



1 As a result of the 1997 legislation that created a carbon dioxide (“CO<sub>2</sub>”) standard  
2 for generating plants, HPP applied to the Council to amend its site certificate as provided  
3 in ORS 469.409. In Amendment No. 1, dated March 19, 1998, the Council approved  
4 HPP’s “monetary path” demonstration of compliance with the applicable CO<sub>2</sub> emissions  
5 standard. The original capacity of the facility was projected to be 460 MW. In connection  
6 with the first amendment request, HPP informed the Council that due to improved turbine  
7 performance the proposed facility’s projected nominal capacity would be 536 MW. That  
8 capacity rating was still within the allowable 10 percent increase in energy use without  
9 requiring an amendment.

10  
11 In Amendment No. 2, dated January 23, 1998, the Council modified Conditions 15,  
12 16 and 79 of HPP’s site certificate to remove former general partner J.R. Simplot Company  
13 (“Simplot”) as a co-guarantor in Condition 15 and to add Idaho Power Company (“IPC”) in  
14 Simplot’s place. In the same document, the Council approved the withdrawal of Simplot  
15 as a partner in HPP.<sup>1</sup>

16  
17 In HPP’s original site certificate the Council imposed a \$8.2 million guaranty  
18 requirement in Condition 15 in order to ensure HPP’s financial ability to retire the project,  
19 as required under the Council’s financial assurance standard, OAR 345-022-0050. With  
20 the changes approved in Amendment No. 2, the guarantors were then TransCanada  
21 PipeLines Ltd. (“TCPL”), Ida West Energy Company (“Ida West”) and IPC. Similarly, in  
22 issuing Amendment No. 1 for compliance with the CO<sub>2</sub> emissions standard, the Council  
23 imposed a second guaranty requirement in Condition 1. This guaranty, also from TCPL,  
24 Ida West and IPC, was for the amount necessary to cover all HPP obligations under the  
25 “monetary path” for compliance with the CO<sub>2</sub> emissions standard.

26  
27 In Amendment No. 3, dated, February 24, 2000, the Council approved transfer of  
28 the site certificate for HPP to Calpine Hermiston, Inc., and CPN Hermiston, Inc. Both are  
29 wholly-owned subsidiaries of Calpine Corporation. Simplot, TCPL and Ida-West are no  
30 longer partners. Calpine provided the \$8.2 million guaranty and the monetary path  
31 guaranty.

32  
33 HPP began construction on the facility on August 4, 2000. It has a certified  
34 nominal capacity of 546 megawatts (“MW”) at annual average conditions. Based on the  
35 certified heat rate, this energy use is within an additional 10 percent of the full power  
36 energy use described in the site certificate.

37  
38 Effective September 13, 2000, HPP entered into a Memorandum of Understanding  
39 (“MOU”) with the Oregon Climate Trust (“OCT”) to pay OCT approximately \$4.2 million  
40 in CO<sub>2</sub> offset funds and related selection and contracting funds. Payment of those funds  
41 upon OCT’s request will complete HPP’s compliance with the Council’s CO<sub>2</sub> emissions  
42 standard for the base-load power plant except as they may be modified by the results of the  
43 100-hour test of the constructed facility. Monetary path payment requirements for excess

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<sup>1</sup> 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 CO<sub>2</sub> emissions from the additional capacity described in this amendment request are  
2 discussed below.

3  
4 **C. Description of Proposed Power Enhancement Technology**

5 HPP requests the Council’s authorization to add peaking capability, specifically  
6 duct burning technology, to the facility. The addition of duct burning technology allows  
7 more complete combustion of exhaust gas. It involves the installation of a natural gas  
8 burner ring in the ductwork of the heat recovery steam generator (the “HRSG”)  
9 approximately 50 feet after the exhaust gas exits from the combustion turbine (the “CT”),  
10 before the number 1 superheater. The ring is segmented to fit into the transition ductwork  
11 of the HRSG. It evenly distributes a flame pattern across the heating section of the  
12 superheater. The burner uses combustion turbine exhaust gas (the “TEG”) to provide  
13 motive and combustion air for the burner. This increases the overall efficiency of the  
14 burner, HRSG and CT by burning the unburned hydrocarbons in the TEG, which allows  
15 more steam production for use in the steam turbine. Because the duct burner will increase  
16 both the capacity and heat rate of the facility, it will result in an incremental increase in  
17 CO<sub>2</sub> emissions and, therefore, must be approved by the Council in an amendment process.  
18 OAR 345-024-0550 and OAR 345-027-0050.

19  
20 HPP also plans to add steam augmentation and inlet fogging technologies as part of  
21 the peak enhancement modification. These technologies increase the overall output of the  
22 facility by adding mass (in the form of steam or water) to the exhaust stream passing  
23 through the combustion turbine. These technologies actually reduce the heat rate and allow  
24 the facility to achieve higher outputs without increased fuel usage. They do not result in  
25 increased carbon dioxide emissions and do not trigger an amendment requirement under  
26 OAR 345-024-0550. Further, the addition of power augmentation and inlet fogging will  
27 not impair HPP’s ability to comply with the site certificate, require any new site certificate  
28 conditions, or cause any significant adverse impacts. Thus, no amendment is required  
29 under OAR 345-027-0050(1).

30  
31 The duct burning, power augmentation, and inlet fogging technologies will allow  
32 the facility to produce an additional 100 MW during peak use periods.

33  
34 **II. Description of the Proposed Amendment**

35 There are three distinct elements to the amendment request: 1) allowing duct  
36 burning, including an increase in the maximum fuel use of the facility; 2) increasing the  
37 amount of water the facility will use; and, 3) rerouting a segment of the transmission line.

38  
39 **A. Duct Burning**

40 HPP makes its amendment request pursuant to OAR 345-27-0050, which requires  
41 site certificate holders to request amendments when they propose to construct a facility in a  
42 manner that differs from the description in the site certificate, if the proposed change  
43 “[c]ould require a new condition or change to a condition in the site certificate.” OAR  
44 345-027-0050(1)(d).

1 The addition of the duct burning technology will increase the facility's CO<sub>2</sub>  
2 emissions. Therefore, HPP must comply with the applicable CO<sub>2</sub> emissions standard for  
3 the incremental CO<sub>2</sub> emissions resulting from the designed operation of the duct burners.  
4 OAR 345-024-0590. HPP proposes to comply with the relevant standard based on  
5 payment of CO<sub>2</sub> mitigation funds as provided for in OAR 345-024-0600(3).  
6

7 Further, by installing duct burners, HPP will construct the facility in a manner that  
8 differs from the description in the site certificate. In particular, the facility with duct  
9 burners will consume a 4,136 MMBtu/hr at full power at average annual conditions, an  
10 increase that is greater than 10 percent compared to the 3,400 MMBtu/hr stated in the site  
11 certificate. An amendment to the site certificate is required pursuant to OAR 345-027-  
12 0050(2)(a). HPP therefore requests that the Council amend the site certificate to describe  
13 this change (*see* Section V, below).  
14

15 **B. Revised Water Balance**

16 HPP recently recalculated the water balance for the Project. By doing so, it  
17 determined that it will need an additional 500 gallons per minute ("gpm") to run the  
18 facility. The facility will consume 2,422 gpm of water at average annual conditions, which  
19 is greater than the 1,969 gpm stated in the site certificate. The updated water balance is  
20 due to (1) engineering refinements made by Calpine<sup>2</sup> and (2) selection of specific  
21 components for the facility by vendors to Calpine. As a result, HPP requests that the  
22 Council amend the site certificate to reflect this additional amount of water.  
23

24 The additional water consumption will also result in additional wastewater  
25 discharge to Simplot. The original calculations estimated that wastewater discharge from  
26 HPP to Simplot would be 144 gpm, or 0.21 million gallons per day ("MGD"). With the  
27 new water balance calculations from HPP, its discharge would increase to 235 gpm, or  
28 0.34 MGD. Duct burning operation would add another 20 gpm, to a maximum of  
29 0.35 MGD. The issue of wastewater disposal is discussed in more detail below in multiple  
30 sections.  
31

32 HPP made this amendment request pursuant to OAR 345-27-0050, which requires  
33 site certificate holders to seek amendments when they propose to construct the facility in a  
34 manner that differs from the description in the site certificate, if the proposed change  
35 "could result in a significant adverse impact that the Council did not evaluate and address  
36 in the final order \* \* \*." OAR 345-027-0050(1)(a)-(b). In this case, the Council must  
37 evaluate the impacts of increased water use.  
38

39 **C. Transmission Line Reroute**

40 HPP requests Council approval to construct about one mile of the 500 kV  
41 transmission line along a different route than initially proposed. In the original design, one  
42 segment of the transmission line would have run above another transmission line owned by

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<sup>2</sup> As noted above, Calpine Hermiston, Inc., and CPN Hermiston, Inc., constitute the Hermiston Power Partnership. Both companies are wholly-owned subsidiaries of Calpine Corporation.

1 PacifiCorp. HPP reports that PacifiCorp is concerned about interruption of its service or  
2 damage to its line during construction of the HPP line. HPP proposes, therefore, a revised  
3 corridor for its transmission line.  
4

5 The proposed route is as follows: Upon leaving the facility site, the 500 kV line  
6 will proceed north across the rail yard and then proceed approximately due east paralleling  
7 the rail yard. About one-quarter mile along this reach the new proposed route diverges  
8 from the originally planned route, which went northeast across a field from that point. The  
9 proposed route continues east to Hinkle Road, then goes north adjacent to the road. The  
10 routes converge at the intersection of Hinkle and Feedville Roads. Both routes are shown  
11 on Exhibit E in the request for amendment. The divergence covers about one mile.  
12

13 HPP made this amendment request to change the route pursuant to OAR 345-27-  
14 0050, which requires site certificate holders to seek amendments when they propose to  
15 construct the facility in a manner that differs from the description in the site certificate, if  
16 the proposed change “could result in a significant adverse impact that the Council did not  
17 evaluate and address in the final order \* \* \*.” OAR 345-027-0050(1)(a)-(b). In this case a  
18 portion of the rerouted line will fall outside the original biological study corridors and,  
19 therefore, raises a potential for unanticipated impacts.  
20

### 21 **III. Procedural History**

#### 22 23 **A. Office of Energy Review Steps**

##### 24 25 **1. HPP’s Request**

26 HPP submitted its Fourth Request to Amend Site Certificate to the Council on  
27 December 28, 2000. In a letter dated January 23, 2001, HPP’s attorney submitted  
28 supplemental information. The new information slightly revised the water balance data  
29 and recommended additional amendments to the description of the facility in the site  
30 certificate to bring the site certificate into conformance with the actions proposed in the  
31 fourth amendment. The discussion in this order reflects both submittals by HPP.  
32

##### 33 **2. Review by Other Agencies, Local Governments and Tribes**

34 The Office of Energy (“Office”), pursuant to OAR 345-027-0070(1)(a), identified  
35 potentially affected agencies, local governments and tribes and asked them to review  
36 HPP’s request for amendment. The Office mailed a copy of the amendment request along  
37 with a review report form on January 2, 2001, to those agencies, local governments and  
38 tribes and asked them to reply by January 26, 2001. The Office sent the request to the  
39 following agencies, local governments and tribes:  
40

41 Department of Geology and Mineral Industries  
42 Department of Fish and Wildlife  
43 Division of State Lands  
44 Department of Agriculture  
45 Department of Land Conservation and Development

1 Water Resources Department  
2 Department of Parks and Recreation  
3 State Historic Preservation Office  
4 Department of Environmental Quality  
5 Office of State Fire Marshall  
6 Public Utilities Commission  
7 Building Codes Division  
8 Department of Forestry  
9 Northwest Power Planning Council  
10 City of Hermiston  
11 City of Stanfield  
12 City of Umatilla  
13 City of Echo  
14 City of Irrigon  
15 City of Pendleton  
16 City of Boardman  
17 Board of Commissioners, Umatilla County  
18 Board of Commissioners, Morrow County  
19 Confederated Tribes of the Umatilla Indian Reservation

### 20 21 **3. Replies**

22 Several agencies and local governments replied to the Office's request for  
23 comments, but the Department of Environmental Quality ("DEQ") was the only responding  
24 agency that raised a question about the amendment request. DEQ found that the request  
25 was unclear about the total amount of wastewater that Simplot would receive from HPP  
26 with the amendment. Without having adequate information, DEQ could not determine if  
27 Simplot would need DEQ's permission to accept additional wastewater from HPP,  
28 pursuant to Simplot's Water Pollution Control Facility ("WPCF") permit # 101471. DEQ  
29 was concerned about the total additional flow and the Total Dissolved Solids ("TDS") in  
30 the HPP wastewater going to Simplot.

31  
32 The request for amendment did not show the total amount of additional reclaimed  
33 wastewater that HPP would discharge to Simplot. HPP only discussed the additional  
34 20 pm as a result of duct burning, not the full amount of additional wastewater as a result  
35 of its revised water calculations. Therefore, in a letter to HPP's attorney, dated January 29,  
36 2001, the Office asked HPP to provide information about the total amount of reclaimed  
37 wastewater that HPP would discharge to Simplot with the revised water budget.

38  
39 HPP replied by forwarding to the Office a letter, dated February 12, 2001, from Ms.  
40 Joan Cloonan, vice-president, environmental and regulatory affairs for the J.R. Simplot  
41 Company, to Ms. Barbara Sellars, water quality manager for the Eastern Region, DEQ. In  
42 that letter, Ms. Cloonan stated that the study upon which DEQ relied to modify Simplot's  
43 WPCF permit in 1995 calculated that the wastewater discharge from HPP to Simplot  
44 would be 144 gpm, or 0.21 million gallons per day ("MGD"). With the new water balance

1 calculations from HPP, its discharge would increase to 235 gpm, or 0.34 MGD. Duct  
2 burning operation would add another 20 gpm, to a maximum of 0.35 MGD.

3  
4 With the information that Ms. Cloonan provided to DEQ, Ms. Sellars wrote the  
5 Office on February 27, 2001, regarding DEQ's evaluation of HPP's amendment request.  
6 Ms. Sellars stated that "Based on the information provided, a review of our files, and our  
7 understanding that Simplot intends to acquire additional land, we have concluded that  
8 Simplot can handle the additional flow from HPP. It is unlikely that this will require a  
9 modification of Simplot's [WPCF] permit, but rather can be handled under their OM&M  
10 [Operations, Monitoring and Maintenance] plan."

#### 11 12 **4. Initial Public Notice**

13 On January 2, 2001, the Office mailed a notice of HPP's request for amendment to  
14 all persons on the Council's general mailing list and persons on the Council's special  
15 mailing list for the Project, including property owners adjacent to the re-routed  
16 transmission line, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments to  
17 the Office by January 26, 2001.

#### 18 19 **5. Public Comments on the Request**

20 On January 26, 2001, Ms. Linda K. Williams, attorney for the Pendleton Building  
21 Trades Council, the Utility Reform Project, and Mr. Bob VandeCar (collectively, "Ms.  
22 Williams"), submitted comments on HPP's Fourth Request to Amend Site Certificate.

23  
24 As stated in the conclusion to her letter, Section VI., Ms. Williams made three  
25 primary requests: 1) she requested a rule-making on the value of carbon offsets; 2) she  
26 requested a contested case on the integrity of the factual record on air, water use, and  
27 environmental issues; and, 3) she requested a scrutiny of HPP compliance with two site  
28 certificate conditions.

29  
30 First, as explained below, Ms. Williams' request for a rulemaking did not conform  
31 to the Attorney General's administrative rules governing petitions for rulemaking.  
32 Therefore, it was not a petition for rulemaking. Second, as explained more fully below,  
33 Ms. Williams' request for a contested case was not timely. In a proceeding for an  
34 amendment request, a request for a contested case must be made within 30 days after the  
35 Office has issued a proposed order. Third, the issues of compliance with the site certificate  
36 are discussed below. Finally, this order discusses factual issues raised by Ms. Williams,  
37 even when not in the proper form or in a timely manner, along with other issues raised in  
38 her letter.

39  
40 The following format within this section is labeled to correspond to the format of  
41 Ms. Williams' comments:  
42

1           **Williams I. Request for Contested Case**

2           Ms. Williams made a broad request for a contested case on the amendment request.  
3           However, the Council rules for “Review of a Request for Amendment”, at OAR 345-027-  
4           0070(5), state:

5  
6           Any person may, by written request submitted to the Office within 30 days  
7           after the Office issues the proposed order, ask the Council to hold a  
8           contested case proceeding on the proposed order. For the purpose of this  
9           rule, the request is submitted when it is received by the Office. In the  
10          request, the person shall provide a description of the issues to be  
11          contested, a statement of the facts believed to be at issue, and the person's  
12          mailing address.

13  
14          Ms. Williams submitted her request for a contested case based on HPP’s request for  
15          amendment, prior to the Office issuing a proposed order. Therefore, Ms. Williams request  
16          for a contested case was not timely, and the Office did not forwarding it to the Council.  
17          The Council does not comment on the issues that Ms. Williams raised within the context of  
18          a request for contested case, but does reply to comments pertinent to the amendment  
19          request.

20  
21           **Williams II. Request for Rulemaking**

22          Ms. Williams stated that she requested that the Council enter rulemaking pursuant  
23          to ORS 469.503(2)(c)(C) to increase the amount of monetary offset above the current 57¢  
24          per ton for CO<sub>2</sub> emissions. However, her “request for rulemaking” did not conform to the  
25          Attorney General’s administrative rules governing petitions for rulemaking and was,  
26          therefore, not a petition for rulemaking.

27  
28          A petition to an agency to commence rulemaking is governed by ORS 183.390,  
29          which provides:

30  
31          An interested person may petition an agency requesting the promulgation,  
32          amendment or repeal of a rule. The Attorney General shall prescribe by  
33          rule the form for such petitions and the procedure for their submission,  
34          consideration and disposition. Not later than 30 days after the date of  
35          submission of a petition, the agency either shall deny the petition in  
36          writing or shall initiate rulemaking proceedings in accordance with ORS  
37          138.335.

38  
39          The statute leaves to the Attorney General the definition of the procedure to be  
40          followed to request a change in rules. As required by ORS 183.390, the Attorney General  
41          has adopted a uniform rule<sup>3</sup> to govern petitions for rulemaking. That rule provides, in part,  
42          that the petition  
43

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<sup>3</sup> This uniform rule must be applied by agencies without further adoption or amendment.

1 \*\*\*shall contain a detailed statement of:

2 (a) The rule petitioner requests the agency to adopt, amend, or  
3 repeal. When a new rule is proposed, the petition shall set forth the  
4 proposed language in full. When an amendment of an existing rule is  
5 proposed, the rule shall be set forth in the petition in full with matter  
6 proposed to be deleted enclosed in brackets and proposed additions shown  
7 by boldface;

8 (b) Facts or arguments in sufficient detail to show the reasons for  
9 and effects of adoption, amendment, or repeal of the rule;

10 (c) All propositions of law to be asserted by petitioner.  
11

12 When an agency receives a petition for rulemaking, it is statutorily required to take  
13 action on the petition within 30 days. A denial of the petition is an order in other than a  
14 contested case, subject to judicial review under ORS 183.484.  
15

16 The provisions of ORS 183.390 and OAR 137-001-0070 provide the exclusive path  
17 to seek rulemaking from an administrative agency. Ms. Williams' request did not conform  
18 to these requirements and, therefore, it was not a petition for rulemaking requiring Council  
19 action within 30 days<sup>4</sup> or any Council action at all.  
20

### 21 **Williams III. Request for Binding Arbitration**

22 Ms. Williams requested binding arbitration "to the extent that the Amendment  
23 involves a dispute under ORS 469.409 about the proper amount of the monetary offset to  
24 comply with the carbon dioxide emissions standard." ORS 469.409 provides:  
25

26 Any site certificate holder that is required by its site certificate or by law to  
27 demonstrate need for the facility shall instead demonstrate compliance  
28 with the carbon dioxide emissions standard applicable to the type of  
29 facility subject to the site certificate before beginning construction. Such a  
30 demonstration shall be made as an amendment to the site certificate.  
31 Notwithstanding ORS 469.405 or any council rule, if the site certificate  
32 holder proceeds pursuant to ORS 469.503 (2)(c)(A) or (C), or both, the  
33 Energy Facility Siting Council shall not conduct a contested case hearing  
34 on such amendment and the council's order shall not be subject to judicial  
35 review. Any dispute about the site certificate holder's demonstration of  
36 compliance with the applicable carbon dioxide emissions standard shall be  
37 settled through binding arbitration.  
38

39 ORS 469.409 and its requirement for binding arbitration are intended to provide an  
40 orderly transition from the application of the former "need for facility" standard to the  
41 current CO<sub>2</sub> standard. The section refers only to the Council proceeding that addresses the

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<sup>4</sup> The request for rulemaking also cannot be viewed as a request to place an action item on the Council's agenda. The Council's rules specifically exclude petitions for rulemaking from the provisions governing placing matters on the action agenda. OAR 345-011-0035(3).

1 amendment of the site certificate to incorporate, or in statutory terms, “demonstrate  
2 compliance with,” the CO<sub>2</sub> standard. The section does not provide a general right to  
3 binding arbitration whenever a question regarding the CO<sub>2</sub> standard is raised in a Council  
4 proceeding. Furthermore, as noted in Section I.B of this order, the Council approved HPP's  
5 “monetary path” demonstration of compliance with the applicable CO<sub>2</sub> emissions standard  
6 in Amendment No. 1, dated March 19, 1998. One of the entities that Ms. Williams  
7 represents, the Utility Reform Project, participated in the proceedings relating to that  
8 amendment, including arbitration. All issues relating the application of ORS 469.409 to  
9 HPP were resolved by the Council’s proceedings and subsequent judicial appeals.

10  
11 **Williams IV. Need for Power**

12 In this section, Ms. Williams repeated her requests for rulemaking or a contested  
13 case, based on the application of the need for facility standard for generating plants, which  
14 the legislature repealed 1997. The former need for facility standard is not applicable to the  
15 current site certificate.

16  
17 **Williams V.A. DEQ Air Permit**

18 Ms. Williams raised several issues about the air quality permit for the facility. The  
19 DEQ issues an air quality permit as a federally-delegated permit. Pursuant to ORS  
20 469.501(3), the air quality permit is not within the Council’s jurisdiction. Furthermore,  
21 OAR 345-022-0000(4) states:

22  
23 In making determinations regarding compliance with statutes, rules and  
24 ordinances normally administered by other agencies or compliance with  
25 requirements of the Council statutes if other agencies have special  
26 expertise, the Office of Energy shall consult with such other agencies  
27 during the notice of intent, site certificate application and site certificate  
28 amendment processes. Nothing in these rules is intended to interfere with  
29 the state's implementation of programs delegated to it by the federal  
30 government.

31  
32 Also, Section I.A. of the Thermal Power Plant Second Amended Site Certificate of  
33 the Hermiston Power Project, lines 30-33, states:

34  
35 The Site Certificate is not binding with respect to matters not governed by  
36 and included in the Site Certificate, including permits issued under statutes  
37 and rules for which the decision on compliance has been delegated by the  
38 Federal government to a state agency other than EFSC.

39  
40 Therefore, the particular questions that Ms. Williams raised about compliance with  
41 the air quality permit are not part of the Council’s review of the request to amend the  
42 HPP site certificate. The Councils takes note of only two elements of Ms. Williams  
43 comments regarding the air permit.  
44

1 First, at her Section V.A.1.a, Ms. Williams raised questions about the consistency  
2 between information that HPP has submitted to DEQ in its air quality permit and  
3 information it submitted in the amendment request. HPP reports in its amendment request  
4 that the facility will consume 4,136 MMBtu/hr at full power at average annual conditions,  
5 as it detailed in Exhibit F to its amendment request. Ms. Williams provided other data  
6 relating to the energy input rate for the facility, but it was unclear whether those data relate  
7 to the maximum input rate at any given period or whether they relate to maximum input at  
8 average annual conditions. Therefore, the Office asked Mr. Peter Brewer, air quality  
9 manager, Eastern Region, DEQ, and HPP to clarify whether there is an inconsistency  
10 between the data.

11  
12 Ms. Williams also questioned whether the base load plant already exceeds the  
13 “permitted heat rate of 3,400 MMBtu/hr.” As noted in Section I.B.1 of this order, the  
14 facility does not need an amendment if it does not increase its fuel consumption by more  
15 than 10 percent above 3,400 MMBtu/hr at average annual conditions. OAR 345-027-  
16 0050(2)(a). Pursuant to Condition 4(e) of the site certificate, HPP certified that the fuel use  
17 of the facility at full power as a base-load plant is 3,706 MMBtu/hr at average annual  
18 conditions. That is less than less than 3,740 MMBtu/h, which is the threshold for being  
19 10 percent greater than 3,400 MMBtu/hr. Therefore, the Council finds that certified energy  
20 use of the base-load facility is within the parameters of the site certificate and Council  
21 rules.

22  
23 In a letter dated February 14, 2001, Mr. Brewer explained that the heat input rate  
24 alone is not a limiting factor in DEQ’s evaluation of an air quality permit. He explained  
25 that the heat input rate of 1,964 MMBtu/hr (per turbine) that Ms. Williams noted was for  
26 operation in cool weather. He stated that that input rate is not inconsistent with the heat  
27 input rate at average annual conditions that HPP provided in its amendment request and in  
28 its air quality permit. The different data reflect different operating conditions. The  
29 Council finds that the heat input rate that HPP provided to the Council in its amendment  
30 request is not inconsistent with data it provided DEQ.

31  
32 The Office also asked HPP to address the question of consistency between the data  
33 it provided the Council and DEQ. In a letter dated February 21 2001, Mr. Peter Mostow,  
34 attorney for HPP, responded with substantially the same information that Mr. Brewer had  
35 provided, but with more detail. He clarified that the higher heat rates to which Ms.  
36 Williams had referred were projected for an ambient air temperature of 26° F rather than at  
37 average annual conditions at 52° F. This difference applies to data for both the currently  
38 sited base-load plant and the proposed amendment. The Council notes that HPP’s  
39 amendment request was not clear that it was reporting maximum fuel use at average annual  
40 conditions. One had to read the data in Exhibit F to determine that fact.

41  
42 Second, at Section V.A.1.b of her comments, Ms. Williams challenged HPP’s  
43 statement in its request for amendment that increasing fuel use and operation of the duct  
44 burners would not cause HPP to violate the terms of the Air Contaminant Discharge Permit  
45 (“ACDP”) for the facility (*viz.* footnote 3, page 3). Even though compliance with the

1 ACDP is not a matter of Council jurisdiction and is not a site certificate condition, it is  
2 appropriate for the Council to take note of statements made by HPP in its amendment  
3 request. In a letter dated January 29, 2001, the Office asked Mr. Brewer his conclusion  
4 about whether HPP would be able to comply with its air quality permit if the Council  
5 granted this amendment request.  
6

7 In his letter dated February 14, 2001, Mr. Brewer responded: “In general, the Air  
8 Quality program of the Department of Environmental Quality (DEQ) believes that the HPP  
9 project will be able to comply with their air quality permit when constructed.” He also  
10 noted that HPP could apply to DEQ for adjustments to its air quality permit if it need to as  
11 a result of changes approved by EFSC through amendment number four. He stated: “It  
12 fact, the normal practice for energy facilities such as HPP is to complete their EFSC  
13 process prior to making any air quality permit adjustments.” The Council finds that HPP  
14 did not misrepresent its position regarding its compliance with the DEQ-issued air quality  
15 permit.  
16

17 Finally, the Council finds that Ms. Williams or any other party must address  
18 questions of HPP’s compliance with its air quality permit to the Department of  
19 Environmental Quality.  
20

21 **Williams V.B. Broader Health, Safety and Environmental Impacts**

22 Ms. Williams raised issues related to climate change and need for facility in regard  
23 to its request for a rulemaking to increase the amount of monetary offset. As noted above,  
24 Ms. Williams did not file a proper petition for rulemaking, so the Council does not respond  
25 to rulemaking issues in this order.  
26

27 **Williams V.C. J.R. Simplot Company**

28 Ms. Williams apparently believes that Simplot is an co-owner of HPP. As noted in  
29 Section I.B of this order, the Council approved the withdrawal of Simplot as a partner in  
30 the final order for Amendment No. 2. Therefore, none of the comments in Section V.C of  
31 Ms. Williams’ letter regarding Simplot’s role as a co-owner is relevant to this amendment  
32 request.  
33

34 Ms. Williams also raised a separate question about Simplot’s ability to accept the  
35 increased amount of reclaimed wastewater from HPP. That issue is addressed in DEQ’s  
36 comments in Section III.A.3 of this order.  
37

38 **Williams V.D Financial Assurance**

39 Ms. Williams raised questions about the role of “co-owners” [sic] Simplot and Ida-  
40 West Corporation in meeting the financial assurance standard. As noted in Section I.B of  
41 this order, neither is a co-owner of the facility. Therefore, Ms. Williams’ comments were  
42 not relevant to this amendment request.  
43

1           **Williams V.E Compliance with Site Certificate Conditions**

2           **Condition 8.** Ms. Williams stated that HPP is not in compliance with Condition 8  
3 of the site certificate. Condition 8 requires:

4  
5           Prior to commencement of construction, HPP shall have a contract or other  
6 agreement with Simplot to accept and dispose of HPP's wastewater.

7  
8           Ms. Williams stated that the amendment request is “silent” on HPP’s agreement  
9 with Simplot. The HPP agreement with Simplot is provided as Exhibit I to the amendment  
10 request. The agreement was executed on July 26, 2000, which was prior to beginning  
11 construction.

12  
13           Ms. Williams also stated that the amendment request is silent on the capability of  
14 Simplot to dispose of additional wastewater. In its Final Order, issued March 26, 1996, the  
15 Council found that DEQ had issued a modification to Simplot's WPCF permit to allow it to  
16 dispose of wastewater from HPP (HPP Final Order at 121). Therefore, Condition 8  
17 addresses only the issue of a contract between HPP and Simplot.

18  
19           The Council interprets Ms. Williams’ reference to Simplot’s “capability to dispose  
20 of additional wastewater” to refer to additional wastewater resulting from the revised water  
21 balance calculations and duct burning, which are additional to the amount considered in the  
22 Final Order. The issue of Simplot’s ability to handle increased reclaimed wastewater is  
23 addressed in DEQ’s comments in Section III.A.3 of this order. However, the issue of  
24 whether Simplot can accept additional reclaimed wastewater if the Council approves HPP  
25 discharging it is not an issue of compliance with current conditions, but rather a subject of  
26 this amendment request.

27  
28           The Council finds that HPP has an agreement with Simplot for Simplot to accept  
29 and dispose of its reclaimed wastewater. The Council finds that HPP is not in violation of  
30 Condition 8.

31  
32           **Condition 61.** Ms. Williams also charged that HPP is not in compliance with  
33 Condition 61 of the site certificate. Condition 61 requires:

34  
35           HPP will hire as many local workers as is reasonably possible for both the  
36 construction and operation of the Project. A "local" worker is one who  
37 resides within a 60 mile radius from the project site encompassing part of  
38 Umatilla and Morrow Counties in Oregon and the part of Benton, Franklin  
39 and Walla Walla counties in Washington. HPP will establish a single point  
40 of contact with the Oregon Employment Department in Pendleton Oregon  
41 to coordinate employment opportunities at the project site.

42  
43           Ms. Williams stated that HPP “appears not to have complied in spirit” with  
44 Condition 61. Ms. Williams offered no information about what compliance “in spirit” with  
45 a requirement that HPP hire as many local workers as reasonably possible might mean.

1  
2 Nor did she offer facts about HPP's hiring practices other than the suggestion that  
3 HPP appears to be hiring out-of-state workers. Condition 61 specifies that the "local" area  
4 includes those parts of Washington within a 60-mile radius of the facility. HPP can  
5 comply with the condition even if it is hiring out-of-state workers if they come from within  
6 that 60-mile radius. Therefore, Ms. Williams' specific charge that HPP is hiring out-of-  
7 state workers would not, on its face, demonstrate a violation of the condition.  
8

9 In a letter dated January 29, 2001, the Office asked HPP to report on its actions to  
10 hire as many local workers as reasonably possible. Mr. Peter Mostow, attorney, replied via  
11 letter on behalf of HPP on February 21, 2001. He stated that there was not a local general  
12 contractor capable of managing the construction of a power plant, so HPP hired a national  
13 contractor, The Industrial Company ("TIC"). He stated that HPP has strongly encouraged  
14 TIC to employ local workers whenever it can find local workers with the necessary skills  
15 who are available within project timelines.  
16

17 As of February 16, 2001, TIC employed 32 local workers among its 127 total  
18 workers. Further, six of the 10 HPP employees are local. He also reported that all but one  
19 of TIC's subcontractors is local. These subcontractors employ 38 local workers. He also  
20 reported that HPP uses a local catering service and purchases supplies and services locally.  
21

22 In all, 76 of the 175 workers on the site as of February 16, 2001, were local. That is  
23 43 percent of the work force. He noted that the number of workers varies with the phases  
24 of work and specific tasks that are needed. He reported that earlier in the construction  
25 process, 60 percent of the workers were local. He reported that it expects the percent of  
26 local worker to fluctuate between 40 to 60 percent.  
27

28 Mr. Mostow reported that Calpine had established a single point of contact at the  
29 Oregon Employment Department at its Hermiston field office. The location for the contact  
30 point was moved to the Hermiston field office at the request of the Oregon Employment  
31 Division. HPP had reported that change to the Office on August 14, 2000.  
32

33 The Council finds that HPP has demonstrated that it is making a reasonable effort  
34 to hire local workers and that, therefore, HPP is acting in compliance with Condition 61.  
35

#### 36 **6. Notice to Site Certificate Holder**

37 On January 2, 2001, the Office mailed notice to HPP, pursuant to OAR 345-027-  
38 0070(1)(c), that it would issue a proposed order no later than February 23, 2001, which is  
39 within 60 days of receiving HPP's request for amendment. However, because of the need  
40 for time to address comments on the amendment request, which are discussed above, the  
41 Office was unable to meet that deadline. On February 23, 2001, the Office notified HPP  
42 that it expected to issue a proposed order no later than March 1, 2001.  
43

1           **7. Proposed Order**

2           The Office issued its proposed order February 27, 2001.

3  
4           **8. Public Notice of Proposed Order**

5           On February 27, 2001, the Office mailed notice of the proposed order to the  
6 Council’s general mailing list, persons on the Council’s special mailing list for the Project,  
7 including property owners adjacent to the re-routed transmission line, pursuant to OAR  
8 345-027-0070(4). The notice set a deadline for public comments by March 30, 2001, and  
9 gave notice of the procedure for requesting a contested case proceeding on the proposed  
10 order, pursuant to OAR 345-027-0070(5).

11  
12           **9. Request for a Contested Case**

13           On March 28, 2001, Ms. Linda K. Williams, attorney for the Pendleton Building  
14 Trades Council, the Utility Reform Project, and Mr. Bob VandeCar (collectively, “Ms.  
15 Williams,” as also used in Section III. A.5, above), submitted a request for a contested case  
16 hearing on the Hermiston Power Partnerships’ Fourth Request to Amend Site Certificate.  
17 Ms. Williams made her request for a contested case pursuant to OAR 345-027-0070.  
18 Section (5) of that rule provides:

19  
20           Any person may, by written request submitted to the Office within 30 days  
21 after the Office issues the proposed order, ask the Council to hold a  
22 contested case proceeding on the proposed order. For the purpose of this  
23 rule, the request is submitted when the Office receives it. In the request,  
24 the person shall provide a description of the issues to be contested, a  
25 statement of the facts believed to be at issue, and the person's mailing  
26 address.

27  
28           The request for a contested case hearing was timely, as provided by the notice of  
29 the proposed order that the Office issued on February 27, 2001. Ms. Williams stated the  
30 issues she contests and the facts she believes to be at issue and provided her mailing  
31 address.

32  
33           OAR 345-027-0070(6) provides the criteria for the Council’s review of a request  
34 for a contested case:

35  
36           To determine that an issue justifies a contested case proceeding under  
37 section (7), the Council must find that the request raises a significant issue  
38 of fact or law that may affect the Council’s determination that the facility,  
39 with the change proposed by the amendment, meets an applicable  
40 standard. If the Council determines that even if the alleged facts are taken  
41 as true the outcome of the Council’s determination would not change, but  
42 that conditions of performance might need revision, the Council may deny  
43 the request and may adopt appropriate conditions. If the Council does not  
44 have jurisdiction over the issue raised in the request, the Council shall  
45 deny the request.

1  
2 OAR 345-0027-0070(7) provides the procedure for the Council’s actions following  
3 its review of a request for a contested case:  
4

5 The Council shall determine whether any issue identified in a request for a  
6 contested case proceeding justifies a contested case proceeding, and:

- 7 (a) If the Council finds that the request identifies one or more issues  
8 that justify a contested case proceeding, the Council shall conduct a  
9 contested case proceeding according to the applicable provisions of  
10 OAR 345-015-0002 to OAR 345-015-0085 limited to the issues  
11 that the Council found sufficient to justify the proceeding;  
12 (b) If the Council finds that the request identifies one or more issues  
13 that an amendment of the proposed order would settle in a manner  
14 satisfactory to the Council, the Council may deny the request as to  
15 those issues and direct the Office to amend the proposed order \*\*\*;  
16 (c) If the Council finds that the request does not identify any issue that  
17 justifies a contested case proceeding, the Council shall deny the  
18 request. In a written order denying the request, the Council shall  
19 state the basis for the denial. The Council shall then adopt, modify  
20 or reject the proposed order based on the considerations described  
21 in section (9). In a written order, the Council shall either grant or  
22 deny issuance of an amended site certificate. If the Council grants  
23 issuance of an amended site certificate, the Council shall issue an  
24 amended site certificate, which is effective upon execution by the  
25 Council Chair and by the applicant.  
26

27 The following discussion addresses Ms. Williams’ request pursuant to Sections (6)  
28 and (7). All of the issues raised by Ms. Williams fail to meet the criteria above, either  
29 because they address matters outside the Council’s jurisdiction or because they do not  
30 demonstrate that the Council’s determination should change based on the alleged facts. At  
31 this stage in the proceeding it is incumbent upon a person who comments to provide  
32 reasoning showing that there is an issue of fact susceptible to determination through an  
33 adversarial process and that a contested case is warranted.  
34

35 Ms. Williams numbered the paragraphs in her request. This discussion refers to her  
36 paragraph numbers. Because Ms Williams raised many of the same issues in her January  
37 26, 2001, comments on the request for amendment number 4, the corresponding parts of  
38 the discussions in Section III.A.5 also apply to this request for a contested case.  
39

40 **Ms. Williams’ Statement of Facts at Issue.** In paragraphs 20 through 22, Ms.  
41 Williams poses broad policy questions relating to the state’s policies regarding climate  
42 change. As so stated, the issues are not subject to a determination of fact, but rather reflect  
43 policy choices to be made in implementing the carbon dioxide offset requirements of the  
44 siting program. Thus the “issues” are not appropriate for a contested case proceeding.  
45

1 In addition, the Legislature has set the state's climate change policy as it relates to  
2 new energy facilities through its adoption of HB 3283 (1997), as codified in ORS  
3 469.503(2) and implemented by OAR 345-024-00500 through -0720. Specifically, the  
4 Legislature identified both the criteria that the Council must consider when it modifies the  
5 monetary offset rate and the process to be used. As stated in OAR 345-024-0580:

6  
7 After three years from June 26, 1997, the Council may *by rule* increase or  
8 decrease the monetary offset rate of 57 cents per ton of carbon dioxide  
9 emissions. The Council shall base any change to the monetary offset rate on  
10 empirical evidence of the cost of carbon dioxide offsets and the Council's  
11 finding that the standard will be economically achievable with the modified rate  
12 for natural gas-fired power plants. Following the initial three-year period, the  
13 Council may increase or decrease the monetary offset rate no more than 50  
14 percent in any two-year period. [Emphasis added.]

15  
16 *See also* ORS 469.503(2)(c)(C).

17  
18 The issues raised by Ms. Williams to support a change in the monetary offset rate  
19 ignore the two specific criteria identified by the Legislature for Council to consider when  
20 modifying the monetary offset rate. Furthermore, for changes such as the one suggested by  
21 Ms. Williams, the Council's review of an amendment request cannot substitute for a  
22 rulemaking procedure conducted pursuant the Oregon Administrative Procedures Act. The  
23 request for a rulemaking is further discussed in relation to paragraphs 3 and 16, below.

24  
25 Finally, the Council finds that paragraphs 20-22 do not raise a significant issue of  
26 fact or law that may affect the Council's determination that the facility, with the change  
27 proposed by the amendment, meets an applicable standard. The Council further finds that  
28 no additional conditions of performance are warranted by the matters raised in paragraphs  
29 20-22. The Council hereby denies a contested case based on paragraphs 20-22.

30  
31 Paragraphs 23 through 25 relate to the DEQ air quality permit. DEQ issues an air  
32 quality permit as a federally-delegated permit. Pursuant to ORS 469.501(3), the air quality  
33 permit is not within the Council's jurisdiction and these issues will not support a contested  
34 case. Furthermore, OAR 345-022-0000(4) states:

35  
36 In making determinations regarding compliance with statutes, rules and  
37 ordinances normally administered by other agencies or compliance with  
38 requirements of the Council statutes if other agencies have special  
39 expertise, the Office of Energy shall consult with such other agencies  
40 during the notice of intent, site certificate application and site certificate  
41 amendment processes. *Nothing in these rules is intended to interfere with*  
42 *the state's implementation of programs delegated to it by the federal*  
43 *government.* [Emphasis added.]  
44

1 Also, Section I.A of the Thermal Power Plant Second Amended Site Certificate of  
2 the Hermiston Power Project, lines 30-33, states:

3  
4 The Site Certificate is not binding with respect to matters not governed by  
5 and included in the Site Certificate, including permits issued under statutes  
6 and rules for which the decision on compliance has been delegated by the  
7 Federal government to a state agency other than EFSC.  
8

9 The issues raised by Ms. Williams concerning compliance with the air quality  
10 permit are preempted by federal law and thus are not within the Council's jurisdiction.  
11 Furthermore, this order addresses factual issues stated in the subparagraphs to number  
12 25 that relate to the energy use of the facility per the current site certificate and with the  
13 proposed changes in Section III.A.5 at Williams V.A, above.  
14

15 The Council finds that it does not have jurisdiction over the issues raised in  
16 paragraphs 23-25 because they relate to air quality. The Council further finds that factual  
17 matters raised in the subparagraphs to number 25, relating to the energy use of the facility,  
18 do not raise a significant issue of fact or law that may affect the Council's determination  
19 that the facility, with the change proposed by the amendment, meets an applicable standard.  
20 The Council further finds that no additional conditions of performance are warranted by the  
21 matters raised in paragraphs 23-35. The Council hereby denies the request for contested  
22 case based on paragraphs 23 through 25.  
23

24 Paragraph 26 relates to compliance by Simplot with the Water Pollution Control  
25 Facilities permit that DEQ issued to the company. The Council does not have jurisdiction  
26 over the enforcement of third-party permits. ORS 469.401(3) provides, in part:  
27

28 \*\*\*Each state or local government agency that issues a permit, license or  
29 certificate shall continue to exercise enforcement authority over the permit,  
30 license or certificate.  
31

32 The Council finds that it does not have jurisdiction over the issue raised in paragraph 26.  
33 The Council hereby denies the request for a contested case based on paragraph 26.  
34

35 The Council reads paragraph 27 to relate to OAR 345-022-0010(3), which address  
36 third-party services and permits. The Council finds in Section VI.A, below, that HPP's  
37 application for amendment meets that standard. Sections III.A.3 and V.A.5 at Williams  
38 V.E. also discuss the wastewater disposal issue more fully and conclude that HPP has  
39 demonstrated compliance with the applicable Council standards. The Council finds that  
40 paragraph 27 does not raise a significant issue of fact or law that may affect the Council's  
41 determination that the facility, with the change proposed by the amendment, meets an  
42 applicable standard.  
43

44 Furthermore, to the extent paragraph 27 relates to enforcement issues, the Council  
45 finds that it does not have jurisdiction, as it discusses in regard to paragraph 26, above.

1 The Council further finds that no additional conditions of performance are warranted by the  
2 matters raised in paragraph 27. The Council hereby denies the request for contested case  
3 based on paragraph 27.  
4

5 Paragraph 28 states “What are the health, safety and environmental impacts  
6 (including the consequences for recreation, scenic, and aesthetic values) of the facility as  
7 amended?” This extremely general, indeed rhetorical, question does not identify any issue  
8 “with sufficient specificity to afford the council, the Office of Energy and the applicant an  
9 adequate opportunity to respond,” as required under the statutory standards for contested  
10 cases. See ORS 469.370(3) and ORS 469. 405(1). As noted below, the Council’s rules  
11 contain several standards that are implicated by the question, all of which are specifically  
12 addressed by the application. It is incumbent upon a person who comments to state  
13 specifically how the applicant has not met a particular standard. Ms. Williams has utterly  
14 failed to provide such specificity in paragraph 28.  
15

16 For example, Ms. Williams modifies the general statement of the issue with a  
17 parenthetical reference to “the consequence for recreation, scenic, and aesthetic values.”  
18 The Council addresses those issues in its discussion of the recreation standard, OAR 345-  
19 022-0100 in Section VI.K and in its discussion of the scenic and aesthetic standard, OAR  
20 345-022-0080 in Section VI.I. Ms. Williams’ comments do not address any of those  
21 standards directly nor do they suggest that the Office’s analysis of compliance with those  
22 standards is faulty. Thus, because the Council is not afforded an opportunity to respond to  
23 concrete issues, paragraph 28 does not provide any basis for changing the Council’s finding  
24 that the HPP application meets those standards for the amendment request.  
25

26 In paragraph 14, Ms. Williams states that “ORS 469.501(1)(i) concerns the  
27 ‘Impacts of the facility on recreation, scenic and aesthetic values’ and this requires the  
28 analysis of the impacts of the facility, wherever they occur<sup>3/4</sup> not merely at the site and its  
29 adjacent areas.” That statement is not correct. The Council has implemented ORS  
30 469.501(1)(i) through OAR 345-022-0080 and OAR 345-022-0100. Both rules limit  
31 consideration of the impacts to the “analysis area” for the facility.  
32

33 The analysis area is defined in the project order for the application for the site  
34 certificate. The Project Order for the Hermiston Power Partnership Proposed Energy  
35 Facility, Revision 1, dated July 8, 1994, states the impact (analysis) areas for resources:  
36

37 \*\*\*

38 For scenic and aesthetic areas, the areas identified in the Umatilla County  
39 Comprehensive Land Use Plan for which scenic and aesthetic standards are  
40 established and from which the facility is visible; portions of the Umatilla  
41 County Historic Road for which the facility is visible, and areas in the City  
42 of Hermiston from which the facility is visible.  
43

44 \*\*\*

45 For recreational opportunities, five miles from the boundary of the energy  
facility site; the area within the gas pipeline right-of-way; and, when the gas

1 pipeline and electrical transmission line are located in the same right-of-  
2 way, the area within the larger of the two right-of-way widths.

3 \*\*\*

4  
5 Furthermore, the Council has determined through its rules that the standard for  
6 judging impacts to scenic and aesthetic values is based on demonstrating that the facility  
7 (or in the case, the facility as changed by the proposed amendments) “is not likely to result  
8 in significant adverse impact to scenic and aesthetic *values identified as significant or*  
9 *important in applicable federal land management plans or in local land use plans* in the  
10 analysis area.” [Emphasis added.] OAR 345-033-0080. The values to be preserved are  
11 those specifically identified by the relevant jurisdictions. The comments do not identify  
12 additional scenic or aesthetic values not analyzed in the Final Order, nor do they  
13 specifically address or identify deficiencies in either the applicant’s or the Office’s analysis  
14 of compliance with the standard. In fact it appears that these comments are aimed at  
15 bringing a general discussion of air quality impacts in through the back door of scenic and  
16 aesthetic values. As noted above, air quality impacts are the exclusive province of the  
17 DEQ through the federally delegated program. The Council cannot address through this  
18 standard.

19  
20 The Council finds that paragraph 28 does not raise a significant issue of fact or law  
21 that may affect the Council’s determination that the facility, with the change proposed by  
22 the amendment, meets an applicable standard. The Council further finds that no additional  
23 conditions of performance are warranted by the matters raised in paragraph 28. The  
24 Council hereby denies the request for contested case based on paragraph 28.

25  
26 In paragraph 29, Ms. Williams raises a broad issue of whether HPP has complied  
27 with its site certificate conditions, such as socio-economic impacts, referring specifically to  
28 Condition 61. Williams provides no further information to focus the issue. Thus, this  
29 issue suffers from the same defect identified above: lack of sufficient specificity to afford  
30 an opportunity to respond. However, in her earlier comments on the amendment request, as  
31 discussed in III.A.5 at Williams V.E, she charged that HPP was not in compliance with the  
32 requirement in Condition 61 that HPP “hire as many local workers as reasonably possible.”  
33 Lacking any other more specific information, the Council assumes that Ms. Williams is  
34 raising the same issue she raised earlier.

35  
36 The Council addresses the facts of HPP’s efforts to hire local workers, as defined in  
37 the condition, in its discussion in Williams V.E, above. The issue of HPP’s compliance  
38 with Condition 61 is whether it is making a “reasonable effort” to hire local workers. The  
39 Council’s determination of what is “reasonable” is not a factual or legal issue that can be  
40 addressed through a contested case proceeding. It is a judgmental decision by the Council  
41 on what it meant by “reasonable effort” when it imposed the condition. The Council has  
42 found, in its discussion of Williams V.E, that HPP is making a “reasonable effort” to hire  
43 local workers. Therefore, the Council finds that paragraph 29 does not raise a significant  
44 issue of fact or law that may affect the Council’s determination that the facility, with the  
45 change proposed by the amendment, meets an applicable standard. The Council further

1 finds that no additional conditions of performance are warranted by the matters raised in  
2 paragraphs 29. The Council hereby denies the request for contested case based on  
3 paragraph 29.  
4

5 **Denial of Ms. Williams' Request for a Contested Case.** Having found for each  
6 issue that Ms. Williams raised that her request does not justify a contested case proceeding,  
7 the Council denies Ms. Williams' request, pursuant to OAR 345-027-0070(7)(c). This  
8 final order states the reasons for the Council's denial in this section and in Section III.A.5.  
9

10 **Petition for Rulemaking.** In paragraphs 3 and 16, Ms. Williams' stated that she  
11 was making, "in the alternative," a petition for rulemaking. The provisions of ORS  
12 183.390 and OAR 137-001-0070 provide the exclusive path to seek rulemaking from an  
13 administrative agency.  
14

15 Ms. Williams' petition was deficient for the same reasons stated in Section III.A.5  
16 in the discussion of subsection Williams II. First, Ms. Williams' petition does not propose  
17 language for changing the rule, as required by OAR 137-001-0070(1)(a). Second, it does  
18 not provide facts or arguments in sufficient detail to address the two criteria in OAR 345-  
19 024-0580 that the Council must consider when it modifies that rule, as required by OAR  
20 345-024-0070(1)(b). In addition, ORS 469.503(2)(c)(C) specifies that the change in the  
21 monetary offset rate must be done by rule. This amendment proceeding does not present  
22 the appropriate forum for the change suggested by Ms. Williams. *See Marbet v. Portland*  
23 *Gen. Elect.*, 227 Or 447, 561 P2d 154 (1997).  
24

25 Ms. Williams' petition does not conform to statutory or administrative  
26 requirements. The Council finds that it is not a petition for rulemaking that requires  
27 Council action. In the alternative, the Council hereby denies the request for rulemaking.  
28

#### 29 **10. Notice to the Public of the Recommended Final Order**

30 On April 10, 2001, the Office mailed notice of its recommended final order to the  
31 Council's general mailing list and persons on the Council's special mailing list for the  
32 Project, including property owners adjacent to the re-routed transmission line, pursuant to  
33 OAR 345-027-0070(4). It also mailed notice to Ms. Williams. The Office's recommended  
34 final order included its recommendation that the Council deny Ms. Williams' request for a  
35 contested case.  
36

#### 37 **11. Notice to the Public of the Council Meeting to Approve the Final Order.**

38 After approving the request for amendment at its April 20, 2001, meeting, the  
39 Council instructed the Office to incorporate into the final order the discussion of the issues  
40 it considered during the hearing on the contested case. On April 27, 2001, the Office  
41 mailed notice of the May 4, 2001, Council meeting to approve the final order to the  
42 Council's general mailing list and persons on the Council's special mailing list for the  
43 Project. It also mailed notice to Ms. Williams and those who testified at the Council  
44 meeting on April 20, 2001.  
45

1 **B. Council Review Steps**

2  
3 **1. Council Notice**

4 The Office mailed HPP’s request for amendment and a memo summarizing the  
5 request to the Council on January 2, 2001. The Office staff and HPP presented information  
6 about the request to the Council at its January 19, 2001, meeting.

7  
8 The Office mailed the proposed order to the Council on February 27, 2001.

9  
10 The Office mailed its recommended final order to the Council on April 10, 2001. It  
11 included a cover memo and copies of the letters it had received regarding the request for  
12 amendment.

13  
14 The Office mailed its revised recommended final order to the Council on April 27,  
15 2001. The revised recommended final order incorporated a discussion of the issues that the  
16 public raised during the Council hearing on the request for a contested case, or in the  
17 alternative, a request for rulemaking, on April 20, 2001. These issues are discussed in  
18 Section III.B.2.

19  
20 **2. Council Hearing on the Request for a Contested Case**

21 The Council held a public hearing on the request for a contested case at its meeting  
22 in Bend, Oregon, on April 20, 2001. This section summarizes the major issues raised  
23 during the hearing by the public, the site certificate holder, staff to the Council, and the  
24 Council. It does not report each detail discussed during the hearing.

25  
26 The Office reviewed its recommendations to the Council, as stated in its  
27 recommended final order. Staff noted that there was an error in the discussion in Section  
28 III.A.9. The identifying numbers for paragraphs 26 and 27 were switched in the discussion  
29 of Ms. Williams’ statement of facts at issue. The Council authorized the Office to correct  
30 the final order concerning paragraphs 26 and 27.

31  
32 Ms. Heather Pope, Hermiston, Oregon, and Ms. Maureen Marick, Umatilla,  
33 Oregon, both stated that HPP had an obligation to hire local workers because it is receiving  
34 a property tax break of \$18.5 million from Umatilla County. They testified that many of  
35 the people hired by HPP were from out-of-state, further than the 60-mile radius defined in  
36 Condition 61. They questioned whether the data HPP supplied about local hiring were  
37 accurate.

38  
39 Ms. Pope submitted a petition that requested that the Council enforce Condition 61  
40 or that Umatilla County withdraw the property tax exemption. Two hundred, seventy-five  
41 people signed the petition.

42  
43 Mr. Richard Monlux, Pasco, Washington, testified on behalf of the Plumbers and  
44 Steamfitters Union. He stated that The Industrial Company (“TIC”), the general contractor  
45 for HPP, has a reputation for bringing in out-of-state workers from other TIC construction

1 sites, even when they have to train them for Oregon licenses. He stated that many local  
2 people are out of work. He made the point that Condition 65 anticipates hiring non-local  
3 workers because it is concerned with providing adequate housing. He also stated that the  
4 Council should not consider local sub-contractors when looking at HPP's compliance with  
5 Condition 61.

6  
7 Mr. Randy Knop, Bend, Oregon, testified on behalf of Oregon Laborers, Local 121.  
8 He stated that he was not able to get detailed information from the Hermiston Employment  
9 Office about what it is doing to help HPP hire local workers. He stated that HPP has not  
10 done an honest effort at hiring as many local people as possible. He also stated that the  
11 Council should not consider sub-contractors in its assessment of HPP's local hiring  
12 practices.

13  
14 Ms. Kate Kimball, Sisters, Oregon, testified on behalf of the Sisters Forest Planning  
15 Committee. She stated that it is unfortunate that the "reasonableness test" in Condition 61  
16 prevents compliance being a matter for a contested case. She recommended that the  
17 Council change the condition to include a specific target. She noted that one issue  
18 revolved around the definition of average annual conditions, so she recommended the  
19 Council be specific about how it defines them. She recommended that the Council develop  
20 a rule on cumulative impacts, especially water.

21  
22 Mr. Dennis Doherty, Chair of the Umatilla County Board of Commissioners,  
23 Pendleton, Oregon, testified. He expressed his concern about the cumulative impacts of so  
24 many energy projects in Umatilla County. He recommended that the Council find a way to  
25 deal with cumulative impacts. He stated that he was neutral on the specific issues of the  
26 contested case request. However, he noted that the Council's process can be confusing for  
27 the general public.

28  
29 He discussed how the burdens of projects are borne locally, while the benefits are  
30 shared widely. The community is looking for a way to obtain its fair share of local benefits  
31 from these projects. That includes developers buying local goods and services as well as  
32 hiring locally. He recommended that the Council look at its socio-economic impacts  
33 standard to see how to help local communities. For example, he questioned why HPP  
34 couldn't hire 75 percent of its workers locally.

35  
36 Mr. John P. Williams, Portland, Oregon, testified on behalf of the Pendleton  
37 Building Trades Council. He stated that a contested case will not delay construction of  
38 HPP's plant. He stated that the amendment request needs more public review, especially  
39 as it relates to cumulative impacts and whether the impacts of the facility are fully  
40 mitigated. He did not agree with the Office's statement that the difference between the  
41 data Ms. Linda Williams quoted in her request for a contested case and the data provided  
42 by HPP in its request for amendment are due to different reporting parameters. He raised  
43 other issues relating to the DEQ-issued air quality permit.

1 He stated that the Council had to review the J.R. Simplot Company's  
2 organizational, managerial and technical expertise because HPP was relying on it for a  
3 disposal of its reclaimed wastewater. He stated that the local subcontractors will soon be  
4 gone; and, he forecast that TIC will bring in as many as 300 workers from out of the area to  
5 do most of the work. He said that that will have a negative impact on the community that  
6 will not be mitigated. He also said that TIC has a poor record of local hiring. He stated  
7 that enforcement of Condition 61 should be the subject of a contested case.  
8

9 Mr. Jerry Fletcher, Redmond, Oregon, testified on behalf of IBEW, Local 280. He  
10 questioned whether the workers hired by local subcontractors are themselves local. He  
11 also questioned whether the hiring rate that HPP reported as 43 percent represented a  
12 reasonable effort as required by the Condition 61. He said that TIC is hiring subcontractors  
13 that do not put effort into apprenticeship and training.  
14

15 Mr. Sandy Lonsdale, Bend, Oregon, represented the Juniper Group of the Sierra  
16 Club. He stated concerns about the air emissions and water use issues for the HPP plant  
17 and the proposed Cogentrix plant.  
18

19 Mr. Peter Mostow, Portland, Oregon, an attorney from Stoel Rives, LLP,  
20 represented HPP. He noted that while the public had raised worthy issues, the issues were  
21 not relevant to the amendment request that HPP had made. Specifically, he stated that the  
22 questions about compliance with Condition 61 were not germane to the Council's  
23 consideration of the changes requested in the amendment. By its rules, the Council must  
24 look at the changes caused by the amendment request. He noted that none of the testimony  
25 about Condition 61 ties that condition to the amendment request. He also noted that TIC  
26 has directly hired only 25 percent locally because it brought a core group of workers to get  
27 the project started.  
28

29 Mr. Mostow said that the issue is what the Council intended when it wrote  
30 Condition 61. HPP is building the plant based on its understanding of the requirements of  
31 the site certificate as the Council drafted them. The record shows that the concern at the  
32 time was the impact on housing and other local services that might be impacted by out-of-  
33 state workers. He noted that HPP complies with Condition 65, which requires it to track  
34 housing to ensure there is no problem. There has been no testimony that housing has been  
35 negatively impacted.  
36

37 Regarding the request for rulemaking on the monetary offset rate, he noted that the  
38 plant is already paying more than \$4 million to meet the carbon dioxide (CO<sub>2</sub>) standard for  
39 the base load plant. The increment for the amendment will be about \$200,000. He argued  
40 that the Council should not hold up the current amendment request for such a small  
41 increment even if it decides it should consider changes to the monetary offset rate in a  
42 separate rulemaking.  
43

44 He stated that the appropriate monetary offset rate is a much larger issue than the  
45 amendment request before the Council. He further noted that rulemaking on the CO<sub>2</sub>

1 standard or cumulative effects are appropriate for a different forum, not a contested case  
2 proceeding. He also noted that the attorney who requested the rulemaking failed to file the  
3 request properly.

4  
5 He concurred with the Office that air quality impacts are not part of the Council's  
6 purview. He stated that the Bonneville Power Administration's is conducting a study of  
7 cumulative air impacts from facilities in the Northwest under the National Environmental  
8 Policy Act in anticipation of preparing an Environmental Impact Statement. That review is  
9 the appropriate forum for the issue of cumulative air quality impacts.

10  
11 Regarding the reclaimed wastewater, he noted that it is a third-party permit. He  
12 said that the record is clear that HPP has an agreement with Simplot for Simplot to accept  
13 the wastewater and that DEQ has stated that Simplot has a permit to allow it to dispose of  
14 HPP's wastewater.

15  
16 Sam McIntosh, project manager for Calpine for the construction of the Hermiston  
17 Power Project, Hermiston, Oregon, stated that a delay in receiving approval of the fourth  
18 amendment will delay the construction of the project. Regarding Calpine's selection of  
19 TIC as the general contractor, this is one of 30 projects under construction by Calpine, and  
20 the availability of qualified general contractors is a major factor in its choice of a specific  
21 general contractor.

22  
23 HPP interprets the intent of Condition 61 to be to act in the best interest of the  
24 community and that is what HPP is trying to do. HPP considers local goods and services  
25 first, even if they are not least cost. He said that Condition 61 has also influenced TIC's  
26 decision to use local subcontractors instead of performing some tasks with its own  
27 workforce. However, he said that TIC relies on a core group that it carries from project to  
28 project so it does not have to train a new group. Further, the composition of the workforce  
29 and the subcontractors will change monthly.

30  
31 Mr. McIntosh said that the housing report is the only direct impact on the  
32 community that HPP must report. The housing report has shown no impact on the local  
33 community. HPP has heard of no negative impact from community leaders about the  
34 construction of the facility.

35  
36 In its comments during the presentations, the Council replied that many of the  
37 issues that had been raised were policy arguments. The Council distinguished between  
38 policy issues and specific issues of fact or law that would justify a contested case related to  
39 the changes proposed by HPP in its amendment request. During the hearing, the Council  
40 also requested clarification from the Office and its counsel regarding issues that had been  
41 raised about other standards and statutes.

42  
43 The Council expressed an interest in the policy issues that the public had raised,  
44 especially related to its socio-economic impacts standard. It noted that the current rule

1 relates specifically to issues of the impact of an energy facility on the local socio-economic  
2 infrastructure.

3  
4 However, the Council noted that an amendment request is not a general reopening  
5 of the site certificate. It is bound by statute concerning its authority to impose conditions  
6 or change its rules. Within that context, it is willing to look broader issues relating to the  
7 socio-economic impacts standard at a later time, not associated with this particular  
8 amendment request.

9  
10 The Council asked if the Office had any information from the Hermiston  
11 Employment Office of the Department of Employment about its assistance to people  
12 seeking work in the area. Staff reported that it did not.

13  
14 At the request of the Council, Mr. David Stewart-Smith, secretary to the Council,  
15 reviewed the origin of Condition 61. He reported that the issue came up during the original  
16 contested case. Local citizens raised the issue because they were concerned about the  
17 impact of workers from outside of Hermiston on local housing prices, both rental and  
18 purchases. The original site certificate applicant, the Office, and local citizens came up  
19 with a vacancy rate that would trigger mitigation by the site certificate holder. That issue  
20 was addressed in Condition 65. Condition 61 was general because it was a companion  
21 condition to Condition 65. The enforceable trigger level was in Condition 65. The impact  
22 on the local work force was not an issue when the Council adopted Condition 61.

23  
24 He noted that the fundamental nature of the site certificate is that it is a binding  
25 contract. The Council cannot unilaterally change a condition unless it is related to public  
26 health and safety. Condition 61 is not such a condition; therefore, the Council cannot  
27 change it without HPP's concurrence.

28  
29 Ms. Janet Prewitt, Assistant Attorney General, advised the Council that an  
30 amendment request does not operate as a general re-opener to the site certificate. The  
31 question before the Council is whether it should amend the site certificate to allow the  
32 changes HPP has requested. The amendment request operates as a re-opener for those  
33 conditions that relate to changes that the site certificate holder wishes to make. Much of  
34 the testimony related to compliance with Condition 61, but Condition 61 was not  
35 implicated in the type of changes HPP wishes to make. Therefore, the request for a  
36 contested case concerning compliance with Condition 61 regards an issue about which the  
37 Council can do nothing in this proceeding because the Council cannot, on its own, change  
38 Condition 61.

39  
40 She explained that the Council has the authority to enforce compliance with the site  
41 certificate. If the Council wishes to investigate further compliance with Condition 61, the  
42 Council would have to direct the Office to investigate and report back to the Council on  
43 whether HPP was in compliance. If it weren't, that could lead to a contested case, but  
44 under a different set of rules than for an amendment. She and Mr. Stewart-Smith explained  
45 the options for investigating compliance pursuant to OAR 345, Division 29.

1  
2 On the other hand, the criteria for a granting contested case for the amendment is  
3 whether the matters raise a significant issue of fact or law that affect the Council's  
4 determination that a facility with the changes proposed by the amendment meet the  
5 applicable standard. The requested changes relate to duct burning, water use and rerouting  
6 the transmission line. They do not relate to hiring practices.  
7

8 Based on the written record, the testimony at the hearing, the advice of counsel, and  
9 its consideration of appropriate statutes and rules, the Council denied the request for a  
10 contested case and denied the request for rulemaking on the monetary offset rate.  
11

### 12 **3. Council Action**

13 The Council conducted a public hearing on Ms. Williams' request for a contested  
14 case on April 20, 2001, as part of a regularly-scheduled Council meeting. The Council  
15 denied the request for a contested case. It also denied the alternative request for a  
16 rulemaking. The Council then considered the request for the amendment. The Council  
17 approved the request for the amendment with conditions as specified in this order.  
18

19 The Council approved the final order for the amendment request during a telephone  
20 conference meeting that it held on May 4, 2001.  
21

## 22 **IV. Demonstration of Compliance with Carbon Dioxide Emissions Standard**

23 OAR Chapter 345, Division 24 establishes standards for CO<sub>2</sub> emissions from base-  
24 load plants designed with power enhancement options.  
25

### 26 **A. Applicable Standard**

27 HPP's generating facility will be fueled solely by natural gas; and, HPP's site  
28 certificate contains no limits on facility hours of operation (other than restrictions on the  
29 use of backup fuel, which HPP reported it would not use). The facility thus is a base-load  
30 gas plant as defined in ORS 469.503(2)(e)(B). For a base-load gas plant designed with  
31 power enhancement options, the Council applies the standard for a non-base-load plant,  
32 OAR 345-024-0590, to the incremental CO<sub>2</sub> emissions from the power enhancement  
33 technology. The non-base-load standard is as follows:  
34

35 To issue a site certificate for a non-base load power plant, the  
36 Council must find that the net carbon dioxide emissions rate of the  
37 proposed facility does not exceed 0.70 pounds of carbon dioxide  
38 per kilowatt hour of net electric power output, with carbon dioxide  
39 emissions and net electric power output measured on a new and  
40 clean basis. For a base load gas plant designed with power  
41 enhancement or augmentation options that increase the capacity  
42 and the heat rate of the plant above the capacity and heat rate that  
43 the base load gas plant can achieve on a new and clean basis, the  
44 Council shall apply this standard to the incremental carbon dioxide

1 emissions from the designed operation of the power enhancement  
2 or augmentation options.

3  
4 For any incremental CO<sub>2</sub> emissions that exceed this standard, the applicant must  
5 comply with one of the provisions of OAR 345-024-0600(1), (2), or (3). As discussed  
6 below, HPP will follow subsection (3), the “Monetary Path,” by providing offset funds to a  
7 qualified organization, The Climate Trust.  
8

9 **B. Compliance with Standard**

10  
11 **1. Incremental CO<sub>2</sub> Emissions Resulting from Duct Burning**

12 OAR 345-024-0590 first requires the Council to determine “the gross carbon  
13 dioxide emissions that are reasonably likely to result from the operation of the proposed  
14 energy facility.” For a base-load plant designed with power enhancement options that  
15 increase the capacity and the heat rate of the facility above what the base-load plant can  
16 achieve on a new and clean basis, the Council bases the determination of the incremental  
17 CO<sub>2</sub> emissions “on the proposed design of the facility and the proposed limitation on the  
18 hours of generation using the power enhancement or augmentation options.” OAR 345-  
19 024-0590(1).<sup>5</sup>  
20

21 **Proposed Design Parameters.** The following discussion of proposed design  
22 parameters is illustrative of how the CO<sub>2</sub> standard applies to the proposed changes to the  
23 facility. However, the proposed site certificate conditions provide the basis for complying  
24 with the CO<sub>2</sub> standard. The proposed conditions require HPP to certify the net power  
25 output, the heat rate, and the limitation on hours of operation on duct burning within the  
26 time frame noted in the conditions. Therefore, the detail in the following discussion does  
27 not necessarily reflect the actual estimated emissions of the facility or the specific offset  
28 requirements that HPP must meet. See Table 1 for illustrative calculations with proposed  
29 design parameters.  
30

31 The estimated net power output of the facility with duct burners operating will be  
32 605,074 kW (compared to 546,240 kW without duct burners). Table 1. The estimated new  
33 and clean heat rate for the facility with duct burners operating will be 6,836 Btu/kWh  
34 (HHV) (compared to 6,785 Btu/kWh without duct burners). HPP estimates that it will  
35 operate the duct burners for 2,700 hours per year on average.  
36 /  
37 /  
38 /  
39

---

<sup>5</sup> Further, “the Council may adopt site certificate conditions that modify the parameters of the new and clean basis to accommodate technical limitations of the power enhancement or augmentation options.” *Id.* This provision is implemented in proposed Condition 141, *infra*.

**Table 1. CO<sub>2</sub> Standard for Base Load Gas Plant  
With Power Augmentation**

**A. CO<sub>2</sub> Standards**

|   |       |
|---|-------|
| Applicable CO <sub>2</sub> Standard for Hermiston Power Project at Base Load Operation (lb. CO <sub>2</sub> /kWh) | 0.700 |
| CO <sub>2</sub> Standard for Power Augmentation (lb. CO <sub>2</sub> /kWh)  | 0.700 |

**B. Parameters for Base Load Gas Plant**

|                                       |         |
|---------------------------------------|---------|
| Net Power Output (kW)                 | 546,240 |
| New and Clean Heat Rate (Btu/kWh) HHV | 6,785   |
| Annual Hours of Operation             | 8,760   |

**C. Parameters for Power Augmentation**

|                                       |         |
|---------------------------------------|---------|
| Net Power Output (kW)                 | 605,074 |
| New and Clean Heat Rate (Btu/kWh) HHV | 6,836   |
| Annual Hours of Operation             | 2,700   |

**D. Hybrid Generating Plant**

|   | Base Load | Full Augmentation | Designed Augmentation |
|---|-----------|-------------------|-----------------------|
| Net Power Output (kW)   | 546,240   | 605,074           |                       |
| Capacity Factor   | 100%      | 100%              | 31%                   |
| Annual Hours of Operation   | 8,760     | 8,760             | 2,700                 |
| Annual Generation (million kWh/yr.)   | 4,785     | 5,300             |                       |
| Deemed Life of Plant (years) by Statute or Rule                             | 30        | 30                |                       |
| Total Plant Output (million kWh for 30 years)                               | 143,552   | 159,013           |                       |
| Heat Rate (Btu/kWh) HHV   | 6,785     | 6,836             |                       |
| CO <sub>2</sub> Emissions Rate (lb. CO <sub>2</sub> /Btu)                   | 0.000117  | 0.000117          |                       |
| Total CO <sub>2</sub> Emissions (million lb.)                               | 113,958   | 127,181           |                       |
| Difference in 30-year Output (million kWh)                                  |           |                   | 15,462                |
| Difference in Total CO <sub>2</sub> Emissions (million lb.)                 |           |                   | 13,223                |
| Gross CO <sub>2</sub> Emissions rate (lb. CO <sub>2</sub> /kWh)             | 0.794     |                   | 0.855                 |
| CO <sub>2</sub> Standard (lb. CO <sub>2</sub> /kWh)                         | 0.700     |                   | 0.700                 |
| Excess CO <sub>2</sub> Emissions Rate (lb. CO <sub>2</sub> /kWh)            | 0.094     |                   | 0.155                 |
| Excess Tons CO <sub>2</sub> (million tons over 30 years)                    | 6.736     |                   | 0.370                 |
| Offset Fund Rate (\$/ton CO <sub>2</sub> )                                  | \$ 0.57   |                   | \$ 0.57               |
| Offset Funds Required (\$ million)  | \$ 3.839  |                   | \$ 0.211              |
| Contracting and Selection Funds (\$ million)                                | \$ 0.193  |                   | \$ 0.009              |
| Monetary Path Requirement (\$ million)                                      | \$ 4.033  | +                 | \$ 0.220              |
| <b>Total Monetary Path Requirement with Power Augmentation (\$ million)</b> |           |                   | <b>\$ 4.252</b>       |

2

3

4

5

**Gross Carbon Dioxide Emissions Attributable to Duct Burning.** The operation of duct burners will increase the plant's CO<sub>2</sub> emissions rate to 0.855 lbs/kWh, which is 0.155 lbs/kWh above the Council's standard of 0.70 lbs/kWh. Operation at this increased

1 rate for 2,700 hours per year on average, over the 30-year life of the facility, will result in  
2 the emission of an additional 370,000 tons of excess CO<sub>2</sub>.

3  
4 Therefore, as described below, HPP proposes to offset funds in an amount deemed  
5 by Council rule to meet the monetary path payment requirements for 370,000 tons of  
6 excess CO<sub>2</sub> emissions.

## 7 8 **2. Means of Securing Required Emissions Reductions**

9 HPP proposes to secure required CO<sub>2</sub> emissions reductions pursuant to  
10 OAR 345-024-0600(3), which allows an applicant to secure reductions by:

11  
12 [p]roviding offset funds, directly or through a third party, in an  
13 amount deemed sufficient to produce the reduction in carbon  
14 dioxide emissions necessary to meet the applicable carbon dioxide  
15 emissions standard.\*\*\*The Council shall deem the payment of 57  
16 cents to result in a reduction of one ton of carbon dioxide  
17 emissions\*\*\*. The Council shall determine the offset funds using  
18 the monetary offset rate and the level of emissions reduction  
19 required to meet the applicable standard. \*\*\*

20  
21 As discussed above , HPP would have 370,000 tons of excess CO<sub>2</sub> emissions.  
22 Multiplying this figure by 57 cents/ton, HPP would pay \$211,000 for direct offsets.

23  
24 In addition, HPP must compensate the qualified organization “for its costs of  
25 selecting offsets and contracting for the implementation of offsets.” OAR 345-024-  
26 0710(4). For offset funds in excess of \$500,000, this amount must be equal to  
27 4.286 percent of any offset funds. In the illustrative case, 4.286 percent of \$211,000 is  
28 \$9,044.

29  
30 The provision requiring “the certificate holder of a base load gas plant” to pay at  
31 least \$50,000 in selection and contracting funds, is satisfied here because HPP already is  
32 paying approximately \$200,000 in selection and contracting funds in connection with its  
33 base-load operations. The Climate Trust will use the additional contracting and selection  
34 funds associated with power augmentation technologies concurrently with the contracting  
35 and selection funds it received for the base-load plant.

36  
37 HPP must disburse the required offset funds and selection and contracting funds to  
38 a qualified organization, as described below, pursuant to the provisions of OAR 345-024-  
39 0710. In addition, within 15 days after the effective date of the Council’s order issuing an  
40 amended site certificate pursuant to this request, HPP must provide a guaranty from its  
41 corporate parent, Calpine Corporation, in an amount sufficient to guarantee payment of the  
42 amounts determined by calculations specified in the site certificate. HPP submitted its  
43 proposed guaranty as Exhibit B-2(A) to the request for amendment. This guaranty is in the  
44 same form as the guaranty for the monetary path that Calpine provided for the monetary  
45 path payment requirements for the base load plant. However, the Office proposes editorial

1 changes to the guaranty to conform it to the other amendments proposed for site certificate  
2 conditions. These changes are discussed in Section V.B, below.

3  
4 There will be a different situation regarding contracting and offset funds if HPP is  
5 required to provide supplemental offset funds following a 5-year reporting period, pursuant  
6 to OAR 345-024-0590(6). In that case, the contacting and selection funds will be  
7 calculated based on the supplemental offset funds alone. The amount of required offset  
8 funds will be significantly less than the amount for the base-load plant and the contracting  
9 and selection funds will be correspondingly smaller. In order to ensure adequate  
10 contracting and selection funds, the Council finds that the basis for the minimum payment  
11 for supplemental funds for each 5-year reporting period in which supplemental offset funds  
12 are required should be at the rate of 20 percent of the first \$250,000 in offset funds and  
13 4.286 percent of the value of any offset funds in excess of that amount. However, the  
14 Council does not set a specific minimum payment amount for supplemental contracting  
15 and selection funds. The Council adopts this calculation procedure in Condition 140(d),  
16 below, pursuant to OAR 345-024-0710(4).

17  
18 **3. Designation of the Qualified Organization**

19 HPP designated The Climate Trust, dba the Oregon Climate Trust (the “Climate  
20 Trust”), as the qualified organization for HPP’s project. The Council has previously found  
21 that the Climate Trust meets the requisite criteria pursuant to ORS 469.503(2)(e)(K) and is  
22 in good standing with the Oregon Secretary of State. In addition, HPP’s current MOU with  
23 The Climate Trust for base-load monetary path payment requirements anticipates payments  
24 for duct burning.

25  
26 **V. Proposed Changes to Site Certificate**

27 HPP proposes to amend the site certificate to describe the power augmentation  
28 technology, to increase its water use, to reroute its transmission line, and to add new  
29 conditions 138 through 142, as follows (deletions are in strikeout format and additions are  
30 double underscored):

31  
32 **A. Changes to the Description of the Facility**

33 HPP proposed the following amendments to Section II of the site certificate. The  
34 numbers to the left in brackets are identifiers used within this order to distinguish among  
35 proposed conditions. They are not part of the site certificate numbering and will not appear  
36 in the amended site certificate.

37  
38 **“II. DESCRIPTION OF SITE AND FACILITY**

39 \*\*\*

40 [1] The Hermiston Power Project is a combined-cycle combustion turbine  
41 electric generating plant, fueled primarily by natural gas, with a nominal capacity of  
42 ~~460~~546 MW at annual average conditions.\*\*\* (P. 2, lines 14-16.)

43  
44 [2] Power Enhancement Technology: The energy facility has peaking  
45 capability due to three power enhancement technologies: duct burners within the

1 HRSG, steam augmentation and inlet fogging. The addition of these technologies  
2 allows the facility to produce approximately 100 MW of additional power during  
3 periods of peak demand. (P.2, line 35).  
4

5 [3] The 500 kV option would require construction of approximately 14.2 miles  
6 of new 500 kV transmission line between the energy facility site and the McNary  
7 Substation. The route for the 500 kV transmission line is shown on Figures I-6A  
8 and I-6B in the ASC, as modified by Exhibit E to the Fourth Request to Amend  
9 Site Certificate.\*\*\* (P. 3, lines 30-32.)  
10

11 [4] ~~Upon leaving the energy facility site, the 500 kV line will proceed north and~~  
12 ~~east approximately 1.5 miles to Feedville Road. This portion of the route is primarily~~  
13 ~~occupied by an existing Pacific Power & Light 69 kV transmission line. The new~~  
14 ~~transmission line would be constructed as a double circuit 69/500 kV in this section.~~  
15 At Feedville Road the line will proceed east for approximately 3.2 miles. Upon  
16 leaving the facility site, the 500 kV line will proceed north across the rail yard and  
17 then proceed approximately due east paralleling the rail yard. On the east side of  
18 Hinkle Road the 500 kV line will turn north and parallel Hinkle Road until it  
19 intersects Feedville Road.\*\*\* (P. 3, lines 37-41.)  
20

21 [5] The cooling tower provides a flow of relatively cold water to the condenser  
22 and receives heated water back from the condenser. The cooling tower is used to  
23 dissipate heat by evaporating a portion of the water circulating within the loop.  
24 Water lost through evaporation is replaced by the facility's cooling water makeup  
25 supply source. Cooling tower makeup water will be provided and sold to the  
26 facility by the Port of Umatilla. The Port of Umatilla will obtain the water sold to  
27 the Hermiston Power Project from the Columbia River under Permit # 49497. The  
28 evaporation rate from the cooling tower will vary between ~~1,300,960~~ gallons per  
29 minute and ~~2,000,667~~ gallons per minute, depending on steam turbine load and  
30 ambient weather conditions. The water use of the entire energy facility under full  
31 load conditions, while operating at an average ambient temperature of 53 degrees  
32 Fahrenheit, will be approximately ~~1,969,422~~ gallons per minute. (P. 5.)  
33

34 [6] The Hermiston Power Project will use approximately ~~4,136,400~~ million  
35 British thermal units (MMBtu) of natural gas fuel per hour at full load.\*\*\* (P. 4,  
36 lines 29-30.)  
37

38 **Discussion.** The discussion of the standards and the Council's conclusions  
39 elsewhere in this order demonstrate compliance with the Council's standards for the  
40 actions that these changes describe, except that the change in the description of the capacity  
41 of the facility from 460 MW to 546 MW does not require an amendment. This amendment  
42 is only proposed to conform the site certificate with the certified capacity. Pursuant to  
43 Condition 4(e), HPP certified the capacity of the facility at 546 MW prior to beginning  
44 construction. Even though the capacity is higher than the capacity originally described in  
45 the site certificate, building to that capacity does not result in the facility increasing its fuel

1 consumption by more than 10 percent. Therefore, pursuant to OAR 345-027-050(2(a), no  
2 amendment is required to build the facility at that capacity.

3  
4 In HPP’s proposed amendment [4], there is an unexplained deletion of part of the  
5 route description. Therefore, the Office recommends that the Council not delete the  
6 sentence: “At Feedville Road the line will proceed east for approximately 3.2 miles.”

7  
8 When entering the changes in the site certificate, the Council will append an  
9 identifier, “[Amendment No.4],” at the end of each paragraph to indicate the procedure  
10 during which the Council amended the site certificate.

11  
12 **Conclusion.** The Council adopts the conditions HPP proposed in Section V.A of  
13 this order with the modifications noted in the discussion section.

14  
15 **B. Compliance with the Carbon Dioxide Emissions Standard**

16 HPP proposes the following conditions for compliance with the CO<sub>2</sub> standard for  
17 duct burning, as discussed in Section IV.B, above. These conditions would follow  
18 Condition 137 in the amended site certificate.

19  
20 **“III. CONDITIONS**

21 \*\*\*

22  
23 **Carbon Dioxide Emissions Standard for Operation with Power Augmentation**

24 Conditions 138 through 142 apply to duct burning and any other power  
25 augmentation or enhancement technologies (“power augmentation technologies”)  
26 that increase the capacity and heat rate of the facility above the capacity and heat  
27 rate that it can achieve as a base-load gas plant on a new and clean basis, as  
28 reported pursuant to Condition 4(e). All provisions of these conditions are in  
29 addition to the requirements of Conditions 1 through 4. The monetary path  
30 payment requirement pursuant to Conditions 138 through 142 are supplemental to  
31 the monetary path payment requirement pursuant to Conditions 1 through 4 and  
32 thus are referred to hereafter as the “supplemental monetary path payment  
33 requirement.” [Amendment No. 4]

34  
35 (138) Within 15 days after the effective date of the Final Order for  
36 Amendment Number Four, the site certificate holder shall submit to the State of  
37 Oregon through the Council a guaranty substantially in the form of Exhibit B-2(A),  
38 executed by Calpine Corporation. Exhibit B-2(A) shall include a guaranty for the  
39 amount of the supplemental monetary path payment requirement (in 2001 dollars)  
40 as determined by the calculations set forth in Condition 140. The site certificate  
41 holder shall base the calculations for the supplemental monetary path payment  
42 requirement on the estimated annual hours of operation and the estimated heat rate  
43 and capacity certified pursuant to Condition 141 below. The guaranty also shall  
44 accommodate adjustments to the amount of the guaranty in accordance with the  
45 terms of this site certificate pursuant to Conditions 140 and 142.

1  
2           The site certificate holder shall maintain the supplemental monetary path  
3 payment guaranty for 30 years or until such time as the site certificate holder has  
4 disbursed the full amount of the supplemental monetary path payment requirement  
5 to the Oregon Climate Trust.

6  
7           The calculation of 2001 dollars shall be made using the U.S. Gross  
8 Domestic Product Implicit Price Deflator, as published by the U.S. Department of  
9 Commerce, Bureau of Economic Analysis, or any successor agency (the “GDP-IPD  
10 index”). If at any time the GDP-IPD index is no longer published, the Council shall  
11 select a comparable calculation of 2001 dollars. The selection of a comparable  
12 calculation to the GDP-IPD index by the Council shall not require a site certificate  
13 amendment.

14  
15           In lieu of the guaranty requirement set forth above, the site certificate holder  
16 may instead provide a letter of credit to the Oregon Climate Trust in the amount of  
17 the supplemental monetary path payment requirement as described above.  
18 Furthermore, in the event that Calpine Corporation’s long-term unsecured debt is  
19 rated below “BB” or its equivalent by S&P and Moody’s or their successors, the  
20 site certificate holder shall provide a letter of credit to the Oregon Climate Trust in  
21 the amount of supplemental monetary path payments required at that time. If the  
22 site certificate holder has provided a letter of credit and subsequent calculations  
23 pursuant to Conditions 140 and 142 demonstrate that the site certificate holder must  
24 increase its supplemental monetary path payments, the site certificate holder shall  
25 increase the letter of credit sufficiently to meet the adjusted supplemental monetary  
26 path payment requirement within the time required by Condition 140.

27  
28           The site certificate holder may reduce the amount of the letter of credit  
29 commensurate with payments it makes to the Oregon Climate Trust. The terms of  
30 the letter of credit and identity of the issuer shall be subject to approval by the  
31 Council, which approval shall not be unreasonably withheld.

32  
33           The amount of the letter of credit shall increase by the percentage increase  
34 in the GDP-IPD index and shall be prorated within the year to the date of  
35 disbursement to the Oregon Climate Trust. The letter of credit shall not be subject  
36 to revocation before disbursement of the full supplemental monetary path payment  
37 requirement, including any adjusted supplemental monetary path payment  
38 requirement. [Amendment No. 4]

39  
40           (139) The site certificate holder shall disburse to the Oregon Climate Trust  
41 offset funds and contracting and selection funds as requested by the Oregon  
42 Climate Trust up to the supplemental monetary path payment requirement (in 2001  
43 dollars) as determined by the calculations set forth in Condition 140.  
44 Disbursements shall be made in response to requests from the Oregon Climate  
45 Trust in accordance with the requirements of OAR 345-024-0710. [Amendment No. 4]

1  
2           (140) The site certificate holder shall submit all supplemental monetary  
3 path payment requirement calculations to the Oregon Office of Energy for  
4 verification. All calculations shall be made assuming that no steam is supplied for  
5 cogeneration. The site certificate holder shall use the estimated annual hours of  
6 operation for the power augmentation technologies and the contracted design  
7 parameters for capacity and heat rate for the facility that it reports pursuant to  
8 Condition 141 to calculate the estimated supplemental monetary path payment  
9 requirement. The site certificate holder shall use the Year One Capacity and Year  
10 One Heat Rate that it reports for the facility pursuant to Condition 142 to calculate  
11 whether it owes additional supplemental monetary path payments following the  
12 Year One Test and in subsequent five-year periods, pursuant to subsections (c)  
13 and (d).

14  
15           (a) The net carbon dioxide emissions rate for incremental emissions for  
16 the facility operating with power augmentation technologies shall not  
17 exceed 0.70 pounds of carbon dioxide per kilowatt hour of net electric  
18 power output, with carbon dioxide emissions and net electric power output  
19 measured on a new and clean basis, subject to any Council modification  
20 pursuant to Condition 141.

21  
22           (b) When the site certificate holder submits the Year One Test report  
23 required in Condition 142, it shall increase its letter of credit, if one is in  
24 effect, for the supplemental monetary path payment requirement if the  
25 calculation using reported data shows that the adjusted supplemental  
26 monetary path payment requirement exceeds the supplemental monetary  
27 path payment requirement for which the site certificate holder had provided  
28 a guaranty or letter of credit, pursuant to Conditions 138 and 141.

29  
30           (A) The site certificate holder shall make the appropriate  
31 calculations and increase its letter of credit, if one is in effect, within  
32 30 days after filing its Year One Test report with the Council.

33  
34           (B) In no case shall the site certificate holder diminish the  
35 guaranty or letter of credit it provided, or receive a refund from the  
36 Oregon Climate Trust, based on the calculations made using the  
37 Year One Capacity and the Year One Heat Rate or payments  
38 required by calculations pursuant to subsections (c) and (d).

39  
40           (c) Each five years after commencing commercial operation of the  
41 facility (“five-year reporting period”), the site certificate holder shall report  
42 to the Office of Energy the annual average hours the facility operated with  
43 power augmentation technologies during that five-year reporting period,  
44 pursuant to OAR 345-024-0590(6). The site certificate holder shall submit

1 five-year reports to the Office of Energy within 30 days of the anniversary  
2 date of beginning commercial operation.

3  
4 (d) If the Office of Energy determines that the facility exceeds the  
5 projected incremental net total carbon dioxide emissions, prorated for five  
6 years, during any five-year reporting period described in subsection (c), the  
7 site certificate holder shall offset excess emissions for the specific reporting  
8 period according to subsection (A) and shall offset the estimated future  
9 excess emissions according to subsection (B) pursuant to  
10 OAR 345-024-0600(4). The certificate holder shall offset excess emissions  
11 using the monetary path as described in OAR 345-024-0710, except that  
12 contracting and selecting funds shall equal 20 percent of the value of any  
13 additional offset funds up to the first \$250,000 (in 2001 dollars) and  
14 4.286 percent of the value of any offset funds in excess of \$250,000 (in  
15 2001 dollars). The site certificate holder shall make the funds available to  
16 the Oregon Climate Trust within 30 days after notification by the Office of  
17 Energy of the amount it owes.

18  
19 (A) In determining the excess carbon dioxide emissions that the  
20 site certificate holder must offset for a five-year period, the Office of  
21 Energy shall apply OAR 345-024-0600(4)(a). The certificate holder  
22 shall pay for the excess emissions at \$0.57 per ton of carbon dioxide  
23 emission (in 2001 dollars). The Office of Energy shall notify the  
24 certificate holder of the amount of payment required, using the  
25 monetary path, to offset excess emissions.

26  
27 (B) The Office of Energy shall calculate estimated future excess  
28 emissions and notify the certificate holder of the amount of payment  
29 required, using the monetary path, to offset them. To estimate  
30 excess emissions for the remaining period of the deemed 30-year life  
31 of the facility, the Office of Energy shall use the parameters  
32 specified in OAR 345-024-0600(4)(b). The certificate holder shall  
33 pay for the estimated excess emissions at \$0.57 per ton of carbon  
34 dioxide emissions (in 2001) dollars. [Amendment No. 4]

35  
36 (141) Within 15 days of the effective date of this amendment, the site  
37 certificate holder shall submit written design information to the Council sufficient  
38 to verify the facility's designed new and clean heat rate and its nominal electric  
39 generating capacity at average annual site conditions when operating with power  
40 augmentation technologies at full power. The site certificate holder shall also  
41 specify the estimated annual average hours that it will operate the power  
42 augmentation technologies. Based on such written design and operational  
43 information, pursuant to OAR 345-024-0590(1), the Council may approve, upon a  
44 request by the site certificate holder, modified parameters for testing the power  
45 augmentation technologies on a new and clean basis in a manner that

1 accommodates technical limitations of the equipment. The Council's approval of  
2 modified testing parameters for power augmentation technologies shall not require  
3 a site certificate amendment. [Amendment No. 4]  
4

5 (142) Within the first 12 months of commercial operation, the site  
6 certificate holder shall conduct a test at full power (Year One Test) of the actual  
7 heat rate at higher heating value (Year One Heat Rate) and nominal generating  
8 capacity (Year One Capacity) for the facility operating with power augmentation  
9 technologies, without degradation, assuming no steam is supplied for cogeneration,  
10 with the results adjusted for the average annual site conditions for temperature,  
11 barometric pressure and relative humidity and use of alternative fuels, and using a  
12 rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel. The full  
13 power test shall be 100 hours' duration unless the Council has approved a different  
14 duration pursuant to Condition 141. Within two months of completing the Year  
15 One Test for the facility operating with power augmentation technologies, the site  
16 certificate holder shall provide to the Council a report of the results of the test.  
17 [Amendment No. 4]  
18

19 **Discussion.** See Section IV.B, above for a discussion of compliance with the CO<sub>2</sub>  
20 emissions standard. As noted in Section IV.B.2, the Office proposes editorial changes to  
21 the guaranty in Exhibit B-2(A). These update the references to 2001, correct the reference  
22 to the appropriate amended site certificate, and clarify that there are separate indices for the  
23 years in which the Council determined compliance with the CO<sub>2</sub> standard. Exhibit B-2(A),  
24 with recommended changes, is attached to this order.  
25

26 The Council adopts the proposed Conditions 138 through 142, including the  
27 introductory paragraph, and adopts Exhibit B-2(A), as amended, as an addendum to the  
28 Third Amended Site Certificate.  
29

30 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
31 024-0590 and OAR 345-024-0600(3).  
32

### 33 **VI. Impact on Other Siting Standards**

34 This section demonstrates that approval of this amendment request complies with  
35 all other Council standards. In addressing the standards set forth in this section, the  
36 Council assesses the impacts of the three elements of the amendments HPP proposed in its  
37 request.  
38

39 OAR 345-027-0070(9) sets forth the Council's general standard for review of a  
40 request by a site certificate holder for an amendment:  
41

42 In making a decision to grant or deny issuance of an amended site  
43 certificate, the Council shall apply state statutes, administrative rules, and  
44 local government ordinances in effect on the date the Council makes its  
45 decision \*\*\*.

1  
2 The following discussion of applicable standards addresses the current version  
3 (November 2000) OAR Chapter 345, Division 22 rules.

4  
5 **A. Organizational, Managerial, and Technical Expertise, OAR 345-022-0010**

6 This standard has four paragraphs. The first two paragraphs, (0010(1) and  
7 0010(2)), relate to application qualifications and capability and the final two paragraphs,  
8 (0010(3) and 0010(4)), relate to third-party permits.

9  
10 **Applicant Qualification and Capability, OAR 345-022-0010(1)**

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

22  
23 **Discussion.** Effective February 24, 2000, the Council approved the transfer of the  
24 project to Calpine subsidiaries, Calpine Hermiston, Inc, and CPN Hermiston, Inc. The  
25 Council found that the transfer to Calpine would not have an adverse impact on HPP's  
26 ability to construct and operate the proposed facility. The Council approved Calpine Gas  
27 Plant Operations Division as the plant operator on July 28, 2000.

28  
29 **1. Duct Burning**

30 This amendment will not change general construction procedures, plans, or  
31 specifications. The duct burners will be located inside the already-approved generating  
32 units. HPP proposes to employ Coen Corporation ("Coen") as its contractor for  
33 construction of the duct burning technology. Coen has been in the combustion business for  
34 over 80 years.

35  
36 **2. Revised Water Balance**

37 The additional water usage will not change general construction procedures, plans,  
38 or specifications, nor will it impact Calpine's qualifications as Project Operator.

39  
40 **3. Transmission Line Reroute**

41 This amendment will change the construction plans for a portion of the 500 kV  
42 transmission line. The new route for the transmission line does not, however, affect  
43 Calpine's qualifications as the Project Operator. As recognized by the Council in  
44 February, Calpine is qualified to construct the Project and its related facilities.

1           **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
2 022-0010(1).

3  
4           **Applicant Qualification and Capability OAR 345-022-0010(2)**

5           The Council may base its findings under section (1) on a rebuttable  
6 presumption that an applicant has organizational, managerial and technical  
7 expertise, if the applicant has an ISO 9000 or ISO 14000 certified program  
8 and proposes to design, construct and operate the facility according to that  
9 program.

10  
11           **Discussion.** OAR 345-022-0010(2) is not addressed herein because HPP does not  
12 have an ISO 9000 or 14000 certified program.

13  
14           **Third-Party Services and Permits, OAR 345-022-0010(3)**

15           If the applicant does not itself obtain a state or local government permit or  
16 approval for which the Council would ordinarily determine compliance but  
17 instead relies on a permit or approval issued to a third party, the Council, to  
18 issue a site certificate, must find that the third party has, or has a reasonable  
19 likelihood of obtaining, the necessary permit or approval, and that the  
20 applicant has, or has a reasonable likelihood of entering into, a contractual  
21 or other arrangement with the third party for access to the resource or  
22 service secured by that permit or approval.

23  
24           **Discussion.** The Final Order notes that with two exceptions HPP will itself obtain  
25 all necessary permits and approvals. The two exceptions involve the water supply, which  
26 HPP proposed to acquire from the Port of Umatilla (the "Port") under an existing water  
27 right permit, and the disposal of process wastewater, which HPP proposed to dispose of  
28 under Simplot's WPCF permit.

29  
30           **1. Duct Burning**

31           HPP's use of duct burners will result in an increase of 20 gpm (from 394 gpm to  
32 414 gpm) in spent cooling water being discharged from the Project under Simplot's WPCF  
33 permit. These 20 gpm are included in the increased use of 500 gpm, discussed in  
34 subsection 2, below.

35  
36           **2. Revised Water Balance**

37           HPP reports that it requires the use or, at least availability, of 500 gpm of water  
38 more than the 2,400 gpm currently provided for by its current agreement with the Port.  
39 The Port has agreed to provide this additional water. In a letter dated December 19, 2000,  
40 included in Exhibit J of the request for amendment, the Port indicates its willingness to  
41 provide the additional water. Furthermore, in a letter dated January 26, 2001, from Mr.  
42 Stephen M. Bloom, an attorney representing the Port, to Mr. Peter Mostow, an attorney  
43 representing HPP, Mr. Bloom stated that it was his understanding that the Port has agreed  
44 verbally to provide 2,900 gpm to HPP and that paperwork is being processed.

1 Further, the Port's water right permit # 49497 allows the Port to divert up to  
2 69,569 gpm (155 cfs) for its municipal system. To date, the Port is using less than one-  
3 quarter of this amount to serve existing customers, so it has a legal right to divert the  
4 additional amount required by HPP. Mr. Bloom also wrote that the Port has filed a timely  
5 request with the Water Resources Department ("WRD") for an extension of the time  
6 required to complete construction of the complete water distribution system and to  
7 complete application of this water to beneficial use. WRD has placed the request on hold  
8 while it considers new rules relating to municipal water right extensions. The Council  
9 finds that the Port has the necessary water right to supply to HPP 2,900 gpm and that HPP  
10 a reasonable likelihood of entering into a contractual arrangement with the Port for access  
11 to the additional water its is requesting.

12  
13 As noted in Section III.A.3, the study upon which DEQ relied to modify Simplot's  
14 WPCF permit in 1995 calculated that the wastewater discharge from HPP to Simplot  
15 would be 144 gpm, or 0.21 million gallons per day ("MGD"). With the new water balance  
16 calculations from HPP, its discharge would increase to 235 gpm, or 0.34 MGD. Duct  
17 burning operation would add another 20 gpm, to a maximum of 0.35 MGD. After  
18 reviewing Simplot's WPCF permit and additional information provided by Simplot, DEQ  
19 concluded that Simplot can handle the additional wastewater flow from HPP. DEQ noted  
20 that is unlikely that it will require a modification of Simplot's WPCF permit. DEQ  
21 anticipates that the additional wastewater can be handled under Simplot's Operations,  
22 Monitoring and Maintenance Plan.

### 23 24 **3. Transmission Line Reroute**

25 The change in alignment for the 500 kV transmission line will not require or affect  
26 any third-party permits.

27  
28 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
29 022-0010(3).

### 30 31 **Third-Party Services and Permits, OAR 345-022-0010(4)**

32 If the applicant relies on a permit or approval issued to a third party and the  
33 third party does not have the necessary permit or approval at the time the  
34 Council issues the site certificate, the Council may issue the site certificate  
35 subject to the condition that the certificate holder may not commence  
36 construction or operation as appropriate until the third party has obtained  
37 the necessary permit or approval and the applicant has a contract or other  
38 arrangement for access to the resource or service secured by that permit or  
39 approval.

1           **Discussion.**

2           **1. Duct Burning**

3           HPP's current proposal to include duct burning technology will involve a small  
4 increase in wastewater discharge, as described in the broader discussion of the revised  
5 water balance.

6  
7           **2. Revised Water Balance**

8           As noted in above in the discussion of OAR 345-022-0010(3), the Port has a legal  
9 right to provide the additional 500 gpm required for operation of the duct burners;  
10 therefore, no new condition is required.

11  
12           DEQ has indicated that Simplot will not need to revise its WPCF to accept  
13 additional wastewater from HPP. Any changes to an operations, monitoring and  
14 maintenance plan are permit enforcement issues that do not fall under the Council's  
15 review.

16  
17           **3. Transmission Line Reroute**

18           The proposal to change the path of the 550 kV transmission line will not result in  
19 an increase in water use or additional wastewater discharge.

20  
21           **Conclusion.** The Council finds that HPP has fully satisfied the requirements of  
22 OAR 345-022-0010(4).

23  
24 **B. Financial Assurance Standard, OAR 345-022-0050**

25           To issue a site certificate, the Council must find that the applicant has a  
26 reasonable likelihood of obtaining a bond or comparable security,  
27 satisfactory to the Council, in an amount adequate to restore the site to a  
28 useful, non-hazardous condition if the certificate holder either begins but  
29 does not complete construction of the facility or permanently closes the  
30 facility before establishing the financial mechanism or instrument described  
31 in OAR 345-027-0020(9).

32  
33           **Discussion.** In addition to OAR 345-022-0050, OAR 345-027-0020(9) requires:  
34 "Before beginning operation of the facility, the certificate holder shall establish a financial  
35 mechanism or instrument, satisfactory to the Council, assuring the availability of adequate  
36 funds throughout the life of the facility to retire the facility and restore the site to a useful,  
37 non-hazardous condition as described in OAR 345-022-0130.\*\*\*"

38  
39           In the Final Order the Council found that site restoration costs would be about  
40 \$8.2 million. In the subsequent order issued on February 24, 2000, the Council accepted a  
41 modification of the financial guaranty proposed by Calpine.

1           **1. Duct Burning**

2           The present amendment request to add power enhancement technology does not  
3 propose any change that would affect the costs of restoring the facility site. Nor does the  
4 request propose any change in the financial guaranty by Calpine.

5  
6           **2. Revised Water Balance**

7           The additional water usage at the facility will not affect the costs of restoring the  
8 facility site, nor does the request propose any change in the financial guaranty by Calpine.

9  
10          **3. Transmission Line Reroute**

11          Similarly, the request to change the path of the 500 kV transmission line will not  
12 affect the costs of restoring the facility site or result in any change in the financial guaranty  
13 by Calpine.

14  
15          **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
16 022-0050.

17  
18          **C. Structural Standard, OAR 345-022-0020**

19          To issue a site certificate, the Council must find that:

20               (1) The applicant, through appropriate site-specific study, has  
21 adequately characterized the site as to seismic zone and expected ground  
22 motion and ground failure, taking into account amplification, during the  
23 maximum credible and maximum probable seismic events; and

24               (2) The applicant can design, engineer, and construct the facility to  
25 avoid dangers to human safety presented by seismic hazards affecting the  
26 site that are expected to result from all maximum probable seismic events.  
27 As used in this rule "seismic hazard" includes ground shaking, landslide,  
28 liquefaction, lateral spreading, tsunami inundation, fault displacement, and  
29 subsidence;

30               (3) The applicant, through appropriate site-specific study, has  
31 adequately characterized the potential geological and soils hazards of the  
32 site and its vicinity that could, in the absence of a seismic event, adversely  
33 affect, or be aggravated by, the construction and operation of the proposed  
34 facility; and

35               (4) The applicant can design, engineer and construct the facility to  
36 avoid dangers to human safety presented by the hazards identified in  
37 section (3).

38  
39          **Discussion.** In the Final Order the Council found that the proposed facility site had  
40 been adequately characterized in terms of seismic zone and that HPP could construct the  
41 facility in order to avoid seismic hazards as defined in ORS 455.447(1)(d). The Council  
42 imposed site certificate conditions to ensure avoidance of seismic hazard.

1           **1. Duct Burning**

2           The addition of power enhancement technology will not require any changes to  
3 avoid seismic or soils hazards.

4  
5           **2. Revised Water Balance**

6           The additional water usage will not require any changes to avoid seismic or soils  
7 hazards.

8  
9           **3. Transmission Line Reroute**

10          The revised route of the 500 kV transmission line does not implicate any changes in  
11 seismic zone. The line will be constructed consistent with conditions already in the site  
12 certificate in a manner to avoid seismic hazards.

13  
14          **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
15 022-0020.

16  
17 **D. Soil Protection Standard, OAR 345-022-0022**

18          To issue a site certificate, the Council must find that the design,  
19 construction and operation of the facility, taking into account mitigation, is  
20 not likely to result in a significant adverse impact to soils including, but not  
21 limited to, erosion and chemical factors such as salt deposition from cooling  
22 towers, land application of liquid effluent, and chemical spills.

23  
24          **Discussion.** In the Final Order the Council noted that HPP had adequately  
25 characterized soils within the impact area and found that HPP’s proposed construction of  
26 the facility would not have a significant adverse impact on soils. The Council also noted  
27 that salt deposition would be very low even in areas at only 200 meters from the facility.

28  
29           **1. Duct Burning**

30          In its request to add power enhancement technology, HPP does not propose to  
31 change any aspect of facility construction or otherwise to alter impacts to soils. Salt  
32 deposition will not increase significantly as a result of the duct burners, as demonstrated in  
33 Exhibit K of the request for amendment. The duct burners can be operated without  
34 affecting HPP’s ability to comply with Condition 31. The cooling tower to be employed by  
35 HPP has a drift loss of 0.002 percent of cooling water flow rate. In addition, the blowdown  
36 rate for the cooling tower will not exceed 1,152 ppm.

37  
38           **2. Revised Water Balance**

39          The revised water balance will not have any adverse impact on soils.

40  
41           **3. Transmission Line Reroute**

42          According to a habitat assessment conducted by Northwest Wildlife Consultants  
43 (“NWC”) and provided in the amendment request document, the reroute contains the same  
44 soil types as that found at the HPP facility site, Quincy loamy fine sand with a small  
45 portion of Adkins fine sandy loam. The impacts to soils will, therefore, be similar to that

1 evaluated by the Council in the Final Order. HPP must protect against erosion during  
2 construction of the reroute and must comply with the previously imposed conditions to  
3 prevent any adverse impact to soils.  
4

5 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
6 022-0022.  
7

8 **E. Land Use Standard, OAR 345-022-0030**

9 (1) To issue a site certificate, the Council must find that the facility  
10 complies with the statewide planning goals adopted by the Land  
11 Conservation and Development Commission.

12 (2) The Council shall find that a proposed facility complies with section (1)  
13 if:

14 (a) The applicant elects to obtain local land use approvals under  
15 ORS 469.504(1)(a) and the Council finds that the facility has received local  
16 land use approval under the acknowledged comprehensive plan and land use  
17 regulations of the affected local government; or

18 (b) The applicant elects to obtain a Council determination under  
19 ORS 469.504(1)(b) and the Council determines that:

20 (A) The proposed facility complies with applicable  
21 substantive criteria as described in section (3) and the facility complies with  
22 any Land Conservation and Development Commission administrative rules  
23 and goals and any land use statutes directly applicable to the facility under  
24 ORS 197.646(3);

25 (B) For a proposed facility that does not comply with one or  
26 more of the applicable substantive criteria as described in section (3), the  
27 facility otherwise complies with the statewide planning goals or an  
28 exception to any applicable statewide planning goal is justified under  
29 section (4); or

30 (C) For a proposed facility that the Council decides, under  
31 sections (3) or (6), to evaluate against the statewide planning goals, the  
32 proposed facility complies with the applicable statewide planning goals or  
33 that an exception to any applicable statewide planning goal is justified under  
34 section (4). \*\*\*  
35

36 **Discussion.** HPP elected to demonstrate to the Council that all land use criteria  
37 were met, pursuant to OAR 345-022-0030(2)(b). The Council identified all aspects of  
38 facility construction and operation that would implicate local or statewide land use review  
39 requirements and finds the proposed facility would meet all applicable criteria.  
40

41 **1. Duct Burning**

42 The addition of power enhancement capability will not increase the size of the  
43 generator pad or change any aspect of the facility site or the use of that site. Nothing about  
44 this request, if approved, would affect HPP's compliance with applicable land use criteria.  
45

1           **2. Revised Water Balance**

2           The additional usage of water at the facility will not have affect HPP’s compliance  
3 with applicable land use criteria.  
4

5           **3. Transmission Line Reroute**

6           The revised corridor of the 500 kV transmission line is located entirely within  
7 Umatilla County and passes through land zoned for Heavy Industrial use (“HI”). The path  
8 of the original line would have crossed land zoned for HI as well as Exclusive Farm Use  
9 (“EFU”) with Future Industrial Overlay. The proposed reroute, therefore, reduces the  
10 amount of EFU land to be crossed by the 500 kV line.  
11

12           In the Final Order the Council found that the 500 kV transmission line was  
13 consistent with applicable land use regulations in Umatilla County for areas zoned for HI  
14 and EFU with Future Industrial Overlay. The Umatilla County code has been revised since  
15 the Council approved the original application in 1996. The relevant land use provisions are  
16 now located in Chapter 152 of the Umatilla County Development Code. The substantive  
17 provisions, however, have not been changed by these revisions.  
18

19           Utility facilities are a permitted use within the HI zone. A utility facility is defined  
20 as:

21           “[a]ny major structure owned or operated by a public, private or corporate electric  
22 \*\*\* company for the generation, transmission, distribution or processing of its  
23 production \* \* \* and including power transmission lines.” Umatilla Cty Dev Code  
24 § 152.003.  
25

26           Further, the transmission line is not prohibited by any of the limitations on use  
27 within the HI zone, as recognized by the Council in its review of the initial site certificate.  
28 *See* Umatilla Cty Dev Code § 152.323. Finally, the revised route does not come any closer  
29 to residential dwellings or other sensitive land uses and in fact reduces the amount of EFU  
30 land impacted.  
31

32           **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
33 022-0030.  
34

35 **F. Protected Area Standard, OAR 345-022-0040**

36           (1) Except as provided in sections (2) and (3), the Council shall not issue a  
37 site certificate for a proposed facility located in the areas listed below. To  
38 issue a site certificate, the Council must find that, taking into account  
39 mitigation, the design, construction and operation of a proposed facility  
40 located outside the areas listed below is not likely to result in significant  
41 adverse impact to the areas listed below. Cross-references in this rule to  
42 federal or state statutes or regulations are to the version of the statutes or  
43 regulations in effect as of September 1, 2000 \*\*\*.  
44

1           **Discussion.** In the Final Order the Council identified 11 protected areas within  
2 20 miles of the facility site. Only one, the OSU Agricultural and Research Center, was  
3 closer than five miles from the site. The Council found that the facility could be operated  
4 without adverse impacts to any of the protected areas and imposed Condition 31 relating to  
5 water emissions, drift, and salt deposition from the facility. The list of protected areas in  
6 the current rule is the same list that the Council considered in its Final Order.

7  
8           **1. Duct Burning**

9           In the present request HPP does not propose to change the facility’s location. The  
10 duct burners can be operated without affecting HPP’s ability to comply with Condition 31.  
11 The cooling tower to be employed by HPP has a drift loss of 0.002 percent of cooling water  
12 flow rate. In addition, HPP reports that the blowdown rate for the cooling tower will never  
13 exceed 1,152 ppm, TDS. Duct burning will not change the facility’s impacts on protected  
14 areas as previously analyzed in the Final Order.

15  
16           **2. Revised Water Balance**

17           The additional usage of water at the facility will not result in any impact on  
18 protected areas identified by the Council.

19  
20           **3. Transmission Line Reroute**

21           The original route of the 500 kV line came within 0.7 miles of the OSU  
22 Agricultural and Research Center and the Power City Wildlife Area. No other protected  
23 area was closer than three miles to the transmission line. The Council determined that the  
24 agricultural research and wildlife habitat values would not be affected by the transmission  
25 line. The reroute portion does not come significantly closer to these areas and does not  
26 affect the Council’s finding.

27  
28           **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
29 022-0040.

30  
31           **G. Fish and Wildlife Habitat Standard, OAR 345-022-0060**

32           To issue a site certificate, the Council must find that the design,  
33 construction, operation and retirement of the facility, taking into account  
34 mitigation, is consistent with the fish and wildlife habitat mitigation goals  
35 and standards of OAR 635-415-0025 in effect as of September 1, 2000.

36  
37           **Discussion.** In the Final Order, the Council classified the habitat areas that will be  
38 affected by the proposed facility and by the related and supporting facilities, including gas  
39 supply lines and electricity transmission lines. The Council imposed a number of  
40 conditions to ensure that construction and operation of the facility would be consistent with  
41 the Council’s fish and wildlife habitat standard and the Oregon Department of Fish and  
42 Wildlife’s (“ODFW”) Fish and Wildlife Habitat Mitigation Policy that were in effect at  
43 that time (OAR 345-022-060 and OAR 635-415-0030).

1 The Council recognized that the Columbia River has been designated as critical  
2 habitat for the spring/summer and fall runs of Snake River chinook salmon and Snake  
3 River sockeye salmon.<sup>6</sup> The Council concurred in the ODFW conclusion that the facility  
4 will not adversely impact the aquatic habitat because the impact of the Project's average  
5 annual withdrawal of 4.38 cubic feet per second (cfs)<sup>3</sup>/<sub>4</sub> 1,969 gallons per minute  
6 (gpm)<sup>3</sup>/<sub>4</sub> of water from the Columbia River would be too small to measure.  
7

8 The Council noted that the 500 kV transmission line would impact two areas of  
9 wetlands (discussed below in Section P) as well as cause temporary impacts during  
10 construction on other habitat. Neither of the wetlands impacted by the transmission line is  
11 within the path of the rerouted transmission line. The Council concurred with the ODFW  
12 conclusion that, with mitigation measures, the transmission line would not violate the fish  
13 and wildlife habitat mitigation goals.  
14

### 15 **1. Duct Burning**

16 The addition of duct burning technology to the facility will not change any aspect of  
17 facility siting, construction or operation that would impact fish and wildlife habitat.  
18

### 19 **2. Revised Water Balance**

20 Due to its designation as critical habitat, the Council considered the Columbia  
21 River as Habitat Category 1 under the ODFW mitigation goals in effect when the Council  
22 adopted the Final Order. The relevant goal for Habitat Category 1 was no loss either of  
23 either habitat units or habitat value. Under the Council's current rules, the Columbia  
24 River, in this circumstance, is designated as Habitat Category 2 because it provides both  
25 essential and limited habitat for several fish species. The mitigation goal for Habitat  
26 Category 2, if impacts are unavoidable, is "no net loss of either habitat quantity or quality  
27 and to provide a net benefit of habitat quantity or quality." OAR 635-415-0025(2)(a).  
28

29 HPP's revised water balance indicates the energy facility will require up to  
30 2,900 gpm (6.44 cfs) rather than 1,969 gpm (4.38 cfs) that the Council evaluated in the  
31 Final Order (page 142). HPP will obtain this water from the Port of Umatilla under the  
32 Port's existing water right # 49497, which allows the Port to withdraw up to 155 cubic feet  
33 per second (cfs) of water from the Columbia River near McNary Dam.  
34

35 The Final Order states that the average annual flow of the Columbia River at  
36 McNary Dam is about 169,000 cfs. HPP's revised request of 6.44 cfs equals 0.0038  
37 percent of this average annual flow at this location. In its Final Order, the Council found  
38 that the impact on fish from a reduction in the average annual flow of the Columbia River  
39 at McNary Dam of 0.0026 percent (4.38 cfs) would be too small to measure. Likewise, the

---

<sup>6</sup> There has been one additional species listing and designation of critical habitat since the time of the Council's Final Order. In March 1999, the National Marine Fisheries Service designated the Middle Columbia River evolutionarily significant unit (ESU) of steelhead trout as threatened. Relevant portions of the Columbia River were designated as critical habitat for the steelhead in February 2000.

1 Council finds here that a reduction in average annual flow of 0.0038 percent effectively  
2 avoids impact to the quantity and quality of habitat in the Columbia River. Therefore, HPP  
3 does not need to provide a net benefit in habitat quantity or quality.  
4

### 5 **3. Transmission Line Reroute**

6 The habitat in the area of the requested transmission line reroute is similar to the  
7 habitat along much of the route that the Council approved in March 1996. It is primarily  
8 shrub-steppe vegetation that has been altered to some extent by human activity.  
9

10 The habitat is considered Category 3 (under the Council's current rules) because it  
11 is both important to a number of wildlife species and has become limited in extent as a  
12 result of human activities in the general region. The goal for this category is "no net loss of  
13 either habitat quantity or quality." Mitigation, if impacts are unavoidable, must use  
14 reliable, in-proximity habitat mitigation to achieve no net loss of either pre-development  
15 habitat quantity or quality.  
16

17 Direct construction impacts include disturbance to soil and removal of vegetation at  
18 the locations of each transmission line structure, areas used by heavy construction vehicles  
19 and equipment, and lay-down and turn-around areas. Direct construction impacts should  
20 be limited to a 100-foot wide corridor along the reroute.  
21

22 HPP will revegetate areas disturbed by construction in accordance with the  
23 Revegetation and Wetland Mitigation Plan for the Hermiston Power Project, dated June 26,  
24 1995 (Revegetation Plan), and the applicable conditions of the site certificate. In addition,  
25 HPP will monitor the results of revegetation and other mitigation efforts as required in the  
26 Revegetation Plan. These measures should result in no net loss of habitat quantity or  
27 quality. For these reasons, the requested transmission line reroute is consistent with OAR  
28 345-022-0060.  
29

30 However, the Council notes that Site Certificate Condition 35 refers to the  
31 "Recommended Revegetation Plan" dated July 19, 1994. This plan is outdated and has  
32 been superseded by the "Revegetation and Wetland Mitigation Plan, Hermiston Power  
33 Project," dated June 26, 1995. Therefore, the Office recommends that the Council, by this  
34 order, amend Condition 35 to delete reference to the outdated July 1994 plan and insert the  
35 reference to the June 1995, plan.  
36

37 (35) Non-wetland areas disturbed by construction of the energy facility, the  
38 equipment storage/staging area and employee parking staging area, the natural gas  
39 pipelines, the water supply pipeline, and the transmission lines shall be revegetated  
40 upon completion of construction. Revegetation shall emphasize the use of native  
41 species and shall be conducted in accordance with the Recommended Revegetation  
42 Plan (July 19, 1994) stated in the ASC (Exhibit P/P 1, Appendix E) Revegetation  
43 and Wetland Mitigation Plan, Hermiston Power Project, dated June 26, 1995.  
44 [Amendment No. 4]  
45

1 Construction activity for the reroute could result in adverse impact to wildlife  
2 species designated as “sensitive” if it takes place during breeding, nesting or rearing  
3 periods. NWC’s habitat assessment report recommends that surveys for wildlife species of  
4 concern be conducted during the appropriate seasons (March 1 through September 1) to  
5 determine their presence or absence.

6  
7 Site Certificate Conditions 36 and 37 address this concern. Condition 36 requires  
8 that, if feasible, construction should occur outside of the sensitive time periods for  
9 specified species of concern. Condition 37 requires, among other things, that HPP must  
10 conduct pre-construction biological surveys to identify the presence and location of  
11 wildlife species of concern or their nest sites. However, the NWC report includes several  
12 species that are not listed in Condition 36 or included in Condition 37.

13  
14 The Office therefore recommends that the Council add the following species to  
15 Condition 36 of the Site Certificate: loggerhead shrike, *Lanius ludovicianus*, sagebrush  
16 lizard, *Sceloporus graciosus*, and white-tailed jackrabbit, *Lepus townsendii*.

17  
18 (36) Subject to Condition (37), if feasible, construction of the natural gas  
19 pipelines, water supply line and transmission line shall occur outside of sensitive  
20 time periods (as described in the ASC, Exhibit P/P-1, page 44a, and Exhibit L,  
21 Fourth Request to Amend Site Certificate) for the following wildlife species of  
22 concern which were documented within the impact area of the proposed natural gas  
23 pipelines, water supply line and transmission line: painted turtle, long-billed  
24 curlew, grasshopper sparrow, Swainson's hawk, burrowing owl, ~~and~~ bank swallow,  
25 loggerhead shrike, *Lanius ludovicianus*, sagebrush lizard, *Sceloporus graciosus*,  
26 and white-tailed jackrabbit, *Lepus townsendii*. [Amendment No. 4]

27  
28 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
29 022-0060.

30  
31 **H. Threatened and Endangered Species, OAR 345-022-0070**

32 To issue a site certificate, the Council, after consultation with appropriate  
33 state agencies, must find that:

34 (1) For plant species that the Oregon Department of Agriculture has  
35 listed as threatened or endangered under ORS 564.105(2), the design,  
36 construction, operation and retirement of the proposed facility, taking into  
37 account mitigation:

38 (a) Is consistent with the protection and conservation  
39 program, if any, that the Oregon Department of Agriculture has adopted  
40 under ORS 564.105(3); or

41 (b) If the Oregon Department of Agriculture has not adopted  
42 a protection and conservation program, is not likely to cause a significant  
43 reduction in the likelihood of survival or recovery of the species; and

44 (2) For wildlife species that the Oregon Fish and Wildlife  
45 Commission has listed as threatened or endangered under ORS 496.172(2),

1 the design, construction, operation and retirement of the proposed facility,  
2 taking into account mitigation, is not likely to cause a significant reduction  
3 in the likelihood of survival or recovery of the species.  
4

5 **Discussion.** Within the relevant area the Council identified the bald eagle,  
6 peregrine falcon, and two runs of Snake River chinook salmon as threatened or endangered  
7 species under state law. ORS 496.172. Based on recommendations from ODFW, the  
8 Council concluded that the facility could be constructed and operated without significant  
9 adverse impacts to these species. The Council required raptor protection designs for  
10 transmission lines and towers. In addition, the Council directed HPP to conduct a pre-  
11 construction survey to determine if the state-threatened plant species, *Astragalus collinus*  
12 *var. laurentii*, is present along the route of the relocated BPA 500 kV transmission line.  
13 HPP conducted the required survey and found the species was not present.  
14

### 15 **1. Duct Burning**

16 The addition of power enhancement capability will not have any adverse impact on  
17 threatened or endangered species.  
18

### 19 **2. Revised Water Balance**

20 As noted above, the only change resulting from the proposed amendment involves  
21 the potential for withdrawing up to 2,900 gpm from the Columbia River. In its Final Order  
22 the Council considered the effects of a reduction in the average annual flow of the  
23 Columbia River of 0.0026 percent. The Council concluded that the “incremental reduction  
24 in flow due to the facility would be negligible.” As discussed in Section G, above, the  
25 additional requested withdrawal would result in a reduction of 0.0038 percent of the  
26 average annual Columbia River flow at McNary Dam. The Council finds that this  
27 reduction will not have a measurable impact on threatened or endangered species of fish in  
28 the river and, therefore, will not cause a significant reduction in the likelihood of their  
29 survival or recovery.  
30

### 31 **3. Transmission Line Reroute**

32 The NWC habitat assessment did not identify any threatened or endangered wildlife  
33 species that would be impacted by the proposed transmission line reroute. The Final Order  
34 considered the HPP 500 kV transmission line’s potential impacts to bald eagle and  
35 peregrine falcon. The proposed reroute does not change these findings.  
36

37 NWC concluded that all potential rare plant species are extremely unlikely to occur  
38 within the reroute corridor, primarily due to the generally disturbed nature of the habitat in  
39 the Hermiston area. However, NWC’s habitat assessment stated that the occurrence of rare  
40 plant species “cannot be entirely ruled out without a site-specific field survey” (page 7).  
41 NWC recommended that such a survey be done in either May or June to ensure that target  
42 plant species could be identified.  
43

44 The Office therefore recommends that the Council add the following language to  
45 Condition 50 of the Site Certificate:

1  
2           HPP shall conduct a pre-construction survey to determine if individuals of  
3 any rare plant species (*Astragalus collinus* var. *laurentii*, *A. sclerocarpus*, *A.*  
4 *succumbens*, *Balsamorhiza rosea*, *Cryptantha leucophaea*, and *Lomatium watsonii*)  
5 are present along the revised route of the HPP 500 kV transmission line described  
6 in the Fourth Request to Amend Site Certificate. The survey shall be conducted  
7 during the appropriate field season (May or June) by a qualified biologist. If  
8 individual plants of a rare species are found to occur in areas that might be affected  
9 by construction of the rerouted HPP 500 kV transmission line, HPP shall contact  
10 the Office of Energy and the Oregon Department of Agriculture, Native Plant  
11 Conservation Program, to develop a mitigation plan prior to construction in the  
12 affected area. [Amendment No. 4]

13  
14           In addition, HPP must comply with the conditions imposed in site certificate  
15 relating to raptor protection and rare plant species. For these reasons, the revised  
16 transmission line corridor will not impact any threatened or endangered species.

17  
18           **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
19 022-0070.

20  
21 **I. Scenic and Aesthetic Standard, OAR 345-022-0080**

22           To issue a site certificate, the Council must find that the design,  
23 construction, operation and retirement of the facility, taking into account  
24 mitigation, is not likely to result in significant adverse impact to scenic and  
25 aesthetic values identified as significant or important in applicable federal  
26 land management plans or in local land use plans in the analysis area.

27  
28           **Discussion.** In the Final Order the Council identified the relevant view-shed and  
29 analyzed the impacts of the proposed facility. The Council found that the facility could be  
30 constructed without significant adverse impacts under this standard and imposed site  
31 certificate conditions relating to the paint color for the facility, landscaping, and lighting at  
32 night.

33  
34           **1. Duct Burning**

35           In this request HPP does not propose to change any visible part of the facility. The  
36 duct burning technology is located inside the generator complex and will not be visible  
37 from outside the facility. Thus the impacts previously identified by the Council will not  
38 change and the conditions previously imposed will remain sufficient.

39  
40           **2. Revised Water Balance**

41           The additional water withdrawal requested in this amendment will not have any  
42 effect on the scenic and aesthetic values in the area of the facility.

43  
44           **3. Transmission Line Reroute**

1 The Council determined that the 500 kV transmission line would be seen “in  
2 combination with other industrial and agricultural structures in the area.” HPP Final Order  
3 at 150. The proposed reroute will be along a path with similar industrial and agricultural  
4 facilities as the original line, and it is unlikely to have any impact on the scenic and  
5 aesthetic values in the area.

6  
7 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-22-  
8 080.

9  
10 **J. Historic, Cultural, and Archeological Resources Standard, OAR 345-022-0090**

11 To issue a site certificate, the Council must find that the construction,  
12 operation and retirement of the facility, taking into account mitigation, is  
13 not likely to result in significant adverse impacts to:

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

17 (2) For a facility on private land, archaeological objects, as defined  
18 in ORS 358.905(1)(a), or archaeological sites, as defined in ORS  
19 358.905(1)(c); and

20 For a facility on public land, archaeological sites, as defined in ORS  
21 358.905(1)(c).

22  
23 **Discussion.** In the Final Order the Council identified certain historic irrigation  
24 canals and reported Native American fishing and camp site within the impact area. The  
25 Council imposed conditions requiring HPP to avoid the canals and to work with the  
26 Confederated Tribes of the Umatilla Indian Reservation during ground-breaking activities.

27  
28 **1. Duct Burning**

29 In this request HPP does not propose to change any aspect of facility siting,  
30 construction, or operation that would impact the identified historic and cultural resources.  
31 Thus the impacts previously identified by the Council will not change and the conditions  
32 previously imposed will remain sufficient.

33  
34 **2. Revised Water Balance**

35 The updated water balance will have no impact on any identified historic and  
36 cultural resources.

37  
38 **3. Transmission Line Reroute**

39 The Council determined that the 500 kV transmission line would cross several  
40 historic irrigation canals identified during the cultural resource study. The revised corridor,  
41 on the other hand, will not cross the irrigation canals. The conditions previously imposed  
42 by the Council will remain sufficient to protect the relevant historic and cultural resources.

43  
44 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
45 022-0090.

1  
2 **K. Recreation Standard, OAR 345-022-0100**

3 To issue a site certificate, the Council must find that the design,  
4 construction and operation of a facility, taking into account mitigation, is  
5 not likely to result in a significant adverse impact to important recreational  
6 opportunities in the analysis area. The Council shall consider the following  
7 factors in judging the importance of a recreational opportunity:

- 8 (1) Any special designation or management of the location;  
9 (2) The degree of demand;  
10 (3) Outstanding or unusual qualities;  
11 (4) Availability or rareness;  
12 (5) Irreplaceability or irretrievability of the opportunity.  
13

14 **Discussion.** In the Final Order the Council noted that the only recreation  
15 opportunities within five miles were (1) informal fishing, hiking, and wildlife viewing  
16 along the Umatilla River and (2) formal recreation opportunities at several nearby parks  
17 and fairgrounds. The Council concluded that the proposed design, construction, and  
18 operation of the facility would not have significant adverse impacts on these recreation  
19 opportunities.  
20

21 **1. Duct Burning**

22 In this request HPP does not propose to change any aspect of facility siting,  
23 construction or operation that would impact the identified recreation resources. Thus the  
24 impacts on recreation opportunities previously identified by the Council will not change  
25 and the conditions previously imposed will remain sufficient.  
26

27 **2. Revised Water Balance**

28 The additional water usage will not impact the identified recreation resources.  
29 Thus the impacts on recreation opportunities previously identified by the Council will not  
30 change and the conditions previously imposed will remain sufficient.  
31

32 **3. Transmission Line Reroute**

33 The Council determined there are no relevant recreational opportunities along the  
34 portion of the original 500 kV transmission line between the energy facility and its  
35 intersection with the BPA McNary-Roundup corridor or along the BPA right-of-way. The  
36 revised corridor also does not appear to offer any recreational opportunities that have the  
37 characteristics stated in the standard. The 500 kV transmission line will not, therefore,  
38 significantly impact recreational opportunities along its corridor.  
39

40 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
41 022-0100.  
42

43 **L. Socioeconomic Impacts Standard, OAR 345-022-0110**

44 To issue a site certificate, the Council must find that the construction and  
45 operation of the facility, taking into account mitigation, is not likely to result

1 in significant adverse impact to the ability of communities within the  
2 analysis area to provide the following governmental services: sewers and  
3 sewage treatment, water, storm water drainage, solid waste management,  
4 housing, traffic safety, police and fire protection, health care and schools.  
5

6 **Discussion.** In the Final Order the Council identified potential impacts to local  
7 economics and noted the public services and facilities the construction and operation of the  
8 Project would likely require. The Council imposed conditions requiring HPP to hire local  
9 workers when reasonably possible and to deal with other needs of the Project.  
10

11 **1. Duct Burning**

12 In this request HPP does not propose to change any aspect of facility siting,  
13 construction or operation that will impact the identified socioeconomic impacts. Thus the  
14 impacts on local socioeconomics previously identified by the Council will not change and  
15 the conditions previously imposed will remain sufficient.  
16

17 **2. Revised Water Balance**

18 The revised water balance will not change any aspect of facility siting, construction  
19 or operation that will impact the identified socioeconomic impacts.<sup>7</sup> Thus the impacts on  
20 local socio-economics previously identified by the Council will not change and the  
21 conditions previously imposed will remain sufficient.  
22

23 **3. Transmission Line Reroute**

24 The Council did not identify any socioeconomic impacts of the 500 kV  
25 transmission line. The reroute of the line will not create any additional impacts, and the  
26 conditions previously imposed are adequate.  
27

28 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
29 022-0110.  
30

31 **M. Waste Minimization Standard, OAR 345-022-0120**

32 To issue a site certificate, the Council must find that, to the extent  
33 reasonably practicable:

34 (1) The applicant's solid waste and wastewater plans are likely to  
35 minimize generation of solid waste and wastewater in the construction,  
36 operation, and retirement of the facility, and when solid waste or wastewater  
37 is generated, to result in recycling and reuse of such wastes;

38 (2) The applicant's plans to manage the accumulation, storage,  
39 disposal and transportation of waste generated by the construction and  
40 operation of the facility are likely to result in minimal adverse impact on  
41 surrounding and adjacent areas.

---

<sup>7</sup> The only potential exception is the ability of the Port to provide the additional water needed. The Port's ability to do so is demonstrated in Section IV.A., above.

1  
2       **Discussion.** In the Final Order the Council found that HPP had proposed adequate  
3 strategies to minimize solid waste and wastewater generation and to maximize recycling.  
4 The Council made compliance with a number of these strategies conditions in the site  
5 certificate.

6  
7       **1. Duct Burning**

8       The addition of power enhancement technology will not result in a significant  
9 amount of additional solid waste. Thus, the waste minimization and recycling strategies  
10 previously identified by the Council will not change and the conditions previously imposed  
11 will remain sufficient.

12  
13       **2. Revised Water Balance**

14       The additional water usage will not result in any additional solid waste produced by  
15 the facility. Generation of additional wastewater is commensurate with the additional  
16 power provided by the modified facility. Thus the waste minimization and recycling  
17 strategies previously identified by the Council will not change and the conditions  
18 previously imposed will remain sufficient.

19  
20       **3. Transmission Line Reroute**

21       The revised path of the 500 kV transmission line will not result in the creation of a  
22 significantly greater amount of solid waste. The conditions previously imposed by the  
23 Council are sufficient to manage any additional solid waste generated by the reroute.

24  
25       **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
26 022-0120.

27  
28 **N. Retirement Standard, OAR 345-022-0130**

29       To issue a site certificate, the Council must find that the site, taking into  
30 account mitigation, can be restored adequately to a useful, non-hazardous  
31 condition following facility retirement.

32  
33       **Discussion.** In the Final Order the Council estimated the cost of restoring the site  
34 after 30 years to be \$8,202,000. To cover the standard, the Council imposed a condition  
35 requiring HPP to establish a retirement fund and to make to it annual commitments in the  
36 amount of \$800,000 until the total reaches \$8,202,000 (in 1996 dollars).

37  
38       **1. Duct Burning**

39       In this request HPP does not propose to change any aspect of facility siting,  
40 construction or operation that would require additional site retirement funds. Thus the site  
41 restoration costs previously identified by the Council will not change and the retirement  
42 fund and other conditions previously imposed will remain sufficient.

43  
44       **2. Revised Water Balance**

45       The updated water balance will not require any additional site retirement funds.

1  
2 **3. Transmission Line Reroute**

3 The reroute of the 500 kV transmission line will not require any additional site  
4 retirement funds.  
5

6 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 345-  
7 022-0130.  
8

9 **O. Noise OAR 340-035-0035(1)(b)(B)**

10 The Council applies and enforces the DEQ noise standards for energy facilities  
11 under its jurisdiction. The DEQ noise standard, OAR 340-035-0035(1)(b)(B), has two  
12 elements. The first element requires that industrial noise sources not increase the noise  
13 level by more than 10 dBA in any one hour above existing ambient noise levels. This  
14 maximum increase clause is known as the “ambient degradation rule.” The second element  
15 provides that “the ambient statistical noise \* \* \* shall include all noises generated or  
16 indirectly caused by or attributable to that source including all its related activities.”  
17

18 **Discussion.** In the Final Order the Council found that the proposed facility would  
19 comply with the applicable numeric noise limits established by DEQ. The Council  
20 imposed design, consultation, and survey related conditions to ensure compliance.  
21

22 **1. Duct Burning**

23 The proposed duct burners will not cause any measurable increase in noise at  
24 appropriate receptor sites. Thus the noise levels previously identified by the Council will  
25 not change and the noise related conditions previously imposed will remain sufficient.  
26

27 **2. Revised Water Balance**

28 The additional water withdrawal requested by this amendment will not create any  
29 additional noise impacts at the facility.  
30

31 **3. Transmission Line Reroute**

32 The Council did not identify any noise impacts from the transmission lines. The  
33 reroute of the transmission line will not create any increase in noise.  
34

35 **Conclusion.** The Council finds that HPP satisfies the requirements of OAR 340-  
36 035-0035(1)(b)(B).  
37

38 **P. Wetlands, OAR 345-022-0000**

39 The Council must determine compliance with applicable Division of State Lands  
40 (“DSL”) regulations, OAR 141-85-005, *et seq.*, relating to fill and other operations taking  
41 place within wetlands. These regulations require persons to obtain a fill-removal permit if  
42 more than 50 cubic yards of material will be removed or altered within “waters of the  
43 state.” The overall standard to be considered in granting a fill-removal permit is whether  
44 the proposed activity would not “unreasonably interfere with the paramount policy of this

1 state to preserve the use of its waters for navigation, fishing and public recreation.” ORS  
2 196.825(2).

3  
4 **Discussion.** In the Final Order the Council found that the proposed facility and its  
5 related and supporting facilities would avoid most wetlands, but may necessarily impact  
6 two identified wetlands. The Council found that HPP could meet the statutory and  
7 regulatory standards for obtaining the necessary DSL permits and imposed conditions  
8 ensuring HPP would continue to be able to secure the permits.

9  
10 **1. Duct Burning**

11 In this request HPP does not propose to change any part of the facility that impacts  
12 wetlands. Thus the wetland impacts previously identified by the Council will not change  
13 and the wetland-related conditions previously imposed will remain sufficient.

14  
15 **2. Revised Water Balance**

16 The updated water balance will not create any adverse impacts to wetlands. Thus  
17 the wetland impacts previously identified by the Council will not change and the wetland-  
18 related conditions previously imposed will remain sufficient.

19  
20 **3. Transmission Line Reroute**

21 The Council identified two wetland areas that may be affected by the 500 kV  
22 transmission line, Wetland #13 and #15. The recent NWC habitat assessment concluded  
23 there are no additional wetlands present within a width of 100 feet along the reroute path.  
24 The conditions previously imposed are sufficient to protect the identified wetlands.

25  
26 **Conclusion.** Approval of this amendment request will satisfy the Council’s  
27 obligation to determine compliance with DSL requirements.

28  
29 **Q. Public Health and Safety, ORS 469.401(2)**

30 The Council is required to impose conditions in the site certificate for the protection  
31 of public health and safety.

32  
33 **Discussion.** The site certificate has eight conditions relating to public health and  
34 safety: three of these conditions, 106 through 108, pertain to the electric transmission line.  
35 Condition 106 requires that alternating current electric fields not exceed 9kV per meter at  
36 one meter above the ground in areas accessible to the public. Condition 107 requires that  
37 the transmission line be designed so that induced currents are as low as reasonably  
38 achievable. Condition 108 requires that the transmission line be designed, constructed, and  
39 operated in a manner consistent with provisions of the National Electric Safety Code and  
40 the Rural Electrification Administration standards.

41  
42 **1. Duct Burning**

43 The addition of duct burning technology will not impact compliance with the public  
44 health and safety conditions in the site certificate. First, HPP demonstrated that the  
45 increased current flow associated with duct burning has only a minimal impact on the

1 resulting electric field. The electric field strength will not exceed 9 kV per meter at any  
2 location along the 500 kV transmission line, including areas accessible to the public as well  
3 as within the right-of-way. Thus the amendment will not violate Condition 106.  
4

5 Second, the addition of power enhancement technology will not impact HPP's  
6 ability to design the 500 kV transmission line to minimize induced currents. HPP states in  
7 its request for amendment that it remains committed to a thorough grounding program. The  
8 Project will continue to comply with Condition 107.  
9

10 Further, HPP will design, construct and operate the 500 kV transmission line  
11 consistent with the National Electrical Safety Code and the Rural Electrification  
12 Administration standards. Condition 108 will, therefore, continue to be met.  
13

## 14 **2. Revised Water Balance**

15 This request for approval of additional water usage will not impact public health  
16 and safety.  
17

## 18 **3. Transmission Line Reroute**

19 The revised corridor for the 500 kV line will not adversely affect public health and  
20 safety and will comply with the public health and safety conditions in the site certificate.  
21 As noted above, the new transmission line is no closer to any occupied structures. It will  
22 be designed to minimize induced currents and will be designed, constructed and operated  
23 consistent with relevant safety standards. The requested reroute will thus comply with the  
24 Council's rules and applicable conditions of the site certificate.  
25

## 26 **4. Magnetic Fields**

27 As originally approved in March 1996, the Project had a nominal capacity of  
28 460 MW at annual average conditions. As a result of subsequent changes during plant  
29 design, and as requested for this amendment, the Project will have a peaking capacity of  
30 about 650 MW. This will result in a higher current (estimated at 750 Amps) flowing over  
31 the HPP 500 kV transmission line to McNary Substation than the Project as originally  
32 approved (estimated at 530 Amps). This higher current will result in an increase in the  
33 magnetic fields surrounding the transmission line during those periods when the energy  
34 facility is operating at or near peak capacity.  
35

36 Site Certificate Condition 115 requires that HPP take reasonable steps to reduce or  
37 manage exposure to electromagnetic fields (EMF) and provide information to the public  
38 upon request about EMF levels associated with the Project's operation. At the request of  
39 the Office of Energy, HPP provided an updated estimate of the maximum magnetic field  
40 levels that are expected from operation at peak capacity of 650 MW. The estimated  
41 magnetic field at 50 feet from the centerline is about 41 milliGauss (mG). At 100 feet from  
42 the centerline the level is estimated to be 14 mG. At 200 feet from the centerline the level  
43 is about 4 mG. These levels are consistent with other 500 kV transmission lines in the  
44 Northwest.  
45



1 Ordered this 4<sup>th</sup> day of May, 2001.  
2  
3  
4  
5

6   
7 \_\_\_\_\_  
8 Karen H. Green, Chair  
9 Energy Facility Siting Council  
10  
11

12 **Notice of the Right to Appeal**

13 You have the right to appeal this order to the Oregon Supreme Court pursuant to  
14 ORS 469.405. To appeal you must file a petition for judicial review with the Supreme  
15 Court within 60 days from the day this order was served on you. If this order was  
16 personally delivered to you, the date of service is the date you received this order. If this  
17 order was mailed to you, the date of service is the date it was mailed, not the day you  
18 received it. If you do not file a petition for judicial review within the 60-day time period,  
19 you lose your right to appeal.  
20

21 /  
22 /  
23 /

## CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2001, I served true and correct copies of the Final Order in the Matter of the Thermal Power Plant Site Certificate for the Hermiston Power Project Request for Amendment No. 4 with Amended Exhibit B-2(A), and the Thermal Power Plant Third Amended Site Certificate for the Hermiston Power Project by mail to the service list below.

Dated: May 10, 2001



Sam Sadler  
Office of Energy

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