

1
2
3
4
5
6
7
8
9
10
11
12
13
14

BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

6 In the matter of the Thermal Power Plant) FINAL ORDER
7 Site Certificate for the Hermiston Power) TO TRANSFER
8 Project (Amendment No. 3)) SITE CERTIFICATE

11 **A. Summary**

12 The Energy Facility Siting Council ("Council") approves this transfer request with
13 amendments to the site certificate conditions, as noted below.

15 **A.1 Summary and Background of the Request for Transfer of the Site Certificate**

16 Pursuant to OAR 345-27-0100(6), Calpine Hermiston, Inc. and CPN Hermiston, Inc.
17 (collectively, "Transferees") have requested approval of the Council to transfer to Transferees the
18 site certificate for the Hermiston Power Project ("Project") and to make associated amendments
19 to the Project's site certificate.

21 The Project's site certificate currently authorizes TCPL Hermiston Ltd. and Hermiston
22 Power Company ("HPC"), the general partners in the Hermiston Power Partnership ("HPP"), to
23 construct, operate and retire the Project. HPC and TCPL Hermiston have entered into an
24 agreement, subject to Council approval, to transfer to Transferees their general partnership
25 interests and their rights to own, construct and operate the Project.

27 **Names and Addresses of Transferees**

29 Calpine Hermiston, Inc., and CPN Hermiston, Inc.
30 c/o Calpine Corporation
31 50 West San Fernando Street
32 San Jose, CA 95113

RECEIVED

FEB 25 2000

OFFICE OF ENERGY

34 **A.2 Brief Description of the Project**

35 On March 25, 1996, the Council issued HPP a site certificate for the Project. The
36 certificate authorizes construction of a combined-cycle combustion turbine electric generating
37 plant, fueled primarily by natural gas, with a nominal capacity of 460 megawatts ("MW"). The
38 proposed facility will be located on a 17-acre parcel about three miles south of Hermiston,
39 Oregon. The facility is described in greater detail in the Council's final order approving HPP's
40 application for site certificate. HPP has not begun construction of the proposed facility.

42 The Council has amended HPP's site certificate twice previously. Amendment No. 1
43 approved HPP's "monetary path" demonstration of compliance with the applicable carbon
44 dioxide emissions standard. In connection with that amendment request, HPP informed the
45 Council that due to improved turbine performance the proposed facility's projected nominal
46 capacity had been increased to 536 MW.¹

¹ Pursuant to OAR 345-27-0050(2)(a), no amendment was required for this increase in capacity.

1
2 Amendment No. 2 modified Conditions 15, 16 and 79 of HPP's site certificate to remove
3 former general partner J.R. Simplot Company ("Simplot") as a co-guarantor in Condition 15 and
4 to add Idaho Power Company ("IPC") in Simplot's place. In the same document, the Council
5 approved the withdrawal of Simplot as a partner in HPP.²
6

7 In HPP's original site certificate the Council imposed a \$8.2 million guaranty requirement
8 in Condition 15 in order to ensure HPP's financial ability to retire the project when necessary, as
9 required under the Council's financial assurance standard, OAR 345-022-0050. With the
10 changes approved in Amendment No. 2, the guarantors now are TransCanada PipeLines Ltd.
11 ("TCPL"), Ida West Energy Company ("Ida West") and IPC. Similarly, in issuing Amendment
12 No. 1 for compliance with the carbon dioxide emissions standard, the Council imposed a second
13 guaranty requirement in Condition 1. This guaranty, also from TCPL, Ida West and IPC, is to be
14 in the amount necessary to cover all HPP obligations under the "monetary path" for compliance
15 with the carbon dioxide emissions standard.
16

17 In lieu of a guaranty, Conditions 1 and 15 authorize the site certificate holder to meet its
18 financial obligations through providing irrevocable letters of credit. The terms of such letters,
19 and the identity of the issuer, are subject to Council approval, not to be unreasonably withheld.
20

21 **B. Procedural History**

22 **B.1 Transferees' Request**

23 The Transferees submitted their request for transfer of the HPP site certificate to the
24 Council on January 21, 2000.
25

26 **B.2 Notice**

27 In early January, HPP notified the Council that the Transferees would be submitting its
28 request on January 21, 2000. The Council scheduled an information hearing on the request as
29 part of the Council's agenda for its January 28, 2000, meeting. Because the Council mailed the
30 agenda on January 20, 2000, it did not indicate on the agenda who the Transferees were.
31
32

33 Pursuant to OAR 345-027-0100(8), the Council mailed notice on January 21, 2000, of its
34 receipt of the application for the transfer to all persons on the Council's general mailing list and
35 persons on the special mailing list for the HPP facility. That notice specified that the
36 informational hearing would be held at the Council meeting on January 28, 2000, and that
37 persons could submit comments in writing to the Council until the end of the day on February 4,
38 2000.
39

40 **B.3 Informational Hearing**

41 The Council conducted the informational hearing during its general meeting on January
42 28, 2000. Pursuant to OAR 345.027-0100(9), the informational hearing was not a contested case
43 hearing.
44 /

² Pursuant to Condition 13 of HPP's site certificate, the Council did not treat this approval as an amendment request, but incorporated it in the Final Order for Amendment No. 2.

1 The Office of Energy (“OOE”) presented its review of the request. It noted that it was
2 still in discussion with Calpine Corporation (“Calpine”) about Calpine’s proposed guaranty for
3 the financial assurance standard. The Office stated it was not prepared to recommend that the
4 Council replace the current HPP guarantors with Calpine in the guaranty as written. It was the
5 Office’s perception that the guaranty Calpine proposed holds more risk than the current guaranty
6 by Idaho Power Company, a regulated public utility.
7

8 Council members noted the difference in risk to the State of accepting the same guaranty
9 from Calpine compared to Idaho Power. The Council was also concerned that a guaranty would
10 have a weak position in a bankruptcy proceeding.
11

12 Representatives of Calpine presented information about the managerial and technical
13 expertise of the company and information about its financial condition.
14

15 **B4 Public Comments**

16 The close of the public comment period was the end of the day on February 4, 2000.
17 Only Calpine submitted written comments during that period.
18

19 In response to comments from the Office and the Council at the informational hearing,
20 Calpine proposed in its written comments to modify its guaranty for the financial assurance
21 standard. Calpine’s modification adds a trigger that gives the Council the option of demanding a
22 letter of credit in place of the guaranty if Calpine’s credit rating falls below BB, as rated by
23 Standard and Poor’s and Moody’s. The amendment language is shown in section “D” below.
24

25 **B.5 Draft Final Order**

26 The Office issued its Draft Final Order on February 11, 2000, and mailed it to the Council
27 on that date. It gave notice to the public on that date that the draft final order was available and
28 that the Council would make a decision on the transfer request at its February 23, 2000, meeting.
29

30 **B.6 Council Decision Meeting**

31 The Council held a telephone conference call public meeting on February 23, 2000. The
32 Office recommended that the Council approve the amendment for the transfer, with appropriate
33 changes to the site certificate conditions. The Council approved the request to transfer the HPP
34 site certificate To Calpine Hermiston, Inc., and CPN Hermiston, Inc.
35

36 During the Council’s decision meeting, Calpine requested that the Council clarify
37 Conditions 15, 16, and 79.
38

39 In its February 4, 2000, comments on Condition 15, Calpine proposed a mechanism
40 whereby it would provide a letter of credit in lieu of its guaranty if its debt rating dropped below
41 a certain level. The changes Calpine originally proposed did not address the possibility that
42 Calpine might have partially funded the retirement fund at a time it might be required to provide
43 such a letter of credit. Calpine’s original proposal only identified the full amount of the
44 retirement fund as Calpine’s obligation in that case. Calpine’s wanted to clarify that, if it has to
45 provide a letter of credit in lieu of its guaranty because of a drop in its debt rating, the letter of
46 credit would be for the unfunded portion of the retirement fund.
47

48 Calpine also requested clarification in Conditions 16 and 79 that it could contribute to the
49 retirement fund in larger increments than the minimum required by the conditions if it chose to.

1 It was not clear in Conditions 16 and 79 that the \$800,000 annual commitment was a minimum,
2 rather than an absolute, amount.

3
4 The Council agreed to Calpine's requests for clarification. The Council addresses
5 Calpine's proposed changes in Section D below.

6 7 **C. General Findings of Fact Related to the Request to Transfer the Site Certificate**

8 9 **C.1 Description of the Proposed Transfer**

10 According to the request for transfer of the site certificate HPP in October 1999 solicited
11 bids from parties potentially interested in purchasing the general partnership rights of HPC and
12 TCPL Hermiston to construct, operate and own the Project. From a list of several responses,
13 HPP selected a small group of finalists. As several of the bids appeared both substantial and
14 attractive to HPP, in December 1999, HPP notified the Council's staff in the Office of Energy of
15 the potential, pending transfer. The finalists submitted revised bids, and on January 12, 2000,
16 HPP selected Calpine as the winning bidder.

17
18 The Transferees are the wholly-owned subsidiaries of Calpine. Calpine incorporated
19 them on January 19, 2000, for the specific purpose of becoming the new general partners of HPP.
20 The Transferees and Calpine are Delaware corporations.

21
22 The Transferees included in their request a notarized declaration from the current
23 President of HPC attesting that, upon Council approval and satisfaction of other unrelated
24 conditions to closing, Transferees would have full rights to the Project. In addition, the request
25 to transfer the site certificate indicates that the Transferees, HPC and TCPL Hermiston, intend to
26 enter into a written agreement for the transfer of the partnership interests (the "Agreement"). The
27 Agreement will provide for the transfer to Transferees of 100 percent of the general partnership
28 interests of HPC and TCPL Hermiston, contingent upon Council approval.

29 30 **C.2 Request for Council Approval**

31 The Council's rules governing site certificate transfers provide:

32
33 A transfer of ownership requires a transfer of the site certificate when the
34 person who will have the legal right to possession and control of the site or
35 the facility does not have authority under the site certificate to construct,
36 operate or retire the facility; OAR 345-027-0100(1)(a).

37
38 The transaction proposed here is a "transfer of ownership" from HPC and TCPL
39 Hermiston to Transferees. As a result of this transfer, Transferees will become the new general
40 partners of HPP and thus acquire the legal right to possession and control of the Project's site and
41 facility. However, Transferees will not have authority under the current site certificate to
42 construct, operate or retire the facility because the Council issued the site certificate based upon a
43 specific review of the technical, managerial and financial strength of HPC, TCPL Hermiston and
44 their parent entities. Therefore, OAR 345-027-0100(1)(a) requires Transferees to submit for the
45 Council's approval a request to transfer the site certificate for the Project.

46
47 OAR 345-027-0100(10) directs the Council to approve a transfer if the Transferees meet
48 the following standards:

49 /

- 1 (a) The transferee complies with the standards described in OAR
2 345-022-0010, OAR 345-022-0050 and, if applicable, OAR
3 345-024-0710(1);
4
5 (b) The transferee is lawfully entitled to possession or control of the site or
6 the facility described in the site certificate;
7
8 (c) The transferee agrees to abide by all the terms and conditions of the
9 site certificate to be transferred as determined by the Council; and
10
11 (d) The facility complies with the statutes, local government ordinances
12 and Council rules in effect on the date of the Council's order that the
13 Council decides should apply to the transferred facility based on the
14 transferee's consent or upon a clear showing of a significant threat to
15 the public health, safety or the environment. In the order, the Council
16 shall include any new or amended site certificate conditions necessary
17 to assure compliance with these statutes, local government ordinances
18 and Council rules.
19

20 These standards are addressed below.
21

22 **C.2.1 OAR 345-022-0010, Organizational, Managerial and Technical Expertise**

23 The Organizational, Managerial and Technical Expertise standard has four paragraphs.
24 Subsections (1) and (2) relate to the applicants' qualifications and capability and subsections (3)
25 and (4) relate to third-party permits.
26

27 **a. Applicant Qualification and Capability, OAR 345-022-0010(1)**

28 To issue a site certificate, the Council must find that the applicant has the
29 organizational, managerial and technical expertise to construct and operate
30 the proposed facility. To conclude that the applicant has the organizational,
31 managerial and technical expertise to construct and operate the proposed
32 facility, the Council must find that the applicant has a reasonable probability
33 of successful construction and operation of the proposed facility considering
34 the experience of the applicant, the availability of technical expertise to the
35 applicant, and the past performance of the applicant in constructing and
36 operating other facilities, including, but not limited to, the number and
37 severity of regulatory citations, in constructing or operating a facility, type of
38 equipment, or process similar to the proposed facility.
39

40 **Discussion.** Transferees are wholly owned subsidiaries of Calpine and will be staffed
41 and supported by Calpine personnel. Calpine is an established power development corporation
42 with a portfolio of 44 gas-fired and geothermal power plants in the United States. Calpine plays
43 an active role in the development, permitting, construction, and operation of almost all of the
44 plants it develops. It has a staff of about 900 employees to perform these and other functions.
45 Calpine reports that it plans to take a more active role in managing construction of the Project
46 than HPC and TCPL Hermiston originally proposed. Moreover, Calpine intends to be the Project
47 Operator rather than use a turnkey contractor, as HPC and TCPL Hermiston had proposed. The
48 following subsections discuss Calpine's ability to fulfill these roles.

1
2 Transferees' Expertise. Calpine is a major independent power company engaged in the
3 development, ownership and operation of power generation facilities and the sale of electric
4 energy. Transferees thus have a store of in-house expertise to draw upon in their management of
5 Project construction and operation. In their request, the Transferees identified the qualifications
6 of personnel who will have the responsibility for selecting and supervising the Transferees' line
7 managers, who will be directly involved in Project construction and operation.
8

9 Transferees' Power Facility Development History. Calpine owns a substantial interest in
10 25 operating gas-fired power plants in the United States and is the operator of 16 of these. In all,
11 these plants represent 3,384 MW of generating capacity. Calpine is the sole (or in three cases, a
12 major) interest holder in 10 more plants currently under construction, representing an additional
13 4,535 MW of generation. Calpine played a key role in successfully developing and permitting
14 each of these projects. Calpine has developed and now operates 19 geothermal power plants
15 with a total of 888 MW of generating capacity. The Council knows of no serious regulatory
16 problem, mandatory stop work order or license revocation in Calpine's development,
17 construction and operation experience.
18

19 **Conclusion.** The Council finds that the transfer to Transferees of the partnership
20 interests of TCPL Hermiston and HPC will not have an adverse impact on HPP's ability to
21 construct and operate the proposed facility; therefore, approval of the transfer to Transferees
22 satisfies the requirements of OAR 345-022-0010(1).
23

24 **b. Applicant Qualification and Capability, OAR 345-022-0010(2)**

25 The Council may base its findings under section (1) on a rebuttable
26 presumption that an applicant has organizational, managerial and technical
27 expertise, if the applicant has an ISO 9000 or ISO 14000 certified program
28 and proposes to design, construct and operate the facility according to that
29 program.
30

31 **Discussion:** This subsection does not impose a requirement; rather, it provides a
32 rebuttable presumption of the managerial and technical expertise upon which an applicant could
33 rely. Calpine itself is not ISO 9000 or ISO 14000 certified, so it cannot rely on this subsection.
34 However, the Council takes note of the fact that Siemens-Westinghouse and Nooter/Eriksen,
35 Inc., whom Calpine identified as the contractors that will construct the turbines and heat recovery
36 steam generator, respectively, are each ISO 9000 certified.
37

38 **Conclusion.** The Council finds that the Transferees did not request a rebuttable
39 presumption of expertise based on OAR 345-033-0010(2).
40

41 **c. Third-Party Services and Permits, OAR 345-022-0010(3)**

42 If the applicant does not itself obtain a state or local government permit or
43 approval for which the Council would ordinarily determine compliance but
44 instead relies on a permit or approval issued to a third party, the Council, to
45 issue a site certificate, must find that the third party has, or has a reasonable
46 likelihood of obtaining, the necessary permit or approval, and that the
47 applicant has, or has a reasonable likelihood of entering into, a contractual or
48 other arrangement with the third party for access to the resource or service
49 secured by that permit or approval.

1
2 **Discussion.** The original Final Order notes that with two exceptions HPP will itself
3 obtain all necessary permits and approvals. The two exceptions involve (1) required process
4 water, which HPP proposed to acquire from the Port of Umatilla under an existing, but
5 unperfected, water right permit, and (2) the disposal of process wastewater, which HPP proposed
6 to dispose of under a modification to Simplot's Water Pollution Control Facility permit.
7

8 The transfer of the partnership interests of HPC and TCPL Hermiston will not affect
9 HPP's rights to water and wastewater disposal because those are rights of the partnership rather
10 than the individual partners. Transferees do not propose to rely on any new or additional third-
11 party permits. Nothing about the transfer, if approved, would affect HPP's ability to obtain water
12 from the Port or dispose of water through Simplot.
13

14 **Conclusion.** The Council finds that approval of the transfer to Transferees satisfies the
15 requirements of OAR 345-022-010(3).
16

17 **d. Third-Party Services and Permits, OAR 345-022-0010(4)**

18 If the applicant relies on a permit or approval issued to a third party and the
19 third party does not have the necessary permit or approval at the time the
20 Council issues the site certificate, the Council may issue the site certificate
21 subject to the condition that the certificate holder may not commence
22 construction or operation as appropriate until the third party has obtained the
23 necessary permit or approval and the applicant has a contract or other
24 arrangement for access to the resource or service secured by that permit or
25 approval.
26

27 **Discussion.** HPP' site certificate requires HPP to demonstrate, before commencing
28 construction, (1) that the Port of Umatilla has not forfeited its legal right to perfect the
29 2,400 gpm of water contracted to HPP and (2) that HPP has a contract with Simplot to dispose of
30 wastewater. This subsection of the rule is not applicable to the present request for a pre-
31 construction transfer of the site certificate. Transferees will be subject to the site certificate
32 condition, and the transfer will not affect HPP' ability to secure these required services.
33

34 **Conclusion.** The Council finds that approval of the transfer to the Transferees satisfies
35 the requirements of OAR 345-022-0010(4).
36

37 **C.2.2 OAR 345-022-0050, Financial Assurance**

38 To issue a site certificate, the Council must find that the applicant has a
39 reasonable likelihood of obtaining a bond or comparable security, satisfactory
40 to the Council, in an amount adequate to restore the site to a useful, non-
41 hazardous condition if the certificate holder either begins but does not
42 complete construction of the facility or permanently closes the facility before
43 establishing the financial mechanism or instrument described in
44 OAR 345-027-0020(9).
45

46 **Discussion.** In the original Final Order the Council found that site restoration costs
47 would be about \$8.2 million (1995 dollars). HPP proposed to meet the financial assurance
48 standard by executing a guaranty by the parent companies of HPP's partners. The Council

1 accepted the guaranty and imposed the guaranty requirement in Condition 15. Conditions 16
2 and 79 relate to the implementation of the guaranty.

3
4 In connection with Amendment No. 2, the Council reviewed the financial strength of
5 TransCanada Pipeline, Ltd., Ida West Energy Company and Idaho Power Company and
6 concluded that they have the requisite financial strength to meet this standard. The guaranty was
7 identified as "Amended Exhibit A."

8
9 In connection with their transfer request, the Transferees requested Council approval to
10 meet the financial assurance standard through Condition 15 by submitting a guaranty identical in
11 form to the one previously approved by the Council. Transferees proposed Calpine as the
12 Guarantor.

13
14 The Council is not prepared to accept a simple substitution of Calpine as the Guarantor
15 because its review showed significant differences between Calpine and Idaho Power Company,
16 one of the current Guarantors. The most apparent difference is the ratings assigned the debt of
17 the two companies. Idaho Power Company has a composite debt rating of "A1." Calpine has a
18 composite debt rating of "BB1." This difference alone shows that a guaranty from Calpine is not
19 of "comparable security" to the guaranty offered by Idaho Power Company. The rating agencies
20 (Moody's, Standard & Poor's, and Fitch's) showed small differences between their ratings, but
21 were consistent in the difference between the two entities.

22
23 The Council found, in addition, Calpine has a debt to equity ratio of approximate 2.5 to 1,
24 while Idaho Power Company has a debt to equity ratio of approximately 0.9 to 1. As a regulated
25 utility Idaho Power Company has a more stable cash flow and provides a better opportunity to
26 predict the probability of performance on a guaranty than Calpine does at this time.

27
28 While the Council notes the differences in a guaranty from Calpine compared to Idaho
29 Power, the Council does not think that Calpine is uncreditworthy. In fact, Calpine has a
30 satisfactory credit standing in the marketplace.

31
32 With the original guaranty, the Council was concerned about the risk from potential
33 unforeseen events over the approximately 10 years it will take for Calpine to establish a fully-
34 funded retirement fund, as required by Conditions 16 and 79. In response to comments by staff
35 of the Office and members of the Council at the informational hearing, Calpine proposed to
36 strengthen the guaranty in the comments it submitted as part of the public comment period on
37 February 4, 2000.

38
39 Calpine's proposed modification of the guaranty allows the Council to accept the
40 guaranty of Calpine with a reasonable assurance that an unforeseen deterioration of Calpine's
41 creditworthiness would not jeopardize the restoration funding of the HPP site. Under Calpine's
42 proposal, the Council will have the ability to protect against the development of currently
43 unforeseen events by adding a provision for the replacement of the guaranty with a letter of credit
44 (LOC) through a trigger tied to a deterioration of Calpine's credit standing. The provision also
45 requires timely notice by Calpine in the event of a downgrade while Calpine is still able to
46 provide a suitable LOC.

1
2 **Conclusion.** The Council finds that Transferees satisfy the requirements of OAR 345-
3 022-0050.
4

5 **C.2.3 OAR 345-024-0710(1), Monetary Path Payment Requirement**

6 If the applicant elects to meet the applicable carbon dioxide emissions
7 standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-
8 0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a
9 bond or comparable security in a form reasonably acceptable to the Council
10 to ensure the payment of the offset funds and the additional funds required
11 under section (4).***
12

13 **Discussion.** In Amendment No. 1, HPP demonstrated its compliance with the carbon
14 dioxide standard pursuant to OAR 345-024-0560(3), the “monetary path.” The Council
15 approved this demonstration and, in Condition 1 of the revised site certificate, required TCPL,
16 Ida West and IPC to provide a guaranty in the amount of the “monetary path payment
17 requirement.”
18

19 In connection with Amendment Nos. 1 and 2, the Council also found that HPP could
20 satisfy this standard by providing an irrevocable letter of credit for the monetary path payments
21 calculated as provided in Condition 4. Condition 1 describes this alternative.
22

23 In connection with the transfer, Transferees do not propose to change HPP’s
24 demonstration of compliance with the carbon dioxide emissions standard pursuant to the
25 monetary path. Thus, the only issue for review in this application is Transferees’ ability to
26 ensure payment of the monetary path obligations.
27

28 Transferees propose to meet their monetary path obligations under the carbon dioxide
29 emissions standard and Condition 1 by submitting a guaranty identical in form to the one already
30 approved by the Council. Transferees propose Calpine as the Guarantor. In addition to the
31 guaranty, Transferees retain the option of submitting an appropriate letter of credit prior to
32 construction.
33

34 The Council finds that the guaranty as written is sufficient to meet the monetary path
35 payment requirement because of the short time in which the guaranty will be in operation. The
36 Transferees will provide that majority, if not all, of the funds in the guaranty before completing
37 construction. If HPP is required to provide additional funds due to the results of the test of the
38 facility on a new and clean basis, those funds will likely be a small amount and will be due
39 during the early operation of the facility. Because of this short life of the guaranty, the risk of
40 Calpine being unable to honor it is insignificant.
41

42 **Conclusion.** The Council finds that approval of the transfer to Transferees satisfies the
43 requirements of OAR 345-024-0710(1).
44

45 **C.2.4 Transferees’ Right to Possession and Control of Site and Facility, OAR 345-027-
46 0100(10)(b)**

47 [The Council must find that:]
48 /

1 The transferee is lawfully entitled to possession or control of the site or the facility
2 described in the site certificate;
3

4 **Discussion.** The Transferees submitted a declaration from the current President of HPC
5 stating that if the Council approves the transfer and other unrelated closing conditions are
6 satisfied, Transferees will acquire full, exclusive rights to possession and control of the Project
7 and its site.
8

9 **Conclusion.** The Council finds that approval of the transfer to Transferees satisfies the
10 requirements of OAR 345-027-0100(10)(b).
11

12 **C.2.5 Agreement to Comply with the Site Certificate OAR 345-027-0100(10)(c)**
13 [The Council must find that:]
14

15 The transferee agrees to abide by all the terms and conditions of the site certificate
16 to be transferred as determined by the Council; and
17

18 **Discussion.** In their request to transfer the site certificate, the Transferees have indicated
19 their intention of abiding by the terms and conditions of the site certificate, as modified to reflect
20 the transfer.
21

22 **Conclusion.** The Council finds that the proposed transfer will not alter HPP's
23 compliance and/or ability to comply with the site certificate and that the transfer meets the
24 requirements of OAR 345-027-0100(10)(c).
25

26 **C.2.6 Other Statutes, Ordinances and Council Rules OAR 345-027-0100(10)(d)**
27 [The Council must find that:]
28

- 29 (d) The facility complies with the statutes, local government ordinances and
30 Council rules in effect on the date of the Council's order that the Council
31 decides should apply to the transferred facility based on the transferee's
32 consent or upon a clear showing of a significant threat to the public
33 health, safety or the environment. In the order, the Council shall include
34 any new or amended site certificate conditions necessary to assure
35 compliance with these statutes, local government ordinances and Council
36 rules.
37

38 **Discussion.** The Transferees have not proposed to apply any statutes, local government
39 ordinances and Council rules in effect on the date of the Council's order other than those
40 specified in OAR 345-027-0100. The Council has not identified any significant threat to the
41 public health, safety or the environment that requires the Council to impose other conditions.
42

43 **Conclusion.** The Council finds that the Transferees have not proposed to apply any
44 statutes, local government ordinances and Council rules in effect on the date of the Council's
45 order other than those specified in OAR 345-027-0100. The Council does not find that there is
46 significant threat to the public health, safety or the environment that requires the Council to
47 impose other conditions.
48 /

1 **D. Requested Amendments to Site Certificate**

2 Pursuant to OAR 345-027-0100(11), upon approval of a transfer, the Council is
3 authorized to issue an amended site certificate “that names the transferee as the new certificate
4 holder and includes appropriate new or amended site certificate conditions.”
5

6 In the proposed transfer, Transferees will acquire the entire general partnership interest in
7 HPP. HPP will continue in existence and will remain the holder of the Project’s site certificate.
8 Therefore, no name change in the site certificate is needed.
9

10 The Transferees proposed to amend Conditions 1 and 15 to make Calpine Corporation the
11 guarantor instead of TransCanada PipeLines, Ltd., Ida West Energy Company, and Idaho Power
12 Company. They also propose amendments to related guaranties.
13

14 **Condition 1.** The Transferees proposed to amend Condition 1 as follows (language
15 Transferees propose to be added is double underlined; language to be deleted in ~~strikeout~~):
16

17 (1) Prior to commencement of construction, the site certificate holder
18 shall submit to the State of Oregon through the Council a guaranty
19 substantially in the form of Exhibit B-2, executed by ~~TransCanada PipeLines~~
20 ~~Ltd., Ida West Energy Company (‘Ida West’) and Idaho Power Company~~
21 Calpine Corporation in the amount of the monetary path payment
22 requirement (in 1998 dollars) as determined by the calculations set forth in
23 Condition 4 and based on the estimated heat rate and capacity certified
24 pursuant to Condition 4(e) below and as adjusted in accordance with the
25 terms of this site certificate pursuant to Condition 4(d). For the purposes of
26 this site certificate, the “monetary path payment requirement” means the
27 offset funds determined pursuant to ORS 469.503(2)(c) and the selection and
28 contracting funds determined pursuant to ORS 469.503(2)(d)(A)(ii) that the
29 site certificate holder must disburse to the Oregon Climate Trust, as the
30 qualified organization, pursuant to ORS 469.403(2)(d)(A). The calculation
31 of 1998 dollars shall be made using the index set forth below.
32

33 ~~The site certificate holder may offer to substitute the guaranty of a~~
34 ~~new parent corporation of Ida West for the guaranty of Idaho Power~~
35 ~~Company. In that event, the Council will approve the guaranty from the new~~
36 ~~parent unless the Council finds that the proposed guaranty does not provide~~
37 ~~comparable security to the guaranty of Idaho Power Company. Such~~
38 ~~approval will not require a site certificate amendment. The guaranty shall~~
39 ~~remain in effect until such time as the site certificate holder has disbursed the~~
40 ~~full amount of the monetary path payment requirement to the Oregon Climate~~
41 ~~Trust (“Oregon Climate Trust”) as provided in ORS 469.503(2)(d)(A).~~
42

43 In lieu of the guaranty requirement set forth above that the site
44 certificate holder must provide prior to commencement of construction, the
45 site certificate holder may instead provide a letter of credit in the amount of
46 the monetary path payment requirement as calculated pursuant to Condition 4
47 below (in 1998 dollars) and based on the estimated capacity and heat rate of
48 the plant as certified by the site certificate holder pursuant to Condition 4(d).
49 If the site certificate holder has provided a letter of credit prior to

1 commencing construction and if calculations pursuant to Condition 4(d)
2 demonstrate that the site certificate holder must increase its monetary path
3 payments, the site certificate holder shall increase the letter of credit
4 sufficiently to meet the adjusted monetary path payment requirement within
5 the time required by Condition 4(d). The site certificate holder may reduce
6 the amount of the letter of credit commensurate with payments it makes to
7 the Oregon Climate Trust.
8

9 The calculation of 1998 dollars shall be made using the US Gross
10 Domestic Product Deflator for Total Non-Residential Fixed Investment, as
11 published by the US Department of Commerce, Bureau of Economic
12 Analysis, or any successor agency ("the index"). The amount of the letter of
13 credit shall increase annually by the percentage increase in the index and shall
14 be pro-rated within the year to the date of disbursement to the Oregon
15 Climate Trust. If at any time the index is no longer published, the Council
16 shall select a comparable calculation of 1998 dollars. The letter of credit
17 shall not be subject to revocation prior to disbursement of the full monetary
18 path payment requirement, including any adjusted monetary path payment
19 requirement. The terms of the letter of credit and identity of the issuer shall
20 be subject to approval by the Council, which approval shall not be
21 unreasonably withheld.
22

23 **Discussion.** For the reasons discussed in section "C.2.3" above, the guaranty is sufficient
24 to satisfy the requirements of the monetary path payment requirement for security.
25

26 **Conclusion.** The Council adopts Condition 1 as the Transferees proposed, with an
27 editorial note that the reference to the guaranty document should read "Amended Exhibit B-2."
28

29 **Condition 15.** The Transferees originally proposed to substitute Calpine as the guarantor
30 in Condition 15. Calpine proposed on February 4, 2000, to amend Condition 15 to add a trigger
31 that gives the Council the option of demanding a letter of credit in place of the guaranty if
32 Calpine's credit rating falls below BB, as rated by Standard and Poor's and Moody's.
33

34 Then, during the Council's decision meeting on February 23, 2000, Calpine also
35 requested that the Council clarify Condition 15 to address the possibility that Calpine might have
36 partially funded the retirement fund at a time it might be required to provide a letter of credit
37 because of a drop in its debt rating. Calpine's February 4, 2000, proposal only identified the full
38 amount of the retirement fund as Calpine's obligation in that case. Calpine's wanted to clarify
39 that, if it has to provide a letter of credit in lieu of its guaranty because of a drop in its debt rating,
40 the letter of credit would be for the unfunded portion of the retirement fund. The following
41 condition incorporates all changes proposed by the Transferees and Calpine.
42

43 (15) Prior to commencement of construction, the site certificate holder
44 shall submit to the State of Oregon through the Council, a guaranty
45 substantially in the form of Amended Exhibit A, executed by ~~TransCanada~~
46 ~~PipeLines Ltd., Ida West Energy Company ("Ida West") and Idaho Power~~
47 ~~Company~~ Calpine Corporation in the amount of \$8,202,000 (in 1995 dollars).
48 The calculation of 1995 dollars shall be made using the index set forth
49 below. ~~The site certificate holder may offer to substitute the guaranty of a~~

1 ~~new parent corporation of Ida West for the guaranty of Idaho Power~~
2 ~~Company. In that event, the Council will approve the guaranty from the new~~
3 ~~parent unless the Council finds that the proposed guaranty does not provide~~
4 ~~comparable security to the guaranty of Idaho Power Company. Such~~
5 ~~approval will not require a site certificate amendment. The guaranty shall~~
6 remain in effect until such time as the total security in the retirement fund
7 described in Condition 16 below reaches \$8,202,000 (in 1995 dollars). For
8 the purposes of this site certificate, "total security in the retirement fund"
9 means the total amount of all cash, letters of credit and performance bonds
10 deposited, issued or posted as security for the performance of the site
11 certificate holder's obligation under OAR 345-22-130.
12

13 ~~In lieu of the guaranty requirement set forth above that the site~~
14 ~~certificate holder must provide prior to commencement of construction, the~~
15 ~~site certificate holder may instead provide a letter of credit. In the event that~~
16 ~~Calpine Corporation's long-term senior unsecured debt is rated below "BB"~~
17 ~~or its equivalent by S&P and Moody's, the site certificate holder shall provide~~
18 ~~a letter of credit in the amount of \$8,202,000 (in 1995 dollars) less all~~
19 ~~amounts then on deposit in the retirement fund. The calculation of 1995~~
20 ~~dollars shall be made using the U.S. Gross Domestic Product Deflator for~~
21 ~~Total Non-Residential Fixed Investment, as published by the U.S.~~
22 ~~Department of Commerce, Bureau of Economic Analysis, or any successor~~
23 ~~agency ("the index"). The amount of the letter of credit shall increase~~
24 ~~annually by the percentage increase in the index. If at any time the index is~~
25 ~~no longer published, the Council shall select a comparable calculation of~~
26 ~~1995 dollars. The letter of credit shall not be subject to revocation during the~~
27 ~~lifetime of the facility. The terms of the letter of credit and identity of the~~
28 ~~issuer shall be subject to approval by the Council, which approval shall not~~
29 ~~be unreasonably withheld. All funds received by the site certificate holder~~
30 ~~from the salvage of equipment or buildings shall be committed to the~~
31 ~~restoration of the facility site to the extent necessary to fund the approved~~
32 ~~restoration. If the site certificate holder provides, and the Council approves,~~
33 ~~a letter of credit in accordance with this condition, the requirements of~~
34 ~~Conditions 16 and 79 will cease and the letter of credit will be deemed to~~
35 ~~satisfy fully the retirement fund obligations set forth therein.~~
36

37 **Discussion.** For the reasons discussed in sections "B.6" and "C.2.2" above, the Council
38 accepts the guaranty with the changes that Calpine proposed in its comments on February 4 and
39 23, 2000. However, in recognition that corporations change names and structure over time, the
40 Council inserts "or their successors" to follow the designation of S&P and Moody's.
41

42 **Conclusion.** The Council adopts the changes Calpine proposed for Condition 15. It also
43 inserts "or their successors" following "Moody's," updates the references to the current
44 numbering system for Council rules, and changes the reference to the guaranty document to read
45 "Second Amended Exhibit A."
46

47 **Related Conditions.** There are two other conditions in the site certificate that relate to
48 the implementation of the guaranty in Condition 15, Conditions 16 and 79. In its comments on
49 February 4, 2000, Calpine proposed changes to those conditions to make them conform to its

1 proposal for Condition 15. In its testimony before the Council on February 23, 2000, Calpine
2 also requested clarification in Conditions 16 and 79 that it could contribute to the retirement fund
3 in larger increments than the minimum required by the conditions if it chose to. It was not clear
4 in Conditions 16 and 79 that the \$800,000 annual commitment was a minimum rather than
5 absolute. The following condition incorporates all changes proposed by the Transferees and
6 Calpine.

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

13
14 Starting with the first year of commercial operation, the site certificate holder
15 shall establish a retirement fund and begin making ~~annual~~ commitments to
16 the fund in the amount of \$800,000 (or more if the site certificate holder
17 chooses) in the form of a letter of credit, ~~or~~ performance bond, or cash
18 ("annual commitments"). The terms of the security and identity of the issuer
19 shall be subject to approval by the Council, which approval shall not be
20 unreasonably withheld. Such annual commitments shall continue until the
21 total security in the retirement fund reaches \$8,202,000 (in 1995 dollars) in
22 no event later than 10 years from the date of commercial operation. The
23 calculation of 1995 dollars shall be made using the U.S. Gross Domestic
24 Product Deflator for Total Non-Residential Fixed Investment, as published
25 by the U.S. Department of Commerce, Bureau of Economic Analysis, or any
26 successor agency ("the index"). After the security in the fund reaches
27 \$8,202,000 (in 1995 dollars), the fund shall increase annually by the
28 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.

30 In the event the security in the retirement fund is less than \$8,202,000 in
31 (1995 dollars) at the time the site certificate holder notifies the Council of its
32 intent to retire the facility, the annual commitments to the retirement fund
33 shall be adjusted so as to assure that the total security in the funds is
34 \$8,202,000 (in 1995 dollars) at the time of retirement. the site certificate
35 holder shall describe the status of the fund in the annual report submitted to
36 the Council. All funds received by the site certificate holder from the salvage
37 of equipment or buildings shall be committed to the restoration of the facility
38 site, to the extent necessary to fund the approved restoration.

39
40 (79) This condition shall apply only ~~if~~while the site certificate holder
41 satisfies Condition 15 with a guaranty instead of a letter of credit. ~~If the site~~
42 ~~certificate holder satisfies Condition 15 with a letter of credit, the letter of~~
43 ~~credit will be deemed to satisfy fully the retirement fund obligations set forth~~
44 ~~in this condition and the remainder of this condition shall be of no effect.~~

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

27 **Discussion.** The Council notes that the reference to the “terms of the security” applies to
28 the letter of credit, performance bond or cash and that the “issuer” applies to the letter of credit or
29 performance bond. The Council also finds that the intent of the \$800,000 annual commitment is
30 that the amount is a minimum rather than absolute, and that the certificate holder has the option
31 of contributing larger amounts in any year.
32

33 **Conclusion.** The Council finds that the changes are necessary to conform with changes
34 to Condition 15 and therefore adopts the changes Calpine proposed for Conditions 16 and
35 79, along with clarification about the minimum annual commitment.
36

37 The Council also makes the editorial clarification that the appropriate sentence in each
38 condition shall read: “The terms of the security and identity of the issuer of the letter of credit or
39 performance bond shall be subject to approval by the Council, which approval shall not be
40 unreasonably withheld.”
41

42 **Conforming Changes.** Transferees proposed in connection with the above amendments
43 to make conforming name and address changes (including changes to the authorized agent for
44 service of process in Oregon) to Amended Exhibit A and Exhibit B-2 to HPP’s Site Certificate,
45 as referenced in Conditions 1 and 15.
46 /

1 **Conclusion.** The Council adopts the appropriate conforming name and address changes
2 to Second Amended Exhibit A and Amended Exhibit B-2, which are attached.

3
4 **Guaranty Changes.** In its comments on February 4, 2000, Calpine further proposed to
5 add a new section to Second Amended Exhibit A at (10) and to amend Section 13. It proposed
6 that the Council re-number sections to reflect the insert.

7
8 SECTION 10. If at any time during the term of this Guaranty Guarantor's long-term
9 senior unsecured debt is rated below "BB" or its equivalent by S&P and Moody's,
10 Guarantor shall provide EFSC with written notice thereof within five (5) business
11 days. Within thirty (30) calendar days of receipt of such notice, EFSC may, by
12 providing written notice to Guarantor, request that HPP or Guarantor provide a letter
13 of credit to replace this Guaranty. Within five (5) business days of receipt of such
14 notice from EFSC, Guarantor shall provide or cause HPP to provide a letter of credit
15 pursuant to Condition 15 of the site certificate for the Project. Upon delivery of such
16 letter of credit by HPP or Guarantor in form and substance satisfactory to EFSC, the
17 obligations and liabilities of Guarantor under this Guaranty shall terminate as
18 provided in Section 14.

19
20 SECTION ~~10~~11. ***

21 SECTION ~~11~~12. ***

22 SECTION ~~12~~13. ***

23
24 SECTION ~~13~~14. The obligations and liabilities of ~~each~~ of the Guarantors under this
25 Guaranty shall terminate (subject to automatic reinstatement under Section 4) on the
26 ~~earlier~~earliest of the date on which (a) the Guaranteed Obligations have been paid and
27 performed in their entirety, ~~and~~ (b) the security for the retirement fund required under the
28 site certificate for the Project reaches \$8,202,000 (in 1995 dollars calculated using the
29 index referred to in the site certificate for the Project relating to the calculation of the
30 retirement fund amount), or (c) the letter of credit described in Section 10 is delivered to
31 EFSC.

32
33 SECTION ~~14~~15. ***

34 SECTION ~~15~~16. ***

35 SECTION ~~16~~17. ***

36 SECTION ~~17~~18. ***

37 SECTION ~~18~~19. ***

38
39 Discussion. These changes conform the guaranty with the changes in the site certificate
40 conditions. Further, in recognition that corporations change names and structure over time, the
41 Council inserts "or their successors" to follow the designation of S&P and Moody's.

42
43 **Conclusion.** The Council adopts new Section 10 and amends the original Section 13 to
44 conform with its amendments to Condition 15. It further renumbers the sections to reflect the
45 insertion on a new section at 10, adds the phrase "or their successors" following "Moody's" in
46 new Section 10, and conforms internal references among conditions.

47
48 **Ministerial Changes.** Beginning with these amendments, the Council will note at the
49 end of each condition it amends the number of the amendment. This will make it easier to track

1 changes to the site certificate without necessarily having to refer back to final orders for
2 individual amendments.

3
4 **E. Conclusion**

5 The Council finds that the Transferees meet all applicable standards for the transfer of
6 ownership, including associated amendments to Site Certificate Conditions 1, 15, 16 and 79 and
7 to Second Amended Exhibit A and Amended Exhibit B-2.

8
9 **FINAL ORDER**

10
11 Based on the above findings of fact, discussions and conclusions of law, the Energy
12 Facility Siting Council determines that it shall approve the Transferees' request to transfer the
13 HPP site certificate (Amendment Request No. 3) and that the chairperson of the Council shall
14 execute the site certificate amendment as a comprehensive "Thermal Power Plant Second
15 Amended Site Certificate for the Hermiston Power Project."

16
17 Issued this 24th day of February 2000.

18
19
20
21 

22
23 Karen H. Green
24 Chair, Energy Facility Siting Council
25

26
27 **Notice of the Right to Appeal**

28
29 You have the right to appeal this order to the Oregon Supreme Court pursuant to
30 ORS 469.405. To appeal you must file a petition for judicial review with the Supreme Court
31 within 60 days from the day this order was served on you. If this order was personally delivered
32 to you, the date of service is the date you received this order. If this order was mailed to you, the
33 date of service is the date it was mailed, not the day you received it. If you do not file a petition
34 for judicial review within the 60-day time period, you lose your right to appeal.

35 /
36 /
37 /