

1 BEFORE THE ENERGY FACILITY SITING COUNCIL  
2 OF THE STATE OF OREGON  
3  
4

5 In the Matter of the Thermal Power )  
6 Plant Site Certificate for the ) FINAL ORDER  
7 Hermiston Power Project )  
8 Request for Amendment No. Two )  
9  
10  
11

12 **Summary**

13 The Energy Facility Siting Council (“Council”) approves this amendment request  
14 with modified site certificate conditions.  
15

16 **A. Summary and Background of the Request for Amendment**

17 On October 29, 1997, the Hermiston Power Partnership (“HPP”, or ‘the site  
18 certificate holder”) submitted an “Interim Report to the Energy Facility Siting Council  
19 Regarding the Withdrawal of a Partner and Management Committee Changes.” HPP  
20 filed the Report to inform the Council of a change in the ownership of the Hermiston  
21 Power Project and to request a change to site certificate condition 15. Upon review of the  
22 Report, the Office of Energy (“OOE”) determined that the proposed change to site  
23 certificate condition 15 requires that the Council treat that proposed change as a request  
24 for amendment. Therefore, this order shall refer to the Report as the Request for  
25 Amendment Number Two to the Site Certificate for the Hermiston Power Project<sup>1</sup>.  
26

27 On November 19, 1996, SimGen, Inc., (“SimGen”) notified HPP of its intention  
28 to withdraw from the partnership, explaining that the potential operation of the Project as  
29 a merchant power plant was not consistent with the current objectives and lines of  
30 business of SimGen’s parent, the J.R. Simplot Company (“Simplot”). Effective June 24,  
31 1997, Hermiston Power Company (“HPC”), SimGen and TCPL Hermiston Ltd.  
32 (“TCPL”) entered into a First Amendment to the General Partnership Agreement, which  
33 provides for SimGen’s withdrawal from HPP. Under Section 5 of that amendment, the  
34 withdrawal will become effective upon the Council’s approval of the withdrawal and of  
35 any changes to HPP’s site certificate necessary to reflect the withdrawal. Withdrawal per  
36 se does not require an amendment to the site certificate, although the Council addresses  
37 the withdrawal concurrently with considering the amendment request.  
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<sup>1</sup> HPP’s Request for Amendment Number One is a separate application before the Council to amend the site certificate to remove conditions related to the need for facility standard and add conditions to ensure compliance with the carbon dioxide emissions standard. For procedural reasons, the Council has delayed consideration of Request for Amendment Number One.

1 SimGen's withdrawal means that Simplot will no longer be one of the guarantors  
2 for the financial assurance and retirement standards. HPP does not propose to add  
3 another partner in SimGen's place.

4  
5 HPP's address is as follows:

6  
7 Hermiston Power Partnership  
8 c/o Hermiston Power Company  
9 PO Box 7867  
10 Boise, ID 83707  
11

## 12 **A.1. Description of the Proposed Facility**

13 On March 25, 1996, the Council issued HPP a site certificate for the Hermiston  
14 Power Project. The certificate authorizes HPP to construct a combined-cycle combustion  
15 turbine electric generating plant, fueled primarily by natural gas, with a nominal capacity  
16 of 460 megawatts ("MW"). The proposed facility would be located on a 17-acre parcel  
17 about three miles south of Hermiston, Oregon. HPP may construct either a one turbine  
18 project (230 MW) or a two turbine project (460 MW)<sup>2</sup>. HPP has not begun construction  
19 of the facility.  
20

## 21 **A.2 Description of the Partnership**

22 As described in the Site Certificate, HPP is an Oregon general partnership  
23 governed by a General Partnership Agreement dated October 1, 1993. At the time the  
24 Council issued the Site Certificate, HPP was composed of three partners: Hermiston  
25 Power Company, a subsidiary of Ida-West Energy Company, which is a subsidiary of  
26 Idaho Power Company; TCPL Hermiston Ltd., a subsidiary of TransCanada PipeLines  
27 Limited ("TransCanada"); and SimGen, Inc., a subsidiary of the J.R. Simplot Company.  
28

## 29 **B. Procedural History**

### 30 31 **B.1 Office of Energy Review Steps**

#### 32 33 **B.1.2 HPP's Request.**

34 On October 29, 1997, HPP submitted an "Interim Report to the Energy Facility  
35 Siting Council Regarding the Withdrawal of a Partner and Management Committee  
36 Changes," which included a site certificate amendment request. On November 1, 1997,  
37 OOE determined that the requested change to a site certificate condition would require an  
38 amendment to the site certificate. OOE then designated this request as Request for  
39 Amendment Number Two.

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<sup>2</sup> HPP's Request for Amendment Number One describes recent improvements in turbine performance that will increase the capacities of a one- and two-unit project, respectively, to 268 MW and 536 MW. However, HPP is not requesting a change to the site certificate conditions related to the capacity of the facility.

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

2 OOE, pursuant to OAR 345-27-070(1), identified potentially affected agencies,  
3 local governments and tribes and asked them to review the request for amendment. OOE  
4 mailed a copy of the amendment request along with a review report form on November  
5 12, 1997 to those agencies, local governments and tribes and asked them to reply by  
6 December 5, 1997.

7  
8 The reviewing agencies, local governments and tribes are the Oregon Department  
9 of Geology and Mineral Industries (DOGAMI); the Oregon Department of Fish and  
10 Wildlife (ODFW); the Division of State Lands (DSL); the Department of Agriculture  
11 (ODA); the Department of Land Conservation and Development (DLCD); the Water  
12 Resources Department (WRD); the Department of Parks and Recreation (ODPR); the  
13 State Historic Preservation Office (SHPO); the Department of Transportation (ODOT),  
14 the Department of Environmental Quality (DEQ), the Office of State Fire Marshall, the  
15 Oregon Public Utilities Commission (OPUC), the Building Codes Division (BCD), the  
16 Department of Forestry (ODF), the Northwest Power Planning Council (NWPPC), the  
17 Cities of Hermiston, Stanfield, Umatilla, Echo, and Irrigon, Umatilla County, the  
18 Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of  
19 Warm Springs.

20  
21 **B.1.3.1 Replies.**

22 No agency, local government or tribe suggested conditions. The Department of  
23 Transportation noted that any work on the state right of way and any access to the state  
24 highway system would require permits. The State Fire Marshall recommended that HPP  
25 consider a fixed-foam fire suppression system for its oil tanks. Neither of these  
26 comments relates to the amendment HPP requested. Furthermore, both topics are  
27 exempted from Council regulation.

28  
29 **B.1.4 Initial Public Notice.**

30 On November 11 and 12, 1997, OOE, with help from HPP, mailed a notice of  
31 HPP's request for amendment to all persons on the Council's general mailing list and  
32 persons on the Council's mailing list for HPP's initial site certificate proceeding,  
33 including adjacent property owners, pursuant to OAR 345-27-070(1). The notice asked  
34 for comments to OOE by December 5, 1997. OOE received no comments.

35  
36 **B.1.5 Proposed Order.**

37 OOE issued its proposed order December 10, 1997.

38  
39 **B.1.5.1 Notice and Public Comment.**

40 On December 10, 1997, OOE mailed notice of the proposed order to the Council's  
41 general mailing list, persons on the Council's mailing list for HPP's first site certificate  
42 proceeding, and the adjacent property owners list, pursuant to OAR 345-27-070(2). The

1 notice set a deadline for public comments and requests for a contested case by January 8,  
2 1998. OOE received no comments on the proposed order.

## 3 4 **B.2 Council Review Steps**

### 5 6 **B.2.1 Council Notice.**

7 OOE mailed HPP's request for amendment to the Council on November 5, 1997.  
8 Staff presented information about the request to the Council at its November 14, 1997  
9 meeting. At that time, the Council decided to delay action on the related request to  
10 remove SimGen as a partner and to address it at the same time it decided HPP's Request  
11 for Amendment Number Two.

12  
13 On December 10, 1997, OOE mailed to the Council copies of the proposed order  
14 and the public notice of its availability.

### 15 16 **B.2.2. Public Hearing on Final Order.**

17 The Council conducted a public hearing on HPP's request for amendment on  
18 January 23, 1998 pursuant to OAR 345-27 070(5).

## 19 20 **C. Request to Withdraw a Partner and Make Changes to the Management** 21 **Committee**

### 22 23 **C.1. The Withdrawal of SimGen**

24 HPP reported to the Council that on November 19, 1996, SimGen notified HPP of  
25 its intention to withdraw from the partnership, explaining that the potential operation of  
26 the Project as a merchant power plant was not consistent with the current objectives and  
27 lines of business of SimGen's parent company, Simplot.

28  
29 Effective June 24, 1997, HPC, SimGen and TCPL entered into a First  
30 Amendment to the General Partnership Agreement ("First Amendment"). The First  
31 Amendment provides for SimGen's withdrawal from HPP. Under Section 5 of the First  
32 Amendment, the withdrawal will become effective upon the Council's approval of the  
33 withdrawal and of any changes to HPP's site certificate necessary to reflect the  
34 withdrawal.

35  
36 Section 6 of the First Amendment provides that the withdrawal will not affect the  
37 rights or obligations of HPP under the steam sales agreement with Simplot dated  
38 February 28, 1996. That agreement relates to the operation of the Project as a  
39 cogeneration facility that supplies steam to the adjacent potato processing plant operated  
40 by Simplot.

41  
42 HPP does not now propose to add another partner in SimGen's place.

43 /

1 **C.1.1 The Council's Approval Authority Regarding a Change in the Partnership**  
2 Condition 13 of the Site Certificate states:

3  
4 "In the annual report submitted to the Council, the Site  
5 Certificate holder shall describe any change in the  
6 membership or voting requirements of its Management  
7 Committee or any admission or withdrawal of a partner not  
8 described in any earlier annual report previously submitted  
9 to the Council. Any (a) such change in such membership  
10 or voting requirements resulting in a material change to the  
11 Site Certificate holder's existing management structure and  
12 procedures; (b) such admission resulting in a new partner's  
13 active participation in the business and affairs of the Site  
14 Certificate holder; or (c) such withdrawal resulting in the  
15 complete removal of an existing partner from its previously  
16 active participation in the business and affairs of the Site  
17 Certificate holder, shall be subject to approval of the  
18 Council, which approval shall not be unreasonably  
19 withheld or delayed."  
20

21 Under this provision, the Council has the authority to approve HPP's request to  
22 allow SimGen to withdraw from the partnership if the withdrawal removes SimGen from  
23 active participation in HPP's business and affairs. The condition provides that the  
24 Council is to approve the request unless there is a reasonable basis for denying it.  
25

26 **C.1.2 Impacts of Proposed Change and Applicable Council Standards**

27 HPP's request does not propose to change either the physical configuration of any  
28 of the Project facilities or any aspect of the proposed operations of the facility. Following  
29 is a list of the siting standards relevant to the request to remove SimGen as a partner and  
30 the potential impacts of that request under each standard.  
31

32 A. OAR 345-22-010: Organizational, Managerial and Technical Expertise

33  
34 1. The first part of this standard states:

35  
36 "(1) To issue a Site Certificate, the Council must find that  
37 the applicant has the organizational, managerial and  
38 technical expertise to construct and operate the facility. To  
39 conclude that the applicant has the organizational,  
40 managerial and technical expertise to construct and operate  
41 the proposed facility, the Council must determine that the  
42 applicant has a reasonable probability of successful  
43 construction and operation of the facility considering the

1 experience of the applicant, the availability of technical  
2 expertise to the applicant, and, if the applicant has  
3 constructed or operated other facilities, the past  
4 performance of the applicant, including but not limited to  
5 the number and severity of regulatory citations, in  
6 constructing or operating a facility, type of equipment, or  
7 process similar to the proposed facility.”  
8

9 In finding compliance with the organizational, managerial and technical expertise  
10 standard, the Council’s Final Order in the contested case for the Site Certificate (the  
11 “Final Order”) made findings in five categories:  
12

13 First, the Council found that the Project will be constructed and operated not by  
14 HPP directly but by qualified contractors selected by HPP and approved by the Council.  
15 See Final Order, pp. 115-116; Site Certificate, Conditions 7 through 14. The Final Order  
16 found that the contractors that will construct and operate the facility will be selected and  
17 supervised by HPP’s Management Committee, assisted by key personnel from Ida-West  
18 and TCPL. In particular, key persons assisting the Management Committee are David  
19 Barlow from TCPL and Ed Clark from Ida-West.<sup>3</sup> The Council finds that SimGen’s  
20 withdrawal will not affect the participation of these persons in the selection and  
21 supervision of contractors for construction and operation of the Project.  
22

23 Second, the Council found that HPP had demonstrated a high degree of expertise  
24 in the permitting of the facility that had been done to date. Final Order, p. 116. Ida-West  
25 is and has been the Project Administration Agent for the Partnership and in that capacity  
26 has been responsible for all of the Project’s permitting activities. The Council finds that  
27 Simplot’s withdrawal, therefore, will not affect the Council’s finding concerning  
28 permitting expertise.  
29

30 Third, the Council found that HPP had demonstrated both in-house expertise  
31 through the work of Ida-West personnel and an ability to augment its expertise through  
32 the use of qualified consultants. Final Order, p. 118. The consultant selection was  
33 performed by Ida-West as the Project Administration Agent.  
34

35 Fourth, the Council found the experience of all three partners to be relevant. The  
36 record demonstrates that TransCanada’s experience with the Ocean States Power Plant  
37 and Ida-West’s experience in “overall project development, plant construction  
38 management, O & M services and project financing” are significant. Final Order, p. 118.  
39 /

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<sup>3</sup> Changes in the Management Committee are described in Section C.2 below.

1 Specifically, HPP reports that TransCanada is a Canadian company that transmits,  
2 markets and processes energy for customers in Canada, throughout North America, and  
3 around the world. HPP reports that TransCanada is the largest marketer of Canadian  
4 natural gas, having sold 1.6 trillion cubic feet of gas in 1996. TransCanada wholly owns  
5 the Alberta Natural Gas Pipeline, which carries gas from Alberta's western border  
6 through British Columbia to the Pacific Gas Transmission System Pipeline at the US  
7 border. TransCanada operates and provides fuel to three natural gas fired power projects  
8 in Canada and one in the United States. The US plant is the 500-megawatt Ocean States  
9 generating station located in Rhode Island.

10  
11 The Council did note that Simplot's position as a high load factor, large-volume  
12 natural gas consumer put it in "a strong position to obtain gas supplies on a cost-effective  
13 basis." Final Order, p. 119. This finding was the only one under the standard that  
14 specifically identified Simplot's experience. However, the Council finds the any  
15 perceived loss of Simplot leverage in negotiation of cost-effective gas contracts is more  
16 than offset by TransCanada's natural gas supply capabilities.

17  
18 Fifth, the Council found that HPP's selection by the Bonneville Power  
19 Administration ("BPA") for its Resource Contingency Program ("RCP") was relevant  
20 and concluded that "successful competition in the BPA RCP process against a field of  
21 63 competing developers is an indicator of organizational, managerial and technical  
22 expertise." Final Order, p. 119. Ida-West was HPP's agent for purposes of the RCP  
23 competition.

24  
25 Finally, Mr. Clark of Ida-West is the Project Manager and a primary source of  
26 technical expertise for the Project. HPP reports that Mr. Clark has specific experience  
27 managing a combined-cycle gas plant using a turbine similar to the one HPP proposes to  
28 use. HPP also reports that Mr. Clark will be supported by the technical staff at Ida-West,  
29 including electrical and civil engineers with many years of experience. SimGen's  
30 withdrawal will not affect the designation of Mr. Clark as Project Manager or his ability  
31 to draw upon the expertise of Ida-West's technical staff.

32  
33 For the reasons listed above, the Council finds that SimGen's withdrawal will not  
34 have an adverse impact on HPP's ability to construct and operate the proposed facility  
35 and therefore continues to meet part one of the standard.

36  
37 2. The second part of the organizational, managerial and technical expertise  
38 standard states:

39  
40 "(2) If the applicant will not itself obtain any state or local  
41 government permit or approval for which the Council  
42 would ordinarily determine compliance with applicable  
43 standards, but will rely on a permit or approval issued to a

1 third party, the Council must determine that the named  
2 third party has, or has a reasonable likelihood of obtaining,  
3 the necessary permit or approval, and that the applicant has,  
4 or has a reasonable likelihood of entering into, a contractual  
5 or other arrangement with the third party for access to the  
6 resource or service secured by that permit or approval.”  
7

8 With respect to process wastewater and domestic sewage disposal, the Final Order  
9 states:

10  
11 “Wastewater from the proposed energy facility will be  
12 treated and discharged under a modification to Simplot’s  
13 Water Pollution Control Facilities (“WPCF”) permit from  
14 DEQ. DEQ issued the modification to Simplot’s existing  
15 WPCF permit on March 27, 1995. The modification  
16 authorizes treatment and discharge of the facility’s  
17 wastewater by the Simplot plant. Simplot, which is an HPP  
18 affiliate, has stated its intention to enter into an agreement  
19 to accept and dispose of HPP’s wastewater under the  
20 permit.  
21

22 “We conclude, based on the foregoing, that Simplot has the  
23 necessary WPCF permit to accommodate treatment and  
24 disposal of HPP’s wastewater and that HPP is reasonably  
25 likely to enter into an agreement with Simplot for disposal  
26 of HPP’s wastewater under Simplot’s permit.” Final Order,  
27 pp. 120-121.  
28

29 SimGen’s withdrawal from the partnership does not affect the existence or  
30 validity of Simplot’s WPCF permit. In a letter to Mr. Ed Clark of Ida-West Energy  
31 Company, dated October 24, 1997, Mr. David Hawk of the J.R. Simplot Company  
32 confirmed Simplot’s intention to enter into an agreement to accept and dispose of HPP’s  
33 wastewater. Accordingly, the Council finds that SimGen’s withdrawal does not affect  
34 HPP’s compliance with the second paragraph of the organizational, managerial and  
35 technical expertise standard.  
36

37 **Conclusion.** The Council finds that HPP has demonstrated that SimGen’s  
38 withdrawal from HPP will have no adverse impacts under the organizational, technical  
39 and managerial expertise standard. The Council approves HPP’s request for the  
40 withdrawal of SimGen from the partnership, subject to appropriate changes to site  
41 certificate conditions noted below.  
42 /



1 **C.2 Notice of Management Committee Changes**

2 Condition 13 of the Site Certificate requires HPP to notify the Council of any  
3 “change in the membership of its Management Committee \* \* \*.” It requires Council  
4 approval of such a change only if the change will result in “a material change to the Site  
5 Certificate holder’s existing management structure and procedures.”  
6

7 Article VII of the General Partnership Agreement, titled “Management of the  
8 Partnership,” governs HPP’s management. Section 7.02(a) provides that each partner is  
9 entitled to one representative on the Management Committee. SimGen’s withdrawal  
10 from HPP therefore eliminates SimGen’s representative from the committee. In addition,  
11 HPP reports that Wilfrid A. Lambo has recently replaced David Russell as TCPL’s  
12 representative on the Committee and Randolph J. Hill has replaced Kip Runyan as HPC’s  
13 representative.  
14

15 As noted, Condition 13 requires Council approval of Management Committee  
16 changes only if they will result in “a material change” to HPP’s “management structure  
17 and procedures.” HPP’s management structure and procedures are set out in detail in  
18 article VII of the General Partnership Agreement. Article VII has not been amended as a  
19 result of SimGen’s withdrawal or recent Management Committee changes. Accordingly,  
20 the Council takes note of the Management Committee changes, but it finds it does not  
21 need to approve the Management Committee changes.  
22

23 **C.3 Requirement to Begin and Complete Construction by Dates Certain**

24 At its meeting on November 14, 1997, the Council raised the issue of the shelf-  
25 life of the site certificate, or the date by which HPP must begin and complete  
26 construction. Condition 5 states:  
27

28 “(5) The Site Certificate holder shall begin construction of [the] proposed facility  
29 by November 30, 2000 and shall complete construction by January 1, 2003.  
30

31 With the original date of the site certificate being March 25, 1996, the shelf life  
32 was 56 months. That is a relatively long shelf life, but the Council granted it in  
33 recognition that exercising the 6(c) exemption from the need for facility standard might  
34 take longer than for other types of site certificates.  
35

36 In another amendment request (Request for Amendment Number One), HPP is  
37 requesting that the Council allow it to substitute the carbon dioxide standard for the 6(c)  
38 exemption in order to construct the facility. Nevertheless, HPP is maintaining its option  
39 with the Bonneville Power Administration, upon which the 6(c) exemption was based.  
40 Even though HPP would not need to rely on selling the output of the facility to  
41 Bonneville in order to construct a facility if the Council grants the requested Amendment  
42 Number One, that amendment does not preclude Bonneville from exercising its option.  
43 Therefore, the rationale for the original timeline is still relevant.

1 Furthermore, with the likely Council decision date being early March 1998  
2 regarding the substitution of meeting the carbon dioxide standard rather than using the  
3 6(c) exemption, the effective shelf life of the site certificate will be 32 months for  
4 beginning construction. That time period is similar to the 30 months the Council recently  
5 granted to another merchant plant. Therefore, the Council finds that beginning  
6 construction by November 30, 2000 is a reasonable shelf life and, therefore, there is no  
7 need to modify Condition 5.

8  
9 **D. Requested Amendment to Site Certificate**

10 HPP requests a site certificate amendment that removes J.R. Simplot Company as  
11 a guarantor from the site certificate condition that guarantees the ability of HPP to meet  
12 the financial assurance standard. HPP proposes that the guarantors be TransCanada  
13 PipeLines Limited and Ida-West Energy Company.

14  
15 In connection with the Council's approval of SimGen's withdrawal as a partner,  
16 HPP requests that the Council make the following change to the Site Certificate:

17  
18 “(15) Prior to commencement of construction HPP shall  
19 submit to the state of Oregon, through the Council, a  
20 guaranty substantially in the form attached as Exhibit A,  
21 executed by ~~J.R. Simplot Co.~~, TransCanada Pipelines  
22 Limited and Ida-West Energy Company. The guaranty  
23 shall remain in effect until such time as the retirement fund  
24 described in Condition 16 below reaches \$8,202,000 (in  
25 1995 dollars).”

26  
27 OOE determined that HPP's request should be processed as an amendment  
28 request pursuant to OAR 345-27-050. That rule requires site certificate holders to request  
29 amendments when they propose to change an aspect of the facility in any way that would  
30 invalidate the basis for a finding made by the Council in granting the site certificate. In  
31 this case HPP proposes to remove one of three guarantors, all of whom are jointly and  
32 severally liable.

33  
34 **E. Compliance with Council Standards**

35 OAR 345-27-070(6) sets forth the Council's general standard for review of a  
36 request by a site certificate holder for an amendment:

37  
38 “In evaluating a request for an amendment under this rule, the Council shall  
39 limit its consideration to the effects which may be produced by the  
40 proposed change or addition to the site or facility described in the request  
41 for amendment. In considering those effects, the Council shall apply state  
42 statutes, administrative rules, and local government ordinances in effect on  
43 the date the amended Site Certificate is executed.”

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

3  
4 **E.1 Standards Relating to the Applicant**

5  
6 **E.1.1 Organizational, Managerial and Technical Expertise, OAR 345-22-010**

7 This standard has three paragraphs. One (010(1)) relates to applicant  
8 qualifications and capability and two (010(2) and (3)) relate to third-party permits.

9  
10 **E.1.1.1 Applicant Qualification and Capability, OAR 345-22-010(1)**

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

21  
22 **Discussion.** The order discusses this part of the standard in section C.1.2 above.

23  
24 **Conclusion.** The Council finds that HPP has satisfied the requirements of OAR  
25 345-22-010(1) for the reasons set forth in section C.1.2.

26  
27 **E.1.1.2 Third-Party Services and Permits, OAR 345-22-010(2)**

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

31  
32 "If the applicant will not itself obtain any state or local government permit or  
33 approval for which the Council would ordinarily determine compliance with  
34 applicable standards, but will rely on a permit or approval issued to a third party,  
35 the Council must determine that the named third party has, or has a reasonable  
36 likelihood of obtaining, the necessary permit or approval, and that the applicant  
37 has, or has a reasonable likelihood of entering into, a contractual or other  
38 arrangement with the third party for access to the resource or service secured by  
39 that permit or approval."

40  
41 **Discussion.** The order discusses this part of the standard in C.1.2 above.

42 /





1 dollars). The calculation of 1995 dollars shall be made using the U.S. Gross  
2 Domestic Product Deflator for Total Non-Residential Fixed Investment, as  
3 published by the U.S. Department of Commerce, Bureau of Economic Analysis,  
4 or any successor agency ("the index"). The amount of the letter of credit shall  
5 increase annually by the percentage increase in the index. If at any time the  
6 index is no longer published, the Council shall select a comparable calculation of  
7 1995 dollars. The letter of credit shall not be subject to revocation during the  
8 lifetime of the facility. The terms of the letter of credit and identity of the issuer  
9 shall be subject to approval by the Council, which approval shall not be  
10 unreasonably withheld. All funds received by the site certificate holder from the  
11 salvage of equipment or buildings shall be committed to the restoration of the  
12 facility site to the extent necessary to fund the approved restoration. If the site  
13 certificate holder provides, and the Council approves, a letter of credit in  
14 accordance with this condition, the requirements of Conditions 16 and 79 will  
15 cease and the letter of credit will be deemed to satisfy fully the retirement fund  
16 obligations set forth therein.

17  
18 The proposed language regarding a letter of credit in Condition 15 renders  
19 Conditions 16 and 79 moot if HPP provides a letter of credit. Therefore, the Council will  
20 adopt the following modifications to Condition 16 for financial assurance and Condition  
21 79 for retirement along with its revisions to Condition 15:

22  
23 (16) This condition shall apply only if the site certificate holder satisfies  
24 Condition 15 with a guaranty instead of a letter of credit. If the site certificate  
25 holder satisfies Condition 15 with a letter of credit, the letter of credit will be  
26 deemed to satisfy fully the retirement fund obligations set forth in this condition  
27 and the remainder of this condition shall be of no effect.

28  
29 Starting with the first year of commercial operation, ~~HPP~~ the site certificate  
30 holder shall establish a retirement fund and begin making annual commitments to  
31 the fund in the amount of \$800,000 in the form of a letter of credit or performance  
32 bond. The terms of the security and identity of the issuer shall be subject to  
33 approval by the Council, which approval shall not be unreasonably withheld.  
34 Such annual commitments shall continue until the total security in the retirement  
35 fund reaches \$8,202,000 (in 1995 dollars) in no event later than 10 years from the  
36 date of commercial operation. The calculation of 1995 dollars shall be made  
37 using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed  
38 Investment, as published by the U.S. Department of Commerce, Bureau of  
39 Economic Analysis, or any successor agency ("the index"). After the security in  
40 the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase annually by  
41 the percentage increase in the index. If at any time the index is no longer  
42 published, the Council shall select a comparable calculation of 1995 dollars. In  
43 the event the security in the retirement fund is less than \$8,202,000 in (1995

1 dollars) at the time HPP the site certificate holder notifies the Council of its intent  
2 to retire the facility, the annual commitments to the retirement fund shall be  
3 adjusted so as to assure that the total security in the funds is \$8,202,000 (in 1995  
4 dollars) at the time of retirement. HPP the site certificate holder shall describe the  
5 status of the fund in the annual report submitted to the Council. All funds  
6 received by HPP the site certificate holder from the salvage of equipment or  
7 buildings shall be committed to the restoration of the facility site, to the extent  
8 necessary to fund the approved restoration.

9  
10 (79) This condition shall apply only if the site certificate holder satisfies  
11 Condition 15 with a guaranty instead of a letter of credit. If the site certificate  
12 holder satisfies Condition 15 with a letter of credit, the letter of credit will be  
13 deemed to satisfy fully the retirement fund obligations set forth in this condition  
14 and the remainder of this condition shall be of no effect.

15  
16 Starting with the first year of commercial operation, HPP the site certificate  
17 holder shall establish a retirement fund and begin making annual commitments to  
18 the fund in the amount of \$800,000 in the form of a letter of credit or performance  
19 bond. The terms of the security and identity of the issuer shall be subject to  
20 approval by the Council, which approval shall not be unreasonably withheld.  
21 Such annual commitments shall continue until the total security in the retirement  
22 fund reaches \$8,202,000 (in 1995 dollars) in no event later than 10 years from the  
23 date of commercial operation. The calculation of 1995 dollars shall be made  
24 using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed  
25 Investment, as published by the U.S. Department of Commerce, Bureau of  
26 Economic Analysis, or any successor agency ("the index"). After the security in  
27 the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase annually by  
28 the percentage increase in the index. If at any time the index is no longer  
29 published, the Council shall select a comparable calculation of 1995 dollars. In  
30 the event the security in the retirement fund is less than \$8,202,000 in (1995  
31 dollars) at the time HPP the site certificate holder notifies the Council of its intent  
32 to retire the facility, the annual commitments to the retirement fund shall be  
33 adjusted so as to assure that the total security in the funds is \$8,202,000 (in 1995  
34 dollars) at the time of retirement. The site certificate holder shall describe the  
35 status of the fund in the annual report submitted to the Council. All funds  
36 received by HPP the site certificate holder from the salvage of equipment or  
37 buildings shall be committed to the restoration of the facility site, to the extent  
38 necessary to fund the approved restoration.

39  
40 **Conclusion.** The Council finds that HPP meets the financial assurance standard,  
41 OAR 345-22-050, with the changes to the site certificate conditions 15, 16, and 79 as  
42 noted.

43 /

1 **E.2 Standards Relating to the Site and Structure**

2

3 **E.2.1 Structural Standard, OAR 345-22-020**

4 The structural standard requires the Council to find:

5

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

9

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

14

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

17

18 **Conclusion.** The Council finds that HPP meets the structural standard, OAR 345-  
19 22-020.

20

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

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

25

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

28

29 **Conclusion.** The Council finds that HPP meets the soil protection standard, OAR  
30 345-22-022.

31

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

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

36

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

39

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

42 /





1 recovery of any threatened or endangered species listed under ORS 496.172(2) or ORS  
2 564.105(2).

3  
4 **Discussion.** This amendment will not affect any Council finding relating to the  
5 threatened and endangered species standard.

6  
7 **Conclusion.** The Council finds that HPP meets the threatened and endangered  
8 species standard, OAR 345-22-070.

9  
10 **E.3.4 Scenic and Aesthetic Standard, OAR 345-22-080**

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

16  
17 **Discussion.** This amendment will not affect any Council finding relating to the  
18 scenic and aesthetic standard.

19  
20 **Conclusion.** The Council finds that HPP meets the scenic and aesthetic values  
21 standard, OAR 345-22-080.

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

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

27  
28 “(1) Historic, cultural or archaeological resources that have been listed on, or  
29 would likely be listed on the National Register of Historic Places;

30  
31 “(2) For a facility on private land, archaeological objects, as defined in ORS  
32 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c);  
33 and,

34  
35 “(3) For a facility on public land, archaeological sites, as defined in ORS  
36 358.905(1)(c).”

37  
38 **Discussion.** This amendment will not affect any Council finding relating to the  
39 historic, cultural and archeological resources standard.

40  
41 **Conclusion.** The Council finds that HPP meets the historic, cultural, and  
42 archeological resources standard, OAR 345-22-090.

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

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

- 7 “(1) Any special designation or management of the location,  
8 “(2) The degree of demand  
9 “(3) Uniqueness  
10 “(4) Outstanding or unusual qualities  
11 “(5) Availability or rareness, and  
12 “(6) Irreplaceability or irretrievability of the opportunity.”

13  
14 **Discussion.** This amendment will not affect any Council finding relating to the  
15 recreation standard.

16  
17 **Conclusion.** The Council finds that HPP meets the recreation standard, OAR-  
18 345-22-100.

19  
20 **E.3.7 Socio-Economic Impacts Standard, OAR 345-22-110**

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

27  
28 **Discussion.** This amendment will not affect any Council finding relating to the  
29 socio-economic impacts standard.

30  
31 **Conclusion.** The Council finds that HPP meets the socio-economic impacts  
32 standard, OAR 345-22-110.

33  
34 **E.3.8 Waste Minimization Standard, OAR 345-22-120**

35 The waste minimization standard requires an applicant, “to the extent reasonably  
36 practicable...[to] minimize generation of solid waste and wastewater in the construction  
37 and operation of the facility, and when solid waste or wastewater is generated, recycle  
38 and reuse such wastes. [In addition,] to the extent reasonably practicable, the  
39 accumulation, storage, disposal and transportation of waste generated by the construction  
40 and operation of the facility must have minimal adverse impacts on surrounding and  
41 adjacent areas.”



1 sensitive properties. The limits allow a moderately higher level of noise in the daytime  
2 than at night.

3  
4 **Discussion.** This amendment will not affect any Council finding relating to the  
5 noise standard.

6  
7 **Conclusion.** The Council finds that HPP meets the noise standard, OAR 340-35-  
8 035(1)(b)(B).

9  
10 **F. Conclusions**

11 The Council finds that the actions in HPP's request are consistent with current  
12 Council rules, with other applicable statutes and rules, and with state wide land use  
13 planning goals and would not cause a significant adverse impact to public health and  
14 safety or the environment. In preparing this proposed order, the Council has limited its  
15 consideration to the effects that may be produced by the proposed change to the facility  
16 described in HPP's "Interim Report to the Energy Facility Siting Council Regarding the  
17 Withdrawal of a Partner and Management Committee Changes," dated October 29, 1997.  
18 In considering those effects, the Council has reviewed related state statutes, administrative  
19 rules, and local government ordinances.

20  
21 Based on the above findings, the Council concludes that it will amend the site  
22 certificate for the Hermiston Power Project as HPP requests with the site certificate  
23 conditions and amended Exhibit A as modified by the Council.

24  
25 **FINAL ORDER**

26  
27 Based on the above findings of fact, discussions and conclusions of law, the  
28 Energy Facility Siting Council approves amendment request number two with modified  
29 site certificate conditions. The chairperson of the Council shall execute the site certificate  
30 amendment in the form of the "Amendment Number Two the Thermal Power Plant Site  
31 Certificate for the Hermiston Power Project," which is attached to this order and which is  
32 incorporated by reference into this order.

33  
34 Issued this 23rd day of January, 1998.

35  
36  
37  
38  
39 

40 Terry Edvalson  
41 Chair, Energy Facility Siting Council

1 Notice of the Right to Appeal

2

3           You have the right to appeal this order to the Oregon Supreme Court pursuant to  
4 ORS 469.405. To appeal you must file a petition for judicial review with the Supreme  
5 Court within 60 days from the day this order was served on you. If this order was  
6 personally delivered to you, the date of service is the date you received this order. If this  
7 order was mailed to you, the date of service is the date it was mailed, not the day you  
8 received it. If you do not file a petition for judicial review within the 60-day time period,  
9 you lose your right to appeal.

10 /

11 /

12 /

1 AMENDMENT NUMBER TWO  
2 to the  
3 THERMAL POWER PLANT  
4 SITE CERTIFICATE  
5 for the  
6 HERMISTON POWER PROJECT

7  
8 January 26, 1998  
9

10 This Amendment Number Two to the Thermal Power Plant Site Certificate for the  
11 Hermiston Power Project is made and entered into pursuant to the Order in Matter of the  
12 Thermal Power Plant Site Certificate for the Hermiston Power Project Request for  
13 Amendment Number Two between the State of Oregon, acting by and through its Energy  
14 Facility Siting Council ("EFSC" or "the Council") and the Hermiston Power Partnership  
15 ("HPP"), an Oregon General Partnership.  
16

17 This amendment changes one of the guarantors for the financial assurance standard and  
18 the retirement standard.  
19

20 **III. CONDITIONS**

21  
22 **Financial Assurance: OAR 345-22-050**

23 Site Certificate Condition 15 is replaced with the following condition:  
24

25 (15) Prior to commencement of construction, the site certificate holder shall  
26 submit to the State of Oregon through the Council, a guaranty substantially in the  
27 form of Amended Exhibit A, executed by TransCanada PipeLines Ltd., Ida-West  
28 Energy Company (Ida West") and Idaho Power Company in the amount of  
29 \$8,202,000 (in 1995 dollars). The calculation of 1995 dollars shall be made  
30 using the index set forth below. The site certificate holder may offer to substitute  
31 the guaranty of a new parent corporation of Ida West for the guaranty of Idaho  
32 Power Company. In that event, the Council will approve the guaranty from the  
33 new parent unless the Council finds that the proposed guaranty does not provide  
34 comparable security to the guaranty of Idaho Power Company. Such approval  
35 will not require a site certificate amendment. The guaranty shall remain in effect  
36 until such time as the total security in the retirement fund described in Condition  
37 16 below reaches \$8,202,000 (in 1995 dollars). For the purposes of this site  
38 certificate, "total security in the retirement fund" means the total amount of all  
39 letters of credit and performance bonds issued or posted as security for the  
40 performance of the site certificate holder's obligation under OAR 345-22-130.  
41

42 In lieu of the guaranty requirement set forth above that the site certificate holder  
43 must provide prior to commencement of construction, the site certificate holder  
44 may instead provide a letter of credit in the amount of \$8,202,000 (in 1995  
45 dollars). The calculation of 1995 dollars shall be made using the U.S. Gross

1 Domestic Product Deflator for Total Non-Residential Fixed Investment, as  
2 published by the U.S. Department of Commerce, Bureau of Economic Analysis,  
3 or any successor agency ("the index"). The amount of the letter of credit shall  
4 increase annually by the percentage increase in the index. If at any time the  
5 index is no longer published, the Council shall select a comparable calculation of  
6 1995 dollars. The letter of credit shall not be subject to revocation during the  
7 lifetime of the facility. The terms of the letter of credit and identity of the issuer  
8 shall be subject to approval by the Council, which approval shall not be  
9 unreasonably withheld. All funds received by the site certificate holder from the  
10 salvage of equipment or buildings shall be committed to the restoration of the  
11 facility site to the extent necessary to fund the approved restoration. If the site  
12 certificate holder provides, and the Council approves, a letter of credit in  
13 accordance with this condition, the requirements of Conditions 16 and 79 will  
14 cease and the letter of credit will be deemed to satisfy fully the retirement fund  
15 obligations set forth therein.

16  
17 Site Certificate Condition 16 is replaced with the following condition:

18  
19 (16) This condition shall apply only if the site certificate holder satisfies  
20 Condition 15 with a guaranty instead of a letter of credit. If the site certificate  
21 holder satisfies Condition 15 with a letter of credit, the letter of credit will be  
22 deemed to satisfy fully the retirement fund obligations set forth in this condition  
23 and the remainder of this condition shall be of no effect.

24  
25 Starting with the first year of commercial operation, the site certificate holder  
26 shall establish a retirement fund and begin making annual commitments to the  
27 fund in the amount of \$800,000 in the form of a letter of credit or performance  
28 bond. The terms of the security and identity of the issuer shall be subject to  
29 approval by the Council, which approval shall not be unreasonably withheld.  
30 Such annual commitments shall continue until the total security in the retirement  
31 fund reaches \$8,202,000 (in 1995 dollars) in no event later than 10 years from the  
32 date of commercial operation. The calculation of 1995 dollars shall be made  
33 using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed  
34 Investment, as published by the U.S. Department of Commerce, Bureau of  
35 Economic Analysis, or any successor agency ("the index"). After the security in  
36 the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase annually by  
37 the percentage increase in the index. If at any time the index is no longer  
38 published, the Council shall select a comparable calculation of 1995 dollars. In  
39 the event the security in the retirement fund is less than \$8,202,000 (in 1995  
40 dollars) at the time the site certificate holder notifies the Council of its intent to  
41 retire the facility, the annual commitments to the retirement fund shall be adjusted  
42 so as to assure that the total security in the funds is \$8,202,000 (in 1995 dollars) at  
43 the time of retirement. the site certificate holder shall describe the status of the  
44 fund in the annual report submitted to the Council. All funds received by the site  
45 certificate holder from the salvage of equipment or buildings shall be committed



1 to the restoration of the facility site, to the extent necessary to fund the approved  
2 restoration.

3

4 **Retirement: OAR 345-22-130**

5 Site Certificate Condition 79 is replaced with the following condition:

6

7 (79) This condition shall apply only if the site certificate holder satisfies  
8 Condition 15 with a guaranty instead of a letter of credit. If the site certificate  
9 holder satisfies Condition 15 with a letter of credit, the letter of credit will be  
10 deemed to satisfy fully the retirement fund obligations set forth in this condition  
11 and the remainder of this condition shall be of no effect.

12

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

36

37 State of Oregon  
38 Energy Facility Siting Council

Hermiston Power Partnership

39

40

41

42

43

44

45

  
Terry Edvalson, Chair

  
Randolph J. Hill

January 23, 1998

January 27, 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 25, 1996, EFSC and HPP entered into a site certificate for the Project issued pursuant to HPP's application therefor. The 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 OAR 345-22-050 relating to restoration of the Project site upon the occurrence of certain circumstances.

D. To induce EFSC to issue the site certificate for the Project, and in consideration of EFSC's issuing such site certificate, the Guarantors desire to execute and deliver this Guaranty in favor of EFSC to enable HPP to satisfy the condition in the site certificate for the Project described above relating to HPP's obligations under OAR 345-22-050.

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 OAR 345-22-050 as in effect on the date hereof relating to the restoration of the site for the Project up to an aggregate amount not to exceed \$8,202,000 (in 1995 dollars calculated using the index referred to in the site certificate for the Project relating to the calculation of the retirement fund amount)(the "Guaranteed Obligations") 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

1 Guarantors shall, jointly and severally, forthwith perform or pay the Guaranteed  
2 Obligations, or cause the Guaranteed Obligations to be performed or paid, without regard  
3 to any exercise or non-exercise by EFSC of any right, power or privilege under or in  
4 respect of the Guaranteed Obligations.

5  
6 SECTION 2. This Guaranty shall be direct, immediate and primary and shall be  
7 a guarantee of payment and performance and not of collection, and is not conditioned or  
8 contingent upon any requirement that EFSC proceed against HPP or any other person or  
9 pursue any other right or remedy in EFSC's power before proceeding against the  
10 Guarantors of any of them or upon any other event, contingency or circumstance  
11 whatsoever.

12  
13 SECTION 3. The Guarantors, jointly and severally, hereby unconditionally,  
14 absolutely and irrevocably agree to hold EFSC harmless and to indemnify EFSC from  
15 and against any and all claims costs, liabilities and expenses of any nature whatsoever,  
16 including reasonable attorneys' fees, resulting from, arising out of or relating to any  
17 failure by HPP to perform the Guaranteed Obligations when due or any failure by the  
18 Guarantors to perform any of their obligations hereunder when due and in accordance  
19 with the terms hereof.

20  
21 SECTION 4. To the fullest extent permitted by law, the obligations of the  
22 Guarantors under this Guaranty shall be absolute, irrevocable and unconditional, shall  
23 remain in full force and effect, and shall not be affected by or subject to any reduction,  
24 termination or other impairment by set-off, deduction, counterclaim, recoupment,  
25 interruption or otherwise, and the Guarantors shall have no right to terminate this  
26 Guaranty or to be released, relieved or discharged, in whole or in part, from their payment  
27 or performance obligations referred to in this Guaranty for any reason whatsoever,  
28 including without limitation, any one or more of the following:

29  
30 (a) any amendment, supplement or modification to, waiver of, consent to  
31 or departure from, or failure to exercise any right, remedy, power or privilege  
32 under or in respect of, the Guaranteed Obligations or any other agreement or  
33 instrument relating thereto;

34  
35 (b) any insolvency, bankruptcy, reorganization, dissolution or liquidation  
36 of, or any similar occurrence with respect to, or cessation of existence of, or  
37 change of ownership of, any person, or any rejection of any of the Guaranteed  
38 Obligations in connection with any Proceeding (as defined in Section 5 below) or  
39 any disallowance of all or any portion of any claim by EFSC in connection with  
40 any Proceeding;

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

43  
44 (d) any substitution, modification, exchange, release, settlement or  
45 compromise of any security or collateral for or guarantee of any of the

1           Guaranteed Obligations, or failure to apply such security or collateral or failure to  
2           enforce such guarantee; or

3  
4           (e) any other event or circumstance whatsoever which might otherwise  
5           constitute a legal or equitable discharge of a surety or guarantor, it being the  
6           intent of the Guarantors that their obligations under this Guaranty shall be  
7           irrevocable, absolute and unconditional under any and all circumstances.

8  
9           This Guaranty and the obligations of the Guarantors hereunder shall continue to be  
10          effective or be automatically reinstated, as the case may be, if at any time any payment by  
11          or on behalf of HPP is rescinded or must otherwise be restored by EFSC for any reason,  
12          including, but not limited to, as a result of any Proceeding with respect to HPP or any  
13          other person, as though such payment had not been made.

14  
15          SECTION 5. The Guaranteed Obligations shall include, without limitation,  
16          interest accruing following the commencement by or against HPP of any case or  
17          proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up,  
18          liquidation, dissolution or composition or adjustment of debt (a "Proceeding"), whether or  
19          not allowed as a claim in any such Proceeding.

20  
21          SECTION 6. To the fullest extent permitted by law, the Guarantors hereby  
22          waive (a) all set-offs, counterclaims, presentments, demands for performance, notices of  
23          adverse change in the financial condition of HPP or of any other fact that might increase  
24          Guarantors' risk hereunder, notices of nonperformance, protests, notice of any of the  
25          matters referred to in Section 4, notices of presentation for payment, notices of demand  
26          for performance, notices of protest, notices of dishonor, notice of any waivers or  
27          indulgences or extensions, notice of the creation or existence of any Guaranteed  
28          Obligations, notices of every kind which may be required to be given by any statute or  
29          rule of law and notice of acceptance of this Guaranty; (b) diligence, presentment and  
30          demand of payment, filing of claims with a court in connection with any Proceeding,  
31          protest or notice with respect to the Guaranteed Obligations and all demands whatsoever;  
32          (c) any and all statutes of limitations, all laws providing for the exemption of property  
33          from execution or for valuation and appraisal upon foreclosure; and (d) any requirement  
34          that any action or proceeding be brought against HPP or any other person, or any  
35          requirement that any person exhaust any right, power or remedy or proceed against any  
36          other person, prior to any action against the Guarantors or any of them under the terms  
37          thereof; (e) any defense arising by reason of any disability or other defense of HPP or by  
38          reason of cessation from any cause whatsoever of the liability of HPP with respect to the  
39          Guaranteed Obligations (other than the defense that the Guaranteed Obligations have  
40          been paid or performed in their entirety), (f) any right to assert against EFSC any defense  
41          (legal or equitable), set-off against counterclaims, or claim which any Guarantor may  
42          now or at any time hereafter claim against HPP or any other party liable to EFSC.

43          /

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

4  
5 (a) compromise, settle, extend the duration or the time for the payment or  
6 performance of, or discharge the performance of, or otherwise not enforce the  
7 Guaranteed Obligations;

8  
9 (b) release or substitute any Guarantor or any other guarantor, if any, of  
10 the Guaranteed Obligations, or enforce, exchange, release, or waive any security  
11 for the Guaranteed Obligations or any other guaranty of the Guaranteed  
12 Obligations, or any portion thereof.

13  
14 SECTION 8. Until all of the Guaranteed Obligations have been fully and  
15 indefeasibly discharged, to the full extent necessary to prevent any payments or other  
16 transfers from HPP or Guarantors to EFSC from being made for the benefit of an insider  
17 creditor in determining whether such payments or other transfers constitute avoidable  
18 transfers or preferences under Section 547 of the Bankruptcy Code, Guarantors hereby  
19 waive (a) any right of subrogation or reimbursement Guarantors have or may have as  
20 against HPP with respect to the Guaranteed Obligations; (b) any right to proceed against  
21 HPP, now or hereafter, for contribution, indemnity, reimbursement and any other  
22 suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether  
23 arising under express or implied contract or by operation of law, which Guarantors may  
24 now have or hereafter have as against HPP with respect to the Guaranteed Obligations,  
25 and (c) any rights to recourse to or with respect to any asset of HPP.

26  
27 SECTION 9. This Guaranty is a continuing guaranty, shall apply to all  
28 Guaranteed Obligations whenever arising, shall be binding upon the Guarantors and their  
29 respective successors and shall inure to the benefit of and be enforceable by EFSC and its  
30 successors.

31  
32 SECTION 10. All notices to be served under this Guaranty shall be in writing  
33 and delivered personally or mailed by certified mail, postage prepaid and return receipt  
34 requested, or by telegram or telecopier addressed as follows:

35 /  
36 /  
37 /  
38 /

1 If to the Guarantors:

2  
3 Ida-West Energy Company  
4 3380 Americana Terrace  
5 Suite 300  
6 Boise, Idaho 83706  
7 Attention of President  
8 (208) 395-8930  
9 (208) 395-8931 [fax]

Idaho Power Company  
PO Box 70  
Boise, Idaho 83707  
Attention of President  
(208) 388-2200

10  
11 TransCanada PipeLines Limited  
12 TransCanada PipeLines Towers  
13 111 - Fifth Avenue SW  
14 PO Box 1000, Station M  
15 Calgary, Alberta  
16 Canada T2P 4KS  
17 Attention of President  
18 (403) 267-8894  
19 (403) 267-8954 [fax]

20  
21 If to EFSC:

22  
23 Energy Facility Siting Council  
24 625 Marion Street NE  
25 Salem, Oregon 97310  
26 Attention of Chairman  
27 (503) 556-0005  
28 (503) 556-7257 [fax]

29  
30 or at such other address as may from time to time be designated in writing in a notice  
31 delivered as aforesaid. Notice given by personal delivery shall be effective upon actual  
32 receipt. Notice given by certified mail, postage prepaid and return receipt requested shall  
33 be effective three days after the date of mailing. Notice given by telegram or telecopier  
34 shall be effective upon actual receipt if received during the recipient's normal business  
35 hours, or at the beginning of the recipient's next business day after receipt if not received  
36 during the recipient's normal business hours. All notices by telegram or telecopies shall  
37 be confirmed promptly after transmission in writing by certified mail or personal  
38 delivery.

39  
40 SECTION 11. This Guaranty shall in all respect be governed by, and construed  
41 in accordance with, the law of the State of Oregon without regard to principles of  
42 conflicts of laws.

43  
44 SECTION 12. Each Guarantor represents and warrants to EFSC that: (a) such  
45 Guarantor is a corporation duly organized, validly existing and in good standing under

1 the laws of the jurisdiction of its incorporation; (b) the execution and delivery of this  
2 Guaranty and its performance have been duly authorized by all necessary corporate action  
3 on the part of such Guarantor and do not require any other corporate actions or  
4 proceedings or any stockholder approval or consent of any trustee or holder of any  
5 indebtedness of such Guarantor; and (c) this Guaranty has been duly executed and  
6 delivered by such Guarantor and constitutes the legal, valid and binding obligation of  
7 such Guarantor, enforceable against such Guarantor in accordance with its terms, except  
8 as such enforceability may be limited by bankruptcy, insolvency, reorganization or  
9 similar laws relating to or affecting the enforcement of creditors' rights generally or by  
10 general principles of equity, regardless of whether such enforceability is considered in a  
11 proceeding in equity or at law.

12  
13 SECTION 13. The obligations and liabilities of each of the Guarantors under  
14 this Guaranty shall terminate (subject to automatic reinstatement under Section 4) on the  
15 earlier of the date on which (a) the Guaranteed Obligations have been paid and performed  
16 in their entirety and (b) the security for the retirement fund required under the site  
17 certificate for the Project reaches \$8,202,000 (in 1995 dollars calculated using the index  
18 referred to in the site certificate for the Project relating to the calculation of the retirement  
19 fund amount).

20  
21 SECTION 14. If any provision of this Guaranty shall for any reason be held  
22 invalid, illegal or unenforceable in any respect, such invalidity, illegality or  
23 unenforceability shall not affect any other provision of this Guaranty, and this Guaranty  
24 shall be construed as if such invalid, illegal or unenforceable provision had never been  
25 contained herein, but only to the extent of its invalidity, illegality or unenforceability.

26  
27 SECTION 15. (a) Each Guarantor hereby irrevocably agrees that any legal  
28 action or proceeding against it arising out of or relating to this Guaranty or the  
29 Guaranteed Obligations may be brought in any Oregon State or Federal court in the City  
30 of Salem or the City of Portland in the State of Oregon and hereby irrevocably submits  
31 generally and unconditionally to the non-exclusive jurisdiction of such courts.

32  
33 (b) Each Guarantor hereby irrevocably and unconditionally appoints Stoel Rives  
34 LLP as its authorized agent to receive and acknowledge on its behalf service of any writ,  
35 summons, order, judgment or other notice of legal process in Oregon and agrees that any  
36 writ, summons, order, judgment or other notice of legal process shall be sufficiently  
37 served on it if delivered to such agent for service at its address in Portland, Oregon  
38 whether or not such agent gives notice thereof to such Guarantor. Each Guarantor agrees  
39 that it will at all times maintain an agent for service in Oregon with respect to its  
40 obligations under this Section 13, and in the event that for any reason the agent named  
41 above (or its successor) shall no longer serve as agent of any Guarantor to receive service  
42 of process as aforesaid, such Guarantor shall promptly appoint a successor so to serve and  
43 shall notify EFSC thereof.

44 /



1 (c) Nothing in this Section 15 shall limit the right of EFSC to commence any  
2 legal action or proceeding or otherwise proceed against any Guarantor in any other  
3 jurisdiction or to serve process in any manner permitted by applicable law nor shall the  
4 taking of proceedings in any one or more jurisdictions preclude the taking of proceedings  
5 in any other jurisdiction whether concurrently or not.  
6

7 SECTION 16. Subordination. Each Guarantor hereby agrees that any and all  
8 present and future indebtedness of HPP owing to Guarantor is postponed in favor of and  
9 subordinated to, full and final payment and performance of the Guaranteed Obligations in  
10 their entirety. In this regard, no payment of any kind whatsoever shall be made with  
11 respect to such indebtedness so long as any Guaranteed Obligation remains unpaid or  
12 unperformed.  
13

14 SECTION 17. Attorneys' Fees and Costs. Guarantors agree to pay, on demand,  
15 all reasonable attorneys' fees and all other costs and expenses which may be incurred by  
16 EFSC in the enforcement of this Guaranty or in any way arising out of, or consequential  
17 to the protection, assertion, or enforcement of the Guaranteed Obligations whether or not  
18 suit is brought.  
19

20 SECTION 18. Execution and Counterparts. This Guaranty may be executed in  
21 several counterparts, all of which when taken together shall constitute one Guaranty  
22 binding on all parties, notwithstanding that all parties are not signatories to the same  
23 counterpart. Each copy of the Guaranty so executed shall constitute an original.  
24

25 IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be  
26 executed and delivered by its duly authorized officer as of the date first above written.  
27

28 IDA-WEST ENERGY COMPANY  
29 an Idaho corporation  
30

31  
32  
33 By:  
34 Name:  
35 Title:  
36

37 IDAHO POWER COMPANY  
38 an Idaho corporation  
39

40  
41  
42 By:  
43 Name:  
44 Title:  
45 /

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TRANSCANADA PIPELINES  
LIMITED  
a Canadian corporation

By:  
Name:  
Title:

By:  
Name:  
Title:

ACCEPTED:

OREGON ENERGY FACILITY SITTING COUNCIL

By:  
Name:  
Title: