 megawatts, is below the 500 megawatts limit.
3. The application for the Project was deemed complete on April 17, 1995, (*sic* April 14, 1995) well before the July 1, 1997 deadline.

In addition, under Section 28 of SB 951, the provisions of the bill, including Section 20, apply to any action taken by the Council after the effective date of SB 951, including any action taken on an application filed prior to such effective date. SB 951 contains an emergency clause (Section 33) that made it effective upon passage. Section 20 is therefore applicable to this site certificate application.

4. The energy industry is rapidly evolving toward a fully competitive market. This occurrence, together with efforts to save salmon runs in the Columbia River and other recent developments, is causing a thorough re-evaluation of BPA's role in the Western energy supply system. The NPPC is working on a new regional power plan. These developments are causing both BPA and HPP, parties to the Contract described above, to consider uses of the Project's output that differ from the uses contemplated by the 1991 Plan.

As noted above, the NPPC is currently authorized to review the acquisition of the output of the Project as described in OAR 345-23-010(3). It is becoming increasingly uncertain, however, whether BPA and the NPPC will follow the narrowly drawn process described in that rule. It is therefore becoming increasingly less likely that HPP will be able to satisfy the mandatory condition in OAR 345-27-010(6) (d), which it must satisfy in order to utilize the exemption set forth in OAR 345-23-010 (3) and to construct the Project. Accordingly, HPP needs the exemption in order to protect its and BPA's investments in the Project and to ensure the eventual construction of the Project.

5. The Council, by rule and by practice, has allocated exemptions from the Need Standard on a first-come, first-served basis. The 950 megawatts exemption for natural gas fired plants that was adopted in 1992 was allocated to the Hermiston Generating Company for its Umatilla County facility, and to PGE for the Coyote Springs facility, on a first-come, first-served basis. OAR 345-23-010(4) states that when an exemption becomes available due to denial or withdrawal of an application, or loss of a site certificate, the exemption will go to the eligible facility with the oldest application date.

6. The Project is the only proposed facility with a complete application before the Council and the only pending project that is eligible for the exemption."

HPP Amended Exhibit "L", submitted with Request to Amend Site Certificate on July 7, 1995.

At the Council's first reading on the Department's draft proposed order, on September 12, 1995, the Council approved HPP's request to amend its site certificate application to claim the 500 mW exemption. On March 1, 1996, HPP submitted to the Department a second 500 mW amendment to its application, as part of its request for the 500 mW exemption the Council will award under OAR 345-23-010(2). The Council has not yet awarded the 500 mW exemption. It will do so based on the outcome of a contested case proceeding pursuant to OAR 345-23-010(2).

### Conclusion

Given the Council's decision to award HPP a site certificate on the basis of the 6(c) exemption, the Council orders that both 500 mW amendments be treated as a request to amend a site certificate in the contested case proceedings under OAR 345-23-010(2).

*End of Section*

STANDARDS RELATING TO THE APPLICANT

**Organizational, Managerial And Technical Expertise: OAR 345-22-010**

**Applicant Qualification and Capability**

To meet this 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."

OAR 345-22-010(1).

**Discussion**

1. Oversight of "Turnkey" Project. HPP will not directly construct and operate the facility. Instead, HPP proposes to solicit "turnkey" contract proposals for engineering, procurement and construction ("EPC") of the facility from selected, prequalified firms. Firms will be prequalified to bid based upon their success in constructing combined-cycle combustion turbine cogeneration plants similar to the proposed facility. Prospective contractors will be required to have successfully completed at least one large combined-cycle plant.

Prequalification criteria will include experience in the design and construction of similar projects, capability of key personnel, availability of qualified personnel, financial capability, quality of references, and satisfactory previous experience in working with any of the companies that comprise HPP. A management team will administer the EPC contract.

Similarly, the operation of the proposed facility will be handled on a day-to-day basis by a contract operator chosen by HPP.

HPP's Management Committee will select the firms that perform the EPC contract and operate the facility. The Management Committee, which is comprised of Kip Runyan (Ida-West), David Russell (TransCanada), and Larry Costello (Simplot) and assisted by key personnel from those companies, is qualified by experience to select appropriate contractors and management team members.

David Russell was actively involved, on TransCanada's behalf, in the development of a 500 megawatts, combined-cycle power plant at Burrilville, Rhode Island, known as the

Ocean States Power Plant. That facility was successfully completed in two, 250 megawatt phases, on time and within budget. Since then, it has operated successfully under the oversight of an operating committee that includes David Barlow, TransCanada's Senior Manager for Construction and Operation. Mr. Barlow will be involved in the management of the proposed facility.

Kip Runyan, Ida-West's President and CEO, has over 17 years of experience in all aspects of power plant development, design, financing and construction, including involvement in the development of hydroelectric projects in excess of 375 megawatts and the 250 MW Valmy coal-fired station. He will be assisted by Ed Clark, the current Project Manager, and other Ida-West personnel, whose resumes demonstrate broad expertise in the design, construction and operation of energy facilities.

2. Management of Permitting Process. HPP has demonstrated a high degree of organizational, technical and managerial expertise in the permitting for the facility that has been done to date.

HPP has identified and obtained, or has a sound plan to obtain, all of the principal state and local permits necessary for construction and operation of the proposed facility. Some of these permits are under the Council jurisdiction as reflected in the amended Project Order for this application. Other permits are federally delegated to agencies other than the Council and are therefore not part of the siting process. However, HPP's progress in identifying and procuring these permits is an indication of its organizational, managerial and technical capability.

The permits necessary for construction and operation of the facility are listed in Appendix AA of the Application. Such permits include the water permit, fill/removal permits as required under the regulations of DSL permits as identified by affected local governments in accordance with each jurisdiction's acknowledged comprehensive land use plan, waste water discharge permits as required by the DEQ, submerged/submersible land easement permits as required by the DSL, building permits administered by the Oregon Building Codes Agency, Air Contaminant Discharge Permits delegated by the federal government to DEQ, storm water permit 1200-C delegated by the federal government to DEQ under the National Pollutant Discharge Elimination System (NPDES) and Federal Aviation Administration (FAA) permits for stack height.

Remaining permits have been applied for either by HPP or through arrangement with a third party. HPP has successfully entered into an arrangement with the Port of Umatilla for the purchase of water to be supplied by the Port under Permit #49497. HPP has also arranged for waste water discharge to Simplot facility using Simplot's existing WPCF permit, which is administered by DEQ. DEQ has issued the required WPCF permit modification.

HPP has worked with DSL towards meeting the requirements for its fill/removal permit (see DSL Agency Report). HPP has worked with the Cities of Umatilla and Stanfield and with Umatilla County to ensure compliance with their requirements for local approvals (see Resolutions of Umatilla, Umatilla County, Stanfield and agency report from Pat

Napolitano of the City of Hermiston). HPP has included a completed application for DSL Submerged/Submersible Land Easement permits under OAR 141-83-250.

HPP has completed the application for the DEQ Air Contaminant Discharge Permit. The DEQ Air Permit is outside the Council jurisdiction. However, DEQ has issued notice that HPP meets the requirements for the permit and has scheduled the public hearing for August 14, 1995. HPP has obtained storm water permit 1200-C from DEQ. HPP also obtained permits required by the Federal Aviation Administration (FAA) for stack height greater than 195 feet.

The following requirements outside the Council jurisdiction do not directly require permits but nonetheless apply to the proposed facility.

HPP has identified sections of ORS 757, OAR 860 and U.S. Department of Transportation Pipeline Safety Regulations in 49 CFR parts 191, 192, 199, and 40 as applicable to transmission line and pipeline safety. These requirements are administered by the Public Utilities Commission and are outside the Council jurisdiction. However, memoranda from the PUC to ODOE indicate that HPP has properly identified the applicable PUC requirements.

HPP has coordinated the timing of permits within and outside the Council jurisdiction to the extent practical. Required WPCF permit modifications were obtained in May 1995. The DEQ Air Quality permitting and federal environmental impact statement processes have proceeded in parallel with the Council siting review. Required NPDES and FAA permits were obtained in 1995 on a schedule consistent with the the Council siting review. The coordination of several permitting processes occurring on the same time schedule is a practice generally associated with construction management.

HPP's progress in identifying and ensuring compliance with applicable state and federal regulations, both inside and outside the Council jurisdiction, is a reasonable indicator of managerial and technical expertise.

3. Availability of Technical Expertise. The technical work that HPP has done in-house demonstrates substantial relevant expertise. HPP has augmented the engineering experience base of its staff by recruiting individuals with prior experience with other companies. The Project Manager, Ed Clark, was recruited based on experience with Texaco, Union Oil, American Natural Resources, and the Electric Power Research Institute. Mr. Clark has prior experience as project manager for an experimental 120 megawatt demonstration project integrating coal gasification with combined-cycle gas turbine technology. The gas turbine used in that project was the General Electric Frame 7E which is similar to the General Electric Frame 7F turbine under consideration for this project, along with similar designs by three competing manufacturers. The staff of Ida-West also includes an electrical engineer with 23 years of prior experience in the field of electric power generation, a civil engineer with engineering supervisory experience dating back to 1982 and another civil engineer with over ten years prior experience.

HPP has augmented its in-house technical abilities with outside consultants through the permitting process on an as-needed basis. HPP utilized consultant firms for biological surveys, geotechnical and geological studies, cultural and historic resource studies,

compliance with DEQ noise standards, studies concerning cooling tower drift, and overall preparation of the Notice of Intent and Application for Site Certificate. Both documents were found by the Department to be nearly complete as submitted. Agency reports from ODFW, ODA, DSL and DOGAMI state that the technical material provided by HPP based on the work product of its consultants met the requirements of those departments.

HPP's ability to coordinate the efforts of several diverse consultants in the ASC process is an indicator of the ability to effectively manage technical contractors operating on a "turnkey" basis.

The Council concludes that HPP has both a high level of expertise in-house and the ability to procure technical expertise through consultants, as needed.

4. Affiliates' Experience. The experience and expertise of TransCanada, Ida-West and Simplot are relevant to the Council's finding under OAR 345-22-010(1), given the active involvement of those entities in the development of the proposed facility (e.g. through the Management Committee, as Project Administration Agent and as parties fully liable on the Guaranty).

As noted, TransCanada has been actively involved in the construction and operation of the Ocean States Power Plant, which is similar in size and type to the proposed facility. As the holder of the largest interest in the Ocean States Power Plant (40%), TransCanada's involvement was essential to its success. TransCanada's experience with Ocean States is particularly relevant to the proposed facility because TransCanada personnel key to the Ocean States Project will also be involved with the construction and operation of the proposed facility and because, like the proposed facility, Ocean States was a "turnkey" project that was built and is operated by outside contractors, overseen by the facility owners. The regulatory history of the project has only one blemish, a muriatic acid spill on March 27, 1994, that resulted in the payment of a \$1,137 fine. Corrective actions were taken and there have been no other occurrences.

TransCanada also owns and operates a smaller (38 MW) combined-cycle facility in Nipigon, Ontario. As a leader in North American transporting and marketing of natural gas, with assets in excess of \$8 billion (Canadian), it also brings substantial expertise about fuel transportation and supply to the project.

Ida-West brings experience in overall project development, plant construction management, O&M services and project financing. It has constructed three hydroelectric facilities, currently operates four hydroelectric facilities (total 33.3 MW), and has 250 MW of cogeneration now under development. It has successfully financed the construction and/or acquisition of a number of projects, totalling at least \$75.5 million.

Simplot has been involved in the development and operation of a 9 MW hydroelectric facility and two 12 MW cogeneration plants. With operations in 16 states, Canada and Mexico, and annual sales in excess of \$2 billion, Simplot is a major natural gas consumer that has pioneered in the areas of self-supply and transportation. As a high load factor, large volume natural gas consumer, Simplot is in a strong position to obtain gas supplies

on a cost-effective basis. HPP plans to use Simplot's experience as a large industrial customer to minimize the facility's fuel procurement costs.

5. Selection for BPA Resource Contingency Program (RCP). HPP's selection by BPA for its RCP is relevant to a finding of compliance with this standard. The RCP is a program whereby BPA enters into contractual agreements with selected Independent Power Producers for the siting and permitting of potential electric generation resources. Under the terms of the agreement, BPA reimburses the developer for certain licensing and permitting costs associated with the project.

BPA issued a RCP Solicitation in May 1992 for energy option proposals. In response to the solicitation 64 proposals were submitted totalling 7,842 average megawatts (Federal Register, August 30, 1993).

In June 1992 BPA selected 25 project sponsors that it evaluated to be qualified to develop the proposed option resource. In August 1993, BPA issued notice in the Federal Register of its intent to produce an Environmental Impact Statement for the RCP based on its selection of 3 projects, of which the Hermiston Power Project was one.

BPA selected the three developers from among the original 64 according to criteria stated in its March 1992 "Request for Energy Options." The criteria included development team experience, development team commitments, success as a non-utility generator, and financing plan adequacy. The projects with which HPP successfully competed for selection in the BPA RCP include the Hermiston Generating Co. facility which has since been found to meet the Council's organizational, managerial and technical expertise standard.

The Council concludes that successful competition in the BPA RCP process against a field of 63 competing developers is an indicator of organizational, managerial and technical expertise.

To summarize: HPP has demonstrated that it has experience in the construction and operation of energy facilities through the construction and operation experiences of TransCanada, Ida-West and Simplot, and that it has experience in the selection of contractors to construct and operate large energy facilities. HPP has demonstrated that it has substantial technical expertise in-house and available to it through the high quality of its technical work to date and through the criteria it plans to employ in contractor selection. HPP has demonstrated a high degree of organizational, managerial and technical competence in its permitting process to date, and through its successful competition against 63 other proposals in the RCP process.

Conclusion. For these reasons, the Council concludes that HPP has satisfied the requirements of OAR 345-22-010(1).

### **Third-Party Services and Permits**

The standard requires that:

"(2) 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." OAR 345-22-010(2).

With two exceptions, the permits and approvals addressed in the site certificate will be obtained directly by HPP. The two exceptions are the required permits for water supply and wastewater discharge.

#### *Water supply*

HPP proposes to obtain water necessary for the operation of the energy facility from the Port of Umatilla-City of Hermiston regional water supply system. The Port has a permit, Permit # 49497, to use up to 155 cubic feet per second (69,564 gpm) of water from the Columbia River. Under the terms of the permit the Port must commence construction of the system and apply at least some portion of its permitted right to beneficial uses by October 1, 1997 unless the time is extended by the WRD. The first phase of construction, to apply 11,000 gpm to beneficial use, is scheduled for completion in August, 1995. This will allow perfection of the Port's right to 11,000 gpm. The Port's water right will be further perfected by future application of appropriated water to beneficial use. The Port and HPP entered into a Memorandum of Agreement on January 11, 1994 for the supply of 2,400 gpm to the facility. Under full load conditions, operating at an average ambient temperature of 53 degrees F, the facility will use 1969 gpm.

We conclude, based on the foregoing, that: (1) the Port has the necessary permit; (2) the Port has a "reasonable likelihood" of perfecting its right to appropriate the water needed for operation of the facility; and (3) HPP has a contractual agreement for the use of the necessary water.

#### *Process Wastewater and Domestic Sewage Disposal*

HPP proposes land application of wastewater, for which a permit is required. Wastewater from the proposed energy facility will be treated and discharged under a modification to Simplot's Water Pollution Control Facilities ("WPCF") permit from DEQ. DEQ issued the modification to Simplot's existing WPCF permit on March 27, 1995. The modification authorizes treatment and discharge of the facility's wastewater by the Simplot plant. Simplot, which is an HPP affiliate, has stated its intention to enter into an agreement to accept and dispose of HPP's wastewater under the permit.

We conclude, based on the foregoing, that Simplot has the necessary WPCF permit to accommodate treatment and disposal of HPP's wastewater and that HPP is reasonably likely to enter into an agreement with Simplot for disposal of HPP's wastewater under Simplot's permit.

For these reasons, we conclude that HPP meets the requirements of OAR 345-22-020(2).

### Conditions

(7) Prior to commencement of construction, the site certificate holder shall demonstrate to ODOE that the Port has not forfeited its legal right to perfect the 2400 gpm contracted to HPP.

(8) Prior to commencement of construction, HPP shall have a contract or other agreement with Simplot to accept and dispose of HPP's wastewater.

(9) Prior to construction, HPP shall identify for the Council's approval the EPC contractor chosen to construct the facility. Prior to commercial operation, HPP shall identify for the Council's approval the contractor chosen to operate the facility. Any such approval shall not be unreasonably withheld.

(10) All modifications to the partnership agreement shall be submitted to the Department for incorporation in the Site Certificate file.

(11) Any change of operator shall be reported to the Department.

(12) Any matter of non-compliance under this Site Certificate shall be the responsibility of the partnership. Any notices of violation issued will be issued to the partnership. Any civil penalties levied will be the responsibility of the partners jointly and severally.

(13) In the annual report submitted to the Council, the site certificate holder shall describe any change in the membership or voting requirements of its management committee or any admission or withdrawal of a partner not described in any earlier annual report previously submitted to the Council. Any (a) such change in such membership or voting requirements resulting in a material change to the site certificate holder's existing management structure and procedures; (b) such admission resulting in a new partner's active participation in the business and affairs of the site certificate holder; or (c) such withdrawal resulting in the complete removal of an existing partner from its previously active participation in the business and affairs of the site certificate holder, shall be subject to approval of the Council, which approval shall not be unreasonably withheld or delayed.

(14) Applicant shall contractually require the EPC contractor and all independent contractors and subcontractors involved in the construction and operation of the proposed facilities to comply with all applicable laws and regulations and with the terms and conditions of the site certificate. Such contractual provision shall not operate to relieve the site certificate holder of responsibility under the site certificate.

### **Financial assurance standard: OAR 345-22-050**

OAR 345-22-050 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.

### **Discussion**

This standard and the Retirement Standard in OAR 345-22-130 are designed to ensure that funds are available to restore the site in three different circumstances: (1) the facility construction is begun but not completed by the time required in the site certificate; (2) the facility is permanently closed before a retirement fund is fully funded; and (3) the facility is permanently closed after the retirement fund is fully funded. Permanent closure and retirement could occur any time up to the end of the facility's useful life.

Under this standard we address the availability of funds in the first two circumstances listed above, i.e. if the construction is begun but not completed, or if the facility is permanently closed at any time before the retirement fund described under the discussion of the Retirement Standard is fully funded.

We estimate the cost of restoring the site to be \$8,202,000. A description of the basis for that estimate appears in the discussion of compliance with the Retirement Standard.

The standard requires a finding that HPP has a reasonable likelihood of obtaining security comparable to a bond to restore the site. A performance bond is a contract between the site certificate holder and a surety under which the surety agrees to make a payment to the state in the event that the site certificate holder fails to perform its obligations. The Council may demand payment from the surety if the site certificate holder fails to meet its obligation. The Council is not obliged to sue the site certificate holder before demanding payment from the surety.

In satisfaction of the standard HPP has offered a guaranty from Simplot, TransCanada and Ida-West, the partnership affiliates.<sup>13</sup> The form of the guaranty is attached as Exhibit A. Like a performance bond, the guaranty obligates the guarantors to pay the cost of restoration in either of the circumstances described in this standard. The guarantors are jointly and severally liable for the cost of restoration, which means that each of them is liable for the entire cost of restoration. The state need not attempt recovery from HPP before demanding payment from the guarantors, and may demand payment from any or all of the guarantors without first proceeding against HPP. The guaranty constitutes an unconditional promise from each of the

guarantors to pay the cost of restoring the site if construction is begun but is not completed, or if HPP permanently closes the facility before it has completely funded the retirement fund.

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<sup>13</sup> As described earlier in this order, HPP is a partnership of SimGen Inc, a subsidiary of Simplot, TCPL Hermiston Ltd., a subsidiary of TransCanada, and Hermiston Power Company, a subsidiary of Ida-West.

The major difference between a surety bond and the guaranty is that a surety company that offers a performance bond is regulated as an insurance company. The regulation is intended to assure that the company has adequate assets to make payment on the bonds. In order for the Council to find that a guaranty is a "comparable security," it must be able to conclude that it has reasonable assurance that the guarantors have adequate financial reserves to make payment on the guaranty, both currently and over the life of the guaranty.

*J.R. Simplot Company*

Simplot is privately held. HPP has not provided financial statements for the company. Simplot manufactures frozen potatoes and other food products, fertilizers, agricultural and industrial chemicals and phosphates, and operates cattle feedlots.

Simplot's financial officer reports that Simplot has annual revenues in excess of \$2 billion. Simplot carries an NAIC (National Association of Insurance Commissioners) rating of 2. The Department's agency report describes the 2 rating as being comparable to a Standard and Poors rating of BBB+, BBB or BBB-, and a Moodys rating of Baaa1, 2 or 3. These are investment grade ratings.

The Department obtained a Dun and Bradstreet ("D&B") financial report on Simplot. D&B provides a variety of financial information and assigns a credit risk rating to the companies it evaluates. On March 11, 1994, D&B assigned Simplot a rating of 5A1, given to companies with financial strength of \$50 million and over, and signifying a composite credit appraisal of "High". D&B has not rated Simplot since that date because "the absence of appropriate financial statements precludes an accurate appraisal of the Company's financial position."

HPP provided letters from West One Bank and First Security Bank as an alternative to disclosing confidential financial statements. Simplot has been a customer of First Security Bank for over forty years, and of West One Bank for over ten years. Both banks stated that they had extended a significant amount of credit to Simplot. First Security Bank currently has credit exposure with Simplot exceeding \$35 million and West One Bank has exposure exceeding \$25 million. Both banks stated that over the years they had received detailed confidential financial information, including audited financial statements, from Simplot, and that based on this information, they are familiar with the financial abilities of the Company. Based on that information, both banks concluded that Simplot and its subsidiaries have financial resources to meet the obligations that may arise as part of the licensing, development and operation of the facility.

*TransCanada PipeLines Limited*

TransCanada is a Canadian public company incorporated in 1951 by a Special Act of Parliament and continued on June 1, 1979 under the Canada Business Corporations Act. TransCanada operates in three industry segments: Canadian mainline and interconnected pipelines, energy marketing and power generation.

Financial statements for TransCanada show total revenues in 1994 of \$5.2 billion and net income for the year of \$358.6 million. That compares with \$4.5 billion in total revenues and \$355.6 million in net income for 1993. TransCanada had \$2.5 billion in equity preferred shares and common shareholder's equity in 1994 compared to \$2.3 billion in 1993.

TransCanada is regulated by the Canada National Energy Board ("NEB"). It is allowed a rate of return of 12.25% in 1995 on the deemed common equity ratio. The NEB also issued a decision in April of this year that a 30% deemed common equity component is appropriate for TransCanada.

TransCanda maintains the following credit ratings:

	Senior Unsecured Debt	Commercial Paper	Preferred Shares
Canadian Bond Rating Service	A	A-1(low)	P-2
Dominion Bond Rating	A(high)	R-1(middle)	Pfd-2
Moody's Investor Services	A3	P-1	A3
Standard and Poor's	A	A-1	N/R

#### *Ida-West Energy Company*

HPP did not submit financial statements for Ida-West. HPP reports that Ida-West has secured loans totalling approximately \$75.5 million from various lenders to finance construction or acquisition of hydroelectric projects.

Although we accept a guaranty as the security instrument required under the standard in part because the three guarantors are jointly and severally liable, the joint and several liability would allow us to make a finding of compliance based on the financial strength of any one of the guarantors, or based on the collective strength of the three guarantors. We find that the financial information for the Simplot and TransCanada demonstrates that they both have the financial strength to meet an obligation estimated to be approximately \$8 million. We also find that the three guarantors collectively have the financial strength to meet such an obligation. We conclude that HPP has demonstrated a reasonable likelihood of obtaining a guaranty from the guarantors, and that the guaranty is a security comparable to a bond to assure restoration of the site.

*Conclusion*

For these reasons, we conclude that the financial assurance standard is met.

**Conditions**

(15) Prior to commencement of construction HPP shall submit to the State of Oregon, through the Council, a guaranty substantially in the form attached as Exhibit A, executed by J.R. Simplot Co., TransCanada Pipelines Limited and Ida-West Energy Company. The guaranty shall remain in effect until such time as the retirement fund described in Condition 2 below reaches \$8,202,000 (in 1995 dollars).

(16) Starting with the first year of commercial operation, HPP shall establish a retirement fund and begin making annual commitments to the fund in the amount of \$800,000 in the form of a letter of credit or performance bond. The terms of the security and identity of the issuer shall be subject to approval by the Council, which approval shall not be unreasonably withheld. Such annual commitments shall continue until the total security in the retirement fund reaches \$8,202,000 (in 1995 dollars) in no event later than 10 years from the date of commercial operation. The calculation of 1995 dollars shall be made using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index"). After the security in the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase annually by the percentage increase in the index. If at any time the index is no longer published, the Council shall select a comparable calculation of 1995 dollars. In the event the security in the retirement fund is less than \$8,202,000 in (1995 dollars) at the time HPP notifies the council of its intent to retire the facility, the annual commitments to the retirement fund shall be adjusted so as to assure that the total security in the funds is \$8,202,000 (in 1995 dollars) at the time of retirement. Applicant shall describe the status of the fund in the annual report submitted to the Council. All funds received by HPP from the salvage of equipment or buildings shall be committed to the restoration of the facility site, to the extent necessary to fund the approved restoration.

(17) In the event construction is begun but not completed by the deadlines set forth in the site certificate, or the energy facility is closed permanently before the end of its useful life, HPP shall restore the site to a useful condition. Restoration shall include but not be limited to the removal of transmission line towers erected by the applicant unless the Council determines that such towers are likely to be used by another facility, electric utility or other entity that provides electric service.

*End of Section*

STANDARDS RELATING TO THE SITE AND STRUCTURE

**Structural standard: OAR 345-22-020**

The standard requires the Council to find that

" (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, as defined in ORS 455.447(1)(d) and including amplification, that are reasonably probable at the site."

**Discussion**

The standard has two components, a site characterization requirement and a design and construction requirement. We consider each in turn.

Site Characterization: Applicant has characterized the site with the assistance of a geotechnical and geological consultant, Squier Associates. The 1993 Edition of the Oregon Structural Specialty Code ("Oregon Building Code") designates the site as Seismic Zone 2b. The classification of 2b is based on a review of historical magnitude and frequency of occurrence of earthquakes within the region.

The historic earthquake activity in the region surrounding the energy facility site is low to moderate. Only a few recorded earthquakes have occurred in the vicinity of the energy facility site. The largest event near the facility site was an 1893 event with a reported Modified Mercalli Intensity (MM) VII. The epicenter of this event is only approximately known as being near the town of Umatilla. The U.S. Army Corps of Engineers has concluded that this event had a magnitude of approximately 4.0 on the Moment Magnitude Scale. In 1992 a magnitude 3.9 event was recorded in the Hermiston/Umatilla area. The epicenter of this earthquake was located approximately 20 km. west of the energy facility site and cannot be attributed to any known fault.

HPP reviewed potentially seismogenic geologic structures identified by various investigators within 70 miles of the energy facility. Seventy miles is about the maximum distance from an epicenter for the occurrence of strong ground motions and damage in the Western United States.

HPP has identified ten fault zones and geologic structures within 70 miles of the energy facility site which, by virtue of their size, could potentially generate the largest earthquakes in the region. The geologic structure producing the maximum credible seismic event is the Service Anticline.

In its surface expression, the Service Anticline is a north-south trending series of aligned anticlinal buttes that lies immediately east of the site. The Service Anticline is believed to contain both axial and cross-cutting faults.

A neo-tectonic analysis of the Service Anticline was conducted to evaluate the geologic history of the structure. The neo-tectonic analysis assumes that the geologic structure has consistently been active using known geologic time constraints.

The U.S. Army Corps of Engineers has concluded that the Service Anticline should be considered a potentially active structure and has assigned a magnitude 5.5 event as a potential maximum credible event considering a level of significant recurrence (within 35,000 years). Based on the uncertain but potentially low level of seismic activity in the area, and considering that the energy facility site is located at a distance of less than 1 km from the Service Anticline, HPP has concluded that the Service Anticline may be capable of generating a 4.5 magnitude earthquake with a 500 year recurrence and a magnitude 5.5 earthquake with a 5,000 year recurrence. These earthquake predictions are consistent with the historical record which includes the observed magnitude 4 (1893) earthquake at Umatilla that occurred at a distance of 8 miles from the site.

HPP has studied several other seismogenic structures within the 70 mile area. Of these, the nearest to the site is the Wallula Fault Zone, which is classified as capable of generating a magnitude 6.3 to 6.8 earthquake. However, this fault's nearest approach to the site is 31 miles. Other potentially seismogenic structures were either considered inactive, capable of only smaller seismic events, or at much greater distance from the site.

HPP also studied the potential for random or "floating" earthquakes that could reasonably be expected in the region. To estimate the maximum expected earthquake, a magnitude versus frequency of event per year was plotted using the DOGAMI catalog of historical earthquakes. Based on the study, which used historical data, a random floating earthquake with a magnitude of about 4.5 can reasonably be expected within 15 miles of the facility site. For this region, because of the relatively low historic seismicity, a random or floating earthquake is typically assumed to occur no closer than 6 miles from a site. However, because the energy facility site lies approximately 1 km from the Service Anticline and its axial fault, HPP considered the possibility that the random event would occur at a distance of 1 km.

HPP estimated peak ground motion accelerations occurring at the site for both random floating events and "active or potentially active" geologic structures. These estimates were based on using predictive equations of Joyner and Boore (1988) of the U.S. Geologic Survey. The estimates confirm mean values for predicted ground motion (random direction) at .14 g for a 4.5 magnitude event with an expected 500 year recurrence interval at a distance of 1 km from the energy facility site, and .11g for a 5.8 magnitude event with a 5,000 year recurrence interval at a distance of 17.7 km from the energy facility site.

The proposed facility is located within the Umatilla Basin, a broad lowland that is part of the Columbia Plateau. Bedrock of the region is Columbia River Basalt Group (CRBG) between 6 and 17 million years old. In the Umatilla Basin, the CRBG is about 5,000 feet

thick with three subunits. This layered basalt bedrock has seen extensive deformation resulting in folds and fault structures which may or may not be active.

Alluvial deposits of sand and gravel overlie the bedrock throughout the Umatilla Basin. This alluvium was deposited only 13,000 to 40,000 years ago, during the "Pleistocene Epoch", when periodic flooding (the "Missoula Floods") produced Lake Condon, an intermittent 400 feet deep lake at the proposed site. With the end of flooding, surface modification by natural geologic processes has occurred forming the Umatilla River Valley. Wind erosion on a regional scale has resulted in a blanket of loose silt and fine sand called loess.

At the energy facility site bedrock occurs at a depth of about 200 feet. Above this are three layers that grade into adjacent layers. The first layer above the bedrock consists of about 120 feet of dense gravel from flood deposits, then up to 70 feet of sand and gravel, and finally eight to ten feet of loess on the surface.

The seismic waves may be modified by passage through the soil column, overlying bedrock. This may result in the peak ground acceleration at the ground surface being modified from the bedrock accelerations. The nature of the modification is a function of the thickness and the physical properties of the soils.

At the energy facility site, bedrock underlies about 200 feet of granular deposits from Pleistocene age Missoula floods. Along the transmission and pipeline corridors flood deposits, some 100 to 200 feet thick, generally mantle bedrock. An exception is near the northern terminus of the transmission corridor approaching the McNary Dam, where Umatilla Butte crops out near the alignment. The flood deposits that comprise the bulk of the soils consist of relatively dense sand and gravel; hence they are not prone to significant high amplification of earthquake generated ground motions.

HPP conducted a sensitivity analysis to evaluate the potential range of earthquake induced ground response amplification at the energy facility site. The analysis of ground response was accomplished using the computer program SHAKE91. A site stratigraphy was developed from existing boring information from the site and adjoining properties. Then, considering the stratigraphic profile, HPP researched DOGAMI files and the literature to evaluate the probable range of shear wave velocities for the site. HPP also made use of shear wave velocity data submitted in 1994 in support of the Application for Site Certificate by the Hermiston Generating Company, whose site is approximately three miles from the proposed energy facility site and has similar underlying geologic units.

HPP estimates the peak ground acceleration at the surface associated with the maximum credible earthquake at .28 to .36 of gravity. This ground acceleration is based on a magnitude 5.5 event occurring along the Service Anticline, distance less than 1 mile from the energy facility, with a greater than 5,000 year recurrence interval. HPP estimates the peak ground acceleration associated with a magnitude 4.5 event on the Service Anticline to be .15 of gravity. The 4.5 magnitude event is considered to be a more reasonably probable event.

HPP has concluded that the project area is properly classified as Oregon Building Code Seismic Zone 2b.

HPP based the conclusions above on a combination of regional evaluation of geology and historic seismicity and onsite investigations consisting of drilling and sampling at the proposed site, soil testing and onsite evaluations of surface geology for the energy facility site and related and supporting facilities.

During the final design stage of work, HPP will conduct additional drilling and sampling at specific points where foundations for the larger pieces of equipment will be located. HPP proposes to test soil properties at transmission pole and pipeline locations that could be subject to settling, slumping or liquefaction.

A geologic reconnaissance, aerial photographic study and review of available geologic literature indicate that Pleistocene flood and wind blown loess deposits mantle nearly the entire Umatilla Basin and the facility's impact area. These deposits are generally in the range of 100 or more feet thick except in the vicinity of bedrock highs such as the Service Anticline. Based on the regional extent and thickness of the flood and loess deposits, field observations conducted by HPP's consultant, and on water well logs from the area, shallow subsurface conditions along project linear routes are expected to be very similar to those disclosed at the energy facility site. Along the proposed gas pipeline and transmission line rights of way bedrock is not anticipated within the depth of trenching, footing excavation and/or pole embedment.

DOGAMI has reviewed the geological investigations performed to date by HPP. DOGAMI concurs with HPP's conclusions and concludes that adequate site characterization has been done.

For these reasons, the Council concludes that HPP has, through appropriate site specific investigation, adequately characterized the proposed site in terms of seismic zone and expected ground response during the maximum credible seismic event.

Avoidance of Seismic Hazards: The second part of the standard concerns HPP's ability to design the facility to avoid seismic hazards described in ORS 445.447(1)(d), including amplification, that are reasonably probable at the site. These include slumping, mass wasting, liquefaction, compaction, and landslide.

HPP has characterized the site in terms of the maximum credible earthquake and in terms of Seismic Zone classification as set forth in the Oregon Building Code. The maximum credible earthquake is an event with a recurrence interval of 5,000 years. However, the Oregon Building Code requires the facility to be designed and constructed based on an event with a recurrence interval of 500 years. HPP's site characterization work has revealed no special features of the site which would suggest that the 5,000 year event (maximum credible event) is reasonably likely in the expected life of the proposed facility. The Council therefore concludes the assumption of a 4.5 magnitude event (500 year event) is consistent with the Oregon Building Code and is an appropriate definition for the term "reasonably probable at the site".

Hazards such as slumping, mass wasting, compaction, liquefaction, and landslide may occur under a combination of specific conditions of steep slopes, susceptible soil, and strong ground shaking for sufficient duration to set in motion a mass of material.

The terrain of the energy facility site is nearly flat. Along the gas and water pipeline and electrical transmission line rights of way the terrain is typically flat to gently sloping. Along all rights of way, soils are inherently stable. Based on these characteristics, no significant potential for mass wasting, slumping and sliding exists at the facility site.

The hazard of settlement or compaction due to seismically induced ground motions is negligible. Dense soils below 10 feet depth at the energy facility site and in areas where loess is thin or non-existent pose no risk of earthquake induced soil settlement. Along the electrical transmission line rights of way, the only areas of concern resulting from potential settlement due to earthquake induced ground motion would be at the tower locations. Tower foundations can be embedded below any significant loose soils to effectively eliminate potential for settlement that might otherwise affect tower performance.

Liquefaction is not considered to be a hazard at the energy facility site, along the 230 kV line right of way, or typically along the 500 kV line right of way, due to the deep ground water level and the density of underlying sand and gravel. Along the 500 kV route, reconnaissance conducted by HPP's consultant suggests that areas containing potentially liquefiable material would be very localized and near topographic low points that most likely would be spanned by the transmission line.

Liquefaction is not considered to be a hazard along the Northwest Pipeline route. A one-half mile segment of the proposed PGT gas pipeline route along the Umatilla river is located at the river flood plain level where potentially liquefiable soils exist. The potential for damage to this proposed gas pipeline from ground movement due to liquefaction can be prevented by embedment of the pipeline below any loose soil deposits combined, if necessary, with the use of free draining, coarse granular backfill.

HPP has committed to design the energy facility consistent with a maximum design basis earthquake of magnitude 4.5 on the Service Anticline at an assumed distance of 1 km. from the site. The associated peak acceleration from this event would be .15 of gravity, which is within the Oregon Building Code Seismic Zone 2b classification. In its site characterization work, HPP considered amplification of ground motion during a seismic event at the site due to site specific conditions, as discussed above. We find the 4.5 magnitude seismic event with 500 year recurrence interval to be an appropriate design basis. We therefore find that construction to the standard of Seismic Zone 2b would avoid seismic hazards defined in ORS 455.447(1)(d), taking into account amplification, that are reasonably probable at the site.

*Conclusion:* For these reasons, we conclude that the standard is met.

### **Conditions**

(18) Prior to the start of construction, HPP shall conduct an investigation as described by Mr. D. Wermiel of DOGAMI in a letter dated May 9, 1995 to Mr. A. Bless, ODOE

which would confirm HPP's characterization of ground response to potential seismic events. The ground response evaluation will include drilling one deep boring to bedrock and measuring downhole shear wave velocity profile beneath the energy facility site. Based on the site-specific measurements, ground response and amplification will be evaluated.

The geotechnical investigation shall be peer reviewed by the DOGAMI or by a private engineering geologist or geotechnical engineer registered in the state of Oregon that is independent from HPP and the HPP's contractors and subcontractors. If a private engineering geologist or geotechnical engineer is used, the choice of peer reviewer shall be approved by ODOE in consultation with DOGAMI.

(19) If the detailed survey reveals evidence that is not as described in the ASC, then the HPP shall revise the facility design parameters to comply with corresponding Oregon Building Code requirements. If pre-construction seismic analysis reveals features unique to the energy facility site that justify enhanced seismic design, HPP shall design safety structures critical to public health or safety in consultation with the Building Codes Division of the Department of Consumer and Business Services ("DCBS"), subject to approval by ODOE. Critical structures include hazardous material storage areas and control rooms.

(20) Except as provided for in condition 2 above, HPP shall design and construct the proposed facility to be consistent with Seismic Zone 2b requirements, in compliance with the laws and regulations administered by the DCBS.

(21) HPP shall place electrical transmission towers to avoid, to the greatest extent possible given the existing alignment, the narrow strip of alluvium along the Umatilla River that may be subject to liquefaction. If this strip cannot be avoided, the transmission towers shall be constructed so as to otherwise mitigate for the risk of liquefaction. Mitigation measures shall be developed in consultation with DOGAMI.

(22) HPP shall design the energy facility in accordance with a design basis seismic event of magnitude 4.5 along the service Anticline at a distance of 1 km from the energy facility site, as described on p. 14a of Exhibit G of the ASC, and in accordance with a Seismic Zone 2b classification by the Oregon Building Code.

(23) HPP shall embed transmission line tower foundations below significant loose soils as described on p. 16 of Exhibit G of the ASC.

(24) The PGT pipeline shall be embedded below loose soil deposits combined, if necessary with the use of free draining, coarse granular backfill as described in the ASC, Exhibit G p. 17.

(25) Along the 500 kV transmission line right of way in the vicinity of Maxwell Canal, near Diagonal Road, east and north of Hermiston, along the relocated BPA 500 kV McNary to Lower Monumental line between Highway 730 and Power City Road, and in the area near Power City, transmission line poles will be constructed in upland areas and/or on higher ground underlain by dense granular soil with negligible liquefaction potential as described in ASC Exhibit G p. 17.

(26) Transmission pole and pipeline locations that could be subject to settling, slumping or liquefaction shall be tested for soil properties prior to pole and pipe installation, as described on page 19 on Exhibit G of the ASC.

**Soil Standard, OAR 345-22-022**

To issue a Site Certificate, the Council must 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. OAR 345-22-022

**Discussion**

The Council's soil standard was adopted on November 18, 1994. The Project Order, as amended July 18, 1994, did not include an impact area for soils, as there was no EFSC standard at the time. Because of the type of impacts the soil standard is designed to address, we establish an impact area for soils that is the same as that for the Fish & Wildlife Standard and Threatened & Endangered Species Standard.

Impacts on soils are evaluated by the council because of related impacts to farmland, cropland, pasture land, native vegetation, fish and wildlife habitat and water quality. Relevant under this standard are the facility's impact on the potential for conditions such as erosion, compaction, mass wasting and slumping.

Fifteen soil types were reported within the project impact area as listed below (ASC, Exhibit N, p. 8 - 14):

- Adkins fine sandy loam
- Burbank loamy fine sand
- Esquatzel silt loam
- Pits, gravel
- Powder silt loam
- Quincy fine sand
- Quincy loamy fine sand
- Rock outcrop - Xeric Torriorthents complex
- Starbuck very fine sandy loam
- Taunton fine sandy loam
- Thatuna silt loam
- Wanser loamy fine sand
- Winchester sand
- Xerofluvents
- Xerollic Durorthids

The soils in the impact area have a low clay content and are subject to wind erosion, particularly when disturbed. Therefore, HPP has committed to apply water to graded surfaces during construction to reduce the potential for wind erosion, and to provide silt fences or similar structures as necessary to further reduce soil erosion. Following construction, disturbed areas of the site will be replanted with native vegetation. Revegetation will provide more permanent protection against wind erosion.

Due to the siting of the facility on lands with a level and gentle topography, mass wasting, slumping, sliding and other adverse impacts to soils are not expected to occur, and the facility can be designed to avoid significant adverse impacts.

HPP's commitments to protect against erosion during construction are reasonably expected to avoid significant adverse impact. In addition, nothing in the operation of the facility may reasonably be expected to cause a significant adverse impact on soils, and HPP's observance of the conditions under the retirement standard will protect against any such impacts at that time.

Conclusions: For these reasons, we conclude that the facility complies with the soils standard.

**Conditions:**

(27) Ground disturbing activities and incidental activities (e.g., personal vehicle parking, sanitary facilities, temporary staging areas, etc.) for the facility shall be confined to a limited number of locations identified by HPP and approved by the Department prior to commencement of construction.

(28) Only existing roadways shall be used for access along the pipelines; access for transmission line construction and maintenance shall utilize existing roads wherever practicable and temporary transmission line access roads shall only be constructed where there is open terrain with no existing access road; and no permanent impacts shall be associated with pipeline or transmission line access road construction or maintenance.

(29) Topsoils and subsoils resulting from excavation for gas and water pipelines shall be segregated and the topsoil restored to minimize impacts on soil fertility.

(30) Applicant shall utilize site watering or other methods to reduce wind erosion during site earthwork or construction. Post construction soil stabilization methods shall be utilized as described on ASC Exhibit G p. 18.

*End of Section*

## CONSTRUCTION, OPERATION, & RETIREMENT

### **Protected Area Standard: OAR 345-22-040**

This 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 "design, construction and operation of the facility...will not result in significant adverse impact" to any of the protected areas.

### **Discussion**

The proposed site is not within any of the protected areas.

The Project Order, as amended on July 18, 1994, states that the impact area for the Protected Area standard is twenty miles from the site. There are eleven protected areas in Oregon within 20 miles of the site. They are:

1. Cold Springs National Wildlife Refuge,
2. Power City State Wildlife Area,
3. Oregon State University Agriculture Research and Extension Center,
4. Hat Rock State Park,
5. Irrigon and Umatilla State Fish Hatcheries,
6. Umatilla National Wildlife Area,
7. Coyote Springs State Wildlife Area,
8. Irrigon State Wildlife Area,
9. Echo Meadows Oregon Trail Site,
10. Boardman Research Natural Area, and
11. Lindsey Grassland Preserve.

The closest protected area to the site is the Oregon State University Agriculture and Research Center (the "OSU Center"), which is two miles away. No other protected area is closer than 5.0 miles from the site.

The NWP gas pipeline would come within 0.7 miles of the OSU Center and within one mile of the Cold Springs National Wildlife Refuge. No other protected area is closer than 5 miles to the NWP pipeline.

The PGT gas pipeline would come within 1.5 miles of the OSU Center. No other protected area is closer than 5 miles to the PGT pipeline.

The 500 kV transmission line option would come within 0.7 miles of the OSU Center and the Power City Wildlife Area. No other protected area is closer than 3 miles to the 500 kV line.

The 230 kV line would come within 1.5 miles of the Power City Wildlife Area and 1.9 miles of the OSU Center. No other protected area is closer than 3.5 miles to the 230 kV line.

The water supply pipeline is within 1.9 miles of the OSU Center. No other protected area is closer than 5.0 miles to the water supply line.

1. Noise, Light, Glare. No noise, light or glare impacts will be caused by the transmission lines or pipelines.

The energy facility's noise impacts were evaluated by consultants for both HPP and the department pursuant to DEQ's noise impact rules. Their findings are discussed in more detail in Section IV.F.1. of this Order. Based on these findings, we conclude that the noise impacts on noise-sensitive properties within one-half mile of the energy facility site will be acceptable. As noted, the nearest protected area is two miles away. The distance between the energy facility site and the protected areas will render noise impacts at the protected areas, if any, insignificant.

Light and glare from the energy facility will be masked by the lighting at nearby industrial facilities, including the Hinkle Railroad Yard, the Amtrak facility and the Simplot and Lamb Weston potato processing plants.

2. Visual. Due to distances ranging from 5 to 22 miles, the energy facility will not be visible from 10 of the 11 protected areas. The energy facility will be visible from the OSU Center, two miles away.

However, at distances of 2 miles or more, the energy facility appears in the background of the viewshed and will blend with other similar features in the area; The energy facility site is zoned for heavy industrial development and adjacent and nearby parcels are developed with large industrial facilities, some of which also have stacks and plumes (e.g. the Simplot and Lamb Weston plants). Grain silos and elevators, electrical distribution lines and water towers are also visible from the OSU Center.

The OSU Center is a protected area based on its agricultural research values, not because of the views from the Center. The purpose of the protected area is relevant to our findings under this standard. Based on the research purpose of the OSU Center, and the existing industrial and agricultural facilities in its viewshed, we find that the visual impacts of the energy facility, if any, are incremental and not significant adverse impacts.

Most of the towers for the 230 kV line are now under construction pursuant to Hermiston Generating Company's site certificate. HPP's actions on most of the 230 kV line will consist of simply replacing UECA's 115 kV insulators and conductors with 230 kV insulators and conductors. This activity will have negligible visual impact on even the closest properties.

The portion of the 230 kV line requiring new construction will be 1.9 miles from the OSU Center, 6.5 miles from the Power City Wildlife Area and more from the other protected areas. Existing transmission lines as well as other highly-visible industrial and agricultural facilities are already visible from the OSU Center, as noted above. Again, the

purpose of the OSU Center's protection is to maintain its agricultural research values. These values will not be affected by the 230 kV line.

The 230 kV line will not be visible from the Power City Wildlife Area because of topography, distance and the foliage within the Wildlife Area. Accordingly, the 230 kV line will not have significant adverse impacts on protected areas.

The 500 kV line will be visible from the OSU Center (0.7 miles); the Power City Wildlife Area (0.7 miles) and the Cold Springs National Wildlife Refuge (3 miles). In proximity to the OSU Center, the 500 kV line will replace existing power lines. The new poles will be taller but they will be placed further apart. The result should not appreciably change the viewshed, particularly in light of the other industrial and agricultural facilities now visible from the OSU Center, as described above.

There is an existing PP&L 230 kV transmission line immediately north of the Power City Wildlife Area. At present, views from the refuge include several commercial businesses, Highway 395 traffic, a gravel crushing operation, and various 69 kV, 115 kV, 230 kV and 500 kV transmission lines.

From the Cold Springs Reservoir, views now include various 69 kV, 115 kV, 230 kV and 500 kV lines owned by BPA, PP&L and UECA. At a distance of 3 miles, the 500 kV option will be indistinguishable from the existing lines.

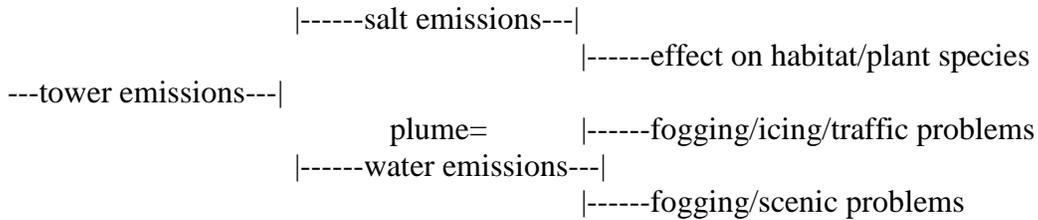
The agricultural research and wildlife habitat values of the areas will not be affected by views of the transmission line. Finally, HPP has committed to minimize the visual impacts of the 500 kV line in the City of Umatilla by the use of steel lattice and wood frame structures, where feasible, and where new single pole structures must be installed, HPP will use a non-glossy paint covering to minimize visual impacts.

Natural gas and water pipelines will be buried and will not be visible from the protected areas.

3. Air Quality. The facility must comply with DEQ's air quality regulations. The facility's air quality impacts on the protected areas were evaluated through a review of the modeling performed for DEQ covering a radius of 50 kilometers from the energy facility site. The results indicate that maximum air quality impacts will occur about 8 kilometers from the energy facility site and will be below DEQ's "significance" levels. Accordingly, no significant adverse impact on those protected areas from air pollution is expected.

4. Cooling Tower Plume and Drift. Because of the proximity of the OSU Center-HPP gave additional study to the cooling tower plume and drift. Although water vapor will emanate from the cooling towers, this vapor does not contain mineral salts. Only droplets of liquid phase water, called "cooling tower drift", will contain mineral salts. This drift is heavier than air and as a result does not have the same range as the visible vapor phase in a cooling tower plume. The cooling tower emissions impacts have four components. It may be useful to separate the four impacts for discussion.

drift= |-----effect on crops



HPP employed Lambier Professional Group to study cooling tower effects. The consultant studied water and salt emissions using the Electric Power Research Institute' SACTI computer model.

a. Visible plume and water emissions. For the weather history in years 1986 through 1990, the modeled visible plume was two miles (3,218 meters) or longer in only two years. In the northeast direction of the OSU Center, the plume reached 2,500 meters (about 1.6 miles) only in one year and was 2,100 meters (1.3 miles) or less in other years. Therefore, the plume should reach the protected area less than once every five years and should have no effect on agriculture in the OSU Center protected area.

b. Drift and salt deposition. Cooling tower drift and salt deposition are expressed commonly in the units of kg/hectare-month. DEQ has adopted a standard for particulate fallout 10 g/m<sup>2</sup>-mo (100 kg/ha-mo) for industrial and 5 g/m<sup>2</sup>-mo (50 kg/ha-mo) for residential sites.

Using historic weather data over the years from 1986 to 1990, HPP projects that maximum salt deposition over the five-year period would have been 2.87 kg/ha-mo. This maximum level would have been 200 meters east of the cooling tower. The deposition falls off sharply with distance. Other years were lower. There are additional conservatisms in the model. At a distance of one mile (1,600 m), deposition was 0.0192 kg/ha-mo to the east with the prevailing wind and 0.0012 kg/ha-mo to the northeast in the direction of the OSU Center. No impact on agricultural activities at the OSU Center is anticipated as a result of cooling tower drift. There would be no impact on other protected areas which are more distant.

Cooling tower drift rate projections were based on assumptions of Total Dissolved Solids (TDS) in circulating water of 5200 parts per million, and a drift rate of .005%.

Conclusion: For these reasons, the Council concludes that the proposed facility would not result in significant adverse impacts to the protected areas within the impact area.

**Conditions**

(31) Applicant shall not operate the Circulating Water System at above 5,200 ppm, TDS equivalent on an annual average basis. Drift rate shall not result in solids carryover exceeding the equivalent of 0.005% drift rate at 5,200 ppm, TDS.

**Fish and Wildlife Standard: OAR 345-22-060**

According to this standard, the "design, construction, operation and retirement" of the proposed facility must be "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 established mitigation goals and corresponding implementation standards for each habitat category.

Habitat Category 1 is habitat of exceptional value. The goal is "no loss of either habitat units or habitat value." The implementation standard requires avoidance of impact.

Habitat Category 2 is high value habitat. The goal is "no net loss of either habitat units or habitat value." The implementation standard is avoidance or mitigation in-kind, on-site.

Habitat Category 3 is also high value habitat. The goal is "no net loss of either habitat units or habitat value." The implementation standard is avoidance or mitigation either in-kind or out-of-kind, and either on-site or off-site.

Habitat Category 4 is habitat of low value. The goal is "minimize the loss" of habitat value or, if possible, conserve or enhance habitat. The implementation standard provides for flexible mitigation.

**Discussion**

For purposes of evaluating the effect of the facility on fish and wildlife and their habitats, the impact area was the area within five miles of the energy facility site boundary and 500 feet on either side of the proposed rights-of-way for related and supporting pipelines and transmission lines. If a related or supporting facility was less than 500 feet from a railroad line, the impact area was bounded by the railroad tracks on that side of the supporting facility and was 500 feet from the right-of-way on the side away from the tracks.

In 1993, 1994, and 1995, HPP engaged Northwest Wildlife Surveys (NWS) to conduct biological resource investigations of the project impact area, which included site-specific surveys for wildlife. HPP and NWS developed survey plans and methodologies for fish and wildlife resources in conjunction with the Oregon Department of Fish and Wildlife (ODFW).

Prior to the field surveys, NWS conducted database searches for sensitive fish and wildlife species of concern. The databases were provided by the Oregon Surveys Natural Heritage Program, ODFW Species Information System, U.S. Fish and Wildlife Service, local ODFW biologists, and specialists familiar with the species of concern. Potentially suitable habitats for sensitive mammals, birds, reptiles, and amphibians were surveyed during the field period (December 10, 1993 through July 14, 1994 and December 1995). Surveys for fish species of concern were not conducted. Wildlife surveying techniques consisted of visual searches, dipnetting, aquatic funnel trapping, night spotlighting, mist netting, and broad band recording.

NWS reported the results of the investigations in three separate reports. The first report, entitled Wintering Bald Eagle and Peregrine Falcon Assessment, Hermiston Power Project (April 28, 1994), was submitted only to ODFW. The general results of that report are described in the ASC (Exhibit R, pages 9-12). The second report, entitled Hermiston Power Project Biological Resources Investigation (September 26, 1994), is included in the ASC (Exhibit P, attachment, Exhibit P-1). The third report (December 23, 1995) describes the results of the investigation of the BPA 500 kV relocated line corridor. (ODOE-281)

NWS separated fish and wildlife habitats within the project impact area into eight vegetation/habitat types, representing all habitats used by fish and wildlife. The habitats were field reviewed during preliminary field tasks conducted in 1993 and during field surveys conducted on various days from December 10, 1993 through July 14, 1994 and December, 1995. All habitats were classified by NWS according to the four habitat categories established in OAR 635-415-030.-The eight fish and wildlife habitat types identified within the project impact area include: shrub-steppe, grass/forb, riparian/deciduous shrub, wetlands, open water, pastureland, cropland, non-vegetated.

Habitat Category 1 included only Columbia River open water habitat.

Habitat Category 2 included:

- (a) Umatilla River open water habitat;
- (b) the U.S. Army's Umatilla Ordinance Depot (Depot) shrub-steppe and grass/forb communities;
- (c) riparian/deciduous scrub;
- (d) wetlands; and
- (e) non-vegetated gravel quarries.

Habitat Category 3 included:

- (a) shrub-steppe (with the exception of the community on the Depot);
- (b) grass/forb (with the exception of the community on the Depot); and
- (c) pastureland.

Habitat Category 4 included:

- (a) cropland; and
- (b) non-vegetated (excluding gravel quarries).

1. Habitat Category 1. The Columbia River has been designated as critical habitat for two federally listed endangered fish species, the spring/summer and fall runs of Snake River chinook salmon and Snake River sockeye salmon.

Operation of the facility will require the withdrawal of 0.12 m<sup>3</sup>/s (4.38 cfs) of Columbia River water on an average daily basis. This represents 0.0026 percent of the average annual flow of 4.808 m<sup>3</sup>/s (169,000 cfs) at McNary Dam. This water will be obtained

from WRD Permit #49497, which authorizes the withdrawal of up to 155 cfs (approximately 69,564 gpm) per day from the Columbia River.

HPP cites studies conducted in the Lower Columbia that have examined the effects of flow increases on salmon and steelhead survival (Cada et al. 1993). Results indicate that the benefits of an increase of flow ranging from 283 to 566 m<sup>3</sup>/s (10,000 to 20,000 cfs) are very small.

The implementation standard for Habitat Category 1 is avoidance of impact. The impact on fish of withdrawing .12 m<sup>3</sup>/s (4.38 cfs) would be too small to measure.

ODF&W has concluded, and we concur, that the facility will not adversely impact fish or aquatic habitat in the Columbia River and that the Habitat Category 1 goal and standards are met.

2. Habitat Category 2. The 230 kV line option will cross the Umatilla River. The River's open water and riparian habitat is Category 2 habitat. HPP states that the towers and lines of the 230 kV option will span the River and its riparian habitat to avoid adverse impacts. There will be no withdrawals from, discharges into or other impacts to the River. ODFW states that the facility will not adversely impact fish or aquatic habitat in the River.

Impacts to wetland habitats will result from the construction and maintenance of one of the facility's natural gas pipelines, and the 500 kV transmission line option. HPP has identified 21 wetlands within the impact area. If built, the 500 kV transmission line would impact wetland #15, and may impact wetland #13, for the placement of transmission poles, as described in the section of this order evaluating wetland impacts. See Page 261. The PGT natural gas pipeline connection will impact wetland #4, filling approximately 0.007 acre. Riparian vegetation will be trimmed in the vicinity of wetland #17 during routine transmission line maintenance.

The implementation standard for Habitat Category 2 allows in-kind, on site mitigation.

ODFW has recommended mitigation for the impacts to wetlands and has indicated that with the recommendations the requirements of OAR Chapter 635, Division 415 are met.

HPP has stated and ODFW agrees that the riparian wildlife habitat impacts will be minor and no net loss of habitat would occur. ODFW indicates that with the mitigation recommendations, the requirements of OAR Chapter 635, Division 415 are met.

No part of the facility will affect the Depot's Category 2 habitat. With recommended conditions, the Category 2 standards will be met.

3. Habitat Category 3. The pipelines and transmission line options will cross Category 3 habitat. The implementation standard for Category 3 is either avoidance of impacts or mitigation of impacts, in-kind or out-of-kind, on-site or off-site.

Temporary impacts associated with pipeline construction will be mitigated by the segregation and replacement of top soils. HPP will implement a revegetation plan to restore and enhance affected habitat. (ASC, Exhibit P.p. 18a; Exhibit P-1, Attachment E).

ODFW concludes, and we concur, that the pipelines and transmission line options will not impact wildlife habitat.

4. Habitat Category 4. The 17 acres of cropland at the energy facility site is Category 4 habitat that will be affected by construction of the energy facility. The pipelines and transmission line options will also cross Category 4 habitat.

The implementation standard for Category 4 provides for flexible mitigation.

HPP will revegetate 7 acres of the energy facility site. ODFW recommends that two raptor perching poles be placed along the perimeter of the energy facility site to enhance wildlife habitat. The temporary impacts associated with pipeline and transmission line construction will be mitigated as described in the Category 3 discussion above. ODFW concludes that the pipelines and transmission line options will not impact wildlife habitat.

ODFW has concluded that, with additional mitigation measures recommended by ODFW, the facility will comply with OAR Chapter 635, Division 415 (Fish and Wildlife Habitat Mitigation Policy).

Conclusion: For these reasons, the Council concludes that the design, construction, operation and retirement of the facility is consistent with the mitigation goals and standards of OAR 635-415-030.

### **Conditions**

(32) Any trimming, side cutting or other removal of riparian vegetation that may be required under the proposed 500 kV transmission line shall be kept to a minimum and shall only be conducted to meet National Electric Safety Code clearances.

(33) Construction and maintenance of the transmission lines and natural gas pipelines shall avoid all wetlands, except for the two wetland areas (wetlands #4 and #15) that will be unavoidably impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and the one wetland area, wetland #13, that may be impacted by pole placement.

(34) No ground disturbing activities shall be conducted in the Umatilla River, no water withdrawals from the Umatilla River shall occur, and the energy facility shall not discharge water into the river (ASC, Exhibit P, p. 15).

(35) Non-wetland areas disturbed by construction of the energy facility, the equipment storage/staging area and employee parking staging area, the natural gas pipelines, the water supply pipeline, and the transmission lines shall be revegetated upon completion of construction. Revegetation shall emphasize the use of native species and shall be

conducted in accordance with the Recommended Revegetation Plan (July 19, 1994) stated in the ASC (Exhibit P/P-1, Appendix E).

(36) Subject to Condition (6), if feasible, construction of the natural gas pipelines, water supply line and transmission line shall occur outside of sensitive time periods (as described in the ASC, Exhibit P/P-1, page 44a) for the following wildlife species of concern which were documented within the impact area of the proposed natural gas pipelines, water supply line and transmission line: painted turtle, long-billed curlew, grasshopper sparrow, Swainson's hawk, burrowing owl, and bank swallow.

(37) Notwithstanding Condition (5), prior to construction of the gas pipelines, water supply line and transmission line HPP shall provide to ODOE a construction schedule, including activities and locations, if any, of planned construction of the gas pipelines, water supply line and transmission line during the sensitive time periods for the species listed above. HPP shall consult with ODFW to make every effort to schedule construction activities to avoid adverse impact on the species listed above.

Not less than 60 days prior to the sensitive time periods for species listed above, HPP shall notify ODOE in writing of any construction activities on the gas pipelines, water supply line and transmission line scheduled for those time periods. If construction activities cannot be scheduled to occur outside the sensitive time periods for the above listed species of concern, pre-construction biological surveys shall be conducted by a wildlife biologist within the impact area of the proposed natural gas pipelines, water supply line and transmission line to identify the location of wildlife species of concern or their nest sites. HPP shall develop the methodology for these pre-construction surveys in consultation with ODFW prior to conducting the surveys. Mitigation for potential impacts to any wildlife species of concern and/or their nest sites found during pre-construction surveys shall be developed by HPP prior to construction of the gas pipelines, water supply line and transmission line and in consultation with ODFW. The mitigation plan shall be submitted to ODFW and ODOE for review and approval prior to construction of the gas pipelines, water supply line and transmission line. ODOE shall make a final determination on the mitigation plan within 45 days of its submission.

(38) Upon completion of construction of the energy facility, two raptor perching poles shall be placed near the outside edge of the 17 acre energy facility site. The design and location of these raptor perching poles shall be developed in consultations with ODFW. Raptor perching poles shall be located to benefit raptors without interfering with the energy facility plant operation and maintenance.

(39) Transmission lines shall span the Umatilla River and associated riparian habitat in order to avoid adverse impacts, as described in the ASC (Exhibit P, p. 15). The natural gas pipelines, water supply line, and transmission lines shall be routed to avoid riparian areas and wetlands adjacent to the Umatilla River. All permanent access routes shall be designed to be set back at least 50 feet from the Umatilla River, as described in the ASC (Exhibit N, p. 7a).

(40) The following areas shall be flagged in the field prior to the start of construction to delineate the maximum extent of project disturbance:

- i. the natural gas pipeline and transmission line routes through wetlands #4, #13, and #15;
- ii. any natural gas pipeline, water supply line, and transmission line routes within 50 feet of the Umatilla River; and
- iii. the transmission line crossings of the Umatilla River.

(41) Notification shall be provided to the ODFW's Pendleton District office at least one week (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply pipeline, and transmission lines.

(42) Measures taken to mitigate impacts to fish and wildlife and their habitats shall be monitored by HPP. Monitoring methodologies and schedules shall be developed in consultation with ODFW. A mitigation monitoring plan shall be submitted to ODFW and ODOE for review and approval prior to issuance of a notice to proceed. If any mitigation measures are determined by the applicant or ODFW to be unsuccessful, corrective actions shall be taken by the applicant after consultation with ODFW.

(43) A minimum of ten (10) cottonwood (*Populus trichocarpa*) tree saplings shall be planted, in an appropriate habitat area, and within the vegetation impact area for the natural gas pipelines and electrical transmission lines for every cottonwood tree removed during construction of the natural gas pipelines and electrical transmission lines.

(44) The project shall not impact any native vegetation within the U.S. Army's Umatilla Ordinance Depot.

(45) HPP shall design transmission lines with a separation between conductors greater than 5 feet, and shall consider other techniques to reduce collision potential (e.g., clustering lines, placing colored serial marker ball on the line, etc.)

(46) Top soils and subsoils resulting from excavation for gas and water pipelines shall be segregated and the top soil restored.

(47) The Swainson's hawk nest south of the proposed energy facility (described in ASC Ex P, page 19) shall be monitored during the two weeks prior to facility construction to determine if the nest is active. If the nest is determined to be active, a qualified biologist shall be retained to monitor the nest during facility construction and maintain contact with ODFW. If monitoring indicates that facility construction is adversely impacting nesting Swainson's hawks or their young, a mitigation plan shall be developed after consultation with ODFW.

**Threatened and Endangered Species Standard: OAR 345-22-070**

This standard requires that the design, construction, operation and retirement of the facility 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 appreciably reduce the likelihood of the survival or recovery of any threatened or endangered species listed under ORS 496.172(2) or ORS 564.105(2). These standards relate to the protection of both wildlife and plant species listed as threatened or endangered.

### Discussion

The impact area for threatened and endangered animal species is the area within five miles from the energy facility site boundary and 500 feet on either side of the proposed rights-of-way for related and supporting pipelines and transmission lines. For threatened and endangered plant species, the project impact area is the area within 500 feet of the energy facility site boundary and 500 feet on either side of the proposed rights-of-way for related and supporting pipelines and transmission lines. If a related or supporting facility was less than 500 feet from a railroad line, the impact area was bounded by the railroad tracks on that side of the supporting facility and was 500 feet from the right-of-way on the side away from the tracks. For threatened and endangered aquatic species, the project impact area also included the McNary and John Day pools of the Columbia River.

In 1993, 1994 and 1995, HPP engaged Northwest Wildlife Surveys (NWS) to conduct biological resource investigations of the project impact area, which included site-specific surveys for threatened and endangered plant and wildlife species. NWS developed survey plans and methodologies for threatened and endangered animal species in conjunction with the ODFW. Survey methodologies for threatened and endangered plant species were submitted to the ODA for review and approval. NWS reported the results of the investigations in two separate reports. The first report, entitled Wintering Bald Eagle and Peregrine Falcon Assessment, Hermiston Power Project (April 28, 1994), was submitted only to ODFW. However, the general results of that report are described in the ASC (Exhibit R, pages 9-12). The second report, entitled Hermiston Power Project Biological Resources Investigation, (September 26, 1994), was included in the ASC (Exhibit P, attachment, Exhibit P-1) with results presented in Exhibits R (p. 4a-7).

HPP submitted a third NWS report in December, 1995, which addressed threatened or endangered plant and animal species in the impact area for the relocated 500 kV line. (ODOE-281)

No threatened or endangered plant species were identified by NWS or ODA in the impact area. NWS and ODFW identified 3 threatened or endangered animal species with potential to occur in the impact area, the bald eagle, the peregrine falcon and the spring/summer and fall runs of Snake River chinook salmon.

#### 1. Bald eagle

The bald eagle (Haleieetus leucocephalis) is listed in Oregon as threatened. ODFW has not adopted a conservative program for bald eagles. Potentially suitable bald eagle habitat occurs along the Umatilla River upstream from the J.R. Simplot plant. One bald eagle solitary roost was discovered within the impact area. The impact area contains no designated critical habitat for the bald eagle.

The facility will not impact bald eagles or their habitat because: (1) no loss of bald eagle day or night roost trees or potential nesting habitat will occur; (2) no loss of habitat caused by noise will occur; (3) the project will not adversely affect bald eagle food supplies; and (4) transmission lines will be designed to reduce the potential for raptor electrocution. ODFW concludes, and we concur, that the facility will not adversely affect bald eagles or their habitat.

2: American Peregrine falcon

The peregrine falcon (Falco peregrinus) is listed in Oregon as endangered. ODFW has not adopted a conservation program for peregrine falcons. Existing data show minimal occurrence of peregrine falcons in the impact area, and none were observed during field surveys. The impact area contains no designated critical habitat for the American peregrine falcon.

The facility will not impact peregrine falcons or their habitat because because: (1) nesting potential is very low, and no loss of nesting habitat will occur; (2) the facility will not adversely affect falcon food supplies; and (3) no loss of habitat caused by noise will occur.

ODFW concludes, and we concur, that no adverse impacts to peregrine falcons are anticipated from the proposed facility.

3: Spring/summer and fall Snake River chinook salmon

The spring/summer and fall runs of the Snake River chinook salmon (Oncorhynchus tshawytscha ssp.) are listed in Oregon as threatened. The Columbia River has been designated critical habitat for these runs. The only potential impact to these fish from this facility would be any decrease in flows attributable to the facility's water use.

The facility will obtain water from the Port of Umatilla under an existing permit. Operation of the facility will require the withdrawal of 4.38 cfs of Columbia River water on an average daily basis, representing 0.0026 percent of the average annual flow of 169,000 cfs at McNary Dam. The incremental reduction in flow due to the facility would be negligible. ODFW concluded, and we concur, that the facility will not adversely impact fish or aquatic habitat in the Columbia River.

Because the facility will not adversely affect or impact the threatened and endangered species or their habitats, the council concludes that the facility does not have the potential to appreciably reduce the likelihood of survival or recovery of any threatened or endangered species. OAR 345-22-070(b).

**Conditions**

(48) Raptor protection shall be employed in the design and construction of the transmission towers and transmission lines following the methods described by Olendorf, R.L., A.D. Miller, and R.N. Lehman, 1981, Suggested practices for raptor protection on

power lines, Raptor Research Foundation, University of Minnesota, St. Paul, Minnesota. A detailed design shall be submitted to the ODFW for review and approval during the design phase of the project. All energized transmission conductors shall be designed with adequate separation of a minimum of five feet.

(49) Notification shall be provided to the ODFW's Pendleton District office at least one week (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply pipeline, and transmission lines.

(50) HPP shall conduct a pre-construction survey to determine if *Astragalus collinus var. laurentii* is present along the route of the relocated BPA 500 kV transmission line where the route crosses the slope that occurs north of Highway 730. The survey shall be conducted during the appropriate field season (May through early July) by a qualified biologist. If the species is found to occur in areas that might be affected by construction of the relocated BPA 500 kV line, HPP shall contact ODOE and the Oregon Department of Agriculture, Plant Conservation biology Program to develop a mitigation plan.

#### **Scenic and Aesthetic Standard: OAR 345-22-080**

This standard requires that the:

"...design, construction, operation and retirement of the proposed facility, taking into account mitigation, will not result in significant adverse impact to scenic and aesthetic values identified as significant or important in the acknowledged local land use plan for the site or its vicinity."

#### **Discussion**

The impact area for this standard is "the areas identified in the Umatilla County Comprehensive Land Use Plan for which scenic or aesthetic standards are established and from which the facility is visible; portions of the Umatilla County Scenic Historic Road from which the facility is visible, and areas in the City of Hermiston from which the facility is visible." Amended Project Order, July 18, 1994.

The acknowledged comprehensive land use plans of the cities of Hermiston, Stanfield and Umatilla do not identify any significant or important scenic or aesthetic values in the impact area.

Considering the line of sight from the highest point of the energy facility, the gas pipeline and the alternate transmission lines for a distance up to 30 miles, there are six sites or vistas listed in the Umatilla County Comprehensive Plan: Hat Rock State Park, Wallula Gap, Lake Wallula, Lake Umatilla, McKay Reservoir, and Cold Springs Reservoir. The proposed facility would not be visible from any of the areas. The facility therefore would not result in significant adverse impact to those areas.

The County has also identified the Umatilla County Scenic-Historic Road ("Road"), which is approximately 1.3 miles to the northeast of the site of the proposed energy

facility as having scenic value. Neither the Road nor views from it are identified in the Umatilla County Comprehensive Plan as significant or important scenic or aesthetic values. Potential impacts on the Road are therefore outside the scope of the standard. We discuss them in this Order to address a request by the County.

The Road, which now consists of a collection of county roads, city streets, and state highways, follows the general course of early wagon roads between Umatilla and the Blue Mountains. In the Umatilla/Hermiston area, the Road traverses south from U.S. Route 730 along the Umatilla River Road into downtown Hermiston. There, the Road turns south along Hermiston Hinkle Road for approximately 2 miles to the Intersection with Feedville Road. The Road turns east along Feedville Road to Highway 395 and then follows this highway into Stanfield. There are currently no signs or markers indicating the location of this Road within the impact area.

The energy facility and the transmission line would be visible from the Road. In addition, the proposed 500 kV transmission line will be constructed along the side of Feedville Road for about two miles between Hermiston-Hinkle Road and Highway 395. This portion of Feedville Road is part of the Road.

HPP proposes to minimize the visual effect of the exhaust stacks by painting them in a matte-finish neutral color chosen to blend with the surrounding area. HPP also proposes to limit outdoor lighting at night to the minimum necessary to maintain safe conditions. Stair lighting would be engaged manually so that stairs could remain unlighted when not in use. HPP proposes to construct a buffer zone of trees and shrubs to enhance the appearance of the energy facility site.

The energy facility site is zoned for heavy industrial use. Steam plumes are already being produced in the area by the Lamb-Weston and Simplot plants, and other industrial uses visible from the Road. Nearby industrial uses, including the Simplot plant and the neighboring heavy rail tracks and switching yards, are also visible from the Road. The 500 kV transmission line, if built, would be seen in combination with other industrial and agricultural structures in the area.

Because portions of the facility will be visible from the Road, the facility will have an aesthetic impact on the Road. However, with the proposed mitigation and in the context of the existing plumes and nearby industrial uses visible from the Road, this visibility will not be a significant adverse impact on the Road.

Conclusion: For these reasons, the Council concludes that the Scenic and Aesthetic standard is met.

#### CONDITIONS

(51) To minimize visual intrusion caused by the stacks, the stacks shall be painted in a matte finished neutral color to minimize the potential for glare caused by reflective surfaces. Colors shall be chosen to blend with the surrounding area, to the extent that the choice does not compromise air traffic safety.

(52) Landscaping shall be used to screen the energy facility from the nearest residence and roadways to the extent reasonably feasible. Shrubbery and trees planted along the perimeter of the energy facility site and other landscaping shall be well-maintained and include low-maintenance and indigenous plants.

(53) To minimize project visibility at night, outdoor lighting shall be limited to the extent necessary to maintain safety conditions.

(54) HPP will not put up signs along Feedville Road without authorization from the County.

**Historic, Cultural, and Archaeological Standard: OAR 345-22-090**

This standard requires that the 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).

ORS 358.905(1)(a) defines an "archeological object" as an object that: (a) is at least 50 years old; (b) "comprises the physical record of" any culture; and (c) is material remains of past human life or activity that are of archeological significance."

ORS 358.905(1)(c)(A) defines "archeological site" as any location that "contains archeological objects and the contextual associations of the objects" with each other or biotic or geological remains or deposits.

DISCUSSION

For purposes of evaluating the effect of the facility on historic, cultural, and archeological resources (collectively "cultural resources"), the impact area was the energy facility site, and the rights of way for the water supply and gas pipelines, and the transmission lines.

Heritage Research Associates (HRA) of Eugene, Oregon, conducted a cultural resource study of the impact area. The study consisted of a literature search and a pedestrian survey that involved systematic inspection of the ground surface within the entire impact area.

1. Listed Resources. No historic, cultural or archaeological resource listed on the National Register of Historic Places is present within the impact areas.

2. Resources Likely to be Listed. HRA identified several irrigation canals in the impact area that are a part of the Umatilla Project. Elements of the Umatilla Project, including components of the irrigation networks, have been determined by the Bureau of

Reclamation and the SHPO to be eligible for listing on the National Register of Historic Places. The Umatilla Project canals in the impact area are portions of the Z, Maxwell, A-Line, and Feed Canals, and segments of the Hermiston and Stanfield Branch Furnish Ditches.

The 500 kV line option would cross these canals. A portion of the A-Line Canal is within the right-of-way for the part of the 230 kV option that would require the installation of new poles (from Westland Substation to the energy facility site). The NWP pipeline would cross the Feed Canal.

These canal segments do not appear to be in the portions of the Umatilla Project that have been determined to be eligible for listing on the National Register (ASC, T-2a). Nonetheless, HRA recommended avoidance of the canals during construction and stated ways of avoidance:

"...The electrical transmission line construction [for both the 500 and 230 kV options] should be able to avoid canals by placing towers locations away from canal banks and carefully avoiding any disturbance at the crossing while stringing the electrical lines..." (ASC, Exhibit T, page 16)

"...If [NWP pipeline] construction cannot avoid the [Feed] canal, additional cultural resource investigations, approved by the Oregon State Historic Preservation Office, will be necessary to mitigate adverse impacts to the canal. Fill excavated during any construction at the canal should be monitored by a professional historic archaeologist..." (ASC, Exhibit T, page 16)

### 3. Archeological Sites and Objects.

a. Trash Dumps. HRA identified three trash dumps in the impact area, two in the right-of-way of the 500 kV option and one in the NWP pipeline right-of-way. HRA reviewed the contents of the trash dumps and concluded, in each case, that the dump "is not considered to be a historic resource at this time." HRA recommended no further work at any of the three sites.

To qualify as an archeological object or site, a resource must have archeological significance. See ORS 358.905(1) (c). Based on HRA's review and analysis, we conclude that none of the trash dumps contain archeological objects or qualify as archeological sites.

b. Fishing and Camp Site. Elders of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) reviewed the impact area in 1994 and conducted a file search. In the file search, CTUIR discovered that an ethnographically recorded fishing and camp site was situated on the Umatilla River in the location of the 230 kV line crossing that HPP would share with Hermiston Generating Company if this option were selected. No evidence of the fishing camp was observed during the archeological resource survey. CTUIR recommended that a limited test be conducted in the area when the exact location of the line is finalized and the pole placements have been determined. HGC performed the requested test in connection with the construction of their 230 kV line crossing.

The cultural resource survey did not reveal any other potential archeological sites or objects.

Based on the information now in the record, we conclude that the construction, operation and retirement of the facility is not likely to result in adverse impacts to any of the cultural resources protected by OAR 345-22-090.

There is a possibility, however, that additional cultural resources may be encountered during ground breaking activities. For this reason, CTUIR has recommended that tribal members be present at all ground disturbance, or at least at disturbance of all areas with a high potential for containing archeological remains.

If potential cultural resources are encountered during construction, HPP will be subject to the archeological permit requirements in ORS 358.920, ORS 390.235 and OAR Chapter 736, Division 1, administered by SHPO.

Conclusion: For these reasons the Council concludes that OAR 345-22-090 is met. We further conclude that the actions listed in the conditions below adequately describe HPP's plan to protect historic, cultural and archaeological resources and that compliance with these conditions satisfies the Mandatory Site Certificate Condition of OAR 345-27-020(14).

### **Conditions**

(55) HPP shall consult with CTUIR before commencing construction. HPP shall allow tribal monitoring by CTUIR of earth-moving activities within areas with a high potential for containing archaeological remains. These areas are identified in Figure T-5 of the ASC.

(56) HPP shall notify the CTUIR before starting construction and shall provide the opportunity for a CTUIR representative, knowledgeable in cultural resources of the area, to be available for periodic on-site monitoring during construction activities.

(57) If resources are discovered during project construction or construction-related activities that are likely to be eligible for listing on the National Register of Historic Places or to qualify as archeological objects or sites, HPP shall stop all work in the immediate area of the find and consult with the CTUIR and SHPO. HPP shall not restart work in the affected area until it has complied with the archeological permit requirements administered by SHPO (currently set forth in OAR Chapter 736, Division 51).

(58) HPP shall place the transmission towers/poles away from the banks of the Z, Maxwell, A-Line and Feed canals, and the Hermiston and Stanfield Branch Furnish Ditches, and shall avoid any disturbance at the canal crossings when electrical lines are strung, to avoid disturbance of the canal features during construction and operation of the transmission line.

(59) If practicable, HPP shall avoid disturbance to the Feed Canal in construction of the NWP pipeline. If construction cannot avoid the canal, HPP shall consult with SHPO

and shall take steps required by SHPO to mitigate adverse impacts to the canal. Fill excavated during any construction at the canal shall be monitored by a professional historic archaeologist.

(60) HPP shall consult with the irrigation district in which the canal is located before construction or the upgrading of the transmission line in the area of the canal to determine whether there are any applicable restrictions.

**Recreation Standard: OAR 345-22-100**

This standard provides that the

"design, construction and operation of a facility, taking into account mitigation, will not 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."

OAR 345-22-100.

**Discussion**

For the Council's recreational standard, the impact area was the area five miles from the boundary of the energy facility site; the area within the gas pipeline rights-of-way; the area within the electrical transmission line rights-of-way; and, when the gas pipeline and electrical transmission line are located in the same right-of-way, the area within the larger of the two right-of-way widths.

There are informal recreational opportunities along the Umatilla River within the impact area (e.g., fishing, hiking and wildlife viewing). There is no formal management of recreational opportunity associated with the Umatilla River within the impact area. The Application cites personal communications with the Umatilla County Planner indicating that use of the Umatilla River within the impact area is not in high demand. The Umatilla River does not provide unique or outstanding opportunities for recreation, and recreational opportunities associated with the Umatilla River are not rare, irreplaceable or irretrievable. Recreational opportunities along the Columbia River are better developed than those along the Umatilla. The Columbia River is outside the impact area for the Recreation Standard for this proposed facility.

Impact on recreational opportunities along the Umatilla River would be minimal. HPP may select the transmission line route which would span the Umatilla River. HPP has committed to placement of poles as far from the river banks as possible. At points where

the transmission line would span the river there are not formal or managed hiking trails or other recreational facilities along the banks.

The portion of the 230 kV transmission line route north of the Westland substation would not involve construction of new transmission structures, but only replacement of the UECA 115 kV line with HPP's 230 kV line. Because no new transmission structures would be constructed, there would not be significant adverse impacts on recreational opportunities along the transmission corridor. A small portion of the upgrade would be to the transmission line as it runs through the City of Umatilla, which has no recreational opportunities along this portion of the corridor with the characteristics listed in the standard. Because there are no such recreational opportunities, upgrade of the transmission line would not result in significant adverse impact to recreational opportunities.

The 500 kV transmission line alternative does not cross the Umatilla River and would not impact any recreational activities along it. There are no recreational opportunities along the portion of the proposed 500 kV line route between the energy facility and its intersection with the BPA McNary-Roundup corridor that have the characteristics stated in the standard. Nor are there any within the BPA right of way. Further, the addition of HPP's proposed transmission line in this corridor would not significantly impact recreational opportunities in light of existing BPA transmission lines.

The City of Hermiston has several formal recreational facilities within the impact area, including the Umatilla County Fairground, a community recreational center and nine city parks with a total of approximately 76 acres. The City of Stanfield, which is partly within the impact area, operates three city parks. There are no existing or planned federal, state or county parks or recreational facilities within the impact area.

There would be no direct impacts to recreational facilities from construction, operation or retirement of the facility. Potential indirect impacts could include population increase, air quality degradation, noise, light and glare visual impacts, and traffic.

HPP has estimated an increase in population of approximately 337 people at maximum during peak construction activity. The estimated population increase due to facility operations is estimated at 49 people. The resulting increase in demand on recreational opportunities within the impact area is expected to be imperceptible.

Air quality impacts on recreational facilities will not be significant because air emissions from the power plant will be subject to control technology as required by Oregon Department of Environmental Quality.

At formal recreational facilities in Hermiston, noise from construction and operation of the facility would be inaudible. Noise impacts on fishing and other recreational impacts along the Umatilla River would not be significant because the energy facility site is located in an existing industrial area with elevated noise levels and approximately 1 mile north of Interstate 84.

Because of intervening terrain, distance and natural and manmade features the proposed energy facility, with the possible exception of the upper portion of the stack, would not be visible from formal recreational facilities in Hermiston or Stanfield. Visual impacts from the 230 kV transmission line alternative on formal recreational facilities would not be noticeable because north of the Westland substation the 230 kV line will be placed on existing transmission line poles. Visual impacts from the 500 kV alternative would be minimal because the BPA right of way is more than a mile away from managed recreational facilities and because of already existing BPA transmission lines in that right of way.

Traffic impacts on identified recreational facilities will be negligible because of the short distance to the energy facility site from state and interstate highways. Very little construction or operation related traffic would be along local roads in the vicinity of existing recreational areas.

### **Conclusion**

Identified informal recreational opportunities in the impact area of the facility do not have outstanding or unusual qualities and are not unique, rare, in high demand, or irreplaceable or irretrievable. Formal or managed recreational facilities within the impact area will not be significantly affected by construction or operation of the facility. For these reasons the Council concludes that the design, construction, operation and retirement of the facility will not result in a significant adverse impact to recreational opportunities.

### **Socio-Economic Impact Standard: OAR 345-22-110**

Under this standard the Council must 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**

For the Council's Socio-Economic standard, the Project Order defined the impact area as Umatilla County and the incorporated cities and towns in Umatilla and Morrow County within 30 miles of the energy facility site boundary.

During the construction phase, HPP expects to require a workforce of an average of approximately 150 workers while peaking at approximately 400 workers approximately 16 months into the construction schedule. During operations, HPP expects to require a workforce of approximately 24 workers.

HPP intends to hire as many local workers as possible for both the construction and operation of the facility. HPP considers a "local" worker to be one who resides within a 60 mile radius from the project site encompassing part of Umatilla and Morrow Counties

in Oregon and the Port of Benton, Franklin and Walla Walla counties in Washington. HPP proposes to establish a single point of contact with the Oregon Employment Department in Pendleton Oregon to coordinate employment opportunities at the facility site.

For purposes of assessing impacts on the community and on governmental services referenced in the Council's standard, the operation and construction workforces were assumed to be 50 percent local for high impact estimates and 75 percent local for the low impact estimate.

The proposed project will not significantly impact total population in the impact area. In 1992, Morrow County had a population of 8100, an increase from the 1983 population of 7275. Between 1983 and 1992 the population of Umatilla County increased from 60,600 to 61,100. The community nearest to the energy facility site is Hermiston, which had a population of 10,145 in 1992. Under the high impact scenario HPP estimated the population increase during the peak construction phase at 337 people, a 0.5% increase in the impact area's 1992 population. HPP has estimated the maximum population increase during operations at 49 people, which is a .07% increase.

*Impact on sewers and sewage treatment:* During construction, contracted portable toilet facilities will be used. During operation, domestic wastewater would be treated by the Simplot treatment system. Simplot is the steam host for the plant and is an Affiliate of the Hermiston Power Partnership. Simplot has already obtained a modification of its WPCF permit to accommodate domestic waste water from the energy facility. Therefore the energy facility will have no impact on local sewers or sewage treatment capabilities.

There will be little additional demand on the Hermiston or other local sewer systems from new residents generated by the project, a temporary maximum of 337 people. The City of Hermiston's sewage treatment system is currently operating at 47% of capacity. Sewage treatment facilities for Umatilla, Stanfield, Boardman, Pendleton, Echo and Irrigon are all operating below capacity.

*Water Supply:* The proposed project will obtain process and cooling water from the Port of Umatilla's regional water supply system. The Port of Umatilla holds water rights under Permit #49497. The Port is authorized under this permit to withdraw up to 155 cubic feet per second from the Columbia River. The facility would require approximately 4 to 5 cubic feet per second depending on weather and operating conditions.

The Port's water project has been developed to meet the demands of local cities and several industrial users. The area has experienced a moderate but consistent population growth in recent years. It is forecast that this moderate growth will continue in the immediate future. Population growth was a factor in the City of Hermiston's participation in the water project.

Domestic water at the energy facility would be supplied by the Simplot's existing water supply system. Simplot's system is adequate to supply the proposed facility.

We conclude that the proposed facility will not adversely impact the ability of local governments to provide water supply services.

*Stormwater and Stormwater Drainage:* None of the local governments in the impact area provide storm water disposal as a government service. HPP has proposed to retain stormwater on-site in a stormwater detention pond. During an extreme event, excess stormwater will be discharged from the settlement basin to the natural drainage. HPP will require a general National Pollutant Discharge Elimination System (NPDES) permit 1200-C for construction of the facility. Authority for the NPDES permit is delegated by the federal government to the DEQ. During operation the facility will require a general NPDES permit 1200-H which is also administered by DEQ.

*Solid Waste Management:* The proposed project would generate approximately 26 tons of solid waste per year.

The Pendleton landfill, in Umatilla County, has a projected capacity of 20,000 tons per year for 40 years. The Finley Buttes landfill in Morrow County is designed to handle 1,000 tons of garbage per day for 50 years. The landfill has over 500 acres of land available for current use and an additional 1,000 acres on which to expand.

We conclude that the proposed project will not adversely affect the ability of local governments within the impact area to provide for solid waste management.

*Housing:* The project may require up to 400 workers during the peak of the construction phase. This maximum number of workers would be required only for a short period of several months. During the peak construction period, demand for housing could grow to between 124 and 224 housing units, depending on the number of local workers hired and the numbers of single workers who choose to double up.

Time spent on the job by individual workers will range from a few weeks to the full 2 year construction period. For this reason, HPP estimates that up to 80 percent of the housing need during peak construction will be for rentals and transient-type housing such as recreational vehicle spaces, motel rooms or mobile home rentals. HPP estimates that the demand for temporary housing would be about 99 to 179 units during the peak construction period.

At present, there are 884 hotel and motel units in the impact area that could be used to accommodate the temporary housing needs of the construction work force. Other more limited possibilities include RV and mobile home spaces.

HPP estimates the demand for permanent housing at 24 to 45 units during the peak construction phase and 10 to 14 units during the operational phase.

Availability of permanent housing units in the impact area is currently limited. However, two major manufactured home housing projects are currently under construction or permitted for construction, for a total of 279 units. There are plans to construct an additional 20 to 30 new multi-family units within the next two years. If demand is high, an additional 60 to 80 units may be built. In addition, there is a good supply of developable building sites and local home builders are expanding plans for new construction.

Some workers may live in the Tri-Cities area of Washington and commute to the proposed job site, since the travel distance is approximately 37 miles.

HPP proposes to establish a housing clearinghouse at the project site for construction workers. The clearinghouse will coordinate with local officials and housing owners to place workers needing lodging, if necessary.

Because of HPP's expressed intent to work with local officials in establishing an on-site housing clearinghouse, and because of the small number of permanent workers, the temporary nature and needs of the construction force, the present availability of temporary housing in the impact area and the possibility of significant new single- and multi-family development over the next two years, and HPP's stated intention to utilize local workers where possible, we conclude that the proposed facility is not likely to have a significant adverse impact on the ability of communities in the impact area to provide housing.

*Traffic Safety:* Access to the proposed facility would be from the existing access road to the Simplot potato processing facility. Currently the Simplot facility generates approximately 800 daily employee vehicle trips and 50 to 60 truck trips.

The energy facility site is located on State Route 207 (SR 207). The nearest point on SR 207 for which reliable traffic estimates are available is the Umatilla River Bridge which is less than 1/2 mile from the energy facility site. Oregon Department of Transportation (ODOT) statistics indicate that average daily traffic at SR 207 and the Umatilla River Bridge was 2,650 vehicles in 1991 and 2200 vehicles in 1993.

During the operational phase, the facility will employ approximately 24 workers. This number will not represent a significant increase over the existing traffic from the J.R. Simplot facility.

During the construction phase, the project may require up to 400 workers at the site during the peak of construction. This might yield up to 400 additional employee vehicle trips per day if single occupancy vehicles are used. An additional 20 truck trips per day would be required during construction.

Transportation access for heavy equipment and components is also provided by the proximity of the Union Pacific Railroad access and Simplot's existing rail spur. Movement of heavy components by rail will reduce the need to transport large components by truck on SR 207.

The main access to the Simplot site is via an unsignalized intersection of Simplot's private road with SR 207 at the southerly end of their property. The intersection is channelized with a southbound to eastbound left turn bay that enables safe access. The existing channelized intersection has long sight distances and would facilitate the additional left turning movements for southbound to eastbound vehicles. Peak construction traffic along this section of SR 207 would represent approximately 15 percent of the 1991 Average Daily Traffic and approximately 19 percent of the 1993 ADT recorded for this segment of highway.

SR207 is a 2-lane highway (each lane 12 feet wide with 3-foot shoulders). Prior to construction of I-82 it was a major route between I-84 and the cities of Hermiston and Umatilla. Even during this time SR207 was not at capacity. After the construction of I-82, traffic on SR207 has decreased. The estimated increase of traffic on SR207 due to the construction of the HPP Project (15-20%) will not place the roadway at pre I-82 levels.

HPP proposes to schedule all deliveries of heavy equipment to avoid times of road weight restrictions. HPP will coordinate construction worker traffic patterns to the site, both egress and ingress, with the state, the County, and Simplot. Neither ODOT nor the county has voiced concern about traffic safety or the adequacy of the existing roadways to accommodate projected temporary and permanent increases in traffic.

Impact on highway safety caused by fogging and icing due to cooling tower effects were analyzed by computer model. The analysis was based on meteorological data from the five year period between 1986 and 1990. The results are also discussed under the Protected Area Standard in this proposed order (section IV.E.1). The analysis showed that no fogging would occur at major transportation routes near the project site. No fogging impact is predicted at the Amtrak train depot or the nearby Headstart daycare center. Portions of the Umatilla Meadows Road and Simplot Access may experience 2.0 hours of ground level fogging per year.

No ground level icing due to cooling tower impacts is predicted at nearby transportation routes. Limited portions of the Simplot access road may be affected by icing, however the impact is expected to be approximately 2.0 hours per five year period.

We conclude that with the mitigating steps proposed by HPP, the proposed facility will not adversely affect traffic safety.

*Police and Fire Protection:* The project area for the energy facility will be fenced and access to the energy facility will be controlled. The facility will operate 24 hours a day with personnel on-site at all times. The increase in local population will be small when compared to the general population and will not significantly increase the demand for police service.

Police protection will be provided by the Oregon State Police and the Umatilla County Sheriff's office, with second response emergency services provided by the Hermiston Police Department. None of these law enforcement agencies expect the facility to have an adverse impact on their ability to provide police protection.

Fire protection in the impact area is provided through the local communities and rural fire protection districts. The proposed energy facility site is in the Hermiston Rural Fire Protection District.

During construction the risk of a significant fire or explosion is extremely low. Most of the building materials used in construction of the power plant are nonflammable. Many of the major components are constructed offsite. Flammable liquids used during the construction process may include paints and cleaning solvents. Compressed gasses may include acetylene, oxygen, helium, hydrogen, and argon for welding.

During operation the facility will utilize natural gas, anhydrous ammonia, hydrogen and number 2 fuel oil which will be stored in two 1.0 million gallon storage tanks for use as backup fuel. HPP will be required to comply with Oregon Fire Code requirements for design and construction of the facility. HPP has committed to constructing the facility with fire hydrants and a sprinkler and deluge system. Because explosions involving the above materials have historically been caused by equipment failure or human error, HPP proposes to implement employee training requirements in safe operation of the facility, first aid and quick response procedures. The initial training will be supplemented by annual refresher training. Training records will be maintained for all personnel.

HPP proposes to install an early warning gas release system for flammable gasses. The flammable gas detectors will monitor work area to alert personnel if gas concentration reaches 20 percent of the lower explosive limit or at limits to protect human health, whichever is lower.

The Hermiston Fire Department has stated that if the facility is constructed with all fire protection equipment and facilities in accordance with the Oregon Fire Code, it will not be expected to result in significant adverse impacts to the department's existing capabilities.

*Health Care:* The primary health care facility for the proposed facility would be the Good Shepherd Community Hospital in Hermiston, Oregon. The hospital has 49 licensed beds, a helipad, and approximately 200 employees including 22 doctors and approximately 100 nurses. The facility is not expected to adversely affect medical services in the impact area. The hospital has stated that it has the capability to meet the need for medical services created by the facility.

*Schools:* HPP estimates that enrollment in public schools in the impact area would increase by a maximum of 0.4 percent (47 students) at the peak of construction activity. This estimate may well be high due to the short duration of the peak construction period and the maximum increase will be temporary.

During the operation phase, the facility would generate a maximum of approximately 14 school-age children.

At present, most schools in the impact area are at or above capacity. However, Hermiston High School is at only 80% capacity and there is remaining capacity at the Junior High and elementary school levels in Hermiston and at the Echo Public School. The Hermiston Public School System is in the midst of a growth study and is considering the construction of a new middle school. The Morrow County School District is considering a bond issue that would increase capacity to accommodate both current needs and future growth.

Given some capacity at all levels in Hermiston and Echo and the small number of new students generated by the high estimates even at peak construction, the Council concludes that the facility is not likely to have a significant adverse impact on the ability of the communities in the impact area to provide schools.

Conclusion: For these reasons, the Council concludes that the proposed facility would not adversely impact the local governments' ability to provide essential services as identified in the Council's standard.

### **Conditions**

(61) HPP will hire as many local workers as is reasonably possible for both the construction and operation of the Project. A "local" worker is one who resides within a 60 mile radius from the project site encompassing part of Umatilla and Morrow Counties in Oregon and the Port of Benton, Franklin and Walla Walla counties in Washington. HPP will establish a single point of contact with the Oregon Employment Department in Pendleton Oregon to coordinate employment opportunities at the project site.

(62) During construction, contracted portable toilet facilities shall be used. During operation, domestic wastewater will be treated by the Simplot Company treatment system.

(63) HPP shall retain stormwater on-site in a stormwater detention pond. During an extreme event, excess stormwater will be discharged from the settlement basin to the natural drainage. Prior to construction Applicant will obtain from the Department of Environmental Quality a general National Pollutant Discharge Elimination System (NPDES) permit 1200-C for construction of the facility. Prior to operation the facility will obtain a general NPDES permit 1200-H as administered by DEQ.

(64) The energy facility shall be constructed with fire hydrants and a sprinkler and deluge system. An employee training program will be implemented and records maintained as described in the ASC, Exhibit U p. 19. An early warning gas release system will be installed as described in the ASC Exhibit U p. 19.

(65) During construction, HPP shall establish a housing clearing house at the energy facility site for construction workers. The clearing house shall coordinate with local officials and housing owners to place workers who need lodging as necessary. During construction, HPP shall monitor the central vacancy rate in the cities of Umatilla, Stanfield and Hermiston. If the vacancy rate falls below seven percent, the clearing house will begin its activity to locate available housing outside of Umatilla, Stanfield and Hermiston so a listing of available housing outside of these cities can be provided to temporary workers should the vacancy rate fall below five percent. If the vacancy rate falls below five percent, HPP shall locate housing outside of Umatilla, Stanfield and Hermiston, or offer temporary housing for any temporary workers that it hires from outside the local area. HPP shall provide a plan of operation for the housing clearing house to ODOE prior to the start of construction. HPP shall provide such a plan at least 60 days prior to the start of construction and ODOE shall review and respond with its approval or comments not later than 30 days after the plan is submitted.

(66) Construction worker traffic patterns to the energy facility site will be coordinated with the state, county and adjacent Simplot potato processing facility. If necessary, sight distances will be improved and a left turn lane provided on Simplot's private access road at its intersection with State Road 207.

(67) Rail delivery shall be used to the extent practical to minimize heavy-haul truck trips during construction.

(68) HPP shall, in consultation with the Hermiston Rural Fire Protection District, establish a pre-fire plan which shall be available to the local fire district. The plan shall describe key entrances and exits, the floor plan of the energy facility, the location of hydrants and hoses, and the location and description of any hazardous materials.

**Waste Minimization Standard: OAR 345-22-120**

This 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."

[OAR 345-22-120]

**Discussion**

This standard addresses generation and disposal of solid and liquid waste. It is designed to encourage site certificate holders to minimize generation of solid and liquid waste, to recycle and reuse generated waste, and to safely dispose of waste generated.

**Waste Minimization, Reuse & Recycling**

1. Construction. Solid waste generated during the construction period will generally consist of non-hazardous discarded equipment packing materials, wood materials, and construction debris. The material will include excess piping, concrete, and steel scrap. These materials will be transported to a sanitary landfill or to a recycling facility as appropriate. HPP states that solid waste will be recycled to the greatest extent practical as a first priority through a deliberate recycling program to minimize the final amount of waste materials requiring landfill disposal.

2. Operation.

Solid waste. Operation of the facility will generate approximately 26 tons of solid waste per year. The solid waste will include used batteries, spent Selective Catalytic Reduction (SCR) catalysts, waste oil, lubricants, solvents, oily rags and oil absorbent materials, spent demineralizer resins, office administration waste (trash and garbage) and possibly spent oxidation catalysts.

Used batteries will be shipped to vendor recycling facilities for heavy metal recovery. Used SCR catalysts will be shipped to a metals reclaiming facility. The generation of waste catalyst materials will be minimized by use of clean-burning natural gas and proper operation and maintenance of system components. Spent demineralizer resins will be shipped to vendor recycling facilities. Spent oxidation catalysts will also be shipped to vendor recycling facilities to recover precious metals. HPP has included a two-pass reverse osmosis system to lengthen demineralizer run time and reduce ion exchange resin waste. The office/administration area will host recycling bins for recyclables including paper, aluminum cans, glass and some plastics.

Liquid waste: Waste water will be produced by three sources: sanitary wastewater, demineralizer backwash, and cooling tower blowdown. Additional water losses result from cooling tower operation. HPP will minimize generation of sanitary waste water through such steps as use of water restricting devices on bathroom and locker room sink and shower fixtures and by using low water consumption water closets.

HPP will provide plant water treatment demineralizers with programmable logic controls and to set demineralizers to maximize resin efficiency, thereby reducing overall water consumption.

Heat Recovery Steam Generator (HRSG) blowdown will be utilized as make-up to the cooling tower. HPP proposes to minimize cooling tower blowdown by automating the chemical treatment plant and blowdown system for the cooling tower to allow the tower to operate at optimal cycles of concentration, thereby minimizing the amount of blowdown required, to the extent allowed by DEQ water quality requirements.

HPP has proposed additional steps to reduce generation of waste water. These steps include turbine cycle optimization, sizing condenser surfaces to condense all steam produced in the HRSG, selection of non-hazardous chemicals to allow use of waste water for irrigation, recovery of filter backwash water, reprocessing of filtrate from the sludge dewatering system, incorporation of a two pass reverse osmosis system to reduce regenerant wastewater production, and return of steam condensate that is recovered from the potato plant.

Wastewater from the plant will be recycled to irrigation by the Simplot facility. To the extent that well water withdrawal is displaced by waste water for irrigation, this will reduce groundwater usage.

### **Waste Accumulation, Storage, Disposal & Transportation**

1. Construction. Waste generated during the construction period will primarily consist of non-hazardous solid waste. HPP states that this waste will be accumulated daily and stored in areas suitable to the material. Heavier waste such as spent lumber and steel scrap will be stockpiled until it can be hauled to a disposal facility or, preferably, recycled. Trash will be deposited in covered containers (dumpsters) until disposal. The containers will be placed throughout the construction site to facilitate their use by all construction personnel.

Additional protection from wind-blown trash will be afforded to the surrounding areas by a chain link fence surrounding the energy facility site. Round the clock security will minimize fire and vandalism risks. Trash and other non-recyclable, non-hazardous construction waste will be transported to local landfills. Material that could blow out during transportation to the landfill will be hauled in covered containers or in dump trucks with bed covers.

2. Operation. There will be no waste generation associated with the operation of the related and supporting facilities. The following discussion addresses the energy facility site:

a. Non-hazardous Solid Waste. Non-hazardous waste generated during the operation period will generally consist of trash and light debris from administration and building maintenance (common waste), and of spent demineralizer resin (process waste).

Common waste will be accumulated daily and deposited in covered containers (dumpsters) stored in an area screened from view from adjacent areas by partition walls or solid fences. Covered containers will eliminate any potential odor or airborne trash nuisance to the surrounding area.

Additional protection from wind blown trash will be afforded to the surrounding areas by a chain link site perimeter fence. Other waste suitable for recycling such as glass or steel scrap, expected in minor amounts, will be stockpiled in a screened area until it can be hauled to a recycling center. Dumpsters and stockpiles will be inside the site fence. Disposal of trash and other non-recyclable, non-hazardous waste will be at a local landfill. Transportation to the landfill will be by a licensed carrier.

Process waste will be stored in closed containers. Spent resins will be shipped to vendor recycling facilities for regeneration and reuse. Spent oxidation catalysts will be shipped to vendor facilities to recover precious metals for reuse. The use of covered containers to store these materials and licensed shippers for transportation will minimize impact on adjacent and surrounding areas.

b. Hazardous Waste. Hazardous solid wastes will consist of materials generated infrequently (used lead acid batteries with lives of 10 to 15 years and spent SCR catalyst with a life of 3 to 5 years) and of routine waste such as used oil, lubricants, anti-freeze, and oily rags.

Used batteries will be stored indoors and transported as soon as practical to recycling facilities. Spent SCR catalysts will be transported to the manufacturer for recycling of precious metals. When accumulated in sufficient amounts, they will be shipped by a licensed transporter to disposal facilities licensed to handle hazardous waste. Hazardous waste will not be stored on site longer than 90 days.

Routine waste will be collected daily and deposited in closed containers (such as capped drums). HPP states that the storage areas will be protected from fire and flood hazards.

c. Wastewater. Process and sanitary wastewater produced by the facility will be transported to the existing off-site treatment facilities at the Simplot potato processing

plant via underground pipeline. There will be no significant additional odors or nuisances posed to surrounding and adjacent areas by the transportation of process and sanitary wastewater to the existing treatment facilities at the potato plant.

Conclusion. For these reasons, the Council concludes that the waste minimization standard is satisfied.

### **Conditions**

(69) During construction of the facility, HPP shall identify means of minimizing waste generation and shall recycle waste to the extent reasonably practicable. HPP shall also implement a waste minimization and recycling program to remain in effect throughout the life of the facility.

(70) HPP shall ship used batteries, spent demineralizer resins and spent oxidation catalysts to vendor recycling facilities. Used SCR catalysts will be shipped to a metals reclaiming facility.

(71) During operation, all waste materials shall be contained on the energy facility site within the site perimeter fence and screened from view. Process waste will be stored in closed containers. Used batteries shall be stored indoors. Hazardous waste shall be stored and transported in accordance with applicable state and federal law.

(72) HPP shall implement, to the extent reasonably practical, design features such as those described in Exhibit V pages 4 through 6 to reduce unnecessary water consumption. Such features may include but are not limited to controls to maximize demineralizer resin efficiency, utilization of optimal cycles of concentration, selection of advanced gas turbines, sizing of the condenser to condense all steam produced in the HRSG, recovery of filter backwash water, reprocessing of filtrate from the sludge dewatering system, and incorporation of a two pass Reverse Osmosis system.

(73) Non hazardous chemicals shall be selected for water treatment to allow use of waste water for irrigation.

(74) Steam condensate that is recovered in the potato processing plant will be returned to the energy facility for reuse.

(75) Upon completion of construction, HPP shall dispose of all temporary structures not required for future operation of the facility and all used timber, brush, refuse, or flammable material resulting from clearing of lands or from construction of the facility.

### **Retirement Standard OAR 345-22-130**

The standard requires that "taking into account mitigation, the site can be restored adequately to a useful condition following facility retirement."

### **Discussion**

The estimated lifetime of the energy facility is in excess of 30 years.

1. Energy Facility. The energy facility site is located in an industrially zoned area, adjacent to highway and railroad corridors, with excellent utility service. A useful condition of the energy facility site is therefore a condition consistent with the industrial zoning.

The energy facility will not require underground storage tanks and no significant alteration of topography is planned. The gas, water and electric utility services, and even some of the structures, would have considerable value in place for many industrial users. The energy facility site can therefore be restored to a useful condition by removing major equipment and any unnecessary structures.

HPP has committed to manage all hazardous material in accordance with local and state regulatory standards. Documentation will be maintained and hazardous materials will be handled by qualified personnel. Hazardous waste will be stored on site no more than 90 days, followed by transport to a licensed treatment storage disposal facility.

Spillage of hazardous materials will be prevented by measures as described in the ASC. Storage and handling of flammable and combustible liquid chemicals will be in compliance with National Fire Protection Association Codes 30 and 321. Chemical storage areas will have secondary containment. Storage tanks for distillate will have secondary containment. HPP has committed to comply with Uniform Building Code Chapters 79 for Hazardous Materials and 80 for Flammable Liquids. Concrete basins will be provided at each of the large electrical transformers to capture any insulating oil that might spill during a transformer failure or maintenance operation. Foundations and slabs for equipment containing lubricating oil, insulating oil or hydraulic fluid will be designed to contain and collect any spill. Secondary containment for hazardous material storage areas will have volume equal to 100 percent of the maximum chemical volume in primary containment. For these reasons, contamination of the energy facility site is not likely to impede restoration of this site to a useful condition.

2. Related and Supporting Facilities. If the energy facility site is restored for industrial use, it is likely that the gas and water pipelines, and possibly the transmission line, will remain in place and in use. If the transmission line must be removed, restoration will involve only the removal of the towers and their foundations.

The restoration process proceeds by law under the jurisdiction of the Council. Revegetation and other mitigation conditions similar to those required by this Order pursuant to the Council's Fish and Wildlife Habitat Standard will ensure adequate restoration of the transmission line site and, if necessary, the natural gas and water pipeline sites.

3. Cost of restoration. The Department retained Pacific Energy Systems to estimate the cost of restoring the site to a useful condition at the end of 30 years of operation. The estimate was made on the assumption that materials and structures with continuing value would be retained for reuse, any specific environmental problems caused by facility operation would be remediated, public safety hazards would be eliminated, transmission towers and lines could be removed and sold and tower foundations remediated. Pacific Energy Systems estimated the cost to be \$8,202,000.

Based on this information, we estimate the cost of restoring the site to be \$8,202,000.

4. Financial Mechanism. The standard requires that the site can be restored to a useful condition on retirement, which requires a finding that HPP will likely be able to cover the cost of that retirement. To meet this requirement HPP will, beginning with the first year of commercial operation, establish a retirement fund and begin making annual commitments to the fund in the amount of \$800,000 in the form of a letter of credit or performance bond. The annual commitments will continue until the total security in the fund reaches \$8,202,000 (in 1995 dollars), in no event later than 10 years from the date of commercial operation. HPP will also commit any funds it receives from the salvage value of equipment or buildings to the restoration of the site, to the extent necessary to fund the approved restoration. We find that this financial mechanism is satisfactory to assure funds will be available to adequately retire the facility and restore the site.

For these reasons we conclude that the site can be adequately restored to a useful condition following retirement of the facility.

### Conditions

(76) HPP shall manage all hazardous material in accordance with local and state regulatory standards. Documentation will be maintained and hazardous materials will be handled by qualified personnel. Hazardous waste will be stored on site no more than 90 days, followed by transport to a licensed treatment storage disposal facility, as described in ASC, exhibit B p.15a.

(77) Storage and handling of flammable and combustible liquid chemicals shall be in compliance with National Fire Protection Association Codes 30 and 321. Chemical storage areas will have secondary containment. Storage tanks for distillate shall have secondary containment. HPP shall comply with Uniform Building Code Chapters 79 for Hazardous Materials and 80 for Flammable Liquids. Concrete basins will be provided at each of the large electrical transformers to capture any insulating oil that might spill during a transformer failure or maintenance operation. (ASC Exhibit F p.6) Foundations and slabs for equipment containing lubricating oil, insulating oil or hydraulic fluid shall be designed to contain and collect any spill. Secondary containment for hazardous material storage areas shall have volume equal to 100 percent of the maximum chemical volume in primary containment (ASC Exhibit F p. 9)

(78) HPP shall prevent any condition over which the certificate holder has control from developing on the site that would preclude restoration of the site to a useful condition. (OAR 345-27-020(9) ).

(79) Starting with the first year of commercial operation, HPP shall establish a retirement fund and begin making annual commitments to the fund in the amount of \$800,000 in the form of a letter of credit or performance bond. The terms of the security and identity of the issuer shall be subject to approval by the Council, which approval shall not be unreasonably withheld. Such annual commitments shall continue until the total security in the retirement fund reaches \$8,202,000 (in 1995 dollars) in no event later

than 10 years from the date of commercial operation. The calculation of 1995 dollars shall be made using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index"). After the security in the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase annually by the percentage increase in the index. If at any time the index is no longer published, the Council shall select a comparable calculation of 1995 dollars. In the event the security in the retirement fund is less than \$8,202,000 (in 1995 dollars) at the time HPP notifies the council of its intent to retire the facility, the annual commitments to the retirement fund shall be adjusted so as to assure that the total security in the funds is \$8,202,000 (in 1995 dollars) at the time of retirement. Applicant shall describe the status of the fund in the annual report submitted to the Council. All funds received by HPP from the salvage of equipment or buildings shall be committed to the restoration of the facility site, to the extent necessary to fund the approved restoration.

(80) In the event construction is begun but not completed by the deadlines set forth in the site certificate, or the energy facility is closed permanently before the end of its useful life, HPP shall restore the site to a useful condition. Restoration shall include but not be limited to the removal of transmission line towers erected by the applicant unless the Council determines that such towers are likely to be used by another facility, electric utility or other entity that provides electric service.

(81) At least five years prior to planned permanent closure of the facility, HPP shall submit a retirement plan to the Council for approval. The plan shall describe how the site will be restored adequately to a useful condition, including options for post-retirement land use, information on how impacts to fish, wildlife and the environment will be minimized during the retirement process, measures to protect the public against risk or danger resulting from post-retirement site conditions. The plan shall provide for restoration of vegetation to the maximum extent consistent with the anticipated use of the site after the facility is retired.

(82) HPP shall retire the facility at the end of its useful life in accordance with the approved final retirement plan, pursuant to OAR 345-27-110.

(83) The retirement plan shall provide for restoration of vegetation to the maximum extent consistent with the anticipated use of the site after the facility is retired.

(84) Not later than four months before commencing construction of the transmission line, or immediately before commencing construction of the energy facility—whichever is sooner<sup>3/4</sup> HPP shall notify ODOE of which alternative transmission line route will serve the energy facility. Once this election has been made, Council approval of the other alternative transmission line shall terminate.

*End of Section*

MANDATORY CONDITIONS (OAR CHAPTER 345 DIVISION 27)

**General Conditions**

The following mandatory conditions proposed for inclusion in the site certificate are either specifically required by OAR 345-27-020 or are appropriate under OAR 345-27-020(6) to address project and site specific conditions and requirements. These mandatory conditions shall apply and should be read together with the specific additional conditions recommended in this Order to ensure compliance with the siting standards of OAR 345 Divisions 22, 23 and 24, and to protect the public health and safety.

(85) The Site Certificate holder shall submit to the department a legal description of the site to be appended to the Site Certificate prior to construction.

(86) The facility shall be designed, constructed, operated and retired:

- (a) Substantially as described in the Site Certificate and in this order;
- (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the Site Certificate is issued; and
- (c) In compliance with all applicable permit requirements of other state agencies.

(87) Construction of the facility must begin and be completed by dates specified in the Site Certificate.

(88) No construction, including clearing of a right of way, except for the initial survey, may commence on any part of the facility until the certificate holder has adequate control, or has the statutory authority to gain control, of the lands on which clearing or construction will occur.

(89) The certificate holder shall submit to the State of Oregon, through the Council, a bond or comparable security, satisfactory to the Council, in an amount specified in the certificate adequate to restore the site to a useful condition if the certificate holder:

- (a) Begins but does not complete construction of the facility; or
- (b) 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.

(90) Except for the portion of capacity to be used by the applicant:

(d) For facilities exempt from demonstrating need under OAR 345-23-010(3), facilities for which all of the net electric output is contracted to the Bonneville Power Administration, the Council shall condition the Site Certificate to require, before construction:

- (A) A long-term power sales contract with the Bonneville Power Administration for all the net electric output of the facility; and
- (B) A final, non-appealable determination by the Pacific Northwest Electric Power and Conservation Planning Council, under the criteria identified in OAR 345-23-010(3), that the Bonneville Power Administrator's decision to acquire output from the proposed facility is consistent with the 1991 Northwest Conservation and Electric

Power Plan and is in accordance with the criteria identified in OAR 345-23-010(3)(a), (b) and (c). If such a determination is not provided, the certificate holder shall not begin construction unless it demonstrates need in a process in conformance with OAR 345-27-070, except that the Council shall hold a contested case if requested by any person as provided in 345-27-070(3). The hearing shall be limited to consideration of whether the facility complies with division 23 of these rules.

(91) If mitigation is required after an affirmative finding by the Council under any standards of division 22 or division 24 of this chapter, the certificate holder, in consultation with affected state agencies and local governments designated by the Council, shall develop specific mitigation plans consistent with Council findings under the relevant standards. Such plans must be approved by the department prior to the beginning of construction or, as appropriate, operation.

(92) The certificate holder shall prevent any condition over which the certificate holder has control from developing on the site that would preclude restoration of the site to a useful condition.

(93) Conditions related to facility retirement and site restoration:

(a) The certificate holder shall establish 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;

(b) At least five years prior to planned retirement of the facility, the certificate holder shall submit a retirement plan to the Council for approval. The plan shall describe how the site will be restored adequately to a useful condition, including options for post-retirement land use, information on how impacts to fish, wildlife and the environment will be minimized during the retirement process and measures to protect the public against risk or danger resulting from post-retirement site conditions; and

(c) The facility shall be retired after its useful life in accordance with the approved final retirement plan, pursuant to OAR 345-27-110.

(94) The Site Certificate shall include as conditions all representations from the Application for Site Certificate and supporting record deemed by the Council to be binding commitments on the part of the applicant. Sections of the Application and supporting record may be incorporated directly or by reference.

(95) The certificate holder shall restore vegetation to the extent practicable and shall landscape portions of the site disturbed by construction in a manner compatible with its surroundings and/or proposed future use. Upon completion of construction, the certificate holder shall dispose of all temporary structures not required for future use and all timber, brush, refuse and flammable or combustible material resulting from the clearing of land or from construction of the facility.

(96) The facility shall be designed, engineered and constructed 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 the reasonably probable seismic event.

**Site Specific Conditions**

(97) The certificate holder shall notify the department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the Application for Site Certificate. The Council may, at such time, require the certificate holder to propose additional mitigating actions in consultation with the Department of Geology and Mineral Industries and the Building Codes Division.

(98) The certificate holder shall notify the department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.

(99) (applicable only to coal facilities)

(100) (applicable as a mandatory condition only to jurisdictional natural gas pipelines)

(101) (applicable only to jurisdictional transmission lines)

**Monitoring Conditions: OAR 345-27-028**

(102) The certificate holder shall establish, in consultation with affected state agencies and local governments, monitoring programs as required by the Site Certificate for impact on resources protected by the standards of division 22 and 24 of this chapter, and to ensure compliance with the Site Certificate.

(103) The certificate holder shall establish monitoring programs as required by permitting agencies and local governments, as required by the Site Certificate.

(104) For each monitoring program that it establishes, the certificate holder shall have quality assurance measures that are reviewed and approved by the department prior to commencement of construction or commencement of commercial operation, as specified in the Site Certificate.

(105) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall submit to the department as soon as possible a written report identifying the issue and assessing the impact on the facility and any affected Site Certificate conditions.

(106) HPP shall report any material violation of any condition of the site certificate by HPP or any of its contractors, subcontractors or agents to ODOE within 72 hours of discovery. HPP shall report to ODOE within 24 hours of discovery if HPP or any of its contractors, subcontractors or agents creates any condition by construction or operation of the facility that endangers the public health or safety.

PUBLIC HEALTH AND SAFETY

Under ORS 469.401(2), EFSC must impose conditions in the site certificate for the protection of public health and safety. Throughout this order are conditions relating to other decisional criteria that are ultimately intended to protect public health and safety. The following conditions protect public health and safety specifically with regard to natural gas pipelines and electrical transmission lines.

(107) The applicant shall design, construct, operate and retire the facility in accordance with all applicable statutes, rules, and ordinances.

(108) The pipelines shall be constructed in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192.

(109) The pipelines shall have mechanical structures that allow the pipeline to be sealed off, in the event of leakage, in a manner that will minimize the release of flammable materials. This is rebuttably presumed to be satisfied if the pipeline meets the requirements of Title 49, Code of Federal Regulations, Part 192.

(110) The applicant shall develop a program, or assure the development of a program by the entity responsible for the pipelines, using the best available, practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.

(111) The transmission line shall be designed so that alternating current electric fields shall not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public within the right of way.

(112) The transmission line shall be designed so that induced currents resulting from the transmission line and related facilities will be as low as reasonably achievable. The applicant shall develop and implement a program which shall provide reasonable assurance that all fences, gates, cattle guards, trailers, or other permanent objects or structures ("structures") that could become inadvertently charged with electricity shall be grounded through the life of the line. The Council interprets this requirement to apply to structures in existence when the line is constructed.

(113) The transmission line shall be designed, constructed, and operated in a manner consistent with the National Electrical Safety Code, Section C2, 1993 Edition (American National Standards Institute), as well as the Rural Electrification Administration standards, where applicable.

(114) HPP shall submit to the Department copies of all incident reports required under 49 CFR §192.709 involving the related and supporting natural gas pipelines.

*End of Section*

*Land Use Introduction*

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## LAND USE STANDARD

This standard requires that the facility be in compliance with the statewide planning goals. OAR 345-22-030. A facility is in compliance where:

"(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations\*\*\*, and

"(B) The facility complies with any Land Conservation and Development Commission "LCDC" administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3)\*\*\*."

OAR 345-22-030(2)(b)(A) and (B).

## LOCATION OF FACILITIES

**Energy Facility**

The energy facility site is located on approximately 17 acres in Umatilla County, in an area designated Heavy Industrial (HI) in the Umatilla County Development Ordinance ("UCDO") and comprehensive plan. The HI zone allows utility facilities as permitted uses. (UCDO) 3.192(15).

The energy facility site is on land owned and currently used by Simplot which is one of the Affiliates of the Hermiston Power Partnership. It is adjacent to Simplot's existing potato processing facility.

The proposed energy facility is within the Area of Mutual Concern for the Cites of Hermiston and Stanfield.

## **Water Supply Pipeline**

The water supply line pipeline will consist of a buried pipeline approximately 16 inches in diameter and approximately 1.1 mile long to the connection with the Port of Umatilla's water treatment plant which is the terminus of the Port's main water supply pipeline. The pipeline will be buried 3 or more feet below ground surface. The water treatment plant will be adjacent to S.R.207 at the intersection of Feedville Road. Beginning at the energy facility site, the pipeline route will proceed northwest at the edge of cultivated land owned by the Simplot to a crossing of State Route 207 (Butter Creek Road) near the Union Pacific Railroad bridge. The pipeline will parallel S.R. 207 on the west side of the road for the balance of the route.

The water supply pipeline route is entirely within the County's jurisdiction. Portions of the water supply pipeline route are within Stanfield's Area of Mutual Concern. The Stanfield Area of Mutual Concern extends north to Feedville Road, west to S.R. 207, and south to the Umatilla River. The entire water supply pipeline is within the City of Hermiston's Area of

Mutual Concern. The Hermiston Area of Mutual Concern extends west to I-82, south to I-84, east to Edwards Road, and north to Baggett Lane.

## **Natural Gas Pipeline Connections**

HPP requests an EFSC Site Certificate for two natural gas pipelines. HPP proposes to construct both pipelines in order to provide a choice of natural gas suppliers. The two proposed pipelines would connect the energy facility with the Northwest Pipeline Corporation's ("NWP") interstate pipeline and the Pacific Gas Transmission Company's ("PGT") interstate pipeline.

a. NWP Pipeline Connection. The connection from the energy facility to the existing NWP interstate pipeline will consist of a lateral pipeline connection approximately 12 inches in diameter and approximately 8.8 miles long to the existing pipeline. The pipeline will be buried 3 or more feet below ground surface. Beginning at the energy facility site, the pipeline route proceeds north through Simplot's industrial property and across the Union Pacific rail lines. It then turns northeast along an existing electrical transmission corridor in agricultural land to Feedville Road. The route turns east and parallels Feedville Road on the south side for over 4 1/2 miles where it intersects an abandoned road in open fields two miles northeast of Stanfield. The route then proceeds northeast for over two miles to the intersection with the NWP main line.

The pipeline route is mainly within the County's jurisdiction, with a portion traversing the edge of Stanfield's UGA. Portions of the pipeline route are within the Hermiston and Stanfield Areas of Mutual Concern.

b. PGT Pipeline Connection. The connection from the energy facility to the PGT interstate pipeline will consist of a lateral pipeline connection approximately 12 inches in diameter and approximately 4.1 miles long to the existing PGT natural gas pipeline. The pipeline will be buried 3 or more feet below ground surface. Beginning at the energy

facility site, the pipeline route proceeds across Simplot's industrial property and then generally parallels the Union Pacific rail lines east to the connection with the PGT interstate pipeline approximately one-half mile west of the City of Stanfield.

The pipeline route is mainly within the County's jurisdiction, with a portion within the Stanfield UGA. The gas pipeline route is also within Stanfield's Area of Mutual Concern. Portions of the pipeline are also within Hermiston's Area of Mutual Concern.

### **Transmission Line Alternatives**

HPP has proposed two electric transmission line routes. As stated above, only one would be built.

a. 500 kV Transmission Line Alternative. The 500 kV electrical transmission line right-of-way extends from the energy facility site to BPA's McNary Substation. As proposed, the line will consist mainly of a single circuit, single pole transmission line approximately 14.2 miles long. The proposed steel transmission line poles will be 125 to 160 feet tall, spaced at 600 to 800 feet. Whenever feasible, the pole-top configuration will be a vertically stacked "delta" configuration. Conductors will be spaced at "close compaction" clearances. Actual conductor separation for any section of the power line will be based on conductor height and span length. Where multiple power lines occupy common right-of-way, HPP will employ "phasing cancellation" techniques, *i.e.* arrangement of individual phase conductors on the structures such that the EMF is reduced rather than increased.

The pole configuration will be changed to double-pole H-frame structures for a distance of approximately 2,000 feet in the Hermiston Airport approach zone in order to avoid encroachment on required clearances. At the northern end of the route, near the McNary Substation and within the City of Umatilla Urban Growth Area, HPP may use transmission pole structures such as steel lattice towers where those structures are feasible and where they more closely match the appearance of existing transmission structures.

Beginning at the energy facility, the transmission line route proceeds north across Simplot's industrial property and then northeast through open land to Feedville Road. The route will then parallel Feedville Road to the intersection with Canal road, where it turns north along Canal road to the existing BPA right-of-way. The BPA right-of-way runs generally north/northwest to a point about one mile south of McNary Substation, where it turns north to the substation. The transmission line will be constructed within the existing BPA right-of-way from Canal Road north toward the City of Umatilla, to a point where it will intercept BPA's existing 500 kV McNary - Lower Monumental transmission line. The 500 kV line will then occupy the existing BPA structures into McNary Substation, while the existing McNary-Lower Monumental transmission line will be relocated to a corridor paralleling Ford (Lind) Road as described on page 13 in the General Findings of Fact.

The 500 kV transmission line route is mainly within the County's jurisdiction, with a portion traversing the northern edge of Stanfield's UGA, another portion traversing the northeast corner of Hermiston's UGA, and a portion traversing the City of Umatilla UGA.

A very short portion of the route is also within the city limits of the City of Umatilla. Portions of the transmission line are within the Area of Mutual Concern of the cities of Hermiston and Stanfield. Stanfield's Area of Mutual Concern extends north to Feedville Road, west to S.R. 207, and south to the Umatilla River. Hermiston's Area of Mutual Concern extends west to I-82, south to I-84, east to Edwards Road, and north to Baggett Lane.

b. 230 kV Transmission Line Alternative: Energy Facility Site to Westland Substation.

As an alternative to the 500 kV transmission line described above, HPP proposes a 230 kV transmission line. Most of the 230 kV transmission line alternative would utilize transmission line poles currently under construction. These poles are a part of the transmission facilities for the Hermiston Generating Company (HGC) energy facility which received a Site Certificate in March of 1994. The transmission facilities are owned and will be operated by the Umatilla Electric Cooperative Association (UECA). HPP would need to construct approximately 3.6 miles of new transmission line to connect the energy facility to the existing HGC/UECA transmission line.

The 230 kV transmission line right-of-way from the energy facility site to the connection at UECA's Westland Substation near the Lamb-Weston potato processing plant will consist of a single circuit, single pole transmission line approximately 3.6 miles long. The steel transmission line poles will be 95 to 110 feet tall, spaced at 600 to 800 feet.

Beginning at the energy facility site, the new transmission line route proceeds west across Simplot's property, then parallels S.R. 207 (Butter Creek Road) north to Feedville Road, and then westerly on the south side of Feedville Road for 1 1/2 miles where it will then proceed southwest to UECA's Westland Substation. From the Westland Substation to near the McNary Substation, HPP's transmission conductors and insulators would replace UECA conductors and insulators on existing poles. Approximately 1/4 mile south of the McNary Substation, the proposed transmission line conductors will be placed on new poles to the proper location within the Substation.

All of the new transmission line route from the energy facility site to the Westland Substation is within the jurisdiction of Umatilla County. Portions of the transmission line are also within the Area of Mutual Concern of the cities of Hermiston and Stanfield.

c. Conversion of Existing 115/230 kV Electrical Transmission Line to 230/230 kV Electrical Transmission Line. The transmission line currently under construction will run from the Westland Substation to the McNary Substation. Under HGC's existing Site Certificate, the transmission poles will be occupied on one side by a 230 kV transmission line which is related to the Hermiston Generating Plant, and on the other side by a 115 kV line belonging to the UECA. HPP proposes to remove the 115 kV UECA line and replace it with a 230 kV line serving the proposed energy facility. No new poles would be added along this portion of the 230 kV route. The sole change would be replacement of UECA's 115 kV insulators and conductors with HPP's 230 kV insulators and conductors, converting a 115/230 kV line into a 230/230 kV line. The 230 kV option between the Westland Substation and the McNary Substation is contingent on completion of construction of the 230/115 kV electrical transmission line between the same substations.

HPP and Umatilla Generating Company (UGC) have both made good faith requests for wheeling services from UECA for the use of UECA's transmission facilities between the Westland Substation and the McNary Substation in connection with the energy facilities proposed by HPP and UGC. UECA is undertaking a study to determine whether it can accommodate both HPP's and UGC's requests. Access to the UECA transmission facilities will be determined by UECA, following completion of the study. If either UGC or HPP is denied access to the UECA transmission facilities, or if the terms and conditions associated with either party's use of the transmission facilities are inappropriate, UGC or HPP may seek a determination from the Federal Energy Regulatory Commission that directs UECA to provide the requested wheeling services on appropriate terms and conditions. Access to the UECA transmission facilities is not controlled by the EFSC, and approval of a site certificate for HPP does not mean that a site certificate could no be granted for another applicant seeking use of the same UECA transmission facilities. Nor does it mean that HPP's site certificate would have to be amended in order for another application using the same transmission facilities to proceed.

### COMPLIANCE REVIEW PROCEDURE

**HPP's Method for Showing Compliance.** ORS 469.503(2) allows an applicant to demonstrate compliance with the statewide planning goals either by obtaining local land use approvals or by showing compliance with applicable state and local land use criteria to the Council. HPP elected to show compliance through the latter method.

**Applicable Date for Criteria.** ORS 469.503(2)(b) states that the applicable local land use regulations are those that were in effect when the ASC was submitted. The ASC was submitted on November 30, 1994.

**Applicable Local Governments.** The local governments with land use jurisdiction over the facility's components are Umatilla County (the "County") and the City of Umatilla ("Umatilla"). Portions of the facility are also in the urban growth areas (the "UGA") of the cities of Hermiston ("Hermiston") and Stanfield ("Stanfield"). The County has jurisdiction over land use decisions within the UGA's of Hermiston, Stanfield and Umatilla pursuant to adopted joint management agreements between the County and the cities. All applicable local governments have comprehensive plans and land use regulations acknowledged by LCDC.

**Applicable Criteria.** The Department asked the Department of Land Conservation (DLCD) to review the ASC and identify any directly applicable statewide planning goals, administrative rules, and land use statutes. The Department also asked Umatilla County, and the cities of Hermiston, Umatilla and Stanfield (the "Cities"), to review the ASC and identify applicable substantive criteria. DLCDC, the County, and the Cities responded that the ASC correctly identifies the applicable substantive criteria and regulations. None of them identified criteria which they felt HPP failed to meet.

**Interpretation of Criteria.** By August 5, 1995, letter, the Umatilla County Board of Commissioners confirmed that HPP's facility would be a "utility facility" under UCDO Section 3.192(15)

On July 11, 1995, the City of Stanfield adopted a resolution concluding that: (1) the 500 kV line and gas pipelines would be permitted uses in the City's Transportation-Industrial ('TI') and Industrial-Service Commercial ('ISC') zones because they are similar to permitted uses in those zones; and (2) the transmission line and pipeline within the City's Exclusive Farm Use ('EFU') zone are "utility distribution lines" permitted outright in that zone.

**Suggestions for Conditions.** The Department received suggestions for conditions to a site certificate as follows:

*Umatilla County.* By Resolution adopted on June 5, 1995, the Umatilla County Board of Commissioners recommended that the Council impose eleven conditions on any approval of HPP's application. The specific conditions are set forth in the condition section.

*City of Umatilla.* On June 20, 1995, the City of Umatilla adopted Resolution 43-95. The Resolution recommends that, if the 500 kV transmission line is constructed, the Council require HPP to use steel lattice or wood pole construction where feasible and use non-glossy paint coatings to minimize visual impact.

*End of Section*

## Local Land Use Requirements

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### UMATILLA COUNTY

#### *Energy Facility*

The energy facility site is located in the County's Heavy Industrial ("HI") zoning district. The energy facility site is on property presently owned by the J.R. Simplot Company. The Applicant has an option to purchase the energy facility site from J.R. Simplot Co. Prior to completing the purchase of the site, the Applicant will obtain approval from the County for a tentative partition plan and a final partition map consistent with the applicable standards in Umatilla County Development Ordinance ("UCDO") Chapter 10, "Land Divisions."

Current land uses within the impact area of the energy facility in the HI zone are industrial (J.R. Simplot potato processing plant and Union Pacific Railroad), agriculture, and vacant land. The energy facility is compatible with these current uses. The energy

facility will not pose a nuisance to adjacent uses because it will not emit noise or odors that would impair use of the adjacent land, and the visual appearance of the facility is similar to other industrial uses adjacent to the facility.

*UCDO 3.190, "Heavy Industrial Zone (HI)"*

Utility facilities are a permitted use in the County's Heavy Industrial ("HI") zone. UCDO Section 3.192(15). Umatilla County confirmed that the proposed use is classified as a "utility facility" by letter dated August 5, 1993. UCDO 3.190 and 3.192 provide as follows:

**(i) "3.190 DESCRIPTION AND PURPOSE:** The HI Heavy Industrial Zone is designed to provide for industrial uses where potential conflicts with adjacent land uses will have a minimal negative impact. It is designed to help the County expand and diversify its economic base. The HI Zone is appropriate for areas adjacent to major transportation facilities such as railways, major highways and waterways.

**"3.192 USES PERMITTED WITH A ZONING PERMIT:** In a HI Zone, the following uses are permitted upon the issuance of a zoning permit, pursuant to Section 1.050 and Section 3.197:

\* \* \* \* \*

*"(15) Utility facility;"*

The energy facility is a utility facility as defined in the UCDO. UCDO 18.207. Several other standards for uses in the HI zone apply to the proposed energy facility and its related or supporting facilities. Those identified by Umatilla County include: (1) Limitations on Use (UCDO Section 3.196); (2) Design Review (UCDO Section 3.197); (3) Dimensional Standards (UCDO Section 3.198); and (4) Supplementary Regulations (UCDO Chapter 4). Compliance with these regulations is demonstrated below.

**(ii) "3.196(1)** A use is prohibited which has been declared a nuisance by statute, by action of Commissioners or by a court of competent jurisdiction:"

The uses adjacent to the energy facility are industrial or agricultural. The project will not pose a nuisance to adjacent uses. The proposed use has not been declared a nuisance by statute, by action of EFSC, the County or by any court.

**(iii) "3.196(2)** A use is prohibited and shall be in violation of this Ordinance if it violates an environmental quality statute or regulation of the state or federal government;"

The project will not violate environmental quality statutes or regulations. Federal and state environmental quality standards will be enforced through the following permits:

An Air Contaminant Discharge Permit application has been filed with the Oregon DEQ. The permit regulates all gas, particulate, and vapor discharges from operation of the energy facility.

A Registration Application for coverage by General Permit 1200-C (storm water regulation at construction sites) was approved on August 28, 1995, by the Oregon DEQ. The general permit regulates the containment, control, and monitoring of storm water runoff from construction projects which disturb more than 5 acres of land. A requirement of the permit is the adherence to a storm water pollution control and countermeasure plan to be submitted prior to construction commencement.

An application for coverage by General Permit 1200-H (Storm water regulation at industrial plants), if required, will be filed with the Oregon DEQ prior to operation of the project. The permit regulates the containment, control, and monitoring of storm water runoff from certain industrial plants. The permit will be necessary only if it is determined during final design that on-site storm water detention will not be feasible. A requirement of the permit is the adherence to a storm water pollution control and countermeasure plan to be submitted prior to commencement of operation.

An application for amendment to J.R. Simplot Water Pollution Control Facilities Permit ("WPCF Permit") was approved on November 30, 1995, by the Oregon DEQ. The amendment will allow wastewater discharge from the energy facility to be commingled with wastewater from the adjacent J.R. Simplot potato processing plant, whose wastewater discharges are regulated under an existing WPCF permit. The addition of the energy facility discharges to the existing discharges will slightly increase the volume of wastewater currently applied to agricultural land under the WPCF permit.

(iv) "3.196(3) Materials shall be stored and grounds shall be maintained in such a manner which will not attract or aid in the propagation of insects or rodents or otherwise create a health hazard;"

Materials will be stored in accordance with applicable standards and in a manner that will not cause a health hazard.

(v) "3.196(4) Points of access from a public street or County road to properties in a HI Heavy Industrial Zone shall be located so as to minimize traffic congestion and direct traffic away from residential streets."

The Applicant will comply with Umatilla County Public Works Department specifications for location and construction of the entrance onto the County road. The proposed entrance will enter County road 1324, which has no residential uses adjacent to it. The entrance road will comply with County dimension and construction specifications.

(vi) 3.197, "Design Review"

"An application for a zoning permit for a use permitted in Section 3.192 of this Ordinance shall be accompanied by a site plan. The Planning Director or his authorized agent shall review the site plan for completeness and compliance with the following requirement:

"(1) The site plan shall consist of the following:

"(a) An accurate map showing the property lines, dimensions, and location of buildings on the property both existing and proposed;

"(b) Drawn at a scale no smaller than 1" = 100';

"(c) Access points to County or state roads;

"(d) Names of the owner and developer of the site.

"(2) The Planning Director or his authorized agent may require landscaping around the buildings or property lines to insure conformance with County policies;

"(3) Applicable standards listed in this Ordinance for access, parking lots and spaces, off-street parking and loading requirements, setbacks, sign, vision clearance and other standards which may now or hereafter be enacted."

The Project will include access in conformity with County requirements. The Project will incorporate landscaping as required by the Planning Director to ensure conformance with County policies. Setbacks, parking, signs, and other physical requirements will meet the requirements of this section and by UCDO Chapter 4.

**(vii) UCDO 3.198, "Dimensional Standards"**

"In a HI Zone, the following dimensional standards shall apply:

"(1) Lot Size: The minimum lot size shall be one acre unless written proof from the Department of Environmental Quality is provided that shows that an approval subsurface disposal system can be located on less than one acre;

"(2) Minimum Lot Width: The minimum average lot width shall be 100 feet with a minimum of 25 feet fronting on a dedicated County or public road or state highway;

"(3) Setback Requirements: The minimum setback requirements shall be as follows:

"(a) Front Yard: 20 feet; except if the front yard area is used for off-street loading or parking requirements, then the front yard shall be a minimum of 40 feet; and except if the property abuts a property zoned for residential use, then the setback shall be 200 feet;

"(b) Side Yard: 20 feet; except if the lot abuts a property zoned for residential use, then the setback shall be 200 feet;

"(c) Rear Yard: 20 feet; except if the lot abuts a property zoned for residential use, then the setback shall be 200 feet;

"(4) Stream Setback: To permit better light, air, vision, stream pollution control, protect fish and wildlife areas and to preserve the natural scenic amenities and vistas along the streams, lakes or wetlands, the following setbacks shall apply:

"(a) All sewage disposal installations such as septic tanks and drain fields shall be set back from the mean high-water line or mark along all streams, lakes or wetlands a minimum of 100 feet, measured at right angles to the high-water line or mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the DEQ finds that a closer location will not endanger health, the Planning Director may permit the location of these facilities closer to the stream, lake or wetland, but in no case closer than 50 feet.

"(b) All structures, buildings or similar permanent fixtures shall be set back from the high-water line along all streams, lakes or wetlands a minimum of 100 feet measured at right angles to the high-water line or mark."

The energy facility will be located on a parcel containing approximately 17 acres, well above the minimum parcel size. The proposed parcel width is well above the 100 foot requirement. The following setbacks shown on Figure I-8 will be observed: front: 20 feet; side: 20 feet; rear: 20 feet. The parcel width and setbacks conform to UCDO 3.198(3).

Sewage disposal setbacks from streams do not apply to this proposal as J.R. Simplot's existing sanitary system will be utilized. The stream setback of 100 feet from the high water mark of the Umatilla River will be met. The distance from the facility to the Umatilla River is about 600 feet. The distance from the facility to the flood hazard area is about 500 feet.

#### *UCDO Chapter 4, "Supplementary Regulations"*

UCDO Chapter 4 contains detailed supplementary regulations regarding signs, off-street parking and loading, access and vision clearance, fences and riparian areas. The project will comply with these requirements, as follows:

**Signs:** An entrance sign to the facility will be placed near the entrance. The sign will conform to the requirements for a Type 9 sign found in UCDO Section 4.020. A sign near State Route 207 directing visitors to the plant will be placed on J.R. Simplot property near the Simplot access road off S.R. 207. The sign will conform to the requirements for a "Type 10" sign found in UCDO Section 4.020.

The signs will not be placed so as to interfere with visibility or effectiveness of any official traffic sign. No signal exists near the entrances where signs will be placed. The signs will be located in consultation with the County Public Works Department to ensure they will be a sufficient distance from the roadways so as not to interfere with driver vision. The signs will not be illuminated by flashing lights and will not include any animated part. Any illumination for the signs will be directed away from and not be reflected upon adjacent premises. The signs will be maintained in a neat, clean, and attractive condition by the Applicant.

**Parking and off-street loading:** About 30 paved parking spaces will be provided for visitors and the employees, of which there will be 18 on day shift. Approximately 50 unpaved parking spaces will be provided for contractor employees. Contractor employees will be on site only during major maintenance periods, which is for a several week period every 3 years.

Separate loading areas will be provided which will not interfere with parking.

The employee parking spaces will be adjacent to the administrative entrance to the main plant building. Contractor parking spaces will be within 500 feet of the main plant building. The paved parking area will be used for parking and passenger unloading only, and will not be used for storage of vehicles, materials, or trucks. The employee parking area will be paved with asphalt concrete, while the contractor parking area will be plated with clean gravel. The paved parking area will be bordered by a four inch high curb.

There are no residential zones or dwellings near the energy facility site. Parking area lighting will be designed to avoid undesirable glare or reflections.

**Access:** The location, construction, and design of the entrance onto the County road will be subject to the approval of the County public works department, hence the applicant will conform to County requirements. See Figure B-2 for the configuration of the proposed access road.

**Vision clearance:** The vision clearance at the intersection of the proposed access road with the County road will be 30 feet or greater.

**Fences:** The fence surrounding the plant site will be located so as to provide sufficient vision clearances. Fence construction will meet UBC requirements.

**Driveways:** The entrance road to the energy facility will be constructed and paved in accordance with County specifications for a distance of at least 25 feet back from the edge of the existing road.

#### *Water Supply Pipeline*

The proposed water supply pipeline route is entirely within the County's land use jurisdiction. The pipeline's construction may temporarily affect about 5 acres of land. This land is contained within approximately a 50 foot wide, 1.1 mile long corridor. Construction of the pipeline is expected to occur over 3 months. The pipeline will be covered and soils replaced. The pipeline will be partially constructed along Highway 207 (Butter Creek Road) and will not interfere with farm operations and practices. Although it will temporarily affect a limited amount of agricultural lands, these lands can be returned to agricultural production upon completion of the pipeline construction. The facility will not permanently remove agricultural lands from production. See Figure I-3 for pipeline routing and affected zones.

Current land uses within the impact area of the water supply pipeline in the HI zone are industrial (J.R. Simplot potato processing plant and Union Pacific Railroad), agriculture, transportation (State Route 207), and vacant land. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

*UCDO 3.190, "Heavy Industrial Zone (HI)"*

About 3/4 mile of the water supply pipeline route closest to the energy facility site is within the Heavy Industrial ("HI") zone. The pipeline is a "utility facility," which is a permitted use in the HI zone. UCDO Section 3.192(15). UCDO 3.190 and 3.192 provide as follows:

**(i) "3.190 DESCRIPTION AND PURPOSE:** The HI Heavy Industrial Zone is designed to provide for industrial uses where potential conflicts with adjacent land uses will have a minimal negative impact. It is designed to help the County expand and diversify its economic base. The HI Zone is appropriate for areas adjacent to major transportation facilities such as railways, major highways and waterways.

**"3.192 USES PERMITTED WITH A ZONING PERMIT:** In a HI Zone, the following uses are permitted upon the issuance of a zoning permit, pursuant to Section 1.050 and Section 3.197:

\* \* \* \* \*

"(15) Utility facility;"

The water supply pipeline is a utility facility and is a permitted use in the HI zone. UCDO 18.207 defines "utility facility" to include major trunk pipelines.

**(ii) "3.196(1)** A use is prohibited which has been declared a nuisance by statute, by action of Commissioners or by a court of competent jurisdiction:"

The pipeline as proposed will not pose a nuisance to adjacent uses. Current adjacent uses are industrial or agricultural. The pipeline will not have any scenic or noise impacts because it will be underground.

**(iii) "3.196(2)** A use is prohibited and shall be in violation of this Ordinance if it violates an environmental quality statute or regulation of the state or federal government;"

The facility will not violate environmental quality statutes or regulations as demonstrated elsewhere in this order.

**(iv) "3.196(3)** Materials shall be stored and grounds shall be maintained in such a manner which will not attract or aid in the propagation of insects or rodents or otherwise create a health hazard;"

**(v) "3.196(4)** Points of access from a public street or County road to properties in a HI Heavy Industrial Zone shall be located so as to minimize traffic congestion and direct traffic away from residential streets."

These standards are either met or do not apply to the pipeline since it will be entirely underground, and there will be no permanent roads associated with the pipeline.

*UCDO 3.010, "Exclusive Farm Use Zone (EFU)" and  
UCDO 3.600, "Future Industrial Overlay (FI)"*

A very short portion of the pipeline route, will be in the corner of an area with a comprehensive plan designation of North and South County Agricultural, zoned EFU with an overlay zone of Future Industrial (FI).

The pipeline is a conditional use in the EFU zone pursuant to UCDO 3.015.23 while the Future Industrial overlay zone identifies the land for industrial development should it become necessary. The water supply pipeline will not inhibit future industrial use.

Current land uses within the impact area of the water supply pipeline in the Exclusive Farm Use zone are agriculture and a feedlot. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

(i) "3.015 CONDITIONAL USES PERMITTED. In an EFU Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.015 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

\* \* \* \* \*

.23 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.011.4 and 3.011.5."

The water pipeline is a conditional use because it is a new utility facility that is necessary for public service.

(ii) "3.016 LIMITATIONS ON USE. The following limitations shall apply to all conditional uses in an EFU zone except as noted for Non-farm Dwellings in Section 3.017:

".1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

".2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use, nor interfere with other resource operations and practices on adjacent lands, and will not:

"2.a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"2.b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (An Applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)"

The pipeline as proposed will not decrease the amount of agricultural land since the pipeline will be underground. Agricultural uses may continue over the pipeline and on adjacent land after construction completion. The pipeline will not have any adverse effect on other resource uses of the land or adjacent land.

".3 Does not materially alter the stability of the overall land use pattern of the area."

The pipeline as proposed will not alter the stability of the overall land use pattern of the impact area since the pipeline will be underground.

".4 Is situated upon generally unsuitable land for production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract."

This standard does not apply to the pipeline since the production of crops and other resource activities may continue after construction completion.

".5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone."

Consistency with comprehensive plan policies is discussed below. The purpose of this zone, to preserve and maintain agricultural lands for farm use, will not be compromised because the pipeline will be buried so that agricultural use may continue.

".6 Alternative sites within acknowledged urban growth boundaries or "exception areas" were evaluated and found not to be acceptable."

There are no urban growth boundaries or exception areas within the corridor of any reasonable alternative route from the energy facility to the Regional Water Supply Project water treatment plant. An alternative route on the east side of Highway 207 would not materially affect the amount of agricultural land temporarily disturbed by the pipeline.

".7 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as a requirement for approval."

The Applicant will cooperate with any reasonable and necessary covenants required by the County.

*UCDO 3.170, "Agribusiness Zone (AB)"*

The majority of the land affected by the pipeline route as it parallels S.R. 207 (Butter Creek Road), about 1/2 mile, is zoned Agribusiness ("AB"). The pipeline is a conditional use in the AB zone. UCDO Section 3.176(14).

Current land uses within the impact area of the water supply pipeline in the Agribusiness zone are agribusinesses (farm implement dealership, product storage), agricultural, transportation (S.R. 207) and a dwelling. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

**(i) "3.176 CONDITIONAL USES PERMITTED.** In a AB Zone, the following uses and their accessory uses are permitted conditionally subject to the requirements of Sections 7.010 through 7.060:

\* \* \* \* \*

"(14) *Utility facility.*"

The water pipeline is a conditional use because it is a utility facility.

*UCDO 7.060, Conditional Use Criteria*

UCDO 7.060(55)(a)-(k) contain applicable substantive criteria for the water supply pipeline as a conditional uses in the EFU and AB zones.

(i) "(a) The facility is designed to minimize conflicts with scenic values and adjacent recreational residential, forest, grazing and farm uses as outlined in policies of the Comprehensive Plan;"

There are no recreational residential or forest uses adjacent to the proposed water supply pipeline right-of-way. The pipeline will not affect scenic values, since it will be entirely underground. Some agricultural uses are located adjacent to the proposed right-of-way. However, the pipeline avoids any conflict with grazing and farm uses by being located within or adjacent to existing rights-of-way and by being located underground.

(ii) "(b) The facility be of a size and design to help reduce noise or other detrimental effects when located adjacent to recreational residential dwellings;"

The water supply pipeline is not located adjacent to recreational resident dwellings.

(iii) "(c) The Hearings Officer may require that the facility be fenced and landscaped buffering and/or screening be provided;"

The pipeline will be underground. Thus, landscaping is not appropriate.

(iv) "(d) The facility does not materially alter the stability of the overall land use pattern of the area;"

The water supply pipeline will largely utilize existing transportation corridors. The pipeline will not result in any significant secondary effects (noise, traffic, population growth, etc.) that could alter the stability of the land use pattern of the impact area, since it will be located underground.

(v) "(e) The facility does not constitute an unnecessary fire hazard, and consideration be made for minimum fire safety measures which can include but are not limited to:

"(A) The site be maintained free of litter and debris;"

After completion of construction, the right-of-way will be restored to its prior condition, and maintenance will be the responsibility of the landowner.

(vi) "(B) Using non-combustible or fire retardant treated materials for structures and fencing;"

The pipeline will be underground, constructed of non-combustible materials.

(vii) "(C) Clearing site of all combustible materials within thirty (30) feet of structures;"

After construction, the right of way will be restored to its prior condition. There will be no above ground structures.

(viii) "(f) Major transmission tower, poles and similar gear shall consider locations within or adjacent to existing rights-of-way in order to take the least amount of timberland out of production and maintain the overall stability and land use patterns of the area, and construction methods consider minimum soil disturbance to maintain water quality;"

The water supply pipeline will largely utilize the existing road rights-of-way. Construction of the pipeline will require only temporary soil disturbance.

(ix) "(g) The facility shall adequately protect fish and wildlife resources by meeting minimum Oregon State Department of Forestry regulations;"

This regulation applies only on forest lands. No forest lands are involved.

(x) "(h) Access roads or easements be improved to a standard and follow grades recommended by the Public Works Director;"

No permanent access improvements will be required in conjunction with the water supply pipeline.

(xi) "(i) Road construction be consistent with the intent and purposes set forth in the Oregon Forest Practices Act or the 208 Water Quality Program to minimize soil disturbance and help maintain water quality;"

No permanent road construction will be required in conjunction with the water supply pipeline.

(xii) "(j) Land or construction clearing shall be kept to a minimum to minimize soil disturbances and help maintain water quality;"

Soil disturbance will be temporary, and limited to a minimal width along the pipeline to provide access and overburden stockpiling. Erosion and sedimentation control plans have been furnished in conjunction with the NPDES storm water permitting process.

(xiii) "(k) Complies with other conditions deemed necessary by the Hearings Officer;"

By letter dated June 5, 1995, the Umatilla County Board of Commissioners sent recommended conditions to ODOE. The Council concurs in those conditions and has incorporated them into this order. The Applicant will comply with final conditions imposed in the Site Certificate.

#### *Northwest Natural Gas Pipeline Connection*

The Northwest natural gas pipeline route from the energy facility site to the connection with the Northwest Pipeline main line is within the County's land use jurisdiction. A portion of the line is within the Stanfield UGA. The pipeline will temporarily affect about 35 acres of land during its construction. This land is contained within a 50 foot wide by 8.8 mile long corridor. Construction of the pipeline is expected to occur over a 3 month time frame. Once installed, the pipeline will be covered and soils replaced. The pipeline will mainly be constructed along existing transmission line and road rights-of-way, and will not permanently interfere with farm operations and practices. Although the pipeline's construction may temporarily affect a limited amount of agricultural lands, these lands can be returned to agricultural production upon completion of the pipeline construction.

Current land uses within the impact area of the natural gas pipeline in the Heavy Industrial zone are industrial (J.R. Simplot potato processing plant and Union Pacific Railroad), agriculture, and open land. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

#### *UCDO 3.190, "Heavy Industrial Zone (HI)"*

About one mile of the Northwest Natural Gas pipeline connection route closest to the energy facility site is on land zoned Heavy Industrial ("HI").

(i) "3.190 DESCRIPTION AND PURPOSE: The HI Heavy Industrial Zone is designed to provide for industrial uses where potential conflicts with adjacent land uses will have a minimal negative impact. It is designed to help the County expand and diversify its economic base. The HI Zone is appropriate for areas adjacent to major transportation facilities such as railways, major highways and waterways.

"3.192 USES PERMITTED WITH A ZONING PERMIT: In a HI Zone, the following uses are permitted upon the issuance of a zoning permit, pursuant to Section 1.050 and Section 3.197:

\* \* \* \* \*

"(15) Utility facility;"

The Northwest Natural Gas pipeline connection is a permitted use because it is a utility facility.

(ii) "3.196(1) A use is prohibited which has been declared a nuisance by statute, by action of Commissioners or by a court of competent jurisdiction:"

The pipeline as proposed will not pose a nuisance to adjacent uses. Current adjacent uses are industrial, agribusiness, and agricultural. The pipeline will not have any scenic or noise impacts because it will be underground.

(iii) "3.196(2) A use is prohibited and shall be in violation of this Ordinance if it violates an environmental quality statute or regulation of the state or federal government;"

The facility will be required by the site certificate to comply with environmental quality statues and regulations.

(iv) "3.196(3) Materials shall be stored and grounds shall be maintained in such a manner which will not attract or aid in the propagation of insects or rodents or otherwise create a health hazard;"

This standard will be met because the pipeline will be entirely underground.

(v) "3.196(4) Points of access from a public street or County road to properties in a HI Heavy Industrial Zone shall be located so as to minimize traffic congestion and direct traffic away from residential streets."

This standard does not apply to the pipeline since it will be entirely underground, and there will be no permanent roads associated with the pipeline.

*UCDO 3.010, "Exclusive Farm Use Zone (EFU)" and  
UCDO 3.600, "Future Industrial Overlay (FI) Zone"*

About two miles of the pipeline route is on land zoned Exclusive Farm Use (EFU) with an overlay zone of Future Industrial (FI). The pipeline is a conditional use in the

EFU zone pursuant to UCDO Section 3.015.23. The Future Industrial Overlay zone identifies the land for industrial development should it become necessary. The gas pipeline will not inhibit future industrial use.

Current land uses within the impact area of the natural gas pipeline in the Exclusive Farm Use - Future Industrial Overlay zone are agriculture, agribusiness, commercial, and open land. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

(i) "3.015 CONDITIONAL USES PERMITTED. In an EFU Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.015 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

\* \* \* \* \*

".23 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.011.4 and 3.011.5."

The natural gas pipeline is a conditional use because it is a utility facility.

(ii) "3.016 LIMITATIONS ON USE: The following limitations shall apply to all conditional uses in an EFU zone except as noted for Non-farm Dwellings in Section 3.017:

".1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

".2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use, nor interfere with other resource operations and practices on adjacent lands, and will not:"

"2.a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"2.b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

"(An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)"

The pipeline as proposed will not decrease the amount of agricultural land since the pipeline will be underground. Agricultural uses may continue over the pipeline and on

adjacent land after construction completion. The pipeline will not have any adverse effect on other resource uses of the land or adjacent land.

".3 Does not materially alter the stability of the overall land use pattern of the area."

The pipeline as proposed will not alter the stability of the overall land use pattern of the impact area since the pipeline will be underground.

".4 Is situated upon generally unsuitable land for production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract."

This standard does not apply to the pipeline since the production of crops and other resource activities, with the possible exception of aggregate production, may continue after construction completion. The pipeline does not pass through any areas identified in the Comprehensive Plan as Aggregate Resource.

".5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone."

Consistency with comprehensive plan policies is discussed below. The purpose of this zone, to preserve and maintain agricultural lands for farm use, will not be compromised because the pipeline will be buried so that agricultural use may continue.

".6 Alternative sites within acknowledged urban growth boundaries or "exception areas" were evaluated and found not to be acceptable."

An alternative route on the north side of Feedville Road rather than the south side would include one mile of land within the urban growth boundary of the City of Hermiston. However, this route would not materially affect the amount of agricultural land temporarily disturbed and would affect a greater number of commercial and residential uses.

".7 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as a requirement for approval."

The Applicant will cooperate with any reasonable and necessary covenants required by the County.

*UCDO 3.170, "Agribusiness Zone (AB)"*

About 800 feet of the pipeline route adjacent to Feedville Road is on land zoned Agribusiness ("AB"). The pipeline is a conditional use in the AB zone pursuant to UCDO Section 3.176(14).

Current land uses within the impact area of the natural gas pipeline in the Agribusiness zone are agriculture and agribusinesses. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will

be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

(i) "3.176 **CONDITIONAL USES PERMITTED**. In a AB Zone, the following uses and their accessory uses are permitted conditionally subject to the requirements of Sections 7.010 through 7.060:

"(14) Utility facility."

The natural gas pipeline is a utility facility.

**UCDO 3.015, "Exclusive Farm Use Zone 160-Acre Minimum (EFU-160)" and UCDO 3.050, "Exclusive Farm Use Zone 40-Acre Minimum (EFU-40)"**

About 3 1/2 miles of the pipeline route is on land zoned either EFU or EFU-40. The construction of new utility facilities is a conditional use in both EFU zones.

Current land uses within the impact area of the natural gas pipeline in the Exclusive Farm Use zones are open land, agricultural, and one dwelling. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline, except at the valve station at the interconnection of the proposed pipeline with the Northwest Pipelines main line. This interconnection will be near a County road, with only occasional vehicular access required.

(i) "**3.015 CONDITIONAL USES PERMITTED**. In an EFU Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.015 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

\* \* \* \* \*

".23 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.011.4 and 3.011.5.

"**3.055 CONDITIONAL USES PERMITTED**. In an EFU-40 Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.056 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

\* \* \* \* \*

".21 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.051.4 and 3.051.5."

Limitations on Use regulations for the EFU and EFU-40 zones are substantially identical. UCDO Section 3.016, "Limitations on Uses" for the EFU zone is discussed above and the responses apply equally to this portion of the natural gas pipeline.

*UCDO 7.060, Conditional Use Criteria*

UCDO 7.060(55)(a)-(k) contain applicable substantive criteria for conditional uses. The natural gas pipeline is a conditional use in the EFU and AB zones. This section applies these criteria to the natural gas pipeline:

**(i)** "(a) The facility is designed to minimize conflicts with scenic values and adjacent recreational residential, forest, grazing and farm uses as outlined in policies of the Comprehensive Plan;"

There are no recreational residential or forest uses adjacent to the proposed natural gas pipeline right-of-way. The pipeline will not affect scenic values, since it will be entirely underground. Some agricultural uses are located adjacent to the proposed right-of-way. However, the pipeline avoids any conflict with grazing and farm uses by being located within or adjacent to existing road or railroad corridors and by being located underground.

**(ii)** "(b) The facility be of a size and design to help reduce noise or other detrimental effects when located adjacent to recreational residential dwellings;"

The natural gas pipeline is not located adjacent to recreational resident dwellings.

**(iii)** "(c) The Hearings Officer may require that the facility be fenced and landscaped buffering and/or screening be provided;"

The pipeline will be underground. Thus, landscaping is not appropriate.

**(iv)** "(d) The facility does not materially alter the stability of the overall land use pattern of the area;"

The natural gas pipeline will largely utilize existing transportation corridors. The pipeline will not result in any significant secondary effect (noise, traffic, population growth, etc.) that could alter the stability of the land use pattern of the impact area, since it will be located underground.

**(v)** "(e) The facility does not constitute an unnecessary fire hazard, and consideration be made for minimum fire safety measures which can include but are not limited to:

"(A) The site be maintained free of litter and debris;"

After completion of construction, the right-of-way will be restored to its prior use, and maintenance will be the responsibility of the landowner.

(vi) "(B) Using non-combustible or fire retardant treated materials for structures and fencing;"

The pipeline will be underground, constructed of non-combustible materials.

(vii) "(C) Clearing site of all combustible materials within thirty (30) feet of structures;"

Following construction, the right of way will be restored to its prior use. There will be no above ground structures.

(viii) "(f) Major transmission tower, poles and similar gear shall consider locations within or adjacent to existing rights-of-way in order to take the least amount of timberland out of production and maintain the overall stability and land use patterns of the area, and construction methods consider minimum soil disturbance to maintain water quality;"

The natural gas pipeline will largely utilize the existing road and railroad corridors. Construction of the pipeline will require only temporary soil disturbance.

(ix) "(g) The facility shall adequately protect fish and wildlife resources by meeting minimum Oregon State Department of Forestry regulations;"

This regulation applies only on forest lands. No forest lands are involved.

(x) "(h) Access roads or easements be improved to a standard and follow grades recommended by the Public Works Director;"

No permanent access improvements will be required in conjunction with the natural gas pipeline.

(xi) "(i) Road construction be consistent with the intent and purposes set forth in the Oregon Forest Practices Act or the 208 Water Quality Program to minimize soil disturbance and help maintain water quality;"

No permanent road construction will be required in conjunction with the natural gas pipeline.

(xii) "(j) Land or construction clearing shall be kept to a minimum to minimize soil disturbances and help maintain water quality;"

Soil disturbance will be temporary, and limited to a minimal width along the pipeline to provide access and overburden stockpiling. Erosion and sedimentation control plans have been furnished in conjunction with the NPDES storm water permitting process.

(xiii) "(k) Complies with other conditions deemed necessary by the Hearings Officer;"

By letter dated June 5, 1995, the Umatilla County Board of Commissioners sent recommended conditions to ODOE. The Council concurs in those conditions and has incorporated them into this order.

*PGT Natural Gas Pipeline Connection*

The PGT natural gas pipeline connection route from the energy facility site to the PGT main gas pipeline is partially within the County's land use jurisdiction with a portion within the Stanfield UGA.

The pipeline may temporarily remove about 2 acres of land from agricultural use, depending on the season in which construction actually occurs. About 10 acres of land are contained within a corridor approximately 50 feet wide and 4.1 miles long. Construction of the pipeline is expected to occur over a 3 to 4 month time frame. Once installed, the pipeline will be covered and soils replaced. The pipeline will be mostly constructed along existing Union Pacific Railway right-of-way, and will not interfere with farm operations and practices. Although it may temporarily affect a limited amount of agricultural lands, these lands can be returned to agricultural production upon completion of the pipeline construction.

Current land uses within the impact area of the natural gas pipeline in the Heavy Industrial zone are industrial (J.R. Simplot potato processing plant and Union Pacific Railroad), agriculture, and open land. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

*UCDO 3.192, "Heavy Industrial Zone (HI)"*

About 2 miles of the gas pipeline route closest to the energy facility site is on land zoned Heavy Industrial ("HI"). The pipeline is a "utility facility," which is a permitted use in the HI zone. UCDO 3.192(15).

(i) "3.190 DESCRIPTION AND PURPOSE: The HI Heavy Industrial Zone is designed to provide for industrial uses where potential conflicts with adjacent land uses will have a minimal negative impact. It is designed to help the County expand and diversify its economic base. The HI Zone is appropriate for areas adjacent to major transportation facilities such as railways, major highways and waterways.

"3.192 USES PERMITTED WITH A ZONING PERMIT: In a HI Zone, the following uses are permitted upon the issuance of a zoning permit, pursuant to Section 1.050 and Section 3.197:

\* \* \* \* \*

"(15) Utility facility;"

The PGT natural gas pipeline connection is a permitted use in the HI zone.

**(ii) "3.196 LIMITATIONS ON USE:**

"(1) A use is prohibited which has been declared a nuisance by statute, by action of Commissioners or by a court of competent jurisdiction:"

The pipeline as proposed will not pose a nuisance to adjacent uses. Current adjacent uses are industrial or agricultural. The pipeline will not have any scenic or noise impacts because it will be underground.

**(iii) "3.196(2) A use is prohibited and shall be in violation of this Ordinance if it violates an environmental quality statute or regulation of the state or federal government;"**

The facility must comply with environmental quality statutes and regulations imposed by the state and federal government.

**(iv) "3.196(3) Materials shall be stored and grounds shall be maintained in such a manner which will not attract or aid in the propagation of insects or rodents or otherwise create a health hazard;"**

This standard will be met because the pipeline will be entirely underground.

**(v) "3.196(4) Points of access from a public street or County road to properties in a HI Heavy Industrial Zone shall be located so as to minimize traffic congestion and direct traffic away from residential streets."**

This standard does not apply to the pipeline since there will be no permanent roads associated with the pipeline.

**UCDO 3.010, "Exclusive Farm Use Zone 160-Acre Minimum (EFU)"**

About 1 1/2 miles of the gas pipeline route is on land zoned EFU. The pipeline right-of-way consists only of a lateral to connect the energy facility site to the PGT main line, most of which is along existing UPRR right-of-way. At the interconnection of the lateral pipeline to the PGT main line there will be a valve station which will consist of several above-ground, unenclosed valve operators.

Current land uses within the impact area of the natural gas pipeline in the Exclusive Farm Use zone are agriculture, aggregate mining, and open land. The pipeline is compatible with these current uses. The pipeline will not pose a nuisance to adjacent uses because it will be underground, with no noise, odor, or visual impacts. There will be no permanent access requirements for maintenance of the pipeline.

**(i) "3.015 CONDITIONAL USES PERMITTED.** In an EFU Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.015 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

\* \* \* \* \*

".23 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.011.4 and 3.011.5."

The pipeline is a conditional use in the EFU zone.

**(ii) "3.016 LIMITATIONS ON USE:** The following limitations shall apply to all conditional uses in an EFU zone except as noted for Non-farm Dwellings in Section 3.017:

".1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

".2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use, nor interfere with other resource operations and practices on adjacent lands, and will not:

".a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

".b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

"(An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)"

The pipeline as proposed will not decrease the amount of agricultural land since the pipeline will be underground with the exception of a valve station. The valve station will occupy less than 1/10 acre, and will be located on land not currently cultivated. Agricultural uses may continue over the pipeline and on adjacent land after construction completion. The pipeline will not have any adverse effect on other resource uses of the land or adjacent land.

**(iii) ".3 Does not materially alter the stability of the overall land use pattern of the area."**

The pipeline as proposed will not alter the stability of the overall land use pattern of the impact area since the pipeline will be underground.

**(iv) ".4 Is situated upon generally unsuitable land for production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract."**

This standard does not apply to the pipeline since the production of crops and other resource activities may continue after construction completion.

(v) ".5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone."

Consistency with comprehensive plan policies is discussed below. The purpose of this zone, to preserve and maintain agricultural lands for farm use, will not be compromised because the pipeline will be buried so that agricultural use may continue.

(vi) ".6 Alternative sites within acknowledged urban growth boundaries or "exception areas" were evaluated and found not to be acceptable."

The route is within an existing road and railroad corridor, and utilizes the urban growth boundary of the City of Stanfield where possible.

(vii) ".7 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as a requirement for approval."

The Applicant will cooperate with any reasonable and necessary covenants required by the County.

*UCDO 3.500, "Flood Hazard Subdistrict (F-H)"*

Very short portions of the PGT gas pipeline connection, depending upon the final alignment, will be within the Umatilla River flood plain, in areas with little submergence during a 100 year flood. The Flood Hazard Subdistrict is defined by Federal Emergency Management Agency ("FEMA") Flood Insurance Maps.

(i) "3.500 PURPOSE: The purpose of the Flood Hazard Subdistrict is to promote and protect the public health, safety, and general welfare and to minimize flood losses by provisions designed to:

"(1) Restrict or prohibit uses which are dangerous to health, safety, or property in times of flood or which cause increased flood heights or velocities;

"(2) Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

"(3) Protect individuals from buying lands which are unsuited for some purposes because of flood hazard."

Land uses within the flood hazard subdistrict are restricted by UCDO Section 3.504, limitations on all uses, Section 3.506, Limitations on structures, and Section 3.507, Limitations on storage of materials and equipment. UCDO Section 3.506 applies to above-ground structures. There are no above-ground structures associated with the natural gas pipeline within the floodway, therefore that section does not apply. Compliance with UCDO Sections 3.504 and 3.507 is demonstrated below.

(ii) "**3.504 LIMITATIONS ON ALL USES:** No structure (temporary or permanent), fill, including fill for roads and levees, deposit, obstruction, storage materials

or equipment, or other uses shall be permitted in a Flood Hazard Area which, acting alone or in combination with existing or future uses, increases flood heights. In any case, no new structures shall be allowed in a designated floodway. The County shall notify adjacent communities and state coordinating agencies prior to any alteration or relocation of a water course, and submit evidence of such notification to the Federal Insurance Administration, and require that maintenance is provided within the altered or relocated portion of said water course so that flood carrying capacity is not diminished."

No structure or fill will be placed in the floodway or floodplain. The ground surface will be returned to the original contour after construction. Therefore, the flood carrying capacity of the floodway will not be diminished.

**(iii) "3.507 LIMITATIONS ON STORAGE OF MATERIAL AND EQUIPMENT:**

"(1) The storage or processing of materials that are buoyant, flammable, explosive or that could be injurious to human, animal or plant life in time of flooding is prohibited in a Flood Hazard Area.

"(2) Storage of other materials or equipment may be allowed in a Flood Hazard Area if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area with the limited time available after flood warning."

No materials or equipment will be stored in the floodway. Material or equipment storage in the pipeline corridor within the floodplain will be during the temporary construction period only. Material, consisting of stockpiled pipe, and equipment, consisting of mobile construction equipment, will be readily moveable after a flood warning.

*UCDO 7.060, Conditional Use Criteria*

UCDO 7.060(55)(a)-(k) contain applicable substantive criteria for conditional uses. The natural gas pipeline is conditional use in the EFU and AB zones. This section applies these criteria to the pipeline:

(i) "(a) The facility is designed to minimize conflicts with scenic values and adjacent recreational residential, forest, grazing and farm uses as outlined in policies of the Comprehensive Plan;"

There are no recreational residential or forest uses adjacent to the proposed natural gas pipeline right-of-way. The pipeline will not affect scenic values, since it will be entirely underground. Some agricultural uses are located adjacent to the proposed right-of-way. However, the pipeline avoids any conflict with grazing and farm uses by being located within or adjacent to existing road or railroad corridors and by being located underground.

(ii) "(b) The facility be of a size and design to help reduce noise or other detrimental effects when located adjacent to recreational residential dwellings;"

The natural gas pipeline is not located adjacent to recreational resident dwellings.

**(iii)** "(c) The Hearings Officer may require that the facility be fenced and landscaped buffering and/or screening be provided;"

The pipeline will be underground. Thus, landscaping is not appropriate.

**(iv)** "(d) The facility does not materially alter the stability of the overall land use pattern of the area;"

The natural gas pipeline will largely utilize existing transportation corridors. The pipeline will not result in any significant secondary effect (noise, traffic, population growth, etc.) that could alter the stability of the land use pattern of the impact area, since it will be located underground.

**(v)** "(e) The facility does not constitute an unnecessary fire hazard, and consideration be made for minimum fire safety measures which can include but are not limited to:"

"(A) The site be maintained free of litter and debris;"

After completion of construction, the right-of-way will be restored to its former use, and maintenance will be the responsibility of the landowner.

**(vi)** "(B) Using non-combustible or fire retardant treated materials for structures and fencing;"

The pipeline will be underground, constructed of non-combustible materials.

**(vii)** "(C) Clearing site of all combustible materials within thirty (30) feet of structures;"

After completion of construction, the right of way will be restored to its former use. There will be no above ground structures.

**(viii)** "(f) Major transmission tower, poles and similar gear shall consider locations within or adjacent to existing rights-of-way in order to take the least amount of timberland out of production and maintain the overall stability and land use patterns of the area, and construction methods consider minimum soil disturbance to maintain water quality;"

The natural gas pipeline will largely utilize the existing road and railroad corridors. Construction of the pipeline will require only temporary soil disturbance.

**(ix)** "(g) The facility shall adequately protect fish and wildlife resources by meeting minimum Oregon State Department of Forestry regulations;"

This regulation applies only on forest lands. No forest lands are involved.

(x) "(h) Access roads or easements be improved to a standard and follow grades recommended by the Public Works Director;"

No permanent access improvements will be required in conjunction with the natural gas pipeline.

(xi) "(i) Road construction be consistent with the intent and purposes set forth in the Oregon Forest Practices Act or the 208 Water Quality Program to minimize soil disturbance and help maintain water quality;"

No permanent road construction will be required in conjunction with the natural gas pipeline.

(xii) "(j) Land or construction clearing shall be kept to a minimum to minimize soil disturbances and help maintain water quality;"

Soil disturbance will be temporary, and limited to a minimal width along the pipeline to provide access and overburden stockpiling. Erosion and sedimentation control plans are required and will be furnished in conjunction with the NPDES storm water permitting process.

(xiii) "(k) Complies with other conditions deemed necessary by the Hearings Officer;"

By letter dated June 5, 1995, the Umatilla County Board of Commissioners sent recommended conditions to ODOE. The Council concurs in those conditions and has incorporated them into this order.

The General Provisions Regarding Conditional Uses for utility facilities (UCDO 7.060(55)) are satisfied for the natural gas pipeline from the energy facility site to the connection with the PGT main line, in that no above-ground characteristics of the land will be permanently modified, existing and contemplated land uses will continue, and no permanent road construction is required.

*500 kV Electrical Transmission Line  
from the Energy Facility Site to McNary Substation*

The majority of the 500 kV electrical transmission line route will occupy lands under the County's land use jurisdiction. Portions of the route are within the Stanfield, Hermiston, and Umatilla UGA and a short portion is within the city limits of the City of Umatilla. This subsection describes how the transmission line is consistent with applicable County land use regulations. Compliance with City regulations is addressed in a later section of this order.

The transmission line will be a conventional single pole construction, with a single, three phase circuit. Portions of the transmission line will be built over existing distribution and transmission circuits and, in those cases, the circuits will be combined onto the new transmission pole structures.

Construction of the transmission line may temporarily remove about 15 acres of land from agricultural use and production, depending upon the season in which the erection of poles actually takes place. If pole erection can be scheduled outside the growing season, impacts will be limited to the area occupied by the pole foundation. Construction of the transmission line is expected to take about 12 months.

Current land uses within the impact area of the 500 kV electrical transmission line in the Heavy Industrial zone are industrial (J.R. Simplot potato processing plant and Union Pacific Railroad), agriculture, agribusiness, and open land. The transmission line is compatible with these current uses. The transmission line will utilize the existing road and transmission line rights-of-way within this zone.

The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land.

Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as vehicles, industrial plants, and trains, would mask the occurrence of transmission line noise, which tends to occur mainly in foul weather.

The visual impact of the transmission line is minimized by the use of single pole steel structures. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimize the footprint of the structure and minimize obstructions.

Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

*UCDO 3.190, "Heavy Industrial Zone (HI)"*

The 500 kV transmission line route is on land zoned HI for a distance of about one mile. The 500 kV transmission line is a "utility facility," which is a permitted use in the HI zone. UCDO Section 3.192(15).

(i) "3.190 DESCRIPTION AND PURPOSE: The HI Heavy Industrial Zone is designed to provide for industrial uses where potential conflicts with adjacent land uses will have a minimal negative impact. It is designed to help the County expand and diversify its economic base. The HI Zone is appropriate for areas adjacent to major transportation facilities such as railways, major highways and waterways.

"3.192 USES PERMITTED WITH A ZONING PERMIT: In a HI Zone, the following uses are permitted upon the issuance of a zoning permit, pursuant to Section 1.050 and Section 3.197:

*"(15) Utility facility;"*

The 500 kV electrical transmission line is a new utility facility.

**(ii)** "3.196 LIMITATIONS ON USE:

"(1) A use is prohibited which has been declared a nuisance by statute, by action of Commissioners or by a court of competent jurisdiction:"

The transmission line as proposed will not pose a nuisance to adjacent uses. Current adjacent uses are industrial, agribusiness, commercial, or agricultural. The proposed use has not been declared a nuisance by statute, by action of Commissioners, or by court action.

**(iii)** "3.196(2) A use is prohibited and shall be in violation of this Ordinance if it violates an environmental quality statute or regulation of the state or federal government;"

The project must comply with environmental quality statutes and regulations as a condition of the site certificate.

**(iv)** "3.196(3) Materials shall be stored and grounds shall be maintained in such a manner which will not attract or aid in the propagation of insects or rodents or otherwise create a health hazard;"

This standard will be met because the transmission line will include no stored materials and no enclosed structures. The steel transmission poles will not aid in the propagation of insects or rodents, nor otherwise create a health hazard.

**(v)** "3.196(4) Points of access from a public street or County road to properties in a HI Heavy Industrial Zone shall be located so as to minimize traffic congestion and direct traffic away from residential streets."

This standard does not apply to the transmission line since there will be no permanent roads associated with the transmission line.

*UCDO 3.170, "Agribusiness Zone (AB)"*

About 800 feet of the transmission line route adjacent to Feedville Road is on land zoned Agribusiness ("AB").

Current land uses within the impact area of the 500 kV electrical transmission line in the Agribusiness zone are agriculture and agribusinesses. The transmission line is compatible with these current uses. The transmission line will utilize the existing road and transmission line rights-of-way within this zone. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as vehicles and trains, would mask the occurrence of transmission line noise, which occurs mainly in foul weather. The visual impact of the transmission line is minimized by the use of single pole steel structures. The transmission line minimizes conflicts with adjacent farming uses by utilizing single

steel pole structures which minimizes the footprint of the structure and minimizes the occupation of land. Normal access to the transmission line for inspection will be occasional and will be along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

(i) "3.176 CONDITIONAL USES PERMITTED. In a AB Zone, the following uses and their accessory uses are permitted conditionally subject to the requirements of Sections 7.010 through 7.060:

\* \* \* \* \*

"(14) Utility facility."

The 500 kV electrical transmission line is a conditional use in the AB zone.

*UCDO 3.010, "Exclusive Farm Use Zone (EFU)"  
and UCDO 3.600, "Future Industrial Overlay Zone (FI)"*

The 500 kV electrical transmission line route is on land zoned Exclusive Farm Use ("EFU") with an overlay zone of Future Industrial ("FI") for about 2 miles. The transmission line route is on land zoned EFU without an overlay zone for a distance of about 2 1/4 miles.

(i) "3.015 CONDITIONAL USES PERMITTED. In an EFU Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.015 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

\* \* \* \* \*

".23 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.011.4 and 3.011.5."

The 500 kV transmission line is a conditional use in the EFU zone.

(ii) "3.016 LIMITATIONS ON USE: The following limitations shall apply to all conditional uses in an EFU zone except as noted for Non-farm Dwellings in Section 3.017:

".1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

".2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use, nor interfere with other resource operations and practices on adjacent lands, and will not:

"a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)"

The transmission line as proposed will not significantly decrease the amount of agricultural land since the transmission line will utilize single steel poles spaced at 600 to 800 feet. This configuration minimizes the footprint on the land. Agricultural uses may continue adjacent to and under the transmission line after construction completion. The transmission line will not have any significant adverse effect on other resource uses of the land or adjacent land.

(iii) ".3 Does not materially alter the stability of the overall land use pattern of the area."

The transmission line as proposed will not alter the stability of the overall land use pattern of the impact area since the transmission line will allow farm uses to continue.

(iv) ".4 Is situated upon generally unsuitable land for production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract."

The production of crops and other resource activities may continue after construction completion. There is no reasonable alternative route which would avoid the minimal impact to farm production.

(v) ".5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone."

Consistency with comprehensive plan policies is discussed below. The purpose of this zone, to preserve and maintain agricultural lands for farm use, will not be compromised because the transmission line will allow agricultural use to continue.

(vi) ".6 Alternative sites within acknowledged urban growth boundaries or "exception areas" were evaluated and found not to be acceptable."

The route is within existing road and transmission line corridors where possible, and utilizes the urban growth boundary of the Cities of Stanfield, Hermiston and Umatilla where possible. Relocating the line to also utilize the southern edge of the City of Hermiston urban growth boundary adjacent to Feedville Road would create two road crossings and the accompanying hazards without significantly reducing impact to agricultural land.

(vii) ".7 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as a requirement for approval."

The Applicant will cooperate with any reasonable and necessary covenants required by the County.

*UCDO 3.050, "Exclusive Farm Use Zone - 40 Acre Minimum (EFU-40)"*

The transmission line route is on land zoned EFU-40 (Exclusive Farm Use - 40 acre minimum) for a distance of about 1 1/2 miles.

Current land uses within the impact area of the 500 kV electrical transmission line in the Exclusive Farm Use zone are agriculture and dwellings. The transmission line is compatible with these current uses. The transmission line will utilize the existing transmission line right-of-way within this zone.

The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. The visual impact of the transmission line is minimized by the use of single pole steel structures, and by the fact the transmission line is adjacent to an existing high voltage transmission line. The transmission line minimizes conflicts with adjacent farming uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes the occupation of land. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

(i) "3.055 CONDITIONAL USES PERMITTED. In an EFU-40 Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.056 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

\* \* \* \* \*

".21 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.051.4 and 3.051.5."

The 500 kV electrical transmission line is a conditional use in the EFU-40 zone.

(ii) "3.056 LIMITATIONS ON CONDITIONAL USES. The following limitations shall apply to all conditional uses in an EFU-40 zone except as noted for Non-farm Dwellings in Section 3.057:

".1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, the comprehensive plan and this ordinance and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

"2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use, nor interfere with other resource operations and practices on adjacent lands, and will not:

"2.a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"2.b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use(e).

"(An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)"

Limitations on Conditional Uses applies to the 500 kV transmission line in the EFU-40 zone. UCDO Section 3.056. The 500 kV electrical transmission line as proposed will not significantly decrease the amount of agricultural land since the transmission line will utilize single steel poles spaced at 600 to 800 feet. This configuration minimizes the footprint on the land. Agricultural uses may continue adjacent to and under the transmission line after construction completion. The transmission line will not have any significant adverse effect on other resource uses of the land or adjacent land.

(iii) "3.056.3 Does not materially alter the stability of the overall land use pattern of the area."

The 500 kV electrical transmission line as proposed will not alter the stability of the overall land use pattern of the impact area since the transmission line will allow farm uses to continue.

(iv) "3.056.4 Is situated upon generally unsuitable land for production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract."

The production of crops and other resource activities may continue after construction completion. There is no reasonable alternative route which would avoid the minimal impact to farm production.

(v) "3.056.5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone."

Consistency with applicable comprehensive plan policies is discussed below. The purpose of this zone, to preserve and maintain agricultural lands for farm use, will not be compromised because the 500 kV electrical transmission line will allow agricultural use to continue.

(vi) "3.056.6 Alternative sites within acknowledged urban growth boundaries or "exception areas" were evaluated and found not to be acceptable."

The 500 kV electrical transmission line route is within existing road and transmission line corridors where possible, and utilizes the urban growth boundary of the Cities of Stanfield and Umatilla where possible.

(viii) "3.056.8 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as a requirement for approval."

The Applicant will cooperate with any reasonable and necessary covenants required by the County.

*UCDO 3.530, "Hermiston Airport Hazard Overlay Zone (AH-H)"*

The transmission line route passes through the Hermiston Airport Hazard Overlay Zone, crossing the extended centerline of the main runway about 2500 feet from the east end of the runway.

The current land use within the impact area of the 500 kV electrical transmission line in the AH-H overlay zone is entirely agriculture. The transmission line is compatible with this current use as described above in the primary zone, EFU.

(i) "3.530 DESCRIPTION AND PURPOSE. The Hermiston Airport Hazard Overlay Zone is designed to protect the Hermiston Airport from obstruction to safe aviation. It creates and establishes special overlay zones which include the land lying with the approach zones, transition zones, horizontal zones, and conical zones as they apply to the Hermiston Airport. Such zones are shown on the Hermiston airport Hazard Zoning Map consisting of one sheet, prepared by the Umatilla County Planning Department, and dated September 24, 1975, which is hereby adopted by reference."

The UCDO describes height limitations within certain zones. UCDO Section 3.532. The UCDO height limitations indicate a maximum transmission structure height in the area of about 70 feet. The existing transmission structures are approximately 70 feet in height. The proposed transmission line will be 125 feet east of the existing BPA Roundup-McNary 230 kV transmission line, and therefore 125 feet further from the end of the runway than the existing transmission line. The proposed transmission line structure heights within restricted zone will be limited to a height similar to the existing BPA transmission line. A Notice of Proposed Construction or Alteration for the 500 kV transmission line has been approved by the Federal Aviation Administration. By limiting the proposed transmission line structures to the height of the existing structures, there will be no net increase in hazard to approaching aircraft, and the requirements of UCDO Section 3.532 will be met.

(ii) "3.534 USE RESTRICTIONS: Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to:

"(1) Create an electrical interference with navigational signals or radio communication between the airport and aircraft;"

The transmission line will be designed to meet radio frequency interference limits.

(iii) "3.534(2) Make it difficult for pilots to distinguish between airport lights and others;

"(3) Result in glare in the eyes of pilots using the airport;"

No lighting is planned for the structures. Any warning lighting required to be installed will be designed in consultation with the Federal Aviation Administration and the Oregon Department of Transportation - Aviation Division.

(iv) "3.534(4) Impair visibility in the vicinity of the airport;

The transmission line structures and conductors are comparatively small in dimension and will not impair visibility.

(v) "3.534(5) Otherwise in any way create a hazard or endanger the landing, takeoff, or maneuvering of aircraft intending to use the airport."

Due to the fact that the proposed transmission line structures will be no closer to the approach zone or transition zones than the existing transmission line structures, and the proposed structures will be further from the runway than the existing structures, the proposed transmission line will not create any additional hazard, and therefore will not endanger aircraft intending to use the airport.

UCDO Section 3.538 requires the applicant to obtain a permit from Umatilla County for the structures proposed within the Airport Hazard Overlay Zone. An application for the permit will be made upon receipt of a Site Certificate.

*UCDO 3.020, "Exclusive Farm Use Zone - 20 Acre Minimum (EFU-20)"*

The 500 kV electrical transmission line route is on land zoned Exclusive Farm Use - 20 acre minimum ("EFU-20") for a distance of about 1/4 mile.

Current land uses within the impact area of the 500 kV electrical transmission line in the Exclusive Farm Use zone, 20 acre minimum, are agriculture and open land. The transmission line is compatible with these current uses. The transmission line will utilize the existing transmission line right-of-way within this zone. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. The visual impact of the transmission line is minimized by the use of single pole steel structures, and by the fact that it will be located adjacent to an existing high-voltage transmission line. The transmission line minimizes conflicts with adjacent farming uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes the occupation of land. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

(i) "3.025 CONDITIONAL USES PERMITTED. In an EFU-20 Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.026 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050:

".21 Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.021.4 and 3.021.5."

The 500 kV electrical transmission line is a conditional use in the EFU-20 zone.

(ii) "3.026 LIMITATIONS ON CONDITIONAL USES. The following limitations shall apply to all conditional uses in an EFU-20 zone except as noted for Non-farm Dwellings in Section 3.027:

".1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, the comprehensive plan and this ordinance and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

".2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use, nor interfere with other resource operations and practices on adjacent lands, and will not:

"2.a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"2.b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use(e).

"(An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)"

The 500 kV electrical transmission line as proposed will not significantly decrease the amount of agricultural land since the transmission line will utilize single steel poles spaced at 600 to 800 feet. This configuration minimizes the footprint on the land. Agricultural uses may continue adjacent to an under the transmission line after construction completion. The transmission line will not have any significant adverse effect on other resource uses of the land or adjacent land.

(iii) "3.026.3 Does not materially alter the stability of the overall land use pattern of the area."

The 500 kV electrical transmission line as proposed will not alter the stability of the overall land use pattern of the impact area since the transmission line will allow farm uses to continue.

(iv) "3.026.4 Is situated upon generally unsuitable land for production of farm crops and livestock, considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract."

The production of crops and other resource activities may continue after construction completion. There is no reasonable alternative route which would avoid the minimal impact to farm production.

(v) "3.026.5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone."

Consistency with comprehensive plan policies is discussed below. The purpose of this zone, to preserve and maintain agricultural lands for farm use, will not be compromised because the 500 kV electrical transmission line will allow agricultural use to continue.

(vi) "3.026.6 Alternative sites within acknowledged urban growth boundaries or "exceptions areas" were evaluated and found not to be acceptable."

The route is within existing road and transmission line corridors where possible, and utilizes the urban growth boundary of the Cities of Stanfield, Hermiston and Umatilla where possible.

(viii) "3.026.8 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as a requirement for approval."

The Applicant will cooperate with any reasonable and necessary covenants required by the County.

*UCDO 3.090, "Rural Residential Zone (RR-2)"*

The 500 kV transmission line route is on land zoned RR-2 (Rural Residential) for a distance of about 1 1/4 mile.

Current land uses within the impact area of the 500 kV electrical transmission line in the Rural Residential zone, 2 acre minimum, are dwellings and open land. The transmission line is compatible with these current uses. The transmission line will utilize the existing transmission line right-of-way within this zone. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. The visual impact of the transmission line is minimized by the use of single pole steel structures, and by the fact that it will be located adjacent to an existing high-voltage transmission line. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes obstructions. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

(i) "3.096 CONDITIONAL USES PERMITTED: In a RR-2 Zone, the following uses and their accessory uses are permitted conditionally subject to the requirements of Section 7.010 through 7.060:

\* \* \* \* \*

"(8) Utility facility;"

The 500 kV electrical transmission line is a conditional use in the RR-2 zone.

(ii) "3.098 DIMENSIONAL STANDARDS: In a RR-2 Zone, the following standards shall apply:

"(1) Minimum Lot Area:

\* \* \* \* \*

"(c) Conditional Uses: Minimum lot sizes for all conditional uses shall be determined by the Hearings Officer and/or DEQ considering the protection of public health, the size needed to accommodate the use and its accessory uses, and the objective to minimize potential conflicts with adjacent land uses;"

The 500 kV electrical transmission line will be located on existing private easements or ownerships which are 125 feet wide, which are within an existing 250 foot wide Bonneville Power Administration transmission line easement. The western 125 feet of the 250 foot wide easement is occupied by a BPA transmission line, while the eastern 125 feet would be occupied by the proposed transmission line. The easement would extend 62.5 feet from the center of the proposed line. Clearance guidelines according to the Rural Electric Association and the National Electric Safety Code would dictate an easement of about 50 feet perpendicular to the transmission line centerline. The existing easement width is greater than established guidelines, and therefore adequate to accommodate the transmission line.

(iii) "3.098(3) Lot Coverage and Building Heights

\* \* \* \* \*

"(b) Building Height: No building or structure shall be erected or enlarged to exceed two (2) stories or more than twenty-five (25) feet in height, except split-level buildings, which may be increased in height to thirty (30) feet."

The 500 kV electrical transmission line will be greater than 25 feet in height for safety reasons. Accordingly, a variance is necessary for the structure height of 127 feet. UCDO 8.030 outlines the criteria under which the County may grant a variance. UCDO 8.030 requires that a variance meet only one of four circumstances to be granted.

(iv) "8.030 CIRCUMSTANCES FOR GRANTING A VARIANCE: A variance may be granted under some or all of the following circumstances:

"(1) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, an result from lot size or shape, topography, or other circumstances over which the owners of property since enactment of this Ordinance have had no control;"

The planned route for the 500 kV electrical transmission line is an existing transmission line easement, half of which is already occupied by a high-voltage transmission line exceeding the structure height limitation. The presence of the transmission line corridor and vacant transmission line right-of-way is an exceptional circumstance which is unique to the properties affected in this zone.

"(2) The variance is necessary for the preservation of a property right of the applicant substantially the same as possessed by the owner of other property in the same zone or vicinity;"

The variance is necessary for the preservation of the use of the transmission line right-of-way, which existed prior to the enactment of the ordinance. The existing transmission line was placed into service May 25, 1956.

"(3) The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any County plan or policy;"

The variance would not be materially detrimental to the purposes of the zoning ordinance. The transmission line corridor exists to consolidate the location of transmission lines, thereby reducing the land use impact of multiple transmission lines. The variance would not be materially detrimental to the property in the vicinity, as it would allow a use which already exists on the property. Consistency with the objectives of the County plans and policies is discussed later in this section.

"(4) The variance requested is the minimum variance which would alleviate the hardship."

The variance requested is minimal, in that a similar variance applies to the adjacent, existing transmission line. The proposed transmission line structures will be greater in height than the existing transmission line. This is considered desirable in this zone because the proposed transmission structure design results in lower electrical and magnetic fields at ground level, and imposes fewer restrictions on land use within the right-of-way.

Conclusion:

All of the four criteria for a variance are satisfied. Only one criteria must be satisfied. The variance is justified.

*UCDO 3.100, "Rural Residential Zone (RR-4)"*

The transmission line route is on land zoned RR-4 (Rural Residential) for a distance of about 1/4 mile.

Current land uses within the impact area of the 500 kV electrical transmission line in the Rural Residential zone, 4 acre minimum, are dwellings and open land. The transmission line is compatible with these current uses. The transmission line will utilize the existing transmission line right-of-way within this zone. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. The visual impact of the transmission line is minimized by the use of single pole steel structures, and by the fact that it will be located adjacent to an existing high-voltage transmission line. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes obstructions. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

(i) "3.106 CONDITIONAL USES PERMITTED. In a RR-4 Zone, the following uses and their accessory uses are permitted conditionally subject to the requirements of Section 7.010 through 7.060:

\* \* \* \* \*

"(8) Utility facility;"

The 500 kV electrical transmission line is a conditional use in the RR-4 zone.

(ii) "3.108 DIMENSIONAL STANDARDS: In a RR-4 Zone, the following standards shall apply:

(1) Minimum Lot Area:

\* \* \* \* \*

(c) Conditional Uses: Minimum lot sizes for all conditional uses shall be determined by the Hearings Officer and/or DEQ considering the protection of public health, the size needed to accommodate the use and its accessory use and the objective to minimize potential conflicts with adjacent land uses;"

The transmission line will be located on existing private easements or ownerships which are 125 feet wide, which are within an existing 250 foot wide Bonneville Power Administration transmission line easement. The western 125 feet of the 250 foot wide easement is occupied by a BPA transmission line, while the eastern 125 feet would be occupied by the proposed transmission line. The easement would extend 62.5 feet from the center of the proposed line. Clearance guidelines according to the Rural Electric

Association and the National Electric Safety Code would dictate an easement of about 50 feet perpendicular to the transmission line centerline. The existing easement width is greater than established guidelines, and therefore adequate to accommodate the transmission line.

**(iii) "3.108(3) Lot Coverage and Building Heights:**

"(b) Building Height: No building or structure shall be erected or enlarged to exceed two (2) stories or more than twenty-five (25) feet in height, except split-level buildings, which may be increased in height to thirty (30) feet."

The proposed transmission line will be greater than 25 feet in height, for safety reasons. Accordingly, a variance will be sought for the structure height of 127 feet. UCDO Section 8.030 outlines the circumstances under which the county may grant a variance. It is set out in section E.7 of this appendix, followed by a discussion of compliance. That discussion is incorporated by reference here.

*UCDO 3.180, "Light Industrial Zone (LI)"*

The transmission line route is on land zoned Light Industrial ("LI") for a distance of about 1/3 mile.

Current land uses within the impact area of the 500 kV electrical transmission line in the Light Industrial zone are distribution warehouse, aggregate mining, and open land. The transmission line is compatible with these current uses. The transmission line will utilize the existing transmission line right-of-way within this zone. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as vehicles, would mask the occurrence of transmission line noise, which occurs mainly in foul weather. The visual impact of the transmission line is minimized by the use of single pole steel structures, and by the fact that it will be located adjacent to an existing high-voltage transmission line. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes obstructions. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

An electrical transmission line is a utility facility and is a conditional use in the LI Zone. UCDO 3.184(16). A conditional use must comply with the requirements of UCDO 3.185(1)-(3). Additionally, a commercial, business or industrial use must comply with the requirements of UCDO 3.186(1)-(3).

**(i) "3.185 GENERAL CRITERIA FOR ALL CONDITIONAL USES:** The following general criteria shall be used to review all conditional uses listed in the LI Zone, notwithstanding any other criteria listed in this Ordinance for a particular use;

"(1) The use will be compatible with other uses allowed in a LI Zone:"

The 500 kV electrical transmission line will be adjacent to an existing high-voltage transmission line in this zone, and will not introduce any new elements or uses to the zone. The transmission line is compatible with the uses listed in the LI zone.

(ii) "3.185(2) The use will be in conformance with policies listed in the text of the Comprehensive Plan;"

Conformance with applicable County comprehensive plan policies is discussed later in this section.

(iii) "3.185(3) The use would not have an adverse impact on existing industrial uses in that it would not be incompatible with the noise, dust, vibrations and odors that may emanate from or be caused by the existing adjacent industrial uses."

The proposed transmission line would not be affected by noise, dust, vibrations or odors that may emanate from or be caused by adjacent industrial uses.

Limitations on use are listed in UCDO Section 3.186 and are discussed below:

(iv) "3.186 LIMITATIONS ON USE:

"(1) All business, commercial and industrial activities, and storage allowed in an LI Light Industrial Zone shall be conducted wholly within a building or shall be screened from view from adjacent public roads or surrounding properties in farm, residential or commercial zones, unless the entire activity is conducted more than 500 feet from said surrounding property or road;"

There will be no activities or storage associated with the transmission line that need to be conducted within a building or that require screening.

(v) "3.186(2) All off-street loading areas shall be screened from view if adjoining properties are in a residential zone;"

There will be no off-street loading areas associated with the transmission line.

(vi) "3.186(3) All noise, vibration, dust, odor, smoke, appearance or other objectionable factors involved in any activity shall comply with appropriate state and federal regulations."

The proposed transmission line will comply with appropriate state and federal regulations in all factors.

### **230 kV Electrical Transmission Line (new construction)**

The transmission line right-of-way for the new 230 kV electrical transmission line will be located lands under the jurisdiction of the County. This section describes how the transmission line complies with applicable zoning regulations and comprehensive plan policies of Umatilla County. The transmission line will be of conventional single steel

pole construction. Construction of the transmission line is expected to take about 12 months.

*UCDO 3.192 "Heavy Industrial Zone (HI)"*

About one mile of the 230 kV electrical transmission line route closest to the energy facility is on land zoned HI (Heavy Industrial). The transmission line is a "utility facility," which is a permitted use in the HI zone. UCDO Section 3.192(15).

Current land uses within the impact area of the 230 kV electrical transmission line in the Heavy Industrial zone are transportation (S.R. 207), a day care, agriculture, industrial (J.R. Simplot potato processing plant), and open land. The transmission line is compatible with these current uses. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as vehicles, industrial plants, and trains, would mask the occurrence of transmission line noise, which occurs mainly in foul weather. The visual impact of the transmission line is minimized by the use of single pole steel structures. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes obstructions. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed. The day care facility is 375 feet from the transmission line, where EMF levels will be negligible. (<0.02 kV/m electrical field and <2.0 mg magnetic field)

**(i) "3.190 DESCRIPTION AND PURPOSE:** The HI Heavy Industrial Zone is designed to provide for industrial uses where potential conflicts with adjacent land uses will have a minimal negative impact. It is designed to help the County expand and diversify its economic base. The HI Zone is appropriate for areas adjacent to major transportation facilities such as railways, major highways and waterways.

"3.192 USES PERMITTED WITH A ZONING PERMIT: In a HI Zone, the following uses are permitted upon the issuance of a zoning permit, pursuant to Section 1.050 and Section 3.197:

\* \* \* \* \*

*(15) Utility facility;"*

The 230 kV electrical transmission line is a permitted use in the HI zone.

**(ii) "3.196 LIMITATIONS ON USE:**

"(1) A use is prohibited which has been declared a nuisance by statute, by action of Commissioners or by a court of competent jurisdiction:"

The transmission line as proposed will not pose a nuisance to adjacent uses. Current adjacent uses are industrial, agribusiness, or agricultural. The proposed use has not been declared a nuisance by statute, by action of Commissioners, or by court action.

(iii) "3.196(2) A use is prohibited and shall be in violation of this Ordinance if it violates an environmental quality statute or regulation of the state or federal government;"

The facility must comply with environmental quality statutes and regulations.

(iv) "3.196(3) Materials shall be stored and grounds shall be maintained in such a manner which will not attract or aid in the propagation of insects or rodents or otherwise create a health hazard;"

This standard will be met because the transmission line will include no stored materials and no enclosed structures. The steel transmission poles will not aid in the propagation of insects or rodents, nor otherwise create a health hazard.

(v) "3.196(4) Points of access from a public street or County road to properties in a HI Heavy Industrial Zone shall be located so as to minimize traffic congestion and direct traffic away from residential streets."

This standard does not apply to the transmission line since there will be no permanent roads associated with the transmission line.

*UCDO 3.170, "Agribusiness Zone (AB)"*

About 1/2 mile of the transmission line route is on land adjacent to S.R. 207 (Butter Creek road) zoned AB (Agribusiness). The 230 kV electrical transmission line is a conditional use in the AB zone UCDO Section 3.176(14).

Current land uses within the impact area of the 230 kV electrical transmission line in the Agribusiness zone are transportation (S.R. 207), a dwelling, agribusiness, agriculture, and a planned water treatment plant. The transmission line is compatible with these current uses. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as vehicles, industrial plants, and trains, would mask the occurrence of transmission line noise, which occurs mainly in foul weather. The visual impact of the transmission line is minimized by the use of single pole steel structures. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes obstructions. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

*UCDO 3.010, "Exclusive Farm Use Zone 160-Acre Minimum (EFU)"  
and UCDO 3.600, "Future Industrial Overlay Zone (FI)"*

The 230 kV transmission line route is on land zoned Exclusive Farm Use (EFU) with an overlay zone of Future Industrial (FI) for a distance of about 2 1/2 miles. The transmission line is a conditional use in the EFU zone (UCDO Section 3.015.23) while the Future Industrial overlay zone identifies the land for industrial development should it become necessary.

Current land uses within the impact area of the 230 kV electrical transmission line in the Exclusive Farm Use zone are agriculture and dwellings. The transmission line is compatible with these current uses. The transmission line will utilize existing road and distribution line rights-of-way within this zone. The transmission will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as vehicles and trains, would mask the occurrence of transmission line noise, which occurs mainly in foul weather. The visual impact of the transmission line is minimized by the use of single pole steel structures and by the fact that the new transmission line will be combined with an existing distribution line. The transmission line minimizes conflicts with adjacent farming uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes the occupation of land. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

Limitations on Use (UCDO Section 3.016) applies to the 230 kV transmission line. These regulations are discussed below.

(i) "3.015 CONDITIONAL USES PERMITTED: In an EFU Zone the following uses may be permitted conditionally via Administrative Review (Section 16.045) subject to the requirements of Section 3.015 and Sections 7.010 through 7.060. Standards for each of the conditional uses listed below are contained in Section 7.060. A zoning permit is required following the approval of a conditional use pursuant to Section 1.050.

\* \* \* \* \*

(23) Construction of new utility facilities, including transmission lines and towers, necessary for public service, excepting as provided in Section 3.011.4 and 3.011.5."

The 230 kV electrical transmission line in the EFU Zone is a new utility facility, and is therefore a conditional use. Sections 3.011.4 and 3.011.5 pertain to local feeders and minor betterment of utility facilities, and do not apply in this case.

(ii) "3.016 LIMITATIONS ON USE: The following limitations shall apply to all conditional uses in an EFU zone except as noted for Non-farm Dwellings in Section 3.017:

".1 Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

".2 Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use, nor interfere with other resource operations and practices on adjacent lands, and will not:

".a Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

".b Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

"(An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions that are clear and objective.)"

The transmission line as proposed will not significantly decrease the amount of agricultural land since the transmission line will utilize single steel poles spaced at 600 to 800 feet. This configuration minimizes the footprint on the land. Agricultural uses may continue adjacent to and under the transmission line after construction completion. The transmission line will not have any significant adverse effect on other resource uses of the land or adjacent land.

(iii) "3.106.3 Does not materially alter the stability of the overall land use pattern of the area."

The transmission line as proposed will not alter the stability of the overall land use pattern of the impact area since the transmission line will allow farm uses to continue.

(iv) "3.016.4 Is situated upon generally unsuitable land for production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract."

The production of crops and other resource activities may continue after construction completion. There is no reasonable alternative route which would avoid the minimal impact to farm production.

(v) "3.016.5 Is consistent with agricultural and other resource policies in the comprehensive plan and the purpose of this zone."

Consistency with comprehensive plan policies is discussed below. The purpose of this zone, to preserve and maintain agricultural lands for farm use, will not be compromised because the transmission line will allow agricultural use to continue.

(vi) "3.016.6 Alternative sites within acknowledged urban growth boundaries or "exception areas" were evaluated and found not to be acceptable."

The route is within an existing road, railroad, and transmission line corridors where possible. There is no reasonable alternative route within an acknowledged urban growth boundary.

(vii) "3.016.7 A Covenant Not to Sue, as contained in Appendix 1, with regard to normal farming practices, shall be recorded as a requirement for approval."

The Applicant will cooperate with any reasonable and necessary covenants required by the County.

*UCDO 3.180, "Light Industrial Zone (LI)"*

The transmission line route is on land zoned LI (Light Industrial) for a distance of about 1/4 mile.

Current land uses within the impact area of the 230 kV electrical transmission line in the Light Industrial zone are industrial (Union Pacific railroad and Lamb-Weston potato processing plant) and agricultural. The transmission line is compatible with these current uses. The transmission line will utilize the existing railroad right-of-way within this zone. The transmission will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as industrial plants and trains, would mask the occurrence of transmission line noise, which occurs mainly in foul weather. The visual impact of the transmission line is minimized by the use of single pole steel structures. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes the occupation of land. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

(i) "3.184 CONDITIONAL USES PERMITTED: In a LI Zone, the following uses and their accessory uses are permitted, conditionally, subject to the requirements of Section 7.010 through 7.060, and upon the issuance of a zoning permit:

\* \* \* \* \*

(16) *Utility facility;*"

The 230 kV electrical transmission line is a conditional use in the LI zone.

(ii) "3.185 GENERAL CRITERIA FOR ALL CONDITIONAL USES: The following general criteria shall be used to review all conditional uses listed in the LI Zone, notwithstanding any other criteria listed in this Ordinance for a particular use;

"(1) The use will be compatible with other uses allowed in a LI Zone:"

The transmission line is compatible with the uses listed in the LI zone. The proposed use will not introduce any new uses or elements to the impact area, and will be compatible with surrounding properties within the impact area.

(iii) "3.185(2) The use will be in conformance with policies listed in the text of the Comprehensive Plan;"

Conformance with applicable County comprehensive plan policies is discussed later in this section.

(iv) "3.185(3) The use would not have an adverse impact on existing industrial uses in that it would not be incompatible with the noise, dust, vibrations and odors that may emanate from or be caused by the existing adjacent industrial uses."

The proposed transmission line would not be affected by noise, dust, vibrations or odors that may emanate from or be caused by adjacent industrial uses.

(v) "3.186 LIMITATIONS ON USE:

"(1) All business, commercial and industrial activities, and storage allowed in an LI Light Industrial Zone shall be conducted wholly within a building or shall be screened from view from adjacent public roads or surrounding properties in farm, residential or commercial zones, unless the entire activity is conducted more than 500 feet from said surrounding property or road;"

There will be no activities or storage associated with the transmission line that need to be conducted within a building or that require screening. Further, the transmission line is not a business, commercial or industrial activity that can be screened from view or conducted wholly within a building.

(vi) "3.186(2) All off-street loading areas shall be screened from view if adjoining properties are in a residential zone;"

There will be no off-street loading areas associated with the transmission line.

(vii) "3.186(3) All noise, vibration, dust, odor, smoke, appearance or other objectionable factors involved in any activity shall comply with appropriate state and federal regulations."

The proposed transmission line must comply with state and federal regulations in all factors.

*Conversion of the Existing 115/230 kV Electrical Transmission Line to a 230/230 kV Electrical Transmission Line*

An existing 115/230 kV electrical transmission line runs from the Westland Substation to the McNary substation. The line will be upgraded with new insulators and conductors to a 230/230 kV line. The upgraded line will be in the County's Light

Industrial ("LI"), Exclusive Farm Use ("EFU"), Exclusive Farm Use - 40 ("EFU-40"), and Tourist Commercial ("TC") zoning districts.

*UCDO 3.010, "Exclusive Farm Use (EFU)"  
and UCDO 3.050 "Exclusive Farm Use - 40 (EFU-40) Zone"*

The EFU and EFU-40 zones allow "minor betterment" of existing transmission lines" as a use permitted outright. UCDO Sections 3.011.5 and 3.051.5. "Minor betterment" is not defined in the UCDO, but we find that the term "minor betterment" allows minor improvements to an existing line utility line.

The conversion of the 115/230 kV line to a 230/230 kV line is a minor betterment because it improves the capacity and performance of an existing transmission line. The improvement adds only new insulators and conductors. No additional poles or circuits will be added. Additional right-of-way is not required to accommodate the improvement. The improvement will not create any additional impacts on adjacent land. The change to the line is, therefore, a minor betterment.

*UCDO 3.180, "Light Industrial Zone (LI)"*

An electrical transmission line is a utility facility and is a conditional use in the LI Zone. UCDO 3.184(16). A conditional use must comply with the requirements of UCDO 3.185(1)-(3). Additionally, a commercial, business or industrial use must comply with the requirements of UCDO 3.186(1)-(3).

The discussion in Part (F)(4) above for the new 230 kV line in the (LI) Zone addresses the applicable conditional use criteria for conversion of the existing 230 kV electrical transmission line. That discussion is incorporated herein by reference.

UCDO 3.164, "Tourist Commercial (TC)" Zone

The TC District permits utility facilities as a conditional use. Umatilla County Development Ordinance (the "UCDO") Section 3.164. A conditional use is subject to the requirement of UCDO Sections 7.010 through 7.060.

The criteria for a conditional use are found at UCDO Section 7.060(20) (a)-(j).

(a) UCDO Section 7.060(20) (a):

"Facility is designed to minimize conflicts with scenic values and adjacent forests, farming and recreational uses as outlined in policies of the comprehensive plan;"

An existing 115/230kV electrical transmission line will be upgraded with new insulators and connectors to a 230/230kV electrical transmission line. The upgrading will not cause additional conflicts with scenic values and adjacent forest, farming and recreational uses. The line is in place and will not require new power or poles. This criteria is satisfied.

(b) UCDO Section 7.060(20) (b):

"Facility will be of a size and design to help reduce noise or other detrimental effects when located adjacent to farms, forest and grazing dwellings(s), or a recreational residential zone."

Current land uses within the area adjacent to the 115/230kV electrical transmission line to be converted included industrial uses, semi-agricultural uses and vacant land. Because the conversion anticipates only additional insulators and connectors and no additional poles, the facility would be of a size and design that helps reduce noise or detrimental effects when located adjacent to a farm, forest and grazing dwelling(s), or recreational residential zone. No recreational residential is located adjacent to this line.

(c) UCDO Section 7.060(20) (c):

"The Facility when located adjacent to dwelling(s) or a mountain recreational or forest residential zone in landscaping, buffering and/or screening be provided."

Fencing is not required because the line will not be located adjacent to dwelling(s) or a mountain recreational or forest residential zone.

(d) UCDO Section 7.060(20) (d):

"The Facility does not constitute an unnecessary fire hazard and consideration be made of minimum fire safety measures if located in a forest area, which can include but is not limited to:

(A) The site be maintained free of litter and debris;

(B) Use of non-combustible or fire retardant treated materials for structures and fencing;

(C) The removal of all combustible materials within thirty (30) feet of structure"

This site is not located within a forest area so this criterion is inapplicable.

(e) UCDO Section 7.060(20) (e):

"Major transmission towers, poles and similar gear shall consider locations within or adjacent to existing rights-of-way in order to take the least amount of timber land out of production and maintain the overall stability of land use patterns of the area, and construction methods consider minimum impacts to maintain water quality."

This site is not located within timber land. Nevertheless, the applicant has located the line in the existing right-of-way.

(f) UCDO Section 7.060(20) (f):

"The Facility shall not alter accepted timber management operations on adjacent forest lands."

No adjacent forest land is located near this line.

(g) UCDO Section 7.060(20) (g):

"Sitee shall adequately protect fish and wildlife resources by meeting minimum Oregon State Department of Forestry regulations."

No fish and wildlife resources are located adjacent to this line.

(h) UCDO Section 7.060(20) (h):

"Access roads or easements be improved to a standard and follow grades recommended by the public works director."

Existing access road will be utilized.

(i) UCDO Section 7.060(20) (i):

"Road construction be consistent with the intent and purposes set forth in the Oregon Forest Practices Act or the 208 Water Quality Program to minimize soil disturbance and help maintain water quality."

No road construction is anticipated.

(j) UCDO Section 7.060(20) (j):

"Complies with other conditions deemed necessary by the hearings officer."

No other conditions have been imposed or suggested by the county.

#### *Applicable Substantive Umatilla County Comprehensive Plan Policies*

The Applicable Umatilla County Comprehensive Plan is the September 6, 1984 plan. The Umatilla County Comprehensive Plan policies are applied outside of incorporated cities and the UGA's. Within the UGA's, the County implements relevant City comprehensive plan policies incorporated by ordinance into the County's plan. This section addresses the applicable County comprehensive plan policies that apply to the project's components outside city boundaries and the UGA's.

#### *Applicability of the Comprehensive Plan*

The five facility components within the County are subject to applicable comprehensive plan policies for the following reasons:

1. Water Pipeline

The water pipeline is located in the EFU district and is a conditional use in that district. UCDO 3.016(5) requires that the conditional use be consistent with agricultural and other resource policies in the comprehensive plan. It is also a conditional use in the AB zone. UCDO 3.176(55)(a) requires the conditional use to minimize conflicts with scenic values and adjacent recreational, residential, forest, grazing and farm uses as outlined in comprehensive plan policies.

2. Northwest Natural Gas Pipeline Connection

The pipeline is a conditional use in the EFU and AB zones. Pursuant to UCDO 3.016(5), the pipeline must be consistent with agricultural and other resource policies in the comprehensive plan.

3. PGT Natural Gas Pipeline Connection

The pipeline is a conditional use in the EFU zone and is subject to the analysis applicable to the water pipeline.

4. 500 kV Electrical Transmission Line

The line is a conditional use in the AB, EFU, EFU-20, RR-2 and RR-4 zones. The conditional use is subject to the analysis above.

5. 230 kV Electrical Transmission Line

The line is located in the AB, EFU and LI zones. It is a conditional use in each of those zones. In the AB and EFU zones, it is subject to the analysis above. In the LI zone, it is subject to Section 3.185(2), which requires conformance with the policies listed in the comprehensive plan.

*Applicable Policies for the Water Pipeline,  
Northwest Natural Gas Pipeline Connection,  
500 kV Electrical Transmission Line, and  
230 kV Electrical Transmission Line in the AB and EFU Zones*

These uses are conditional uses in the Agribusiness (AB) zone. UCDO 3.176(14)(a)-(b). Conditional uses are subject to the standard in UCDO Section 7.060(20)(a):

"The facility is designed to minimize conflicts with scenic values and adjacent recreational residential, forest, grazing and farm uses as outlined in policies of the comprehensive plan."

The relevant comprehensive plan policies are found in the Agricultural, Grazing/Forest, Open Space, Scenic and Historic Areas and Natural Resources, and Rural Residential/Multiple Use Housing elements of the County comprehensive plan.

*a. Applicable Agricultural Policies*

**Policy 1**, "Umatilla County will protect, with exclusive farm use zoning pursuant to ORS 215, lands meeting the definition of farm land in this plan and designated as agricultural on the comprehensive plan map."

The water pipeline, gas pipeline connection to the Northwest Pipeline and electrical transmission lines are all located within the AB and EFU zones, implementing ORS Chapter 215. They are conditional uses in that zone, requiring conformance with various approval criteria. The pipeline will not adversely impact agricultural uses because they will be buried deep enough to continue to allow normal agricultural practices. The only impact may be occasional maintenance.

The transmission lines, once constructed, will allow normal agricultural practices beneath them. This policy is satisfied.

**Policy 8**, "The County shall require appropriate procedures/standards/policies be met in the comprehensive plan and development ordinance when reviewing non-farm uses for compatibility with agricultural."

This policy is satisfied through the conditional use process and the AB and EFU zones. The facilities associated with the energy facility will generally utilize existing rights-of-way in order to avoid impacting agricultural uses. The water and gas pipelines will be buried at a depth to avoid interfering with agricultural uses. This policy is satisfied.

*b. Applicable Grazing/Forest Policies*

None of the facilities associated with this project are located in areas designated grazing/forest. Therefore, none of the grazing/forest comprehensive plan policies are applicable.

*c. Open Space, Scenic and Historic Areas, and Natural Resources  
Applicable*

**Policy 1(a)**, "The County shall maintain this resource by limiting development mainly to existing built up areas."

This policy requires the maintenance of open space. These facilities are not located within any zones designated "open space." They are located within agricultural zones and their location is required in order to provide the necessary service. This policy is satisfied.

**Policy 8(b)**, "Development and timber practices in and adjacent to significant and other wetlands shall be allowed only when such practices are in accordance with the rules and regulations of the forest practices act."

None of the facilities associated with this project that pass through the County's AB and EFU zones are located in or near significant wetlands as identified in the County's comprehensive plan.

**Policy 20(a)**, "Developments of potentially high visual impacts shall address and mitigate adverse visual effects in their permit application, as outlined in the development ordinance standards."

Assuming that there are outstanding scenic views and pleasant vistas affected by the transmission lines, the transmission lines' construction will address and mitigate adverse visual affects. The 500 kV electrical transmission line consists of a single circuit, single pole transmission line supported by single steel poles 125-160 feet tall, spaced at 600-800 foot intervals. The 230 kV electrical transmission line consists of single steel poles 95-100 feet tall, at the same intervals. The impacts are mitigated to the extent possible with attractive pole design and large pole spacing. This policy is satisfied.

**Policy 20(b)**, "It is the position of the County that the comprehensive plan designations and zoning already limit scenic and aesthetic conflicts by limiting land uses or by mitigating conflicts through ordinance criteria. However, to address any specific, potential conflicts, the County shall ensure special consideration of the following when reviewing a proposed change of land use. \*\*\*."

"Change of land use" is not defined in the County comprehensive plan. We find that it means to change the land use district. Because no zoning change is requested, this policy is inapplicable.

*d. Applicable Air, Land and Water Quality Policies*

None of the ten policies are applicable to these facilities.

*e. Applicable Natural Hazards Policies*

None of the four policies are applicable because the facilities are not located in areas designated or recognized as hazard areas.

*6. Residential/Multiple Use Housing Policies*

None of the fourteen policies contained in this element of the comprehensive plan are applicable.

*Applicable Policies for the 500 kV Electrical Transmission Line  
in the RR-2 and RR-4 Zones*

Utility facilities in these districts are subject to the same standards as utility facilities in the AB and EFU zones. The discussion of comprehensive plan policies above for the linear facilities in those zones is incorporated herein.

*Applicable Policies for the 230 kV Electrical Transmission Line*

230 kV line is located in the LI, "Light Industrial" zone. Utility facilities are conditional uses in the LI zone. UCDO Section 3.184(16). They are subject to the policies discussed above for the linear facilities in the AB and EFU zones. That discussion is incorporated herein. Additionally, UCDO Section 3.185(2) requires that "the [conditional] use will be in conformance with policies listed in the text of the comprehensive plan." The discussion of those policies above is incorporated herein. In addition, the following comprehensive plan policies are applicable.

7. *Economy of the County*

Policy 1, "Encourage diversification within existing and potential resource-based industries."

The proposed facility is a resource-based industry because it provides process steam for the Simplot potato processing Plant. The facility will be a new source of employment and tax revenue in an economic sector that is not highly developed in Umatilla County.

The proposed project will diversify the existing resource-based industries by generating approximately 24 full-time, year-round jobs, thereby helping to offset seasonal unemployment/underemployment without displacing agricultural employment. Most of the jobs created by the project will have salaries above the "family wage" level of the area.

**Policy 7**, "Cooperate with development-oriented entities in promoting advantageous aspects of the area."

The proposed project promotes the area's comparative advantages, availability of labor, reasonably priced land, access to energy and gas transmission lines, and excellent transportation access. This policy is satisfied.

**Policy 8**, "Evaluate economic development proposals upon the following: will the proposal [with respect to water]: (a) increase or decrease available supplies; (b) improve or degrade qualities; (c) balance withdrawal with recharge rates; (d) be a beneficial use; (e) have sufficient quantities available to meet needs of the proposed project and other existing and reasonably anticipated needs; and (f) reduce other opportunities and, if so, will the loss be compensated by other equal opportunities?"

This policy concerns the availability of water for future economic growth in the County. (a) The source of water for the Hermiston Power Project will be the Columbia River through the Port of Umatilla - City of Hermiston Regional Water Supply Project under permit 49497, with a priority date of January 19, 1979. The permit allows the Port and City to withdraw up to 155 cfs (69,564 gallons per minute) of water from the Columbia River. On April 29, 1994, the U.S. Army Corps of Engineers approved the issuance of a Corps 404 permit for construction and operation of a pump station at river mile 293 just above McNary Dam. The Corp's environmental assessment concluded there was no significant impact. See also Exhibit O. (b) The project will neither improve nor

degrade water quality. The water source is the Columbia River, where the withdrawal will not affect the overall quality of the Columbia River. The wastewater will be disposed of by applying it to crops. This process is the subject of a Water Pollution Control Facilities permit to ensure no significant adverse impact to surface or groundwater. (c) There will be an unavoidable imbalance in withdrawal and recharge rates, as the majority of the water used in the plant is lost to evaporation in the cooling tower. (d) The use of the water by the proposed project is consistent with the stated purposes of the Regional Water Supply Project, and is similar to uses by the initial subscribers to the Regional Water Supply Project. (e) and (f) The project will use about three percent of the authorized withdrawal rate of the Regional Water Supply Project, allowing ample future use by others. This policy is satisfied.

**Policy 10**, "Encourage industry and manufacturing diversification while preserving the more productive agricultural land."

The current use of the site to be occupied by the facility is agricultural. The County has determined, through its land use planning process, that the ultimate uses of land may be industrial.

The energy facility site land is composed of soils of the Quincy group (14 acres) and soils of the Adkins group (3 acres). The Adkins soils are considered prime soils if they are irrigated, which they are at the energy facility site. The existence of soils classified as prime establishes the portion of the energy facility site occupied by the Adkins soils as high-value farmland. However, the three acres of prime soil is isolated from other farmable tracts of prime soil by surrounding existing industrial uses. Due to the small acreage of prime soils, adjacent existing industrial use, isolation from residential use, and proximity to transportation facilities, the County has zoned the area for Heavy Industrial use.

8. *Air, Land and Water Quality Policies*

**Policy 7**, "Consider cumulative noise impacts and compatibility of future developments, including the adoption of appropriate mitigating requirements and plan updates."

The energy facility will comply with state noise regulations. Surrounding land uses are predominantly industrial and agricultural and are not noise-sensitive as defined by the Department of Environmental Quality ("DEQ") administrative rule. Exhibit BB discusses anticipated noise impacts and counter-measures. This policy is satisfied.

9. *Public Facilities and Services*

**Policy 1**, "The County will control land development in a timely, orderly, and efficient manner by requiring that public facilities and services be consistent with the established levels of rural needs. Those needs are identified as:

"(a) Fire protection shall be provided consistent with Policies 8, 9, 10.

"(b) Police protection shall be provided consistent with Policy 7.

"(c) Surface water drainage-roadside drainages shall be maintained and plans for drainage shall be required in multiple-use areas.

"(d) Roads shall be maintained or improved to standards adopted by the County road department, which are consistent with nationally-accepted standards to correlate traffic to desired road conditions."

The only portion of the facility which will require public facilities and services is the energy facility itself. Policies 8, 9 and 10 concern fire protection. The site is located in a rural fire protection district. The energy facility will have its own fire water supply and fire suppression system, and will not rely solely on rural fire protection services.

**Policy 7** concerns police protection and is inapplicable to this application.

Surface water drainage shall be maintained where appropriate.

Finally, the project will generate little permanent traffic, which should not create adverse impact on County roads due to traffic generated by this project.

**Policy 19**, "Where feasible, all utility lines and facilities shall be located on or adjacent to existing public or private rights-of-way so as to avoid dividing existing farm or forest units; and transmission lines should be located within existing corridors as much as possible."

The 230 kV line is located within the light industrial zone. The line runs from the energy facility site to the Westland substation. For the portion of the line in or adjacent to the light industrial district, it is located adjacent to existing public roads. The line's route is difficult to relocate because of the necessity to connect the energy facility site with the Westland substation. However, it follows existing public rights-of-way for much of its 3.6 mile path. This policy is satisfied because the transmission line is located within an existing corridor as much as possible.

10. *Transportation Policies*

**Policy 20**, "The County will review right-of-way acquisitions and proposals for transmission lines and pipelines so as to minimize adverse impacts on the community."

The proposed 230 kV electrical transmission line from the energy facility site to the Westland substation is located along existing public rights-of-way for much of the 3.6 mile path. It is located so as to minimize adverse impacts on the community as much as possible. Location of the transmission line in the LI district is likely to result in less adverse impacts on the community than in other districts. Moreover, the additional conditional use criteria described elsewhere ensure that the transmission line's adverse impacts on the community will be minimized as this policy requires.

11. *Open Space, Scenic and Historic Areas, and Natural Resources Policies*

There are no inventoried significant open space, scenic, historic or natural resource areas in the vicinity of the facility or that portion of the water supply pipeline, natural gas pipeline or electrical transmission line within the LI zoning district. There is no wetland or riparian vegetation on the energy facility site.

*End of Section*

***CITY OF HERMISTON URBAN GROWTH AREA***

**Applicable Substantive Land Use Regulations and Comprehensive Plan Policies**

The County has land use jurisdiction within the Hermiston UGA pursuant to the City/County JMA. The County incorporates provisions from the City's comprehensive plan and land use regulations into its ordinances for application in the Hermiston UGA. The September 28, 1992 Hermiston zoning ordinance ("HZO") is the relevant land use regulation.

Current land uses within the impact area of the 500 kV electrical transmission line in the R-4 zone within the Hermiston UGA are dwellings and open land. The 500 kV transmission line is compatible with these current uses. The transmission line will utilize the existing transmission line right-of-way within this zone. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise.

The visual impact of the transmission line is minimized by the use of single pole steel structures, and by the fact that it will be located adjacent to an existing high-voltage transmission line. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes obstructions.

Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

*500 kV Electrical Transmission Line*

*HZO Section 27, "Multi-Structure Residential Zone (R-4)"*

The 500 kV electrical transmission line will pass through land in the City's UGA. The land is zoned "R-4" for a distance of about 1 3/4 mile. This zone is only in Hermiston's UGA.

(i) "Section 29(1). CONDITIONAL USES PERMITTED. In a R-4 zone, the following uses and their accessory uses are permitted when authorized in accordance with the requirements of Sections 98 through 104 of this ordinance:

(1) A conditional use permitted in a R-3 zone except manufactured dwelling park which is an outright permitted use in this zone."

A utility line is a conditional use in the R-4 Zone pursuant to HZO Section 10(12) (conditional uses in the R-1 zone). The R-4 zone permits conditional uses that are allowed in the R-3, R-2 and R-1 zones. Utility lines and substations are conditional uses in the R-1 zone, so they are a conditional use in the R-4 zone.

(ii) "Section 101. APPROVAL CRITERIA. Based on the testimony provided at the hearing, the Planning Commission shall develop findings of fact to justify either approving or denying a conditional use permit. The Planning Commission may approve such requests when it is determined the request is in conformance with all the following requirements or can be made to conform through the imposition of conditions:"

Applicable conditional use criteria are found in HZO Section 101. HZO Section 104 lists standards governing conditional uses, which concern building characteristics, access, and setback. HZO Section 104 does not apply to the proposed transmission line because no buildings are proposed. HZO Section 101(A)-(D) contain the approval criteria for conditional uses. HZO Section 101(A)-(D) are discussed below.

(iii) "Section 101. (A) The proposal is in conformance with the comprehensive plan and zoning ordinance."

Conformance with applicable comprehensive plan policies is discussed in Section V(D)(2), below. Conformance with the HZO is demonstrated in Part V(D)(1).

(iv) "(B) The property is adequate in size and shape to accommodate the proposed use, together with all other zoning requirements and any additional conditions imposed by the planning commission."

The 500 kV electrical transmission line will be located on existing private easements or ownerships which are 125 feet wide within an existing 250 foot wide Bonneville Power Administration transmission line easement. The western 125 feet of the 250 foot wide easement is occupied by a BPA transmission line, while the eastern 125 feet would be occupied by the proposed transmission line. The easement will extend 62.5 feet from each side of the center of the proposed line. Clearance guidelines according to the Rural Electric Association and the National Electric Safety Code dictate an easement of about 50 feet perpendicular to the transmission line centerline. The existing easement width is greater than these guidelines, so it is adequate to accommodate the transmission line.

(v) "(C) Public facilities are of adequate size and quality to serve the proposed use."

No public facility such as sewer, water, roads, schools, etc., will be required to serve the transmission line.

(vi) "(D) The proposed use will prove reasonably compatible with surrounding properties."

The proposed transmission line will be within a pre-existing, designated transmission line corridor adjacent to an existing, high-voltage transmission line. The proposed use will not introduce new uses or elements to the impact area, and will be compatible with surrounding properties within the impact area to the extent that the existing transmission line is compatible.

Moreover, the transmission line poses no compatibility problems for adjacent dwellings. The line will not create noise or odor. It will not cause traffic congestion. The line will require only occasional maintenance.

*Applicable Comprehensive Plan Policies*

The applicable Hermiston Comprehensive Plan is dated December 7, 1992. The Hermiston/Umatilla County JMA provides that within the Hermiston UGB, the County is to adopt amendments to its comprehensive plan to include the City's comprehensive plan and policies. JMA paragraph (E)(2). Therefore, the County applies applicable city comprehensive plan policies in the UGA.

The 500 kV electrical transmission line is allowed in the R-4 zone as a conditional use pursuant to HZO Section 29(1). That section requires that applicable comprehensive plan policies be satisfied as conditional use approval criterion.

The relevant portion of the facility which is within the Hermiston UGA is the 500 kV electrical transmission line. The 230 kV electrical transmission line is within the city of Hermiston Area of Mutual Concern but is not within the City or its UGA.

**Error! Bookmark not defined..** Policy 7, Natural Resources

The comprehensive plan does not identify specific natural resources to be protected through this policy. The comprehensive plan indicates that the "Open Space" ("OS") designation is applied to the 100-year floodplain, wetland areas and the OSU agricultural experimentation station. Therefore, those areas are the natural resources to be protected to the "maximum degree possible." The facilities do not significantly impact any of the identified natural resources uses. This policy is satisfied.

**Error! Bookmark not defined..** Policy 10, Historic Resources

No historic resources are impacted by the facilities' components within the Hermiston UGA. This policy is satisfied.

**Error! Bookmark not defined..** Policy 12, Noise

The 500 kV electrical transmission line will comply with applicable state noise standards. The transmission line design variables affecting audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate noise exceeding state noise standards. Audible noise from transmission lines occurs primarily in foul weather, when far fewer people are likely to be exposed to the noise, compared with the number of people exposed to more commonly encountered noise which occur in the area of the transmission line, such as vehicles. Moreover, the transmission line passes through the R-4 district in the City of Hermiston UGA. Utilities line substations are permitted as a conditional use. To the extent the application satisfies the conditional use criteria contained in Section 24(4.1)-(4.4), the City of Hermiston land use regulations recognize the electrical transmission lines may be located in the UGA. This policy is satisfied.

**Error! Bookmark not defined..** Policy 18, General and Industrial Development

The proposed project associated with the transmission line will generate approximately 24 full-time, year-round jobs, helping to offset seasonal unemployment and underemployment, without displacing agricultural employment. The great majority of the jobs created by this project will be above the "family wage" level for the area. This policy is satisfied.

**Error! Bookmark not defined..** Policy 21, Neighborhood Quality

The 500 kV electrical transmission line will pass through an area zoned R-4. The majority of the area is undeveloped. There are no neighborhoods, only isolated residences. The electrical transmission line will be located in an existing right of way, which means that new transmission line right-of-way is not required. This policy is satisfied.

*End of Section*

**CITY OF UMATILLA URBAN GROWTH AREA****Applicable Substantive Land Use Regulations and Comprehensive Plan Policies****A. 500 kV Electric Transmission Line****Relocated BPA Line**

In the UGA, the existing BPA 500 kV McNary to Lower Monumental electrical transmission line will be displaced by the Project's 500 kV electrical transmission line and will be relocated approximately 500 to 800 feet east of its present location. This relocated section of line will be approximately one mile in length. The relocation begins approximately 1,400 feet North of the Southwest corner of Section 15, Township 5 North, Range 25 East, Willamette Meridian (approximately 150 feet north of the intersection of Margaret Avenue and Lind Road) at the existing BPA Lower Monumental transmission line. The relocated BPA 500 kV line will then proceed North generally paralleling the East edge of the Lind Road, crossing Highway 730, and then continuing North across the existing railroad tracks near the McNary Substation. This section of the line is approximately 4,300 feet long. After crossing the railroad, the line will turn Northwest and proceed about 700 feet to the McNary Substation. The total length of the relocated line is approximately 5,000 feet.

As proposed by HPP, the relocated BPA 500 kV line is a single-pole, single-circuit line. The Project's 500 kV line is a dual circuit 500 kV/500 kV line. Pursuant to the City of Umatilla's request HPP will, where feasible, use steel lattice and wood frame structures in the city to minimize visual impacts.

The relocated BPA 500 kV line is located in the following City UGA zoning districts from north to south:

F-1, C-1 and F-2.

*Project 500 kV Line*

The Project's 500 kV electrical transmission line will occupy BPA's existing 500 kV structures North of Diagonal Road into the McNary Substation. A new portion of 500 kV line will also be constructed south of the existing BPA line. This line will be a single-pole, single-circuit line. South of this portion of the Project's line extending outside of the City of Umatilla UGA into Umatilla County, the line will be a 500 kV/230 kV dual circuit line, replacing an existing PP&L 230 kV line. See figures I-6A and I-6B.

The Project's 500 kV line is located in the following City UGA zoning districts (from north to south):

F-1, M-1, F-2 and F-1.

Current land uses within the impact area of the Project's 500 kV electrical transmission line and the relocated BPA 500 kV electrical transmission line within the

Umatilla UGA are commercial (mobile home sales and public storage), single-family dwellings and vacant lands in the C-1 zone; open land in the M-1 zone, an archery range, single-family dwellings, pasture, public storage, aggregate mining, open land and an electrical substation in the F-1 zone, and single-family dwellings and pasture in the F-2 zone.

The Project's 500 kV line will be located within an existing BPA or PP&L easement. The relocated BPA 500 kV line will be located within an existing 100-foot-wide easement, land owned or optioned by the applicant, and/or an existing road right-of-way.

The transmission lines will not pose a nuisance to adjacent uses or residents. The lines will not emit odors that would impair uses of adjacent properties. The transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. Any noise would not pose a nuisance to vacant land, open land, pasture, public storage, aggregate mining, archery range, or electrical substation. Common noises in this area, such as vehicles, will mask the occurrence of transmission line noise (which occurs mainly in foul weather) in any event.

The visual impact of the transmission lines will be minimized by the use of single-pole steel structures, where applicable. Visual impacts will also be mitigated by the fact that the Project's 500 kV line will utilize the existing line within a BPA easement and will be adjacent to four other electrical transmission lines that comprise this existing utility corridor. The relocated BPA 500 kV line will be located within an existing 100-foot easement, land owned or optioned by HPP, and/or an existing road right-of-way. If the relocated BPA line is constructed on the eastern edge of its corridor, it will be further removed from existing residences. The use of single-pole structures, where possible, minimizes the footprint of the structures thus minimizing potential interference with other land uses.

Access to the transmission line for inspection will occur frequently and will be along existing roads or trails with light duty vehicles. No new, permanently improved roads will be constructed.

The City of Umatilla/Umatilla County JMA requires the County to adopt and incorporate the City zoning ordinance provisions for application in the UGA. The County has not taken the step, so the 1972 County Zoning Ordinance ("1972 UCZO") remains in effect for the City of Umatilla UGA. The applicable land use regulations for this part of the application are contained in the 1972 UCZO.

**1. 1972 UCZO Section 3.110, "General Commercial Zone (C-1)."**

- i.** "3.113 CONDITIONAL USES (Revised 1/77). In a C-1 Zone, the following uses and their accessory uses are permitted, subject to the requirements of Section 7.010 through 7.040 inclusive and upon issuance of a zoning permit:

\* \* \* \* \*

"(7) Utility facility."

The relocated BPA line passes through the C-1 Zone immediately south of Highway 730. The relocated BPA 500 kV line is on the extreme west edge of the C-1 Zone. The relocated BPA 500 kV line is a conditional use in the C-1 Zone because it is a utility facility. See 1972 UCZO Section 1.090(63), definition of "Utility Facility." The applicable conditional use criteria are discussed below.

The Project's 500 kV line is not located in the C-1 Zone, so it need not comply with the conditional use requirements for the C-1 Zone.

**ii. 1972 UCZO Section 7.040(14):**

"Radio, television, tower, utility station or substation:

- "(a) In a residential zone, all equipment storage on the site may be within an enclosed building;
- (b) the use may be fenced and provided with landscaping;
- (c) the minimum lot size for a public utility facility may be waived on finding that the waiver will not result in noise or other detrimental effect to adjacent property;
- (d) transmission towers, poles, overhead wires, pumping stations, and similar gear shall be located, designed and installed as to minimize their conflict with scenic values."

Only 1972 UCZO 7.040(14)(d) is applicable to the relocated 500 kV line as a conditional use in the C-1 Zone. Minimum lot size is not relevant because no land partitions will be made for the relocated 500 kV line.

The transmission towers and overhead wires will be located, designed and installed in order to minimize their conflict with scenic values. The use of single-pole steel structures for most of the line minimizes the number of poles in the zone. The use of lattice or wood poles, where feasible, to accommodate the City of Umatilla's aesthetic concerns, also ensures that the design will minimize conflicts with scenic values. For its entire length, the relocated BPA 500 kV transmission line will be within 500 to 800 feet of several existing transmission lines in an existing corridor. This corridor presently contains two 500 kV transmission lines and four 230 kV transmission lines.

**iii. 1972 UCZO Section 3.114, "Limitations on Uses," in the C-1 Zone.**

"In a C-1 Zone, the following limitations and conditions shall apply:

"(1) Outside storage areas shall be screened with a sight-obscuring fence so that the area shall not be exposed to view from without the property.

(2) Outside display of any scrap or salvage material shall be prohibited."

No outside storage will be associated with the relocated BPA 500 kV electrical transmission line. No scrap or salvage material will be associated with the relocated BPA 500 kV electrical transmission line.

**2. 1972 UCZO 3.130, "Light Industrial Zone (M-1)."**

"UCZO 3.136 Conditional Use (Revised 1/77). In an M-1 Zone, the following uses and their accessory uses are permitted, subject to the requirements of Section 7.010 through 7.040 inclusive and upon issuance of a zoning permit:

\* \* \* \* \*

"(28) Utility facility."

The Project's 500 kV line will be located on the extreme western edge of the M-1 Zone. The relocated BPA line will not be located in the M-1 Zone. The Project's 500 kV line is a conditional use in the M-1 Zone pursuant to 1972 UCZO Section 3.136.

**ii. 1972 UCZO Section 7.040(14)(a)-(d).**

The Project's 500 kV line is similar to the relocated BPA 500 kV electrical transmission line. The findings with respect to the conditional use criteria for the relocated BPA line are incorporated by reference.

**iii. 1972 UCZO Section 3.134, "Limitations on Use," in the M-1 Zone.**

"(1) All business, commercial and industrial activities, and storage allowed in an M-1 light industrial zone shall be conducted wholly within a building or shall be screened from view from adjacent public roads or surrounding properties in farm, residential or commercial zones, unless the entire activity is conducted more than 500 feet from said surrounding property or road.

"(2) All off-street loading areas shall be screened wholly within a building or shall be screened from view if adjoining properties are in a residential zone.

"(3) No merchandise shall be displayed outdoors in any front or side yard nor in any street right-of-way.

"(4) All noise, vibration, dust, odor, smoke, appearance or other objectionable factors involved in any activity shall be confined or reduced so as not to be unduly detrimental to surrounding properties."

The Project's 500 kV line is not a business, commercial or industrial activity subject to this limitation on use because the definition of "utility facility" in 1972 UCZO 1.090(63) includes power transmission lines. It is not possible to locate a power transmission line wholly within a building.

No off-street loading area or outdoor display of merchandise are proposed in association with the Project's 500 kV line.

No dust, smoke, odor or vibration will be caused by the Project's 500 kV line. Noise impacts will be mitigated by the location and design of the line. Appearance impacts will be mitigated by the use of single-pole structures and, where feasible within the City of Umatilla to accommodate the City's aesthetic concerns, the use of lattice or wood poles. This criterion permits some "objectionable factors" as long as they are not "unduly detrimental to surrounding properties." Because the Project's 500 kV line is to be located on an existing structure with an existing BPA 500 kV line, within a BPA easement and adjacent to at least four other electrical transmission lines, its existence will not be unduly detrimental to surrounding properties. The only existing use in the M-1 zone is open land.

**3. 1973 UCZO 3.010. "Exclusive Farm Zone (F-1)."**

i. "1972 UCZO Section 3.012, Uses Permitted Outright. In an F-1 Zone the following uses and their accessory uses are permitted upon issuance of a zoning permit:

\* \* \* \* \*

"(5) Utility facilities necessary for public service except commercial facilities for the purpose of generating power for public use by sale."

Both the Project's 500 kV line and the relocated BPA 500 kV line are located within the F-1 Zone. The electrical transmission lines are permitted uses in the zone.

The definition of "utility facility" in 1972 UCZO 1.090(63) includes a structure owned by a public or private electric company for the transmission or distribution of its products and including power transmission lines.

**ii. 1972 UCZO Sections 3.014 and 3.016.**

1972 UCZO Sections 3.014, "Dimensional Standards" and 1972 UCZO 3.016, "Signs" do not apply to the electrical transmission lines because no signs are proposed and because the lines will be constructed within easements or road rights of way.

**4. 1972 UCZO Section 3.020. "General Rural Zone (F-2)."**

**i. "1972 UCZO Section 3.024, Conditional Uses."**

"In an F-2 Zone, the following uses and their accessory uses are permitted subject to the requirements of Section 7.010 through 7.040 inclusive and upon issuance of a zoning permit:

"\* \* \* \* \*

"(14) Utility facility."

Both 500 kV electrical transmission lines are located within the F-2 Zone. Both are, therefore, conditional uses in the F-2 Zone.

**ii. 1972 UCZO Section 7.040, Suggested Standards Governing Conditional Uses.**

"(14) Radio, Television Tower, Utility Station or Substation"

"(a) In a residential zone, all equipment storage on the site may be within an enclosed building;

"(b) The use may be fenced and provided with landscaping;

"(c) The minimum lot size for a public utility facility may be waived on finding that the waiver will not result in noise or other detrimental effect to adjacent property;

"(d) Transmission towers, poles, overhead wires, pumping stations and similar gear shall be located, designed and installed as to minimize their conflict with scenic values."

Both lines are in a residential zone but no on-site equipment storage is proposed. Minimum lot size is not relevant because no land partitions will be created for the lines.

The electrical transmission line will be located, designed and installed so as to minimize their conflict with scenic values.

For most of its length the Project's 500 kV line is within an existing BPA easement and adjacent to other existing electrical transmission lines. In the F-2 zone, the Project's line will utilize the existing BPA 500 kV double-circuit structures, although the wires may be replaced. Because of the existing transmission lines in the immediate vicinity, the location of the Project's line means that scenic values will not be further impacted.

The relocated BPA 500 kV line will be within a 100 foot wide utility easement, public road right-of-way and/or land owned or optioned by HPP. Its design and installation will utilize primarily single-pole structures, which will minimize conflict with

scenic values as opposed to other types of structures because there will be fewer poles. HPP will also utilize wood or lattice structures where feasible within the City of Umatilla to accommodate the City's aesthetic concerns. The line will be located within 500 to 800 feet of existing transmission lines, which will also minimize conflict with scenic values.

The transmission lines will have no ground-level hazards. The steel poles will be resistant to vandalism and trespass. Because the transmission line conductors are at a considerable distance above ground, and the steel pole structures are not visually obtrusive at ground level, there is no reason to landscape or fence the structures. Use of the single-pole design minimizes the visual mass of the transmission lines and the long spans between the poles will minimize the number of poles, thereby minimizing the total impact on scenic values.

**B. 230 kV Electric Transmission Line**

An existing 115/230 kV electrical transmission line runs from the Westland Substation to the McNary Substation. See Figures I-7B and 7C. The transmission line will be upgraded with new insulators and conductors to a 230/230 kV electrical transmission line."

Current land uses within the impact area of the 230 kV electrical transmission line in the Exclusive Farm Zone within the Umatilla UGA are an irrigation canal and open land. The transmission line is compatible with these current uses. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. The visual impact of the transmission line is minimized by the use of single pole steel structures, and by the fact that it will be located adjacent to an existing high-voltage transmission line. The transmission line minimizes conflicts with adjacent uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes obstructions. Normal access to the transmission lines for inspection will be occasional, along existing roads or trails with light duty vehicles. Therefore, no new permanent improved roads will be constructed.

The converted 230/230 kV electrical transmission line passes through the F-1, F-2, R-1 and C-2 zoning districts in the City of Umatilla UGA. The zoning districts in the Umatilla UGA are those found in the 1972 Umatilla County Zoning Ordinance (the "UCZO").

*UCZO 3.010, "Exclusive Farm Zone (F-1)"*

*UCZO Section 3.012 provides as follows:*

In an F-1 zone, the following uses and their accessories are permitted upon the issuance of a zoning permit:

\* \* \* \* \*

(5) Utility facilities necessary for public service except commercial facilities for the purpose of generating power for public use by sale.

The electrical transmission line is a permitted use in this zone pursuant to UCZO Section 3.012.

*UCZO Section 1.030(63)* defines utility facilities as follows:

Any major structure owned or operated by a public, private or cooperative electric, fuel, communication, sewage or water company for the generation, transmission, distribution or processing of its productions or for the disposal of cooling water, waste of by-products, and including power transmission lines, major trunk pipeline, power substations, dams, water towers, sewage lagoons, sanitary landfills and similar facilities, but excluding sewer, water, gas, telephone and power local distribution lines and similar minor facilities allowed in any zone.

The conversion of the existing 115/230 kV electrical transmission line to a 230/230 kV electrical transmission line is a power transmission line under the definition of utility facility. Therefore, the use is a permitted use in the F-1 Zone.

#### **UCZO 3.020, "General Rural Zone (F-2)"**

A utility facility is a conditional use in the F-2 Zone pursuant to UCZO Section 3.024(14). The criteria for its initial use in the F-2 Zone are found in Part (III)(A)(5). That section discusses the 500 kV electrical transmission line as a conditional use in the F-2 Zone. Findings in that section are incorporated herein and applied to the findings for the 230/230 kV electrical transmission line in the F-2 Zone.

#### **UCZO 3.070, "Agricultural-Residential Zone (R-1)"**

The 230/230 electrical transmission line is a conditional use in the R-1 Zone pursuant to UCZO Section 3.072(6). Findings for conditional uses are found in Part (III)(A)(5).

#### **UCZO Section 3.120, "Tourist Commercial Zone (C-2)"**

A utility facility is a conditional use in the C-2 Zone pursuant to UCZO 3.123(5). Findings for conditional uses are found in Part (III)(A)(5). The conditional use criteria are met.

#### *UCZO Section 3.016*

UCZO Section 3.016 concerns signs. The section does not apply to the 230/230 kV electrical transmission line.

*Applicable County Comprehensive Plan*

*500 kV Electrical Transmission Line*

Within the City UGA, City Comprehensive Plan Policies apply if applicable pursuant to the City/County JMA. The City's December 1977 Comprehensive Plan states the Plan is intended to be a general guide to future community development and should not deal with detail site planning. Plan at 50. The Plan also provides that Development proposals would be required to conform to the City's zoning and subdivision ordinances. Plat at 8. The City's Comprehensive Plan is implemented, for purposes of reviewing specific development proposals, through the City's zoning ordinance. Therefore, consistency with the Comprehensive Plan element is demonstrated by compliance with the applicable UZO provisions discussed above.

A portion of the 500 kV electrical transmission line passes through an M-1 Zone area pursuant to the 1972 Umatilla County Zoning Ordinance that remains in effect in the UGA. However, the zoning ordinance is inconsistent with the City Comprehensive Plan applied pursuant to the City/County JMA. A plan/land use regulation inconsistency requires that the plan be addressed.

The City Comprehensive Plan does not contain a section expressly implementing the M-1 Zone. However, the urbanization section contains the following policy:

The City has established an urban growth boundary; growth and development will be directed and encouraged within this area on developable land (a shown and defined in the urbanization element, page 54). Development will be consistent with the capacity and capability of public services.

The M-1 Zone permits utility facilities as a conditional use. UCDO 3.136(28). The 500 kV electrical transmission line will be located on a right-of-way already committed to an existing transmission line. The line is therefore directed towards developed lands. It will not require provision of public services. Neither will it occupy developable land for other uses.

The 500 kV electrical transmission line is consistent with the applicable policies from the City Comprehensive Plan.

*Converted 115/230 kV Electrical Transmission Line*

The applicable county comprehensive plan policies for the conversion of the 115/230 kV electrical transmission line to a 230/230 kV electrical transmission line are addressed in the portion of this order addressing "Applicable Substantive Umatilla County Comprehensive Plan Policies." See Page 223. Those findings are incorporated here by reference.

*End of Section*

**CITY OF STANFIELD URBAN GROWTH AREA**

*Applicable Substantive Land Use Regulations*

Parts of the Northwest natural gas pipeline connection, the PGT natural gas pipeline connection and the 500 kV electrical transmission line will be located within the Stanfield UGA. The Northwest Natural Gas pipeline passes through land with Stanfield's UGA zoned as Industrial Service - Commercial ("ISC"), and through land zoned as Exclusive Farm Use (EFU). The PGT Natural Gas pipeline route passes through land zoned as Transportation Industrial (TI). The 500 kV electrical transmission line passes through land zoned ISC and EFU.

*City of Stanfield Resolution No. 10-95*

On July 11, 1995 the city of Stanfield ("city") adopted Resolution No. 10-95, in which it interpreted its zoning ordinances as they apply to the parts of the facility within the city. For the reasons set forth below, the city concluded that the transmission line and pipelines are uses similar to permitted uses in the Transportation-Industrial ("TI") and Industrial-Service Commercial ("ISC") districts, and thus are authorized under Stanfield Zoning Ordinance ("SZO) 22.12.<sup>14</sup> The city concluded further that the transmission line and one pipeline within the EFU zone are "utility distribution lines" under SZO 12.33 and thus are allowed as outright permitted uses in the EFU zone.<sup>15</sup> The city's reasoning is as follows:

1. The HPP transmission line and pipelines will be located within the City of Stanfield urban growth area in the TI, ISC, and EFU districts.

2. Transmission lines and pipelines are not specifically listed as permitted or conditional use in any zoning district in the Ordinance. The term "Utility distribution line" is not defined in the Ordinance.

3. Transmission lines and pipelines are uses similar to permitted uses in the TI and ISC districts. Ordinance Section 22.12 permits a use not otherwise listed in a zone to be allowed if it is similar to allowed uses and if its effect on adjacent properties is substantially the same as that of allowed uses.

4. The ISC district allows railroad spur lines, railroad ancillary facilities, utility substations and communication facilities. The TI district allows railroad main

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<sup>14</sup>SZO 22.12 provides:

(ii) **"22.12 AUTHORIZATION OF SIMILAR USES:** *The City Council may rule that a use not specifically listed among the allowed uses in a zone shall be permitted as an allowed use if it is similar to the allowed uses in the zone, if its effect on adjacent properties is substantially the same as that of allowed uses, and if it is not specifically listed as an allowed use in another zone.*"

<sup>15</sup>SZO 12.33 provides:

*"Utility distribution lines are considered an outright permitted use not subject to Development permit approval [pursuant to SZO 1.40]."*

lines, spur lines, marshalling yards, ancillary facilities and transportation terminals and services.

5. The transmission line is an above-ground facility consisting of a 500 kV single-pole line with a maximum tower height of 160 feet. The poles will be spaced 600 to 800 feet apart. The pipelines will be twelve inches in diameter and will be buried three feet below ground.

The transmission line and pipelines are similar to allowed uses in the TI and ISC zones in the following respects:

(i) they are linear facilities located in confined rights of way, similar to railroad lines and certain communication facilities; (ii) they are utility facilities, as are utility substations and communication facilities; and (iii) they serve a transportation function similar to the function of railroad facilities and communication facilities.

The impacts of the transmission line and pipelines are similar to the impacts of allowed uses in the TI and ISC zones. Neither use has noise, dust, light, heat or odor impacts on adjacent uses; the pipelines have no visual impact after construction. The transmission line has visual impacts similar to the impacts of the allowed communication and railroad facilities and other industrial uses allowed in the ISC zone. Further, both will allow the use of adjacent land as do the allowed uses. Moreover, the pipeline once installed, will permit use of the land above the pipeline.

For these reasons, the City Council finds that the transmission line and pipelines are uses similar to those permitted in the TI and ISC zones.

6. The transmission line and one pipeline are also to be located in the EFU zone. The transmission line and pipeline are "utility distribution lines" allowed as outright permitted uses in the EFU district for the following reasons. The Ordinance is silent with respect to transmission lines and pipelines in the EFU district. If the term "utility distribution line" in Ordinance Section 12.33 were not interpreted to allow these uses in the EFU zone, they would be prohibited.

The City did not intend an absolute prohibition on these uses in the EFU zone. This view is supported by the fact that several of the city's zoning districts, including the ISC zone, allow utility substations. It would be absurd to allow utility substations without allowing transmission lines to cross lands needed to access the substations.

State law provides that the following uses may be established on EFU lands: "Utility" facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height." ORS 215.283 (1)(d); OAR 660-33-120. A utility facility necessary for public service is one that must be located in an agricultural zone in order for the service to be provided. OAR 660-33-130(16). The transmission line and pipeline must go through the EFU zone in order to reach the generating facility. Transmission lines and pipelines are utility facilities; neither is a commercial generating facility and the transmission towers for the transmission line will be less than 200 feet in height. An interpretation of the EFU district and Ordinance Section 12.33, as allowing the transmission line and pipeline on

EFU lands, is therefore consistent with state law, McCaw Communications, Inc. v. Marion County, 17 or LUBA 206 (1989).

Notice and opportunity for a hearing is not required because this EFU zone is within an urban growth boundary. OAR 660-33-010 (1)(c).

7. The City council is empowered by Ordinance Section 22.12 and Clark v. Jackson County, 313 OR 508, 836 P2d 710 (1992) to interpret the provisions of its zoning ordinance."

**City of Stanfield Resolution NO. 10-95, adopted July 11, 1995.**

We concur in the city's analysis of the applicable zoning ordinances, and find that the facility is authorized under these ordinances.

*Other SZO Standards*

The SZO contains criteria for Off-Street Parking and Loading (Article 9), Signs (Article 10), Accessory Uses, Structures and Facilities (Article 11), Streets, Sidewalks, Clear Vision Areas, Utilities, Irrigation Ditches, Access, and Driveways (Article 12), Street Trees and Landscaping (Article 13), and Grading and Drainage Controls (Article 15). None of those criteria apply because the project components will either be buried or in the case of the 500 kV electrical transmission line will not trigger other requirements with the exception of Article 15, Grading and Drainage Controls. The criteria of Article 15 will be met by regrading and revegetating all land disturbed during construction to restore the land to the previous contours. Hence, the project will maintain the natural drainage courses and features. The soil surface will be protected during construction with dust control measures such as water spraying on access roads, and by regrading and revegetating ground as the trench is backfilled, or in the case of the 500 kV line, as construction is completed.

Very short portions of the PGT natural gas pipeline route, depending on final alignment will be within the Umatilla River flood plain, in areas with little submergence during a 100 year flood. The Flood Plain Overlay Zone is defined by Federal Emergency Management Agency (FEMA) Flood Insurance Maps.

*End of Section*

**CITY OF UMATILLA**

*500 kV Electrical Transmission Line*

*Applicable Land Use Regulations and Comprehensive Plan Policies*

The 500 kV electrical transmission line will be constructed within the existing BPA right-of-way south of the city of Umatilla to a point where it intercepts BPA's existing 500 kV McNary - Lower Monumental transmission line. The transmission line will occupy the existing structures into McNary Substation, while the McNary - Lower Monumental transmission line will be relocated by the Applicant to a route paralleling Ford Road. Both transmission lines pass through the City of Umatilla. The City of Umatilla Zoning Ordinance ("UZO") governs this facility.

Current land uses within the impact area of the 500 kV electrical transmission line in the Community Services zone within the City of Umatilla are public storage, commercial, transportation (S.R. 730), dwellings, and pasture. The transmission line is compatible with these current uses. The transmission line will utilize the existing road and transmission line corridors within this zone. The transmission line will not pose a nuisance to adjacent uses. It will not emit odors that would impair use of the adjacent land. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. More common noises in this area, such as vehicles, would mask the occurrence of transmission line noise, which occurs mainly in foul weather. The visual impact of the transmission line is minimized by the use of single pole steel structures and by the fact that the zone is dominated by wood frame and steel lattice frame high voltage transmission towers. The transmission line minimizes conflicts with adjacent farming uses by utilizing single steel pole structures which minimizes the footprint of the structure and minimizes the occupation of land.

*UZO 3.120, "Community Service Zone (CS)"*

Both the existing McNary - Lower Monumental 500 kV electrical transmission line and the proposed new location for the McNary - Lower Monumental 500 kV electrical transmission line pass through the Community Service ("CS") zoning district inside the City. See Figure I-6a. The proposed transmission line is permitted as a conditional use in the CS zone. "Community Service" uses include "power substation or other public utility building or use." UZO Sections 3.120 to 3.124 describe the CS zone. UZO Section 3.122 is blank. UZO Section 3.123 pertains to density provisions, which are not applicable to the transmission line. UZO Section 3.124 contains procedural guidelines. UZO Sections 3.120 and 3.121 are as follows.

(i) "3.120 COMMUNITY SERVICE USES

"The purpose of this Section is to provide a procedure and standards to review and approve the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be

appropriate in any district, but not suitable for listing within the other sections of this ordinance.

(ii) "3.121 CONDITIONAL USES PERMITTED

"In a CS zone, the following conditional uses and their accessory uses are permitted.

\* \* \* \* \*

(8) Power substation or other public utility building or use"

The proposed use is a "public utility use." The transmission line will carry electrical energy for distribution to wholesale and retail customers of Bonneville Power Administration. The local utility, Umatilla Electric Cooperative Association, is a customer of BPA.

Conditional use criteria are found in UZO Article 7, "Conditional Uses."

b. "7.020 STANDARDS GOVERNING CONDITIONAL USES. In addition to the standards of the zone in which the conditional use is located and the other standards of this ordinance, a conditional use shall meet the following standards.

\* \* \* \* \*

"4. For such facilities as a utility substation, water storage tank, radio or television transmitter, etc., the Planning Commission shall determine that the site is so located as to best serve the intended area with a minimum effect on surrounding property. Towers, tanks, poles, overhead wires, pumping stations and similar structures shall be located, designed and installed with suitable regard for aesthetic values."

The proposed 500 kV electrical transmission line complies with these standards.

The energy facility will generate approximately 24 full-time, year-round jobs, helping to offset seasonal unemployment and underemployment, without displacing any agricultural employment. The great majority of the jobs created by the project will be above the 'family wage' level for the area. The comparatively high tax contribution in relation to the number of residents brought in due to the project contributes to the quality of life for all areas of the region's economy.

The proposed transmission line is sited to have a minimum effect on surrounding property by being sited adjacent to and within existing transmission line corridors. Transmission line design variables which affect audible noise, such as conductor spacing and conductor bundle configuration, will be selected to mitigate objectionable noise. Audible noise from transmission lines occurs primarily in foul weather, when far fewer people are likely to be exposed to the noise compared with the number of people exposed to more commonly encountered noises which occur in the area of the transmission line such as vehicles, boats, and hydroelectric power plants.

The proposed transmission line design employs suitable regard for aesthetic values. The single steel pole design minimizes the visual mass of the transmission line, and the long spans between poles minimize the number of poles, thereby minimizing the impact on aesthetic values. The UZO does not impose a height limitation on transmission line structures. The transmission line structure heights of 125 to 160 feet are the minimum for safety and clearance requirements. The vertical conductor configuration results in structures taller than would result with horizontal conductor arrangement, but the vertical conductor configuration results in lower ground-level EMF levels.

*Applicable Comprehensive Plan Policies  
for the 500 kV Electrical Transmission Line*

The city's December 1977 Comprehensive Plan states that the plan "is intended to be a general guide to future community development and should not deal with detailed site planning." Plan at 59. The plan also provides that "Development proposals will be required to conform to the city's zoning and subdivision ordinances." Plan at 8. The city's Comprehensive Plan is implemented, for purposes of reviewing specific development proposals, through the UZO. Therefore, consistency with the comprehensive plan is demonstrated by compliance with the applicable UZO provisions discussed above.

***Conversion of the 115/230 kV Transmission Line to a 230/230 kV Transmission Line***

An existing 115/230 kV electrical transmission line runs from the Westland Substation to the McNary Substation. See Figures I-7B and 7C. The line will be upgraded with new insulators and conductors to a 230/230 kV line. The upgraded line will be in the City's Suburban Residential ("SR"), Community Service ("CS"), Residential ("R-1"), Mobile Home Residential ("MH") and General Commercial ("C-1") and zoning districts.

*UZO 3.010, "Suburban Residential Zone (SR)"*

Conditional uses include uses allowed in the "Community Services (CS)" Zone. UZO 3.015(6). Public utility uses are allowed in the CS Zone. UZO 3.121(8). Conditional uses are subject to the requirements of UZO Chapter 7.

*UZO 3.020, "Residential Zone (R-1)"*

Conditional uses include uses allowed in the CS Zone. UZO 3.021(1). Public utility uses are allowed in the CS District. UZO 3.121(8).

*UZO 3.050, "Mobile Home Residential Zone (MH)"*

Utility facilities are not allowed in the MH Zone. The use is not allowed in the MH Zone nor is it a similar use pursuant to UZO 8.080. Therefore, the application must demonstrate compliance with the Goals. OAR 345-22-030(2)(b)(C).

The applicable Goals are Goal 9, "Economic Development", and Goal 10, "Housing".

- (i) Goal 9, "Economic Development"

"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon citizens."

This Goal is satisfied because the application provides for an economically beneficial utility facility. The utility facility will benefit the city and the region by adding temporary and permanent jobs. The utility facility will support the region's economy by providing a dependable energy source.

(ii) Goal 10, "Housing"

"To provide for the housing needs of citizens of the state."

This Goal is satisfied because the conversion of the existing electrical transmission line will not affect any existing housing units since additional poles and lines will not be added.

*UZO 3.060, "General Commercial Zone (C-1)"*

Conditional uses include use allowed in the CS District. UZO 3.061(2). Public utility uses are allowed in the CS District. UZO 3.122(8).

*UZO Chapter 3.120, "Community Services Zone (C-S)"*

A "Power substation or other public utility building or use" is a conditional use in the C-S Zone. UZO Section 3.121(a).

*f. UZO Chapter 7, "Conditional Uses"*

Part (V)(A)(1) addresses the applicable conditional use criteria for utilities for the 500 kV electrical transmission line. That discussion is incorporated herein by reference.

**Applicable Comprehensive Plan Policies for Conversion of the 115/230 kV Transmission Line to a 230/230 kV Transmission Line**

The City's December 1977 comprehensive plan states that the plan "is intended to be a general guide to future community development and should not deal with detailed site planning". Plan at 59. The plan also provides that "development proposals will be required to conform to the City's zoning and subdivision ordinances." Plan at 8. The City's comprehensive plan is implemented, for purposes of reviewing specific development proposals, through the UZO. Therefore, consistency with the comprehensive plan is demonstrated by compliance with the applicable UZO provisions discussed above.

**Conclusion**

The 500 kV electrical transmission line within the city limits of the City of Umatilla complies with the applicable substantive criteria from the City's land use regulations. The proposed transmission line is a conditional use within the City of

Umatilla's CS zone. The transmission line will satisfy the standards for conditional use, therefore the transmission line complies with standards and regulations of the Umatilla Zoning Ordinance, and the transmission line is consistent with the City's planning policies. The transmission line meets the Council's land use standard, through meeting the City of Umatilla's criteria and the County criteria discussed above.

The conversion of the existing 115/230 kV electrical transmission line to a 230/230 kV electrical transmission line also complies with applicable city standards.

*End of Section*

### *Other Land Use Requirements*

#### CHAPTER CONTENTS

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#### LCDC RULES AND GOALS

The amended Project Order states that if compliance with the local government land use regulations or comprehensive plan require amendment to the comprehensive plan or land use regulations, the provisions of OAR 660 may apply, including Divisions 4, 9, 11, 12, 15, 16, 18, and 25 and the Statewide Planning Goals. The project is in compliance with acknowledged local land use plans and regulations, except as noted. Where non-compliance is noted, this application addresses the applicable goals and demonstrates the project's compliance with them.

The amended Project Order further states that EFSC determination of compliance with state and local regulations requires demonstration the facility complies with any LCDC administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3). ORS 197.646(3) requires local land use decisions to consider new or amended statewide planning goals, LCDC administrative rules and land use statutes which have not been incorporated in existing comprehensive plans and land use regulations, to the extent those new provisions apply to the Project. Following is a discussion of new or amended LCDC goals, rules and statutes and a discussion of how the Project complies.

#### **OAR 660-15-000(3), Statewide Planning Goal 3, Agricultural Land**

Goal 3 requires agricultural lands be preserved and maintained for farm use. Uses permitted in exclusive farm use zones, per ORS 215.283(1)(d), are utility facilities necessary for public service. Portions of both routes of the proposed electrical

transmission line, both proposed gas pipelines, and the water supply pipeline are on lands zoned for exclusive farm use. The locations of these facilities have been selected to use existing utility, railroad, and road corridors for most of their length. In addition, the water supply and gas pipelines will be buried, resulting in only a short-term impact on agricultural uses where the pipelines cross lands in farm use. Construction will be scheduled outside the growing season to the extent practical, to minimize impact.

Portions of the 500 kV transmission line route, the natural gas pipeline route to the connection with the Northwest Pipeline, and to a lesser degree the natural gas pipeline route to the connection with the PGT pipeline traverse soils of the Adkins group. These soils are considered prime soil if they are irrigated, which they are over portions of the routes. Impact to the soils is minimal, since the transmission line will be located adjacent to existing roads or transmission lines in the areas where the soils are cultivated, and the transmission line will only impact the use of soils at the locations of the single steel poles which will be spaced 600 to 800 feet apart. Impact to the soils by the natural gas pipelines will be nonexistent, because soils will be stockpiled and replaced after construction.

The Esquatzel, Powder, and Thatuna soil groups within the impact area discussed in Exhibit N may also be considered prime soils when irrigated, however these soil groups are not directly disturbed by construction of the 500 kV transmission line or either natural gas pipeline within the Stanfield Urban Growth Area.

The impacts of the proposed uses are minimal and do not significantly affect agricultural productivity and will not force a change in farm practices or costs on surrounding farm land. For these reasons, and the additional reasons identified above in connection with applicable comprehensive plan and land use regulations, the Project complies with the revised Goal 3.

### **OAR 660, Division 33, Statewide Planning Goal 3, Agricultural Land**

OAR 660, Division 33 establishes standards for uses on high value farm land and other agricultural lands. The Land Conversation and Development Commission (the "LCDC") adopted amended rules implementing Statewide Planning goal 3 in 1994, after the application was submitted.

Portions of both routes of the proposed electrical transmission lines, both proposed natural gas transmission pipe line and the water supply pipeline are on land zoned for "exclusive farm use." Assuming that this land constitutes high-value farm land or other agricultural land, the application is required to address these rules.

OAR 660-33-120 permits utility facilities necessary for public services on these types of lands. OAR 660-33-130(16) provides that utility facilities necessary for the public service are allowed on these types of land if it must be situated in an agricultural zone in order for the service to be provided.

As explained in the application, the utility facilities cannot be located in such a way as to avoid agricultural zones. Therefore, the standard for establishing utility

facilities on agricultural land is satisfied because they must be situated in an agricultural zone in order for the service to be provided.

**OAR 660, Division 9, Industrial and Commercial Development**

This rule requires that comprehensive plans and land use regulations be updated to provide adequate opportunities for economic activities and to assure that plans are based on available information about state and nationwide economic trends. The rule applies to comprehensive plans for Urban Growth Areas. The plans are to be updated at the first periodic review after implementation of this rule. As of the date of the NOI, a periodic review of the City of Stanfield Comprehensive Plan had not occurred, therefore the Stanfield plan may not yet conform to this rule.

No other revised goals or rules are directly applicable to the facility.

*End of Section*

EMERGENCY PREPAREDNESS

The Applicant has initiated consultations with the Umatilla County Chemical Stockpile Emergency Preparedness Program Coordinator. Prior to commencing construction of the energy facility, the Applicant will develop and submit a plan to EFSC, to be developed in consultation with the Emergency Preparedness Program Coordinator, for responding to an emergency at the Umatilla Army Depot.

*End of Section*

*Land Use Conclusion*

CHAPTER CONTENTS

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COMPLIANCE

HPP's discussion of land use criteria in the ASC accurately analyses the facility's compliance with applicable substantive land use criteria. That discussion served as the basis for the Council's analysis. The analysis shows that HPP meets all of the applicable substantive criteria, statewide planning goals, and DLCD rules.

CONDITIONS

(115) Following issuance of the Site Certificate and prior to commencement of construction, HPP shall apply for and obtain all appropriate land use approvals from the County, as listed in the Resolution of June 5, 1995 passed by the Umatilla County Board of Commissioners.

(116) HPP shall file with the County Planning Department a landscaping plan for the power plant prior to issuance of a zoning permit. The landscaping plan shall be implemented and shall provide screening and visual buffering for the power plant and its parking and loading areas to the extent reasonably feasible.

(117) Prior to issuance of a building permit, HPP shall file a site plan with the County which shall consist of a map showing the property lines, location of buildings, access roads and the names of the owner and developer of the site. The site plan shall also show that county ordinances related to parking and loading requirements, setbacks, signs and vision clearance are satisfied.

(118) If the energy facility site will not be owned by Simplot, HPP shall file with the County an application for a minor partition of the energy facility site from remainder of

the adjacent Simplot property in conformance with the information included in the ASC and file and record a final plat in accordance with County ordinances.

(119) Prior to construction, HPP shall submit a plan acceptable to ODOE for responding to an emergency at the Umatilla Army Depot. The plan shall be developed in consultation with the Umatilla County Chemical Stockpile Emergency Preparedness Program.

(120) HPP shall take reasonable steps to reduce or manage exposure to electromagnetic fields (EMF), consistent with EFSC findings presented in the "Report of the EMF Subcommittee to the Energy Facility Siting Council," dated March 30, 1993. Prior to and during construction and operation, HPP shall provide information to the public upon public request about EMF levels associated with the power plant and related transmission lines.

(121) HPP shall enter into an Irrevocable Consent Agreement (ICA) with the County by which HPP agrees to waive the right to oppose the formation of a Local Improvement District (LID) for Co. Rd.No 1324.

(122) The power plant will incorporate an on-site fire suppression system and will be constructed from fire retardant materials to the extent reasonably feasible. The power plant will incorporate spill prevention and containment designs for the storage of all hazardous materials. Fire suppression and hazardous material safety designs shall be established in consultation with the Hermiston Fire Department and the State Fire Marshall.

(123) HPP shall provide adequate parking during construction.

(124) HPP shall coordinate construction traffic with the county Public Works Department. In particular, a traffic plan shall be developed to coordinate peak construction traffic and peak potato harvest traffic.

(125) The applicant shall be responsible for any damages to County Road No. 1324 occurring as a result of construction or general operating activities.

(126) If the 500 kV transmission line alternative is constructed, HPP shall minimize the visual impact of new transmission line structures in the City of Umatilla by the use of steel lattice and wood frame structures, where feasible. Where new single steel pole structures must be installed within the City of Umatilla, HPP shall use non glossy paint coverings in colors that will minimize visual impacts.

*End of Section*

### *Other Requirements*

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**Regulations Exempt from EFSC's jurisdiction.** \_\_\_\_\_ **269**

Under ORS 469.503(1)(b), EFSC must determine that the facility complies with all other Oregon statutes and administrative rule identified in the Project Order, as amended, as applicable to the issuance of a site certificate for the proposed facility.

Applicable Oregon statutes and administrative rules identified in the Project Order and not addressed in any of the Council's standards discussed above include DEQ's regulations on noise from new industrial and commercial sources, and DSL's regulations concerning wetland impacts.

### NOISE

To approve the site certificate, EFSC must find that the facility will comply with DEQ's noise control regulations, OAR 340, Division 35. In this case the applicable regulation is 340-35-035(1)(b)(B)(i):

"No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels<sup>16</sup> L<sub>10</sub> or L<sub>50</sub>, by more than 10 dBA<sup>17</sup> in any one hour, or exceed the levels specified in Table 8..."  
[340-35-035(1)(b)(B)(i)]

Table 8  
(340-35-035)

#### New Industrial and Commercial Noise Source Standards

##### Allowable Statistical Noise Levels in Any One Hour

7 a.m. - 10 p.m. 10 p.m. - 7 a.m.

L<sub>50</sub> - 55 dBA   L<sub>50</sub> - 50 dBA

L<sub>10</sub> - 60 dBA   L<sub>10</sub> - 55 dBA

L<sub>1</sub> - 75 dBA   L<sub>1</sub> - 60 dBA

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<sup>16</sup> "Statistical noise level" means the Noise Level which is equalled or exceeded a stated percentage of the time. An L<sub>10</sub> = 65 dBA implies that in any hour of the day 65 dBA can be equalled or exceeded only 10 percent of the time, or for six minutes. [340-35-015(59)]

<sup>17</sup>"Noise level" means weighted Sound Pressure Level measured by use of a metering characteristic with an "A" frequency weighting network and reported as dBA. [340-35-015(37)] "Sound Pressure Level (SPL)" means 20 times the logarithm to the base 10 of the ratio of the root-mean-square pressure of the sound to the reference pressure. SPL is given in decibels (dB). The reference pressure is 20 micropascals (20 micronewtons per square meter). [340-35-015(56)].

The appropriate measurement point is either the nearest property boundary of the noise sensitive property<sup>18</sup> most affected by the noise source, or a point 25 feet from the closest building on the noise sensitive property, whichever is furthest from the source.

### Discussion

#### A. Noise Standards

The proposed plant would be located on previously unused industrial property near Hermiston, Oregon. Previously unused property is defined as property not used by an industrial or commercial noise source within the immediate past 20 years. Agricultural activities are not considered as industrial or commercial. Therefore the above standard will apply to the proposed energy facility.

The DEQ noise standard, OAR 340-35-035 (1)(b)(B)(i), 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, to the limits in Table 8. The limits in Table 8 allow a moderately higher level of noise in the daytime than at night.

New industrial noise sources must meet both tests of the standard. However, for any given industrial facility, one of the two standards will be the limiting requirement. The power plant would be a nearly constant noise source. For this reason, and because of already existing noise from the adjacent industrial facilities and highway traffic along Interstate 84, the DEQ nighttime L<sub>50</sub> limit of 50 dBA or less (from Table 8) will be the most stringent criterion applicable to this project.

#### B. Noise Sensitive Properties

HPP identified three noise sensitive properties within the area of influence of the proposed energy facility. The closest of these properties is owned by J.R. Simplot Co. and is operated as a day-care facility for employees' children during week days. The other two noise sensitive receptors are residential properties located to the south across the Umatilla River, on the north side of Umatilla Meadows Road. The closer of the two is approximately 2,900 feet distant from the energy facility site.

Ambient noise levels were recorded over a three day period to obtain a 24 hour sample. The noise measurements were taken at the closer of the two residences on Umatilla Meadows road. Both residences are equally exposed to the existing ambient noise sources of Highway I-84 and the J.R. Simplot plant. Therefore noise measurements at the closer of the two residences are representative of the noise impact on both properties.

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<sup>18</sup>"Noise sensitive property" means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner. [340-35-015(38)]

Sound measurements were not taken at the daycare center. The elevation of the daycare facility is approximately 80 feet below the power plant site. There would be some sound attenuation due to barrier effects of the ground, trees, and grasses. Calculations performed by HPP indicate that the ambient noise level at the daycare facility is likely to be lower than the ambient noise level at the measured location on Umatilla Meadows Road.

HPP also took noise measurements at the Hinkle railroad yard to determine what sources other than Interstate 84 and J.R. Simplot plant could be contributing to ambient noise levels at sensitive properties. The existing noise at the sensitive receivers along Umatilla Meadows Road is mainly a result of traffic along I-84, particularly truck traffic.

### C. Compliance

The above-described noise measurements indicate that the limiting existing statistical ambient noise level at the nearest residential noise sensitive property is L<sub>50</sub> of 44 dBA. Given that ambient level, the limiting standard for noise at this noise sensitive property caused by the operation of the energy facility is the nighttime L<sub>50</sub> limit of 50 dBA from Table 8. Preliminary design studies indicate that, with mitigation and noise abatement features, energy facility noise sources at the nearest noise sensitive residential receptor will be in the range of 46 to 48 dBA.

Because in this case the difference between the existing ambient level and the post-operation ambient level will be less than 10 dBA, the ambient degradation rule will not be the controlling measurement. In any event, ambient noise levels at the noise sensitive property are calculated to increase by not more than 6 dBA.

Although no noise measurements were taken at the daycare facility, observation and calculation incorporating data with respect to noise sources in the area lead to the conservative assumption that L<sub>50</sub> ambient level at the daycare center are most likely approximately 40 dBA. HPP's calculations indicate that energy facility noise at the daycare center will be 44 dBA, and that the existing ambient 40 dBA will be increased to 46 dBA. Thus, at the daycare center, both the 50 dBA limit and the 10 dBA increase standard will be met.

### D. Mitigation

The energy facility will employ noise controls to ensure that DEQ noise regulation are complied with. Because there is some probability that the turbine exhaust stack will radiate high levels of low frequency noise, silencer selection will include consideration of silencer performance down to the 31.5 Hz octave band. Preliminary design information indicates that no special noise abatement features are required for the turbine building. Cooling tower specifications should include noise level limits, and total plant noise should be calculated in the final design phase to confirm preliminary noise predictions.

## **Conclusion**

The facility will comply with the absolute limits from OAR 340-35-035 Table 8 through a combination of noise abatement and other measures. Because the limits of Table 8 have been found to be the most restrictive limits applicable to this facility, compliance with the absolute limits of Table 8 will ensure compliance with the ambient degradation element of the DEQ noise regulation.

### **Conditions**

(127) Applicant shall design, select, locate, and/or orient components of the energy facility and provide needed noise controls required to comply with OAR 340-35-035 for new industrial sources located on previously unused industrial sites.

(128) Applicant shall conduct a noise analysis of the final design to insure that the facility will meet DEQ regulations. Results of the analysis shall be submitted to the Department of Energy prior to issuing specifications for the equipment to be installed. The noise study shall include a projection of noise to the noise sensitive properties identified along Umatilla Meadows Road, the daycare facility, and residences west of the plant site west of Highway 207 and south of the Umatilla River. The analysis shall include a listing of the major noise sources and expected sound levels from each source at each receiver.

(129) Applicant shall conduct a survey at locations mentioned in Condition No. 2 above within two months of startup of the first turbine, again within two months of full power operation, within two months of startup of the second turbine, and again within two months of full power operation of both units. Sound measurements of power operation shall be at operation within 3% of full power. Measurements shall be made at each location during atmospheric conditions best for sound propagation. Sound monitoring shall not be conducted when winds are in excess of 5 mph.

(130) Applicant shall consult with Umatilla County and City of Umatilla and with neighbors around the energy facility to minimize the impacts of construction noise.

(131) Applicant shall specify noise rated cooling towers.

(132) Applicant shall design the HRSG and stack with resonant frequency above the lowest natural frequency of the exhaust from the gas turbine.

(133) Applicant shall specify combustion air inlet silencers to limit noise levels to 46 dBA or less at 2900 feet.

*End of Section*

## WETLANDS

Depending on route selection, HPP may require a removal-fill permit from DSL. As identified in the Project Order, the Oregon Removal-Fill Law (ORS 196.800 through 196.990) and the Division's Removal-Fill rules (OAR 141-85-005 to 141-85-090) are applicable to the proposed facility. A Removal-Fill Permit is needed if 50 cubic yards or more of material is removed, filled or altered within any "waters of the state" at the proposed site. Under the Removal-Fill Law, "waters of the state" include wetlands. The Council must determine compliance with applicable DSL regulations in order to approve the application. ORS 469.503(1)(b), OAR 345-22-000.

### Discussion

For purposes of evaluating the effect of the facility on wetlands, the area within 500 feet from the energy facility site boundary and 500 feet on either side of the proposed rights-of-way for related and supporting pipelines and transmission lines was considered as the project impact area. If a related or supporting facility was less than 500 feet from a railroad line, the impact area was bounded by the railroad tracks on that side of the supporting facility and was 500 feet from the right-of-way on the side away from the tracks.

In 1994 and 1995, the applicant engaged Northwest Wildlife Surveys (NWS) to identify and map the location of any jurisdictional wetlands in the project impact area and the source of water for the wetlands. Information was gathered from a variety of sources including U.S. Fish and Wildlife Service National Wetlands Inventory maps, Umatilla County Soil Conservation Service soils survey and wetlands maps, a Pacific Gas Transmission (PGT) pipeline connection route map (McKinnis Engineering, 1/11/94), and a field reconnaissance of the project impact area conducted during May and June, 1994. NWS reported the results of the investigations in the ASC (Exhibit H) and a report entitled Wetland Delineation Report: Hermiston Power Project (March 15, 1995), which was included in the ASC (Exhibit H, attachment, Exhibit H-1). The ASC (Exhibit H) included descriptions of the nature and amount of material to be removed from or placed in the project area wetlands. Mapping was provided on 1:24,000 scale topographic maps and on 1"=100' scale black and white aerial photograph reproductions.

HPP submitted a third NWS report in December, 1995, which addressed wetlands in the impact area for the relocated 500 kV line. (ODOE-280)

NWS identified 21 wetlands/riparian zones within the project impact area. These wetland areas were characterized as forested riparian, emergent wetland, pond, and artificially created wetland habitats (ASC, Exhibit H, p. 2a-11a). Most of the riparian areas and some of the emergent marsh areas are associated with the corridor of the Umatilla River. There are no wetlands on the energy facility site (a 17 acre parcel of alfalfa cropland).

Of the 21 wetlands identified, seven were examined as being potentially disturbed during project construction (Exhibit H, p. 11a). Upon further analysis, the applicant concluded that only three wetlands would be filled by activities related to the construction of the PGT natural gas pipeline connection and the 500 kV electrical transmission line. The

impacted wetland areas are identified as wetlands #4 and 15 and, depending on final pole placement, possibly # 13. The applicant has stated that the other four areas (wetlands #14, 16, 17, and 18) will be avoided by the transmission line construction and will not be impacted (Exhibit H, p. 11f).

Wetland #4 is an emergent wetland located on the PGT pipeline connection route. Wetland #13 is an emergent wetland located on the north end of the impact area for the 500 kV transmission line route. Wetland #15 is a forested and emergent wetland also along the 500 kV transmission route, to the south of wetland #13. Approximately 300 square feet (0.007 acre) of wetland #4 will be filled for the PGT pipeline connection. Approximately 6,000 square feet (0.07 acre) of wetland #15 will be filled by the placement of transmission poles. If final transmission line routing requires pole placement in wetland #13, approximately 300 square feet of wetland #13 will be filled. The total anticipated direct impacts to wetlands will be approximately 6,600 square feet (1/6 acre) (Exhibit H, p. 12a.)

In consultation with DSL, we have analyzed these proposed fills against against the legal standards from the Removal-Fill Law and administrative rules. We conclude that permits may be issued for each of the fills, provided that all unavoidable wetland impacts are fully mitigated in compliance with approved mitigation plans pursuant to the conditions in this order.

#### Statutory standards from ORS 196.825

ORS 196.825(2) provides the overall decision standard for permitting wetland fills. It provides that a permit shall be issued for filling waters of this state only after a determination that "the proposed fill would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation."

We conclude that the wetland fills meet this standard because:

- (a) the impacted wetlands do not now offer significant values related to public navigation, fishing and recreation;
- (b) routes for and methods of constructing the transmission lines and gas pipeline were changed to the extent practicable to minimize wetland impacts; and
- (c) the resulting wetland fills are not significant, and the impacted wetlands will remain viable and will continue to offer wetland functions and values.

ORS 196.825(3) requires consideration of certain factors in determining whether grant a fill permit:

"(a) The public need for the proposed fill and the social, economic or other public benefits likely to result from the proposed fill. \*\*\*\*"

The statute here (and in all but one of the other considerations) addresses the proposed "fill", obviously distinguishing it from what the statute calls the "project". ORS 196.800(5) defines "fill" as "the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of the state". Thus, the

statute limits our consideration here to the public need for the proposed transmission line supports and pipeline support structures that are proposed to be placed within jurisdictional wetlands. DSL advised that, accepting the proposed energy facility as a given, there is a public need for fills that would enable siting of necessary transmission lines and pipelines in an efficient and environmentally sensitive manner.

"(b) The economic cost to the public if the proposed fill is not accomplished."

Without the proposed wetland fills for the transmission line and pipeline, those lines would have to be re-routed to skirt each of the wetlands. Such re-routing would result in a considerably longer route, thereby increasing the costs of construction and right of way acquisition and expanding the scope of disruption for nearby residents. In addition, a longer transmission line would incrementally increase the risk of injury to birds from collision.

"(c) The availability of alternatives to the project for which the fill is proposed."

In contrast to the other statutory considerations, this consideration addresses the "project," which DSL has interpreted to mean the structures which the proposed fills would make possible (in this context, the transmission line and pipeline). The pipeline is essential to supplying the power plant with gas and the transmission line is essential to transmitting the generated electricity from the plant to consumers. DSL advises, and we concur, that the most practicable and least environmentally damaging routes for the transmission line and pipeline depend on the proposed wetland fills.

"(d) The availability of alternative sites for the proposed fill."

DSL analyzed various alternatives for siting the proposed transmission line and pipeline and advised that the proposed routes (and their associated fills) represent the practicable alternative with the least wetland impact. Alternatives include longer spans of transmission lines (to extend the line over wetlands without placing support structures within the wetlands), routing the transmission line and pipelines around wetlands entirely, and changing power pole construction. These alternatives were rejected because they involved engineering difficulties, substantial additional cost and additional environmental impacts. Specifically, other routes for the pipeline would impact more wetland and encroach on the Umatilla River. Also, alternative transmission line routes would be significantly longer and could not rely on existing rights of way and towers. By contrast, the proposed wetland fills for the preferred routes would affect only small, isolated wetland sites.

"(e) Whether the proposed fill conforms to sound policies of conservation and would not interfere with public health and safety."

The proposed fills minimize impacts to wetlands and other waters of the state and, by using existing rights of way, minimize potential hazards to health and safety.

"(f) Whether the proposed fill is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances."

The proposed fills would not impact the Umatilla River (the only nearby "water of the state" with significant public uses) and, by making maximum use of existing rights of way, would not unreasonably interfere with agricultural uses designated for adjacent land.

"(g) Whether the proposed fill is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill is to take place."

All the fills are under Umatilla County's land use jurisdiction. The County has certified that the proposed fills for the transmission line and pipeline comply with the local plan.

"(h) Whether the proposed fill is for streambank protection."

The proposed fills have no relation to streambank protection.

#### Administrative Rule Standards

OAR 141-85-050(1) requires an evaluation of probable impacts, "including cumulative impacts, of the proposed [fill] activity and its intended use on the water resources" by considering certain factors in addition to those required by the statute:

"(a) The environmental and economic consequences of the proposed fill."

As described above, the proposed fills will have minimal environmental impact, especially since the area to be filled for the pipeline is planned to be restored. Moreover, there appear to be no adverse economic consequences of the fills.

"(b) Direct and indirect effects of the fill on submerged and/or submersible lands."

The fills would avoid any waterway with state-owned submerged and submersible lands

"(c) Effects of the fill on the hydraulic characteristics of the fill site and surrounding areas, such as water circulation, tidal fluctuation, current patterns and flood hazards."

The proposed fills will have no measureable effects on the hydraulic characteristics of the wetlands, because the fills are relatively small and the wetlands receive their water from precipitation and local runoff.

"(d) Effects of the fill on special aquatic sites and refuges, sanctuaries and scenic waterways."

The proposed fills will have no such impacts.

"(e) Effects of the fill on water supply, water access, public recreation and aesthetics."

The proposed fill will not affect water supply or water access, and there is no current public recreation use of the impacted wetlands. There is not likely to be an effect on aesthetics, since the impacted wetlands are small and aesthetic values are not high.

"(f) Effects of the fill on water quality and aquatic life and habitats."

DEQ has certified that the proposed fills will not violate Oregon water quality standards. Since the impacted wetlands are small and do not include significant aquatic habitats and since the fills are relatively minor, there will be no significant effects on aquatic life and habitats.

OAR 141-85-050(2) requires consultation with local governments to determine that the proposed fills are consistent with the local comprehensive plan and ordinances and planning goals. DSL has conferred with local government and advises that the proposed fills are consistent with the local comprehensive plan and ordinances and planning goals.

OAR 141-85-050(3) provides that no fill permit can be issued until certain determinations are made:

"(a) The project is consistent with the water quality and toxic effluent standards of the State of Oregon as administered by the Oregon Department of Environmental Quality and would not result in significant degradation of the waters of the state."

As described above, DEQ has certified water quality compliance, and the minimal impacts of the fills would not result in significant degradation of the waters of the state.

"(b) The project meets historical and archaeological site preservation requirements of ORS 390.235."

The SHPO has reviewed the ASC and has no concerns. The ASC identifies no cultural resources protected by ORS 390.235 that would be affected by the fills. The Council has also determined that the facility complies with its standard on Historic, Cultural and Archaeological Resources, OAR 345-22-090.

"(c) There is no practicable alternative to the proposed fill which would have less adverse impact on the water resources of the State of Oregon."

As noted above, the expected impacts are minor, and (from an economic or engineering perspective) there are no practicable alternatives for transmitting power from, and supplying gas to, the power plant.

"(d) The project would not adversely affect rare, threatened or endangered species in the State of Oregon..."

No rare, threatened or endangered species are known to be adversely affected by the proposed fills. The Council has determined that the facility complies with its standard on Threatened or Endangered Species, OAR 345-22-070.

"(e) The project individually or collectively would not cause significant degradation of municipal water supplies; aquatic life and habitats; functions of the aquatic ecosystem; or recreational, aesthetic and economic values of the water resources of the state."

All unavoidable impacts of the proposed fills (which would be minor) would be offset by compensatory mitigation through creation or restoration of an equivalent area of wetland. Therefore, there would be no net degradation.

"(f) Appropriate and practicable steps have been taken which will minimize adverse impacts of the fill on aquatic life and habitats."

As noted above, all aspects of the proposed fills (location, engineering, timing, equipment access, etc) have been designed to minimize impact as much as practicable. Also, any unavoidable impacts will be fully mitigated.

For these reasons, we conclude that the facility complies with ORS 196.825 and OAR 141-85-050. To ensure continued compliance with these statutes and rules DSL has recommended, and we approve, the following conditions for inclusion in the site certificate.

### **Conditions**

(134) Prior to construction of the 500 kV transmission line, the applicant shall investigate, and where practicable, shall implement opportunities to design the tangent poles of the transmission lines to be high enough to pull the line up so that vegetation maintenance activities in riparian habitats can be minimized or avoided.

(135) Construction and maintenance of the transmission lines and natural gas pipelines shall avoid all wetlands, except for the two wetland areas (wetlands 4 and 15) that will be unavoidably impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and wetland #13, which may be impacted by placement of the transmission line poles. The permanent impact at these wetlands shall be limited to the area occupied by natural gas pipeline (wetland #4) and the pole foundations and the earthen backfill placed at the base of the poles (wetlands #13 and 15).

(136) The following areas shall be flagged in the field prior to the start of construction to delineate the maximum extent of project disturbance:

- i. the natural gas pipeline and transmission line routes through wetlands 4, 13, and 15;

- ii. any natural gas pipeline, water supply line, and transmission line routes within 50 feet of the Umatilla River; and
- iii. the transmission line crossings of the Umatilla River.

Ground disturbing activities in all areas shall be confined to a predefined construction right-of-way corridor. The corridor shall be no wider than is necessary for the safe and practicable completion of the construction tasks. Incidental activities (i.e., personal vehicle parking, sanitary facilities, temporary staging areas, etc.) shall be confined to a limited number of locations that shall be predetermined prior to commencement of construction activities.

(137) At wetland #13, all ditch crossings shall be culverted with adequate culverts to maintain year round flow.

(138) If pole placement avoids wetland #13 but is within 45 feet of it, HPP shall place a temporary construction fence and temporary silt barrier at the border of the wetland in the area of the pole to preclude incidental construction-related activity within the wetland and to minimize surface runoff from the construction site into the wetland.

(139) At wetland #15, construction access for pole placement shall be restricted to the driest period of the year (July through October); all waste and construction debris shall be removed from the wetland area and disposed of on uplands; and construction disturbance shall be restricted to the smallest area practicable.

(140) At wetland #4, a clay collar shall be placed on the down gradient side of the pipeline at the wetland boundary at each crossing; the pipeline shall be backfilled and stockpiled topsoil shall be replaced at the grade of the trench; and at the location of the outfall, fill material shall be minimized and stabilized to prevent erosion.

(141) Disturbed wetland and riparian areas shall be revegetated upon completion of construction with seed composition and vegetation species designed to enhance wetland and riparian habitat values and composed only of species commonly associated with wetland and riparian plant communities. Any wetland area that is lost due to project construction shall be compensated by restoring wetland area at a 1:1 wetland impact: wetland restoration ratio, by creating wetland area at a 1:1.5 wetland impact: wetland creation ratio, or by enhancing wetland area at a 1:3.0 wetland impact: wetland enhancement ratio such that there shall be no net loss of wetland habitat units or wetland habitat values. A wetland creation and revegetation plan shall be developed prior to construction in consultation with ODFW and DSL. The wetland creation and revegetation plan shall be submitted to ODOE for review and approval in consultation with ODFW and DSL. HPP shall comply with the approved plan.

(142) Measures taken to mitigate impacts to wetlands shall be monitored by the applicant. Monitoring methodologies and schedules shall be developed in consultation with ODFW, ODA, and DSL. Monitoring shall be conducted for a minimum of seven (7) years following the completion of the restoration efforts unless ODOE, in consultation with DSL and ODFW, approves a shorter monitoring period pursuant to its approval of a specific mitigation monitoring plan. A mitigation monitoring plan shall be submitted to

ODOE for review and approval in consultation with ODFW and DSL, prior to the commencement of construction. If any mitigation measures are determined by the applicant or ODFW to be unsuccessful, corrective actions shall be taken by the applicant after consultation with ODFW (as well as with ODOE and DSL if appropriate).

*End of Section*

REGULATIONS EXEMPT FROM EFSC'S JURISDICTION.

Under ORS chapter 469, EFSC does not have jurisdiction for determining compliance with federally delegated regulatory programs or with state and local regulatory programs that address design-specific construction or operating standards and practices that do not relate to siting.

We conclude that the following programs are not within EFSC jurisdiction because they are federally delegated programs:

- (1) the Air Contaminant Discharge Permit program administered by DEQ, which includes the federally delegated new source review requirements of the Clean Air Act and the Prevention of Significant Deterioration (PSD) program. This authority is in ORS Chapter 468A; OAR Chapter 340, Divisions 20, 21, 22, 25, and 31.
- (2) the National Pollutant Discharge Elimination System (NPDES), administered by DEQ - Water Quality Division, which regulates and permits stormwater runoff from the proposed project site; and
- (3) the program regulating the design, operation, monitoring and removal of underground storage tanks that contain certain toxic and hazardous materials, including petroleum products, administered by DEQ, under ORS Chapter 466,; OAR Chapter 340, Division 150.

We conclude that, for the Hermiston Power Partnership application, the following state regulatory programs are not within EFSC jurisdiction because the programs address design-specific construction or operating standards and practices not related to siting:

- (1) the Oil Spill Contingency and Prevention Plan program, administered by DEQ Water Quality Division under ORS 468B and OAR Chapter 340, Division 47, which regulates the transport, storage, handling and spill control and prevention of petroleum products;
- (2) regulations of building, structure design and construction practices by the Building Code Agency under ORS Chapters 447, 455, 460, 476, 479, and 480; OAR Chapter 918, Divisions 225, 290, 301, 302, 400, 440, 460, 750, 770, and 780;
- (3) various programs addressing fire protection and fire safety and the storage, use, handling, and emergency response for hazardous materials and community right to know laws for hazardous materials, administered by the Oregon State Fire Marshal's Office, under ORS Chapters 453, 476, and 480; OAR Chapter 837, Divisions 40 and 90;
- (4) the program addressing design and safety standards for natural gas pipelines and electric transmission lines administered by the Oregon Public Utilities

Commission, Safety Section under ORS Chapter 757; OAR Chapter 860, Division 24;

(5) regulations on the size and weight of truck loads on state and federal highways administered by the Oregon Department of Transportation under ORS Chapter 818; OAR Chapter 743, Division 82;

(6) the program regulating the possession, use and transfer of radioactive materials administered by the Oregon State Health Division (OSHD) under ORS Chapter 453; OAR Chapter 333, Divisions 100-119;

(7) regulations of domestic water supply systems regarding potability administered by OSHD under ORS Chapter 448.

*End of Section*

CONCLUSION

In order to issue a Site Certificate, the Council must determine that the preponderance of the evidence on the record support the following conclusions:

"(a) The facility complies with the standards adopted by the Council pursuant to ORS 469.501 ..."

"(b) . . . the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility . . . "

"(c) The facility complies with statewide planning goals adopted by the Land Conservation and Development Commission."

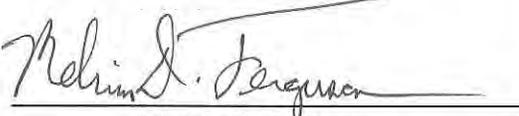
(see 1995 Senate Bill 951 Section 21.)

Having done that, the Council concludes that it should issue a site certificate for the Hermiston Power Project.

ORDER

IT IS THEREFORE ORDERED THAT the chairperson of the Council shall execute a site certificate in the form of the "Thermal Power Plant Certificate for the Hermiston Power Project" which is attached to this Order.

Made, entered, and effective this 25th day of March, 1996.

  
Melvin D. Ferguson  
Chair

Any party to the contested case proceeding on this site certificate application may appeal the Council's approval of the site certificate. Judicial review may be obtained by filing a petition for review within 60 days after the date of service of this order. Judicial review is pursuant to the provisions of ORS 469.403 to the Oregon Supreme Court.

Served on April 3, 1996 by Regular mail.

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