BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Thermal Power Plant Site Certificate for the Hermiston Power Project Request for Amendment No. One

FINAL ORDER

Summary
The Council approves this amendment request with modifications to the site certificate conditions.

A. Summary and Background of the Request for Amendment
Pursuant to ORS 469.409 [1997 Oregon Laws, Chapter 428 (HB 3283)] and OAR 345-27-050, the Hermiston Power Partnership (“HPP”) requests that the Energy Facility Siting Council (“Council”) amend the site certificate for the Hermiston Power Project.
HPP proposes to remove the site certificate conditions that require the proposed facility to demonstrate that it either meets the need standard or qualifies for an exemption under OAR 345-23-010(3) and to replace those requirements with conditions ensuring compliance with the applicable carbon dioxide (CO₂) emissions standard.

HPP’s address is as follows:
Hermiston Power Partnership
c/o Hermiston Power Company
PO Box 7867
Boise, ID 83707

A.1. Description of the Proposed Facility
On March 25, 1996, the Council issued HPP a site certificate for the Hermiston Power Project. The certificate authorizes HPP to construct a combined-cycle combustion turbine electric generating plant, fueled primarily by natural gas, with a nominal capacity of 460 megawatts (“MW”). The proposed facility would be located on a 17-acre parcel about three miles south of Hermiston, Oregon. HPP may construct either a one turbine project (230 MW) or a two turbine project (460 MW).

On January 23, 1998, the Council adopted amendment number two (out of sequence) to the site certificate. That amendment removed the J. R. Simplot Company from the partnership and modified the guaranty for the retirement account. HPP has not begun construction of the facility.
At the time HPP’s site certificate was issued, applicants were required to demonstrate a need for their proposed facilities ("need") under former ORS 469.501(L) and OAR 345, Division 23. Applicants could also demonstrate that their facilities were exempt from the need requirement. In its order approving HPP’s site certificate ("final order"), the Council found that HPP qualified for an exemption from the need standard because HPP met the criteria in OAR 345-23-010(3), the "6(c) Exemption." The 6(c) Exemption provides an exemption from the need standard for facilities for which, among other things, "all the net electric output is contracted to the Bonneville Power Administration." Id. HPP’s compliance with the criteria in the 6(c) Exemption is ensured through Conditions 1 through 4 and 90 of the site certificate. If HPP cannot fulfill these conditions prior to construction, Condition 4 requires it to amend its site certificate to demonstrate need under OAR 345, Division 23.

A.2 Unit Size

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

(2) No Site Certificate amendment is required for:
(a) A change to an electrical generation facility that results in an increase in the electrical generating capacity without increasing the number of electric generators at the site, changing fuel type, increasing fuel consumption by more than 10%, or enlarging the facility site, and that does not violate any other conditions specified in the Site Certificate.

The Council’s final order allows HPP to construct the combined-cycle plant with combustion turbines built by one of four vendors: General Electric, Asea Brown-Boveri ("ABB"), Siemens, and Westinghouse. At the time HPP submitted its application for site certificate (ASC), each of these combined-cycles had a nominal capacity of approximately 230 MW per unit. The site certificate describes the proposed two-unit facility as having a nominal capacity of 460 MW. It describes the facility as using approximately 3,400 MMBtu of natural gas per hour at full load (page 4).

However, in the two and one-half years since HPP submitted its ASC, all four vendors have revised the nominal capacity ratings for the turbine models HPP proposes to use. The revisions are based upon continued improvement in turbine performance for each model, as well as on additional data from models that others have purchased and installed.

In particular, based on performance improvements and on data from a unit installed in New Jersey, ABB has revised the capacity rating of the combined-cycle based on its model GT-24 turbine to 268 MW per unit. This represents a 14 percent increase over the output anticipated in the ASC. Fuel consumption for the improved GT-24 design for two units increases only 4 percent, from 3,400 MMBtu/hr to 3,527 MMBtu/hr.
using only natural gas and 3,537 MMBtu/hr at a combined rate of natural gas and
distillate fuel. The improved efficiency of the GT-24 combined-cycle consumes less fuel
per kilowatt hour of power generated and decreases carbon dioxide emissions per
kilowatt hour.

HPP is requesting no changes to the site certificate relating to the likely increased
capacity of the facility. Furthermore, it remains bound by all other conditions that might
possibly be affected by a change in capacity. Because HPP has selected a specific power
plant design, the Council uses the capacity and heat rate calculations in this order that are
based on data ABB provided to HPP for the-plant design. (Exhibit D, Request for
Amendment Number One).

B. Procedural History

B.1 Office of Energy Review Steps

B.1.2 HPP’s Request

HPP submitted its Request for Amendment Number One to the Council on
October 23, 1997.

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

The Office of Energy (OOE), pursuant to OAR 345-27-070(1), identified
potentially affected agencies, local governments and tribes and asked them to review the
request for amendment. OOE mailed a copy of the amendment request along with a
review report form on October 28, 1997 to those agencies, local governments and tribes
and asked them to reply by November 26, 1997.

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

B.1.3.1 Replies

No agency, local government or tribe suggested conditions. The Department of
Transportation noted that any work on the state right of way and any access to the state

Page 3 - Final Order for Request Number One to Amend the Site Certificate for the
Hermiston Power Project March 19, 1998
highway system would require permits. The State Fire Marshall recommended that HPP consider a fixed-foam fire suppression system for its oil tanks. Neither of these comments relates to the amendment HPP requested. Furthermore, both topics are exempted from Council regulation.

B.1.4 Initial Public Notice

On October 28, 1997, OOE mailed a notice of HPP’s request for amendment to all persons on the Council’s general mailing list and persons on the Council’s mailing list for HPP’s initial site certificate proceeding, pursuant to OAR 345-27-070(1). On October 29, 1997, OOE mailed the same notice of HPP’s request for amendment to adjacent property owners. The notice asked for initial comments to OOE by November 26, 1997.

No member of the public suggested conditions. The only comment was from Ball Janik, LLP, attorneys for the Umatilla Generating Company, LP. That letter noted Umatilla Generating Company’s interest in any issues regarding interpretation or implementation of the carbon dioxide standard. However, the letter offered no specific comments relating to HPP’s request for amendment.

B.1.5 Proposed Order

OOE issued its proposed order January 26, 1998.

B.1.6 Notice

At its November 14, 1997 meeting, the Council instructed OOE staff to file a notice of proposed rule-making concerning the adoption of a rule to govern the binding arbitration process that will apply to this amendment request if any person disagrees with the Council’s finding of HPP’s compliance with the CO₂ standard, pursuant to ORS 469.409. Based on the rule adoption process begun by its action on November 14, the Council placed the adoption of the arbitration rule on the January 23, 1998 meeting agenda. It stayed the present action until notice could be provided of both the proposed order for this amendment and the arbitration rule that would govern disputes arising out of this matter. The Council adopted the rule, OAR 345-27-0200, on January 23, 1998.

On January 26, 1998, OOE mailed notice of the proposed order to the Council’s general mailing list, persons on the Council’s mailing list for HPP’s first site certificate proceeding, and the adjacent property owners list, pursuant to OAR 345-27-070(2). The notice set a deadline for public comments by February 24, 1998 and gave notice of the procedure for requesting binding arbitration for challenges to the Council’s final order.

B.1.7. Public Comments on Proposed Order Regarding Facts and Policies

The Office of Energy received two written comments on the proposed order on February 24, 1998. Mr. Eugene Rosolie submitted comments on behalf of Northwest Environmental Advocates and Mr. Daniel W. Meek submitted comments on behalf of Don’t Waste Oregon Council, Utility Reform Project, and Mr. Lloyd Marbet.
This section of addresses factual and policy issues. Some of Mr. Meek’s comments raised legal and procedural issues. The Council addresses those issues in Section B.1.8 below.

B.1.7.1. Northwest Environmental Advocates

Mr. Rosolie objected to HPP’s proposed Conditions 1 and 4 to the extent the proposed language establishes a set monetary obligation. He supported the language for conditions that OOE proposed as offering more flexibility in matching the monetary path payments to the facility that will be built and providing greater assurance that the monetary path payment requirement matches actual obligations.

Mr. Rosolie also objected to the language in HPP’s proposed conditions that either 1) would require the qualified organization to refund moneys already obligated or 2) would permit HPP to diminish its guaranty up to the amount not expended if the facility has lower net emissions than estimated when it completes its 100-hour test. Mr. Rosolie argued that either interpretation of HPP’s proposed language could put undue pressure on the qualified organization to expend funds too quickly and could set up an internal conflict of interest on the board of the qualified organization, since HPP will participate as a non-voting member. He also argued that the HPP proposal is contrary to the agreement that crafted the legislation and is contrary to the language of the law.

Mr. Rosolie supported OOE’s recommendations regarding Conditions 1 and 4 in opposition to HPP’s proposal. For reasons stated in Section D.2, below, the Council also concurs with OOE’s recommendations regarding Conditions 1 and 4.


Mr. Meek argued that the Council should require HPP to pay the monetary path payment into an account that bears interest or other income. He noted that OOE proposed that the Council index the monetary path payment requirement to 1998 dollars. However, the proposed order only requires that HPP provide a guaranty that the funds be available to the Oregon Climate Trust. He argued that the Council should require HPP to place the funds, in 1998 dollars, in an account controlled by the Oregon Climate Trust. Doing so would allow the account to earn at least 5 percent annually with no risk or higher returns with little risk. Mr. Meek argued that relying solely on the index will result in less funds be available than from a secure, interest-bearing account. It could conceivably result in a reduction in the nominal amount with deflation over time.

ORS 469.503(2)(d) provides that “...The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amounts required under subparagraph (A)(ii) of this paragraph...” The Council believes that the important concern is that the money in the monetary path payment requirement retains its 1998 value until it is withdrawn by the Oregon Climate Trust. Under the site certificate conditions the Council sets forth in
Section D.2, HPP is not required to sign the guaranty or provide a letter of credit until just prior to when it begins construction. Because the Oregon Climate Trust cannot withdraw offset funds until it is ready to sign contracts for offsets, pursuant to OAR 469.503(2)(d)(A)(i), there will be an additional delay after HPP performs the guarantee. As explained in Section D.2.1.1, the Council will adopt conditions that include a clause requiring indexing of funds to ensure the funds retain their 1998 value.

It has been long-standing Council policy that future funds be indexed. The Council believes this is fair and consistent with the law. On the other hand, the law does not require that the security instrument be interest-bearing or provide other income. The statute uses the phrase “bond or comparable security.” A bond is not normally an interest-bearing instrument. The Council believes that the legislature did not intend to authorize the Council to require that the funds be placed in an interest-bearing account. The parties negotiating the initial draft of the law agreed that there would be flexibility for the applicant to propose a satisfactory security and rejected requiring specific instruments. The Council does not accept the recommendation that it require HPP to place the funds to meet the monetary path payment requirement in an interest bearing or income generating account.

B.1.8 Public Comments on Proposed Order Regarding Procedural and Legal Issues

Mr. Meek argued that HPP does not qualify for application of ORS 469.409 because HPP does not possess a valid site certificate. He noted that HPP is requesting this amendment pursuant to ORS 469.409:

469.409 Amendment of site certificate to demonstrate compliance with carbon dioxide emissions standard: binding arbitration to resolve disputes. Any site certificate holder that is required by its site certificate or by law to demonstrate need for the facility shall instead demonstrate compliance with the carbon dioxide emissions standard applicable to the type of facility subject to the site certificate before beginning construction. *** [1997 c.428 s. 7]

Mr. Meek argued that the statute applies only to a “...site certificate holder that is required by its site certificate or by law to demonstrate need for the facility.” He further argued that HPP does not currently hold a site certificate because the order granting one was stayed pursuant to ORS 469.403(4), which provides:

469.403(4) The filing of a petition for judicial review shall stay the order, except that the Supreme Court may lift the stay upon showing that:

(a) The delay in construction will result in substantial economic injury to the applicant; and
(b) Construction will not result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards.

Mr. Meek argued that the effectiveness of the site certificate was stayed on May 31, 1996 when the commentators and others filed in the Oregon Supreme Court their challenge to the Council order granting the site certificate. SC No. S433267.

Mr. Meek is correct that the filing of an appeal stays the Council order and prevents HPP from commencing construction. Nevertheless, HPP still has a valid site certificate. The order and the site certificate remain valid until and unless the court declares them invalid.

Mr. Meek's appeal of the original site certificate to the Supreme Court is based on his challenge to the "6C" exemption from need. This amendment, if granted, will make the Supreme Court review of the site certificate moot. The Supreme Court has held the case in abeyance until the Council acts on this amendment request. Therefore, the Council finds that the appeal of the order and site certificate and the stay of the order create no impediment to the granting of the amendment.

Mr. Meek also claims that HB 3283 is unconstitutional in several respects, including that it illegally precludes judicial review, violates the separation of powers doctrine, and contains illegal delegations of legislative powers. In reviewing Mr. Meek's claims, the Council relies on the presumption that duly enacted legislation, such as HB 3283, is valid; and, it bears in mind that its determination of the validity of HB 3283 is subject to review by the courts.

Mr. Meek first claims that HB 3283 violates constitutional guarantees to due process, separation of powers, and "checks and balances" because HB 3283 provides that the Council's order amending the site certificate to apply the carbon dioxide standard is not subject to judicial review. It is well established that the legislature has the authority to limit the jurisdiction of courts and that such limitations do not violate due process or separation of powers. The only exception relates to constitutional challenges to the statute or its implementation. Here, the provision only bars judicial review of the Council's decisions relating to HPP's qualification under the statutory criteria, but does not preclude Mr. Meek from making his constitutional arguments to a court. Therefore, the Council finds that the statute is not unconstitutional.

Mr. Meek next claims that HB 3283's reliance upon binding arbitration to settle disputes "about the site certificate holder's demonstration of compliance with the applicable carbon dioxide emission standard" violates the separation of powers doctrine and Article 1, Section 21, of the Oregon Constitution, which provides:
No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested.

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

Clearly the Oregon legislature has substituted binding arbitration for judicial review on a narrow, fact-based issue. No policy questions have been left for the arbitrator to decide. The neutral arbitrator's role is not likely to go much beyond resolving disputes about competing mathematical calculations, or, as is suggested by Mr. Meek's comments, about the details of paying the offset funds. Furthermore, the statute clearly sets out the methodology for determining the carbon dioxide offsets, making the determination largely ministerial. The arbitrator's role certainly does not extend to making law, that is setting standards of conduct applicable to other persons. HB 3283 contains a complete description of the requirements for compliance with the carbon dioxide emissions standard, including the monetary path. The Council finds that the binding arbitration provisions are not unconstitutional.

Mr. Meek also asserts that the "monetary path" is unconstitutional because it delegates authority to a private agency over which the government has no control.

Mr. Meek is incorrect. The monetary path does allow a site certificate holder to meet its carbon mitigation obligations by making payments to a "qualified organization." ORS 469.503. However, the statute has delegated no state power to the qualified organization.

The legislature has neither given the "qualified organization" the power to determine how much money the applicant must pay, nor the use to which those funds are put. The Council determines the amount of money the applicant must pay available. The funds must be used for "the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions." ORS 469.503(2)(e)(K)(iii). The Council finds that the use of the qualified organization is not unconstitutional.
For the reasons outlined above, the Council finds that HB 3283 is a constitutional
exercise of legislative power.

B.2 Council Review Steps

B.2.1 Council Notice
OE mailed HPP’s request for amendment and a memo summarizing the request
to the Council on November 5, 1997. OOE staff and HPP presented information about
the request to the Council at its November 14, 1997 meeting.

For the reasons discussed above regarding public notice, OOE mailed the
proposed order to the Council on January 26, 1998.

B.2.2 Council Hearing and Action
On March 13, 1998 the Council conducted a hearing on the request for
amendment and adopted this final order.

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

C.1 Proposed Changes to the Site Certificate
HPP requests a site certificate amendment that removes site certificate conditions
that require HPP to demonstrate compliance either with the 6(c) Exemption or the need
for facility standard and that adds conditions relating to the carbon dioxide emissions
standard, pursuant to ORS 469.409. HPP submitted its amendment request pursuant to
OAR 345-27-050, which requires site certificate holders to request amendments when
they propose to change an aspect of the facility in any way that would invalidate the basis
for a finding made by the Council in granting the site certificate.

HPP also cites ORS 469.409 as authority for its request. HPP proposes to
demonstrate compliance with the applicable carbon dioxide emissions standard based on
payment of carbon dioxide mitigation funds pursuant to ORS 469.503(2)(c)(C).

C.1.1. Current Need for Facility Conditions
In order to proceed with construction of its facility, HPP must comply with
Condition 4 of its site certificate, which provides:

“(4) In accordance with the Mandatory Condition requirement in
OAR 345-27-020(6)(d), the Site Certificate holder shall provide to the Council,
prior to commencement of construction:

(i) A long term power sales contract with the Bonneville Power
Administration for all the net electric output of the facility; and
(ii) 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(3). The issue at the hearing shall be limited to whether the facility complies with OAR Chapter 345, division 23.

HPP’s site certificate requires HPP either to meet the 6(c) Exemption criteria or to demonstrate need. At this time, HPP certifies that it cannot provide the required final determination from the Power Planning Council regarding a decision by BPA to acquire power from HPP’s proposed facility because BPA has not exercised its option to acquire such power. Therefore, under Condition 4 of the site certificate, HPP cannot proceed to construction “unless it demonstrates need ***.” The Council finds that HPP thus is “required by its site certificate *** to demonstrate need.”

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

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

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

C.1.3. Applicable Standard
HPP’s proposed generating facility will be fueled by natural gas, with distillate used as a backup fuel. HPP’s site certificate contains no limits on facility hours of operation other than restrictions on the use of backup fuel. Thus, the Council finds that the facility is a base-load gas plant as that term is defined in ORS 469.503(2)(e)(B). The applicable standard for a base-load gas plant is as follows:

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

ORS 469.503(2)(c), as amended, first requires the Council to determine “the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility.” The determination is to be based upon the facility’s proposed design and is to assume a 100 percent load factor (8,760 hours) and a 30-year facility life. ORS 469.503(2)(e)(B).

The statute requires the Council to use a rate of 117 lb. of CO₂ emissions per MMBtu (0.000117 lb. CO₂/Btu) of natural gas fuel consumed and a rate of 161 lb. CO₂ per MMBtu (0.000161 lb. CO₂/Btu) of distillate fuel consumed. ORS 469.503(2)(e)(G).

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

The following discussion demonstrates the method the Council uses to determine the monetary path payment requirement for the site certificate holder. The “monetary path payment requirement” means the combination of offset funds as defined in ORS 469.503(2)(c)(C) and selection and contracting funds as defined in ORS 469.503(2)(d)(A)(ii), whether calculated based on estimated heat rates and capacities for each fuel or calculated based on data (“Year One Heat Rates” and “Year One Capacities”) from the “Year One Test” report, conducted pursuant to ORS 469.503(2)(e)(G) and OOE’s proposed Condition 4(f). (Table 1 shows this demonstration also.)

HPP has selected a specific power plant design for its proposed energy facility and has provided information about the installed capacity and heat rate of that design based on current information from a major equipment supplier. The Council, therefore, bases its calculations to determine gross carbon dioxide emissions on such information. However, HPP has not yet entered into a contract for the purchase of plant equipment. As described in Section A.2, continuing improvements in the performance of turbines and other equipment mean that, at the time of equipment purchase and installation, the final installed capacity and heat rate of the proposed facility may differ from current projections. Hours of operation on distillate may also vary from those HPP proposed in its request for amendment. The Council, therefore, adopts a two-step process to allow itself to determine that HPP meets the applicable CO₂ standard.

Step one develops a method by which the Council determines the appropriate amount of the monetary path payments, based on HPP’s proposed combustion turbine. This method is then specified as a condition (Condition 4) in the amended site certificate.
Step two will use the method specified in the site certificate condition to calculate the required amount of the monetary path payment requirement. HPP will use the methodology to calculate the estimated monetary path payment requirement prior to beginning construction of the facility. This amount will be based on the final contracted capacity and heat rate of the facility for each fuel, along with the limit on the number of hours that HPP will be allowed to use distillate fuel. HPP must submit this information to the Council before it begins construction, pursuant to Condition 4(e). HPP will also use this methodology to determine whether it must increase its monetary path payment requirement, based on calculations using Year One Test data, as specified in Condition 4(d).

In its request for amendment, HPP performed the calculations for the process in a manner that allowed it to derive a method for calculating its required monetary path payments (offset funds and selection and contracting funds) that combined several steps into one factor. However, the Council uses a method that makes explicit all calculations and that is applicable both to estimated payments and additional payments, if any, due after the Year One Test.

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

For the purposes of demonstrating the calculation of the gross carbon dioxide emissions for the proposed plant, the Council uses a nominal generating capacity of the two-unit combustion turbine configuration of 536 MW (net, with no steam to off-site use), based on HPP’s request for amendment. The same methodology would apply to a one-unit configuration. The Council also uses the limit on average number of hours of burning distillate fuel annually that HPP proposes in its request for amendment (15.75 days, or 378 hours).

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

To calculate estimated offset funds required, the Council uses the proposed average number of hours annually that the facility will be permitted to use distillate fuel (378 hours). It subtracts 378 hours from 8,760 hours (the total number of hours in a year) to determine the average number of hours annually that the facility will use natural gas for fuel (8,382 hr).
The Council then calculates the total CO₂ emissions (lb. CO₂) that the facility will produce using each fuel. For natural gas, the Council multiplies the nominal power of the facility (536 MW, or 536,000 kW) while operating on natural gas by the annual average hours of operation on natural gas (8,382 hr); it then multiplies that product by 30 years to determine the total net plant output for 30 years (134,782,560,000 kWh). It then multiplies total net plant output for 30 years by the heat rate while operating on natural gas (6,580 Btu/kWh) and by the CO₂ emissions factor for natural gas (0.000117 lb. CO₂/Btu) to determine the total CO₂ emissions while operating on natural gas (103,763,701,642 lb.).

For distillate fuel, the Council multiplies the nominal power of the facility (537 MW, or 537,000 kW) while operating on distillate fuel by the annual average hours of operation permitted on distillate fuel (378 hr); it then multiplies that product by 30 years to determine the total net plant output for 30 years (6,089,580,000 kWh). It then multiplies total net plant output for 30 years by the heat rate while operating on distillate fuel (7,016 Btu/kWh) and by the CO₂ emissions factor for distillate fuel (0.000161 lb. CO₂/Btu) to determine the total CO₂ emissions while operating distillate fuel (6,878,643,418 lb.).

The Council then calculates the average CO₂ emissions rate for facility using the two fuels. It adds total CO₂ emissions that each fuel contributes for 30 years to determine the total combined CO₂ emissions from the facility (110,642,345,060 lb.). The Council adds the total net plant output from operation on each fuel for 30 years to determine the total combined plant output (140,872,140,000 kWh). The Council then divides the total combined CO₂ emissions by the total combined net plant output to determine the average CO₂ emissions rate for the facility (0.7854097 lb. CO₂/kWh).

The Council subtracts the carbon dioxide standard of 0.7 lb. CO₂/kWh from the average CO₂ emissions rate for the facility to calculate the excess CO₂ emissions rate (0.0854097 lb./CO₂ kWh).

The Council multiplies the total combined plant output for 30 years by the excess CO₂ emissions rate. Then it divides that product by 2,000 pounds per ton to determine the total amount of CO₂ emissions that the site certificate holder must mitigate (6,015,924 tons).

HPP has selected the "monetary path" provided in ORS 469.5032(c)(c) to meet the net CO₂ standard. Under the monetary path, the payment by the site certificate holder of $0.57 is deemed to result in a reduction of one ton of CO₂ emissions. Therefore, the Council multiplies the tons of excess CO₂ emissions by the unit mitigation rate of $0.57 per ton of CO₂ to calculate the sub-total for the offset fund ($3,429,076).
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Illustration of Methodology for Determining  
Monetary Path Payment Requirement  
Two Units, No Cogeneration |
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<td>Time on distillate fuel (hours)</td>
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<td>Time on natural gas (hours)</td>
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<td><strong>CO₂ emissions from operation on natural gas</strong></td>
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<td>Nominal power (kW) on primary fuel</td>
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<td>Total net plant output (kWh for 30 years)</td>
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<td><strong>Calculation of Offset Funds</strong></td>
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<td>Excess CO₂ emissions rate (lb. CO₂/kWh)</td>
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<tr>
<td>Total CO₂ emissions that must be mitigated (tons)</td>
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<tr>
<td>CO₂ mitigation costs per ton of emissions</td>
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<tr>
<td>Sub-Total: CO₂ offset funds required</td>
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<tr>
<td><strong>Calculation of Contracting and Selection Funds</strong></td>
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<tr>
<td>Sub-Total: Contracting and selection funds required</td>
</tr>
<tr>
<td><strong>Total: Monetary Path Payment Requirement</strong></td>
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In addition to paying offset funds, HPP must pay the qualified organization to compensate it for its costs of selecting and contracting for implementation of offsets, as specified in ORS 469.503(2)(d)(A)(ii). To calculate the appropriate selection and contracting fund amount, the Council subtracts $500,000 from the offset fund subtotal, then multiplies the remaining amount ($2,929,076) by 4.286 percent, then adds $50,000 to that product to calculate the selection and contracting fund sub-total ($175,540).

The Council then adds the sub-totals of the offset fund and the selection and contracting fund to calculate the monetary path payment requirement for the facility ($3,604,617).

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

For step two of the process, the site certificate holder shall use the contracted design parameters for capacity and heat rate for the facility that it reports pursuant to Condition 4(e) to calculate the estimated monetary path payment requirement. Likewise, the site certificate holder shall use the Year One Capacities and Year One Heat Rates that it reports for the facility pursuant to Condition 4(f) to calculate whether it owes additional monetary path payments.

The Council finds that the methodologies it employs in sections C.1.4.1 and C.1.4.2 and Table 1 accurately demonstrate the calculation method to determine the site certificate holder’s monetary path payment requirement to meet the CO\textsubscript{2} standard.

C.1.5 Means of Securing Required Emissions Reductions

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

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

In electing to use subparagraph (C), HPP does not request any carbon dioxide emissions credit for cogeneration at its facility as proposed in the application for site certificate and approved in the site certificate (page 2). However, HPP does not intend to
waive, and expressly reserves, the right to operate the project as a cogeneration project, as
set forth in the site certificate. Any added carbon dioxide offsets from such cogeneration
would be an added benefit for the state, but HPP does not seek any credit under
ORS 469.503(2)(c) for such offsets.

HPP proposes to disburse the required mitigation funds to a qualified
organization, as described below, pursuant to the provisions of ORS 469.503(2)(d)(A). In
addition, prior to the commencement of construction, HPP proposes to provide a guaranty
or letter of credit executed sufficient to ensure payment of these funds, as shown in
Exhibit B-2. Conditions proposed below will implement these measures.

C.1.6 Designation of the Qualified Organization
An applicant proceeding under ORS 469.503(2)(c)(C) must designate a qualified
organization to receive carbon dioxide offset funds and use them to implement offset
programs. The qualified organization also receives selection and contracting funds. HPP
has designated the Oregon Climate Trust as the qualified organization.

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

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

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

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

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

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

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

The first three of these criteria are applicable to this request. The Oregon Climate Trust meets these three criteria as follows:

469.503(2)(e)(K)(i). The Oregon Climate Trust has received an exemption from federal taxation under section 501(c)(3) of the Internal Revenue Code (Internal Revenue Service letter dated November 19, 1997).

469.503(2)(e)(K)(ii). The Oregon Climate Trust is incorporated in the State of Oregon.

469.503(2)(e)(K)(iii). The Oregon Climate Trust has in effect articles of incorporation that comply with this section.

469.503(2)(e)(K)(iv). This criterion is not applicable because the Oregon Climate Trust, having filed its articles of incorporation on June 26, 1997, has not completed its first year of operation.

469.503(2)(e)(K)(v). This criterion is not applicable because it relates to the operations of the qualified organization after construction of the proposed facility has commenced and the site certificate holder has made disbursements to the qualified organization.

469.503(2)(e)(K)(vi). This criterion is not applicable because it relates to the operations of the qualified organization after construction of the proposed facility has commenced and the site certificate holder has made disbursements to the qualified organization.

The Council finds that the Oregon Climate Trust meets all the applicable criteria as a qualified organization.
D. Amendments to Site Certificate

HPP requests the following amendments to the site certificate to apply the carbon dioxide standard in lieu demonstrating need for the facility. HPP changes are shown as strikeouts and single underlines. The Council’s revisions follow the discussion of each requested amendment. The Council’s revisions show modifications to the amended site certificate conditions as strikeouts and double underlines, except for Condition 4, which is shown as a complete replacement of the condition HPP proposed. Because the Council makes a significant reorganization of the conditions, some elements move among conditions.

D.1. Need for Facility

HPP requests that the Council delete Conditions no. 1 through no. 4 on pages 5 and 6 and Condition 90 on pages 18 and 19 of the site certificate. These conditions relate to the need for the facility and exemption therefrom.

III. CONDITIONS

Need/BPA Exemption: OAR 345-23-010(3)

1. Prior to commencement of construction, the Site Certificate holder 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, the Site Certificate holder 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 Site Certificate holder shall provide to the Council, prior to commencement of construction:

   (i) A long-term power sales contract with the Bonneville Power Administration for all the net electric output of the facility; and

   (ii) 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(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.

"(90) Except for the portion of capacity to be used by the Site Certificate holder:

(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, for 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."

The Council deletes these conditions for the reasons stated in section C.1.1, along with adding conditions to apply the CO₂ standard.

D.2. Additional Conditions for the Site Certificate

D.2.1 HPP requests that the Council add the following conditions under "Carbon Dioxide Emissions Standard, ORS 469.503(2)" and number them 1 through 4, beginning on page 5 of the site certificate.

D.2.1.1 HPP requests the following new Condition 1:

(1) Prior to commencement of construction the Site Certificate holder shall submit to the State of Oregon, through the Council, a guaranty substantially in the form attached as Exhibit B-2, executed by TransCanada Pipelines Limited and Ida-West Energy Company. The guaranty shall remain in effect until such time as
the Site Certificate holder has disbursed the amount of $1,817,555 for a one unit project, and $3,606,540 for a two unit project, as adjusted in accordance with the terms of this Site Certificate, to the Oregon Climate Trust (the “Oregon Climate Trust”). The guaranty will be in the initial amount of $1,817,555 for a one unit project, and $3,606,540 for a two unit project, and will thereafter be reduced upon, and in the exact amount of, any disbursement by the Site Certificate holder to the Oregon Climate Trust.

Subsequent to filing its request for amendment number one, HPP submitted an “Interim Report to the Energy Facility Siting Council Regarding the Withdrawal of a Partner and Management Committee Changes.” HPP filed the Report to inform the Council of a change in the ownership of the Hermiston Power Project and to request a change to Condition 15 in the site certificate. Upon review of the Report, OOE determined that the proposed change to Condition 15 required that the Council treat that proposed change as a request for amendment. Therefore, the Council processed the Report as the Request for Amendment Number Two to the Site Certificate for the Hermiston Power Project. The Council approved that amendment request at its meeting on January 23, 1998. The amended Condition 15, and related Conditions 16 and 79, changed the parties to the guaranty and provided alternative mechanisms.

The Council modifies the amendment HPP proposed to make it consistent in form and requirements with the guaranty the Council approved in Amendment Number Two. The changes add Idaho Power Company as a guarantor, allow HPP to substitute another guarantor with Council approval, and allow HPP to provide a letter of credit in lieu of the guaranty.

The Council also modifies the condition so it does not specify the dollar amount of the requirement. The monetary path payment requirement is determined by the methodology the Council adopts in Condition 4.

The Council’s condition also includes an indexing of the funds in 1998 dollars until they are withdrawn by the qualified organization. Indexing is consistent with the guaranty approved in Amendment Request Number Two. It is an element that OOE proposed, but HPP did not propose.

The Council believes that the money in the guaranty or letter of credit should maintain its value until the money is withdrawn by the Oregon Climate Trust. The monetary path payment must be made prior to beginning construction, which may be as late as November 30, 2000. In addition, it could be some time before the money is actually withdrawn by the Oregon Climate Trust. The Council believes that the money should retain its value over this period so that the value of the money that is withdrawn by the Oregon Climate Trust is equal to the value of the money at the time the Council
made the determination that HPP met the carbon dioxide standard by reliance on the monetary path payment requirement.

The Council’s modifies Condition 1 as follows:

(1) Prior to commencement of construction, the site certificate holder shall submit to the State of Oregon through the Council a guaranty substantially in the form of Exhibit B - 2, executed by TransCanada PipeLines Ltd. and Ida-West Energy Company ("Ida West"). The guaranty shall remain in effect until such time as the Site Certificate holder has disbursed the amount of $1,817,555 for a one unit project, and $3,606,540 for a two unit project, as adjusted in accordance with the terms of this Site Certificate, to the Oregon Climate Trust (the "Oregon Climate Trust"). The guaranty will be in the initial amount of $1,817,555 for a one unit project, and $3,606,540 for a two unit project, and will thereafter be reduced upon, and in the exact amount of, any disbursement by the Site Certificate holder to the Oregon Climate Trust, and Idaho Power Company in the amount of the monetary path payment requirement (in 1998 dollars) as determined by the calculations set forth in Condition 4 and based on the estimated heat rate and capacity certified pursuant to Condition 4(c) below and as adjusted in accordance with the terms of this site certificate pursuant to Condition 4(d).

For the purposes of this site certificate, the "monetary path payment requirement" means the offset funds determined pursuant to ORS 469.503(2)(c) and the selection and contracting funds determined pursuant to ORS 469.503(2)(d)(A)(ii) that the site certificate holder must disburse to the Oregon Climate Trust, as the qualified organization, pursuant to ORS 469.403(2)(d)(A). The calculation of 1998 dollars shall be made using the index set forth below.

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

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

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

D.2.1.2 HPP requests the following new Condition 2:

(2) The Site Certificate holder shall disburse to the Oregon Climate Trust offset
funds as requested by the Oregon Climate Trust up to the total amount of
$1,715,460 per turbine unit and administrative funds up to the total amount of
$102,095 for a one-unit project and $175,619 for a two-unit project, as adjusted in
accordance with the terms of this Site Certificate. Disbursements shall be made in
response to requests from the Oregon Climate Trust made in accordance with the
requirements of ORS 469.503(2)(d)(A).

In this proposed condition, HPP specifies the amount of money it must pay to the
qualified organization and requests that the total amount of funds be "adjusted in
accordance with the terms of this Site Certificate." There are two changes that the
Council makes to the condition:

First, the Council adopts the process outlined in section C.1.4 to determine the
estimated monetary path payment once HPP has contracted for a combustion turbine.
This acknowledges that the site certificate allows flexibility in turbine selection rather
than specifying a set amount of payment in the condition.

Second, HPP proposes language that would permit it to adjust its guaranty or
letter of credit both downward and upward. Under HPP’s proposal, if Year One Test data
show the CO₂ emissions are lower than the emissions estimated using design data, it
would be permitted to decrease the guaranty or letter of credit it made to meet the
estimated monetary path payment requirement. The Council concludes that proposal is
not within the scope of the ORS 469.503(2).

HPP clarified its proposal regarding an adjustment to the guaranty in a letter to
OOE on January 26, 1998. HPP stated that the intent of its proposal to allow the HPP to
reduce the amount of the guaranty or letter of credit (within the limit of remaining funds)
if the Oregon Climate Trust has not withdrawn all the funds before the adjustment is
calculated. However, the Council also believes that the language in the conditions that
HPP submitted is open to another interpretation, even if that were not HPP’s intent. The
Council reads HPP’s proposed conditions as requiring the qualified organization to
refund monetary path payments after the qualified organization had contracted for
expenditure of the funds.

There are several reasons the Council opposes HPP’s proposal regarding the
adjustment. In all likelihood, the Oregon Climate Trust will have already entered into
contracts to purchase offsets long before the Year One Test is completed. In fact, ORS
469.503(2)(e)(K)(v) requires the qualified organization to expend at least 60 percent of
offset funds within two years, which would likely be before a facility is completed, much
less tested. Implementation of the HPP proposal could put pressure on the Oregon
Climate Trust to delay spending funds until the adjustment is calculated. The site
certificate holder will be a non-voting member of the board until the funds are expended
and will be able to influence such decisions. Furthermore, allowing an adjustment that
could decrease the available funds could make it difficult for the Oregon Climate Trust to
negotiate contracts near the time of the adjustment. Finally, there is nothing in the statute
to suggest that the monetary path payment requirement should be adjusted downward
once the site certificate holder has made it available to the qualified organization. The
Council believes the HPP proposal is not workable and is not justified.

On the other hand, ORS 469.503(2)(c) requires the Council to adopt conditions to
“ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean
basis.” The only way the Council can meet such a requirement is to require the site
certificate holder to adjust its monetary payments to ensure that the net emissions are not
exceeded. Therefore, the conditions must have a mechanism to increase the monetary
path payments if necessary to meet the CO₂ standard.

The Council adopts the following modified version of Condition 2 to reflect the
language in its proposed Condition 1. It deals with the adjustment clause in language for
Condition 4.

(2) The site certificate holder shall disburse to the Oregon Climate Trust offset
funds and contracting and selection funds as requested by the Oregon Climate

Trust up to the total amount of $1,715,460 per turbine unit and administrative funds up to the total amount of $102,095 for a one unit project and $175,619 for a two-unit project monetary path payment requirement as determined by the calculations set forth in Condition 4 and based on the estimated heat rate and capacity certified pursuant to Condition 4(e) below (in 1998 dollars) and as adjusted in accordance with the terms of this Site Certificate pursuant to Condition 4(d). Disbursements shall be made in response to requests from the Oregon Climate Trust made in accordance with the requirements of ORS 469.503(2)(d)(A).

D.2.1.3 HPP requests the following new Condition 3:

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

The Council notes that this conditions paraphrases ORS 469.503(2)(d)(A)(iii). The Council adopts the condition with editorial changes, as follows:

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

D.2.1.4 HPP requests the following new Condition 4:

(4) The Site Certificate Holder shall comply with the following conditions regarding monitoring and offset fund adjustment:

(A) Prior to commencement of construction, the Site Certificate holder shall notify the Council in writing of the final selection of gas turbine vendor and shall submit written design information to the Department sufficient to verify that the facility's actual design carbon dioxide emissions on an annual average basis are not more than 0.7854 lb./kWh on a new and clean basis as defined in ORS 469.503(2). The information submitted shall include the proposed maximum
number of days of facility operation on fuel oil, as well as the facility's new and
clean heat rate, nominal electric generating capacity, and carbon dioxide
emissions for each fuel type. The report shall also include an affidavit or other
evidence from the Site Certificate holder to confirm that the vendor has
guaranteed the heat rate and that the Site Certificate holder's contract with the
vendor includes a liquidated damages provision adequate to fund any increased
CO₂ mitigation obligation calculated under Condition 4(D) resulting from
vendor's failure to achieve the guaranteed heat rate. Based upon this information,
the total amount of the Site Certificate holder's obligations under Condition 2
above, and the amount of the guaranty in Condition 1 above, shall be adjusted to
reflect the facility's actual design carbon dioxide emissions. The adjustment shall
be performed according to the methodology in Condition 4(D), below.

(B) Within two months of completion of the first year of commercial
operation, the Site Certificate holder shall provide a test report of the actual heat
rate, net electric power output and average carbon dioxide emissions per hour, for
each fuel type used, without degradation, as determined by a 100-hour test at full
power completed during the first 12 months of commercial operation, with the
results adjusted for the average annual site condition for temperature, barometric
pressure and relative humidity and use of alternative fuels, and using a rate of 117
pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161
pounds of carbon dioxide per million Btu of distillate fuel. Based upon the data
contained in the test report, the total amount of the site Certificate holder's
obligations under Condition 2 above, and the amount of the guaranty in Condition
1 above, shall be adjusted to reflect the facility's reported carbon dioxide
emissions. The adjustment shall be performed according to the methodology in
Condition 4(D), below.

(C) The combustion turbine units shall be fueled solely with natural
gas or with synthetic gas with a carbon content per MMBtu no greater than natural
gas, except that fuel oil may be used for no more than an average of 15.75 days
per year calculated on a rolling average of the previous five years. However, if
prior to the commencement of construction the Site Certificate holder proposes in
its written submission to the Council made pursuant to Condition 4(A) above, to
use fuel oil more or less than 15.75 days per year, the number proposed by the
Site Certificate holder shall replace 15.75 days as the binding maximum for fuel
oil use under this Condition 4(C).

(D) Upon the Site Certificate holder's submissions to the Council
pursuant to each of Conditions 4(A) and 4(B), if the calculation of the total of the
offset fund and the selection and contracting fund payments, as described below,
differs from the total of the offset fund and the selection and contracting fund
payments in the guaranty provided in Condition 1, then the total amount of the
guaranty in Condition 1 above, and the total amount of the site Certificate holder's obligations under Condition 2 above, shall be adjusted accordingly.

To calculate possible adjustments pursuant to this condition, the Site Certificate holder shall use the respective capacity and heat rate for each fuel it reported under condition 4(A) or 4(B), as applicable. The Site Certificate holder shall calculate a combined emissions rate (lb. CO₂/kWh) by using the reported heat rate for natural gas, 0.000117 (lb. CO₂/Btu), and the reported heat rate for fuel oil, 0.000161 (lb. CO₂/Btu), and by prorating each of these rates to reflect the Site Certificate holder's written commitment, pursuant to Condition 4(A), to a numeric maximum number of days per year on fuel oil. From that combined emissions rate, The Site Certificate holder shall subtract 0.7 lb. CO₂/kWh to calculate its excess CO₂ emissions rate. It shall calculate the combined annual nominal energy (kWh) by prorating the reported capacity for each fuel (kW) by same proportions of time it used for the heat rates. It shall multiply annual nominal energy by its excess CO₂ emissions rate, then multiply that by 30 years to calculate total pounds of excess CO₂ emissions. It shall then convert pounds of CO₂ to tons and multiply tons by the unit mitigation rate of $0.57 per ton of CO₂ to calculate the sub-total for the offset fund.

To calculate the appropriate selection and contracting fund amount, the Site Certificate holder shall subtract $500,000 from the offset fund subtotal, multiply the remaining amount by 4.286 percent, then add $50,000 to that product to calculate the selection and contracting fund sub-total.

The Site Certificate holder shall then add the sub-totals of the offset fund and the selection and contracting fund to calculate the total funds associated with the combined reported capacity and heat rates. If that total differs from the total amount of funds provided for in the guaranty in Condition 1, the Site Certificate holder shall adjust the guaranty by the difference between the original guaranty and the new amount and notify the Council and the Oregon Climate Trust that the total amount of its obligations under Condition 2 has been adjusted within two weeks of filing its submission under Condition 4(A) or 4(B), as applicable.

Because of the extensive changes the Council makes to the condition and the complexity of the condition, Condition 4 is shown below as the Council adopts it, rather than striking through the elements proposed by HPP. The discussion highlights the changes between what HPP proposed and what the Council adopts.

In its adoption of Condition 4(a)-(c), the Council uses the process it described in section C.1.4 as the way to determine estimated and adjusted monetary path payment requirements. This replaces HPP's proposed Condition 1, which simply specified the amount of money that would be required and provided for a guaranty.
In its adoption of Condition 4(d), the Council requires the site certificate holder to increase any monetary path payments calculated using the Year One Test data. As discussed in section D.2.1.2 above, the condition does not allow the site certificate holder to reduce the guaranty or letter of credit for the estimated monetary path payment requirement. This replaces HPP’s proposed Condition 4(D), which provided for a decrease in the guaranty or letter of credit if the tested facility had lower than estimated emissions.

In adopting Condition 4(e), the Council incorporates elements that HPP proposed in its Condition 4(A).

In adopting of Condition 4(f), the Council incorporates the concepts that HPP proposed in its Condition 4(B), except for the adjustment issue.

In adopting Condition 4(g), the Council incorporates the concepts that HPP proposed in its Condition 4(C). It also brings in language from the definition of a base load gas plant (ORS 469.503(2)(e)(B)) to ensure the limit on the use of alternative fuels.

(4) The site certificate holder shall use the following methodology to calculate the amount of the monetary path payment requirement that it must make available to the qualified organization pursuant to ORS 469.503(2)(d)(A). The same methodology shall apply to a one-unit or a two-unit facility. All calculations shall be made assuming that no steam is supplied for cogeneration. The site certificate holder shall use the contracted design parameters for capacity and heat rate for the facility that it reports pursuant to Condition 4(e) to calculate the estimated monetary path payment requirement. The site certificate holder shall use the Year One Capacities and Year One Heat Rates that it reports for the facility pursuant to Condition 4(f) to calculate whether it owes additional monetary path payments.

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

(A) The site certificate holder shall use the respective capacity, heat rate, and carbon dioxide emission factor for each fuel. The carbon dioxide emission factor for natural gas is 0.000117 lb. CO₂/Btu, and for distillate fuel it is 0.000161 lb. CO₂/Btu.

(B) The site certificate holder shall determine the time the plant will operate using each fuel. For distillate fuel, the time shall be the average number of hours annually that this site certificate permits the facility to use distillate fuel pursuant to Condition 4(g). The site certificate holder shall determine the annual average hours of operation on natural gas by subtracting the annual average hours on distillate fuel from 8,760 hours.
(C) The site certificate holder shall calculate the total CO₂ emissions (lb. CO₂) for each fuel:

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

(ii) Second, the site certificate holder shall multiply the nominal power of the facility (kW) while operating on distillate fuel by the annual average hours of operation on distillate fuel. It shall then multiply that product by 30 years to determine the total net plant output (kWh). It shall multiply the total net plant output by the heat rate (Btu/kWh) while operating on distillate fuel and by the carbon dioxide emission factor for distillate fuel (0.000161 lb. CO₂/Btu) to determine the total CO₂ emissions (lb.) from operating on distillate fuel; then.

(D) The site certificate holder shall calculate the average CO₂ emissions rate (lb. CO₂/kWh) for the two fuels. It shall add the total CO₂ emissions that each fuel contributes for 30 years to determine the total combined CO₂ emissions from the facility (lb.). Then, it shall add the total net plant output from operation on each fuel for 30 years to determine the total combined plant output (kWh). Then it shall divide the total combined CO₂ emissions by the total combined plant output to determine the average CO₂ emissions rate for the facility (lb. CO₂/kWh):

(E) The site certificate holder shall subtract the carbon dioxide standard of 0.7 lb. CO₂/kWh from the average CO₂ emissions rate for the facility to determine its excess CO₂ emissions rate (lb. CO₂/kWh):

(F) The site certificate holder shall multiply the total combined plant output (kWh) by the facility’s excess CO₂ emissions rate (lb. CO₂/kWh). It shall then divide that product by 2,000 pounds to determine the total tons of CO₂ emissions it must mitigate (tons); then.
(G) The site certificate holder shall multiply the total tons of CO₂ emissions it must mitigate by $0.57 per ton of CO₂ to determine the sub-total for the offset funds.

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

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

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

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

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

(c) Prior to commencement of construction, the site certificate holder shall notify the Council in writing of its final selection of gas turbine vendor and shall submit written design information to the Council sufficient to verify the facility’s designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. The information that the site certificate holder submits shall include the proposed binding annual average number of hours of facility operation on distillate fuel oil. The report shall also include an affidavit or other evidence from the site certificate holder to confirm that the vendor has guaranteed the heat rate and that the site certificate holder’s contract with the vendor includes a liquidated damages provision adequate to fund any increased monetary path payment requirement calculated under Condition 4(d) resulting from vendor’s failure to achieve the guaranteed heat rates or capacities.
(f) Within two months of completion of the first year of commercial operation, the site certificate holder shall provide to the Council pursuant to ORS 469.503(2)(e)(G) a test report (Year One Test) of the actual heat rates (Year One Heat Rates) and nominal generating capacities (Year One Capacities) for each fuel type used, without degradation, assuming no steam is supplied for cogeneration, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation, with the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel.

(g) The combustion turbine units shall be fueled solely with natural gas or with synthetic gas with a carbon content per million Btu no greater than natural gas, except that the site certificate holder may use distillate fuel for no more than an average of 378 hours per year calculated on a rolling average of the previous five years. For the first five years, distillate fuel use may fluctuate, provided that the average use, when calculated at the end of five years, does not exceed 378 hours per year. However, if prior to the commencement of construction the site certificate holder proposes in its written submission to the Council made pursuant to Condition 4(e) to use distillate fuel more or less than 378 hours on average per year, the number proposed by the site certificate holder shall replace 378 hours as the binding annual average number of hours for distillate fuel use under this Condition 4(g) and for calculations of the monetary path payment requirement.

Notwithstanding the number of hours permitted annually of distillate fuel use based on a five-year rolling average or during the first five years, in no year shall the facility’s use of distillate fuel exceed 10 percent of its expected total annual fuel use in Btu, higher heating value.

Conclusion. With the adoption of Conditions 1 through 4 as it modifies them, the Council finds that HPP meets the carbon dioxide emissions standard, ORS 469.503(2)(a).

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

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

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

E.1 Standards Relating to the Applicant

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

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

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

Conclusion. The Council finds that HPP has satisfied the requirements of OAR
345-22-010(1).

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

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

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

Discussion. This amendment will not affect any Council finding relating to third-
party services and permits, OAR 345-22-010(2).
Conclusion. The Council finds that HPP meets the requirements of OAR 345-22-010(2) for third-party services and permits.

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

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

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

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

E.1.1.4 Financial Assurance Standard, OAR 345-22-050
The financial assurance standard requires the Council to find that “the applicant has a reasonable likelihood of obtaining a bond or comparable security, satisfactory to the Council, in an amount adequate to restore the site if the site certificate holder:

“(1) Begins but does not complete construction of the facility; or

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

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

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

E.2 Standards Relating to the Site and Structure

E.2.1 Structural Standard, OAR 345-22-020
The structural standard requires the Council to find:
"(1) The applicant, through appropriate site specific study, has adequately characterized the site in terms of seismic zone and expected ground response during the maximum credible seismic event; and 

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

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

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

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

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

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

Conclusion. The Council finds that HPP meets the soil protection standard, OAR 345-22-022.

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

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

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

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

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

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

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

E.3.1 Protected Area Standard, OAR 345-22-040
The protected area standard prohibits the siting of an energy facility in any of the listed protected areas. OAR 345-22-040(1). The standard permits the siting of a facility outside the listed protected areas as long as the Council finds, "taking into account mitigation, the design, construction and operation of the facility...is not likely to result in significant adverse impact" to any of the listed protected areas.

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

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

E.3.2 Fish and Wildlife Habitat Standard, OAR 345-22-060
The fish and wildlife habitat standard requires that the Council find that "the design, construction, operation and retirement of the facility, taking into account mitigation, is consistent with the fish and wildlife mitigation goals and standards of OAR 635-415-030." OAR 635-415-030 describes four categories of habitat in order of their value. The rule then establishes mitigation goals and corresponding implementation standards for each habitat category.

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

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

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

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

Conclusion. The Council finds that HPP meets the threatened and endangered species standard, OAR 345-22-070.
E.3.4 Scenic and Aesthetic Standard, OAR 345-22-080

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

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

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

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

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

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

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

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

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

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

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

The recreation standard requires that the Council find that "design, construction and operation of a facility, taking into account mitigation, is not likely to result in a significant adverse impact to important recreational opportunities in the impact area.

Factors which will be considered in judging the importance of a recreational opportunity include:

“(1) Any special designation or management of the location,

“(2) The degree of demand

“(3) Uniqueness
“(4) Outstanding or unusual qualities
“(5) Availability or rareness, and
“(6) Irreplaceability or irretrievability of the opportunity.”

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

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

E.3.7 Socio-Economic Impacts Standard, OAR 345-22-110
The socio-economic impacts standard requires the Council to find “that the construction and operation of the facility, taking into account mitigation, is not likely to result in significant adverse impact to the ability of communities within the study area to provide the following governmental services: sewers and sewage treatment, water, stormwater drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.”

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

Conclusion. The Council finds that HPP meets the socio-economic impacts standard, OAR 345-22-110.

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

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

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

E.3.9 Retirement Standard, OAR 345-22-130
The retirement standard requires the Council to find that "the site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following facility retirement."
Discussion. This amendment will not affect any Council finding relating to the retirement standard.

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

E.4 Other Standards

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

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

Conclusion. The Council finds that HPP meets the noise standard, OAR 340-35-035(1)(b)(B).

F. Conclusions
The Council finds that the actions in HPP's request are consistent with current Council rules, with other applicable statutes and rules, and with state-wide land use planning goals and would not cause a significant adverse impact to public health and safety or the environment. In preparing this proposed order, the Council has limited its consideration to the effects that may be produced by the proposed change to the facility described in HPP's request for amendment to remove conditions related to the need for facility standard and adopt conditions related to the carbon dioxide standard, dated October 23, 1997. In considering those effects, the Council has reviewed state statutes, administrative rules, and local government ordinances.

Based on the above findings, the Council concludes that it should amend the site certificate for the Hermiston Power Project as HPP requests, with modifications to the amendments as noted above.

FINAL ORDER

Based on the above findings of fact, discussions and conclusions of law, the Energy Facility Siting Council determines that it shall approve amendment request
number one and that the chairperson of the Council shall execute the site certificate
amendment in the form of the “Thermal Power Plant Amended Site Certificate for the
Hermiston Power Project,” which incorporates “Amendment Number One to the Thermal
Power Plant Site Certificate for the Hermiston Power Project.” The Amended Site
Certificate also incorporates “Amendment Number Two to the Thermal Power Plant Site
Certificate for the Hermiston Power Project,” which the Council adopted on January 23,
1997. The Amended Site Certificate is attached to this order and is incorporated by
reference into this order.

Issued this 19th day of March, 1998.

Terry Edvalson,
Chair, Energy Facility Siting Council

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

The governing rules for this amendment process are at OAR 345-27-0200,
of compliance with the applicable carbon dioxide emissions standard is the only issue that
is subject to binding arbitration.

You may only request binding arbitration if you submitted written comments on
OOE’s Proposed Order by 5:00 p.m. on February 24, 1998 and you appeared at the
Council meeting at which the Council adopted the final order on the amendment request.

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

Page 38 - Final Order for Request Number One to Amend the Site Certificate for the
Hermiston Power Project March 19, 1998
GUARANTY

This GUARANTY, dated as of ______________ (this "Guaranty") is executed and delivered by IDA-WEST ENERGY COMPANY, an Idaho corporation, TRANSCANADA PIPELINES LIMITED, a Canadian corporation, and IDAHO POWER COMPANY, an Idaho corporation (individually a "Guarantor" and collectively the "Guarantors"), in favor the Oregon Energy Facility Siting Council ("EFSC").

Recitals

A. The Guarantors have, through their wholly owned subsidiaries, formed Hermiston Power Partnership, an Oregon general partnership ("HPP"), for the purpose of developing, constructing, owning and operating a nominal 460 MW (net) natural gas-fired combined-cycle combustion turbine cogeneration plant and related and supporting facilities (the "Project") to be located near Hermiston, Oregon.

B. HPP previously filed an application with EFSC for a site certificate authorizing construction and operation of the Project in accordance with ORS Chapter 469 and the rules and regulations of EFSC promulgated thereunder.

C. On March 19, 1998, EFSC and HPP entered into an amended site certificate for the Project issued pursuant to HPP's application therefor. The amended site certificate requires HPP, prior to the commencement of construction of the Project, to obtain security, satisfactory to EFSC, in an amount sufficient to satisfy HPP's obligations under ORS 469.503(2)(d) relating to the monetary path payment requirement, which shall include estimated offset funds and selection and contracting funds and any increased amounts of those funds required to meet the monetary path payment requirement as calculated using data from the facility when it is tested on a new and clean basis pursuant to ORS 469.503(2)(c)(G).

D. To induce EFSC to amend the site certificate for the Project, and in consideration of EFSC's amending such site certificate, the Guarantors desire to execute and deliver this Guaranty in favor of EFSC to enable HPP to satisfy the conditions in the site certificate for the Project described above relating to HPP's obligations under ORS 469.503(2)(d).

Accordingly, the Guarantors hereby covenant and agree with EFSC as follows:

SECTION 1. The Guarantors, jointly and severally, hereby irrevocably, absolutely and unconditionally under any and all circumstances guarantee to EFSC the punctual and full performance and payment of each and every obligation of HPP now existing or which may hereafter arise under ORS 469.503(2)(d) as in effect on the date
hereof relating to the payment of the monetary path requirement (in 1998 dollars calculated using the index referred to in the amended site certificate for the Project relating to the calculation of the monetary path payment requirement) (the "Guaranteed Obligations"), as may be increased by calculations using data provided in the test of the facility on a new and clean basis pursuant to ORS 469.503(2)(e)(G), and agree that, if for any reason whatsoever, HPP shall fail or be unable duly, punctually and fully to perform or pay the Guaranteed Obligations, the Guarantors shall, jointly and severally, forthwith perform or pay the Guaranteed Obligations, or cause the Guaranteed Obligations to be performed or paid, without regard to any exercise or non-exercise by EFSC of any right, power or privilege under or in respect of the Guaranteed Obligations.

SECTION 2. This Guaranty shall be direct, immediate and primary and shall be a guarantee of payment and performance and not of collection, and is not conditioned or contingent upon any requirement that EFSC proceed against HPP or any other person or pursue any other right or remedy in EFSC's power before proceeding against the Guarantors of any of them or upon any other event, contingency or circumstance whatsoever.

SECTION 3. The Guarantors, jointly and severally, hereby unconditionally, absolutely and irrevocably agree to hold EFSC harmless and to indemnify EFSC from and against any and all claims costs, liabilities and expenses of any nature whatsoever, including reasonable attorneys' fees, resulting from, arising out of or relating to any failure by HPP to perform the Guaranteed Obligations when due or any failure by the Guarantors to perform any of their obligations hereunder when due and in accordance with the terms hereof.

SECTION 4. To the fullest extent permitted by law, the obligations of the Guarantors under this Guaranty shall be absolute, irrevocable and unconditional, shall remain in full force and effect, and shall not be affected by or subject to any reduction, termination or other impairment by set-off, deduction, counterclaim, recoupment, interruption or otherwise, and the Guarantors shall have no right to terminate this Guaranty or to be released, relieved or discharged, in whole or in part, from their payment or performance obligations referred to in this Guaranty for any reason whatsoever, including without limitation, any one or more of the following:

(a) any amendment, supplement or modification to, waiver of, consent to or departure from, or failure to exercise any right, remedy, power or privilege under or in respect of, the Guaranteed Obligations or any other agreement or instrument relating thereto;

(b) any insolvency, bankruptcy, reorganization, dissolution or liquidation of, or any similar occurrence with respect to, or cessation of existence of, or change of ownership of, any person, or any rejection of any of the Guaranteed Obligations in connection with any Proceeding (as defined in Section 5 below) or
any disallowance of all or any portion of any claim by EFSC in connection with any Proceeding;

(c) the failure to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, any person;

(d) any substitution, modification, exchange, release, settlement or compromise of any security or collateral for or guarantee of any of the Guaranteed Obligations, or failure to apply such security or collateral or failure to enforce such guarantee; or

(e) any other event or circumstance whatsoever which might otherwise constitute a legal or equitable discharge of a surety or guarantor, it being the intent of the Guarantors that their obligations under this Guaranty shall be irrevocable, absolute and unconditional under any and all circumstances.

This Guaranty and the obligations of the Guarantors hereunder shall continue to be effective or be automatically reinstated, as the case may be, if at any time any payment by or on behalf of HPP is rescinded or must otherwise be restored by EFSC for any reason, including, but not limited to, as a result of any Proceeding with respect to HPP or any other person, as though such payment had not been made.

SECTION 5. The Guaranteed Obligations shall include, without limitation, interest accruing following the commencement by or against HPP of any case or proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up, liquidation, dissolution or composition or adjustment of debt (a "Proceeding"), whether or not allowed as a claim in any such Proceeding.

SECTION 6. To the fullest extent permitted by law, the Guarantors hereby waive (a) all set-offs, counterclaims, presentments, demands for performance, notices of adverse change in the financial condition of HPP or of any other fact that might increase Guarantors' risk hereunder, notices of nonperformance, protests, notice of any of the matters referred to in Section 4, notices of presentation for payment, notices of demand for performance, notices of protest, notices of dishonor, notice of any waivers or indulgences or extensions, notice of the creation or existence of any Guaranteed Obligations, notices of every kind which may be required to be given by any statute or rule of law and notice of acceptance of this Guaranty; (b) diligence, presentment and demand of payment, filing of claims with a court in connection with any Proceeding, protest or notice with respect to the Guaranteed Obligations and all demands whatsoever; (c) any and all statutes of limitations, all laws providing for the exemption of property from execution or for valuation and appraisal upon foreclosure; and (d) any requirement that any action or proceeding be brought against HPP or any other person, or any requirement that any person exhaust any right, power or remedy or proceed against any other person, prior to any action against the Guarantors or any of them under the terms
thereof; (e) any defense arising by reason of any disability or other defense of HPP or by reason of cessation from any cause whatsoever of the liability of HPP with respect to the Guaranteed Obligations (other than the defense that the Guaranteed Obligations have been paid or performed in their entirety), (f) any right to assert against EFSC any defense (legal or equitable), set-off against counterclaims, or claim which any Guarantor may now or at any time hereafter claim against HPP or any other party liable to EFSC.

SECTION 7. Guarantors consent and agree that, without notice to or by Guarantors and without affecting or impairing the obligations or Guarantors hereunder, EFSC may, by action or inaction:

(a) compromise, settle, extend the duration or the time for the payment or performance of, or discharge the performance of, or otherwise not enforce the Guaranteed Obligations;

(b) release or substitute any Guarantor or any other guarantor, if any, of the Guaranteed Obligations, or enforce, exchange, release, or waive any security for the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations, or any portion thereof.

SECTION 8. Until all of the Guaranteed Obligations have been fully and indefeasibly discharged, to the full extent necessary to prevent any payments or other transfers from HPP or Guarantors to EFSC from being made for the benefit of an insider creditor in determining whether such payments or other transfers constitute avoidable transfers or preferences under Section 547 of the Bankruptcy Code, Guarantors hereby waive (a) any right of subrogation or reimbursement Guarantors have or may have as against HPP with respect to the Guaranteed Obligations; (b) any right to proceed against HPP, now or hereafter, for contribution, indemnity, reimbursement and any other suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether arising under express or implied contract or by operation of law, which Guarantors may now have or hereafter have as against HPP with respect to the Guaranteed Obligations, and (c) any rights to recourse to or with respect to any asset of HPP.

SECTION 9. This Guaranty is a continuing guaranty, shall apply to all Guaranteed Obligations whenever arising, shall be binding upon the Guarantors and their respective successors and shall inure to the benefit of and be enforceable by EFSC and its successors.

SECTION 10. All notices to be served under this Guaranty shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telex as follows:

/
If to the Guarantors:

Ida-West Energy Company
3380 Americana Terrace
Suite 300
Boise, Idaho 83706
Attention of President
(208) 395-8930
(208) 395-8931 [fax]

TransCanada PipeLines Limited
TransCanada PipeLines Towers
111 - Fifth Avenue SW
PO Box 1000, Station M
Calgary, Alberta
Canada T2P 4KS
Attention of President
(403) 267-8894
(403) 267-8954 [fax]

If to EFSC:

Energy Facility Siting Council
625 Marion Street NE
Salem, Oregon 97310
Attention of Chairman
(503) 556-0005
(503) 556-7257 [fax]

or at such other address as may from time to time be designated in writing in a notice delivered as aforesaid. Notice given by personal delivery shall be effective upon actual receipt. Notice given by certified mail, postage prepaid and return receipt requested shall be effective three days after the date of mailing. Notice given by telegram or telex shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices by telegram or telexes shall be confirmed promptly after transmission in writing by certified mail or personal delivery.

SECTION 11. This Guaranty shall in all respect be governed by, and construed in accordance with, the law of the State of Oregon without regard to principles of conflicts of laws.
SECTION 12. Each Guarantor represents and warrants to EFSC that: (a) such Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (b) the execution and delivery of this Guaranty and its performance have been duly authorized by all necessary corporate action on the part of such Guarantor and do not require any other corporate actions or proceedings or any stockholder approval or consent of any trustee or holder of any indebtedness of such Guarantor; and (c) this Guaranty has been duly executed and delivered by such Guarantor and constitutes the legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors’ rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

SECTION 13. The obligations and liabilities of each of the Guarantors under this Guaranty shall terminate (subject to automatic reinstatement under Section 4) on the date on which the Guaranteed Obligations have been paid and performed in their entirety (in 1998 dollars calculated using the index referred to in the site certificate for the Project relating to the calculation of the monetary path payment requirement), but not before HPP has met any additional obligations that it may incur based on calculations of monetary path payment requirement using data from the facility when it is tested on a new and clean basis pursuant to ORS 469.503(2)(e)(G).

SECTION 14. If any provision of this Guaranty shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Guaranty, and this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but only to the extent of its invalidity, illegality or unenforceability.

SECTION 15. (a) Each Guarantor hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations may be brought in any Oregon State or Federal court in the City of Salem or the City of Portland in the State of Oregon and hereby irrevocably submits generally and unconditionally to the non-exclusive jurisdiction of such courts.

(b) Each Guarantor hereby irrevocably and unconditionally appoints Stoel Rives LLP as its authorized agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Oregon and agrees that any writ, summons, order, judgment or other notice of legal process shall be sufficiently served on it if delivered to such agent for service at its address in Portland, Oregon whether or not such agent gives notice thereof to such Guarantor. Each Guarantor agrees that it will at all times maintain an agent for service in Oregon with respect to its obligations under this Section 13, and in the event that for any reason the agent named above (or its successor) shall no longer serve as agent of any Guarantor to receive service
of process as aforesaid, such Guarantor shall promptly appoint a successor so to serve and
shall notify EFSC thereof.

(c) Nothing in this Section 15 shall limit the right of EFSC to commence any
legal action or proceeding or otherwise proceed against any Guarantor in any other
jurisdiction or to serve process in any manner permitted by applicable law nor shall the
taking of proceedings in any one or more jurisdictions preclude the taking of proceedings
in any other jurisdiction whether concurrently or not.

SECTION 16. Subordination. Each Guarantor hereby agrees that any and all
present and future indebtedness of HPP owing to Guarantor is postponed in favor of and
subordinated to, full and final payment and performance of the Guaranteed Obligations in
their entirety. In this regard, no payment of any kind whatsoever shall be made with
respect to such indebtedness so long as any Guaranteed Obligation remains unpaid or
unperformed.

SECTION 17. Attorneys' Fees and Costs. Guarantors agree to pay, on demand,
all reasonable attorneys' fees and all other costs and expenses which may be incurred by
EFSC in the enforcement of this Guaranty or in any way arising out of, or consequential
to the protection, assertion, or enforcement of the Guaranteed Obligations whether or not
suit is brought.

SECTION 18. Execution and Counterparts. This Guaranty may be executed in
several counterparts, all of which when taken together shall constitute one Guaranty
binding on all parties, notwithstanding that all parties are not signatories to the same
counterpart. Each copy of the Guaranty so executed shall constitute an original.

IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be
executed and delivered by its duly authorized officer as of the date first above written.

IDA-WEST ENERGY COMPANY
an Idaho corporation

By:
Name:
Title:
IDAHO POWER COMPANY
an Idaho corporation

By:
  Name:
  Title:

TRANSCANADA PIPELINES LIMITED
a Canadian corporation

By:
  Name:
  Title:

By:
  Name:
  Title:

ACCEPTED:

OREGON ENERGY FACILITY SITTING COUNCIL

By:
  Name:
  Title:

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