

1 **THERMAL POWER PLANT**  
2  
3 **AMENDED SITE CERTIFICATE**

4  
5 **for the**

6  
7 **HERMISTON POWER PROJECT**  
8 (Includes Amendment No. 1, March 19, 1998, and  
9 Amendment No. 2, January 23, 1998)

10  
11 This Site Certificate is made and entered into in the manner provided by ORS Chapter 469 by and  
12 between the State of Oregon (State), acting by and through its Energy Facility Siting Council  
13 ("EFSC" or "the Council"), and Hermiston Power Partnership ("HPP") an Oregon General  
14 Partnership.

15  
16 **I. SITE CERTIFICATION**

- 17  
18 A. To the extent authorized by State law and subject to the conditions set forth herein, the State  
19 approves and authorizes the construction, operation and retirement by HPP of a natural gas-  
20 fired combustion turbine energy facility, together with certain related or supporting  
21 facilities, at the site near Hermiston in Umatilla County, Oregon, in the manner described in  
22 the EFSC's Final Order, which by this reference is incorporated herein. The terms used in  
23 this Site Certificate shall have the meaning set forth in ORS 469.300 and Oregon  
24 Administrative Rules OAR 345-01-010. The facts, reasoning, conclusions and conditions  
25 relied on for approval are set out in EFSC's Final Order.

26  
27 Subject to the conditions herein, this certificate binds the State and all counties, cities and  
28 political subdivisions in this State as to the approval of the site and the construction,  
29 operation and retirement of the facility, as to matters that are included in and governed by  
30 this Site Certificate. The Site Certificate is not binding with respect to matters not governed  
31 by and included in the Site Certificate, including permits issued under statutes and rules for  
32 which the decision on compliance has been delegated by the Federal government to a state  
33 agency other than EFSC.

- 34  
35 B. Each affected state agency, county, city and political subdivision with authority to issue a  
36 permit, license or other approval addressed in or governed by the Site Certificate or EFSC's  
37 Final Order shall, upon submission by HPP of the proper application and payment of the  
38 proper fees, issue such permit, license or other approval without hearing or other  
39 proceeding, subject only to conditions set forth in the Site Certificate. Each state agency or  
40 local government that issues a permit, license or other approval to HPP shall continue to  
41 exercise enforcement authority over such permit, license or other approval.

1 For a permit, license or other approval addressed in the Site Certificate, HPP shall comply  
2 with applicable state and federal laws adopted in the future to the extent that such  
3 compliance is required under the respective state agency statutes and rules.  
4

- 5 C. Both the State and HPP shall abide by local ordinances and state law and the rules of EFSC  
6 in effect on the date the Site Certificate is executed. The EFSC rules in effect on the date  
7 the Site Certificate is executed are attached as Exhibit B. In addition, upon a clear showing  
8 of a significant threat to the public health, safety or the environment that requires  
9 application of later-adopted laws or rules, EFSC may require compliance with such later-  
10 adopted laws or rules.  
11

## 12 **II. DESCRIPTION OF SITE AND FACILITY**

13

14 The Hermiston Power Project is a combined-cycle combustion turbine electric generating  
15 plant, fueled primarily by natural gas, with a nominal capacity of 460 MW at annual average  
16 conditions. Distillate (diesel) fuel will be used if needed as a backup fuel. In addition to the  
17 generation of electricity, the facility will be designed to supply steam to the J.R. Simplot Company  
18 potato processing plant.  
19

20 *Energy Facility Site:* The energy facility site is located on a 17 acre site adjacent to the J.R.  
21 Simplot ("Simplot") potato processing plant, approximately 3 miles south of Hermiston, Oregon.  
22 The energy facility site is on land zoned Heavy Industrial (HI). The location of the energy facility  
23 site is shown on the attached Figure 1.  
24

25 *Power Plant Structures and Major Equipment:* The proposed energy facility will consist of  
26 several structures: a turbine-generator building; two heat recovery steam generator (HRSG)  
27 structures; two exhaust stacks approximately 195 feet in height; an administration/control building;  
28 storage tanks for raw and demineralized water; an electrical substation occupying approximately  
29 50,000 square feet; two above ground 1,000,000 gallon distillate storage tanks; and two five-cell  
30 mechanical induced draft evaporative cooling towers, each with a height of approximately 42 feet.  
31 The combustion turbine will be surrounded with an acoustically insulated enclosure to reduce noise  
32 levels and to provide containment for automatic fire suppression equipment. The facility's water  
33 system, including treatment, component cooling, fire protection and condensate return is described  
34 in the ASC, Exhibit B, pp. 13 and 14a.  
35

36 *Related and Supporting Facilities:* Related and supporting facilities include two natural gas  
37 pipelines that will bring natural gas to the energy facility from interstate pipelines, a water pipeline  
38 which will carry raw water to the energy facility site, and one of two electrical transmission lines  
39 that will deliver output from the power plant to the BPA McNary substation.  
40

41 The two natural gas pipelines will deliver natural gas from the Pacific Gas Transmission  
42 (PGT) and Northwest Pipeline (NWP) interstate pipeline systems. Each pipeline would be  
43 approximately 12 inches in diameter and will be located underground. The PGT pipeline  
44 connection will be approximately 4.1 miles long and the NWP pipeline will be approximately 8.8

1 miles long. Both pipelines are related and supporting facilities as defined in OAR 345-01-010.  
2 HPP may construct one or both pipelines. The routes for these pipelines are described in the land  
3 use section of the EFSC Final Order and shown on Figures I-4 and I-5 in the ASC.  
4

5 The raw water supply line for the energy facility will be approximately 16 inches in  
6 diameter and approximately 1.1 miles long. The route for the raw water supply line is shown on  
7 Figure I-3 in the ASC. This line will connect the energy facility site to the Port of Umatilla water  
8 supply project. HPP has an agreement to purchase water from the Port of Umatilla. The Port will  
9 obtain the water from the Columbia River under an existing municipal water permit issued by  
10 WRD, # 49497 ("Permit # 49497"). The Port's water supply project is not an energy facility and is  
11 not subject to EFSC regulation.  
12

13 This Site Certificate permits construction along either one of two transmission line routes.  
14 Only one of the two will be built. The two transmission line routes include a 230 kV option and a  
15 500 kV option.  
16

17 The 230 kV option will be approximately 15.9 miles long. The route for the 230 kV  
18 transmission line is shown on Figures I-7A, I-7B and I-7C in the ASC. Approximately 12.3 miles of  
19 this would use the 230 kV transmission line route from the Westland Substation to the BPA  
20 McNary Substation which is a double circuit steel pole 230/115 kV line. The Hermiston  
21 Generating Company L.P ("HGC") holds a Site Certificate for the 230 kV line in connection with  
22 its energy facility. The Umatilla Electric Cooperative Association ("UECA") owns and will  
23 operate the 230/115 kV line. If this option is chosen, HPP would replace UECA's 115 kV  
24 conductors and insulators with 230 kV conductors and insulators, thereby upgrading the line to a  
25 230/230 kV line. No new right of way will be required for the 230 kV transmission line from the  
26 Westland Substation to the McNary Substation. UECA may relocate portions of the displaced 115  
27 kV line along different routes elsewhere in Umatilla County. HPP intends to deed the 230 kV line  
28 to UECA.  
29

30 The 500 kV option would require construction of approximately 14.2 miles of new 500 kV  
31 transmission line between the energy facility site and the McNary Substation. The route for the 500  
32 kV transmission line is shown on Figures I-6A and I-6B in the ASC. Most transmission line  
33 structures would be placed within existing BPA right of way with the remainder located on private  
34 lands. All construction will be entirely within Umatilla County with a portion also located within  
35 the City of Umatilla. The 500 kV line would be deeded to BPA.  
36

37 Upon leaving the energy facility site, the 500 kV line will proceed north and east  
38 approximately 1.5 miles to Feedville Road. This portion of the route is primarily occupied by an  
39 existing Pacific Power & Light 69 kV transmission line. The new transmission line would be  
40 constructed as a double circuit 69/500 kV in this section. At Feedville Road the line will proceed  
41 east for approximately 3.2 miles. At the intersection with Canal Road the line will proceed north  
42 for approximately .9 miles to its intersection with the BPA McNary-Roundup transmission line  
43 corridor. From this point the 500 kV line will parallel the McNary-Roundup line within BPA's  
44 existing 250 foot right-of way, and head in a northwesterly direction approximately 7.6 miles.

1 Approximately 0.8 miles of this 7.6 mile section will include construction of a double-circuit  
2 500/230 kV line with PacifiCorp. As the line approaches the McNary substation it will occupy  
3 existing double-circuit transmission structures now being used by the BPA Slatt-McNary and  
4 McNary-Lower Monument 500 kV lines.  
5

6 The existing BPA 500 kV McNary-Lower Monumental transmission line will be displaced  
7 by the facility's 500 kV transmission line and will be relocated about 500 - 800 feet east of its  
8 present location, as shown on document ODOE-285.3 of the contested case record. This relocated  
9 section will be about one mile (5000 feet) in length. The relocation begins about 150 feet north of  
10 the intersection of Margaret Avenue and Lind Road at the existing 500 kV McNary-Lower  
11 Monumental transmission line to the east of Lind Road. The relocated line will then proceed north  
12 generally paralleling Lind Road, crossing Highway 730, and continuing north across the existing  
13 railroad tracks near the McNary Substation. After crossing the railroad tracks, the line would turn  
14 northwest and proceed about 700 feet to the McNary Substation.  
15

16 The corridor for the relocated BPA 500 kV line includes a currently occupied residence.  
17 Pursuant to an agreement with the occupant of that residence, HPP will not place the centerline of  
18 the relocated 500 kV line closer than 80 feet to that property if it is occupied as a residence at the  
19 time of construction.  
20

21 *Power Generation Process Description:* The Hermiston Power Project will consist of two  
22 identical, natural gas-fired, combined-cycle units. A gas turbine-generator is essentially a jet engine  
23 on a stationary mount that derives its power from the combustion of natural gas, which is used to  
24 turn an electric generator. The high-temperature exhaust from the gas turbine-generator is ducted to  
25 a heat recovery steam generator (HRSG) to generate steam. This steam, in turn, is used to drive a  
26 steam turbine-generator. The term "combined-cycle power plant" describes the sequential use of the  
27 fuel energy in both the gas turbine-generator and the steam turbine-generator.  
28

29 The Hermiston Power Project will use approximately 3,400 million British thermal units  
30 (MMBtu) of natural gas fuel per hour at full load. A BTU (British thermal unit) is the amount of  
31 energy needed to heat one pound of water one degree Fahrenheit. Fuel for the turbines will  
32 primarily be natural gas with distillate used only as backup fuel.  
33

34 A power plant's steam cycle describes the process where water enters the heat recovery  
35 steam generator (HRSG) as a liquid and is changed into a high-temperature, high-pressure vapor  
36 (steam) whose energy can then be used to drive the steam turbine. In order to complete the steam  
37 cycle, low-pressure, low-temperature steam exiting the steam turbine-generator must be cooled to  
38 condense the steam back to liquid (water). The change from steam to liquid occurs in the  
39 condenser. Cooling of the condenser is provided by a separate circulating water system known as  
40 the condenser/cooling tower loop.  
41

42 The cooling tower provides a flow of relatively cold water to the condenser and receives  
43 heated water back from the condenser. The cooling tower is used to dissipate heat by evaporating a  
44 portion of the water circulating within the loop. Water lost through evaporation is replaced by the

1 facility's cooling water makeup supply source. Cooling tower makeup water will be provided and  
2 sold to the facility by the Port of Umatilla. The Port of Umatilla will obtain the water sold to the  
3 Hermiston Power Project from the Columbia River under Permit # 49497. The evaporation rate  
4 from the cooling tower will vary between 1,300 gallons per minute and 2,000 gallons per minute,  
5 depending on steam turbine load and ambient weather conditions. The water use of the entire  
6 energy facility under full load conditions, while operating at an average ambient temperature of 53  
7 degrees Fahrenheit, will be approximately 1969 gallons per minute.  
8

9 The proposed power plant will produce wastewater from cooling tower blowdown,  
10 demineralization system backwash and from sanitary wastewater. The combined wastewater  
11 stream will be discharged to Simplot's existing wastewater discharge system, which reuses treated  
12 wastewater for irrigation. Simplot has an existing Water Pollution Control Facility (WPCF) permit  
13 administered by the Department of Environmental Quality ("DEQ"). Simplot has requested and  
14 obtained a modification to its WPCF permit to accommodate the additional discharge from the  
15 proposed energy facility. This permit is a "third party" permit under OAR 345-22-010(2).  
16

### 17 **III. CONDITIONS**

#### 18 **Carbon Dioxide Emissions Standard, ORS 469.503(2)**

19 (1) Prior to commencement of construction, the site certificate holder shall submit to the  
20 State of Oregon through the Council a guaranty substantially in the form of Exhibit B-2, executed  
21 by TransCanada PipeLines Ltd., Ida-West Energy Company ("Ida West") and Idaho Power  
22 Company in the amount of the monetary path payment requirement (in 1998 dollars) as  
23 determined by the calculations set forth in Condition 4 and based on the estimated heat rate and  
24 capacity certified pursuant to Condition 4(e) below and as adjusted in accordance with the terms  
25 of this site certificate pursuant to Condition 4(d). For the purposes of this site certificate, the  
26 "monetary path payment requirement" means the offset funds determined pursuant to ORS  
27 469.503(2)(c) and the selection and contracting funds determined pursuant to ORS  
28 469.503(2)(d)(A)(ii) that the site certificate holder must disburse to the Oregon Climate Trust, as  
29 the qualified organization, pursuant to ORS 469.403(2)(d)(A). The calculation of 1998 dollars  
30 shall be made using the index set forth below.  
31  
32  
33

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

42 In lieu of the guaranty requirement set forth above that the site certificate holder must provide  
43 prior to commencement of construction, the site certificate holder may instead provide a letter of  
44 credit in the amount of the monetary path payment requirement as calculated pursuant to

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

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

20  
21 (2) The site certificate holder shall disburse to the Oregon Climate Trust offset funds and  
22 contracting and selection funds as requested by the Oregon Climate Trust up to the monetary path  
23 payment requirement as determined by the calculations set forth in Condition 4 and based on the  
24 estimated heat rate and capacity certified pursuant to Condition 4(e) below (in 1998 dollars) and  
25 as adjusted in accordance with the terms of this site certificate pursuant to Condition 4(d).  
26 Disbursements shall be made in response to requests from the Oregon Climate Trust in  
27 accordance with the requirements of ORS 469.503(2)(d)(A).

28  
29 (3) Notwithstanding anything in this amended site certificate to the contrary, the site  
30 certificate holder shall have no obligation with regard to offsets, the offset funds and the  
31 selection and contracting funds other than to make available to the Oregon Climate Trust the  
32 total amount required under this site certificate, nor shall any nonperformance, negligence or  
33 misconduct on the part of the Oregon Climate Trust be a basis for revocation of this site  
34 certificate or any other enforcement action by the Council with respect to the site certificate  
35 holder.

36  
37 (4) The site certificate holder shall use the following methodology to calculate the amount of  
38 the monetary path payment requirement that it must make available to the qualified organization  
39 pursuant to ORS 469.503(2)(d)(A). The same methodology shall apply to a one-unit or a two-  
40 unit facility. All calculations shall be made assuming that no steam is supplied for cogeneration.  
41 The site certificate holder shall use the contracted design parameters for capacity and heat rate  
42 for the facility that it reports pursuant to Condition 4(e) to calculate the estimated monetary path  
43 payment requirement. The site certificate holder shall use the Year One Capacities and Year One

1 Heat Rates that it reports for the facility pursuant to Condition 4(f) to calculate whether it owes  
2 additional monetary path payments.

3  
4 (a) To calculate the offset funds payment requirement as provided in ORS 469.503(2)(c), the site  
5 certificate holder shall use the following methodology:

6  
7 (A) The site certificate holder shall use the respective capacity, heat rate, and carbon  
8 dioxide emission factor for each fuel. The carbon dioxide emission factor for natural gas  
9 is 0.000117 lb. CO<sub>2</sub>/Btu, and for distillate fuel it is 0.000161 lb. CO<sub>2</sub>/Btu;

10  
11 (B) The site certificate holder shall determine the time the plant will operate using each  
12 fuel. For distillate fuel, the time shall be the average number of hours annually that this  
13 site certificate permits the facility to use distillate fuel pursuant to Condition 4(g). The  
14 site certificate holder shall determine the annual average hours of operation on natural gas  
15 by subtracting the annual average hours on distillate fuel from 8,760 hours;

16  
17 (C) The site certificate holder shall calculate the total CO<sub>2</sub> emissions (lb. CO<sub>2</sub>) for each  
18 fuel:

19  
20 (i) First, the site certificate holder shall multiply the nominal power of the facility  
21 (kW) while operating on natural gas by the annual average hours of operation on  
22 natural gas. It shall then multiply that product by 30 years to determine the total  
23 net plant output (kWh). It shall multiply the total net plant output by the heat rate  
24 (Btu/kWh) while operating on natural gas and by the carbon dioxide emission  
25 factor for natural gas (0.000117 lb. CO<sub>2</sub>/Btu) to determine the total CO<sub>2</sub> emissions  
26 (lb.) from operating on natural gas;

27  
28 (ii) Second, the site certificate holder shall multiply the nominal power of the  
29 facility (kW) while operating on distillate fuel by the annual average hours of  
30 operation on distillate fuel. It shall then multiply that product by 30 years to  
31 determine the total net plant output (kWh). It shall multiply the total net plant  
32 output by the heat rate (Btu/kWh) while operating on distillate fuel and by the  
33 carbon dioxide emission factor for distillate fuel (0.000161 lb. CO<sub>2</sub>/Btu) to  
34 determine the total CO<sub>2</sub> emissions (lb.) from operating on distillate fuel; then,

35  
36 (D) The site certificate holder shall calculate the average CO<sub>2</sub> emissions rate  
37 (lb. CO<sub>2</sub>/kWh) for the two fuels. It shall add the total CO<sub>2</sub> emissions that each fuel  
38 contributes for 30 years to determine the total combined CO<sub>2</sub> emissions from the facility  
39 (lb.). Then, it shall add the total net plant output from operation on each fuel for 30 years  
40 to determine the total combined plant output (kWh). Then it shall divide the total  
41 combined CO<sub>2</sub> emissions by the total combined plant output to determine the average  
42 CO<sub>2</sub> emissions rate for the facility (lb. CO<sub>2</sub>/kWh);  
43

1 (E) The site certificate holder shall subtract the carbon dioxide standard of 0.7 lb.  
2 CO<sub>2</sub>/kWh from the average CO<sub>2</sub> emissions rate for the facility to determine its excess  
3 CO<sub>2</sub> emissions rate (lb. CO<sub>2</sub>/kWh);  
4

5 (F) The site certificate holder shall multiply the total combined plant output (kWh) by the  
6 facility's excess CO<sub>2</sub> emissions rate (lb. CO<sub>2</sub>/kWh). It shall then divide that product by  
7 2,000 pounds to determine the total tons of CO<sub>2</sub> emissions it must mitigate (tons); then,  
8

9 (G) The site certificate holder shall multiply the total tons of CO<sub>2</sub> emissions it must  
10 mitigate by \$0.57 per ton of CO<sub>2</sub> to determine the sub-total for the offset funds.  
11

12 (b) To calculate the selection and contracting funds sub-total as provided in ORS  
13 469.503(2(d)(A)(ii), the site certificate holder shall subtract \$500,000 from the offset funds  
14 subtotal; then multiply the remaining amount by 4.286 percent; then add \$50,000 to that product.  
15

16 (c) To determine its monetary path payment requirement, the site certificate holder shall add the  
17 sub-total for the offset funds and the sub-total for the selection and contracting funds.  
18

19 (d) When the site certificate holder submits the Year One Test report required in Condition 4(f),  
20 it shall increase its guaranty or letter of credit for the monetary path payment requirement if the  
21 calculation using reported data shows that the adjusted monetary path payment requirement  
22 exceeds the monetary path payment requirement for which the site certificate holder had  
23 provided a guaranty or letter of credit prior to commencing construction, pursuant to Condition 1.  
24

25 (A) The site certificate holder shall make the appropriate calculations and increase its  
26 guaranty or letter of credit, if necessary, within 30 days of filing its Year One Test report  
27 with the Council.  
28

29 (B) In no case shall the site certificate holder diminish the guaranty or letter of credit it  
30 provided prior to commencing construction or receive a refund from the qualified  
31 organization based on the calculations made using the Year One Capacities and the Year  
32 One Heat Rates.  
33

34 (e) Prior to commencement of construction, the site certificate holder shall notify the Council in  
35 writing of its final selection of gas turbine vendor and shall submit written design information to  
36 the Council sufficient to verify the facility's designed new and clean heat rate and its nominal  
37 electric generating capacity at average annual site conditions for each fuel type. The information  
38 that the site certificate holder submits shall include the proposed binding annual average number  
39 of hours of facility operation on distillate fuel oil. The report shall also include an affidavit or  
40 other evidence from the site certificate holder to confirm that the vendor has guaranteed the heat  
41 rate and that the site certificate holder's contract with the vendor includes a liquidated damages  
42 provision adequate to fund any increased monetary path payment requirement calculated under  
43 Condition 4(d) resulting from vendor's failure to achieve the guaranteed heat rates or capacities.  
44

1 (f) Within two months of completion of the first year of commercial operation, the site  
2 certificate holder shall provide to the Council pursuant to ORS 469.503(2)(e)(G) a test report  
3 (Year One Test) of the actual heat rates (Year One Heat Rates) and nominal generating capacities  
4 (Year One Capacities) for each fuel type used, without degradation, assuming no steam is  
5 supplied for cogeneration, as determined by a 100-hour test at full power completed during the  
6 first 12 months of commercial operation, with the results adjusted for the average annual site  
7 condition for temperature, barometric pressure and relative humidity and use of alternative fuels,  
8 and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of  
9 161 pounds of carbon dioxide per million Btu of distillate fuel.

10  
11 (g) The combustion turbine units shall be fueled solely with natural gas or with synthetic gas  
12 with a carbon content per million Btu no greater than natural gas, except that the site certificate  
13 holder may use distillate fuel for no more than an average of 378 hours per year calculated on a  
14 rolling average of the previous five years. For the first five years, distillate fuel use may  
15 fluctuate, provided that the average use, when calculated at the end of five years, does not exceed  
16 378 hours per year. However, if prior to the commencement of construction the site certificate  
17 holder proposes in its written submission to the Council made pursuant to Condition 4(e) to use  
18 distillate fuel more or less than 378 hours on average per year, the number proposed by the site  
19 certificate holder shall replace 378 hours as the binding annual average number of hours for  
20 distillate fuel use under this Condition 4(g) and for calculations of the monetary path payment  
21 requirement.

22  
23 Notwithstanding the number of hours permitted annually of distillate fuel use based on a five-  
24 year rolling average or during the first five years, in no year shall the facility's use of distillate  
25 fuel exceed 10 percent of its expected total annual fuel use in Btu, higher heating value.

26  
27 **Shelf Life: OAR 345-27-020(3)**

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

31  
32 (6) Construction completion of the facility shall be defined as the commercial operation date of  
33 the facility. If the Site Certificate holder begins construction by November 30, 2000 but cannot  
34 complete construction by January 1, 2003, then the Council may grant extensions of the  
35 construction completion date in accordance with OAR 345-27-030.

36  
37 **Organizational, Managerial And Technical Expertise: OAR 345-22-010**

38  
39 (7) Prior to commencement of construction, the Site Certificate holder shall demonstrate to  
40 ODOE that the Port has not forfeited its legal right to perfect the 2400 gpm contracted to HPP.

41  
42 (8) Prior to commencement of construction, HPP shall have a contract or other agreement with  
43 Simplot to accept and dispose of HPP's wastewater.

1 (9) Prior to construction, HPP shall identify for the Council's approval the EPC contractor  
2 chosen to construct the facility. Prior to commercial operation, HPP shall identify for the Council's  
3 approval the contractor chosen to operate the facility. Any such approval shall not be unreasonably  
4 withheld.

5  
6 (10) All modifications to the partnership agreement shall be submitted to the Department for  
7 incorporation in the Site Certificate file.

8  
9 (11) Any change of operator shall be reported to the Department.

10  
11 (12) Any matter of non-compliance under this Site Certificate shall be the responsibility of the  
12 partnership. Any notices of violation issued will be issued to the partnership. Any civil penalties  
13 levied will be the responsibility of the partners jointly and severally.

14  
15 (13) In the annual report submitted to the Council, the Site Certificate holder shall describe any  
16 change in the membership or voting requirements of its management committee or any admission  
17 or withdrawal of a partner not described in any earlier annual report previously submitted to the  
18 Council. Any (a) such change in such membership or voting requirements resulting in a material  
19 change to the Site Certificate holder's existing management structure and procedures; (b) such  
20 admission resulting in a new partner's active participation in the business and affairs of the Site  
21 Certificate holder; or (c) such withdrawal resulting in the complete removal of an existing partner  
22 from its previously active participation in the business and affairs of the Site Certificate holder,  
23 shall be subject to approval of the Council, which approval shall not be unreasonably withheld or  
24 delayed.

25  
26 (14) The Site Certificate holder shall contractually require the EPC contractor and all  
27 independent contractors and subcontractors involved in the construction and operation of the  
28 proposed facilities to comply with all applicable laws and regulations and with the terms and  
29 conditions of the Site Certificate. Such contractual provision shall not operate to relieve the Site  
30 Certificate holder of responsibility under the Site Certificate.

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

32  
33 (15) Prior to commencement of construction, the site certificate holder shall submit to the  
34 State of Oregon through the Council, a guaranty substantially in the form of Amended Exhibit A,  
35 executed by TransCanada PipeLines Ltd., Ida-West Energy Company (Ida West") and Idaho  
36 Power Company in the amount of \$8,202,000 (in 1995 dollars). The calculation of 1995 dollars  
37 shall be made using the index set forth below. The site certificate holder may offer to substitute  
38 the guaranty of a new parent corporation of Ida West for the guaranty of Idaho Power Company.  
39 In that event, the Council will approve the guaranty from the new parent unless the Council finds  
40 that the proposed guaranty does not provide comparable security to the guaranty of Idaho Power  
41 Company. Such approval will not require a site certificate amendment. The guaranty shall  
42 remain in effect until such time as the total security in the retirement fund described in Condition  
43 16 below reaches \$8,202,000 (in 1995 dollars). For the purposes of this site certificate, "total  
44 security in the retirement fund" means the total amount of all letters of credit and performance

1 bonds issued or posted as security for the performance of the site certificate holder's obligation  
2 under OAR 345-22-130.

3  
4 In lieu of the guaranty requirement set forth above that the site certificate holder must provide  
5 prior to commencement of construction, the site certificate holder may instead provide a letter of  
6 credit in the amount of \$8,202,000 (in 1995 dollars). The calculation of 1995 dollars shall be  
7 made using the U.S. Gross Domestic Product Deflator for Total Non-Residential Fixed  
8 Investment, as published by the U.S. Department of Commerce, Bureau of Economic Analysis,  
9 or any successor agency ("the index"). The amount of the letter of credit shall increase annually  
10 by the percentage increase in the index. If at any time the index is no longer published, the  
11 Council shall select a comparable calculation of 1995 dollars. The letter of credit shall not be  
12 subject to revocation during the lifetime of the facility. The terms of the letter of credit and  
13 identity of the issuer shall be subject to approval by the Council, which approval shall not be  
14 unreasonably withheld. All funds received by the site certificate holder from the salvage of  
15 equipment or buildings shall be committed to the restoration of the facility site to the extent  
16 necessary to fund the approved restoration. If the site certificate holder provides, and the Council  
17 approves, a letter of credit in accordance with this condition, the requirements of Conditions 16  
18 and 79 will cease and the letter of credit will be deemed to satisfy fully the retirement fund  
19 obligations set forth therein.

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

1 (17) In the event construction is begun but not completed by the deadlines set forth in the Site  
2 Certificate, or the energy facility is closed permanently before the end of its useful life, HPP shall  
3 restore the site to a useful condition. Restoration shall include but not be limited to the removal of  
4 transmission line towers erected by the Site Certificate holder unless the Council determines that  
5 such towers are likely to be used by another facility, electric utility or other entity that provides  
6 electric service.

7  
8 **Structural: OAR 345-22-020**  
9

10 (18) Prior to the start of construction, HPP shall conduct an investigation as described by Mr. D.  
11 Wermiel of DOGAMI in a letter dated May 9, 1995 to Mr. A. Bless, ODOE which would confirm  
12 HPP's characterization of ground response to potential seismic events. The ground response  
13 evaluation will include drilling one deep boring to bedrock and measuring downhole shear wave  
14 velocity profile beneath the energy facility site. Based on the site-specific measurements, ground  
15 response and amplification will be evaluated.

16  
17 The geotechnical investigation shall be peer reviewed by the DOGAMI or by a private engineering  
18 geologist or geotechnical engineer registered in the state of Oregon that is independent from HPP  
19 and the HPP's contractors and subcontractors. If a private engineering geologist or geotechnical  
20 engineer is used, the choice of peer reviewer shall be approved by ODOE in consultation with  
21 DOGAMI.

22  
23 (19) If the detailed survey reveals evidence that is not as described in the ASC, then the HPP  
24 shall revise the facility design parameters to comply with corresponding Oregon Building Code  
25 requirements. If pre-construction seismic analysis reveals features unique to the energy facility site  
26 that justify enhanced seismic design, HPP shall design safety structures critical to public health or  
27 safety in consultation with the Building Codes Division of the Department of Consumer and  
28 Business Services ("DCBS"), subject to approval by ODOE. Critical structures include hazardous  
29 material storage areas and control rooms.

30  
31 (20) Except as provided for in condition 2 above, HPP shall design and construct the proposed  
32 facility to be consistent with Seismic Zone 2b requirements, in compliance with the laws and  
33 regulations administered by the DCBS.

34  
35 (21) HPP shall place electrical transmission towers to avoid, to the greatest extent possible given  
36 the existing alignment, the narrow strip of alluvium along the Umatilla River that may be subject to  
37 liquefaction. If this strip cannot be avoided, the transmission towers shall be constructed so as to  
38 otherwise mitigate for the risk of liquefaction. Mitigation measures shall be developed in  
39 consultation with DOGAMI.

40  
41 (22) HPP shall design the energy facility in accordance with a design basis seismic event of  
42 magnitude 4.5 along the service Anticline at a distance of 1 km from the energy facility site, as  
43 described on p. 14a of Exhibit G of the ASC, and in accordance with a Seismic Zone 2b  
44 classification by the Oregon Building Code.

1  
2 (23) HPP shall embed transmission line tower foundations below significant loose soils as  
3 described on p. 16 of Exhibit G of the ASC.

4  
5 (24) The PGT pipeline shall be embedded below loose soil deposits combined, if necessary with  
6 the use of free draining, coarse granular backfill as described in the ASC, Exhibit G p. 17.

7  
8 (25) Along the 500 kV transmission line right of way in the vicinity of Maxwell Canal, near  
9 Diagonal Road, east and north of Hermiston, along the relocated BPA 500 kV McNary to Lower  
10 Monumental line between Highway 730 and Power City Road, and in the area near Power City,  
11 transmission line poles will be constructed in upland areas and/or on higher ground underlain by  
12 dense granular soil with negligible liquefaction potential as described in ASC Exhibit G p. 17.

13  
14 (26) Transmission pole and pipeline locations that could be subject to settling, slumping or  
15 liquefaction shall be tested for soil properties prior to pole and pipe installation, as described on  
16 page 19 on Exhibit G of the ASC.

17  
18 **Soil Protection: OAR 345-22-022**

19  
20 (27) Ground disturbing activities and incidental activities (e.g., personal vehicle parking, sanitary  
21 facilities, temporary staging areas, etc.) for the facility shall be confined to a limited number of  
22 locations identified by HPP and approved by the Department prior to commencement of  
23 construction.

24  
25 (28) Only existing roadways shall be used for access along the pipelines; access for transmission  
26 line construction and maintenance shall utilize existing roads wherever practicable and temporary  
27 transmission line access roads shall only be constructed where there is open terrain with no existing  
28 access road; and no permanent impacts shall be associated with pipeline or transmission line access  
29 road construction or maintenance.

30  
31 (29) Topsoils and subsoils resulting from excavation for gas and water pipelines shall be  
32 segregated and the topsoil restored to minimize impacts on soil fertility.

33  
34 (30) The Site Certificate holder shall utilize site watering or other methods to reduce wind  
35 erosion during site earthwork or construction. Post construction soil stabilization methods shall be  
36 utilized as described on ASC Exhibit G p. 18.

37  
38 **Protected Areas: OAR 345-22-040**

39  
40 (31) The Site Certificate holder shall not operate the Circulating Water System at above 5,200  
41 ppm, TDS equivalent on an annual average basis. Drift rate shall not result in solids carryover  
42 exceeding the equivalent of 0.005% drift rate at 5,200 ppm, TDS.

1 **Fish and Wildlife: OAR 345-22-060**  
2

3 (32) Any trimming, side cutting or other removal of riparian vegetation that may be required  
4 under the proposed 500 kV transmission line shall be kept to a minimum and shall only be  
5 conducted to meet National Electric Safety Code clearances.  
6

7 (33) Construction and maintenance of the transmission lines and natural gas pipelines shall  
8 avoid all wetlands, except for the two wetland areas (wetlands #4 and #15) that will be  
9 unavoidably impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and the one  
10 wetland area, wetland #13, that may be impacted by pole placement.  
11

12 (34) No ground disturbing activities shall be conducted in the Umatilla River, no water  
13 withdrawals from the Umatilla River shall occur, and the energy facility shall not discharge water  
14 into the river (ASC, Exhibit P, p. 15).  
15

16 (35) Non-wetland areas disturbed by construction of the energy facility, the equipment  
17 storage/staging area and employee parking staging area, the natural gas pipelines, the water  
18 supply pipeline, and the transmission lines shall be revegetated upon completion of construction.  
19 Revegetation shall emphasize the use of native species and shall be conducted in accordance with  
20 the Recommended Revegetation Plan (July 19, 1994) stated in the ASC (Exhibit P/P-1,  
21 Appendix E).  
22

23 (36) Subject to Condition (37), if feasible, construction of the natural gas pipelines, water  
24 supply line and transmission line shall occur outside of sensitive time periods (as described in the  
25 ASC, Exhibit P/P-1, page 44a) for the following wildlife species of concern which were  
26 documented within the impact area of the proposed natural gas pipelines, water supply line and  
27 transmission line: painted turtle, long-billed curlew, grasshopper sparrow, Swainson's hawk,  
28 burrowing owl, and bank swallow.  
29

30 (37) Notwithstanding Condition (36), prior to construction of the gas pipelines, water supply  
31 line and transmission line HPP shall provide to ODOE a construction schedule, including  
32 activities and locations, if any, of planned construction of the gas pipelines, water supply line and  
33 transmission line during the sensitive time periods for the species listed above. HPP shall consult  
34 with ODFW to make every effort to schedule construction activities to avoid adverse impact on  
35 the species listed above.  
36

37 Not less than 60 days prior to the sensitive time periods for species listed above, HPP shall notify  
38 ODOE in writing of any construction activities on the gas pipelines, water supply line and  
39 transmission line scheduled for those time periods. If construction activities cannot be scheduled  
40 to occur outside the sensitive time periods for the above listed species of concern, pre-  
41 construction biological surveys shall be conducted by a wildlife biologist within the impact area  
42 of the proposed natural gas pipelines, water supply line and transmission line to identify the  
43 location of wildlife species of concern or their nest sites. HPP shall develop the methodology for  
44 these pre-construction surveys in consultation with ODFW prior to conducting the surveys.

1 Mitigation for potential impacts to any wildlife species of concern and/or their nest sites found  
2 during pre-construction surveys shall be developed by HPP prior to construction of the gas  
3 pipelines, water supply line and transmission line and in consultation with ODFW. The  
4 mitigation plan shall be submitted to ODFW and ODOE for review and approval prior to  
5 construction of the gas pipelines, water supply line and transmission line. ODOE shall make a  
6 final determination on the mitigation plan within 45 days of its submission.  
7

8 (38) Upon completion of construction of the energy facility, two raptor perching poles shall be  
9 placed near the outside edge of the 17 acre energy facility site. The design and location of these  
10 raptor perching poles shall be developed in consultations with ODFW. Raptor perching poles  
11 shall be located to benefit raptors without interfering with the energy facility plant operation and  
12 maintenance.  
13

14 (39) Transmission lines shall span the Umatilla River and associated riparian habitat in order  
15 to avoid adverse impacts, as described in the ASC (Exhibit P, p. 15). The natural gas pipelines,  
16 water supply line, and transmission lines shall be routed to avoid riparian areas and wetlands  
17 adjacent to the Umatilla River. All permanent access routes shall be designed to be set back at  
18 least 50 feet from the Umatilla River, as described in the ASC (Exhibit N, p. 7a).  
19

20 (40) The following areas shall be flagged in the field prior to the start of construction to  
21 delineate the maximum extent of project disturbance:  
22

- 23 i. the natural gas pipeline and transmission line routes through wetlands #4, #13,  
24 and #15;
- 25
- 26 ii. any natural gas pipeline, water supply line, and transmission line routes within 50  
27 feet of the Umatilla River; and
- 28
- 29 iii. the transmission line crossings of the Umatilla River.  
30 /

31 (41) Notification shall be provided to the ODFW's Pendleton District office at least one week  
32 (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply  
33 pipeline, and transmission lines.  
34

35 (42) Measures taken to mitigate impacts to fish and wildlife and their habitats shall be  
36 monitored by HPP. Monitoring methodologies and schedules shall be developed in consultation  
37 with ODFW. A mitigation monitoring plan shall be submitted to ODFW and ODOE for review  
38 and approval prior to issuance of a notice to proceed. If any mitigation measures are determined  
39 by the HPP or ODFW to be unsuccessful, corrective actions shall be taken by the applicant after  
40 consultation with ODFW.  
41

42 (43) A minimum of ten (10) cottonwood (*Populus trichocarpa*) tree saplings shall be planted,  
43 in an appropriate habitat area, and within the vegetation impact area for the natural gas pipelines

1 and electrical transmission lines for every cottonwood tree removed during construction of the  
2 natural gas pipelines and electrical transmission lines.

3  
4 (44) The project shall not impact any native vegetation within the U.S. Army's Umatilla  
5 Ordinance Depot.

6  
7 (45) HPP shall design transmission lines with a separation between conductors greater than 5  
8 feet, and shall consider other techniques to reduce collision potential (e.g., clustering lines,  
9 placing colored serial marker ball on the line, etc.)

10  
11 (46) Top soils and subsoils resulting from excavation for gas and water pipelines shall be  
12 segregated and the top soil restored.

13  
14 (47) The Swainson's hawk nest south of the proposed energy facility (described in ASC Ex P,  
15 page 19) shall be monitored during the two weeks prior to facility construction to determine if  
16 the nest is active. If the nest is determined to be active, a qualified biologist shall be retained to  
17 monitor the nest during facility construction and maintain contact with ODFW. If monitoring  
18 indicates that facility construction is adversely impacting nesting Swainson's hawks or their  
19 young, a mitigation plan shall be developed after consultation with ODFW.

20  
21 **Threatened and Endangered Species: OAR 345-22-070**

22  
23 (48) Raptor protection shall be employed in the design and construction of the transmission  
24 towers and transmission lines following the methods described by Olendorf, R.L., A.D. Miller,  
25 and R.N. Lehman, 1981, Suggested practices for raptor protection on power lines, Raptor  
26 Research Foundation, University of Minnesota, St. Paul, Minnesota. A detailed design shall be  
27 submitted to the ODFW for review and approval during the design phase of the project. All  
28 energized transmission conductors shall be designed with adequate separation of a minimum of  
29 five feet.

30 /  
31 (49) Notification shall be provided to the ODFW's Pendleton District office at least one week  
32 (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply  
33 pipeline, and transmission lines.

34  
35 (50) HPP shall conduct a pre-construction survey to determine if *Astragalus collinus var.*  
36 *laurentii* is present along the route of the relocated BPA 500 kV transmission line where the  
37 route crosses the slope that occurs north of Highway 730. The survey shall be conducted during  
38 the appropriate field season (May through early July) by a qualified biologist. If the species is  
39 found to occur in areas that might be affected by construction of the relocated BPA 500 kV line,  
40 HPP shall contact ODOE and the Oregon Department of Agriculture, Plant Conservation biology  
41 Program to develop a mitigation plan.

42  
43 **Scenic and Aesthetic Values: OAR 345-22-080**

1 (51) To minimize visual intrusion caused by the stacks, the stacks shall be painted in a matte  
2 finished neutral color to minimize the potential for glare caused by reflective surfaces. Colors  
3 shall be chosen to blend with the surrounding area, to the extent that the choice does not  
4 compromise air traffic safety.

5  
6 (52) Landscaping shall be used to screen the energy facility from the nearest residence and  
7 roadways to the extent reasonably feasible. Shrubbery and trees planted along the perimeter of  
8 the energy facility site and other landscaping shall be well-maintained and include low-  
9 maintenance and indigenous plants.

10  
11 (53) To minimize project visibility at night, outdoor lighting shall be limited to the extent  
12 necessary to maintain safety conditions.

13  
14 (54) HPP will not put up signs along Feedville Road without authorization from the County.

15  
16 **Historic, Cultural, and Archaeological Resources: OAR 345-22-090**

17  
18 (55) HPP shall consult with CTUIR before commencing construction. HPP shall allow tribal  
19 monitoring by CTUIR of earth-moving activities within areas with a high potential for containing  
20 archaeological remains. These areas are identified in Figure T-5 of the ASC.

21  
22 (56) HPP shall notify the CTUIR before starting construction and shall provide the opportunity  
23 for a CTUIR representative, knowledgeable in cultural resources of the area, to be available for  
24 periodic on-site monitoring during construction activities.

25  
26 (57) If resources are discovered during project construction or construction-related activities  
27 that are likely to be eligible for listing on the National Register of Historic Places or to qualify as  
28 archeological objects or sites, HPP shall stop all work in the immediate area of the find and  
29 consult with the CTUIR and SHPO. HPP shall not restart work in the affected area until it has  
30 complied with the archeological permit requirements administered by SHPO (currently set forth  
31 in OAR Chapter 736, Division 51).

32  
33 (58) HPP shall place the transmission towers/poles away from the banks of the Z, Maxwell, A-  
34 Line and Feed canals, and the Hermiston and Stanfield Branch Furnish Ditches, and shall avoid  
35 any disturbance at the canal crossings when electrical lines are strung, to avoid disturbance of the  
36 canal features during construction and operation of the transmission line.

37  
38 (59) If practicable, HPP shall avoid disturbance to the Feed Canal in construction of the NWP  
39 pipeline. If construction cannot avoid the canal, HPP shall consult with SHPO and shall take  
40 steps required by SHPO to mitigate adverse impacts to the canal. Fill excavated during any  
41 construction at the canal shall be monitored by a professional historic archaeologist.

1 (60) HPP shall consult with the irrigation district in which the canal is located before  
2 construction or the upgrading of the transmission line in the area of the canal to determine  
3 whether there are any applicable restrictions.  
4

5 **Recreation: OAR 345-22-100**  
6

7 None  
8

9 **Socio-Economic Impacts: OAR 345-22-110**

10 (61) HPP will hire as many local workers as is reasonably possible for both the construction  
11 and operation of the Project. A "local" worker is one who resides within a 60 mile radius from  
12 the project site encompassing part of Umatilla and Morrow Counties in Oregon and the part of  
13 Benton, Franklin and Walla Walla counties in Washington. HPP will establish a single point of  
14 contact with the Oregon Employment Department in Pendleton Oregon to coordinate  
15 employment opportunities at the project site.  
16

17 (62) During construction, contracted portable toilet facilities shall be used. During operation,  
18 domestic wastewater will be treated by the Simplot Company treatment system.  
19

20 (63) HPP shall retain stormwater on-site in a stormwater detention pond. During an extreme  
21 event, excess stormwater will be discharged from the settlement basin to the natural drainage.  
22 Prior to construction the Site Certificate holder will obtain from the Department of  
23 Environmental Quality a general National Pollutant Discharge Elimination System (NPDES)  
24 permit 1200-C for construction of the facility. Prior to operation the facility will obtain a general  
25 NPDES permit 1200-H as administered by DEQ.  
26

27 (64) The energy facility shall be constructed with fire hydrants and a sprinkler and deluge  
28 system. An employee training program will be implemented and records maintained as described  
29 in the ASC, Exhibit U p. 19. An early warning gas release system will be installed as described in  
30 the ASC Exhibit U p. 19.

31 (65) During construction, HPP shall establish a housing clearing house at the energy facility  
32 site for construction workers. The clearing house shall coordinate with local officials and housing  
33 owners to place workers who need lodging as necessary. During construction, HPP shall monitor  
34 the central vacancy rate in the cities of Umatilla, Stanfield and Hermiston. If the vacancy rate  
35 falls below seven percent, the clearing house will begin its activity to locate available housing  
36 outside of Umatilla, Stanfield and Hermiston so a listing of available housing outside of these  
37 cities can be provided to temporary workers should the vacancy rate fall below five percent. If  
38 the vacancy rate falls below five percent, HPP shall locate housing outside of Umatilla, Stanfield  
39 and Hermiston, or offer temporary housing for any temporary workers that it hires from outside  
40 the local area. HPP shall provide a plan of operation for the housing clearing house to ODOE  
41 prior to the start of construction. HPP shall provide such a plan at least 60 days prior to the start  
42 of construction and ODOE shall review and respond with its approval or comments not later than  
43 30 days after the plan is submitted.  
44

1 (66) Construction worker traffic patterns to the energy facility site will be coordinated with the  
2 state, county and adjacent Simplot potato processing facility. If necessary, sight distances will be  
3 improved and a left turn lane provided on Simplot's private access road at its intersection with  
4 State Road 207.

5 /  
6 (67) Rail delivery shall be used to the extent practical to minimize heavy-haul truck trips  
7 during construction.

8  
9 (68) HPP shall, in consultation with the Hermiston Rural Fire Protection District, establish a  
10 pre-fire plan which shall be available to the local fire district. The plan shall describe key  
11 entrances and exits, the floor plan of the energy facility, the location of hydrants and hoses, and  
12 the location and description of any hazardous materials.

13  
14 **Waste Minimization: OAR 345-22-120**

15  
16 (69) During construction of the facility, HPP shall identify means of minimizing waste  
17 generation and shall recycle waste to the extent reasonably practicable. HPP shall also implement  
18 a waste minimization and recycling program to remain in effect throughout the life of the facility.

19  
20 (70) HPP shall ship used batteries, spent demineralizer resins and spent oxidation catalysts to  
21 vendor recycling facilities. Used SCR catalysts will be shipped to a metals reclaiming facility.

22  
23 (71) During operation, all waste materials shall be contained on the energy facility site within  
24 the site perimeter fence and screened from view. Process waste will be stored in closed  
25 containers. Used batteries shall be stored indoors. Hazardous waste shall be stored and  
26 transported in accordance with applicable state and federal law.

27  
28 (72) HPP shall implement, to the extent reasonably practical, design features such as those  
29 described in Exhibit V pages 4 through 6 to reduce unnecessary water consumption. Such  
30 features may include but are not limited to controls to maximize demineralizer resin efficiency,  
31 utilization of optimal cycles of concentration, selection of advanced gas turbines, sizing of the  
32 condenser to condense all steam produced in the HRSG, recovery of filter backwash water,  
33 reprocessing of filtrate from the sludge dewatering system, and incorporation of a two pass  
34 Reverse Osmosis system.

35  
36 (73) Non hazardous chemicals shall be selected for water treatment to allow use of waste  
37 water for irrigation.

38  
39 (74) Steam condensate that is recovered in the potato processing plant will be returned to the  
40 energy facility for reuse.

41  
42 (75) Upon completion of construction, HPP shall dispose of all temporary structures not  
43 required for future operation of the facility and all used timber, brush, refuse, or flammable  
44 material resulting from clearing of lands or from construction of the facility.

1  
2 **Retirement: OAR 345-22-130**  
3

4 (76) HPP shall manage all hazardous material in accordance with local and state regulatory  
5 standards. Documentation will be maintained and hazardous materials will be handled by  
6 qualified personnel. Hazardous waste will be stored on site no more than 90 days, followed by  
7 transport to a licensed treatment storage disposal facility, as described in ASC, exhibit B p.15a.  
8

9 (77) Storage and handling of flammable and combustible liquid chemicals shall be in  
10 compliance with National Fire Protection Association Codes 30 and 321. Chemical storage areas  
11 will have secondary containment. Storage tanks for distillate shall have secondary containment.  
12 HPP shall comply with Uniform Building Code Chapters 79 for Hazardous Materials and 80 for  
13 Flammable Liquids. Concrete basins will be provided at each of the large electrical transformers  
14 to capture any insulating oil that might spill during a transformer failure or maintenance  
15 operation. (ASC Exhibit F p.6) Foundations and slabs for equipment containing lubricating oil,  
16 insulating oil or hydraulic fluid shall be designed to contain and collect any spill. Secondary  
17 containment for hazardous material storage areas shall have volume equal to 100 percent of the  
18 maximum chemical volume in primary containment (ASC Exhibit F p. 9)  
19

20 (78) HPP shall prevent any condition over which the certificate holder has control from  
21 developing on the site that would preclude restoration of the site to a useful condition. (OAR  
22 345-27-020(9)).  
23

24 (79) This condition shall apply only if the site certificate holder satisfies Condition 15 with a  
25 guaranty instead of a letter of credit. If the site certificate holder satisfies Condition 15 with a  
26 letter of credit, the letter of credit will be deemed to satisfy fully the retirement fund obligations  
27 set forth in this condition and the remainder of this condition shall be of no effect.  
28 /

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

1 report submitted to the Council. All funds received by the site certificate holder from the salvage  
2 of equipment or buildings shall be committed to the restoration of the facility site, to the extent  
3 necessary to fund the approved restoration.  
4

5 (80) In the event construction is begun but not completed by the deadlines set forth in the Site  
6 Certificate, or the energy facility is closed permanently before the end of its useful life, HPP shall  
7 restore the site to a useful condition. Restoration shall include but not be limited to the removal  
8 of transmission line towers erected by the Site Certificate holder unless the Council determines  
9 that such towers are likely to be used by another facility, electric utility or other entity that  
10 provides electric service.  
11

12 (81) At least five years prior to planned permanent closure of the facility, HPP shall submit a  
13 retirement plan to the Council for approval. The plan shall describe how the site will be restored  
14 adequately to a useful condition, including options for post-retirement land use, information on  
15 how impacts to fish, wildlife and the environment will be minimized during the retirement  
16 process, measures to protect the public against risk or danger resulting from post-retirement site  
17 conditions. The plan shall provide for restoration of vegetation to the maximum extent consistent  
18 with the anticipated use of the site after the facility is retired.  
19

20 (82) HPP shall retire the facility at the end of its useful life in accordance with the approved  
21 final retirement plan, pursuant to OAR 345-27-110.  
22

23 (83) The retirement plan shall provide for restoration of vegetation to the maximum extent  
24 consistent with the anticipated use of the site after the facility is retired.  
25

26 (84) Not later than four months before commencing construction of the transmission line, or  
27 immediately before commencing construction of the energy facility (whichever is sooner) HPP  
28 shall notify ODOE of which alternative transmission line route will serve the energy facility.  
29 Once this election has been made, Council approval of the other alternative transmission line  
30 shall terminate.  
31

32 **Mandatory Conditions (General): OAR 345-27-020**  
33

34 The following mandatory conditions are either specifically required by OAR 345-27-020 or are  
35 appropriate under OAR 345-27-020(6) to address project and site specific conditions and  
36 requirements. These mandatory conditions shall apply and should be read together with the  
37 specific additional conditions in this Site Certificate to ensure compliance with the siting  
38 standards of OAR 345 divisions 22, 23 and 24, and to protect the public health and safety.  
39

40 (85) The Site Certificate holder shall submit to the department a legal description of the site to  
41 be appended to the Site Certificate prior to construction.  
42

43 (86) The facility shall be designed, constructed, operated and retired:  
44

1 (a) Substantially as described in this Site Certificate and in the Final Order;

2  
3 (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules,  
4 and applicable state and local laws, rules and ordinances in effect at the time the Site Certificate  
5 is issued; and

6  
7 (c) In compliance with all applicable permit requirements of other state agencies.  
8

9 (87) Construction of the facility must begin and be completed by dates specified in Condition  
10 5 of this Site Certificate.

11  
12 (88) No construction, including clearing of a right of way, except for the initial survey, may  
13 commence on any part of the facility until the Site Certificate holder has adequate control, or has  
14 the statutory authority to gain control, of the lands on which clearing or construction will occur.

15  
16 (89) The certificate holder shall submit to the State of Oregon, through the Council, a bond or  
17 comparable security, satisfactory to the Council, in an amount specified in the certificate  
18 adequate to restore the site to a useful condition if the certificate holder:

19  
20 (a) Begins but does not complete construction of the facility; or

21  
22 (b) Permanently closes the facility before establishing a financial mechanism or  
23 instrument, satisfactory to the Council, that will assure funds will be available to adequately  
24 retire the facility and restore the site.

25 /  
26 (90) If mitigation is required after an affirmative finding by the Council under any standards of  
27 division 22 or division 24 of this chapter, the certificate holder, in consultation with affected state  
28 agencies and local governments designated by the Council, shall develop specific mitigation  
29 plans consistent with Council findings under the relevant standards. Such plans must be  
30 approved by the department prior to the beginning of construction or, as appropriate, operation.

31  
32 (91) The certificate holder shall prevent any condition over which the certificate holder has  
33 control from developing on the site that would preclude restoration of the site to a useful  
34 condition.

35  
36 (92) Conditions related to facility retirement and site restoration:

37  
38 (a) The certificate holder shall establish a financial mechanism or instrument, satisfactory  
39 to the Council, that will assure funds will be available to adequately retire the facility and restore  
40 the site;

41  
42 (b) At least five years prior to planned retirement of the facility, the certificate holder  
43 shall submit a retirement plan to the Council for approval. The plan shall describe how the site  
44 will be restored adequately to a useful condition, including options for post-retirement land use,

1 information on how impacts to fish, wildlife and the environment will be minimized during the  
2 retirement process and measures to protect the public against risk or danger resulting from post-  
3 retirement site conditions; and  
4

5 (c) The facility shall be retired after its useful life in accordance with the approved final  
6 retirement plan, pursuant to OAR 345-27-110.  
7

8 (93) The certificate holder shall restore vegetation to the extent practicable and shall landscape  
9 portions of the site disturbed by construction in a manner compatible with its surroundings and/or  
10 proposed future use. Upon completion of construction, the certificate holder shall dispose of all  
11 temporary structures not required for future use and all timber, brush, refuse and flammable or  
12 combustible material resulting from the clearing of land or from construction of the facility.  
13

14 (94) The facility shall be designed, engineered and constructed to avoid potential dangers to  
15 human safety presented by seismic hazards affecting the site as defined in ORS 455.447(1)(d),  
16 and including amplification, that are expected to result from the reasonably probable seismic  
17 event.  
18

19 **Mandatory Conditions (Site-Specific): OAR 345-27-023**  
20

21 (95) The certificate holder shall notify the department, the State Building Codes Division and  
22 the Department of Geology and Mineral Industries promptly if site investigations or trenching  
23 reveal that conditions in the foundation rocks differ significantly from those described in the  
24 Application for Site Certificate. The Council may, at such time, require the certificate holder to  
25 propose additional mitigating actions in consultation with the Department of Geology and  
26 Mineral Industries and the Building Codes Division.  
27

28 (96) The certificate holder shall notify the department, the State Building Codes Division and  
29 the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers,  
30 deformations or clastic dikes are found at or in the vicinity of the site.  
31

32 **Mandatory Conditions (Monitoring): OAR 345-27-028**  
33

34 (97) The certificate holder shall establish, in consultation with affected state agencies and local  
35 governments, monitoring programs as required by the Site Certificate for impact on resources  
36 protected by the standards of division 22 and 24 of this chapter, and to ensure compliance with  
37 the Site Certificate.  
38

39 (98) The certificate holder shall establish monitoring programs as required by permitting  
40 agencies and local governments, as required by the Site Certificate.  
41

42 (99) For each monitoring program that it establishes, the certificate holder shall have quality  
43 assurance measures that are reviewed and approved by the department prior to commencement of  
44 construction or commencement of commercial operation, as specified in the Site Certificate.

1  
2 (100) If the certificate holder becomes aware of a significant environmental change or impact  
3 attributable to the facility, the certificate holder shall submit to the department as soon as  
4 possible a written report identifying the issue and assessing the impact on the facility and any  
5 affected Site Certificate conditions.  
6

7 (101) HPP shall report any material violation of any condition of the Site Certificate by HPP or  
8 any of its contractors, subcontractors or agents to ODOE within 72 hours of discovery. HPP shall  
9 report to ODOE within 24 hours of discovery if HPP or any of its contractors, subcontractors or  
10 agents creates any condition by construction or operation of the facility that endangers the public  
11 health or safety.  
12

13 **Public Health & Safety: ORS 469.401(2)**  
14

15 (102) The Site Certificate holder shall design, construct, operate and retire the facility in  
16 accordance with all applicable statutes, rules, and ordinances.  
17

18 (103) The pipelines shall be constructed in accordance with the requirements of the U.S.  
19 Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192.  
20

21 (104) The pipelines shall have mechanical structures that allow the pipeline to be sealed off, in  
22 the event of leakage, in a manner that will minimize the release of flammable materials. This is  
23 rebuttably presumed to be satisfied if the pipeline meets the requirements of Title 49, Code of  
24 Federal Regulations, Part 192.  
25

26 (105) The Site Certificate holder shall develop a program, or assure the development of a  
27 program by the entity responsible for the pipelines, using the best available, practicable  
28 technology to monitor the proposed pipeline to ensure protection of public health and safety.  
29

30 (106) The transmission line shall be designed so that alternating current electric fields shall not  
31 exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public  
32 within the right of way.  
33

34 (107) The transmission line shall be designed so that induced currents resulting from the  
35 transmission line and related facilities will be as low as reasonably achievable. The Site  
36 Certificate holder shall develop and implement a program which shall provide reasonable  
37 assurance that all fences, gates, cattle guards, trailers, or other permanent objects or structures  
38 ("structures") that could become inadvertently charged with electricity shall be grounded through  
39 the life of the line. The Council interprets this requirement to apply to structures in existence  
40 when the line is constructed.  
41

42 (108) The transmission line shall be designed, constructed, and operated in a manner consistent  
43 with the National Electrical Safety Code, Section C2, 1993 Edition (American National

1 Standards Institute), as well as the Rural Electrification Administration standards, where  
2 applicable.

3  
4 (109) HPP shall submit to the Department copies of all incident reports required under 49 CFR  
5 §192.709 involving the related and supporting natural gas pipelines.

6  
7 **Land Use**

8  
9 (110) Following issuance of the Site Certificate and prior to commencement of construction,  
10 HPP shall apply for and obtain all appropriate land use approvals from the County, as listed in  
11 the Resolution of June 5, 1995 passed by the Umatilla County Board of Commissioners.

12  
13 (111) HPP shall file with the County Planning Department a landscaping plan for the power  
14 plant prior to issuance of a zoning permit. The landscaping plan shall be implemented and shall  
15 provide screening and visual buffering for the power plant and its parking and loading areas to  
16 the extent reasonably feasible.

17  
18 (112) Prior to issuance of a building permit, HPP shall file a site plan with the County which  
19 shall consist of a map showing the property lines, location of buildings, access roads and the  
20 names of the owner and developer of the site. The site plan shall also show that county  
21 ordinances related to parking and loading requirements, setbacks, signs and vision clearance are  
22 satisfied.

23 (113) If the energy facility site will not be owned by Simplot, HPP shall file with the County an  
24 application for a minor partition of the energy facility site from remainder of the adjacent  
25 Simplot property in conformance with the information included in the ASC and file and record a  
26 final plat in accordance with County ordinances.

27  
28 (114) Prior to construction, HPP shall submit a plan acceptable to ODOE for responding to an  
29 emergency at the Umatilla Army Depot. The plan shall be developed in consultation with the  
30 Umatilla County Chemical Stockpile Emergency Preparedness Program.

31  
32 (115) HPP shall take reasonable steps to reduce or manage exposure to electromagnetic fields  
33 (EMF), consistent with EFSC findings presented in the "Report of the EMF Subcommittee to the  
34 Energy Facility Siting Council," dated March 30, 1993. Prior to and during construction and  
35 operation, HPP shall provide information to the public upon public request about EMF levels  
36 associated with the power plant and related transmission lines.

37  
38 (116) HPP shall enter into an Irrevocable Consent Agreement (ICA) with the County by which  
39 HPP agrees to waive the right to oppose the formation of a Local Improvement District (LID) for  
40 Co. Rd.No 1324.

41  
42 (117) The power plant will incorporate an on-site fire suppression system and will be  
43 constructed from fire retardant materials to the extent reasonably feasible. The power plant will  
44 incorporate spill prevention and containment designs for the storage of all hazardous materials.

1 Fire suppression and hazardous material safety designs shall be established in consultation with  
2 the Hermiston Fire Department and the State Fire Marshall.

3  
4 (118) HPP shall provide adequate parking during construction.

5  
6 (119) HPP shall coordinate construction traffic with the county Public Works Department. In  
7 particular, a traffic plan shall be developed to coordinate peak construction traffic and peak  
8 potato harvest traffic.

9  
10 (120) The Site Certificate holder shall be responsible for any damages to County Road No.  
11 1324 occurring as a result of construction or general operating activities.

12  
13 (121) If the 500 kV transmission line alternative is constructed, HPP shall minimize the visual  
14 impact of new transmission line structures in the City of Umatilla by the use of steel lattice and  
15 wood frame structures, where feasible. Where new single steel pole structures must be installed  
16 within the City of Umatilla, HPP shall use non glossy paint coverings in colors that will  
17 minimize visual impacts.

18  
19 **Noise**

20 /

21 (122) The Site Certificate holder shall design, select, locate, and/or orient components of the  
22 energy facility and provide needed noise controls required to comply with OAR 340-35-035 for  
23 new industrial sources located on previously unused industrial sites.

24  
25 (123) The Site Certificate holder shall conduct a noise analysis of the final design to insure that  
26 the facility will meet DEQ regulations. Results of the analysis shall be submitted to the  
27 Department of Energy prior to issuing specifications for the equipment to be installed. The noise  
28 study shall include a projection of noise to the noise sensitive properties identified along  
29 Umatilla Meadows Road, the daycare facility, and residences west of the plant site west of  
30 Highway 207 and south of the Umatilla River. The analysis shall include a listing of the major  
31 noise sources and expected sound levels from each source at each receiver.

32  
33 (124) The Site Certificate holder shall conduct a survey at locations mentioned in Condition  
34 124 above within two months of startup of the first turbine, again within two months of full  
35 power operation, within two months of startup of the second turbine, and again within two  
36 months of full power operation of both units. Sound measurements of power operation shall be at  
37 operation within 3% of full power. Measurements shall be made at each location during  
38 atmospheric conditions best for sound propagation. Sound monitoring shall not be conducted  
39 when winds are in excess of 5 mph.

40  
41 (125) The Site Certificate holder shall consult with Umatilla County and City of Umatilla and  
42 with neighbors around the energy facility to minimize the impacts of construction noise.

43  
44 (126) The Site Certificate holder shall specify noise rated cooling towers.

1  
2 (127) The Site Certificate holder shall design the HRSG and stack with resonant frequency  
3 above the lowest natural frequency of the exhaust from the gas turbine.

4  
5 (128) The Site Certificate holder shall specify combustion air inlet silencers to limit noise levels  
6 to 46 dBA or less at 2900 feet.

7  
8 **Wetlands**

9  
10 (129) Prior to construction of the 500 kV transmission line, the Site Certificate holder shall  
11 investigate, and where practicable, shall implement opportunities to design the tangent poles of  
12 the transmission lines to be high enough to pull the line up so that vegetation maintenance  
13 activities in riparian habitats can be minimized or avoided.

14  
15 (130) Construction and maintenance of the transmission lines and natural gas pipelines shall  
16 avoid all wetlands, except for the two wetland areas (wetlands 4 and 15) that will be unavoidably  
17 impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and wetland #13, which may  
18 be impacted by placement of the transmission line poles. The permanent impact at these wetlands  
19 shall be limited to the area occupied by natural gas pipeline (wetland #4) and the pole  
20 foundations and the earthen backfill placed at the base of the poles (wetlands #13 and 15).

21  
22 (131) The following areas shall be flagged in the field prior to the start of construction to  
23 delineate the maximum extent of project disturbance:

- 24  
25 i. the natural gas pipeline and transmission line routes through wetlands 4, 13, and  
26 15;  
27  
28 ii. any natural gas pipeline, water supply line, and transmission line routes within 50  
29 feet of the Umatilla River; and  
30  
31 iii. the transmission line crossings of the Umatilla River.

32  
33 Ground disturbing activities in all areas shall be confined to a predefined construction right-of-  
34 way corridor. The corridor shall be no wider than is necessary for the safe and practicable  
35 completion of the construction tasks. Incidental activities (i.e., personal vehicle parking, sanitary  
36 facilities, temporary staging areas, etc.) shall be confined to a limited number of locations that  
37 shall be predetermined prior to commencement of construction activities.

38  
39 (132) At wetland #13, all ditch crossings shall be culverted with adequate culverts to maintain  
40 year round flow.

41  
42 (133) If pole placement avoids wetland #13 but is within 45 feet of it, HPP shall place a  
43 temporary construction fence and temporary silt barrier at the border of the wetland in the area of

1 the pole to preclude incidental construction-related activity within the wetland and to minimize  
2 surface runoff from the construction site into the wetland.

3  
4 (134) At wetland #15, construction access for pole placement shall be restricted to the driest  
5 period of the year (July through October); all waste and construction debris shall be removed  
6 from the wetland area and disposed of on uplands; and construction disturbance shall be  
7 restricted to the smallest area practicable.

8  
9 (135) At wetland #4, a clay collar shall be placed on the down gradient side of the pipeline at  
10 the wetland boundary at each crossing; the pipeline shall be backfilled and stockpiled topsoil  
11 shall be replaced at the grade of the trench; and at the location of the outfall, fill material shall be  
12 minimized and stabilized to prevent erosion.

13  
14 (136) Disturbed wetland and riparian areas shall be revegetated upon completion of  
15 construction with seed composition and vegetation species designed to enhance wetland and  
16 riparian habitat values and composed only of species commonly associated with wetland and  
17 riparian plant communities. Any wetland area that is lost due to project construction shall be  
18 compensated by restoring wetland area at a 1:1 wetland impact:wetland restoration ratio, or by  
19 creating wetland area at a 1:1.5 wetland impact:wetland creation ration, or by enhancing wetland  
20 area at a 1:3.0 wetland impact:wetland enhancement ratio such that there shall be no net loss of  
21 wetland habitat units or wetland habitat values. A wetland creation and revegetation plan shall be  
22 developed prior to construction in consultation with ODFW and DSL. The wetland creation and  
23 revegetation plan shall be submitted to ODOE for review and approval in consultation with  
24 ODFW and DSL. HPP shall comply with the approved plan.

25  
26 (137) Measures taken to mitigate impacts to wetlands shall be monitored by the Site Certificate  
27 holder. Monitoring methodologies and schedules shall be developed in consultation with  
28 ODFW, ODA, and DSL. Monitoring shall be conducted for a minimum of seven (7) years  
29 following the completion of the restoration efforts unless ODOE, in consultation with DSL and  
30 ODFW, approves a shorter monitoring period pursuant to its approval of a specific mitigation  
31 monitoring plan. A mitigation monitoring plan shall be submitted to ODOE for review and  
32 approval in consultation with ODFW and DSL, prior to the commencement of construction. If  
33 any mitigation measures are determined by the Site Certificate holder or ODFW to be  
34 unsuccessful, corrective actions shall be taken by the Site Certificate holder after consultation  
35 with ODFW (as well as with ODOE and DSL if appropriate).

36  
37 **IV. AMENDMENT OF SITE CERTIFICATION AGREEMENT**

38  
39 HPP and EFSC recognize that, because of the length of time that may pass between the  
40 date on which this Agreement is executed and the date on which construction will commence,  
41 and that will pass between the time construction is commenced and the energy facility is retired,  
42 it may be necessary to amend this Agreement.

1 Amendments shall be made in accordance with EFSC rules applicable and in effect at the  
2 time the amendment is sought.

3  
4 **V. SUCCESSORS AND ASSIGNS**

5  
6 No Site Certificate, or any portion thereof, may be transferred, assigned, or disposed of in  
7 any other manner, directly or indirectly, except in compliance with OAR 345-27-100.

8  
9 **VI. SEVERABILITY AND CONSTRUCTION**

10  
11 If any provision of this agreement and certificate is declared by a court to be illegal or in  
12 conflict with any law, the validity of the remaining terms and conditions shall not be affected,  
13 and the rights and obligations of the parties shall be construed and enforced as if the agreement  
14 and certificate did not contain the particular provision held to be invalid. In the event of a  
15 conflict between the conditions contained in the Site Certificate and EFSC's Final Order, the  
16 conditions contained in this Site Certificate shall control.

17 /  
18 **VII. GOVERNING LAW AND FORUM**

- 19  
20 A. This agreement shall be governed by the laws of the State of Oregon.  
21  
22 B. Any litigation or arbitration arising out of this agreement shall be conducted in an  
23 appropriate forum in Oregon.  
24

25 **IN WITNESS WHEREOF**, this Site Certificate has been executed by the State of  
26 Oregon, acting by and through its Energy Facility Siting Council, and Hermiston Power  
27 Partnership.

28  
29 ENERGY FACILITY SITING COUNCIL

30  
31  
32  
33  
34 By: \_\_\_\_\_ Date: March 19, 1998  
35 Terry Edvalson, Chair

36  
37  
38 HERMISTON POWER PARTNERSHIP  
39  
40  
41  
42  
43

1 By: \_\_\_\_\_ Date: \_\_\_\_\_  
2 Randolph J. Hill  
3 /  
4 /  
5 /

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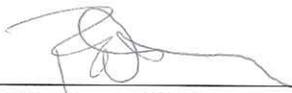
12 ENERGY FACILITY SITING COUNCIL

13

14

15

16

17 By:  \_\_\_\_\_ Date: March 19, 1998

18 Terry Edvalson, Chair

19

20

21 HERMISTON POWER PARTNERSHIP

22

23

24

25

26

27 By:  \_\_\_\_\_ Date: March 23, 1998

28 Randolph J. Hill

GUARANTY

This GUARANTY, dated as of \_\_\_\_\_, 2000, (this "Guaranty") is executed and delivered by CALPINE CORPORATION, a Delaware corporation ("Guarantor"), in favor the Oregon Energy Facility Siting Council ("EFSC").

Recitals

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

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

C. On March 25, 1996, EFSC and HPP entered into a site certificate for the Project issued pursuant to HPP's application therefor. The site certificate requires HPP, prior to the commencement of construction of the Project, to obtain security, satisfactory to EFSC, in an amount sufficient to satisfy HPP's obligations under OAR 345-022-0050 relating to restoration of the Project site upon the occurrence of certain circumstances.

D. To induce EFSC to issue the site certificate for the Project, and in consideration of EFSC's issuing such site certificate, the Guarantor desires to execute and deliver this Guaranty in favor of EFSC to enable HPP to satisfy the condition in the site certificate for the Project described above relating to HPP's obligations under OAR 345-022-0050.

Accordingly, the Guarantor hereby covenants and agrees with EFSC as follows:

SECTION 1. The Guarantor hereby irrevocably, absolutely and unconditionally under any and all circumstances guarantees to EFSC the punctual and full performance and payment of each and every obligation of HPP now existing or which may hereafter arise under OAR 345-022-0050 as in effect on the date hereof relating to the restoration of the site for the Project up to an aggregate amount not to exceed \$8,202,000 (in 1995 dollars calculated using the index referred to in the site certificate for the Project relating to the calculation of the retirement fund amount)(the "Guaranteed Obligations") and agrees that, if for any reason whatsoever, HPP shall fail or be unable duly, punctually and fully to perform or pay the Guaranteed Obligations, the Guarantor shall forthwith perform or pay the Guaranteed Obligations, or cause the Guaranteed Obligations to be performed or paid, without regard to any exercise or non-exercise by EFSC of any right, power or privilege under or in respect of the Guaranteed Obligations.

1  
2 SECTION 2. This Guaranty shall be direct, immediate and primary and shall be a  
3 guarantee of payment and performance and not of collection, and is not conditioned or  
4 contingent upon any requirement that EFSC proceed against HPP or any other person or  
5 pursue any other right or remedy in EFSC's power before proceeding against the Guarantor  
6 or upon any other event, contingency or circumstance whatsoever.  
7

8 SECTION 3. The Guarantor hereby unconditionally, absolutely and irrevocably  
9 agrees to hold EFSC harmless and to indemnify EFSC from and against any and all claims  
10 costs, liabilities and expenses of any nature whatsoever, including reasonable attorneys'  
11 fees, resulting from, arising out of or relating to any failure by HPP to perform the  
12 Guaranteed Obligations when due or any failure by the Guarantor to perform any of its  
13 obligations hereunder when due and in accordance with the terms hereof.  
14

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

24 (a) any amendment, supplement or modification to, waiver of, consent to or  
25 departure from, or failure to exercise any right, remedy, power or privilege under  
26 or in respect of, the Guaranteed Obligations or any other agreement or instrument  
27 relating thereto;  
28

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

36 (c) the failure to create, preserve, validate, perfect or protect any security  
37 interest granted to, or in favor of, any person;  
38

39 (d) any substitution, modification, exchange, release, settlement or  
40 compromise of any security or collateral for or guarantee of any of the Guaranteed  
41 Obligations, or failure to apply such security or collateral or failure to enforce such  
42 guarantee; or  
43

44 (e) any other event or circumstance whatsoever which might otherwise  
45 constitute a legal or equitable discharge of a surety or guarantor, it being the intent

1 of the Guarantor that its obligations under this Guaranty shall be irrevocable,  
2 absolute and unconditional under any and all circumstances.

3  
4 This Guaranty and the obligations of the Guarantor hereunder shall continue to be effective  
5 or be automatically reinstated, as the case may be, if at any time any payment by or on  
6 behalf of HPP is rescinded or must otherwise be restored by EFSC for any reason,  
7 including, but not limited to, as a result of any Proceeding with respect to HPP or any other  
8 person, as though such payment had not been made.

9  
10 SECTION 5. The Guaranteed Obligations shall include, without limitation,  
11 interest accruing following the commencement by or against HPP of any case or  
12 proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up,  
13 liquidation, dissolution or composition or adjustment of debt (a "Proceeding"), whether or  
14 not allowed as a claim in any such Proceeding.

15  
16 SECTION 6. To the fullest extent permitted by law, the Guarantor hereby waives  
17 (a) all set-offs, counterclaims, presentments, demands for performance, notices of adverse  
18 change in the financial condition of HPP or of any other fact that might increase  
19 Guarantor's risk hereunder, notices of nonperformance, protests, notice of any of the  
20 matters referred to in Section 4, notices of presentation for payment, notices of demand for  
21 performance, notices of protest, notices of dishonor, notice of any waivers or indulgences  
22 or extensions, notice of the creation or existence of any Guaranteed Obligations, notices of  
23 every kind which may be required to be given by any statute or rule of law and notice of  
24 acceptance of this Guaranty; (b) diligence, presentment and demand of payment, filing of  
25 claims with a court in connection with any Proceeding, protest or notice with respect to the  
26 Guaranteed Obligations and all demands whatsoever; (c) any and all statutes of limitations,  
27 all laws providing for the exemption of property from execution or for valuation and  
28 appraisal upon foreclosure; and (d) any requirement that any action or proceeding be  
29 brought against HPP or any other person, or any requirement that any person exhaust any  
30 right, power or remedy or proceed against any other person, prior to any action against the  
31 Guarantor under the terms thereof; (e) any defense arising by reason of any disability or  
32 other defense of HPP or by reason of cessation from any cause whatsoever of the liability  
33 of HPP with respect to the Guaranteed Obligations (other than the defense that the  
34 Guaranteed Obligations have been paid or performed in their entirety); (f) any right to  
35 assert against EFSC any defense (legal or equitable), set-off against counterclaims, or  
36 claim which the Guarantor may now or at any time hereafter claim against HPP or any  
37 other party liable to EFSC.

38  
39 SECTION 7. The Guarantor consents and agrees that, without notice to or by the  
40 Guarantor and without affecting or impairing the obligations of the Guarantor hereunder,  
41 EFSC may, by action or inaction:

42  
43 (a) compromise, settle, extend the duration or the time for the payment or  
44 performance of, or discharge the performance of, or otherwise not enforce the  
45 Guaranteed Obligations;

46 /

1 (b) release or substitute the Guarantor or any other guarantor, if any, of the  
2 Guaranteed Obligations, or enforce, exchange, release, or waive any security for  
3 the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations,  
4 or any portion thereof.  
5

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

19 SECTION 9. This Guaranty is a continuing guaranty, shall apply to all  
20 Guaranteed Obligations whenever arising, shall be binding upon the Guarantor and its  
21 respective successors and shall inure to the benefit of and be enforceable by EFSC and its  
22 successors.  
23

24 SECTION 10. If at any time during the term of this Guaranty Guarantor's long-  
25 term senior unsecured debt is rated below "BB" or its equivalent by S&P and Moody's or  
26 their successors, Guarantor shall provide EFSC with written notice thereof within five (5)  
27 business days. Within thirty (30) calendar days of receipt of such notice, EFSC may, by  
28 providing written notice to Guarantor, request that HPP or Guarantor provide a letter of  
29 credit to replace this Guaranty. Within five (5) business days of receipt of such notice  
30 from EFSC, Guarantor shall provide or cause HPP to provide a letter of credit pursuant to  
31 Condition 15 of the site certificate for the Project. Upon delivery of such letter of credit by  
32 HPP or Guarantor in form and substance satisfactory to EFSC, the obligations and  
33 liabilities of Guarantor under this Guaranty shall terminate as provided in Section 14.  
34

35 SECTION 11. All notices to be served under this Guaranty shall be in writing and  
36 delivered personally or mailed by certified mail, postage prepaid and return receipt  
37 requested, or by telegram or telecopier addressed as follows:  
38

39 If to the Guarantor:

40  
41 Calpine Corporation  
42 50 West San Fernando Street  
43 San Jose, California 95113  
44 Attention of Chief Executive Officer  
45 (408) 995-5115  
46 (408) 995-0505

1  
2 If to EFSC:

3  
4 Energy Facility Siting Council  
5 625 Marion Street NE, Suite 1  
6 Salem, Oregon 97301-3742  
7 Attention of Chair  
8 (503) 378-6469  
9 (503) 378-7806 [fax]

10  
11 or at such other address as may from time to time be designated in writing in a notice  
12 delivered as aforesaid. Notice given by personal delivery shall be effective upon actual  
13 receipt. Notice given by certified mail, postage prepaid and return receipt requested shall  
14 be effective three days after the date of mailing. Notice given by telegram or telecopier  
15 shall be effective upon actual receipt if received during the recipient's normal business  
16 hours, or at the beginning of the recipient's next business day after receipt if not received  
17 during the recipient's normal business hours. All notices by telegram or telecopies shall be  
18 confirmed promptly after transmission in writing by certified mail or personal delivery.

19  
20 SECTION 12. This Guaranty shall in all respect be governed by, and construed in  
21 accordance with, the law of the State of Oregon without regard to principles of conflicts of  
22 laws.

23  
24 SECTION 13. The Guarantor represents and warrants to EFSC that: (a) the  
25 Guarantor is a corporation duly organized, validly existing and in good standing under the  
26 laws of the jurisdiction of its incorporation; (b) the execution and delivery of this Guaranty  
27 and its performance have been duly authorized by all necessary corporate action on the part  
28 of such Guarantor and do not require any other corporate actions or proceedings or any  
29 stockholder approval or consent of any trustee or holder of any indebtedness of the  
30 Guarantor; and (c) this Guaranty has been duly executed and delivered by the Guarantor  
31 and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against  
32 the Guarantor in accordance with its terms, except as such enforceability may be limited by  
33 bankruptcy, insolvency, reorganization or similar laws relating to or affecting the  
34 enforcement of creditors' rights generally or by general principles of equity, regardless of  
35 whether such enforceability is considered in a proceeding in equity or at law.

36  
37 SECTION 14. The obligations and liabilities the Guarantor under this Guaranty  
38 shall terminate (subject to automatic reinstatement under Section 4) on the earliest of the  
39 date on which (a) the Guaranteed Obligations have been paid and performed in their  
40 entirety, (b) the security for the retirement fund required under the site certificate for the  
41 Project reaches \$8,202,000 (in 1995 dollars calculated using the index referred to in the  
42 site certificate for the Project relating to the calculation of the retirement fund amount), or  
43 (c) the letter of credit described in Section 10 is delivered to EFSC.

44  
45 SECTION 15. If any provision of this Guaranty shall for any reason be held  
46 invalid, illegal or unenforceable in any respect, such invalidity, illegality or

1 unenforceability shall not affect any other provision of this Guaranty, and this Guaranty  
2 shall be construed as if such invalid, illegal or unenforceable provision had never been  
3 contained herein, but only to the extent of its invalidity, illegality or unenforceability.  
4

5 SECTION 16. (a) The Guarantor hereby irrevocably agrees that any legal action  
6 or proceeding against it arising out of or relating to this Guaranty or the Guaranteed  
7 Obligations may be brought in any Oregon State or Federal court in the City of Salem or  
8 the City of Portland in the State of Oregon and hereby irrevocably submits generally and  
9 unconditionally to the non-exclusive jurisdiction of such courts.  
10

11 (b) The Guarantor hereby unconditionally appoints Perkins Coie LLP as its  
12 authorized agent to receive and acknowledge on its behalf service of any writ, summons,  
13 order, judgment or other notice of legal process in Oregon and agrees that any writ,  
14 summons, order, judgment or other notice of legal process shall be sufficiently served on it  
15 if delivered to such agent for service at its address in Portland, Oregon whether or not such  
16 agent gives notice thereof to the Guarantor. The Guarantor agrees that it will at all times  
17 maintain an agent for service in Oregon with respect to its obligations under this Section  
18 16, and in the event that for any reason the agent named above (or its successor) shall no  
19 longer serve as agent of the Guarantor to receive service of process as aforesaid, the  
20 Guarantor shall promptly appoint a successor so to serve and shall notify EFSC thereof.  
21

22 (c) Nothing in this Section 16 shall limit the right of EFSC to commence any legal  
23 action or proceeding or otherwise proceed against the Guarantor in any other jurisdiction  
24 or to serve process in any manner permitted by applicable law nor shall the taking of  
25 proceedings in any one or more jurisdictions preclude the taking of proceedings in any  
26 other jurisdiction whether concurrently or not.  
27

28 SECTION 17. Subordination. The Guarantor hereby agrees that any and all  
29 present and future indebtedness of HPP owing to Guarantor is postponed in favor of and  
30 subordinated to, full and final payment and performance of the Guaranteed Obligations in  
31 their entirety. In this regard, no payment of any kind whatsoever shall be made with  
32 respect to such indebtedness so long as any Guaranteed Obligation remains unpaid or  
33 unperformed.  
34

35 SECTION 18. Attorneys' Fees and Costs. The Guarantor agrees to pay, on  
36 demand, all reasonable attorneys' fees and all other costs and expenses which may be  
37 incurred by EFSC in the enforcement of this Guaranty or in any way arising out of, or  
38 consequential to the protection, assertion, or enforcement of the Guaranteed Obligations  
39 whether or not suit is brought.  
40

41 SECTION 19. Execution and Counterparts. This Guaranty may be executed in  
42 several counterparts, all of which when taken together shall constitute one Guaranty  
43 binding on all parties, notwithstanding that all parties are not signatories to the same  
44 counterpart. Each copy of the Guaranty so executed shall constitute an original.  
45 /

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

3  
4                                   CALPINE CORPORATION  
5                                   a Delaware corporation  
6

7  
8  
9  
10                                   By: \_\_\_\_\_  
11                                   Name:  
12                                   Title:  
13

14  
15  
16   ACCEPTED:

17  
18   OREGON ENERGY FACILITY SITTING COUNCIL  
19

20  
21  
22  
23   By: \_\_\_\_\_  
24       Name:  
25       Title:

26   /  
27   /  
28   /

GUARANTY

This GUARANTY, dated as of \_\_\_\_\_, 2000, (this "Guaranty") is executed and delivered by Calpine Corporation, a Delaware corporation ("Guarantor"), in favor the Oregon Energy Facility Siting Council ("EFSC").

Recitals

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

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

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

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

Accordingly, the Guarantor hereby covenants and agrees with EFSC as follows:

SECTION 1. The Guarantor hereby irrevocably, absolutely and unconditionally under any and all circumstances guarantees to EFSC the punctual and full performance and payment of each and every obligation of HPP now existing or which may hereafter arise under ORS 469.503(2)(d) as in effect on the date hereof relating to the payment of the monetary path requirement (in 1998 dollars calculated using the index referred to in the amended site certificate for the Project relating to the calculation of the monetary path payment requirement) (the "Guaranteed Obligations"), as may be increased by calculations using data provided in the test of the facility on a new and clean basis pursuant to ORS 469.503(2)(e)(G), and agree that, if for any reason whatsoever, HPP

1 shall fail or be unable duly, punctually and fully to perform or pay the Guaranteed  
2 Obligations, the Guarantor shall forthwith perform or pay the Guaranteed Obligations, or  
3 cause the Guaranteed Obligations to be performed or paid, without regard to any exercise  
4 or non-exercise by EFSC of any right, power or privilege under or in respect of the  
5 Guaranteed Obligations.  
6

7 SECTION 2. This Guaranty shall be direct, immediate and primary and shall be  
8 a guarantee of payment and performance and not of collection, and is not conditioned or  
9 contingent upon any requirement that EFSC proceed against HPP or any other person or  
10 pursue any other right or remedy in EFSC's power before proceeding against the  
11 Guarantor or upon any other event, contingency or circumstance whatsoever.  
12

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

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

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

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

41 (c) the failure to create, preserve, validate, perfect or protect any security  
42 interest granted to, or in favor of, any person;  
43

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

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

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

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

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

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

43  
44          SECTION 7. The Guarantor consents and agrees that, without notice to or by the  
45          Guarantor and without affecting or impairing the obligations or the Guarantor hereunder,  
46          EFSC may, by action or inaction:

1  
2 (a) compromise, settle, extend the duration or the time for the payment or  
3 performance of, or discharge the performance of, or otherwise not enforce the  
4 Guaranteed Obligations;

5  
6 (b) release or substitute the Guarantor or any other guarantor, if any, of  
7 the Guaranteed Obligations, or enforce, exchange, release, or waive any security  
8 for the Guaranteed Obligations or any other guaranty of the Guaranteed  
9 Obligations, or any portion thereof.

10  
11 SECTION 8. Until all of the Guaranteed Obligations have been fully and  
12 indefeasibly discharged, to the full extent necessary to prevent any payments or other  
13 transfers from HPP or the Guarantor to EFSC from being made for the benefit of an  
14 insider creditor in determining whether such payments or other transfers constitute  
15 avoidable transfers or preferences under Section 547 of the Bankruptcy Code, the  
16 Guarantor hereby waives (a) any right of subrogation or reimbursement Guarantor has or  
17 may have as against HPP with respect to the Guaranteed Obligations; (b) any right to  
18 proceed against HPP, now or hereafter, for contribution, indemnity, reimbursement and  
19 any other suretyship rights and claims, whether direct or indirect, liquidated or  
20 contingent, whether arising under express or implied contract or by operation of law,  
21 which Guarantor may now have or hereafter have as against HPP with respect to the  
22 Guaranteed Obligations, and (c) any rights to recourse to or with respect to any asset of  
23 HPP.

24  
25 SECTION 9. This Guaranty is a continuing guaranty, shall apply to all  
26 Guaranteed Obligations whenever arising, shall be binding upon the Guarantor and its  
27 respective successors and shall inure to the benefit of and be enforceable by EFSC and its  
28 successors.

29  
30 SECTION 10. All notices to be served under this Guaranty shall be in writing  
31 and delivered personally or mailed by certified mail, postage prepaid and return receipt  
32 requested, or by telegram or telecopier addressed as follows:

33  
34 If to the Guarantor:

35  
36 Calpine Corporation  
37 50 West San Fernando Street  
38 San Jose, California 95113  
39 Attention of Chief Executive Officer  
40 (408) 995-5115  
41 (408) 995-0505

42 /

43

1 If to EFSC:  
2  
3 Energy Facility Siting Council  
4 625 Marion Street NE, Suite 1  
5 Salem, Oregon 97301-3742  
6 Attention of Chair  
7 (503) 378-6469  
8 (503) 373-7806 [fax]  
9

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

19  
20 SECTION 11. This Guaranty shall in all respect be governed by, and construed  
21 in accordance with, the law of the State of Oregon without regard to principles of  
22 conflicts of laws.  
23

24 SECTION 12. The Guarantor represents and warrants to EFSC that: (a) the  
25 Guarantor is a corporation duly organized, validly existing and in good standing under  
26 the laws of the jurisdiction of its incorporation; (b) the execution and delivery of this  
27 Guaranty and its performance have been duly authorized by all necessary corporate  
28 action on the part of the Guarantor and do not require any other corporate actions or  
29 proceedings or any stockholder approval or consent of any trustee or holder of any  
30 indebtedness of the Guarantor; and (c) this Guaranty has been duly executed and  
31 delivered by the Guarantor and constitutes the legal, valid and binding obligation of the  
32 Guarantor, enforceable against the Guarantor in accordance with its terms, except as such  
33 enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws  
34 relating to or affecting the enforcement of creditors' rights generally or by general  
35 principles of equity, regardless of whether such enforceability is considered in a  
36 proceeding in equity or at law.  
37

38 SECTION 13. The obligations and liabilities of the Guarantor under this  
39 Guaranty shall terminate (subject to automatic reinstatement under Section 4) on the date  
40 on which the Guaranteed Obligations have been paid and performed in their entirety (in  
41 1998 dollars calculated using the index referred to in the site certificate for the Project  
42 relating to the calculation of the monetary path payment requirement), but not before  
43 HPP has met any additional obligations that it may incur based on calculations of  
44 monetary path payment requirement using data from the facility when it is tested on a  
45 new and clean basis pursuant to ORS 469.503(2)(e)(G).  
46 /

1 SECTION 14. If any provision of this Guaranty shall for any reason be held  
2 invalid, illegal or unenforceable in any respect, such invalidity, illegality or  
3 unenforceability shall not affect any other provision of this Guaranty, and this Guaranty  
4 shall be construed as if such invalid, illegal or unenforceable provision had never been  
5 contained herein, but only to the extent of its invalidity, illegality or unenforceability.  
6

7 SECTION 15. (a) The Guarantor hereby irrevocably agrees that any legal action  
8 or proceeding against it arising out of or relating to this Guaranty or the Guaranteed  
9 Obligations may be brought in any Oregon State or Federal court in the City of Salem or  
10 the City of Portland in the State of Oregon and hereby irrevocably submits generally and  
11 unconditionally to the non-exclusive jurisdiction of such courts.  
12

13 (b) The Guarantor hereby unconditionally appoints Perkins Coie LLP as its  
14 authorized agent to receive and acknowledge on its behalf service of any writ, summons,  
15 order, judgment or other notice of legal process in Oregon and agrees that any writ,  
16 summons, order, judgment or other notice of legal process shall be sufficiently served on  
17 it if delivered to such agent for service at its address in Portland, Oregon whether or not  
18 such agent gives notice thereof to the Guarantor. The Guarantor agrees that it will at all  
19 times maintain an agent for service in Oregon with respect to its obligations under this  
20 Section 15, and in the event that for any reason the agent named above (or its successor)  
21 shall no longer serve as agent of any Guarantor to receive service of process as aforesaid,  
22 the Guarantor shall promptly appoint a successor so to serve and shall notify EFSC  
23 thereof.  
24

25 (c) Nothing in this Section 15 shall limit the right of EFSC to commence any  
26 legal action or proceeding or otherwise proceed against the Guarantor in any other  
27 jurisdiction or to serve process in any manner permitted by applicable law nor shall the  
28 taking of proceedings in any one or more jurisdictions preclude the taking of proceedings  
29 in any other jurisdiction whether concurrently or not.  
30

31 SECTION 16. Subordination. The Guarantor hereby agrees that any and all  
32 present and future indebtedness of HPP owing to the Guarantor is postponed in favor of  
33 and subordinated to, full and final payment and performance of the Guaranteed  
34 Obligations in their entirety. In this regard, no payment of any kind whatsoever shall be  
35 made with respect to such indebtedness so long as any Guaranteed Obligation remains  
36 unpaid or unperformed.  
37

38 SECTION 17. Attorneys' Fees and Costs. The Guarantor agrees to pay, on  
39 demand, all reasonable attorneys' fees and all other costs and expenses which may be  
40 incurred by EFSC in the enforcement of this Guaranty or in any way arising out of, or  
41 consequential to the protection, assertion, or enforcement of the Guaranteed Obligations  
42 whether or not suit is brought.  
43

44 SECTION 18. Execution and Counterparts. This Guaranty may be executed in  
45 several counterparts, all of which when taken together shall constitute one Guaranty

1 binding on all parties, notwithstanding that all parties are not signatories to the same  
2 counterpart. Each copy of the Guaranty so executed shall constitute an original.

3  
4 IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be  
5 executed and delivered by its duly authorized officer as of the date first above written.

6  
7  
8 CALPINE CORPORATION  
9 a Delaware corporation

10  
11  
12  
13  
14 By: \_\_\_\_\_  
15 Name:  
16 Title:

17  
18  
19 ACCEPTED:

20  
21 OREGON ENERGY FACILITY SITTING COUNCIL

22  
23  
24  
25  
26 By: \_\_\_\_\_  
27 Name:  
28 Title:

29 /  
30 /  
31 /