

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

IN THE MATTER OF THE REQUEST FOR AMENDMENT #5
OF THE SITE CERTIFICATE FOR THE KLAMATH
COGENERATION PROJECT

FINAL ORDER

Issued by the Oregon Energy Facility Siting Council

January 25, 2013

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1 **I. INTRODUCTION**

2 The Energy Facility Siting Council (“Council” or “EFSC”) issues this order in accordance with
3 ORS 469.405 and OAR 345-027-0070. This order addresses a request by Klamath Energy LLC
4 (“Klamath Energy” or “Certificate Holder”) for Amendment #5 to the Site Certificate for the Klamath
5 Cogeneration Project (“KCP”).¹ The Klamath Cogeneration Project is a nominal 525-megawatt (MW)
6 natural gas-fired electric cogeneration facility. The facility is located about 4.5 miles northwest of the
7 City of Klamath Falls on land adjacent to the Collins Wood Products plant.

8 In its Request for Amendment #5 (“RFA #5”), Klamath Energy requests to delete conditions
9 which have either been superseded or for which the requirements have been met or completed, to
10 make housekeeping changes to outdated references, and to restate and update the contents of the Site
11 Certificate in a more concise and functional manner. The proposed amendment involves no
12 substantive changes to the facility, its operations, or the currently effective terms or conditions of the
13 site certificate.

14 The proposed amendment would make no changes to the KCP site boundary or to facility
15 components previously authorized by the Council. KCP is described in detail in the Fourth Amended
16 Site Certificate.²

17 The Council issued the Final Order on KCP on August 15, 1997, and the Final Orders for
18 Amendment #1 on April 17, 1998, Amendment #2 on December 11, 1998, Amendment #3 on
19 September 21, 2007, and Amendment #4 on March 27, 2009 (the “Final Orders”). This amendment is
20 Amendment #5.

21 In addition to the Final Orders, the Council issued two orders clarifying certain Site Certificate
22 conditions that relate to carbon dioxide emissions; the *Order on Program to Offset Emissions of*
23 *Carbon Dioxide, Nitrogen Oxides and PM-10* (“Order on Carbon Dioxide Offsets”) on September 21,
24 2007, and the *Supplemental Order Clarifying Ongoing Requirements under Conditions at Section*
25 *IV.B of the Site Certificate* (“Supplemental Order”) on July 25, 2008.

26 Collectively, the Final Orders, Order on Carbon Dioxide Offsets, and Supplemental Order are
27 referred to herein as the “Final and Supplemental Orders.”

28 Based upon the discussion and conclusions contained in this Order, the Council approves
29 Amendment #5 and issues an amended site certificate for Klamath Cogeneration Project, subject to
30 the terms and conditions set forth in this proposed order.

31 Unless otherwise specified, the definitions in ORS 469.300 and OAR 345-001-0010 apply to
32 terms used in this order.
33

¹ Klamath Energy, Fifth Request to Amend Site Certificate (Regarding Restatement and Amendment, Carbon Dioxide Emissions Standard and Financial Assurance Standard), September 2012.

² *Fourth Amended Site Certificate for Klamath Cogeneration Project*, Section II, pp. 2-7.

1 **II. THE AMENDMENT PROCESS**

2 **II.A. DESCRIPTION OF THE PROPOSED AMENDMENT**

3 Since 2007, EFSC and Oregon Department of Energy (“ODOE”), acting as staff to EFSC, have
4 approved several incremental changes to KCP’s requirements under the Site Certificate conditions,
5 through amendments, supplemental orders interpreting the site certificate, and approval of
6 supplemental offset payments resulting in a notable difference between the description of carbon
7 dioxide compliance requirements in the Site Certificate and current actual practice. As a result,
8 ODOE recommended that Klamath Energy submit a request to amend the site certificate to
9 memorialize these various changes and consolidate them into a single, updated Site Certificate.

10 In RFA #5, Klamath Energy explained the proposed modifications as follows:

11 *“Klamath Energy proposes to amend the Site Certificate to remove conditions that are no*
12 *longer applicable and revise conditions that are still relevant, but require updating. While*
13 *these proposed conditions focus on the modification of the carbon dioxide emissions standard*
14 *and an update of financial assurance information, additional changes are proposed*
15 *throughout the Site Certificate, including the deletion of conditions which have either been*
16 *superseded or for which the requirements have been met or completed, the elimination of*
17 *references to the City of Klamath Falls’ (“City”) ownership of the KCP, and the restatement*
18 *and updating of the contents of the Site Certificate in a more concise and functional*
19 *manner.”*

20 Given the number of changes proposed to the text of the Site Certificate, the Certificate Holder
21 has provided a redline copy of the proposed Restated and Amended Site Certificate, which is included
22 as Appendix A to this order. The Certificate Holder proposes more extensive changes to certain
23 conditions related to carbon dioxide emissions and financial assurance. Those sections of text are
24 shown in more detail in the applicable portions of Section III of this order.

25 **II.B. APPLICABLE STANDARDS**

26 Under OAR 345-027-0050(1), a Site Certificate amendment request is required if a Certificate
27 Holder proposes to design, construct, operate, or retire a facility in a manner different from the
28 description in the Site Certificate, and the proposed change meets one or more of three defined
29 criteria:

- 30 (a) *[the proposed change] could result in a significant adverse impact to a resource protected by*
31 *Council standards;*
32 (b) *[the proposed change] could impair the certificate holder’s ability to comply with a site*
33 *certificate condition; or*
34 (c) *[the proposed change] could require a new condition or a change to a condition in the site*
35 *certificate.*

36 The restatement of the Site Certificate does not meet any of the criteria for a site certificate
37 amendment listed at OAR 345-027-0050(1)(a)-(c). Nonetheless, ODOE and Klamath Energy agreed
38 that the amendment process set forth at OAR 345-027-0060 and 0070 was an appropriate process for
39 the restatement of the Site Certificate, because it provides a well proven process of public notice and
40 comment, and produces a record of decision in a standardized format that would be clear and useful
41 to future Klamath Energy and state personnel. Although there are no changes to the facility, the
42 restatement is considered Amendment #5 to the Site Certificate.

43 The Certificate Holder and ODOE staff worked together to develop a set of proposed changes to
44 condition language that correctly captured all substantive requirements of the Fourth Amended Site
45 Certificate and the Final and Supplemental Orders. ODOE supported this amendment and restatement

1 of conditions because it consolidates a number of previous Council findings and memorializes them
2 in an updated site certificate document.

3 The Council previously considered a similar amendment request in Amendment #10 to the Site
4 Certificate for the Mist Underground Natural Gas Storage Facility, which consolidated the original
5 site certificate and nine subsequent “stand alone” amendment documents, but made no substantive
6 changes to requirements imposed by the Council. In the *Final Order* on Amendment #10, the Council
7 found that, because the certificate holder Northwest Natural proposed no substantive changes to the
8 site certificate, there were no Council standards relevant to the amendment request, and thus
9 Northwest Natural did not need to provide information on applicable standards under OAR 345-027-
10 0060(1)(e), (f).³ The Council uses this approach in reviewing Klamath Energy’s RFA #5, in which the
11 proposed changes to the Site Certificate do not make substantive changes to requirements.

12 In the Section I(e) of RFA #5, the Certificate Holder lists Council standards relevant to the
13 proposed amendments. In this list, the Certificate Holder includes standards relating to facilities that
14 emit carbon dioxide at OAR Chapter 345, Division 24. However, these standards were adopted after
15 the issuance of the KCP site certificate. The Council has previously found that the current standards
16 for carbon dioxide emissions do not apply to the KCP site certificate, and that the facility’s carbon
17 dioxide emissions are instead addressed in the conditions of approval found in Section IV.B of the
18 Site Certificate.⁴ These conditions implement the Council’s findings on carbon offset requirements
19 found in its 1997 contested case on the 500 Megawatt Exemption.⁵

20 The Council is not authorized to determine compliance with regulatory programs that have been
21 delegated to another state agency by the federal government.⁶ Nevertheless, the Council may consider
22 these programs in the context of its own standards to ensure public health and safety, resource
23 efficiency, and protection of the environment.

24 The Council has no jurisdiction over design or operational issues that do not relate to siting, such
25 as matters relating to employee health and safety, building code compliance, wage and hour or other
26 labor regulations, or local government fees and charges.⁷

27 **II.C. PROCEDURAL HISTORY**

28 On September 15, 2011, Klamath Energy submitted a request to ODOE to eliminate five-year
29 “true up” reports tracking surpluses and shortfalls of carbon dioxide offsets, based on the finding that
30 offset credits for plant efficiency upgrades had effectively eliminated any future required steam sales
31 to Collins Wood Products.

32 On January 23, 2012, ODOE informed Klamath Energy that it had reviewed the calculations and
33 confirmed that KCP had earned carbon dioxide offset credits in excess of the remaining steam sales
34 requirement. In this letter, ODOE recommended that the Certificate Holder submit a Request for

³ *Final Order Consolidating the Original Site Certificate and Amendments 1 through 9 to the Site Certificate for the Mist Underground Natural Gas Storage Facility*, May 30, 2008, pg. 6.

⁴ *Supplemental Order Clarifying Ongoing Requirements under Conditions at Section IV.B of the Site Certificate*, June 25, 2008, pg. 2.

⁵ In justifying its recommendation of approval of the “Five Year True-Up” requirements in Condition IV.B.1, ODOE noted that the clarifications were generally consistent with the Council’s treatment of generating plants under the carbon dioxide emission rules that it had adopted by that time. However, the *Supplemental Order* did not apply those rules directly to KCP. See Adam Bless memo to Energy Facility Siting Council, July 11, 2008.

⁶ ORS 469.503(3).

⁷ ORS 469.401(4).

1 Amendment to delete sections describing superseded carbon offset requirements and move forward
2 with a clear record of requirements in an Amended Site Certificate.⁸

3 On September 20, 2012, Klamath Energy submitted a request to ODOE to restate and amend the
4 Site Certificate to reflect changes to the facility's means of compliance with the Carbon Dioxide
5 Emissions standard. After receiving supplemental information required under EFSC rules,⁹ ODOE
6 deemed RFA #5 officially filed on October 2, 2012.

7 On October 17, 2012, the Certificate Holder sent copies of the RFA to reviewing agencies, with
8 an attached memorandum from ODOE requesting agency comments by November 16, 2012. ODOE
9 received two responses from reviewing agencies during the comment period on the RFA.

10 On October 17, 2012, ODOE sent notice of the RFA to all persons on the Council's general
11 mailing list, to persons on the mailing list established for the facility, and to an updated list of
12 property owners supplied by the Certificate Holder. ODOE requested public comments by November
13 16, 2012. ODOE received one response to this notice during the comment period on the RFA.

14 ODOE issued a proposed order on December 13, 2012. On the same day, ODOE issued a notice
15 of the proposed order in accordance with OAR 345-027-0070, specifying a January 14, 2013 deadline
16 for public comments and requests for a contested case proceeding.

17 On December 7, 2012, after conferring with ODOE staff, the Certificate Holder's representative
18 agreed to withdraw several deletions of conditions initially proposed in RFA #5.¹⁰ The Certificate
19 Holder originally proposed to delete these conditions, listed in Exhibit A to this order, because they
20 had been completed at or prior to construction of the facility. While ODOE agrees that these
21 conditions proposed for deletion were completed at or prior to construction of the facility, updating
22 these conditions through the amendment process is unnecessary as these conditions do not diminish
23 the functionality of the Site Certificate in the same manner as those conditions that were addressed by
24 the Final and Supplemental Orders. Another proposed change would have updated the base year and
25 amount of the financial assurance required under Condition IV.D.3. Because Condition IV.D.3
26 provides for annual updating of the financial assurance amount based on a specific index, updating
27 this amount through the amendment process is unnecessary.

28 Having received no comments raising substantive issues regarding this restatement and
29 amendment of the site certificate, EFSC considered the proposed order at a public meeting in Salem,
30 Oregon, on January 25, 2013.

31 **II.D. REVIEWING AGENCY COMMENTS ON THE REQUEST FOR AMENDMENT #5**

32 Dennis Griffin, PhD, State Archaeologist, submitted two comment letters on behalf of the Oregon
33 State Historic Preservation Office (SHPO).¹¹ The letters inquire as to whether SHPO was consulted
34 prior to construction and raise general concerns regarding any land disturbing activities that have or
35 may be associated with KCP. Because the Certificate Holder does not propose any changes to the
36 design, construction, operation, or retirement of the facility, the Council's Historic, Cultural, and
37 Archaeological Resources standard does not apply to the review of RFA #5. In addition, the
38 Certificate Holder has withdrawn proposed changes to Conditions IV.M.3 and IV.M.4 that appear to
39 have been the basis for Dr. Griffin's concerns.

⁸ Green, Chris, letter to Ray Martens. January 23, 2012.

⁹ OAR 345-027-0060(1) and (2) describe the required contents of a Request for Amendment.

¹⁰ Filippi, David, email to Chris Green, December 7, 2012.

¹¹ Griffin, Dennis, letter to Chris Green, November 7, 2012 and Griffin, Dennis, letter to Chris Green,
November 21, 2012.

1 **II.E. PUBLIC COMMENTS ON THE REQUEST FOR AMENDMENT #5**

2 Paul Fouch, President of Save Our Rural Oregon, submitted a comment letter on behalf of that
3 organization.¹² Mr. Fouch's letter states concerns about the impact of KCP's steam plume on the
4 natural landscape, as well as the Facility's overall water use. Because the Certificate Holder does not
5 propose any changes to the design, construction, operation, or retirement of the facility, the Council's
6 Scenic Resources and Water Use standards do not apply to the review of RFA #5. Mr. Fouch's
7 comments remain in the record in order to document these concerns about plant operations more
8 generally.

9 **II.F. PUBLIC COMMENTS ON THE PROPOSED ORDER ON AMENDMENT #5**

10 ODOE received no comments or requests for contested case prior to the January 14, 2013
11 deadline.

12
13

¹² Fouch, Paul, letter to Chris Green, November 14, 2012.

1 **III. REVIEW OF THE PROPOSED AMENDMENT**

2 **III.A. GENERAL UPDATES TO SITE CERTIFICATE LANGUAGE**

3 **III.A.1. AMENDMENTS PROPOSED BY THE CERTIFICATE HOLDER**

4 Klamath Energy proposes numerous editorial changes throughout the Site Certificate to update
5 language to reflect the current status of the Facility and the Certificate Holder itself. The changes
6 reflected in these updates include (1) identification of Klamath Energy’s parent company as Iberdrola
7 Renewables, LLC, (2) replacement of specific company names with “Certificate Holder,” (3)
8 replacement of “Amended Site Certificate” with “Amended and Restated Site Certificate,” (4)
9 revision to KCP output and capacity, and (5) minor editorial corrections such as removal of
10 references to the City of Klamath Falls’ ownership of the Facility. Each of these five types of editorial
11 changes are discussed in order in Section III.A.2 below.

12 The exact changes proposed by the Certificate Holder are shown in a redline copy of the proposed
13 Restated and Amended Site Certificate, which is included as Appendix A to this order.

14 **III.A.2. DISCUSSION**

15 In accordance with the purpose of this Amendment #5 to update and clarify language in the Site
16 Certificate, Klamath Energy proposes several “cleanup” items. Each one of these updates will
17 eliminate confusing or contradictory language found in the Fourth Amended Site Certificate without
18 making substantive changes to requirements currently in effect.

- 19 1) The Site Certificate for KCP was transferred to Klamath Energy, LLC through Amendment
20 #3 on September 21, 2007. Klamath Energy also assumed ownership of the Facility at that
21 time. Klamath Energy was a subsidiary of a company known at that time as PPM Energy, Inc.
22 PPM Energy was later purchased by Iberdrola Renewables, Inc., which assumed the role of
23 parent company for Klamath Energy. As the Certificate Holder states in RFA #5, Iberdrola
24 Renewables, Inc. became Iberdrola Renewables, LLC in early 2012, with the Oregon
25 Secretary of State’s acknowledgement of the corporate conversion incorporated by reference
26 into the record of Amendment #5. In RFA #5, the Certificate Holder represents that Iberdrola
27 Renewables, LLC is the successor-in-interest to Iberdrola Renewables, Inc. and holds a 100
28 percent ownership interest in Klamath Energy, LLC. This change in the name of Klamath
29 Energy’s parent company is reflected in revised language throughout the proposed Fifth
30 Amended Site Certificate.
- 31 2) In several instances, specific company names are replaced with the generic term “Certificate
32 Holder” in order to provide for future changes in ownership or company names without
33 necessitating another round of text updates throughout the document.
- 34 3) The term “Amended and Restated Site Certificate” reflects that many of the changes made as
35 part of Amendment #5 involve restating existing conditions and descriptive language in the
36 Site Certificate rather than amendments to the requirements themselves.
- 37 4) The gross and net power outputs described in Section II.A.1 of the proposed Fifth Amended
38 Site Certificate have been revised to reflect the KCP’s increased output capacity (from 500
39 megawatts to 525 megawatts), which resulted from the combustion turbine efficiency
40 improvements that were made in 2009 and 2010. OAR 345-027-0050(2) allows changes in
41 design without an amendment to the Site Certificate, provided the facility remains in
42 substantial compliance with Council standards. For an electric generating facility this
43 amendment exemption provision allows an increase in generating capacity (but not an
44 increase in the number of generators or change in fuel type), so long as increased fuel
45 consumption is less than 10%.¹³ In a December 31, 2008 letter, ODOE provided concurrence

¹³ OAR 345-027-0050(5).

1 that the KCP's CT upgrade project did not require a Site Certificate amendment under OAR
2 345-027-0050(5).¹⁴

- 3 5) Several changes correct grammatical or typographical errors within the Site Certificate,
4 including some references to the "City" as Certificate Holder that were overlooked in updates
5 made following the transfer of ownership to Klamath Energy in Amendment #3.

6 **III.A.3. COUNCIL FINDING**

7 Based on the reasons discussed above, the Council makes the following findings on the
8 Certificate Holder's proposed amendments to make general updates to site certificate language:

9 Because the Certificate Holder has proposed no change to the site, the facility, or its construction
10 or operation, the findings in the Final and Supplemental Orders and in the ODOE staff
11 determinations are sufficient to demonstrate compliance with the requirements imposed by the
12 Council in the Final and Supplemental Orders.

13 **III.B. AMENDMENTS TO CONDITIONS RELATED TO FINANCIAL ASSURANCE**

14 **III.B.1. AMENDMENTS PROPOSED BY THE CERTIFICATE HOLDER**

15 Klamath Energy proposes the following amendments to conditions included in section IV.D of
16 the Fourth Amended Site Certificate, relating to Financial Assurance. Proposed additions are show in
17 double-underlined bold typeface and proposed deletions have a strikethrough.

18 **Condition IV.D.1**

19 *For so long as the City owns the KCP, the City will not, without the Council's prior written*
20 *consent, amend the Bond Indenture in a manner that would prevent the Project from using*
21 *the Construction Fund or the Reserve and Contingency Fund to pay for termination or*
22 *decommissioning costs.*~~*DELETED – Condition requirements have been superseded. (This*~~
23 ~~*condition, which related to Bond Indenture requirements during the City of Klamath Falls'*~~
24 ~~*ownership of the KCP, has been superseded because the City no longer owns the KCP and*~~
25 ~~*Bond Indenture requirements pertaining to the current owner, i.e., the Certificate Holder,*~~
26 ~~*are adequately addressed through other conditions contained within this Restated and*~~
27 ~~*Amended Site Certificate.) [Amendment #5]*~~

28 **Condition IV.D.2**

29 *For so long as the City owns the KCP, the City will not, without the Council's prior written*
30 *consent, amend the Bond Indenture to authorize a Reserve and Contingency Fund*
31 *Requirement of less than \$2.5 million.*~~*DELETED – Condition requirements have been*~~
32 ~~*superseded. (This condition, which related to Bond Indenture requirements during the City*~~
33 ~~*of Klamath Falls' ownership of the KCP, has been superseded because the City no longer*~~
34 ~~*owns the KCP and Bond Indenture requirements pertaining to the current owner, i.e., the*~~
35 ~~*Certificate Holder, are adequately addressed through other conditions contained within*~~
36 ~~*this Restated and Amended Site Certificate.) [Amendment #5]*~~

37
38

¹⁴ Bless, Adam, letter to Mike Roberts, December 31, 2008.

1 **III.B.2. DISCUSSION**

2 As described in the Certificate Holder’s proposed restatements of Conditions IV.D.1 and IV.D.2,
3 the Bond Indenture requirement specifically applies to the City of Klamath Falls’ past ownership of
4 the Facility. Ownership of KCP was transferred from the City to Klamath Energy through
5 Amendment #3 to the Site Certificate. The Certificate Holder is required to provide financial
6 assurance to provide for termination or decommissioning costs of the Facility under Conditions
7 IV.D.3-5, which remain in effect.

8
9 **III.B.3. COUNCIL FINDING**

10 Based on the reasons discussed above, the Council makes the following findings on the
11 Certificate Holder’s proposed amendments to Conditions IV.D.1 and IV.D.2:

12 Because the Certificate Holder has proposed no change to the site, the facility, or its construction
13 or operation, the findings in the Final and Supplemental Orders and in the ODOE staff
14 determinations are sufficient to demonstrate compliance with the financial assurance
15 requirements imposed by the Council in the Final and Supplemental Orders.

16 **III.C. AMENDMENTS TO CONDITIONS RELATED TO CARBON DIOXIDE EMISSIONS**

17 The Certificate Holder proposes a number of changes to the conditions of approval related to
18 carbon dioxide offset requirements found in Section IV.B of the Fourth Amended Site Certificate. As
19 these offset requirements have been superseded by other conditions or otherwise met by the
20 Certificate Holder, the changes have been documented by EFSC and ODOE through supplemental
21 orders or official correspondence. The Certificate Holder requests that conditions in Section IV.B that
22 describe carbon offset requirements that have since been satisfied be deleted from the Site Certificate
23 and replaced with citations referring to the appropriate instance of EFSC or ODOE’s previously
24 recorded finding of compliance.

25 EFSC approved the Site Certificate for KCP before EFSC had adopted rules for carbon dioxide
26 emissions at OAR 345, Division 24. In 1997, EFSC held a contested case (known as the “500
27 Megawatt Exemption”) to determine which of three competing generating projects would be
28 exempted from the Council’s Need for Facility Standard, which applied to electric generating plants
29 at that time.¹⁵ As a result, KCP was issued a site certificate with unique carbon dioxide offset
30 conditions.

31 The offset conditions approved for KCP included two primary components; sale of process steam
32 to the adjacent Collins Products facility to replace the carbon dioxide that Collins would otherwise
33 emit by producing the steam in stand-alone boilers, and a diverse portfolio of carbon dioxide offset
34 projects. These projects included energy promotion in Southeast Asia, promotion of geothermal
35 heating in Klamath Falls, capture of methane gas for beneficial use, and funds to the Oregon Forest
36 Resources Trust for reforestation.

37 KCP implemented an overhaul of its two combustion turbines in 2009 and 2010, resulting in an
38 increase in the facility’s combined cycle thermal efficiency.¹⁶

39

¹⁵ The Need for Facility Standard no longer applies to generating plants under ORS 469.501.

¹⁶ In a December 31, 2008 letter to Mike Roberts of Iberdrola Renewables, Adam Bless of ODOE confirmed that the plant upgrades proposed by the Certificate Holder would not require a site certificate amendment under OAR 345-027-0050(5).

1 **III.C.1. AMENDMENTS PROPOSED BY THE CERTIFICATE HOLDER**

2 Klamath Energy proposes the following amendments to conditions included in section IV.B of
3 the Fourth Amended Site Certificate, relating to the 500-MW Exemption and Carbon Dioxide
4 Emissions Standard. Proposed additions are show in double-underlined bold typeface and proposed
5 deletions have a strikethrough.

6 **Introduction to IV.B**

7 *In interpreting the ~~As part of this Restated and Amended Site Certificate, and as noted~~*
8 *below, most of section IV.B has been deleted because these conditions are no longer*
9 *required (refer to correspondence in Appendix D). In interpreting the remaining* conditions
10 *in section IV.B of this Restated and Amended Site Certificate, any ambiguity will be clarified*
11 *by reference to, ~~and~~ in the following priority: (a) this Restated and Amended Site*
12 *Certificate, (b) the Final Order granted on January 25, 2013 for Amendment No. 5 to the*
13 *Site Certificate, (c) the Final Order granted on March 27, 2009 for Amendment No. 4 to*
14 *the Site Certificate, (d) the Final Order granted on September 21, 2007 approving the*
15 *Request to Transfer Site Certificate, (e) the Final order granted on December 11, 1998*
16 *for Amendment No. 2 to the Site Certificate, (f) the Final Order granted on April 17, 1998*
17 *for the Amended ment No. 1 to the Site Certificate, (g) the Final Order granted on August 15,*
18 *1997 for the Application for Site Certificate, (h) the 500 Megawatt Exemption Final Order,*
19 *and if necessary, (i) the record of the proceedings which led to those Orders. ~~For these~~*
20 *~~conditions, the index by which the future value of money shall be converted to 1996 or 1998~~*
21 *~~dollars shall be the Implicit Price Deflator for the Gross Domestic Product as published by~~*
22 *~~the U.S. Bureau of Economic Analysis of the Department of Commerce or a successor~~*
23 *~~agency. These values are published annually each February in the "Economic Report of the~~*
24 *~~President".~~*

25 **Condition IV.B.1**

26 *Klamath Energy shall make available from the Energy Facility to off-site industrial use the*
27 *steam energy equivalent of at least 200,000 pounds of steam per hour at 375 psig and 455*
28 *degrees F (which is equal to 242.8 MMBtu/hr) on an annual average basis. The amount,*
29 *temperature and pressure of steam supplied shall be measured at the point of interconnection*
30 *of the Energy Facility with its off-site industrial use. Provided that Klamath Energy is the*
31 *Certificate Holder, Klamath Energy shall report this information to the Council on an annual*
32 *basis for each year from calendar year 2007 through calendar year 2031. Klamath Energy*
33 *shall calculate the steam energy equivalent of the steam it makes available to off-site*
34 *industrial use using accepted values for the energy content of the steam, such as those found*
35 *in steam tables published by the American Society of Mechanical Engineers.*

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

1 *energy equivalent not used by KCP's existing off-site industrial use at the same or similar*
2 *cost incentive as provided to KCP's existing off-site industrial use. If within twelve months*
3 *after Council approval, KCP has not contracted to make available and sell to another steam*
4 *user the steam energy equivalent not used by KCP's existing off-site industrial use, then KCP*
5 *shall develop, present to the Council for approval, and implement a program to offset an*
6 *amount of CO₂, NO_x or PM-10, or any combination thereof, equivalent to the monetized*
7 *incremental emissions resulting from the existing off-site industrial use of less than the steam*
8 *energy equivalent of an average of 200,000 pounds of steam per hour at 375 psig and 455°F.*
9 *In any event, KCP shall offset an amount equivalent to the monetized incremental emissions*
10 *resulting from the existing off-site industrial use of less than the steam energy equivalent of*
11 *an average of 200,000 pounds of steam per hour at 375 psig and 455°F, measured on a five*
12 *year basis, for 30 years. Calculations of monetized emissions shall use the same methodology*
13 *and monetary values of emissions employed in the 500-megawatt exemption Final*
14 *Order. DELETED – Condition requirements have been superseded. (This condition, which*
15 *related to the CO₂ offset requirement, has been superseded, e.g., see the Council's Order*
16 *dated September 21, 2007 in Appendix D to this Restated and Amended Site Certificate.*
17 *This condition is no longer relevant because the Certificate Holder has satisfied all the*
18 *CO₂ offset requirements for the operating life of the KCP.) [Amendment #5]*

19 **Condition IV.B.2**

20 *KCP shall provide to the Council an executed steam sales contract with its steam host before*
21 *beginning construction. DELETED – Condition requirements have been met. (This*
22 *condition, which related to providing an executed steam sales contract before beginning*
23 *construction, is no longer relevant because its requirements have been met and*
24 *construction has been completed.) [Amendment #5]*

25 **Condition IV.B.3**

26 *Before commencing construction, KCP shall establish an interest bearing escrow account in*
27 *the amount of \$3.1 million, in 1998 dollars, for implementation of the offset portfolio*
28 *described in its Request for Exemption. Any interest accrued in the account shall be used to*
29 *implement the offset portfolio. DELETED – Condition requirements have been met. (This*
30 *condition, which related to establishing an escrow account before commencing*
31 *construction, is no longer relevant because its requirements have been met and*
32 *construction has been completed.) [Amendment #5]*

33 **Condition IV.B.4**

34 *Before commencing construction, KCP shall commence good faith implementation of its*
35 *offset portfolio described in its Request for Exemption. DELETED – Condition requirements*
36 *have been met. (This condition, which related to implementation of an offset portfolio*
37 *before commencing construction, is no longer relevant because its requirements have been*
38 *met and construction has been completed.) [Amendment #5]*

39 **Condition IV.B.5**

40 *If the Facility does not achieve the milestone of commercial operation, KCP's obligation to*
41 *further fund and implement the offset portfolio shall end and any remaining funds shall revert*
42 *to KCP. The Facility will be deemed to achieve the milestone of commercial operation when*
43 *KCP accepts the Facility as available for commercial operation from the Facility's*

1 ~~constructor.~~ **DELETED – Condition requirements have been met. (This condition, which**
2 **related to achieving commercial operation, is no longer relevant because its requirements**
3 **have been met, i.e., commercial operation has been achieved.) [Amendment #5]**

4 **Condition IV.B.6**

5 *Before commencing construction, KCP shall make available a contingency account in the*
6 *amount of \$300,000 in 1996 dollars. The funds shall be placed in an interest bearing*
7 *account, and accrued interest shall be available to address contingencies as provided in this*
8 *condition. The contingency account may be drawn upon in years 10, 20 and 30 to provide*
9 *additional funding in the event the mitigation portfolio is not meeting projections, within 10*
10 *percent. In the event actual CO₂ mitigation is less than 90 percent of projected CO₂ offsets*
11 *after 10, 20 and 30 years, and if cogeneration or other offsets do not compensate for this*
12 *shortfall (including offsets resulting from reduced methane emissions based on the then-*
13 *prevailing IPCC CH₄ CO₂ equivalency factor), KCP shall use the contingency fund to*
14 *implement additional CO₂ offsets. The amount used shall be sufficient to make up the*
15 *deficiencies in meeting projected CO₂ offsets to the extent possible with the available*
16 *contingency funds. The contingency fund available in years 20 and 30 shall comprise the fund*
17 *less funding draws in years 10 and 20, respectively. Any unused portion of the fund shall*
18 *revert to the KCP after year 30.* **DELETED – Condition requirements have been**
19 **superseded. (This condition, which related to the implementation and maintenance of a**
20 **contingency fund for the CO₂ offset requirement, has been superseded, e.g., see the**
21 **Council’s Supplemental Order dated July 25, 2008 in Appendix D to this Restated and**
22 **Amended Site Certificate.) [Amendment #5]**

23 **Condition IV.B.7**

24 *Any financial returns, including the return of capital investment along with accrued interest,*
25 *associated with implementation of KCP’s carbon offset portfolio during the first 30 years*
26 *shall be reinvested in carbon offset portfolio activities as proposed in the request for*
27 *exemption. At year 30, KCP shall consult with the Council regarding the disposition of any*
28 *financial returns after year 30. At the Council’s discretion, these returns may either be*
29 *invested in additional CO₂ mitigation activities or may be redirected to other environmental*
30 *purposes.* **DELETED – Condition requirements have been superseded. (This condition,**
31 **which related to the disposition of financial returns resulting from implementation of the**
32 **KCP’s carbon offset portfolio, has been superseded, e.g., see the Council’s Supplemental**
33 **Order dated July 25, 2008 in Appendix D to this Restated and Amended Site Certificate.**
34 **This condition is no longer relevant because the Certificate Holder is no longer required to**
35 **monitor or report to the Council regarding the performance of the KCP’s carbon offset**
36 **portfolio.) [Amendment #5]**

37 **Condition IV.B.8**

38 *On implementation of its offset portfolio, KCP shall undertake the offset monitoring and*
39 *verification programs described in its Request for Exemption. KCP will make available up to*
40 *\$50,000 per year, in 1998 dollars, for these monitoring and verification programs. KCP shall*
41 *use the monitoring and verification funds to provide monitoring and verification adequate to*
42 *meet the requirements of the conditions of this Amended Site Certificate.* **DELETED –**
43 **Condition requirements have been superseded. (This condition, which related to CO₂ offset**
44 **monitoring and verification programs has been superseded, e.g., see the Council’s**

1 Supplemental Order dated July 25, 2008 in Appendix D to this Restated and Amended Site
2 Certificate.) [Amendment #5]

3 **Condition IV.B.9**

4 *KCP shall make its offset portfolio financial records available for auditing by the Council or*
5 *a designated party for the life of the Facility, provided that the cost of such auditing shall be*
6 *paid by the Council. ~~DELETED – Condition requirements have been superseded. (This~~*
7 *condition, which related to the availability of financial records for the CO2 offset program,*
8 *has been superseded, e.g., see the Council's Supplemental Order dated July 25, 2008 in*
9 *Appendix D to this Restated and Amended Site Certificate.) [Amendment #5]*

10 **Condition IV.B.10**

11 *Based on the monitoring and verification programs in Condition IV.B.(8), KCP shall report*
12 *as follows: KCP shall annually report offset performance to the Council and the U. S.*
13 *Department of Energy Section 1605(b) greenhouse gas registry, for 30 years. Every five*
14 *years for 30 years KCP shall report to the Council offset portfolio performance, associated*
15 *CO₂ and methane benefits, and explain changes from the offset benefits projected in the*
16 *Council's analysis of KCP's request for exemption. KCP shall report, among other things,*
17 *actual or estimated carbon dioxide offsets achieved, the quantity and type of each offset*
18 *measure, and the expenditure of funds for each type of measure in the offset portfolio.*
19 *~~DELETED – Condition requirements have been superseded. (This condition, which related~~*
20 *to reporting requirements for the CO2 offset program, has been superseded, e.g., see the*
21 *Council's Supplemental Order dated July 25, 2008 in Appendix D to this Restated and*
22 *Amended Site Certificate.) [Amendment #5]*

23 **Condition IV.B.11**

24 *KCP shall consult with the Council on an ongoing basis regarding portfolio emphasis and*
25 *performance. As requested by the Council, and to the extent made possible by in place*
26 *agreements, KCP shall reallocate available funds among its portfolio or other projects*
27 *requested by the Council. ~~DELETED – Condition requirements have been superseded. (This~~*
28 *condition, which related to a requirement for ongoing consultation regarding the CO2*
29 *offset program, has been superseded, e.g., see the Council's Supplemental Order dated*
30 *July 25, 2008 in Appendix D to this Restated and Amended Site Certificate.) [Amendment*
31 *#5]*

32 **Condition IV.B.12**

33 *Subject to potential reallocation of funds described in Condition IV.B.(11), of the \$3.1 million*
34 *in the escrow fund, \$0.5 million shall fund the Solar Electric Light Fund (SELF), \$1.5 million*
35 *shall fund the Oregon Forest Resources Trust (FAT), \$1.0 million shall fund new projects to*
36 *generate electricity with otherwise waste methane, and \$0.1 million shall fund geothermal*
37 *heating projects in Klamath Falls, Oregon, as described in the Request for*
38 *Exemption. ~~DELETED – Condition requirements have been met. (This condition, which~~*
39 *related to the apportionment of funding for the CO2 offset portfolio, is no longer relevant*
40 *because its requirements have been met.) [Amendment #5]*
41

1 **Condition IV.B.13**

2 *KCP shall commit \$1.0 million of the \$3.1 million escrow fund to fund new projects to*
3 *generate electricity with otherwise waste methane from sewage treatment plants and coal*
4 *mines. The projects shall be administered by Northwest Fuel Development, Inc., or an*
5 *equivalent contractor, at KCP's discretion. Net revenues, which are total revenues less*
6 *operating costs, from the operation of each electrical generation Facility shall, for a period*
7 *of ten years, be returned to a Revolving Investment Fund (IF) established by KCP. KCP shall*
8 *structure the IF so that net revenues from each installation financed by KCP's original*
9 *capital investment will be used to finance installation of additional sewage treatment plant*
10 *and coal mine methane generating facilities for a period of ten years as described in the*
11 *Request for Exemption. The IF shall be structured so that KCP (or the IF manager) will*
12 *monitor performance of the contractor and the installations, track revenues and offsets*
13 *attributable to IF financed systems, and ensure revenues will, for a period of thirty years, be*
14 *used to finance installation of additional generating equipment. KCP (or the IF manager)*
15 *shall track the number of installations attributable to the IF and report regularly to the*
16 *Council on the performance of the IF. KCP shall establish management or contractual*
17 *controls of the contractor to provide long term control of the Fund and the methane*
18 *project.***DELETED – Condition requirements have been superseded. (This condition, which**
19 **related to the waste methane to electricity portion of the CO2 offset program, has been**
20 **superseded, e.g., see the Council's Supplemental Order dated July 25, 2008 in Appendix D**
21 **to this Restated and Amended Site Certificate. This condition is no longer relevant because**
22 **the Certificate Holder is no longer required to monitor or report to the Council regarding**
23 **the performance of the KCP's carbon offset portfolio.) [Amendment #5]**

24 **Condition IV.B.14**

25 *KCP shall commit \$0.5 million of the \$3.1 million escrow fund into a Revolving Investment*
26 *Fund for photovoltaics as described in the Request for Exemption. The Fund shall be*
27 *structured to provide capital to PV companies identified by the SELF. The solar projects*
28 *shall be in India, Sri Lanka or China unless KCP demonstrates to the Council a better*
29 *location for the PV projects. KCP shall structure the Fund so that, as revenues from the*
30 *systems financed by KCP's working capital come into the companies, those revenues will be*
31 *used to finance installation of additional PV systems. The Fund shall be structured so that*
32 *SELF (or the Fund manager) shall monitor performance of the companies, track the revenues*
33 *attributable to Fund financed systems, and ensure those revenues will be used to finance*
34 *installation of additional PV systems. SELF (or the Fund manager) shall track the number of*
35 *PV systems financed by the IF and report regularly to KCP on the performance of the IF.*
36 *KCP shall establish management or contractual controls of the Fund and the PV firms to*
37 *provide long term control of the Fund and the PV project.***DELETED – Condition**
38 **requirements have been superseded. (This condition, which related to the photovoltaics**
39 **portion of the CO2 offset program, has been superseded, e.g., see the Council's**
40 **Supplemental Order dated July 25, 2008 in Appendix D to this Restated and Amended Site**
41 **Certificate. This condition is no longer relevant because the Certificate Holder is no longer**
42 **required to monitor or report to the Council regarding the performance of the KCP's**
43 **carbon offset portfolio.) [Amendment #5]**

44 **Condition IV.B.15**

45 *KCP shall commit \$0.1 million of the \$3.1 million escrow fund to fund geothermal heating*
46 *projects in Klamath Falls, Oregon. KCP shall establish a revolving credit fund that will loan*

1 money to assist in the hookup of buildings in downtown Klamath Falls to the geothermal
2 heating system. The loans shall be structured for repayment to the fund within three years.
3 Repaid loan amounts shall be used to fund hook up of additional buildings to the geothermal
4 heating system. The fund shall be structured so that KCP or the City of Klamath Falls will
5 track revenues and offsets attributable to the fund and ensure that repaid loan amounts are
6 used to hook up additional buildings to the geothermal heating systems.~~DELETED –~~
7 Condition requirements have been superseded. (This condition, which related to the
8 geothermal heating portion of the CO2 offset program, has been superseded, e.g., see the
9 Council’s Supplemental Order dated July 25, 2008 in Appendix D to this Restated and
10 Amended Site Certificate. This condition is no longer relevant because the Certificate
11 Holder is no longer required to monitor or report to the Council regarding the
12 performance of the KCP’s carbon offset portfolio.) [Amendment #5]

13 **Condition IV.B.16**

14 *KCP shall commit \$1.5 million of the \$3.1 million to the FAT. KCP shall pursue new funding*
15 *to match these funds on a 3:1 basis.*~~DELETED –~~ Condition requirements have been
16 superseded. (This condition, which related to the FAT portion of the CO2 offset program,
17 has been superseded, e.g., see the Council’s Supplemental Order dated July 25, 2008 in
18 Appendix D to this Restated and Amended Site Certificate. This condition is no longer
19 relevant because the Certificate Holder is no longer required to monitor or report to the
20 Council regarding the performance of the KCP’s carbon offset portfolio.) [Amendment #5]

21 **Condition IV.B.17**

22 *KCP shall report as "matching funds" under the FAT proposal only those funds for which the*
23 *funding entity does not claim, and certifies that it will not claim, offset credit.*~~DELETED –~~
24 Condition requirements have been superseded. (This condition, which related to the
25 matching funds under the FAT portion of the CO2 offset program, has been superseded,
26 e.g., see the Council’s Supplemental Order dated July 25, 2008 in Appendix D to this
27 Restated and Amended Site Certificate. This condition is no longer relevant because the
28 Certificate Holder is no longer required to monitor or report to the Council regarding the
29 performance of the KCP’s carbon offset portfolio.) [Amendment #5]

30 **Condition IV.B.18**

31 *FAT funds attributed to KCP’s offset proposal shall be used to plant Site Class II lands for*
32 *the first 6,250 acres.*~~DELETED –~~ Condition requirements have been superseded. (This
33 condition, which related to how funds for the FAT portion of the CO2 offset program were
34 to be used, has been superseded, e.g., see the Council’s Supplemental Order dated July 25,
35 2008 in Appendix D to this Restated and Amended Site Certificate. This condition is no
36 longer relevant because the Certificate Holder is no longer required to monitor or report to
37 the Council regarding the performance of the KCP’s carbon offset portfolio.) [Amendment
38 #5]

39 **Condition IV.B.19**

40 *The Council shall hold in trust for KCP all CO2 credits, including CO2 credits submitted for*
41 *inclusion in the Section 1605(b) database, that KCP receives from Project offsets. The credits*
42 *shall be available for use by KCP. The credits shall not be sold.*~~DELETED –~~ Condition
43 requirements have been superseded. (This condition, which related to the holding of the

1 KCP's CO2 credits by the Council, has been superseded, e.g., see the Council's
2 Supplemental Order dated July 25, 2008 in Appendix D to this Restated and Amended Site
3 Certificate. This condition is no longer relevant because the Certificate Holder is no longer
4 required to monitor or report to the Council regarding the performance of the KCP's
5 carbon offset portfolio.) [Amendment #5]

6 **Condition IV.B.24**

7 *KCP shall use the following methodology for calculating the offset funds and the selection*
8 *and contracting funds (monetary path payment requirement) it must make available to the*
9 *qualified organization under ORS 469.503(2)(d)(A). KCP shall use the contracted design*
10 *parameters reported under Condition IV.B.(21) to calculate the estimated monetary path*
11 *payment requirement. KCP shall use the Year One Capacity and the Year One Heat Rate*
12 *reported under Condition IV.B.(22) to calculate whether it owes additional monetary path*
13 *payments.*

14 (a) *KCP shall first determine the incremental capacity by subtracting 318 MW from the*
15 *nominal electric generating capacity of the Facility with no steam load (using the*
16 *capacity calculated from the contracted design parameters reported under Condition*
17 *IV.B.(21) or the Year One Capacity reported under Condition IV.B.(22);*

18 (b) *KCP shall multiply the heat rate calculated from the contracted design parameters*
19 *reported under Condition IV.B.(21) or the Year One Heat Rate reported under Condition*
20 *IV.B.(22) by the carbon dioxide emission factor for natural gas (0.000117 lbs. CO₂/Btu)*
21 *to calculate the carbon dioxide emission rate (lbs. CO₂/kWh);*

22 (c) *KCP shall subtract the carbon dioxide standard of 0.7 lbs. CO₂/kWh from the carbon*
23 *dioxide emission rate to calculate the excess carbon dioxide emission rate (lbs CO₂/*
24 *kWh);*

25 (d) *KCP shall multiply the incremental capacity by 8,760 hours to determine the annual*
26 *nominal energy for the plant (kWh). KCP shall then multiply the annual nominal energy*
27 *by the excess CO₂ emission rate, then multiply that product by 30 years. It shall then*
28 *divide that product by 2,000 pounds per ton to calculate total tons of excess CO₂*
29 *emissions resulting from the incremental capacity for the deemed life of the plant;*

30 (e) *KCP shall multiply the total tons of excess carbon dioxide emissions by \$0.57 per ton of*
31 *CO₂ to determine the sub-total for the estimated or actual offset funds;*

32 (f) *KCP shall subtract \$500,000 from the offset funds subtotal; then multiply the remaining*
33 *amount by 4.286 percent; then add \$50,000 to that product to determine the estimated or*
34 *actual selection and contracting funds sub-total;*

35 (g) *When KCP submits the Year One Test report required in Condition IV.B.22, KCP shall*
36 *increase its payments to the respective escrow accounts for offset funds and selection and*
37 *contracting funds if the calculation of the actual amounts of offset funds and selection*
38 *and contracting funds due exceeds the amounts of those funds that KCP had deposited to*
39 *the respective escrow accounts prior to commencing construction.*

40 *KCP shall make the appropriate calculations and increase its payments if necessary within*
41 *45 days of filing its Year One Test report with the Council.*

42 *In no case shall KCP receive a refund from the escrow accounts or from the Oregon Climate*
43 *Trust based on the calculations made using the Year One Capacity to determine the actual*
44 *incremental capacity and using the Year One Heat Rate. ~~DELETED – Condition~~*
45 *requirements have been met. (This condition, which related to the methodology for*

1 calculating offset funds and selection and contracting funds for the CO2 offset program, is
2 no longer relevant because its requirements have been met, i.e., the necessary funds have
3 been paid and the Certificate Holder has satisfied all the CO2 offset requirements for the
4 operating life of the KCP.) [Amendment #5]

5 **Condition IV.B.25**

6 *KCP shall establish and maintain separate escrow accounts for the offset funds and the*
7 *selection and contracting funds.*

8 *(a) KCP shall deposit the estimated offset funds and estimated selection and contracting*
9 *funds in 1998 dollars, calculated pursuant to Condition IV.B.(24), into the escrow*
10 *accounts prior to commencing construction. KCP or its agent shall disburse the funds to*
11 *the Oregon Climate Trust for use as specified in ORS 469.503(2)(d)(A).*

12 *(b) KCP shall deposit any additional funds, in 1998 dollars, into the appropriate escrow*
13 *accounts, if required under Condition IV.B.(24)(g), within 45 days of filing its Year One*
14 *Test report with the Council.*

15 *(c) The portion of any interest accruing in either escrow account up to the time of*
16 *disbursement of funds to the Oregon Climate Trust that is equivalent to the 1998 dollar*
17 *index adjustment (as described in the introduction to Section IV.B. of the Amended Site*
18 *Certificate) shall be for the benefit of the Oregon Climate Trust and shall be disbursed to*
19 *the Oregon Climate Trust for use as specified in ORS 469.503(2)(d)(A). Any remaining*
20 *interest that exceeds the 1998 dollar adjustment at the time of disbursement of funds to*
21 *the Oregon Climate Trust shall be disbursed to the KCP upon its request.*

22 DELETED – Condition requirements have been met. (This condition, which related to the
23 separation of escrow accounts, is no longer relevant because its requirements have been
24 met, i.e., the necessary funds have been paid and the Certificate Holder has satisfied all the
25 CO2 offset requirements for the operating life of the KCP.) [Amendment #5]

26 **Condition IV.B.27**

27 *Other than depositing the offset payment funds and selection and contracting funds provided*
28 *in Condition IV.B.(25), KCP shall have no obligation with regards to offsets for the nominal*
29 *incremental generating capacity of the Project in excess of 318 MW, nor shall any*
30 *nonperformance, negligence or misconduct on the part of the Oregon Climate Trust be a*
31 *basis for revocation of the Amended Site Certificate or any other enforcement action by the*
32 *Council with respect to the City.*DELETED – Condition requirements have been met. (This
33 condition, which related to the KCP's obligations to provide CO2 offset funds, is no longer
34 relevant because its requirements have been met, i.e., the necessary funds have been paid
35 and the Certificate Holder has satisfied all the CO2 offset requirements for the operating
36 life of the KCP.) [Amendment #5]

37 **III.C.2. DISCUSSION**

38 **III.C.2.a. Certificate Holder's Proposed Amendments to Conditions IV.B.1 and IV.B.2**

39 Site Certificate Condition IV.B.1 requires the Certificate Holder to report every five years on the
40 hourly rate of steam sales to the adjacent Collins Products, averaged over a five year period, for the
41 life of the facility. The condition states that if steam sales fall short of the 200,000 pound per hour rate
42 described in this condition, the Certificate Holder is required to provide other offsets to make up for
43 the shortfall.

1 ODOE and the Council have made a number of determinations that have modified, superseded, or
2 eliminated the Certificate Holder’s means of compliance with the requirements of Condition IV.B.1
3 since KCP began operation in 2001, as described below.¹⁷

- 4 1) In September 2007, the Council issued an order approving the Certificate Holder’s proposal
5 to address a shortfall in carbon dioxide offsets from steam sales to Collins Products by
6 providing a one-time payment of \$2,437,923.75 to the Climate Trust in order to offset excess
7 carbon dioxide emissions. The approved proposal reduced the baseline rate of required steam
8 sales to 70,000 pounds per hour. The Certificate Holder also took offset credit for reductions
9 in emissions and plant efficiency upgrades.¹⁸ The final payment amount and calculations of
10 offset credits were verified by ODOE staff.¹⁹
- 11 2) In July 2008, the Council issued a Supplemental Order clarifying the process for determining
12 five-year “true up” payments for shortfalls in steam sales to Collins Products, including the
13 opportunity for the Certificate Holder to treat credits for future plant efficiency upgrades as
14 carbon offsets, and to “buy down” anticipated future steam sales shortfalls through offset
15 payments.²⁰
- 16 3) In August 2008, ODOE staff approved a \$675,000.00 “buy down” payment from the
17 Certificate Holder to Climate Trust, which lowered the baseline rate of required steam sales
18 to 30,310 pounds per hour for years 6 through 30 of KCP operation.²¹
- 19 4) In January 2012, ODOE staff confirmed the Certificate Holder’s assertion that, as a result of
20 offset credits obtained from plant efficiency upgrades implemented in 2009 and 2010, the
21 Certificate Holder had earned offset credits in excess of KCP’s remaining steam sales
22 requirement for years 6 through 30 of operation.²² Based on these calculations, the Certificate
23 Holder requested that ODOE determine that no future five-year steam sales reports would be
24 necessary, since KCP could meet all of its remaining offset requirements without providing
25 any steam to Collins Products.²³

26 Condition IV.B.2 requires the Certificate Holder to execute a steam sales contract with Collins
27 Wood Products prior to beginning construction of the Facility. Because ODOE has found that KCP
28 has satisfied the carbon dioxide offset requirements of Condition IV.B.1, the steam sales contract
29 required to implement this condition is in turn also moot.

30 **III.C.2.b. Certificate Holder’s Proposed Amendments to Conditions IV.B.3-IV.B.19,** 31 **IV.B.24-IV.B.25, and IV.B.27**

32 Conditions IV.B.3 through IV.B.19, IV.B.24 through IV.B.25, and IV.B.27 require KCP to
33 maintain a portfolio of other carbon reduction programs, as well as monitoring and reporting
34 programs and contingency funds to ensure the Certificate Holder’s progress toward implementation
35 of those carbon reduction programs.

¹⁷ ORS 469.402 permits the Council to delegate subsequent review and approval of future actions related to site certificate conditions to ODOE.

¹⁸ Oregon Energy Facility Siting Council, *Order for KCP Carbon Dioxide Offsets under Condition IV.B.1*, September 21, 2007.

¹⁹ Bless, Adam, letter to Mike Roberts, November 29, 2007.

²⁰ Oregon Energy Facility Siting Council, *Supplemental Order Clarifying Conditions IV.B.1, 6, 8, 9, 10 and 11*, July 25, 2008.

²¹ Bless, Adam, letter to Mike Roberts, August 13, 2008.

²² Green, Chris, letter to Ray Martens, January 23, 2012.

²³ Martens, Ray, letter to Chris Green, September 15, 2011.

1 In July 2008, the Council issued a *Supplemental Order Clarifying Conditions IV.B.1, 6, 8, 9, 10,*
2 *and 11,*²⁴ which included findings that:

- 3 1) Contingency funds for the shortfall in projects provided in Condition IV.B.6 could be
4 withdrawn in full at any time after Klamath Energy had determined that the mitigation
5 projects were not likely to be met.
- 6 2) That Klamath Energy had met all ongoing obligations under Conditions IV.B.8, 9, 10, and 11
7 of the site certificate regarding monitoring and reporting of carbon dioxide projects by
8 reporting that those projects were no longer effective, so that further monitoring and reporting
9 conditions were no longer required.
- 10 3) That in consideration of delivery of the contingency account to the Climate Trust, Condition
11 IV.B.6 be viewed as “fully satisfied or at a minimum moot, that any potential enforcement of
12 [the] condition be waived, and that [Klamath Energy] be held harmless with respect to the
13 requirements of condition IV.B.6.”²⁵

14 These three Council findings, followed by KCP’s delivery of the contingency fund to the Climate
15 Trust,²⁶ effectively superseded the requirements described in Conditions IV.B.6, 8, 9, 10, and 11. No
16 site certificate amendment was required to reflect these changes, which were duly recorded through
17 the *Supplemental Order* issued by Council. As a result, the Site Certificate itself continues to list
18 these conditions without any notation indicating that they are no longer in effect.

19 Although they are not specifically addressed in the *Supplemental Order*, Conditions IV.B.3-6,
20 IV.B.7, IV.B.12-19, IV.B.24-25, and IV.B.27 require specific actions related to implementing the
21 offset portfolio requirement. Because the *Supplemental Order* found that KCP had satisfied
22 conditions related to the offset portfolio, the implementation requirements for the portfolio found in
23 Conditions IV.3-6, 8, 9, 10, and 11 are in turn also moot.

24 **III.C.3. COUNCIL FINDING**

25 Based on the reasons discussed above, the Council makes the following findings on the
26 Certificate Holder’s proposed amendments to Conditions in Section IV.B:

27 Because the Certificate Holder has proposed no change to the site, the facility, or its construction
28 or operation, the findings in the Final and Supplemental Orders and in the ODOE staff
29 determinations are sufficient to demonstrate compliance with the carbon offset requirements
30 imposed by the Council in the Final and Supplemental Orders.

31 **III.D. COMPLIANCE WITH GENERAL STANDARDS**

32 As noted above, Klamath Energy and EFSC could arguably restate the site certificate outside of
33 the amendment process of OAR 345 Division 27. However, because the restatement will result in a
34 new document, it can be considered an amendment. ODOE recommended use of the amendment
35 process for the reasons stated in Sections II.A and II.B of this order. Because the Certificate Holder
36 has proposed no substantive changes to the Site Certificate, there are no Council standards relevant to
37 this RFA #5.

38 To the extent that there are changes to the Site Certificate, the Council authorized all such
39 changes through previous orders or determinations made by ODOE acting as staff to the Council.

²⁴ Oregon Energy Facility Siting Council, *Supplemental Order Clarifying Conditions IV.B.1, 6, 8, 9, 10 and 11*, July 25, 2008.

²⁵ *Supplemental Order*, pg. 5

²⁶ The date and amount of payments is confirmed in Chris Green’s July 19, 2011 memo to file.

1 Accordingly, the Council incorporates by reference these previous orders and official correspondence
2 memorializing ODOE determinations, as found in Exhibits B and C to this Final Order.

3 Because the Council addressed substantive changes to the original Site Certificate in
4 Amendments 1-4, the Final and Supplemental Orders, and ODOE staff determinations, the Council
5 relies on the past findings contained in these documents in determining Amendment #5's compliance
6 with Council standards.

7 Based on the reasons discussed in Section III above, Council makes the following findings on the
8 changes proposed by the Certificate Holder in the Request for Amendment #5:

- 9 1) The Certificate Holder does not propose to design, construct, or operate the Facility in a
10 manner different from the description in the Site Certificate.
 - 11 2) The proposed changes to the Site Certificate would not result in a significant adverse impact
12 affecting any resource protected by Council standards that the Council has not addressed in
13 an earlier order.
 - 14 3) The proposed changes to the Site Certificate would not impair the Certificate Holder's ability
15 to comply with a site certificate condition.
 - 16 4) The proposed changes to the Site Certificate would result in changes to the text of site
17 certificate conditions, but these changes would not result in substantive changes to the
18 conditions currently in effect.
 - 19 5) Although the proposed changes to the Site Certificate do not require the Certificate Holder to
20 submit a request for amendment, ODOE and the Certificate Holder agree that the amendment
21 process described in OAR 345-027-0060 and 0070 provides the opportunity to make text
22 changes to improve the administrative effectiveness of the Site Certificate document.
 - 23 6) Because the Certificate Holder has proposed no substantive changes to the Site Certificate,
24 there are no Council standards relevant to this Request for Amendment #5.
- 25

1 **IV. CONCLUSION AND ORDER OF THE COUNCIL**

2 The Certificate Holder has submitted a request to amend the Site Certificate for the Klamath
3 Cogeneration Project. The Council finds that a preponderance of evidence on the record supports the
4 following conclusions:

- 5 1. The proposed Fifth Amended Site Certificate for Klamath Cogeneration Project complies
6 with the requirements of the Oregon Energy Facility Siting statutes ORS 469.300 to 469.520.
7 2. The proposed Fifth Amended Site Certificate for Klamath Cogeneration Project complies
8 with the standards adopted by the Council pursuant to ORS 469.501.

9 Based on the findings of fact, reasoning, conditions, and conclusions of law in this Order, the
10 Council concludes that the applicant has satisfied the requirements for issuance of the requested Fifth
11 Amended Site Certificate for the Klamath Cogeneration Project, subject to compliance with the
12 conditions stated in the Final Orders.

13 The Council approves Amendment #5 and issues an amended site certificate for the Klamath
14 Cogeneration Facility, subject to the terms and conditions set forth above.

15 Issued this 25th day of January, 2013.

THE OREGON ENERGY FACILITY SITING COUNCIL

By: W. Bryan Wolfe

W. Bryan Wolfe, Chair
Oregon Energy Facility Siting Council

Notice of the Right to Appeal

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.