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. Two

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FINAL ORDER

Summary
The Energy Facility Siting Council ("Council") approves this amendment request with modified site certificate conditions.

A. Summary and Background of the Request for Amendment
On October 29, 1997, the Hermiston Power Partnership ("HPP", or "the site certificate holder") 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 site certificate condition 15. Upon review of the Report, the Office of Energy ("OOE") determined that the proposed change to site certificate condition 15 requires that the Council treat that proposed change as a request for amendment. Therefore, this order shall refer to the Report as the Request for Amendment Number Two to the Site Certificate for the Hermiston Power Project.

On November 19, 1996, SimGen, Inc., ("SimGen") notified HPP of its intention to withdraw from the partnership, explaining that the potential operation of the Project as a merchant power plant was not consistent with the current objectives and lines of business of SimGen's parent, the J.R. Simplot Company ("Simplot"). Effective June 24, 1997, Hermiston Power Company ("HPC"), SimGen and TCPL Hermiston Ltd. ("TCPL") entered into a First Amendment to the General Partnership Agreement, which provides for SimGen's withdrawal from HPP. Under Section 5 of that amendment, the withdrawal will become effective upon the Council's approval of the withdrawal and of any changes to HPP's site certificate necessary to reflect the withdrawal. Withdrawal per se does not require an amendment to the site certificate, although the Council addresses the withdrawal concurrently with considering the amendment request.

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

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). HPP has not begun construction of the facility.

A.2 Description of the Partnership

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

B. Procedural History

B.1 Office of Energy Review Steps

B.1.2 HPP’s Request.

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

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2 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.
B.1.3 Review by Other Agencies, Local Governments and Tribes.

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 November 12, 1997 to those agencies, local governments and tribes and asked them to reply by December 5, 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 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 November 11 and 12, 1997, OOE, with help from HPP, 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, including adjacent property owners, pursuant to OAR 345-27-070(1). The notice asked for comments to OOE by December 5, 1997. OOE received no comments.

B.1.5 Proposed Order.

OOE issued its proposed order December 10, 1997.

B.1.5.1 Notice and Public Comment.

On December 10, 1997, 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

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

B.2 Council Review Steps

B.2.1 Council Notice.

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

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

B.2.2. Public Hearing on Final Order.

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

C. Request to Withdraw a Partner and Make Changes to the Management Committee

C.1. The Withdrawal of SimGen

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

Effective June 24, 1997, HPC, SimGen and TCPL entered into a First Amendment to the General Partnership Agreement (“First Amendment”). The First Amendment provides for SimGen’s withdrawal from HPP. Under Section 5 of the First Amendment, the withdrawal will become effective upon the Council’s approval of the withdrawal and of any changes to HPP’s site certificate necessary to reflect the withdrawal.

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

HPP does not now propose to add another partner in SimGen’s place.
C.1.1 The Council's Approval Authority Regarding a Change in the Partnership

Condition 13 of the Site Certificate states:

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

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

C.1.2 Impacts of Proposed Change and Applicable Council Standards

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

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

1. The first part of this standard states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion. The Council finds that HPP has demonstrated that SimGen’s
withdrawal from HPP will have no adverse impacts under the organizational, technical
and managerial expertise standard. The Council approves HPP’s request for the
withdrawal of SimGen from the partnership, subject to appropriate changes to site
certificate conditions noted below.
C.2 Notice of Management Committee Changes

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

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

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

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

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


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

In another amendment request (Request for Amendment Number One), HPP is requesting that the Council allow it to substitute the carbon dioxide standard for the 6(c) exemption in order to construct the facility. Nevertheless, HPP is maintaining its option with the Bonneville Power Administration, upon which the 6(c) exemption was based. Even though HPP would not need to rely on selling the output of the facility to Bonneville in order to construct a facility if the Council grants the requested Amendment Number One, that amendment does not preclude Bonneville from exercising its option. Therefore, the rationale for the original timeline is still relevant.
Furthermore, with the likely Council decision date being early March 1998 regarding the substitution of meeting the carbon dioxide standard rather than using the 6(c) exemption, the effective shelf life of the site certificate will be 32 months for beginning construction. That time period is similar to the 30 months the Council recently granted to another merchant plant. Therefore, the Council finds that beginning construction by November 30, 2000 is a reasonable shelf life and, therefore, there is no need to modify Condition 5.

D. Requested Amendment to Site Certificate

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

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

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

OOE determined that HPP’s request should be processed as an amendment request pursuant to OAR 345-27-050. That rule 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. In this case HPP proposes to remove one of three guarantors, all of whom are jointly and severally liable.

E. Compliance with 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 Organizational, Managerial and Technical Expertise, OAR 345-22-010
This standard has three paragraphs. One (010(1)) relates to applicant qualifications and capability and two (010(2) and (3)) relate to third-party permits.

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. The order discusses this part of the standard in section C.1.2 above.

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

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. The order discusses this part of the standard in C.1.2 above.
Conclusion. The Council finds that HPP meets the requirements of OAR 345-22-010(2) for third-party services and permits for the reasons set forth in section C.1.2.

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.

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. In its Final Order, the Council found that HPP satisfied the financial assurance standard based upon a guaranty in the amount of $8,202,000 to be executed by Simplot, TransCanada and Ida-West before facility construction. This finding is reflected in Condition 15 of the site certificate. Noting that the guarantors are jointly and severally liable, the Council found:

“[T]he joint and several liability would allow us to make a finding of compliance [with the financial assurance standard] based on the financial strength of any one of the guarantors, or based on the collective strength of the three guarantors.”

Final Order, pp. 124-25.

The Council then stated:
“We find that the financial information for the [sic] Simplot and TransCanada demonstrates that they both have the financial strength to meet an obligation estimated to be approximately $8 million.” Final Order, p. 125.

HPP proposes to satisfy Condition 15 under the financial assurance standard by presenting a guaranty, before construction, in the same form as previously adopted, but executed by TransCanada and Ida-West solely.

The Council’s review of HPP’s proposed guaranty focused on the ability of the remaining guarantors, TransCanada and Ida-West, to guarantee fully the payment of site restoration costs, taking into account the ease of pursuing claims on the guaranty. The Council determined that Idaho Power Company, an Idaho corporation and the parent of Ida-West, should become a guarantor of the obligation. The Council also provided for the substitution of another guarantor if HPP substitutes another guarantor that is acceptable to the Council in place of Idaho Power Company. Finally, the Council will allow HPP to provide a letter of credit acceptable to the Council as security for the payment of the restoration costs in lieu of the guaranty. The Council also makes the ministerial change of referring to HPP as “the site certificate holder.”

The Council will replace the current Condition 15 with the following condition:

(15) Prior to commencement of construction, HPP the site certificate holder shall submit to the State of Oregon through the Council, a guaranty substantially in the form attached as of Amended Exhibit A, executed by J.R. Simplot, TransCanada PipeLines Ltd., and Ida-West Energy Company (“Ida West”) and Idaho Power Company in the amount of $8,202,000 (in 1995 dollars). The calculation of 1995 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 total security in the retirement fund described in Condition 16 below reaches $8,202,000 (in 1995 dollars). For the purposes of this site certificate, “total security in the retirement fund” means the total amount of all letters of credit and performance bonds issued or posted as security for the performance of the site certificate holder’s obligation under OAR 345-22-130.

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 $8,202,000 (in 1995...
dollars). The calculation of 1995 dollars shall be made using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index"). The amount of the letter of credit shall increase annually by the percentage increase in the index. If at any time the index is no longer published, the Council shall select a comparable calculation of 1995 dollars. The letter of credit shall not be subject to revocation during the lifetime of the facility. 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. All funds received by the site certificate holder from the salvage of equipment or buildings shall be committed to the restoration of the facility site to the extent necessary to fund the approved restoration. If the site certificate holder provides, and the Council approves, a letter of credit in accordance with this condition, the requirements of Conditions 16 and 79 will cease and the letter of credit will be deemed to satisfy fully the retirement fund obligations set forth therein.

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

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

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

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

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

Conclusion. The Council finds that HPP meets the financial assurance standard, OAR 345-22-050, with the changes to the site certificate conditions 15, 16, and 79 as noted.
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 so 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. The Retirement Standard is implicated in this matter because an applicant must be able to demonstrate that it can meet the cost of restoring the site after retirement. In Section E.1.1.4 the Council endorses revised conditions requiring HPP to establish a funding mechanism that would make annual commitments to a retirement fund in the amount of $800,000. Until the retirement fund reaches the target level of $8,202,000 (1995 dollars), HPP will provide a guaranty or letter of credit executed by the parent companies of HPP's partners.

Due to SimGen's withdrawal, Simplot will no longer be a guarantor. With the changes the Council will make to Condition 15, SimGen's withdrawal will not affect HPP's ability to make such commitments. For the reasons discussed in Section E.1.1.4, TransCanada and Idaho Power Company have the financial strength to back the guaranty without Simplot.

For the reasons discussed above in connection with the financial assurance standard, the Council finds that SimGen's withdrawal will not result in any adverse effect on HPP's ability to meet the retirement standard, given the amended Conditions 15 and 79 noted in Section E.1.1.4.

Conclusion. The Council finds that HPP meets the retirement standard, OAR 345-22-130, taking into account the recommended changes to Conditions 15 and 79.

E.4 Other Standards

E.4.1 Noise OAR 340-35-035(I)(b)(B)
The Council applies and enforces the DEQ's noise standards for energy facilities under its jurisdiction. The DEQ noise standard, OAR 340-35-035 (I)(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 “Interim Report to the Energy Facility Siting Council Regarding the
Withdrawal of a Partner and Management Committee Changes,” dated October 29, 1997.
In considering those effects, the Council has reviewed related state statutes, administrative
rules, and local government ordinances.

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

**FINAL ORDER**

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

Issued this 23rd day of January, 1998.

Terry Edvalson
Chair, Energy Facility Siting Council
Notice of the Right to Appeal

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

to the
THERMAL POWER PLANT
SITE CERTIFICATE
for the
HERMISTON POWER PROJECT

January 26, 1998

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

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

III. CONDITIONS

Financial Assurance: OAR 345-22-050

Site Certificate Condition 15 is replaced with the following condition:

(15) 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 Amended Exhibit A, executed by TransCanada PipeLines Ltd., Ida-West Energy Company ("Ida West") and Idaho Power Company in the amount of $8,202,000 (in 1995 dollars). The calculation of 1995 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 total security in the retirement fund described in Condition 16 below reaches $8,202,000 (in 1995 dollars). For the purposes of this site certificate, "total security in the retirement fund" means the total amount of all letters of credit and performance bonds issued or posted as security for the performance of the site certificate holder's obligation under OAR 345-22-130.

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 $8,202,000 (in 1995 dollars). The calculation of 1995 dollars shall be made using the U.S. Gross
Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index"). The amount of the letter of credit shall increase annually by the percentage increase in the index. If at any time the index is no longer published, the Council shall select a comparable calculation of 1995 dollars. The letter of credit shall not be subject to revocation during the lifetime of the facility. 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. All funds received by the site certificate holder from the salvage of equipment or buildings shall be committed to the restoration of the facility site to the extent necessary to fund the approved restoration. If the site certificate holder provides, and the Council approves, a letter of credit in accordance with this condition, the requirements of Conditions 16 and 79 will cease and the letter of credit will be deemed to satisfy fully the retirement fund obligations set forth therein.

Site Certificate Condition 16 is replaced with the following condition:

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

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

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

Site Certificate Condition 79 is replaced with the following condition:

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

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

State of Oregon
Energy Facility Siting Council

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
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 teletypewriter addressed as follows:
If to the Guarantors:

Ida-West Energy Company  Idaho Power Company
3380 Americana Terrace  PO Box 70
Suite 300  Boise, Idaho 83707
Boise, Idaho 83706  Attention of President
Attention of President  (208) 388-2200
(208) 395-8930  [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 telecopier
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 telecopies 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
earlier of the date on which (a) the Guaranteed Obligations have been paid and performed
in their entirety and (b) the security for the retirement fund required under the site
certificate for the Project reaches $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).

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 against it 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: