On May 9, 2001, PacifiCorp Power Marketing (PPM), a wholly owned subsidiary of ScottishPower and an affiliate of PacifiCorp, submitted a request for an exemption from the Energy Facility Siting Council’s (“Council”) jurisdiction for the Klamath Expansion Project (the “Project”). Pacific Klamath Energy, Inc., an affiliate of PPM and the operator of the Klamath Cogeneration Project (KCP), will operate the Project.

A. Project Description
The proposed Klamath Expansion Project is a natural gas-fired combustion turbine, simple-cycle power generation facility. The Project uses four natural gas-fired, aero-derivative combustion turbines (CTs) to generate electricity. The Project will have a nominal (new and clean) electric generating capacity of 100 megawatt (“MW”) at intended annual average operating conditions. The Project will only use natural gas for fuel.

The proposed Project will be located on approximately four acres of land leased from Collins' Products, LLC, in Klamath County, outside the city limits of Klamath Falls, Oregon. The Project site is in Section 18 of Township 39 South, Range 9 East, about one-half mile west of the US Highway 97 bridge over the Klamath River. The Project site is adjacent to the southwest corner of the KCP, which is currently under construction. Exhibits 1, 2 and 3 of the exemption request show the location, general arrangement of components, and the plan and elevation of the Project.

The Project will consist of three major pieces of equipment: two CT-generator sets and one transformer. Each of the CT-generator sets consists of two Pratt & Whitney (P&W) model FT-8 natural gas-fired combustion turbines linked to a single generator. Each of these two CT/one generator units is called a Twin Pac. The two Twin Pacs (four CTs/two generators in total) will generate electricity at 13.8 KiloVolts (kV). The Project's 13.8 – 540 kV transformer will connect the Project’s output to the PacifiCorp 540 kV transmission line at the KCP switchyard immediately north of the Project site.

Pacific Gas & Electric Gas Transmission’s (PG&E GT’s) Medford Lateral will provide natural gas through a new pipeline tap and meter/regulator facility located near the existing meter/regulator station for KCP. PG&E GT will extend piping to the Project’s property line for interconnected the new meter/regulator station to the Project.

B. Basis for Exemption
In order to qualify for the exemption under ORS 469.320(2)(g), the Project must meet two criteria. First, it must be a “temporary energy generating facility” as defined in ORS
469.320(8)(b). Second, it must comply with applicable carbon dioxide ("CO₂") emissions standards.

B.1 Temporary Energy Generating Facility
A "temporary energy generating facility" is defined in ORS 469.320(8)(b) as follows:

'Temporary energy generating facility' means an electric power generating facility, including a thermal power plant and a combustion turbine power plant, but not including a hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that is operated for no more than 24 months from the date of initial commercial operation.

The Project is a combustion turbine electric power generating facility with a nominal electric generating capacity of 100 megawatts ("MW"). Exhibits 4a and 4b of the exemption request show the contracted performance guarantees from the supplier, pursuant to ORS 469.320(2)(g). Exhibit 4b of the exemption request provides the estimated performance and emission data for certain conditions.

The exemption is based on the nominal electric generating capacity. Exhibit 4c shows the performance data for nominal electric generating capacity, calculated pursuant to OAR 345-001-0010(35). Nominal electric generating capacity is calculated using average annual conditions during the times of the year when the facility is intended to operate. Using that definition, the Project’s nominal electric generating capacity is just below 100 MW. However, the nominal electric generating capacity of the combustion turbine generating facility varies with ambient temperature such that it is possible for the new and clean capacity to exceed 100 MW at certain times. PPM will implement control limits to assure that the nominal electric generating capacity of the facility does not exceed 100 MW. The Council adopts Condition 1 to set that 100 MW limit as a requirement. Therefore, the Council finds that the Project has a nominal electric generating capacity of 100 MW.

An owner must operate the Project pursuant to ORS 469.320(2)(g) for not more than 24 months from the date of initial commercial operation. The Council adopts Condition 2 to set that 24-month limit as a requirement.

Section A of this order describes the Project. The Council adopts Condition 3 to ensure the owner builds the Project that the Council exempted.

To grant an exemption, ORS 469.320(7)(a) requires the Council to make the exemption contingent on the owner acquiring local land use approvals and complying with statewide planning goals. The Council adopts Conditions 4 and 5 to implement this requirement.

In its request for exemption, PPM indicated that it intends to transfer ownership of the Project to a special purpose subsidiary of PPM prior to commencement of operations. The Council adopts Condition 8 regarding the obligations of a new owner to abide by this order and its conditions.
B.2 Applicable Carbon Dioxide Emissions Standards

Because the Project is a base load gas plant, the applicable CO₂ emissions standard is found at OAR 345-024-0550. This standard requires that the net CO₂ emissions rate from the Project not exceed 0.675 pounds of CO₂ per kilowatt hour of net electric power output. If emissions reductions are required, ORS 469.320(2)(g) requires the applicant to agree to provide appropriate funds to a qualified organization.

Table 1 shows the applicable parameters for calculating the Project’s CO₂ emissions. In contrast to the exemption criterion of 100 MW, which is based on nominal electric generating capacity, calculations for compliance with the carbon dioxide standard are based on net electric power output, calculated pursuant to OAR 345-001-0010(32). Net electric power output is calculated on the average annual condition for temperature, humidity and barometric pressure. Based on those conditions in this case, the Project's net electric power output is 101.039MW, as derived from the Net Generator Output vs. Ambient Temperature graph in Exhibit 4c. This net output is not inconsistent with the fact that the nominal electric generating capacity is 100MW; it simply reflects the fact that the definitions of net electric power output and nominal electric generating capacity use different measurement parameters.

The new and clean heat rate is 10,199 Btu/kWh, higher heating value. This is a base-load plant, so the calculations show the annual hours of operation at 8,760.

Table 1 shows the gross CO₂ emissions from the Project over two years at 2,112 million pounds, the gross CO₂ emissions rate of 1.193 lb. CO₂/kWh, and the required CO₂ emissions reductions of 459,000 tons.

Table 1 multiplies the excess tons of carbon dioxide for the base-load plant by the current offset fund rate, $0.57, pursuant to OAR 345-024-0560(3). That determines the offset funds needed for the monetary path, $261,478.

Table 1 then applies OAR 345-024-0710(4) to determine the contracting and selection funds. However, the amount of required offset funds are significantly less than the amount for a standard base-load plant and the contracting and selection funds will be correspondingly smaller.

In order to ensure adequate contracting and selection funds, the Council finds that the basis for the calculation for a temporary energy generating facility should be at the rate of 20 percent of the first $250,000 in offset funds and 4.286 percent of the value of any offset funds in excess of that amount, pursuant to OAR 345-024-0710(4).

Based on the calculations in Table 1, the Council finds that the total amount of required offset funds and contracting and selection funds (“Monetary Path Payment”) that PPM must pay The Climate Trust prior to beginning construction is $311,970 in 2001 dollars. The Council adjusts the Monetary Path Payment by the US Gross Domestic Product Implicit Price Deflator if PPM does not pay the Monetary Path Payment by July 31, 2001. The Council further requires that PPM submit any adjusted payment calculations to the Office of Energy for verification.

The Council adopts Condition 6 regarding the PPM’s obligation to pay the Monetary Path Payment to The Climate Trust, in a lump sum payment, prior to beginning construction of the Project.
ORS 469.320(7)(c) provides for a “true-up” of compliance with the CO₂ standard once the Project ceases commercial operation, which must be no later than two years from beginning commercial operation. The Council adopts Condition 7 to implement the reporting and potential payment requirements of ORS 469.320(7)(c).

**TABLE 1**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Electric Power Output (kW)</td>
<td>101,039</td>
</tr>
<tr>
<td>Capacity Factor</td>
<td>100%</td>
</tr>
<tr>
<td>Fuel</td>
<td>Natural gas</td>
</tr>
<tr>
<td>Annual Hours of Operation</td>
<td>8,760</td>
</tr>
<tr>
<td>Annual Generation (million kWh/yr)</td>
<td>885</td>
</tr>
<tr>
<td>Deemed Life of Plant (years) by Statute</td>
<td>2</td>
</tr>
<tr>
<td>Total Plant Output (million kWh)</td>
<td>1,770</td>
</tr>
<tr>
<td>Heat Rate (Btu/kWh) HHV</td>
<td>10,199</td>
</tr>
<tr>
<td>CO₂ Emissions Rate (lb. CO₂/Btu)</td>
<td>0.000117</td>
</tr>
<tr>
<td>Total CO₂ Emissions (million lb.)</td>
<td>2,112</td>
</tr>
<tr>
<td>Gross CO₂ Emissions rate (lb. CO₂/kWh)</td>
<td>1.193</td>
</tr>
<tr>
<td>CO₂ Standard (lb. CO₂/kWh)</td>
<td>0.675</td>
</tr>
<tr>
<td>Excess CO₂ Emissions (lb. CO₂/kWh)</td>
<td>0.518</td>
</tr>
<tr>
<td>Excess Tons CO₂ (million tons)</td>
<td>0.459</td>
</tr>
<tr>
<td>Offset Fund Rate ($/ton CO₂)</td>
<td>$0.57</td>
</tr>
<tr>
<td>Offset Funds Required</td>
<td>$261,478</td>
</tr>
<tr>
<td>Contracting and Selection Funds</td>
<td>$50,492</td>
</tr>
<tr>
<td>Total Monetary Path Requirement</td>
<td>$311,970</td>
</tr>
</tbody>
</table>

Attachment A to this order is in the form of a Memorandum of Understanding (“MOU”) between PPM and The Climate Trust. By providing the MOU, the Council can facilitate the disbursement of the Monetary Path Payment by PPM to The Climate Trust. The Council adopts Attachment A to Conditions 6 and 7 and requiresthat PPM and The Climate Trust sign an MOU substantially in the form of Attachment A.

**B.3. Qualified Organization.**

PPM proposes to provide offset funds and contracting and selection funds to The Climate Trust. The Council has previously found that The Climate Trust is a “qualified organization” in matters relating to the Klamath Cogeneration Project, the Hermiston Power Project, and the Coyote Springs Cogeneration Project, Unit 2. The Council finds that the Climate Trust continues to meet the requirements of a “qualified organization,” as defined by OAR 345-001-0010(45).

**C. Conditions**

The Council imposes the following conditions:

1) KEP shall not exceed 100 megawatts nominal electrical generating capacity.

2) The Project Owner shall cease operation of KEP no later than 24 months after the date of first commercial operation of the facility or January 2, 2006, whichever is earlier.
3) The Project Owner shall build and operate KEP as described in this order.

4) The Project Owner shall not begin construction of KEP before it has received the required land use approval under the applicable acknowledged comprehensive plan and land use regulations of Klamath County, Oregon.

5) The Project Owner shall not begin construction of KEP before it has complied with all statewide planning goals and applicable rules of the Land Conservation and Development Commission.

6) The Project Owner shall not begin construction of KEP before it has signed a Memorandum of Understanding ("MOU") with The Climate Trust, substantially in the form of Attachment A to this order, and has paid The Climate Trust $261,478 in offset funds and $50,492 in contracting and selection funds (jointly, "Funds" or "Monetary Path Payment") in 2001 dollars.

   (a) If the Project Owner disburses the Funds to The Climate Trust later than July 31, 2001, it shall adjust the amount of the Monetary Path Payment for 2001 dollars using the US Gross Domestic Product Implicit Price Deflator, as published by the US Department of Commerce, Bureau of Economic Analysis, or any successor agency ("the index"). The amount of the Monetary Path Payment shall increase annually by the percentage increase in the index and shall be pro-rated within the year to the date of disbursement to The Climate Trust from the date of this order. If at any time the index is no longer published, the Energy Facility Siting Council ("Council") shall select a comparable calculation of 2001 dollars.

   (b) The Project Owner shall submit its calculations of the application of the index to the Office of Energy for verification prior to disbursing the Funds to The Climate Trust.

7) Within 30 days of ceasing operation of KEP pursuant to Condition 2, the Project Owner shall report to the Council the total net electric power production (kilowatt hours) by the facility and the amount of British thermal units of natural gas used to produce it.

   (a) Based on those data and the data that the Council used to grant this exemption, the Council shall determine if the Project Owner owes additional offset funds and contracting and selection funds ("True-Up Monetary Path Payments") to The Climate Trust beyond what the Project Owner disbursed pursuant to Condition 6.

   (b) If the Project Owner owes True-Up Monetary Path Payments, the Council shall index those funds to 2001 dollars, pursuant to Condition 6(a).

   (c) If the Project Owner owes True-Up Monetary Path Payments, it shall pay such funds to The Climate Trust within 60 days of the Council’s order determining the amount of True-Up Monetary Path Payments it owes.
8) Project Owner may assign this exemption, provided that the new Project Owner agrees to all requirements and conditions of this exemption order; and, further provided that the new Project Owner signs an MOU with The Climate Trust for True-Up Monetary Path Payments substantially as provided in Attachment A.

(a) The new Project Owner shall sign the MOU with The Climate Trust within 15 days of acquiring the KEP.

(b) The new Project Owner shall report to the Council its acquisition of KEP and its compliance with Condition 8(a) within 20 days of acquiring KEP.

D. Conclusion.
The Council finds that the Klamath Expansion Project is a temporary energy generating facility that is exempt from Council jurisdiction, pursuant to ORS 469.320(2)(g), and subject to the conditions stated in Section C.

Ordered this 18th day of May, 2001.

Karen H. Green, Chair
Energy Facility Siting Council

ATTACHMENT A: MEMORANDUM OF UNDERSTANDING

Notice of the Right to Appeal
You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.405. 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.
MEMORANDUM OF UNDERSTANDING
THE CLIMATE TRUST AND PACIFICORP POWER MARKETING
CARBON DIOXIDE STANDARD IMPLEMENTATION
Monetary Path Payment Requirement

THIS MEMORANDUM OF UNDERSTANDING ("Agreement"), entered into as of the_______
day of May, 2001, by and between PacifiCorp Power Marketing (the "Project Owner") in its
capacity as owner of the Klamath Expansion Project and The Climate Trust ("The Trust").

RECITALS

1. The Project Owner intends to design, finance, construct, own and operate a natural gas-
fired, simple-cycle, combustion turbine, base-load, temporary energy generating facility
with a nominal electrical generating capacity of 100 megawatts on about four acres of land
it will lease from Collins' Products, LLC, in Klamath County, outside the city limits of
Klamath Falls, Oregon. The facility, together with its ancillary systems, shall be referred to
herein as the "Project." The Project is a "Temporary Energy Generating Facility" as
defined in ORS 469.320(8)(b).

2. The State of Oregon, as a condition of exemption from the site certificate requirement of
ORS 469.320(1) pursuant to ORS 469.320(2)(g), requires new Temporary Energy
Generating Facilities to meet the carbon dioxide standard as described in ORS 469.503(2).
As a further condition of the exemption from siting of the Project, the Project Owner is
required to provide offset funds ("Offset Funds") and selection and contracting funds
("Selection and Contracting Funds") (jointly, "Monetary Path Payments") to The Trust.

3. On May 18, 2001, the Oregon Energy Facility Siting Council ("Council") issued its Order
in the Matter of a Request for Exemption from Energy Facility Siting Council Jurisdiction
for the Klamath Expansion Project ("Order"). The Order granted the request for exemption
filed by the Project Owner pursuant to ORS 469.320(2)(g). The Order is incorporated by
reference and made a part of this Agreement.

4. In accordance with ORS 469.320(2)(g) and the Order, the Project Owner shall pay the
Monetary Path Payments to The Trust prior to commencing construction of the Project.
The Project Owner may also be required to make a true-up monetary path payment ("True-
Up Monetary Path Payment") after the Project ceases operations, as specified in ORS
469.320(2)(g) and ORS 469.320(7)(e). Under the terms and conditions of this Agreement,
the Project Owner shall disburse the monetary path payments to The Trust as specified in
the Order and then by The Trust as specified in ORS 469.503(2)(d)(A).

5. The Trust is a qualified organization within the meaning of ORS 469.503(2)(e)(K).

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained,
the parties hereto agree as follows:

Page 7 Attachment A
Klamath Expansion Project Exemption Order May 18, 2001
Initial Monetary Path Payment.

1.1 The Order includes the results of the monetary path payment requirement calculations (the "Initial Monetary Path Payment") performed by the Council. The Project Owner and The Trust acknowledge that the calculation of the Initial Monetary Path Payment is correct and consistent with the Order. The Project Owner and The Trust further acknowledge that the Initial Monetary Path Payment may be adjusted to the date of disbursement to maintain its value in 2001 dollars, as provided by the Order and as may be shown in Appendix A.

1.2 The Project Owner shall pay to the Trust the amount of $261,478 in Offset Funds and $50,492 in Selection and Contracting Funds prior to commencing construction of the Project. If the Project Owner makes the Initial Monetary Path Payment later than July 31, 2001, it shall make its payment in 2001 dollars based on the calculations of the Initial Monetary Path Payment set forth in Appendix A, as verified by the Office of Energy pursuant to Condition 6(b) in the Order.

True-Up Monetary Path Payment.

2.1 When the Temporary Generating Facility ceases operations, the Office of Energy shall determine if the Project Owner owes any additional Offset Funds or Selecting and Contracting funds (in 2001 dollars), pursuant to Condition 7 of the Order.

2.2 If any True-Up Monetary Path Payment is due, the Project Owner shall pay this amount directly to the Trust within 60 days of the Council order determining the amount of the True-Up Monetary Path Payment.

3. Undertaking by The Trust.

3.1 The Trust shall use the Initial Monetary Path Payment and the True-up Monetary Path Payments, if any, in accordance with ORS 469.503(2)(d)(A).

3.2 With respect to the Offset Funds portions of any Initial Monetary Path Payment and any True-up Monetary Path Payment, The Trust shall spend at least 80 percent of the Offset Funds for contracts to implement offsets, and may use up to 20 percent of the Offset Funds for monitoring, evaluation, administration, and enforcement of contracts to implement offsets.

3.3 The Selection and Contracting Funds portions of the Initial Monetary Path Payment and any True-up Monetary Path Payment shall compensate The Trust for its costs of selecting offsets and contracting for the implementation of offsets and administrative costs related to operating The Trust as a qualified organization.
3.4 The Trust shall use its best efforts to remain a qualified organization, as defined in ORS 469.503(2)(c)(K), until The Trust has used all funds received from the Project Owner.

4. **Limited Obligation of Project Owner.** The Trust acknowledges that (pursuant to ORS 469.503(2)(d)(A)(iii)) that the Project Owner and the Project shall have no obligation with regard to offsets for the Project.

5. **Limited Participation by Project Owner in The Trust Decision Making.** The Project Owner shall appoint one non-voting member to the Board of Directors of The Trust for a term lasting until The Trust has completed the contracting for the offset funds provided by the Project Owner. The Project Owner shall have no approval rights over The Trust’s offset contracts, disbursement of Offset Funds, or other day-to-day operations of The Trust.

6. **Project Owner Agreement to Indemnify and Hold The Trust Harmless.** The Project Owner agrees to defend, hold harmless and indemnify The Trust from and against any and all claims, costs, liabilities and expenses of any nature whatsoever, including reasonable attorneys' fees, resulting from, or arising out of any failure by the Project Owner to make any payments required by this Agreement in a timely manner; PROVIDED, the maximum amount of the Project Owner's liability to The Trust for claims, costs, liabilities and expenses, including attorneys' fees, arising out of the failure to timely make a payment required by this Agreement shall not exceed twice the differential between the amount payable to The Trust on a particular date and the amount actually paid to The Trust on or before that date. FURTHER PROVIDED, The Trust must make reasonable efforts to mitigate any losses, liabilities or expenses for which it seeks indemnification from the Project Owner.

7. **General Provisions.**

7.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

7.2 **Interpretation.** Any ambiguity that may arise under this Agreement shall be given a fair and reasonable construction in accordance with the intention of the parties and without regard to which party caused or is deemed to have caused such ambiguity to exist.

7.2 **Amendments and Waivers.** This Agreement may not be modified, supplemented, altered or amended, nor any provision hereof or rights hereunder be waived, except by an instrument in writing designated as an amendment of or waiver under this Agreement and signed by both parties. The waiver of any particular breach or default hereunder will not constitute a waiver of any other breach or default. Failure or delay by any party to enforce any provision of this Agreement shall not in any way be construed as a waiver of such provision, nor shall it prevent such party from thereafter enforcing each and every provision of this Agreement.
7.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto as to the matters set forth herein, and all prior proposals, commitments, understandings and agreements, whether oral or in writing, as to such matters are superseded by this Agreement.

7.4 **Assignment.** The rights of the Project Owner under this Agreement may be assumed by any entity that acquires an ownership interest in the Project. Upon such assumption, such entity shall be deemed to be a party to this Agreement. The Trust may assign this Agreement only to a "qualified organization" as defined in ORS 469.503(e)(K) and any such assignment must have the prior consent of the Council.

7.5 **Third Party Beneficiaries.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective authorized successors and permitted assigns.

7.6 References to ORS provisions in this agreement are to those provisions as amended by 2001 Or. Laws Chapter ________ (SB 843)

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their respective duly authorized representatives, as of the day and year first above written.

**PACIFICORP POWER MARKETING**

By: ______________________________________

Name: ____________________________________

Title: ________________________________

Date: ________________________________

**THE CLIMATE TRUST**

By: ______________________________________

Name: ____________________________________

Title: ________________________________

Date: ________________________________

**APPENDIX A:** **CALCULATION OF VERIFIED INITIAL MONETARY PATH PAYMENT REQUIREMENT, IF DISBURSED LATER THAN JULY 31, 2001.**

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Page 10 Attachment A  
Klamath Expansion Project Exemption Order  
May 18, 2001