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BEFORE THE
OREGON ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

In the Matter of the Third Amended) FINAL ORDER on
Site Certificate for the) TRANSFER of SITE CERTIFICATE
Klamath Cogeneration Project)

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Summary

The Energy Facility Siting Council ("Council") approves the request for a transfer of the Site Certificate for the Klamath Cogeneration Project.

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

Pursuant to Oregon Revised Statutes Chapter 469 and OAR 345-027-0100, the Oregon Department of Energy ("ODOE" or "Department") originally received on August 20, 2007 a request for transfer of the site certificate for the Klamath Cogeneration Project ("KCP" or "Facility"). The request was made jointly by the City of Klamath Falls ("City") and Klamath Energy LLC ("Klamath Energy"). The City is the original owner and holder of the site certificate. Klamath Energy is a subsidiary of PPM Energy, Inc. ("PPM"), which has managed and operated the facility under contractual agreements with the City since it began operating in 2001. The applicants request a transfer of the site certificate from the City to Klamath Energy. Klamath Energy would also assume ownership of the Facility.

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The KCP is a nominal 500 megawatt (MW) natural gas-fired electric cogeneration plant. The site is located approximately 4.5 miles northwest of the City, on land adjacent to the Collins Wood Products plant. In addition to electric generation, the Facility provides process steam to the Collins Wood Products plant for cogeneration.

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A.1. Name and Address of Transferee

Klamath Energy LLC
c/o PPM Energy Inc.
1125 NW Couch, Ste. 700
Portland, OR 97209

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A.2. Regulatory Background

The Council originally issued the site certificate on August 15, 1997. The site certificate was amended for the first time in April 1998, and a second time in December 1998. This transfer would be amendment No. 3 to the site certificate.

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Other than the transfer from the City to Klamath Energy, applicants propose no other changes to the facility or its operations, and request no other amendments to the site certificate.

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2 **B. Procedural History**

3 **B.1. Transferees' Request**

4 The Department originally received the request for transfer of the KCP Site Certificate
5 on August 20, 2007.
6

7 **B.2. Notice**

8 Because the City and Klamath Energy requested no changes to the site certificate other
9 than the transfer, the Department conducted the review under Council rules at OAR 345-027-
10 0100(1) through (10).
11

12 On August 21, 2007, the Department mailed the notice described at OAR 345-027-
13 0100(6) to the reviewing agencies, the Council's general mailing list, and the list of property
14 owners and other persons on the mailing list maintained for the KCP. The Department
15 described the transfer request and requested written comments by September 14, 2007. The
16 notice stated that the transfer request was posted on the Department's web site. The
17 Department deferred scheduling of the informational hearing described at OAR 345-027-
18 0100(7) until discussion with the applicants.
19

20 On August 28, 2007, the City and Klamath Energy provided a revised version of the
21 transfer request, providing additional information at the Department's request. The August
22 28, 2007 revision is the basis for the Council's review and for this order.
23

24 **B.3. Informational Hearing**

25 After further review and discussion with the applicants, the Department scheduled the
26 informational hearing described at OAR 345-027-0100(7). The hearing was scheduled as part
27 of the Council's regular meeting on September 21, 2007, located in Klamath Falls.
28

29 On September 7, 2007, the Department mailed notice of the information hearing to the
30 reviewing agencies, Council's general mailing list, adjacent property owners and persons on
31 the special list established for the KCP. The notice was mailed in the agenda package for the
32 Council's regular meeting. The notice stated that at the conclusion of the information hearing,
33 the Council may issue its order approving, denying, or conditionally approving the transfer.
34

35 **B.4. Public Comments**

36 The close of the period for written public comment was September 14, 2007. One
37 local resident, Joyce Barrett, commented that the transfer was acceptable to her. The
38 Department received no comments in opposition.
39

40 **B.5. Draft Final Order**

41 The Department issued a Draft Final Order on September 14, 2007, and mailed it to
42 the Council on the same day.
43

44 **B.6. Council Decision Meeting**

45 The Council held a meeting in Klamath Falls on September 21, 2007. That meeting
46 served as the informational hearing and as the Council's decision meeting. Pursuant to OAR
47 345-027-0100(7), the information hearing was not a contested case hearing. The Department
48 presented information about the Draft Final Order. The City and Klamath Energy testified in

1 favor of the transfer and offered to answer any Council questions. The deadline for written
2 comments was past, but the public was invited to comment in person at the information
3 hearing.

4
5 **C. General Findings of Fact Related to the Request for Transfer**

6 **C.1. Description of the Proposed Transfer**

7 The City holds the site certificate and is responsible for compliance with its
8 conditions. Under a contractual agreement with the City, PPM and its wholly owned
9 subsidiary Pacific Klamath Energy (“PKE”) constructed the facility and have managed and
10 operated it since it began operating in 2001. The transfer would place sole responsibility on
11 Klamath Energy for ensuring that the KCP meets Site Certificate requirements. Under 345-
12 027-0100(4), the request for transfer includes a written statement by Klamath Energy,
13 certifying that it agrees to abide by all terms and conditions of the site certificate.

14
15 The transfer request includes a memorandum of understanding (“MOU”) between the
16 City and PPM, stating the agreement to take certain actions. These actions include good faith
17 negotiations of an Asset Purchase Agreement and an agreement for the City to continue
18 providing cooling water to the KCP. Because the KCP was financed with revenue bonds
19 issued by the City, the MOU includes an agreement to negotiate and execute a Bond
20 Redemption and Defeasance Agreement. The MOU lists conditions precedent including an
21 appraisal of transaction, unqualified opinion of bond council, judicial validation, and
22 regulatory approvals that include but are not limited to EFSC, the Federal Energy Regulatory
23 Commission, and necessary credit support and letters of credit.

24
25 **C.2. Anticipated Date of Transfer of Ownership**

26 The City wishes to transfer ownership of KCP to Klamath Energy as soon as possible.
27 The City and Klamath Energy cannot close the transaction prior to Council approval of the
28 site certificate transfer. The City and Klamath Energy must also receive other regulatory
29 approvals prior to any transfer.

30
31 **C.3. Request for Council Approval**

32 The Council’s rules concerning Site Certificate transfers state:

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

38
39 The City is the current holder of the Site Certificate and is responsible for all
40 obligations under the site certificate. The City and Klamath Energy request a transfer of the
41 site certificate that will recognize Klamath Energy as solely liable to the State of Oregon for
42 performance of the responsibilities under the Site Certificate. The requested approval to
43 transfer ownership interests in KCP will remove the City from the Site Certificate.

44
45 Such approval requires the Council to amend the Site Certificate to replace all
46 references to the term “site certificate holder” defined as the “City of Klamath Falls” with

1 “Klamath Energy.” Such approval also requires the Council to amend the Site Certificate to
2 award Klamath Energy the sole authority to operate and retire the facility.

3
4 **C.4. Requested Amendments to Site Certificate**

5 The only amendments to the Site Certificate requested are those necessary to replace
6 references to the City with references to Klamath Energy. No changes in operations or
7 retirement are proposed, and no changes to the site certificate terms or conditions are
8 requested.

9
10 **C.5. Applicable Regulations**

11 OAR 345-027-0100(8) states that the Council may approve a transfer if it finds that:

12
13 (a) The transferee complies with the standards described in OAR
14 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1);
15 and

16
17 (b) The transferee is lawfully entitled to possession or control of the site or the
18 facility described in the Site Certificate;

19
20 These standards are addressed below in Section D: “Compliance with Applicable
21 Regulations.”

22
23 **D. Compliance with Applicable Regulations (OAR 345-027-0100(8))**

24 **D.1. Compliance with OAR 345-027-0100(8)(a)**

25 **D.1.1. Organizational Expertise (OAR 345-022-0010)**

26 The organizational expertise standard has four sections. Subsections (1) and (2) relate
27 to applicant qualifications and capability. Subsections (3) and (4) relate to third-party services
28 and permits.

29
30 **a. Applicant Qualification and Capability (OAR 345-022-0010(1) and (2))**

31 Section (1) of this standard provides that:

32
33 To issue a Site Certificate, the Council must find that the applicant has the
34 organizational expertise to construct, operate and retire the proposed
35 facility in compliance with Council standards and conditions of the Site
36 Certificate. To conclude that the applicant has this expertise, the Council
37 must find that the applicant has demonstrated the ability to design,
38 construct and operate the proposed facility in compliance with Site
39 Certificate conditions and in a manner that protects public health and
40 safety and has demonstrated the ability to restore the site to a useful, non-
41 hazardous condition. The Council may consider the applicant’s
42 experience, the applicant’s access to technical expertise and the
43 applicants’ past performance in constructing, operating and retiring other
44 facilities, including, but not limited to, the number and severity of
45 regulatory citations issued to the applicant.

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2 **Discussion:** The transferee, Klamath Energy LLC, is a wholly owned subsidiary of
3 PPM Energy, Inc (PPM). As parent company, PPM will provide the organizational,
4 managerial and technical expertise to enable Klamath Energy to operate KCP following
5 KCP's purchase from the City.

6 PPM, through its direct subsidiaries, developed and owns or manages three natural
7 gas-fired generation facilities, including KCP and the Klamath Generation Peakers in Oregon
8 and the West Valley Generation Project in Utah. PPM also owns or operates wind farms in
9 Oregon, including the Klondike facility and the Leaning Juniper wind project.

10
11 The KCP was constructed beginning in 1999 and began commercial operation in 2001.
12 PKE, a subsidiary of PPM, has managed and operated the KCP under contract to the City
13 since the facility began operating in 2001. As required by the site certificate and OAR 345-
14 026-0080, KCP reports annually to the Council on plant operations, plant reliability, and
15 compliance with the site certificate. Klamath Energy reports that plant reliability has
16 exceeded 98% over its first five years of operation. Klamath Energy does not anticipate any
17 changes in plant operations. In response to OAR 345-021-0010(1)(d)(B), which requires
18 information about personnel responsible for operating the facility, Klamath Energy has
19 identified the same individuals who are currently performing those functions for PKE.

20
21 **Conclusion:** The Council finds that the transfer of the site certificate from the City to
22 Klamath Energy satisfies the requirements of OAR 345-022-0010(1).

23
24 Section (2) of this standard provides that:

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

31
32 **Discussion:** This subsection does not impose a requirement; rather, it provides a
33 rebuttable presumption of the managerial and technical expertise upon which an applicant
34 may rely. Klamath Energy is not asking to rely on this subsection.

35
36 **Conclusion:** The Council finds that OAR 345-022-0010(2) does not apply to this
37 transfer.

38
39 **b. Third-Party Services and Permits (OAR 345-022-0010(3) and (4)).**

40 Section (3) of this standard requires that:

41
42 If the applicant does not itself obtain a state or local government permit or
43 approval for which the Council would ordinarily determine compliance but
44 instead relies on a permit or approval issued to a third party, the Council, to
45 issue a Site Certificate, must find that the third party has, or has a reasonable

1 likelihood of obtaining, the necessary permit or approval, and that the
2 applicant has, or has a reasonable likelihood of entering into, a contractual or
3 other arrangement with the third party for access to the resource or service
4 secured by that permit or approval.
5

6 Additionally, the final section (4) of the standard provides:
7

8 If the applicant relies on a permit or approval issued to a third party and the
9 third party does not have the necessary permit or approval at the time the
10 Council issues the Site Certificate, the Council may issue the Site Certificate
11 subject to the condition that the certificate holder may not commence
12 construction or operation as appropriate until the third party has obtained the
13 necessary permit or approval and the applicant has a contract or other
14 arrangement for access to the resource or service secured by that permit or
15 approval.
16

17 **Discussion:** The Final Order and Site Certificate do not identify any third party
18 permits needed to construction or operation of the KCP. However, KCP relies on the City to
19 provide certain services and permits which the City previously provided for itself as plant
20 owner.
21

22 *Cooling Water:* The site certificate states that the energy facility will reuse treated
23 effluent from the City's Spring Street Wastewater Treatment Plant (SSWTP). The energy
24 facility will also obtain water from the City's existing municipal water supply system, and
25 from Collins to make steam for Collins.
26

27 The request for transfer includes a Memorandum of Understanding (MOU) between
28 the City and PPM, signed by both parties on July 17, 2007. The MOU includes an agreement
29 to negotiate, execute and deliver a Cooling Water agreement. Therefore, the MOU
30 demonstrates reasonable likelihood that the City and PPM will enter into the necessary
31 contractual arrangement for access to cooling water under permits held by the City.
32

33 The site certificate includes conditions at section IV.S, related to a new water permit
34 which the City obtained from Water Resources Department for operation of the energy
35 facility. Condition IV.S.1 states that the holder of the permit is the City. Klamath Energy has
36 stated¹ that this water right will remain with the City, but that the water supply needed for
37 plant operations would be part of a Cooling Water agreement between the City and Klamath
38 Energy.
39

40 *Wastewater Discharge:* The site certificate includes three conditions on wastewater
41 discharge. Condition IV.J.1 requires KCP to manage the cooling tower system so as to
42 comply with the limits on total dissolved solids in KCP's industrial discharge permit.
43 Condition IV.J.6 requires KCP to manage discharge of industrial wastewater so as to comply

¹ Personal communication from Mike Roberts, Klamath Energy to Adam Bless, ODOE, Sept. 10, 2007

1 with provisions in the Reclaimed Water Use Plan for KCP as required under the City's
2 SSWTP NPDES permit. Condition IV.K.1 places limits on the net consumption of effluent
3 from the SSWTP.
4

5 These conditions continue to apply. After the transfer, the City will become a "third
6 party" with respect to KCP, and the permits held by the City will become third party permits.
7 The MOU states that the City and PPM will negotiate, execute and deliver a Cooling Water
8 agreement, which would include water from the SSWTP.
9

10 On September 12, 2007, the City and Klamath Energy issued a letter addressed to
11 Adam Bless of ODOE, formalizing the agreement for the City to continue provide water to
12 KCP in the same manner as described in the site certificate.² The letter also formalizes the
13 agreement for the City to provide wastewater discharge services through the SSWTP.
14 Moreover, PPM has stated that it plans no changes in the way KCP is operated. Therefore, the
15 City has the necessary third party permits, and there is an agreement for the City to continue
16 providing service. However, the Council will adopt a condition, making execution of the
17 agreement for continued access to the City's NPDES permit and municipal water rights, under
18 terms consistent with the current site certificate, a precondition of the site certificate transfer.
19

20 **Conclusion:** The Council will adopt conditions to require execution of agreements
21 between the City and PPM for continued access to water under the City's municipal water
22 right and continued access to effluent and discharge service to the SSWTP, consistent with the
23 City's NPDES permit and the terms of the site certificate, prior to the site certificate transfer.
24 The Council finds that the transfer of the site certificate from the City to Klamath Energy, as
25 so conditioned, satisfies the requirements of OAR 345-022-0010(3) and (4).
26

27 **D.1.2. Retirement and Financial Assurance (OAR 345-022-0050)**

28 The retirement and financial assurance standard provides:
29

- 30 (1) To issue a Site Certificate, the Council must find that: The site, taking
31 into account mitigation, can be restored adequately to a useful, non-
32 hazardous condition following permanent cessation of construction or
33 operation of the facility.
34 (2) The applicant has a reasonable likelihood of obtaining a bond or letter
35 of credit in a form and amount satisfactory to the Council to restore
36 the site to a useful, non-hazardous condition.
37

38 Further, Council rule OAR 345-027-0020 requires the following mandatory
39 conditions:
40

41 The Council shall impose the following conditions in every Site
42 Certificate. The Council may impose additional conditions.
43

² Letter from Jeff Ball and Peter Van Alderwerelt to Adam Bless, ODOE, Sept. 12, 2007

1 (8) Before beginning construction of the facility, the certificate holder
2 shall submit to the State of Oregon, through the Council, a bond or letter
3 of credit, satisfactory to the Council, in an amount specified in the Site
4 Certificate to restore the site to a useful, non-hazardous condition. The
5 certificate holder shall maintain a bond or letter of credit in effect at all
6 times until the facility has been retired. The Council may specify different
7 amounts for the bond or letter of credit during construction and during
8 operation of the facility.
9

10 **Discussion:** Conditions IV.D.3 and IV.D.4 of the current site certificate direct the
11 City to maintain a Termination fund of \$6.85 million in 1997 dollars. The fund is indexed
12 according to the Implicit Price Deflator for the Gross Domestic Product as published by the
13 U.S. Department of Commerce's Bureau of Economic Analysis. In 2007, the amount of the
14 fund is \$8.6 million.
15

16 Condition IV.D.5 of the site certificate states that in lieu of funding part or all of the
17 Termination Fund with cash or investment securities, the City may cause a performance and
18 payment bond, surety bond or letter of credit to be delivered to the Council. In its request for
19 transfer, Klamath Energy states that it will submit to the Council a bond or letter of credit in
20 the amount of \$8.6 million. The bond or letter of credit will be inflation adjusted annually,
21 according to the index named in the site certificate.
22

23 Klamath Energy submitted a letter dated August 27, 2007 from Royal Bank of
24 Scotland, stating that PPM has sufficient available letter of credit capacity to support this
25 request under its existing uncommitted financing arrangement with the Bank. The letter states
26 that there is reasonable likelihood that the Bank would provide an annual letter of credit. The
27 Council will add a condition requiring submittal of the bond or letter of credit, in a form
28 acceptable to the Council, promptly upon execution of the transfer.
29

30 **Conclusion:** Subject to the above condition, the Council finds that the transfer of the
31 site certificate from the City to Klamath Energy satisfies the requirements of OAR 345-022-
32 0050.
33

34 **D.1.3. CO₂ Emissions Standard (OAR 345-024-0710(1))**

35 The relevant portion of the cited standard provides,
36

37 If the applicant elects to meet the applicable carbon dioxide emissions
38 standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-
39 0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide
40 a bond or letter of credit in a form reasonably acceptable to the Council to
41 ensure the payment of the offset funds and the additional funds required
42 under section (4).***
43

44 **Discussion:** The site certificate for KCP was issued in 1997. Statutes related to
45 carbon dioxide at ORS 469.503 had not been enacted at the time. Therefore, CO₂ emissions

1 standards at OAR 345-024-0710(1) do not apply to this transfer request.

2
3 However, the transferee is required to comply with all terms and conditions of the site
4 certificate. Any change in terms and conditions requires a site certificate amendment, which
5 would be reviewed in accordance with rules and procedures at OAR 354-027-0050 through
6 0070. No such amendment is requested in this case.

7
8 Conditions related to emissions of carbon dioxide and other pollutants are in section
9 IV.B of the site certificate. These conditions resulted from a contested case held in 1997. At
10 that time, electric generating plants in Oregon were subject to the Council's Need for Power
11 standard, OAR 345 Division 23. In 1995, the Oregon legislature directed the Council to
12 award a single 500 mW exemption from that standard. Three applicants sought the
13 exemption. Pursuant to implementing rules, the Council held a contested case to determine
14 which facility would receive the exemption, applying criteria related to the relative
15 environmental impact of the proposed projects, in particular emissions of CO₂ and other air
16 pollutants. The KCP won the contested case, based on a set of programs to reduce or offset
17 air emissions in general and CO₂ emissions in particular.

18
19 The commitments made by KCP in the application were adopted in that contested case
20 as the basis for conditions IV.B.1 through IV.B.25 of the site certificate. Part of KCP's
21 proposal to offset its CO₂ emissions was the sale of process steam to the adjacent Weyerhaeuser
22 wood products plant. (Weyerhaeuser later sold the wood products plant to Collins.) KCP
23 proposed to sell steam at an average rate of 200,000 lb./hour, which would reduce emissions
24 by displacing fuel that would otherwise be burned in boilers at the Collins plant.

25
26 Condition IV.B.1 of the site certificate states that:

27
28 "1. KCP shall make available from the Energy Facility to off-site industrial use the
29 steam energy equivalent of at least 200,000 pounds of steam per hour at 375 psig and
30 455°F (which is equal to 242.8 MMBtu/hr) on an annual average basis. The amount,
31 temperature and pressure of steam supplied shall be measured at the point of
32 interconnection of the Energy Facility with its off-site industrial use. KCP shall report
33 this information to the Council on an annual basis. KCP shall calculate the steam energy
34 equivalent of the steam it makes available to off-site industrial use using accepted values
35 for the energy content of the steam, such as those found in steam tables published by the
36 American Society of Mechanical Engineers.

37
38 KCP's off-site industrial use shall be at least the steam energy equivalent of 200,000
39 pounds of steam per hour at 375 psig and 455°F on a five year basis, measured in
40 discrete, successive five-year periods. "Use" of the steam means that the steam is used to
41 displace another source of carbon dioxide emissions from fossil fuels that would have
42 otherwise occurred or continued to occur. At the end of each five year period following
43 commercial operation, KCP shall determine and report to the Council the hourly average
44 steam volume, pressure and temperature delivered to off-site industrial use for the
45 applicable five year period. Should the hourly average steam used by KCP's off-site

1 industrial use be less than the steam energy equivalent of 200,000 pounds per hour at 375
2 psig and 455°F, KCP shall develop, present to the Council for approval, and implement a
3 plan to make available and sell to another steam use the steam energy equivalent not used
4 by KCP's existing off-site industrial use at the same or similar cost incentive as provided
5 to KCP's existing off-site industrial use. If within twelve months after Council approval,
6 KCP has not contracted to make available and sell to another steam user the steam energy
7 equivalent not used by KCP's existing off-site industrial use, then KCP shall develop,
8 present to the Council for approval, and implement a program to offset an amount of CO₂,
9 NO_x or PM-10, or any combination thereof, equivalent to the monetized incremental
10 emissions resulting from the existing off-site industrial use of less than the steam energy
11 equivalent of an average of 200,000 pounds of steam per hour at 375 psig and 455°F. In
12 any event, KCP shall offset an amount equivalent to the monetized incremental emissions
13 resulting from the existing off-site industrial use of less than the steam energy equivalent
14 of an average of 200,000 pounds of steam per hour at 375 psig and 455°F, measured on a
15 five year basis, for 30 years. Calculations of monetized emissions shall use the same
16 methodology and monetary values of emissions employed in the 500 megawatt exemption
17 Final Order.”
18

19 The first five years ended in June 2006. KCP reported that steam sales for the first five
20 years averaged a rate of 70,000 lb./hour instead of the expected 200,000. Under the above
21 condition, KCP must develop a program to offset an amount of CO₂, NO_x or PM-10, or any
22 combination thereof, equivalent to the shortfall in steam sales. The program is subject to
23 Council approval.
24

25 On August 31, 2007, PPM, in partial fulfillment of the offset requirement, presented
26 an offer to make payments to the Oregon Climate Trust in an amount sufficient to offset the
27 CO₂ emissions equivalent to the shortfall in steam sales. The plan also addresses potential
28 paths to account for expected future shortfalls in steam sales during years five through thirty
29 of plant operations. The Council's review of that plan is the subject of a separate Council
30 deliberation. The plan is under review and is on the Council's agenda for its meeting in
31 Klamath Falls on September 21, 2007. The Council therefore finds that KCP is complying
32 satisfactorily with condition IV.B.1 of the site certificate.
33

34 Other elements of KCP's proposal in the 500 MW contested case involve funding of
35 various programs to offset emissions. These include payments to the Oregon Forest
36 Resources Trust for reforestation, funding of the Methane Energy Trust, funding of programs
37 to promote solar electricity in Asia, and a program to promote geothermal heating in Klamath
38 Falls. KCP met the conditions related to these programs by providing the required funds, and
39 in this way fulfilled its obligations. No further conditions to the transfer are necessary.
40

41 KCP was originally proposed as a 318 MW generating facility. Amendment No. 1 of
42 the site certificate authorized KCP to increase the capacity from 318 MW to 500 MW.
43 Conditions IV.B.24 and IV.B.25, added in amendment 1, directed KCP to fund the Climate
44 Trust at a rate of \$0.57 per ton of CO₂ for emissions due to the increase in generating capacity.
45 KCP met these conditions by providing the required funds. No further conditions to the

1 transfer are necessary.
2

3 **Conclusion:** The Council finds that rules at OAR 345-024-0710 do not apply to KCP,
4 but that Klamath Energy has provided evidence of continued compliance with the conditions
5 in section IV.B of the site certificate related to carbon dioxide, consistent with the site
6 certificate and the 500 MW contested case.

7
8 **D.2. Compliance with OAR 345-027-0100(10)(b): Transferee's Right to Possession**
9 **and Control of Site and Facility**

10 Appendix M-1 of the Request for Transfer is a letter date August 20, 2007 from PPM
11 General Counsel, regarding Klamath Energy's legal authority to own and operate the KCP.
12 The letter states that:

13
14 "****I am of the opinion, based upon my best knowledge, that subject to Klamath
15 Energy meeting all applicable federal, state and local laws (including all rules and regulations
16 promulgated pursuant thereto), Klamath Energy has the legal authority without violating its
17 Articles of Organization, Operating Agreement, membership interest covenants or similar
18 agreements, to own and operate the Klamath Cogeneration Project****"

19
20 **Conclusion:** The Council finds that Klamath Energy is lawfully entitled to possession
21 or control of the site or the Facility described in the Site Certificate, subject to closing the
22 transaction described in the application.

23
24 **D.3. Compliance with Site Certificate**

25 The Site Certificate requires the facility to be designed, constructed, operated and
26 retired as described more specifically in various conditions in the Site Certificate. The only
27 change that will be brought about by the proposed transfer is the change of certificate holder
28 from the City to Klamath Energy. Pursuant to OAR 345-027-0100(4), Klamath Energy
29 certified in its request that it agrees to abide by all terms and conditions of the site certificate
30 currently in effect.

31
32 **E. Preconditions of the Transfer**

33 In connection with the site certificate, the Klamath Cogeneration Project requires
34 certain permits that are administered by state agencies other than EFSC but for which EFSC
35 determines compliance under ORS 469.401. As original site certificate holder, these permits
36 were secured directly by the City, and must now be either transferred or assigned to Klamath
37 Energy through the respective agencies, or subject to an agreement between Klamath Energy
38 and the City that ensures continued access to the resources or services of the permit.
39 Moreover, the transfer is contingent on certain additional regulatory approvals and court
40 actions. Certain permits and approvals are identified in sections D.1.b of this order. Other
41 preconditions are identified in the MOU presented as Appendix A-2 of the Request for
42 Transfer.

43
44 Prior to assuming the site certificate, Klamath Energy must secure:
45

- 1 i An agreement for the City to continue supplying clean water from its municipal water
- 2 system, consistent with Condition IV.O.1 of the site certificate.
- 3 ii An agreement for the City to continue supplying reclaimed water from the SSWTP,
- 4 consistent with conditions IV.J.1, IV.J.6 and IV.K.1 of the site certificate.
- 5 iii An agreement for the City to continue accepting process discharge water under its
- 6 NPDES permit.
- 7 iv Continued use of the water described in section IV.S of the site certificate, which
- 8 describes a new water right obtained by the City specifically for plant operations.
- 9 v Oregon State Fire Marshal Hazardous Material Management Program

10 Other requirements not under EFSC jurisdiction but nonetheless applicable are:

11 Title V Air permit issued by DEQ under a federal delegation

12 Title IV Acid Rain program registration administered by DEQ under federal delegation

13 Hazardous Materials Program administered by DEQ under federal delegation

14 City of Klamath Falls Industrial Discharge Permit, under the NPDES program

15 administered by DEQ under federal delegation

16 Approval by FERC under the Federal Power Act

17
18
19
20 In addition, Klamath Energy proposes to secure a letter of credit in the amount required under the
21 Retirement and Financial Assurance Standard. The Council therefore attaches the following
22 condition to the site certificate transfer:

23
24 III.A(12): The transfer of the site certificate from the City of Klamath Falls (City) to Klamath
25 Energy LLC (Klamath Energy) shall not occur until Klamath Energy delivers evidence to the
26 Council that:

27 (i) The City and Klamath Energy or PPM have entered into the Cooling Water Agreement
28 described in the Memorandum of Understanding included in the Request for Transfer and dated
29 July 17, 2007.

30 (ii) The City and Klamath Energy or PPM have entered into an agreement for Klamath
31 Energy to discharge process waste water and sanitary waste water to the Spring Street Water
32 Treatment Plant (SSWTP) , to be discharged under the SSWTP's NPDES permit

33 (iii) The City has received the Order of the Circuit Court of Klamath County, validating
34 the City's legal authority to enter into and perform its obligations in connection with the transfer,
35 as described in item 4.3 of the Memorandum of Understanding dated July 17, 2007 and included
36 in the Request for Transfer.

37 (iv) the Federal Energy Regulatory Commission has issued such approvals as are
38 necessary for Klamath Energy to proceed with the acquisition of the Facility

39 (v) Contracts for delivery of steam to the steam host have been assigned from the City to
40 Klamath Energy or PPM,

41 (vi) Title V and Title IV air quality permits are transferred by DEQ from the City to
42 Klamath Energy or PPM, and

43 (vii) Klamath Energy delivers to the Council a letter of credit in the amount of \$8.6
44 million that replaces the Termination Fund maintained by the City to satisfy Conditions IV.D.3,
45 IV.D.4 and IV.D.5.

1
2
3 **F. Conclusions about the Request for Transfer**

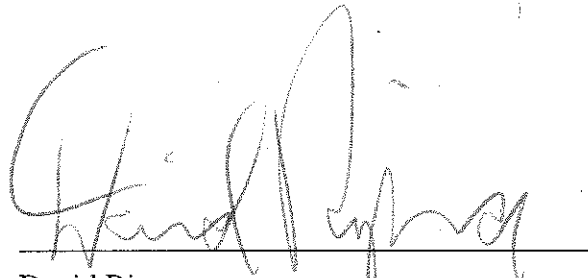
4 The Council finds that the Request for Transfer of Site Certificate from the City to
5 Klamath Energy is consistent with current Council rules and the terms and conditions of the
6 site certificate.
7

8 Based on the above findings, reasoning and conclusions, the Council amends the Site
9 Certificate for the Klamath Cogeneration Project as the City of Klamath Falls and Klamath
10 Energy requested in the Request for Transfer of Site Certificate for the Klamath Cogeneration
11 Project and as conditioned in section E of this order, and as shown in the Council's proposed
12 Third Amended Site Certificate.
13

14 **FINAL ORDER**

15
16 Based on the above findings of fact, discussion and conclusions of law, the Energy
17 Facility Siting Council approves the Request for Transfer of Site Certificate for the Klamath
18 Cogeneration Project from the City of Klamath Falls to Klamath Energy LLC. The Council
19 Chair shall execute the Site Certificate amendment in the form of the "Third Amended Site
20 Certificate for the Klamath Cogeneration Project," which shall incorporate Amendments No.
21 1 through No. 3.
22

23 Issued September 21, 2007
24
25
26
27



28 David Ripma
29 Chair
30 Energy Facility Siting Council
31
32

33 **Notice of the Right to Appeal**

34 You have the right to appeal this order to the Oregon Supreme Court pursuant to
35 Oregon Revised Statutes (ORS) 469.405. To appeal you must file a petition for judicial
36 review with the Supreme Court within 60 days from the day this order was served on you. If
37 this order was personally delivered to you, the date of service is the date you received this
38 order. If this order was mailed to you, the date of service is the date it was mailed, not the day
39 you received it. If you do not file a petition for judicial review within the 60-day time period,
40 you lose your right to appeal.
41