

1
2 **B. Description of the Facility**

3 The Council granted the Site Certificate for the facility on November 8, 2002, and
4 amended the Site Certificate on December 5, 2003. It issued the Final Orders for the Site
5 Certificate and the First Amended Site Certificates (“Final Orders”) on the same dates,
6 respectively.

7
8 The facility is a 560 megawatt (“MW”) natural-gas-fired, combined-cycle generating
9 facility. The facility will be located in Columbia County, Oregon, about seven miles by
10 road northeast of the City of Clatskanie. PGE has not begun construction of the facility.
11

12 **II. Description of the Proposed Amendment**

13 **1. Extension of Construction Commencement and Completion Dates.**

14 Pursuant to Section F.1(5) of the First Amended Site Certificate, the Certificate Holder is
15 required to begin construction of the energy facility by November 8, 2004. Pursuant to
16 Condition F.1(6), the Certificate Holder must complete construction of the facility by
17 May 8, 2007. The Certificate Holder requested that the deadline to begin construction of
18 the facility be extended to November 8, 2006 and that the deadline to complete
19 construction of the facility be extended to May 8, 2009.
20

21 **2. Optional Energy Facility Site Layout.**

22 PGE revised its amendment request on July 1, 2004, to incorporate an optional layout for
23 the energy facility site plan, Figure B-1. The optional layout for Figure B-1 was identified
24 as “Alternative-1, Preliminary Conceptual Design” in Attachment 5 to its letter of July 1,
25 2004. The option layout excludes from the energy facility site an area 180 feet wide. It
26 includes an existing road across the energy facility site.
27

28 The optional layout would permit PGE to develop Phase 1 of the facility without using any
29 portion of the 180-foot wide strip. The proposed amendment request would also give PGE
30 the option of deciding before beginning construction of Phase 2 about whether the 180-foot
31 strip would be included in that phase.
32

33 The Council has previously approved the entire area of the energy facility site in the Site
34 Certificate. This amendment provides an option of excluding part of the energy facility site
35 from development, but it does not enlarge move the approved energy facility site. PGE
36 noted that it might need to request further amendments before beginning construction of
37 Phase 2, depending on the final site layout and equipment it chooses, but it is too early to
38 anticipate what additional amendments it might request
39

40 **3. Columbia County’s Riparian Corridors, Wetlands, Water Quality, and Fish
41 and Wildlife Habitat Overlay Zone (“Riparian Overlay Zone”).**

42 At the request of the Department of Energy and the Department of Justice, the Certificate
43 Holder proposed amendments to two conditions to align them more closely with the
44 standards in the new Riparian Overlay Zone. It proposed to amend Condition D.8(12) to
45 make an explicit reference to the appropriate section of the County Zoning Ordinance and

1 to amend to Condition D.12(16) to clarify when vegetation clearing in the Riparian Zone
2 would be permitted.

3
4 **III. Procedural History**

5 **A. Department of Energy Review Steps**

6 **1. The Certificate Holder's Request**

7 PGE submitted the Request for Second Amendment to the Site Certificate for the Port
8 Westward Generating Project on May 7, 2004. It amended its request on July 1, and
9 August 10, 2004, and provided additional information in support of its amendment
10 requests.

11
12 **2. Extended Review of Amendment Request**

13 In a letter dated May 19, 2004, PGE requested that the Department approve an extended
14 review of the Certificate Holder's Request for Second Amendment to the Site Certificate
15 for the Port Westward Generating Project, pursuant to OAR 345-027-0070(2)(a). On
16 May 20, 2004, the Department extended the notice and review of the amendment request
17 while matters before the Public Utility Commission progressed and while PGE prepared
18 responses to questions that the Department raised in its initial review of the amendment
19 request.

20
21 **3. Review by Other Agencies, Local Governments, and Tribes**

22 The Department, pursuant to OAR 345-027-0070(1)(a), identified potentially affected
23 agencies, local governments, and tribes and asked them to review the request for
24 amendment. The Department mailed a copy of the amendment request along with a review
25 report form on July 2, 2004, to those agencies, local governments and tribes and asked
26 them to reply by July 26, 2004. The Department sent the request to the following agencies,
27 local governments and tribes:

28
29 Department of Geology and Mineral Industries Department of Fish and Wildlife
30 Department of State Lands Department of Agriculture
31 Water Resources Department Department of Parks and Recreation
32 State Historic Preservation Office Department of Environmental Quality
33 Office of State Fire Marshall Public Utilities Commission
34 Oregon Building Codes Division Department of Forestry
35 Northwest Power and Conservation Council Department of Transportation
36 Dept. of Land Conservation and Development Department of Aviation
37 City of Astoria City of Rainier
38 City of Saint Helens City of Clatskanie
39 City of Columbia City Columbia County
40 Confederated Tribes of the Grand Ronde Clatsop County
41 Confederated Tribes of the Warm Springs Chinook Indian Tribe
42 Confederated Tribes of the Siletz
43

1 **4. Replies**

2 No agency, local government, or tribe stated objections to the requested amendment or
3 recommended conditions.
4

5 **5. Initial Public Notice**

6 On July 2, 2004, the Department mailed a notice of the request for amendment to all
7 persons on the Council's general mailing list and persons on the Council's special mailing
8 list for the Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments
9 to the Department by July 26, 2004.
10

11 **6. Public Comments on the Request**

12 The Department received a telephone call from Ms. Pat Powell, who stated that she lives
13 adjacent to the transmission line easement between the energy facility site and the
14 Bonneville Power Administration's Allston Substation. She raised questions about the
15 safety of the natural gas line that is also in the easement for the transmission line and about
16 the effect of induced currents on that gas line. She was also concerned about a cedar tree in
17 the easement that she believed might be an endangered plant species. Ms. Powell did not
18 submit written comments.
19

20 The natural gas line is not an energy facility under the Council's jurisdiction. The Site
21 Certificate has conditions in Section E.1.c that relate to the safe construction of the
22 transmission line and induced currents. The Council reviewed threatened, endangered, and
23 sensitive plant species in the analysis area for the facility, including the transmission line
24 corridor between the Project and the Allston Substation, prior to granting the Site
25 Certificate. The Council did not identify a species of cedar in that corridor that was a
26 threatened, endangered, or sensitive species.
27

28 **7. Proposed Order**

29 The Department issued its proposed order on August 10, 2004.
30

31 **8. Public Notice of Proposed Order**

32 On August 10, 2004, the Department mailed a notice of its proposed order to all persons on
33 the Council's general mailing list and persons on the Council's special mailing list for the
34 Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments to the
35 Department by September 13, 2004.
36

37 **9. Comments on the Proposed Order**

38 There were no comments on the proposed order.
39

40 **B. Council Review Steps**

41 **1. Council Notice**

42 The Department mailed the request for amendment and a memo summarizing the request
43 to the Council on July 2, 2004. On August 10, 2004, the Department mailed the proposed
44 order to the Council and to persons who had requested it.
45

1 **2. Council Action on the Amendment Request**

2 On September 24, 2004, the Council took action on the amendment request during its
3 regular meeting in Tigard, Oregon.
4

5 **IV. Proposed Changes to Site Certificate**

6 OAR 345-027-0060(1)(d) requires that a certificate holder must include in a request for an
7 amendment to a Site Certificate “The specific language of the site certificate, including
8 affected conditions, that the certificate holder proposes to change, add or delete by an
9 amendment.”
10

11 **A. Site Certificate Holder’s Proposed Changes**

12 PGE proposed changes to specific conditions of the Site Certificate are shown below with
13 additions double-underlined and deletions shown by strikethrough.
14

15 1. Title Page and Page 1: FirstSecond Amended Site Certificate for the Port Westward
16 Generating Project.
17

18 2. Page 1, Section A, Introduction:

19 This site certificate for the Port Westward Generating Project (“PWGP or Project”) is
20 issued and executed in the manner provided by ORS Chapter 469, by and between the
21 State of Oregon (“State”), acting by and through its Energy Facility Siting Council
22 (“Council”), and the Portland General Electric Company (“PGE” or “Certificate
23 Holder”).

24 The findings of fact, reasoning and conclusions of law underlying the terms and
25 conditions of this site certificate are set forth in the following documents, which by
26 this reference are incorporated herein: (a) the Council's Final Order in the Matter of
27 the Application for a Site Certificate for the Port Westward Generating Project, which
28 the Council granted on November 8, 2002; ~~and~~, (b) the Council’s Final Order in the
29 Matter of the Site Certificate for the Port Westward Generating Project Request for
30 Amendment No. One, which the Council granted on December 5, 2003. [~~Amendment~~
31 ~~No. 1~~2003; and (c) the Council’s Final Order in the Matter of the Site Certificate for
32 the Port Westward Generating Project Request for Amendment No. Two, which the
33 Council granted on _____, 2004. [Amendment No. 2]
34

35 In interpreting this site certificate, any ambiguity shall be clarified by reference to,
36 and in the following priority: this Site Certificate, the record of the proceedings
37 which led to the Final Order, and the Application for a Site Certificate for the Port
38 Westward Generating Project. As used in this Site Certificate, the “application for
39 site certificate” or the “ASC” includes: (a) the Application for a Site Certificate for
40 the Port Westward Generating Project, which the Office of Energy (“Office”) filed on
41 April 11, 2002; ~~and~~ (b) the Certificate Holder’s Request for First Amendment to the
42 Site Certificate for the Port Westward Generating Project, which the Council received
43 on October 25, 2003. [~~Amendment No. 1~~2003; and (c) the Certificate Holder’s

1 Request for Second Amendment to the Site Certificate for the Port Westward
2 Generating Project, which the Council received on May 7, 2004. [Amendment No. 2]
3 ***

4
5 3. Page 8, Section C.2.a. The Energy Facility Site:

6 The energy facility will be located about seven miles by road northeast of the city of
7 Clatskanie in Columbia County, Oregon. The energy facility site will be located on
8 an approximately 852-acre parcel leased to PGE by the Port of St. Helens in Section
9 15, Township 8 North, Range 4 West, Willamette Meridian. The energy facility site
10 will be fenced and will comprise about 17.5 acres of the larger parcel. ~~[Amendment~~
11 ~~No. 1]~~An alternative configuration of the energy facility site excludes a strip 180 feet
12 wide (50 feet south and 130 feet north of an existing road across the site). Under this
13 alternative, the Certificate Holder could choose to exclude this strip from the energy
14 facility site for Phase 1, if the Certificate Holder develops only Unit 1 or develops
15 Units 1 and 2 in two phases. If the strip is excluded during Phase 1, the Certificate
16 Holder will have to declare in writing to the Office of Energy before beginning
17 construction of Phase 2 whether the energy facility site for Phase 2 will include the
18 180-foot wide strip. [Amendment No. 2]

19 ***

20
21 4. Page 20, Section D.8, Fish and Wildlife Habitat (12):

22 The Certificate Holder shall not construct any structure, ~~(other than fences, and signs)~~
23 and the water supply pipeline, within the riparian corridors established under
24 Columbia County Zoning Ordinance Section 1172. [Amendment No. 2] ~~within 50 feet~~
25 ~~of any Class I river, stream or the emergent vegetation adjacent to such a river or~~
26 ~~stream or within 25 feet of any other rivers, streams, and sloughs or the emergent~~
27 ~~vegetation adjacent to such a river, stream, or slough.~~

28
29 5. Page 21, Section D.8, Fish and Wildlife Habitat (16):

30 During construction of the transmission line(s) and maintenance of the rights-of-way,
31 the Certificate Holder shall limit clearing of vegetation in riparian areas and wetlands
32 to that needed to prevent contact with the transmission line and to meet clearance
33 standards for safety and transmission line reliability, as provided in the appropriate
34 sections of the National Electrical Code. [Amendment No. 2]

35
36 6. Page 35, Section F.1, Mandatory Conditions in Site Certificates, Legal
37 Description (2):

38 Before beginning construction of Phase 1 of the energy facility, the Certificate Holder
39 shall submit to the Office a legal description of the site, except as provided in OAR
40 345-027-0023(6). ~~[Amendment No. 1]~~If the Certificate Holder develops only Unit 1 or
41 develops Units 1 and 2 in two phases, the legal description of the site for purposes of
42 beginning construction of Phase 1 may exclude the 180-foot wide strip (50 feet south
43 and 130 feet north of an existing road) immediately north of Unit 1. If the strip is
44 excluded from the legal description during Phase 1, the Certificate Holder shall
45 submit to the Office, before beginning construction of Phase 2 of the energy facility, a

1 legal description indicating whether the energy facility site for Phase 2 will include
2 the 180-foot wide strip. [Amendment No. 2]
3

4 7. Page 36, Section F.1, Mandatory Conditions in Site Certificates, Construction Rights
5 on Site (4):

6 Except as necessary for the initial survey or as otherwise allowed for transmission
7 lines or pipelines in this condition, the Certificate Holder shall not begin
8 construction, as defined in OAR 345-001-0010, or create a clearing on any part of the
9 site until the Certificate Holder has construction rights on all parts of the site. For the
10 purpose of this condition, "construction rights" means the legal right to engage in
11 construction activities. For transmission lines or pipelines, if the Certificate Holder
12 does not have construction rights on all parts of the site, the Certificate Holder may
13 nevertheless begin construction or create a clearing on a part of the site if:

- 14
- 15 (a) The Certificate Holder has construction rights on that part of the site; and,
 - 16
 - 17 (b) The Certificate Holder would construct and operate part of the facility on
18 that part of the site even if a change in the planned route of the transmission
19 line or pipeline occurs during the Certificate Holder's negotiations to acquire
20 construction rights on another part of the site.
- 21

22 For purposes of this condition, if the Certificate Holder develops only Unit 1 or
23 develops Units 1 and 2 in phases, the "site" for purposes of beginning construction of
24 Phase 1 may exclude the 180-foot wide strip (50feet south and 130 feet north of an
25 existing road) immediately north of Unit 1. [Amendment No. 2]
26

27 8. Page 36, Section F.1, Mandatory Conditions in Site Certificates, Beginning and
28 Completing Construction (5):

29 The Certificate Holder shall begin construction of the energy facility by November 8,
30 ~~2004~~2009. Beginning construction of the Port Westward to BPA Allston Substation
31 Transmission Line shall not satisfy this requirement. [Amendment No. 2].

32 ***

33

34 9. Page 36-37, Section F.1, Mandatory Conditions in Site Certificates, Beginning and
35 Completing Construction (6):

36

37 The Certificate Holder shall complete construction of the facility by May 8,
38 ~~2007~~2009. The completion of construction date is the day by which (1) the facility is
39 substantially complete as defined by the Certificate Holder's construction contract
40 documents; (2) acceptance testing is satisfactorily completed; and, (3) the energy
41 facility is ready to commence continuous operation consistent with the Site
42 Certificate. Completion of construction of the Port Westward to BPA Allston
43 Substation Transmission Line separately shall not satisfy this requirement.

44 [Amendment No. 2]
45

1 **B. Department of Energy's Conforming Changes**

2 The Council adopts the amendments that PGE requested along with making certain
3 changes to the proposed conditions to simplify and clarify the conditions and to update the
4 Site Certificate. Section B.2, below, restores the condition and adds the proposed change
5 from PGE to ensure the general applicability of the condition. The changes the Department
6 proposed are highlighted.

7
8 1. Page 8, Section C.2.a. The Energy Facility Site:

9 The energy facility will be located about seven miles by road northeast of the city of
10 Clatskanie in Columbia County, Oregon. The energy facility site will be located on
11 an approximately 852-acre parcel leased to PGE by the Port of St. Helens in Section
12 15, Township 8 North, Range 4 West, Willamette Meridian. The energy facility
13 site will be fenced and will comprise about 17.5 acres of the larger parcel.

14 ~~[Amendment No. 1]An alternative configuration of the energy facility site excludes a~~
15 ~~strip 180 feet wide (50 feet south and 130 feet north of an existing road across the~~
16 ~~site). Under this alternative, the Certificate Holder could choose to exclude this~~
17 ~~strip from the energy facility site for Phase 1, if the Certificate Holder develops~~
18 ~~only Unit 1 or develops Units 1 and 2 in two phases. If the strip is excluded during~~
19 ~~Phase 1, the Certificate Holder will have to shall declare in writing to the~~
20 ~~OfficeDepartment of Energy before beginning construction of Phase 2 whether the~~
21 ~~energy facility site for Phase 2 will includes the 180-foot wide strip. [Amendment~~
22 ~~No. 2]~~

23 ***

24 2. Page 20, Section D.8, Fish and Wildlife Habitat (12):

25 The Council restores the original language of the condition and adds the reference to the
26 Columbia County Zoning Ordinance to the end of the condition. In that way, the original
27 condition continues to apply to the area in the City of Rainier that is not covered by the
28 new County ordinance:

29
30 The Certificate Holder shall not construct any structure, ~~(other than fences, and signs)~~
31 ~~and the water supply pipeline within 50 feet of any Class I river, stream or the~~
32 ~~emergent vegetation adjacent to such a river or stream or within 25 feet of any other~~
33 ~~rivers, streams, and sloughs or the emergent vegetation adjacent to such a river,~~
34 ~~stream, or slough or within the riparian corridors established under Columbia County~~
35 ~~Zoning Ordinance Section 1172, as appropriate for the local jurisdiction. [Amendment~~
36 ~~No. 2]~~

37
38 3. Page 35, Section F.1, Mandatory Conditions in Site Certificates, Legal
39 Description (2):

40 Before beginning construction of Phase 1 of the energy facility, the Certificate
41 Holder shall submit to the Office a legal description of the site, except as provided
42 in OAR 345-027-0023(6). ~~[Amendment No. 1]If the Certificate Holder develops~~
43 ~~only Unit 1 or develops Units 1 and 2 in two phases, the~~

1 (a) The legal description of the site for purposes of beginning construction of
2 Phase 1 may exclude the 180-foot wide strip (50 feet south and 130 feet
3 north of an existing road) immediately north of Unit Phase 1.

4
5 (b) The Certificate Holder shall notify the Department in writing if it is
6 exercising the option to exclude the 180-foot wide strip from Phase 1.

7
8 (c) If the Certificate Holder excludes the strip is excluded from the legal
9 description during Phase 1, the Certificate Holder shall submit to the Office,
10 before beginning construction of Phase 2 of the energy facility, a legal
11 description indicating whether the energy facility site for Phase 2 will
12 includes the 180-foot wide strip. [Amendment No. 2]

13
14 4. Page 36, Section F.1, Mandatory Conditions in Site Certificates, Construction Rights
15 on Site (4):

16 Except as necessary for the initial survey or as otherwise allowed for transmission
17 lines or pipelines in this condition, the Certificate Holder shall not begin
18 construction, as defined in OAR 345-001-0010, or create a clearing on any part of the
19 site until the Certificate Holder has construction rights on all parts of the site. For the
20 purpose of this condition, “construction rights” means the legal right to engage in
21 construction activities. For transmission lines or pipelines, if the Certificate Holder
22 does not have construction rights on all parts of the site, the Certificate Holder may
23 nevertheless begin construction or create a clearing on a part of the site if:

24
25 (a) The Certificate Holder has construction rights on that part of the site; and,

26
27 (b) The Certificate Holder would construct and operate part of the facility on
28 that part of the site even if a change in the planned route of the transmission
29 line or pipeline occurs during the Certificate Holder's negotiations to acquire
30 construction rights on another part of the site.

31
32 For purposes of this condition, if the Certificate Holder develops only Unit 1 or
33 develops Units 1 and 2 in phases, the “site” for purposes of beginning construction of
34 Phase 1 may exclude the 180-foot wide strip (50 feet south and 130 feet north of an
35 existing road) immediately north of Unit Phase 1. [Amendment No. 2]

36
37 5. Update

38 The Council updates the entire Site Certificate by replacing “Office” with “Department” in
39 references to the Oregon Department of Energy and by indicating the appropriate
40 amendment number for changes to conditions.

41
42 **Discussion.** These proposed changes simplify the requested amendments to the Site
43 Certificate and correct an inadvertent change. They do not change the intent as proposed.

1 **Conclusion.** The Council adopts the amendments to Site Certificate descriptions and
2 conditions discussed in Section IV(A) and (B), pursuant to the findings in Section V.

3
4 **V. Compliance with Siting Standards**

5 In addressing the standards set forth in this section, the Council assesses the impacts of the
6 changes proposed in the amendment request and the compliance with applicable standards,
7 pursuant to OAR 235-027-0070(9).

8
9 OAR 345-027-0070(9) provides:

10 In making a decision to grant or deny issuance of an amended site certificate,
11 the Council shall apply the applicable substantive criteria, as described in
12 OAR 345-022-0030, in effect on the date the certificate holder submitted the
13 request for amendment and all other state statutes, administrative rules, and
14 local government ordinances in effect on the date the Council makes its
15 decision. ***

16
17 **A. Considerations for Extending Construction Deadlines**

18 OAR 345-027-0070(9)(b) identifies three factors the Council must consider when
19 considering an amendment that extends the deadlines for beginning or completing
20 construction. Each factor is discussed below:

21
22 “(A) Whether the Council has previously granted an extension of the deadline.”

23
24 The Council has not previously granted an extension of the deadline for beginning
25 construction or the deadline for completing construction for the Port Westward
26 Generating Project.

27
28 “(B) Whether there has been any change of circumstances that affects a previous
29 Council finding that was required for issuance of a site certificate or
30 amended site certificate.”

31
32 There is a discussion below of previous Council findings. Based on that discussion,
33 the Council finds that there is no change of circumstances that affects a previous
34 Council finding required for issuance of the Site Certificate or the First Amended
35 Site Certificate.

36
37 “(C) Whether the facility complies with all Council standards . . .”

38
39 The Council approved the Site Certificate for the Port Westward Generating Project
40 on November 8, 2002, and it approved the First Amended Site Certificate on
41 December 5, 2003. The Council has adopted substantive changes to the applicable
42 approval standards addressed in the Final Order for the Site Certificate. It has not
43 adopted substantive changes since it approved the Final Order and First Amended
44 Site Certificate. The following discussion of applicable standards, substantive
45 criteria, state statutes, administrative rules, and local government ordinances

1 addresses the current versions of Chapter 345, Divisions 22 and 24, rules and other
2 applicable criteria. The requested amendment would change the construction
3 beginning and completion dates and would provide an option of excluding an area
4 from the energy facility site, but would not affect other geographical areas or
5 human, plant or animal populations in any manner not considered in the Final
6 Orders.

7
8 **B. Updated List of Property Owners**

9 OAR 345-027-0060(1)(g) requires, for an amendment to extend the deadlines for
10 beginning or completing construction of the facility, “an updated list of the owners of
11 property located within or adjacent to the site of the facility, as described in OAR 345-021-
12 0010(1)(f).” PGE provided an updated list as part of its amendment request.

13
14 **C. Organizational Expertise Standard, OAR 345-022-0010**

15 This standard has four paragraphs. The first two paragraphs, -0010(1) and -0010(2), relate
16 to application qualifications and capability and the final two paragraphs, -0010(3) and
17 -0010(4), relate to third-party permits.

18
19 **1. Applicant Qualification and Capability, OAR 345-022-0010(1)**

20 To issue a site certificate, the Council must find that the applicant has the
21 organizational expertise to construct, operate and retire the proposed facility
22 in compliance with Council standards and conditions of the site certificate.
23 To conclude that the applicant has this expertise, the Council must find that
24 the applicant has demonstrated the ability to design, construct and operate
25 the proposed facility in compliance with site certificate conditions and in a
26 manner that protects public health and safety and has demonstrated the
27 ability to restore the site to a useful, non-hazardous condition. The Council
28 may consider the applicant’s experience, the applicant’s access to technical
29 expertise and the applicant’s past performance in constructing, operating and
30 retiring other facilities, including, but not limited to, the number and severity
31 of regulatory citations issued to the applicant.

32
33 **Discussion.** The proposed changes to the facility are within the scope of PGE’s overall
34 responsibilities to construct, operate, and retire the facility. The findings in the Final
35 Orders apply. The Council finds that this amendment will not impact PGE’s qualifications
36 as the Certificate Holder.

37
38 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
39 OAR 345-022-0010(1).

40
41 **2. Applicant Qualification and Capability OAR 345-022-0010(2)**

42 The Council may base its findings under section (1) on a rebuttable
43 presumption that an applicant has organizational, managerial and technical
44 expertise, if the applicant has an ISO 9000 or ISO 14000 certified program

1 and proposes to design, construct and operate the facility according to that
2 program.

3
4 **Discussion.** OAR 345-022-0010(2) is not addressed herein because the Certificate Holder
5 does not have an ISO 9000 or 14000 certified program.

6
7 **3. Third-Party Services and Permits, OAR 345-022-0010(3)**

8 If the applicant does not itself obtain a state or local government permit or
9 approval for which the Council would ordinarily determine compliance but
10 instead relies on a permit or approval issued to a third party, the Council, to
11 issue a site certificate, must find that the third party has, or has a reasonable
12 likelihood of obtaining, the necessary permit or approval, and that the
13 applicant has, or has a reasonable likelihood of entering into, a contractual
14 or other arrangement with the third party for access to the resource or
15 service secured by that permit or approval.

16
17 **Discussion.** The Council finds that the proposed amendment will not change the findings
18 of the Final Orders regarding third party permits.

19
20 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
21 OAR 345-022-0010(3).

22
23 **4. Third-Party Services and Permits, OAR 345-022-0010(4)**

24 If the applicant relies on a permit or approval issued to a third party and
25 the third party does not have the necessary permit or approval at the time
26 the Council issues the site certificate, the Council may issue the site
27 certificate subject to the condition that the certificate holder shall not
28 commence construction or operation as appropriate until the third party
29 has obtained the necessary permit or approval and the applicant has a
30 contract or other arrangement for access to the resource or service secured
31 by that permit or approval.

32
33 **Discussion.** The Council finds that the request will not affect the findings in the Final
34 Orders or conditions in the Site Certificate relating to acquiring third party permits or
35 contracts.

36
37 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
38 OAR 345-022-0010(4).

39
40 **D. Retirement and Financial Assurance Standard, OAR 345-022-0050**

41 To issue a site certificate, the Council must find that:

- 42 (1) The site, taking into account mitigation, can be restored adequately
43 to a useful, non-hazardous condition following permanent cessation
44 of construction or operation of the facility.

- 1 (2) The applicant has a reasonable likelihood of obtaining a bond or
2 letter of credit in a form and amount satisfactory to the Council to
3 restore the site to a useful, non-hazardous condition.
4

5 **Discussion.** The Council finds that the findings in the Final Orders regarding PGE's
6 ability to obtain a bond or letter of credit for retiring the energy facility apply to this
7 request.
8

9 **Conclusion.** The Council finds that the Certificate Holder meets the requirements of
10 OAR 345-022-0050.
11

12 **E. Structural Standard, OAR 345-022-0020**

13 (1) Except for facilities described in sections (2) and (3), to issue a site
14 certificate, the Council must find that:

- 15 (a) The applicant, through appropriate site-specific study, has adequately
16 characterized the site as to seismic zone and expected ground
17 motion and ground failure, taking into account amplification, during
18 the maximum credible and maximum probable seismic events; and
19 (b) The applicant can design, engineer, and construct the facility to
20 avoid dangers to human safety presented by seismic hazards
21 affecting the site that are expected to result from all maximum
22 probable seismic events. As used in this rule "seismic hazard"
23 includes ground shaking, landslide, liquefaction, lateral spreading,
24 tsunami inundation, fault displacement, and subsidence;
25 (c) The applicant, through appropriate site-specific study, has
26 adequately characterized the potential geological and soils hazards
27 of the site and its vicinity that could, in the absence of a seismic
28 event, adversely affect, or be aggravated by, the construction and
29 operation of the proposed facility; and
30 (d) The applicant can design, engineer and construct the facility to
31 avoid dangers to human safety presented by the hazards identified in
32 subsection (c).***
33

34 **Discussion.** The Council finds that the findings in the Final Orders regarding the
35 Structural Standard apply to this request.
36

37 **Conclusion.** The Council finds that the proposed changes to the facility meet the
38 requirements of OAR 345-022-0020.
39

40 **F. Soil Protection Standard, OAR 345-022-0022**

41 To issue a site certificate, the Council must find that the design,
42 construction, operation and retirement of the facility, taking into account
43 mitigation, are not likely to result in a significant adverse impact to soils
44 including, but not limited to, erosion and chemical factors such as salt

1 deposition from cooling towers, land application of liquid effluent, and
2 chemical spills.

3
4 **Discussion.** The Council finds that the findings in the Final Orders regarding the Soil
5 Protection Standard apply to this request.

6
7 **Conclusion.** The Council finds that the proposed changes to the facility meet the
8 requirements of OAR 345-022-0022.

9
10 **G. Land Use Standard, OAR 345-022-0030**

11 (1) To issue a site certificate, the Council must find that the proposed
12 facility complies with the statewide planning goals adopted by the
13 Land Conservation and Development Commission.

14 (2) The Council shall find that a proposed facility complies with section
15 (1) if:

16 (a) The applicant elects to obtain local land use approvals under
17 ORS 469.504(1)(a) and the Council finds that the facility has
18 received local land use approval under the acknowledged
19 comprehensive plan and land use regulations of the affected
20 local government; or

21 (b) The applicant elects to obtain a Council determination under
22 ORS 469.504(1)(b) and the Council determines that:

23 (A) The proposed facility complies with applicable
24 substantive criteria as described in section (3) and the
25 facility complies with any Land Conservation and
26 Development Commission administrative rules and goals
27 and any land use statutes directly applicable to the facility
28 under ORS 197.646(3);

29 (B) For a proposed facility that does not comply with one or
30 more of the applicable substantive criteria as described in
31 section (3), the facility otherwise complies with the
32 statewide planning goals or an exception to any
33 applicable statewide planning goal is justified under
34 section (4); or

35 (C) For a proposed facility that the Council decides, under
36 sections (3) or (6), to evaluate against the statewide
37 planning goals, the proposed facility complies with the
38 applicable statewide planning goals or that an exception
39 to any applicable statewide planning goal is justified
40 under section (4).***

41
42 **Discussion.** PGE submitted an "Analysis of Local and State Land Use Standards" in its
43 letter of July 1, 2004. At the request of the Department and the Department of Justice, it
44 submitted supplemental information on August 10, 2004. The purpose of the analysis was
45 to identify changes to the applicable county, city and state land use regulations and

1 standards adopted after October 2001, the date of the Application for a Site Certificate for
2 the Proposed Port Westward Generating Project (“ASC”).

3
4 As part of its periodic review process, Columbia County amended its Comprehensive Plan
5 and adopted new zoning standards for some Goal 5 resources during the summer of 2003.
6 The County elected to use the safe harbor provisions allowed by administrative rule to
7 comply with the Goal 5 rule. The County revised the following code sections: CCZO §
8 1170 - Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Overlay
9 Zone; CCZO § 1180 - Wetland Area Overlay of their code; and CCZO § 1550 – Site
10 Design Review (minor changes only).

11
12 Columbia County’s new standards protect establish varying widths for riparian corridors,
13 depending on the nature of the water body. The County has not mapped those corridors as
14 an overlay zone on the County zoning map. Rather, the applicable riparian corridor width
15 must be determined, for streams, by determining whether the average annual stream flow is
16 greater or less than 1,000 cubic feet per second (“cfs”) and whether the stream segment at
17 issue is “fish bearing” or “non-fish bearing.” CCZO § 1172. The Columbia River and
18 Bradbury Slough are the only water bodies for which the riparian corridor boundary is 75
19 feet upland from the top of the bank due to classification as “fish-bearing and non-fish
20 bearing streams, rivers and sloughs (greater than 1,000 cfs).” *See* CCZO § 1172.A.3.

21
22 Streams along the transmission line corridor and alternative transmission line corridor are
23 shown as overlays on aerial photographs in Appendices J-4 and J-5 of the ASC. Those
24 aerial photographs also show approximate locations for towers. Streams are also shown on
25 Figures P-3a through P-3d in Exhibit P of the ASC. Riparian corridors along the
26 transmission line would be 50 feet from the top of the bank for fish-bearing streams and
27 25 feet upland from the top of the bank for all other streams. Most tower locations, as
28 shown, are not within several hundred feet of a stream. Given the flexibility available with
29 respect to tower spacing, the Certificate Holder is able to avoid constructing towers within
30 riparian corridors.

31
32 One perennial stream adjacent to the transmission line corridor, Fox Creek, is located
33 within the City of Rainier and, therefore, is not subject to the Columbia County Zoning
34 Ordinance standards for riparian corridors. *See* ASC, Figure P-3d. Therefore, in Section
35 IV.B(2) above, the Council retains the language of the original Condition D.8(12) and add
36 a reference to the new County ordinance so that the condition applies in both the City of
37 Rainier and in Columbia County.

38
39 Conditions D.8(15) and (16) already restrict clearing of vegetation. PGE proposed
40 revisions, as detailed in Section IV.A(4) and (5) and IV.B(2) above, to incorporate explicit
41 compliance with the riparian corridor standards and to clarify when vegetation clearing will
42 be necessary. The proposed amendment to Condition D.8(16) is consistent with CCZO §
43 1175.A.1, which allows removal within the riparian corridor boundary of “trees and
44 vegetation in danger of falling and/or posing a hazard to life and property.”
45

1 Finally, the water supply pipeline is a water-related or water-dependent use allowed within
2 the riparian corridor. Pursuant to CCZO § 1175A.2, vegetation can be removed for a
3 water-related or water-dependent use, but must be “kept to a minimum necessary to allow
4 the water-dependent and water-related use.” Condition D.8(15) already requires that the
5 Certificate Holder clear no more riparian vegetation “than is necessary for the permitted
6 land use.”

7
8 Relevant changes to CCZO Section 1180 and the associated subsections address the
9 protection of significant wetlands within identified Wetland Areas.

10
11 *Section 1180: Wetland Area Overlay.*

12
13 *Section 1181: Purpose. The purpose of this zone is to protect significant wetland*
14 *within the identified Wetland Areas as shown on the State Wetland Inventory and*
15 *Local Wetland Inventories, from filling, drainage, or other alteration which would*
16 *destroy or reduce their biological value. The Wetland Area Overlay does not apply*
17 *to land legally used for commercial forestry operations or standard farm practices,*
18 *both of which are exempt from these wetland area corridor standards. The use of*
19 *land for commercial forestry is regulated by the Oregon Department of Forestry.*
20 *The use of land for standard farm practices is regulated by the Oregon Department*
21 *of Agriculture, with riparian area and water quality issues governed by ORS*
22 *568.210 to ORS 568.805.*

23
24 *Section 1182: Definition. A significant wetland is an area that is inundated or*
25 *saturated by surface water or ground water at a frequency and duration sufficient*
26 *to support, and that under normal circumstances does support, a prevalence of*
27 *vegetation typically adapted for life in saturated soil conditions. In case of dispute*
28 *over whether an area is of biological value and should be considered a significant*
29 *wetland, the County shall obtain the recommendation of the Oregon Department of*
30 *Fish and Wildlife, the Columbia County Soil and Water Conservation District, and*
31 *the Division of State Lands.*

32
33 Before it was amended in 2003, the Comprehensive Plan explicitly exempted the Port
34 Westward area from the Wetland Area Overlay Zone. The amendments to the
35 Comprehensive Plan deleted that exemption and extended the Wetland Area Overlay Zone
36 to all “significant” wetlands, as defined in CCZO Section 1182, within the “identified
37 Wetland Areas as shown on the State Wetland Inventory maintained by the Department of
38 State Lands (“DSL”), which includes the National Wetland Inventory and any Local
39 Wetland Inventory. Columbia County Comprehensive Plan, Article X(A)(2) . For
40 purposes of this order, the Council is assuming that the wetlands present on the Project site
41 are “significant wetlands” as that term is defined in CCZO Section 1182.

42
43 *Section 1183: Permitted Uses. Uses and development activities permitted outright*
44 *or conditionally in the underlying zone shall be permitted in the Wetland Area*
45 *Overlay Zone if they will not result in filling, drainage, removal of vegetation, or*

1 *other alteration which would destroy or degrade a significant wetland as defined in*
2 *Section 1182. Minor drainage improvements necessary to ensure effective*
3 *drainage on surrounding agricultural lands under Oregon Department of*
4 *Agriculture wetland rules shall be allowed where such an action has been fully*
5 *coordinated with the Oregon Department of Fish and Wildlife, the Columbia*
6 *County Soil and Water Conservation District, and the Division of State Lands.*
7 *Existing drainage ditches may be cleared to original specifications without County*
8 *review.*

9
10 In a letter dated August 30, 2004, PGE's attorney noted an incorrect statement in his earlier
11 description of Wetland Overlay Zone requirements. The wetland area at the energy facility
12 site had been excluded from protected wetland areas by earlier versions of the Columbia
13 County Comprehensive Plan, but amendments that the County adopted on September 17,
14 2003, removed the exclusion for that wetland area. Therefore, the provisions of the
15 Wetland Overlay Zone now apply to the facility site.

16
17 PGE argued that CCZO Section 1183's requirement that the permitted activity "not result
18 in filling, drainage, removal of vegetation, or other alteration which would destroy or
19 degrade a significant wetland" does not preclude an activity in the Wetland Area Overlay
20 Zone that is authorized by a removal-fill permit from DSL and the U.S. Army Corps of
21 Engineers. It argued that if an activity is permitted outright or conditionally in the
22 underlying zone, and any wetland fill or other impacts to significant wetlands included in
23 the Wetland Area Overlay Zone are authorized by a valid removal-permit, the activity is a
24 permitted use in the Wetland Area Overlay.

25
26 PGE submitted a copy of a letter that Columbia County assistant county counsel, Sarah
27 Tyson, sent to Adam Bless, Oregon Department of Energy, on August 23, 2004, that
28 supported PGE's interpretation of compliance with the Wetland Overlay Zone. In addition,
29 in a letter dated July 19, 2004, Mr. Todd Dugdale, director of the Columbia County
30 Department of Land Development Services, wrote that he concurred with the analysis of
31 land use standards that PGE submitted and concurred that the Project would comply with
32 new provisions protecting wetlands and riparian areas.

33
34 The Council finds compliance with the Wetland Overlay Zone through a separate analysis.
35 By virtue of an approved removal/fill permit, DSL, via the Council's original Final Order
36 and the First Amended Site Certificate, and the U.S. Army Corps of Engineers have
37 authorized the Certificate Holder to fill 0.43 acre of wetland on the Project site. Exhibit J
38 of the ASC, the Joint Removal-Fill Permit Application, and the original Final Order
39 provide a complete analysis of wetland impacts and compensatory mitigation. Included
40 with the authorizations for the removal/fill permit is the requirement that the Certificate
41 Holder mitigate for the wetland fill by enhancing 1.5 acres of palustine emergent wetlands
42 in the same wetland area. As a result, there will be no net destruction or degradation (by
43 loss of functional value) of the particular wetland area. Therefore, the Council finds that
44 the Certificate Holder complies with the pertinent requirements of CCZO Section 1183, as
45 amended.

1
2 There are no applicable changes to the City of Rainier Zoning Ordinance or the City of
3 Rainier Comprehensive Plan.

4
5 The Land Conservation and Development Commission revised OAR 660-033-0130,
6 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses. This
7 administrative rule has been changed to include requirements that are stated in ORS
8 215.275, which was addressed in the ASC and in the Final Order approving the Site
9 Certificate. This administrative rule simply mirrors that statute; therefore, the Council's
10 findings in the Final Order address the requirements of this rule.

11
12 The Council finds that the analysis demonstrated that the facility complies with the new
13 regulations and standards.

14
15 **Conclusion.** The Council finds that the proposed changes to the facility meet the
16 requirements of OAR 345-022-0030.

17
18 **H. Protected Area Standard, OAR 345-022-0040**

- 19 (1) Except as provided in sections (2) and (3), the Council shall not issue
20 a site certificate for a proposed facility located in the areas listed
21 below. To issue a site certificate for a proposed facility located
22 outside the areas listed below, the Council must find that, taking into
23 account mitigation, the design, construction and operation of the
24 facility are not likely to result in significant adverse impact to the
25 areas listed below. Cross-references in this rule to federal or state
26 statutes or regulations are to the version of the statutes or regulations
27 in effect as of August 28, 2003:***

28
29 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
30 demonstrate compliance with the Protected Areas Standard.

31
32 **Conclusion.** The Council finds that the proposed changes to the facility meet the
33 requirements of OAR 345-022-0040.

34
35 **I. Fish and Wildlife Habitat Standard, OAR 345-022-0060**

36 To issue a site certificate, the Council must find that the design,
37 construction, operation and retirement of the facility, taking into account
38 mitigation, are consistent with the fish and wildlife habitat mitigation goals
39 and standards of OAR 635-415-0025 in effect as of September 1, 2000.

40
41 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
42 demonstrate compliance with the Fish and Wildlife Habitat Standard.

43
44 **Conclusion.** The Council finds that the proposed changes to the facility meet the
45 requirements of OAR 345-022-0060.

1
2 **J. Threatened and Endangered Species Standard, OAR 345-022-0070**

3 To issue a site certificate, the Council, after consultation with appropriate state
4 agencies, must find that:

- 5 (1) For plant species that the Oregon Department of Agriculture has listed
6 as threatened or endangered under ORS 564.105(2), the design,
7 construction, operation and retirement of the proposed facility, taking
8 into account mitigation:
9 (a) Are consistent with the protection and conservation program, if
10 any, that the Oregon Department of Agriculture has adopted
11 under ORS 564.105(3); or
12 (b) If the Oregon Department of Agriculture has not adopted a
13 protection and conservation program, are not likely to cause a
14 significant reduction in the likelihood of survival or recovery of
15 the species; and
16 (2) For wildlife species that the Oregon Fish and Wildlife Commission has
17 listed as threatened or endangered under ORS 496.172(2), the design,
18 construction, operation and retirement of the proposed facility, taking
19 into account mitigation, are not likely to cause a significant reduction
20 in the likelihood of survival or recovery of the species.
21

22 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
23 demonstrate compliance with the Threatened and Endangered Species Standard.
24

25 **Conclusion.** The Council finds that the proposed changes to the facility meet the
26 requirements of OAR 345-022-0070.
27

28 **K. Scenic and Aesthetic Values Standard, OAR 345-022-0080**

- 29 (1) Except for facilities described in sections (2), to issue a site
30 certificate, the Council must find that the design, construction,
31 operation and retirement of the facility, taking into account
32 mitigation, are not likely to result in significant adverse impact to
33 scenic and aesthetic values identified as significant or important in
34 applicable federal land management plans or in local land use plans
35 in the analysis area described in the project order. ***
36

37 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
38 demonstrate compliance with the Scenic and Aesthetic Values Standard.
39

40 **Conclusion.** The Council finds that the proposed changes to the facility meet the
41 requirements of OAR 345-022-0080.
42

43 **L. Historic, Cultural, and Archeological Resources Standard, OAR 345-022-0090**

- 44 (1) Except for facilities described in sections (2) and (3), to issue a site
45 certificate, the Council must find that the construction, operation and

1 retirement of the facility, taking into account mitigation, are not
2 likely to result in significant adverse impacts to:

- 3 (a) Historic, cultural or archaeological resources that have been
4 listed on, or would likely be listed on the National Register of
5 Historic Places;
- 6 (b) For a facility on private land, archaeological objects, as
7 defined in ORS 358.905(1)(a), or archaeological sites, as
8 defined in ORS 358.905(1)(c); and
- 9 (c) For a facility on public land, archaeological sites, as defined
10 in ORS 358.905(1)(c). * * *

11
12 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
13 demonstrate compliance with the Historic, Cultural, and Archeological Resources
14 Standard.

15
16 **Conclusion.** The Council finds that the proposed changes to the facility meet the
17 requirements of OAR 345-022-0090.

18
19 **M. Recreation Standard, OAR 345-022-0100**

- 20 (1) Except for facilities described in section (2), to issue a site
21 certificate, the Council must find that the design, construction and
22 operation of a facility, taking into account mitigation, are not likely
23 to result in a significant adverse impact to important recreational
24 opportunities in the analysis area as described in the project order.
25 The Council shall consider the following factors in judging the
26 importance of a recreational opportunity:

- 27 (a) Any special designation or management of the location;
- 28 (b) The degree of demand;
- 29 (c) Outstanding or unusual qualities;
- 30 (d) Availability or rareness;
- 31 (e) Irreplaceability or irretrievability of the opportunity. ***

32
33 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
34 demonstrate compliance with the Recreation Standard.

35
36 **Conclusion.** The Council finds that the proposed changes to the facility meet the
37 requirements of OAR 345-022-0100.

38
39 **N. Public Services Standard, OAR 345-022-0110**

- 40 (1) Except for facilities described in sections (2) and (3), to issue a site
41 certificate, the Council must find that the construction and operation
42 of the facility, taking into account mitigation, are not likely to result
43 in significant adverse impact to the ability of public and private
44 providers within the analysis area described in the project order to
45 provide: sewers and sewage treatment, water, storm water drainage,

1 solid waste management, housing, traffic safety, police and fire
2 protection, health care and schools.***

3
4 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
5 demonstrate compliance with the Public Services Standard.

6
7 **Conclusion.** The Council finds that the proposed changes to the facility meet the
8 requirements of OAR 345-022-0110.

9
10 **O. Waste Minimization Standard, OAR 345-022-0120**

11 (1) Except for facilities described in sections (2) and (3), to issue a site
12 certificate, the Council must find that, to the extent reasonably practicable:

13 (a) The applicant's solid waste and wastewater plans are likely to
14 minimize generation of solid waste and wastewater in the
15 construction, operation, and retirement of the facility, and when solid
16 waste or wastewater is generated, to result in recycling and reuse of
17 such wastes;

18 (b) The applicant's plans to manage the accumulation, storage, disposal
19 and transportation of waste generated by the construction and
20 operation of the facility are likely to result in minimal adverse impact
21 on surrounding and adjacent areas. ***

22
23 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
24 demonstrate compliance with the Waste Minimization Standard.

25
26 **Conclusion.** The Council finds that the proposed changes to the facility meet the
27 requirements of OAR 345-022-0120.

28
29 **P. Carbon Dioxide Standard**
30 **Standard for Base Load Gas Plants, OAR 345-024-0550**

31 To issue a site certificate for a base load gas plant, the Council must find
32 that the net carbon dioxide emissions rate of the proposed facility does not
33 exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric
34 power output, with carbon dioxide emissions and net electric power output
35 measured on a new and clean basis. For a base load gas plant designed with
36 power or augmentation technology as defined in OAR 345-001-0010, the
37 Council shall apply the standard for a non-base load power plant, as
38 described in OAR 345-024-0590, to the incremental carbon dioxide
39 emissions from the designed operation of the power augmentation
40 technology.***

41
42 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
43 demonstrate compliance with the Carbon Dioxide Standard. Specifically, the Certificate
44 Holder complies with the carbon dioxide standard in effect at the time of the Council's
45 order on the amendment request, pursuant to OAR 345-027-0030(5).

1
2 **Conclusion.** The Council finds that the proposed changes to the facility meet the
3 requirements of OAR 345-024-0550 through -0710.
4

5 **Q. Noise OAR 340-035-0035(1)(b)(B)**

6 The Council applies and enforces the Department of Environmental Quality's ("DEQ")
7 noise standards for energy facilities under its jurisdiction. The DEQ noise regulations for
8 industrial and commercial noise sources apply to the Project. Under the DEQ regulations,
9 the generating facility would be located on a "previously unused industrial site" and
10 according to the regulations:

11
12 No person owning or controlling a new industrial or commercial noise
13 source located on a previously unused industrial or commercial site shall
14 cause or permit the operation of that noise source if the noise levels
15 generated or indirectly caused by that noise source increase the ambient
16 statistical noise levels, L₁₀ or L₅₀, by more than 10 dBA in any one hour, or
17 exceed the levels specified in Table 8, as measured at an appropriate
18 measurement point. OAR 340-035-0035(1)(b)(B)(i).
19

20 **Discussion.** DEQ noise regulations for industrial and commercial noise sources apply to
21 the energy facility. The Council finds that the findings in the Final Orders demonstrate that
22 the energy facility would meet the DEQ noise standards applicable to the facility, OAR
23 340-035-0035(1)(b)(B)(i).
24

25 **Conclusion.** The Council finds that the proposed changes to the facility meet the
26 requirements of OAR 340-035-0035(1)(b)(B)(i).
27

28 **R. Wetlands, OAR 345-022-0000**

29 Pursuant to OAR 345-022-0000, the Council must determine compliance with applicable
30 statutes, ORS 196.800-.990, and applicable Department of State Lands ("DSL")
31 regulations, OAR 141-085-0005 *et seq.* relating to fill and other operations taking place
32 within wetlands. These regulations require persons to obtain a removal/fill permit if more
33 than 50 cubic yards of material will be removed or altered within "waters of the state."
34 The overall standard to be considered in granting a removal/fill permit is whether the
35 proposed activity would not "unreasonably interfere with the paramount policy of this state
36 to preserve the use of its waters for navigation, fishing and public recreation."
37 ORS 196.825(2).
38

39 **Discussion.** In the Final Order for the Site Certificate, the Council found that the energy
40 facility would comply with OAR 345-021-0010(1)(j) and ORS 196.800-990, subject to
41 issuance of a Removal/Fill Permit substantially in the form of Attachment C to the Final
42 Order prior to commencement of construction of the facility. DSL amended its wetland
43 rules in 2003, following the issuance of the Site Certificate in 2002
44

1 The Department requested that PGE demonstrate that it could meet the wetland rules now
2 in effect. In its letter of July 1, 2004, PGE provided reports entitled "J.6: Evidence That
3 Fill and Removal Permits Can Be Issued" and "Wetland Assessment for the Port Westward
4 Generating Project." The first report reviewed the criteria in statute and rule that must be
5 met to in order to demonstrate that a Removal-Fill permit can be issued and an explanation
6 of how each of the criteria is met by the Port Westward Generating Project. The second
7 report was a re-write of Appendix J-2 to the ASC to conform to DSL's new rules regarding
8 wetland assessment.

9
10 Both the Department and DSL staff reviewed the two reports and found that they
11 demonstrated that the facility complies with DSL rules. The Council finds that the findings
12 in the Final Order for the Site Certificate and the Removal/Fill Permit, which is
13 Attachment C to the Amended Site Certificate, meet current DSL standards.

14
15 **Conclusion.** The Council finds that approval of this amendment request will satisfy the
16 Council's obligation to determine compliance with DSL removal/fill permit requirements.

17
18 **S. Public Health and Safety, ORS 469.401(2)**

19 The Council is required to impose conditions in the site certificate for the protection of
20 public health and safety.

21
22 **Discussion.** The Council finds that the findings in the Final Orders are sufficient to
23 demonstrate compliance with the Public Health and Safety standard.

24
25 **Conclusion.** The Council finds that the proposed changes to the facility continue to meet
26 the Council's conditions that protect public health and safety, pursuant to ORS 469.401(2).

27
28 **VI. Conclusions**

29 The Council finds that the actions in the Certificate Holder's request are consistent with
30 current Council rules, with other applicable statutes and rules, and with statewide land use
31 planning goals and would not cause a significant adverse impact to public health and safety
32 or the environment. In preparing this proposed order, the Department limited its
33 consideration to the effects that may be produced by the proposed changes to the energy
34 facility site and the extension of construction deadlines as described in the Certificate
35 Holder's Request for Second Amendment to the Site Certificate for the Port Westward
36 Generating Project, as amended. In considering those effects, the Department reviewed
37 state statutes, administrative rules, and local government ordinances.

38
39 Based on the above findings, the Council concludes that it should amend the First Amended
40 Site Certificate for the Port Westward Generating Project as the Certificate Holder requests
41 with modifications to the conditions as noted above in Section IV.

1 **FINAL ORDER**

2
3 Based on the above findings of fact, discussions and conclusions of law, the Energy
4 Facility Siting Council determines that it shall approve Amendment Number Two and that
5 the chairperson of the Council shall execute the Site Certificate Amendment in the form of
6 the "Second Amended Site Certificate for the Port Westward Generating Project." This
7 incorporates Attachments to the First Amended Site Certificate for the Port Westward
8 Generating Project. The Second Amended Site Certificate for the Port Westward
9 Generating Project, with Attachments, is attached to this order and is incorporated by
10 reference into this order.

11
12 Approved this 24th day of September 2004.

13
14
15 
16 _____
17 Karen H. Green, Chair
18 Oregon Energy Facility Siting Council
19

20 ATTACHMENT: SECOND AMENDED SITE CERTIFICATE WITH ATTACHMENTS
21

22 **NOTICE OF THE RIGHT TO APPEAL**

23 You have the right to appeal this order to the Oregon Supreme Court pursuant to
24 ORS 469.405. To appeal, you must file a petition for judicial review with the Supreme
25 Court within 60 days from the day this order was served on you. If this order was
26 personally delivered to you, the date of service is the date you received this order. If this
27 order was mailed to you, the date of service is the date it was mailed, not the day you
28 received it. If you do not file a petition for judicial review within the 60-day time period,
29 you lose your right to appeal.

30 /
31 /
32 /

ATTACHMENT

SECOND AMENDED SITE CERTIFICATE

FOR THE

PORT WESTWARD GENERATING PROJECT

BLANK

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2004, I served the Final Order in the Matter of the Site Certificate for the Port Westward Generating Project Request for Amendment No. Two and the Second Amended Site Certificate for the Port Westward Generating Project on the following named person(s):

Richard H. Allan
Ball Janik LLP
101 SW Main Street, Suite 1100
Portland, OR 97204-3219
Attorney for PGE

Janet L. Prewitt
Assistant Attorney General
Oregon Department of Justice
1152 Court Street NE
Salem, OR 97301
Attorney for Oregon Department of Energy

Arya Behbehani-Divers
Portland General Electric Company
121 SW Salmon Street, 3WTC-BR03
Portland, OR 97204
Project Manger for PGE

by causing a true copy of the above-listed documents to be served in the following manner:

Mailing with postage prepaid in a sealed enveloped, addressed to person(s) at the last-known address(es) indicated above.

DATED: October 18, 2004



Samuel R. Sadler
Oregon Department of Energy

