

1 **THERMAL POWER PLANT**

2
3 **SECOND AMENDED SITE CERTIFICATE**

4
5 **for the**

6
7 **HERMISTON POWER PROJECT**

8 (Includes Amendment No. 1, March 19, 1998, Amendment No. 2, January 23, 1998,
9 and Amendment No. 3, February 24, 2000)

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.

42 /

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 Amended Exhibit
21 B-2, executed by Calpine Corporation in the amount of the monetary path payment requirement
22 (in 1998 dollars) as determined by the calculations set forth in Condition 4 and based on the
23 estimated heat rate and capacity certified pursuant to Condition 4(e) below and as adjusted in
24 accordance with the terms of this site certificate pursuant to Condition 4(d). For the purposes of
25 this site certificate, the "monetary path payment requirement" means the offset funds determined
26 pursuant to ORS 469.503(2)(c) and the selection and contracting funds determined pursuant to
27 ORS 469.503(2)(d)(A)(ii) that the site certificate holder must disburse to the Oregon Climate
28 Trust, as the qualified organization, pursuant to ORS 469.403(2)(d)(A). The calculation of
29 1998 dollars shall be made using the index set forth below.
30
31

32 The guaranty shall remain in effect until such time as the site certificate holder has disbursed the
33 full amount of the monetary path payment requirement to the Oregon Climate Trust ("Oregon
34 Climate Trust") as provided in ORS 469.503(2)(d)(A).
35
36

37 In lieu of the guaranty requirement set forth above that the site certificate holder must provide
38 prior to commencement of construction, the site certificate holder may instead provide a letter of
39 credit in the amount of the monetary path payment requirement as calculated pursuant to
40 Condition 4 below (in 1998 dollars) and based on the estimated capacity and heat rate of the
41 plant as certified by the site certificate holder pursuant to Condition 4(e). If the site certificate
42 holder has provided a letter of credit prior to commencing construction and if calculations
43 pursuant to Condition 4(d) demonstrate that the site certificate holder must increase its monetary
44 path payments, the site certificate holder shall increase the letter of credit sufficiently to meet the

1 adjusted monetary path payment requirement within the time required by Condition 4(d). The
2 site certificate holder may reduce the amount of the letter of credit commensurate with payments
3 it makes to the Oregon Climate Trust.

4
5 The calculation of 1998 dollars shall be made using the US Gross Domestic Product Deflator for
6 Total Non-Residential Fixed Investment, as published by the US Department of Commerce,
7 Bureau of Economic Analysis, or any successor agency ("the index"). The amount of the letter of
8 credit shall increase annually by the percentage increase in the index and shall be pro-rated
9 within the year to the date of disbursement to the Oregon Climate Trust. If at any time the index
10 is no longer published, the Council shall select a comparable calculation of 1998 dollars. The
11 letter of credit shall not be subject to revocation prior to disbursement of the full monetary path
12 payment requirement, including any adjusted monetary path payment requirement. The terms of
13 the letter of credit and identity of the issuer shall be subject to approval by the Council, which
14 approval shall not be unreasonably withheld. [Amendment No. 3]

15
16 (2) The site certificate holder shall disburse to the Oregon Climate Trust offset funds and
17 contracting and selection funds as requested by the Oregon Climate Trust up to the monetary path
18 payment requirement as determined by the calculations set forth in Condition 4 and based on the
19 estimated heat rate and capacity certified pursuant to Condition 4(e) below (in 1998 dollars) and
20 as adjusted in accordance with the terms of this site certificate pursuant to Condition 4(d).
21 Disbursements shall be made in response to requests from the Oregon Climate Trust in
22 accordance with the requirements of ORS 469.503(2)(d)(A).

23
24 (3) Notwithstanding anything in this amended site certificate to the contrary, the site
25 certificate holder shall have no obligation with regard to offsets, the offset funds and the
26 selection and contracting funds other than to make available to the Oregon Climate Trust the
27 total amount required under this site certificate, nor shall any nonperformance, negligence or
28 misconduct on the part of the Oregon Climate Trust be a basis for revocation of this site
29 certificate or any other enforcement action by the Council with respect to the site certificate
30 holder.

31
32 (4) The site certificate holder shall use the following methodology to calculate the amount of
33 the monetary path payment requirement that it must make available to the qualified organization
34 pursuant to ORS 469.503(2)(d)(A). The same methodology shall apply to a one-unit or a two-
35 unit facility. All calculations shall be made assuming that no steam is supplied for cogeneration.
36 The site certificate holder shall use the contracted design parameters for capacity and heat rate
37 for the facility that it reports pursuant to Condition 4(e) to calculate the estimated monetary path
38 payment requirement. The site certificate holder shall use the Year One Capacities and Year One
39 Heat Rates that it reports for the facility pursuant to Condition 4(f) to calculate whether it owes
40 additional monetary path payments.

41
42 (a) To calculate the offset funds payment requirement as provided in ORS 469.503(2)(c), the site
43 certificate holder shall use the following methodology:

44 /

1 (A) The site certificate holder shall use the respective capacity, heat rate, and carbon
2 dioxide emission factor for each fuel. The carbon dioxide emission factor for natural gas
3 is 0.000117 lb. CO₂/Btu, and for distillate fuel it is 0.000161 lb. CO₂/Btu;
4

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

11 (C) The site certificate holder shall calculate the total CO₂ emissions (lb. CO₂) for each
12 fuel:
13

14 (i) First, the site certificate holder shall multiply the nominal power of the facility
15 (kW) while operating on natural gas by the annual average hours of operation on
16 natural gas. It shall then multiply that product by 30 years to determine the total
17 net plant output (kWh). It shall multiply the total net plant output by the heat rate
18 (Btu/kWh) while operating on natural gas and by the carbon dioxide emission
19 factor for natural gas (0.000117 lb. CO₂/Btu) to determine the total CO₂ emissions
20 (lb.) from operating on natural gas;
21

22 (ii) Second, the site certificate holder shall multiply the nominal power of the
23 facility (kW) while operating on distillate fuel by the annual average hours of
24 operation on distillate fuel. It shall then multiply that product by 30 years to
25 determine the total net plant output (kWh). It shall multiply the total net plant
26 output by the heat rate (Btu/kWh) while operating on distillate fuel and by the
27 carbon dioxide emission factor for distillate fuel (0.000161 lb. CO₂/Btu) to
28 determine the total CO₂ emissions (lb.) from operating on distillate fuel; then,
29

30 (D) The site certificate holder shall calculate the average CO₂ emissions rate
31 (lb. CO₂/kWh) for the two fuels. It shall add the total CO₂ emissions that each fuel
32 contributes for 30 years to determine the total combined CO₂ emissions from the facility
33 (lb.). Then, it shall add the total net plant output from operation on each fuel for 30 years
34 to determine the total combined plant output (kWh). Then it shall divide the total
35 combined CO₂ emissions by the total combined plant output to determine the average
36 CO₂ emissions rate for the facility (lb. CO₂/kWh);
37

38 (E) The site certificate holder shall subtract the carbon dioxide standard of 0.7 lb.
39 CO₂/kWh from the average CO₂ emissions rate for the facility to determine its excess
40 CO₂ emissions rate (lb. CO₂/kWh);
41

42 (F) The site certificate holder shall multiply the total combined plant output (kWh) by the
43 facility's excess CO₂ emissions rate (lb. CO₂/kWh). It shall then divide that product by
44 2,000 pounds to determine the total tons of CO₂ emissions it must mitigate (tons); then,

1
2 (G) The site certificate holder shall multiply the total tons of CO₂ emissions it must
3 mitigate by \$0.57 per ton of CO₂ to determine the sub-total for the offset funds.
4

5 (b) To calculate the selection and contracting funds sub-total as provided in ORS
6 469.503(2(d)(A)(ii), the site certificate holder shall subtract \$500,000 from the offset funds
7 subtotal; then multiply the remaining amount by 4.286 percent; then add \$50,000 to that product.
8

9 (c) To determine its monetary path payment requirement, the site certificate holder shall add the
10 sub-total for the offset funds and the sub-total for the selection and contracting funds.
11

12 (d) When the site certificate holder submits the Year One Test report required in Condition 4(f),
13 it shall increase its guaranty or letter of credit for the monetary path payment requirement if the
14 calculation using reported data shows that the adjusted monetary path payment requirement
15 exceeds the monetary path payment requirement for which the site certificate holder had
16 provided a guaranty or letter of credit prior to commencing construction, pursuant to Condition 1.
17

18 (A) The site certificate holder shall make the appropriate calculations and increase its
19 guaranty or letter of credit, if necessary, within 30 days of filing its Year One Test report
20 with the Council.
21

22 (B) In no case shall the site certificate holder diminish the guaranty or letter of credit it
23 provided prior to commencing construction or receive a refund from the qualified
24 organization based on the calculations made using the Year One Capacities and the Year
25 One Heat Rates.
26

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

38 (f) Within two months of completion of the first year of commercial operation, the site
39 certificate holder shall provide to the Council pursuant to ORS 469.503(2)(e)(G) a test report
40 (Year One Test) of the actual heat rates (Year One Heat Rates) and nominal generating capacities
41 (Year One Capacities) for each fuel type used, without degradation, assuming no steam is
42 supplied for cogeneration, as determined by a 100-hour test at full power completed during the
43 first 12 months of commercial operation, with the results adjusted for the average annual site
44 condition for temperature, barometric pressure and relative humidity and use of alternative fuels,

1 and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of
2 161 pounds of carbon dioxide per million Btu of distillate fuel.

3
4 (g) The combustion turbine units shall be fueled solely with natural gas or with synthetic gas
5 with a carbon content per million Btu no greater than natural gas, except that the site certificate
6 holder may use distillate fuel for no more than an average of 378 hours per year calculated on a
7 rolling average of the previous five years. For the first five years, distillate fuel use may
8 fluctuate, provided that the average use, when calculated at the end of five years, does not exceed
9 378 hours per year. However, if prior to the commencement of construction the site certificate
10 holder proposes in its written submission to the Council made pursuant to Condition 4(e) to use
11 distillate fuel more or less than 378 hours on average per year, the number proposed by the site
12 certificate holder shall replace 378 hours as the binding annual average number of hours for
13 distillate fuel use under this Condition 4(g) and for calculations of the monetary path payment
14 requirement.

15
16 Notwithstanding the number of hours permitted annually of distillate fuel use based on a five-
17 year rolling average or during the first five years, in no year shall the facility's use of distillate
18 fuel exceed 10 percent of its expected total annual fuel use in Btu, higher heating value.

19
20 **Shelf Life: OAR 345-27-020(3)**

21
22 (5) The Site Certificate holder shall begin construction of proposed facility by November 30,
23 2000 and shall complete construction by January 1, 2003.

24
25 (6) Construction completion of the facility shall be defined as the commercial operation date of
26 the facility. If the Site Certificate holder begins construction by November 30, 2000 but cannot
27 complete construction by January 1, 2003, then the Council may grant extensions of the
28 construction completion date in accordance with OAR 345-27-030.

29
30 **Organizational, Managerial And Technical Expertise: OAR 345-22-010**

31
32 (7) Prior to commencement of construction, the Site Certificate holder shall demonstrate to
33 ODOE that the Port has not forfeited its legal right to perfect the 2400 gpm contracted to HPP.

34
35 (8) Prior to commencement of construction, HPP shall have a contract or other agreement with
36 Simplot to accept and dispose of HPP's wastewater.

37
38 (9) Prior to construction, HPP shall identify for the Council's approval the EPC contractor
39 chosen to construct the facility. Prior to commercial operation, HPP shall identify for the Council's
40 approval the contractor chosen to operate the facility. Any such approval shall not be unreasonably
41 withheld.

42
43 (10) All modifications to the partnership agreement shall be submitted to the Department for
44 incorporation in the Site Certificate file.

1
2 (11) Any change of operator shall be reported to the Department.
3

4 (12) Any matter of non-compliance under this Site Certificate shall be the responsibility of the
5 partnership. Any notices of violation issued will be issued to the partnership. Any civil penalties
6 levied will be the responsibility of the partners jointly and severally.
7

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

19 (14) The Site Certificate holder shall contractually require the EPC contractor and all
20 independent contractors and subcontractors involved in the construction and operation of the
21 proposed facilities to comply with all applicable laws and regulations and with the terms and
22 conditions of the Site Certificate. Such contractual provision shall not operate to relieve the Site
23 Certificate holder of responsibility under the Site Certificate.
24

25 **Financial Assurance: OAR 345-022-0050**
26

27 (15) Prior to commencement of construction, the site certificate holder shall submit to the
28 State of Oregon through the Council, a guaranty substantially in the form of Second Amended
29 Exhibit A, executed by Calpine Corporation in the amount of \$8,202,000 (in 1995 dollars). The
30 calculation of 1995 dollars shall be made using the index set forth below. The guaranty shall
31 remain in effect until such time as the total security in the retirement fund described in Condition
32 16 below reaches \$8,202,000 (in 1995 dollars). For the purposes of this site certificate, "total
33 security in the retirement fund" means the total amount of all cash, letters of credit and
34 performance bonds deposited, issued or posted as security for the performance of the site
35 certificate holder's obligation under OAR 345-022-0130.
36

37 In the event that Calpine Corporation's long-term unsecured debt is rated below "BB" or its
38 equivalent by S&P and Moody's or their successors, the site certificate holder shall provide a
39 letter of credit in the amount of \$8,202,000 (in 1995 dollars) less all amounts then on deposit in
40 the retirement fund. The calculation of 1995 dollars shall be made using the U.S. Gross
41 Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S.
42 Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index").
43 The amount of the letter of credit shall increase annually by the percentage increase in the index.
44 If at any time the index is no longer published, the Council shall select a comparable calculation

1 of 1995 dollars. The letter of credit shall not be subject to revocation during the lifetime of the
2 facility. The terms of the letter of credit and identity of the issuer shall be subject to approval by
3 the Council, which approval shall not be unreasonably withheld. All funds received by the site
4 certificate holder from the salvage of equipment or buildings shall be committed to the
5 restoration of the facility site to the extent necessary to fund the approved restoration.

6 [Amendment No. 3]
7

8 (16) This condition shall apply only while the site certificate holder satisfies Condition 15
9 with a guaranty instead of a letter of credit.

10
11 Starting with the first year of commercial operation, the site certificate holder shall establish a
12 retirement fund and begin making commitments to the fund in the amount of \$800,000 (or more
13 if the site certificate holder chooses) in the form of a letter of credit, performance bond, or cash
14 (“annual commitments”). The terms of the security and identity of the issuer of a letter of credit
15 or performance bond shall be subject to approval by the Council, which approval shall not be
16 unreasonably withheld. Such annual commitments shall continue until the total security in the
17 retirement fund reaches \$8,202,000 (in 1995 dollars) in no event later than 10 years from the date
18 of commercial operation. The calculation of 1995 dollars shall be made using the U.S. Gross
19 Domestic Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S.
20 Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index").
21 After the security in the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase
22 annually by the percentage increase in the index. If at any time the index is no longer published,
23 the Council shall select a comparable calculation of 1995 dollars. In the event the security in the
24 retirement fund is less than \$8,202,000 (in 1995 dollars) at the time the site certificate holder
25 notifies the Council of its intent to retire the facility, the annual commitments to the retirement
26 fund shall be adjusted so as to assure that the total security in the funds is \$8,202,000 (in 1995
27 dollars) at the time of retirement. the site certificate holder shall describe the status of the fund in
28 the annual report submitted to the Council. All funds received by the site certificate holder from
29 the salvage of equipment or buildings shall be committed to the restoration of the facility site, to
30 the extent necessary to fund the approved restoration. [Amendment No. 3]
31

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

38
39 **Structural: OAR 345-22-020**
40

41 (18) Prior to the start of construction, HPP shall conduct an investigation as described by Mr. D.
42 Wermiel of DOGAMI in a letter dated May 9, 1995 to Mr. A. Bless, ODOE which would confirm
43 HPP's characterization of ground response to potential seismic events. The ground response
44 evaluation will include drilling one deep boring to bedrock and measuring downhole shear wave

1 velocity profile beneath the energy facility site. Based on the site-specific measurements, ground
2 response and amplification will be evaluated.

3
4 The geotechnical investigation shall be peer reviewed by the DOGAMI or by a private engineering
5 geologist or geotechnical engineer registered in the state of Oregon that is independent from HPP
6 and the HPP's contractors and subcontractors. If a private engineering geologist or geotechnical
7 engineer is used, the choice of peer reviewer shall be approved by ODOE in consultation with
8 DOGAMI.

9
10 (19) If the detailed survey reveals evidence that is not as described in the ASC, then the HPP
11 shall revise the facility design parameters to comply with corresponding Oregon Building Code
12 requirements. If pre-construction seismic analysis reveals features unique to the energy facility site
13 that justify enhanced seismic design, HPP shall design safety structures critical to public health or
14 safety in consultation with the Building Codes Division of the Department of Consumer and
15 Business Services ("DCBS"), subject to approval by ODOE. Critical structures include hazardous
16 material storage areas and control rooms.

17
18 (20) Except as provided for in condition 2 above, HPP shall design and construct the proposed
19 facility to be consistent with Seismic Zone 2b requirements, in compliance with the laws and
20 regulations administered by the DCBS.

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

27
28 (22) HPP shall design the energy facility in accordance with a design basis seismic event of
29 magnitude 4.5 along the service Anticline at a distance of 1 km from the energy facility site, as
30 described on p. 14a of Exhibit G of the ASC, and in accordance with a Seismic Zone 2b
31 classification by the Oregon Building Code.

32
33 (23) HPP shall embed transmission line tower foundations below significant loose soils as
34 described on p. 16 of Exhibit G of the ASC.

35
36 (24) The PGT pipeline shall be embedded below loose soil deposits combined, if necessary with
37 the use of free draining, coarse granular backfill as described in the ASC, Exhibit G p. 17.

38
39 (25) Along the 500 kV transmission line right of way in the vicinity of Maxwell Canal, near
40 Diagonal Road, east and north of Hermiston, along the relocated BPA 500 kV McNary to Lower
41 Monumental line between Highway 730 and Power City Road, and in the area near Power City,
42 transmission line poles will be constructed in upland areas and/or on higher ground underlain by
43 dense granular soil with negligible liquefaction potential as described in ASC Exhibit G p. 17.

44 /

1 (26) Transmission pole and pipeline locations that could be subject to settling, slumping or
2 liquefaction shall be tested for soil properties prior to pole and pipe installation, as described on
3 page 19 on Exhibit G of the ASC.
4

5 **Soil Protection: OAR 345-22-022**
6

7 (27) Ground disturbing activities and incidental activities (e.g., personal vehicle parking, sanitary
8 facilities, temporary staging areas, etc.) for the facility shall be confined to a limited number of
9 locations identified by HPP and approved by the Department prior to commencement of
10 construction.
11

12 (28) Only existing roadways shall be used for access along the pipelines; access for transmission
13 line construction and maintenance shall utilize existing roads wherever practicable and temporary
14 transmission line access roads shall only be constructed where there is open terrain with no existing
15 access road; and no permanent impacts shall be associated with pipeline or transmission line access
16 road construction or maintenance.
17

18 (29) Topsoils and subsoils resulting from excavation for gas and water pipelines shall be
19 segregated and the topsoil restored to minimize impacts on soil fertility.
20

21 (30) The Site Certificate holder shall utilize site watering or other methods to reduce wind
22 erosion during site earthwork or construction. Post construction soil stabilization methods shall be
23 utilized as described on ASC Exhibit G p. 18.
24

25 **Protected Areas: OAR 345-22-040**
26

27 (31) The Site Certificate holder shall not operate the Circulating Water System at above 5,200
28 ppm, TDS equivalent on an annual average basis. Drift rate shall not result in solids carryover
29 exceeding the equivalent of 0.005% drift rate at 5,200 ppm, TDS.
30

31 **Fish and Wildlife: OAR 345-22-060**
32

33 (32) Any trimming, side cutting or other removal of riparian vegetation that may be required
34 under the proposed 500 kV transmission line shall be kept to a minimum and shall only be
35 conducted to meet National Electric Safety Code clearances.
36

37 (33) Construction and maintenance of the transmission lines and natural gas pipelines shall
38 avoid all wetlands, except for the two wetland areas (wetlands #4 and #15) that will be
39 unavoidably impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and the one
40 wetland area, wetland #13, that may be impacted by pole placement.
41

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

1
2 (35) Non-wetland areas disturbed by construction of the energy facility, the equipment
3 storage/staging area and employee parking staging area, the natural gas pipelines, the water
4 supply pipeline, and the transmission lines shall be revegetated upon completion of construction.
5 Revegetation shall emphasize the use of native species and shall be conducted in accordance with
6 the Recommended Revegetation Plan (July 19, 1994) stated in the ASC (Exhibit P/P-1,
7 Appendix E).
8

9 (36) Subject to Condition (37), if feasible, construction of the natural gas pipelines, water
10 supply line and transmission line shall occur outside of sensitive time periods (as described in the
11 ASC, Exhibit P/P-1, page 44a) for the following wildlife species of concern which were
12 documented within the impact area of the proposed natural gas pipelines, water supply line and
13 transmission line: painted turtle, long-billed curlew, grasshopper sparrow, Swainson's hawk,
14 burrowing owl, and bank swallow.
15

16 (37) Notwithstanding Condition (36), prior to construction of the gas pipelines, water supply
17 line and transmission line HPP shall provide to ODOE a construction schedule, including
18 activities and locations, if any, of planned construction of the gas pipelines, water supply line and
19 transmission line during the sensitive time periods for the species listed above. HPP shall consult
20 with ODFW to make every effort to schedule construction activities to avoid adverse impact on
21 the species listed above.
22

23 Not less than 60 days prior to the sensitive time periods for species listed above, HPP shall notify
24 ODOE in writing of any construction activities on the gas pipelines, water supply line and
25 transmission line scheduled for those time periods. If construction activities cannot be scheduled
26 to occur outside the sensitive time periods for the above listed species of concern, pre-
27 construction biological surveys shall be conducted by a wildlife biologist within the impact area
28 of the proposed natural gas pipelines, water supply line and transmission line to identify the
29 location of wildlife species of concern or their nest sites. HPP shall develop the methodology for
30 these pre-construction surveys in consultation with ODFW prior to conducting the surveys.
31 Mitigation for potential impacts to any wildlife species of concern and/or their nest sites found
32 during pre-construction surveys shall be developed by HPP prior to construction of the gas
33 pipelines, water supply line and transmission line and in consultation with ODFW. The
34 mitigation plan shall be submitted to ODFW and ODOE for review and approval prior to
35 construction of the gas pipelines, water supply line and transmission line. ODOE shall make a
36 final determination on the mitigation plan within 45 days of its submission.
37

38 (38) Upon completion of construction of the energy facility, two raptor perching poles shall be
39 placed near the outside edge of the 17 acre energy facility site. The design and location of these
40 raptor perching poles shall be developed in consultations with ODFW. Raptor perching poles
41 shall be located to benefit raptors without interfering with the energy facility plant operation and
42 maintenance.
43 /

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

6
7 (40) The following areas shall be flagged in the field prior to the start of construction to
8 delineate the maximum extent of project disturbance:

- 9
- 10 i. the natural gas pipeline and transmission line routes through wetlands #4, #13,
11 and #15;
 - 12
 - 13 ii. any natural gas pipeline, water supply line, and transmission line routes within 50
14 feet of the Umatilla River; and
 - 15
 - 16 iii. the transmission line crossings of the Umatilla River.
 - 17

18 (41) Notification shall be provided to the ODFW's Pendleton District office at least one week
19 (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply
20 pipeline, and transmission lines.

21
22 (42) Measures taken to mitigate impacts to fish and wildlife and their habitats shall be
23 monitored by HPP. Monitoring methodologies and schedules shall be developed in consultation
24 with ODFW. A mitigation monitoring plan shall be submitted to ODFW and ODOE for review
25 and approval prior to issuance of a notice to proceed. If any mitigation measures are determined
26 by the HPP or ODFW to be unsuccessful, corrective actions shall be taken by the applicant after
27 consultation with ODFW.

28
29 (43) A minimum of ten (10) cottonwood (*Populus trichocarpa*) tree saplings shall be planted,
30 in an appropriate habitat area, and within the vegetation impact area for the natural gas pipelines
31 and electrical transmission lines for every cottonwood tree removed during construction of the
32 natural gas pipelines and electrical transmission lines.

33
34 (44) The project shall not impact any native vegetation within the U.S. Army's Umatilla
35 Ordinance Depot.

36
37 (45) HPP shall design transmission lines with a separation between conductors greater than 5
38 feet, and shall consider other techniques to reduce collision potential (e.g., clustering lines,
39 placing colored serial marker ball on the line, etc.)

40
41 (46) Top soils and subsoils resulting from excavation for gas and water pipelines shall be
42 segregated and the top soil restored.

43 /

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

7
8 **Threatened and Endangered Species: OAR 345-22-070**

9
10 (48) Raptor protection shall be employed in the design and construction of the transmission
11 towers and transmission lines following the methods described by Olendorf, R.L., A.D. Miller,
12 and R.N. Lehman, 1981, Suggested practices for raptor protection on power lines, Raptor
13 Research Foundation, University of Minnesota, St. Paul, Minnesota. A detailed design shall be
14 submitted to the ODFW for review and approval during the design phase of the project. All
15 energized transmission conductors shall be designed with adequate separation of a minimum of
16 five feet.

17
18 (49) Notification shall be provided to the ODFW's Pendleton District office at least one week
19 (7 days) prior to the start of construction for the power plant, natural gas pipelines, water supply
20 pipeline, and transmission lines.

21
22 (50) HPP shall conduct a pre-construction survey to determine if *Astragalus collinus var.*
23 *laurentii* is present along the route of the relocated BPA 500 kV transmission line where the
24 route crosses the slope that occurs north of Highway 730. The survey shall be conducted during
25 the appropriate field season (May through early July) by a qualified biologist. If the species is
26 found to occur in areas that might be affected by construction of the relocated BPA 500 kV line,
27 HPP shall contact ODOE and the Oregon Department of Agriculture, Plant Conservation biology
28 Program to develop a mitigation plan.

29
30 **Scenic and Aesthetic Values: OAR 345-22-080**

31
32 (51) To minimize visual intrusion caused by the stacks, the stacks shall be painted in a matte
33 finished neutral color to minimize the potential for glare caused by reflective surfaces. Colors
34 shall be chosen to blend with the surrounding area, to the extent that the choice does not
35 compromise air traffic safety.

36
37 (52) Landscaping shall be used to screen the energy facility from the nearest residence and
38 roadways to the extent reasonably feasible. Shrubbery and trees planted along the perimeter of
39 the energy facility site and other landscaping shall be well-maintained and include low-
40 maintenance and indigenous plants.

41
42 (53) To minimize project visibility at night, outdoor lighting shall be limited to the extent
43 necessary to maintain safety conditions.

44 /

1 (54) HPP will not put up signs along Feedville Road without authorization from the County.
2

3 **Historic, Cultural, and Archaeological Resources: OAR 345-22-090**
4

5 (55) HPP shall consult with CTUIR before commencing construction. HPP shall allow tribal
6 monitoring by CTUIR of earth-moving activities within areas with a high potential for containing
7 archaeological remains. These areas are identified in Figure T-5 of the ASC.
8

9 (56) HPP shall notify the CTUIR before starting construction and shall provide the opportunity
10 for a CTUIR representative, knowledgeable in cultural resources of the area, to be available for
11 periodic on-site monitoring during construction activities.
12

13 (57) If resources are discovered during project construction or construction-related activities
14 that are likely to be eligible for listing on the National Register of Historic Places or to qualify as
15 archeological objects or sites, HPP shall stop all work in the immediate area of the find and
16 consult with the CTUIR and SHPO. HPP shall not restart work in the affected area until it has
17 complied with the archeological permit requirements administered by SHPO (currently set forth
18 in OAR Chapter 736, Division 51).
19

20 (58) HPP shall place the transmission towers/poles away from the banks of the Z, Maxwell, A-
21 Line and Feed canals, and the Hermiston and Stanfield Branch Furnish Ditches, and shall avoid
22 any disturbance at the canal crossings when electrical lines are strung, to avoid disturbance of the
23 canal features during construction and operation of the transmission line.
24

25 (59) If practicable, HPP shall avoid disturbance to the Feed Canal in construction of the NWP
26 pipeline. If construction cannot avoid the canal, HPP shall consult with SHPO and shall take
27 steps required by SHPO to mitigate adverse impacts to the canal. Fill excavated during any
28 construction at the canal shall be monitored by a professional historic archaeologist.
29

30 (60) HPP shall consult with the irrigation district in which the canal is located before
31 construction or the upgrading of the transmission line in the area of the canal to determine
32 whether there are any applicable restrictions.
33

34 **Recreation: OAR 345-22-100**
35

36 None
37

38 **Socio-Economic Impacts: OAR 345-22-110**
39

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

1
2 (62) During construction, contracted portable toilet facilities shall be used. During operation,
3 domestic wastewater will be treated by the Simplot Company treatment system.
4

5 (63) HPP shall retain stormwater on-site in a stormwater detention pond. During an extreme
6 event, excess stormwater will be discharged from the settlement basin to the natural drainage.
7 Prior to construction the Site Certificate holder will obtain from the Department of
8 Environmental Quality a general National Pollutant Discharge Elimination System (NPDES)
9 permit 1200-C for construction of the facility. Prior to operation the facility will obtain a general
10 NPDES permit 1200-H as administered by DEQ.
11

12 (64) The energy facility shall be constructed with fire hydrants and a sprinkler and deluge
13 system. An employee training program will be implemented and records maintained as described
14 in the ASC, Exhibit U p. 19. An early warning gas release system will be installed as described in
15 the ASC Exhibit U p. 19.
16

17 (65) During construction, HPP shall establish a housing clearing house at the energy facility
18 site for construction workers. The clearing house shall coordinate with local officials and housing
19 owners to place workers who need lodging as necessary. During construction, HPP shall monitor
20 the central vacancy rate in the cities of Umatilla, Stanfield and Hermiston. If the vacancy rate
21 falls below seven percent, the clearing house will begin its activity to locate available housing
22 outside of Umatilla, Stanfield and Hermiston so a listing of available housing outside of these
23 cities can be provided to temporary workers should the vacancy rate fall below five percent. If
24 the vacancy rate falls below five percent, HPP shall locate housing outside of Umatilla, Stanfield
25 and Hermiston, or offer temporary housing for any temporary workers that it hires from outside
26 the local area. HPP shall provide a plan of operation for the housing clearing house to ODOE
27 prior to the start of construction. HPP shall provide such a plan at least 60 days prior to the start
28 of construction and ODOE shall review and respond with its approval or comments not later than
29 30 days after the plan is submitted.
30

31 (66) Construction worker traffic patterns to the energy facility site will be coordinated with the
32 state, county and adjacent Simplot potato processing facility. If necessary, sight distances will be
33 improved and a left turn lane provided on Simplot's private access road at its intersection with
34 State Road 207.
35

36 (67) Rail delivery shall be used to the extent practical to minimize heavy-haul truck trips
37 during construction.
38

39 (68) HPP shall, in consultation with the Hermiston Rural Fire Protection District, establish a
40 pre-fire plan which shall be available to the local fire district. The plan shall describe key
41 entrances and exits, the floor plan of the energy facility, the location of hydrants and hoses, and
42 the location and description of any hazardous materials.
43 /

1 **Waste Minimization: OAR 345-22-120**

2
3 (69) During construction of the facility, HPP shall identify means of minimizing waste
4 generation and shall recycle waste to the extent reasonably practicable. HPP shall also implement
5 a waste minimization and recycling program to remain in effect throughout the life of the facility.
6

7 (70) HPP shall ship used batteries, spent demineralizer resins and spent oxidation catalysts to
8 vendor recycling facilities. Used SCR catalysts will be shipped to a metals reclaiming facility.
9

10 (71) During operation, all waste materials shall be contained on the energy facility site within
11 the site perimeter fence and screened from view. Process waste will be stored in closed
12 containers. Used batteries shall be stored indoors. Hazardous waste shall be stored and
13 transported in accordance with applicable state and federal law.
14

15 (72) HPP shall implement, to the extent reasonably practical, design features such as those
16 described in Exhibit V pages 4 through 6 to reduce unnecessary water consumption. Such
17 features may include but are not limited to controls to maximize demineralizer resin efficiency,
18 utilization of optimal cycles of concentration, selection of advanced gas turbines, sizing of the
19 condenser to condense all steam produced in the HRSG, recovery of filter backwash water,
20 reprocessing of filtrate from the sludge dewatering system, and incorporation of a two pass
21 Reverse Osmosis system.
22

23 (73) Non hazardous chemicals shall be selected for water treatment to allow use of waste
24 water for irrigation.
25

26 (74) Steam condensate that is recovered in the potato processing plant will be returned to the
27 energy facility for reuse.
28

29 (75) Upon completion of construction, HPP shall dispose of all temporary structures not
30 required for future operation of the facility and all used timber, brush, refuse, or flammable
31 material resulting from clearing of lands or from construction of the facility.
32

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

34
35 (76) HPP shall manage all hazardous material in accordance with local and state regulatory
36 standards. Documentation will be maintained and hazardous materials will be handled by
37 qualified personnel. Hazardous waste will be stored on site no more than 90 days, followed by
38 transport to a licensed treatment storage disposal facility, as described in ASC, exhibit B p.15a.
39

40 (77) Storage and handling of flammable and combustible liquid chemicals shall be in
41 compliance with National Fire Protection Association Codes 30 and 321. Chemical storage areas
42 will have secondary containment. Storage tanks for distillate shall have secondary containment.
43 HPP shall comply with Uniform Building Code Chapters 79 for Hazardous Materials and 80 for
44 Flammable Liquids. Concrete basins will be provided at each of the large electrical transformers

1 to capture any insulating oil that might spill during a transformer failure or maintenance
2 operation. (ASC Exhibit F p.6) Foundations and slabs for equipment containing lubricating oil,
3 insulating oil or hydraulic fluid shall be designed to contain and collect any spill. Secondary
4 containment for hazardous material storage areas shall have volume equal to 100 percent of the
5 maximum chemical volume in primary containment (ASC Exhibit F p. 9)
6

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

10
11 (79) This condition shall apply only while the site certificate holder satisfies Condition 15
12 with a guaranty instead of a letter of credit.
13

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

24 After the security in the fund reaches \$8,202,000 (in 1995 dollars), the fund shall increase
25 annually by the percentage increase in the index. If at any time the index is no longer published,
26 the Council shall select a comparable calculation of 1995 dollars. In the event the security in the
27 retirement fund is less than \$8,202,000 (in 1995 dollars) at the time the site certificate holder
28 notifies the Council of its intent to retire the facility, the annual commitments to the retirement
29 fund shall be adjusted so as to assure that the total security in the funds is \$8,202,000 (in 1995
30 dollars) at the time of retirement. The site certificate holder shall describe the status of the fund
31 in the annual report submitted to the Council. All funds received by the site certificate holder
32 from the salvage of equipment or buildings shall be committed to the restoration of the facility
33 site, to the extent necessary to fund the approved restoration. [Amendment No. 3]
34

35 (80) In the event construction is begun but not completed by the deadlines set forth in the Site
36 Certificate, or the energy facility is closed permanently before the end of its useful life, HPP shall
37 restore the site to a useful condition. Restoration shall include but not be limited to the removal
38 of transmission line towers erected by the Site Certificate holder unless the Council determines
39 that such towers are likely to be used by another facility, electric utility or other entity that
40 provides electric service.
41

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

1 how impacts to fish, wildlife and the environment will be minimized during the retirement
2 process, measures to protect the public against risk or danger resulting from post-retirement site
3 conditions. The plan shall provide for restoration of vegetation to the maximum extent consistent
4 with the anticipated use of the site after the facility is retired.
5

6 (82) HPP shall retire the facility at the end of its useful life in accordance with the approved
7 final retirement plan, pursuant to OAR 345-27-110.
8

9 (83) The retirement plan shall provide for restoration of vegetation to the maximum extent
10 consistent with the anticipated use of the site after the facility is retired.
11

12 (84) Not later than four months before commencing construction of the transmission line, or
13 immediately before commencing construction of the energy facility (whichever is sooner) HPP
14 shall notify ODOE of which alternative transmission line route will serve the energy facility.
15 Once this election has been made, Council approval of the other alternative transmission line
16 shall terminate.
17

18 **Mandatory Conditions (General): OAR 345-27-020**
19

20 The following mandatory conditions are either specifically required by OAR 345-27-020 or are
21 appropriate under OAR 345-27-020(6) to address project and site specific conditions and
22 requirements. These mandatory conditions shall apply and should be read together with the
23 specific additional conditions in this Site Certificate to ensure compliance with the siting
24 standards of OAR 345 divisions 22, 23 and 24, and to protect the public health and safety.
25

26 (85) The Site Certificate holder shall submit to the department a legal description of the site to
27 be appended to the Site Certificate prior to construction.
28

29 (86) The facility shall be designed, constructed, operated and retired:
30

31 (a) Substantially as described in this Site Certificate and in the Final Order;
32

33 (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules,
34 and applicable state and local laws, rules and ordinances in effect at the time the Site Certificate
35 is issued; and
36

37 (c) In compliance with all applicable permit requirements of other state agencies.
38

39 (87) Construction of the facility must begin and be completed by dates specified in Condition
40 5 of this Site Certificate.
41

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

1
2 (89) The certificate holder shall submit to the State of Oregon, through the Council, a bond or
3 comparable security, satisfactory to the Council, in an amount specified in the certificate
4 adequate to restore the site to a useful condition if the certificate holder:

5
6 (a) Begins but does not complete construction of the facility; or

7
8 (b) Permanently closes the facility before establishing a financial mechanism or
9 instrument, satisfactory to the Council, that will assure funds will be available to adequately
10 retire the facility and restore the site.

11
12 (90) If mitigation is required after an affirmative finding by the Council under any standards of
13 division 22 or division 24 of this chapter, the certificate holder, in consultation with affected state
14 agencies and local governments designated by the Council, shall develop specific mitigation
15 plans consistent with Council findings under the relevant standards. Such plans must be
16 approved by the department prior to the beginning of construction or, as appropriate, operation.

17
18 (91) The certificate holder shall prevent any condition over which the certificate holder has
19 control from developing on the site that would preclude restoration of the site to a useful
20 condition.

21
22 (92) Conditions related to facility retirement and site restoration:

23
24 (a) The certificate holder shall establish a financial mechanism or instrument, satisfactory
25 to the Council, that will assure funds will be available to adequately retire the facility and restore
26 the site;

27
28 (b) At least five years prior to planned retirement of the facility, the certificate holder
29 shall submit a retirement plan to the Council for approval. The plan shall describe how the site
30 will be restored adequately to a useful condition, including options for post-retirement land use,
31 information on how impacts to fish, wildlife and the environment will be minimized during the
32 retirement process and measures to protect the public against risk or danger resulting from post-
33 retirement site conditions; and

34
35 (c) The facility shall be retired after its useful life in accordance with the approved final
36 retirement plan, pursuant to OAR 345-27-110.

37
38 (93) The certificate holder shall restore vegetation to the extent practicable and shall landscape
39 portions of the site disturbed by construction in a manner compatible with its surroundings and/or
40 proposed future use. Upon completion of construction, the certificate holder shall dispose of all
41 temporary structures not required for future use and all timber, brush, refuse and flammable or
42 combustible material resulting from the clearing of land or from construction of the facility.

43 /

1 (94) The facility shall be designed, engineered and constructed to avoid potential dangers to
2 human safety presented by seismic hazards affecting the site as defined in ORS 455.447(1)(d),
3 and including amplification, that are expected to result from the reasonably probable seismic
4 event.
5

6 **Mandatory Conditions (Site-Specific): OAR 345-27-023**
7

8 (95) The certificate holder shall notify the department, the State Building Codes Division and
9 the Department of Geology and Mineral Industries promptly if site investigations or trenching
10 reveal that conditions in the foundation rocks differ significantly from those described in the
11 Application for Site Certificate. The Council may, at such time, require the certificate holder to
12 propose additional mitigating actions in consultation with the Department of Geology and
13 Mineral Industries and the Building Codes Division.
14

15 (96) The certificate holder shall notify the department, the State Building Codes Division and
16 the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers,
17 deformations or clastic dikes are found at or in the vicinity of the site.
18

19 **Mandatory Conditions (Monitoring): OAR 345-27-028**
20

21 (97) The certificate holder shall establish, in consultation with affected state agencies and local
22 governments, monitoring programs as required by the Site Certificate for impact on resources
23 protected by the standards of division 22 and 24 of this chapter, and to ensure compliance with
24 the Site Certificate.
25

26 (98) The certificate holder shall establish monitoring programs as required by permitting
27 agencies and local governments, as required by the Site Certificate.
28

29 (99) For each monitoring program that it establishes, the certificate holder shall have quality
30 assurance measures that are reviewed and approved by the department prior to commencement of
31 construction or commencement of commercial operation, as specified in the Site Certificate.
32

33 (100) If the certificate holder becomes aware of a significant environmental change or impact
34 attributable to the facility, the certificate holder shall submit to the department as soon as
35 possible a written report identifying the issue and assessing the impact on the facility and any
36 affected Site Certificate conditions.
37

38 (101) HPP shall report any material violation of any condition of the Site Certificate by HPP or
39 any of its contractors, subcontractors or agents to ODOE within 72 hours of discovery. HPP shall
40 report to ODOE within 24 hours of discovery if HPP or any of its contractors, subcontractors or
41 agents creates any condition by construction or operation of the facility that endangers the public
42 health or safety.
43 /

1 **Public Health & Safety: ORS 469.401(2)**
2

3 (102) The Site Certificate holder shall design, construct, operate and retire the facility in
4 accordance with all applicable statutes, rules, and ordinances.
5

6 (103) The pipelines shall be constructed in accordance with the requirements of the U.S.
7 Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192.
8

9 (104) The pipelines shall have mechanical structures that allow the pipeline to be sealed off, in
10 the event of leakage, in a manner that will minimize the release of flammable materials. This is
11 rebuttably presumed to be satisfied if the pipeline meets the requirements of Title 49, Code of
12 Federal Regulations, Part 192.
13

14 (105) The Site Certificate holder shall develop a program, or assure the development of a
15 program by the entity responsible for the pipelines, using the best available, practicable
16 technology to monitor the proposed pipeline to ensure protection of public health and safety.
17

18 (106) The transmission line shall be designed so that alternating current electric fields shall not
19 exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public
20 within the right of way.
21

22 (107) The transmission line shall be designed so that induced currents resulting from the
23 transmission line and related facilities will be as low as reasonably achievable. The Site
24 Certificate holder shall develop and implement a program which shall provide reasonable
25 assurance that all fences, gates, cattle guards, trailers, or other permanent objects or structures
26 ("structures") that could become inadvertently charged with electricity shall be grounded through
27 the life of the line. The Council interprets this requirement to apply to structures in existence
28 when the line is constructed.
29

30 (108) The transmission line shall be designed, constructed, and operated in a manner consistent
31 with the National Electrical Safety Code, Section C2, 1993 Edition (American National
32 Standards Institute), as well as the Rural Electrification Administration standards, where
33 applicable.
34

35 (109) HPP shall submit to the Department copies of all incident reports required under 49 CFR
36 §192.709 involving the related and supporting natural gas pipelines.
37

38 **Land Use**
39

40 (110) Following issuance of the Site Certificate and prior to commencement of construction,
41 HPP shall apply for and obtain all appropriate land use approvals from the County, as listed in
42 the Resolution of June 5, 1995 passed by the Umatilla County Board of Commissioners.
43 /

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

5
6 (112) Prior to issuance of a building permit, HPP shall file a site plan with the County which
7 shall consist of a map showing the property lines, location of buildings, access roads and the
8 names of the owner and developer of the site. The site plan shall also show that county
9 ordinances related to parking and loading requirements, setbacks, signs and vision clearance are
10 satisfied.

11
12 (113) If the energy facility site will not be owned by Simplot, HPP shall file with the County an
13 application for a minor partition of the energy facility site from remainder of the adjacent
14 Simplot property in conformance with the information included in the ASC and file and record a
15 final plat in accordance with County ordinances.

16
17 (114) Prior to construction, HPP shall submit a plan acceptable to ODOE for responding to an
18 emergency at the Umatilla Army Depot. The plan shall be developed in consultation with the
19 Umatilla County Chemical Stockpile Emergency Preparedness Program.

20
21 (115) HPP shall take reasonable steps to reduce or manage exposure to electromagnetic fields
22 (EMF), consistent with EFSC findings presented in the "Report of the EMF Subcommittee to the
23 Energy Facility Siting Council," dated March 30, 1993. Prior to and during construction and
24 operation, HPP shall provide information to the public upon public request about EMF levels
25 associated with the power plant and related transmission lines.

26
27 (116) HPP shall enter into an Irrevocable Consent Agreement (ICA) with the County by which
28 HPP agrees to waive the right to oppose the formation of a Local Improvement District (LID) for
29 Co. Rd.No 1324.

30
31 (117) The power plant will incorporate an on-site fire suppression system and will be
32 constructed from fire retardant materials to the extent reasonably feasible. The power plant will
33 incorporate spill prevention and containment designs for the storage of all hazardous materials.
34 Fire suppression and hazardous material safety designs shall be established in consultation with
35 the Hermiston Fire Department and the State Fire Marshall.

36
37 (118) HPP shall provide adequate parking during construction.

38
39 (119) HPP shall coordinate construction traffic with the county Public Works Department. In
40 particular, a traffic plan shall be developed to coordinate peak construction traffic and peak
41 potato harvest traffic.

42
43 (120) The Site Certificate holder shall be responsible for any damages to County Road No.
44 1324 occurring as a result of construction or general operating activities.

1
2 (121) If the 500 kV transmission line alternative is constructed, HPP shall minimize the visual
3 impact of new transmission line structures in the City of Umatilla by the use of steel lattice and
4 wood frame structures, where feasible. Where new single steel pole structures must be installed
5 within the City of Umatilla, HPP shall use non glossy paint coverings in colors that will
6 minimize visual impacts.

7
8 **Noise**

9
10 (122) The Site Certificate holder shall design, select, locate, and/or orient components of the
11 energy facility and provide needed noise controls required to comply with OAR 340-35-035 for
12 new industrial sources located on previously unused industrial sites.

13
14 (123) The Site Certificate holder shall conduct a noise analysis of the final design to insure that
15 the facility will meet DEQ regulations. Results of the analysis shall be submitted to the
16 Department of Energy prior to issuing specifications for the equipment to be installed. The noise
17 study shall include a projection of noise to the noise sensitive properties identified along
18 Umatilla Meadows Road, the daycare facility, and residences west of the plant site west of
19 Highway 207 and south of the Umatilla River. The analysis shall include a listing of the major
20 noise sources and expected sound levels from each source at each receiver.

21
22 (124) The Site Certificate holder shall conduct a survey at locations mentioned in Condition
23 124 above within two months of startup of the first turbine, again within two months of full
24 power operation, within two months of startup of the second turbine, and again within two
25 months of full power operation of both units. Sound measurements of power operation shall be at
26 operation within 3% of full power. Measurements shall be made at each location during
27 atmospheric conditions best for sound propagation. Sound monitoring shall not be conducted
28 when winds are in excess of 5 mph.

29
30 (125) The Site Certificate holder shall consult with Umatilla County and City of Umatilla and
31 with neighbors around the energy facility to minimize the impacts of construction noise.

32
33 (126) The Site Certificate holder shall specify noise rated cooling towers.

34
35 (127) The Site Certificate holder shall design the HRSG and stack with resonant frequency
36 above the lowest natural frequency of the exhaust from the gas turbine.

37
38 (128) The Site Certificate holder shall specify combustion air inlet silencers to limit noise levels
39 to 46 dBA or less at 2900 feet.

40
41 **Wetlands**

42
43 (129) Prior to construction of the 500 kV transmission line, the Site Certificate holder shall
44 investigate, and where practicable, shall implement opportunities to design the tangent poles of

1 the transmission lines to be high enough to pull the line up so that vegetation maintenance
2 activities in riparian habitats can be minimized or avoided.

3
4 (130) Construction and maintenance of the transmission lines and natural gas pipelines shall
5 avoid all wetlands, except for the two wetland areas (wetlands 4 and 15) that will be unavoidably
6 impacted as stated in the ASC (Exhibit H, p. 11f; Exhibit P, p. 11b) and wetland #13, which may
7 be impacted by placement of the transmission line poles. The permanent impact at these wetlands
8 shall be limited to the area occupied by natural gas pipeline (wetland #4) and the pole
9 foundations and the earthen backfill placed at the base of the poles (wetlands #13 and 15).

10
11 (131) The following areas shall be flagged in the field prior to the start of construction to
12 delineate the maximum extent of project disturbance:

- 13
14 i. the natural gas pipeline and transmission line routes through wetlands 4, 13, and
15 15;
16
17 ii. any natural gas pipeline, water supply line, and transmission line routes within 50
18 feet of the Umatilla River; and
19
20 iii. the transmission line crossings of the Umatilla River.

21
22 Ground disturbing activities in all areas shall be confined to a predefined construction right-of-
23 way corridor. The corridor shall be no wider than is necessary for the safe and practicable
24 completion of the construction tasks. Incidental activities (i.e., personal vehicle parking, sanitary
25 facilities, temporary staging areas, etc.) shall be confined to a limited number of locations that
26 shall be predetermined prior to commencement of construction activities.

27
28 (132) At wetland #13, all ditch crossings shall be culverted with adequate culverts to maintain
29 year round flow.

30
31 (133) If pole placement avoids wetland #13 but is within 45 feet of it, HPP shall place a
32 temporary construction fence and temporary silt barrier at the border of the wetland in the area of
33 the pole to preclude incidental construction-related activity within the wetland and to minimize
34 surface runoff from the construction site into the wetland.

35
36 (134) At wetland #15, construction access for pole placement shall be restricted to the driest
37 period of the year (July through October); all waste and construction debris shall be removed
38 from the wetland area and disposed of on uplands; and construction disturbance shall be
39 restricted to the smallest area practicable.

40
41 (135) At wetland #4, a clay collar shall be placed on the down gradient side of the pipeline at
42 the wetland boundary at each crossing; the pipeline shall be backfilled and stockpiled topsoil
43 shall be replaced at the grade of the trench; and at the location of the outfall, fill material shall be
44 minimized and stabilized to prevent erosion.

1
2 (136) Disturbed wetland and riparian areas shall be revegetated upon completion of
3 construction with seed composition and vegetation species designed to enhance wetland and
4 riparian habitat values and composed only of species commonly associated with wetland and
5 riparian plant communities. Any wetland area that is lost due to project construction shall be
6 compensated by restoring wetland area at a 1:1 wetland impact:wetland restoration ratio, or by
7 creating wetland area at a 1:1.5 wetland impact:wetland creation ration, or by enhancing wetland
8 area at a 1:3.0 wetland impact:wetland enhancement ratio such that there shall be no net loss of
9 wetland habitat units or wetland habitat values. A wetland creation and revegetation plan shall be
10 developed prior to construction in consultation with ODFW and DSL. The wetland creation and
11 revegetation plan shall be submitted to ODOE for review and approval in consultation with
12 ODFW and DSL. HPP shall comply with the approved plan.
13

14 (137) Measures taken to mitigate impacts to wetlands shall be monitored by the Site Certificate
15 holder. Monitoring methodologies and schedules shall be developed in consultation with
16 ODFW, ODA, and DSL. Monitoring shall be conducted for a minimum of seven (7) years
17 following the completion of the restoration efforts unless ODOE, in consultation with DSL and
18 ODFW, approves a shorter monitoring period pursuant to its approval of a specific mitigation
19 monitoring plan. A mitigation monitoring plan shall be submitted to ODOE for review and
20 approval in consultation with ODFW and DSL, prior to the commencement of construction. If
21 any mitigation measures are determined by the Site Certificate holder or ODFW to be
22 unsuccessful, corrective actions shall be taken by the Site Certificate holder after consultation
23 with ODFW (as well as with ODOE and DSL if appropriate).
24

25 **IV. AMENDMENT OF SITE CERTIFICATION AGREEMENT**

26
27 HPP and EFSC recognize that, because of the length of time that may pass between the
28 date on which this Agreement is executed and the date on which construction will commence,
29 and that will pass between the time construction is commenced and the energy facility is retired,
30 it may be necessary to amend this Agreement.
31

32 Amendments shall be made in accordance with EFSC rules applicable and in effect at the
33 time the amendment is sought.
34

35 **V. SUCCESSORS AND ASSIGNS**

36
37 No Site Certificate, or any portion thereof, may be transferred, assigned, or disposed of in
38 any other manner, directly or indirectly, except in compliance with OAR 345-27-100.
39

40 **VI. SEVERABILITY AND CONSTRUCTION**

41
42 If any provision of this agreement and certificate is declared by a court to be illegal or in
43 conflict with any law, the validity of the remaining terms and conditions shall not be affected,

1 and the rights and obligations of the parties shall be construed and enforced as if the agreement
2 and certificate did not contain the particular provision held to be invalid. In the event of a
3 conflict between the conditions contained in the Site Certificate and EFSC's Final Order, the
4 conditions contained in this Site Certificate shall control.
5

6 **VIII. GOVERNING LAW AND FORUM**
7

- 8 A. This agreement shall be governed by the laws of the State of Oregon.
9
10 B. Any litigation or arbitration arising out of this agreement shall be conducted in an
11 appropriate forum in Oregon.
12

13 **IN WITNESS WHEREOF**, this Site Certificate has been executed by the State of
14 Oregon, acting by and through its Energy Facility Siting Council, and Hermiston Power
15 Partnership.
16

17 ENERGY FACILITY SITING COUNCIL
18
19
20
21

22 By: _____ Date: February 24, 2000
23 Karen H. Green, Chair
24
25
26

27 CALPINE HERMISTON, INC.
28
29
30
31

32 By: _____ Date: _____
33 Ron A. Walter
34
35

36 CPN HERMISTON, INC.
37
38
39
40

41 By: _____ Date: _____
42 Ron A. Walter
43 /
44 /

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27 CALPINE HERMISTON, INC.
28

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30
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32 Ron A. Walter
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34

35
36 CPN HERMISTON, INC.
37

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39
40 By: Ron A. Walter Date: 2/28/00
41 Ron A. Walter
42
43 /
44 /

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.
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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.
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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.
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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 /