

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

IN THE MATTER OF THE REQUEST FOR AMENDMENT #9  
OF THE SITE CERTIFICATE FOR THE PORT WESTWARD  
GENERATING PROJECT

FINAL ORDER DENYING A  
CONTESTED CASE  
PROCEEDING AND  
APPROVING AMENDMENT #9

Issued by the Oregon Energy Facility Siting Council

**March 15, 2013**

**FINAL ORDER DENYING A CONTESTED CASE PROCEEDING AND  
APPROVING AMENDMENT #9  
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1 **I. INTRODUCTION**

2 On October 30, 2012, Portland General Electric Company (“PGE” or the “Certificate Holder”)  
3 submitted to the Oregon Department of Energy (“ODOE”) its Request for the Ninth Amendment  
4 (“RFA #9”) to the Site Certificate for the Port Westward Generating Project (“PWGP” or “Facility”).<sup>1</sup>  
5 The principal modifications that PGE requested are:

6 (1) Extension of the deadline for completing construction of Unit 2 of the PWGP by 24 months,  
7 from May 8, 2013, to May 8, 2015; and

8 (2) Extension of the deadline to complete approved changes and make full beneficial use of  
9 water under Transfer Application T-10955 by 12 months, from October 1, 2014 to October 1,  
10 2015.

11 On January 10, 2012, the Certificate Holder submitted recommendations for revisions to Site  
12 Certificate Condition D.8(8), pursuant to OAR 345-027-0060(d). The Certificate Holder proposes  
13 amending Condition D.8(8) to include procedures for wildlife surveys and rescue and relocation of  
14 nongame wildlife.<sup>2</sup>

15 Based upon the discussion and conclusions contained in this Order, the Energy Facility Siting  
16 Council (“Council” or “EFSC”) approves Amendment #9 and issues an amended site certificate for  
17 Port Westward Generating Project, subject to the terms and conditions set forth in this Order. The  
18 Council issues this order in accordance with ORS 469.405 and OAR 345-027-0070.

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

21 **I.A. NAME AND ADDRESS OF CERTIFICATE HOLDER**

22 Portland General Electric Company  
23 121 SW Salmon Street  
24 Portland, OR 97204

25 The individual responsible for submitting the request:

26 Rick Tetzloff, PE  
27 Portland General Electric Company  
28 121 SW Salmon Street, 3WTC-BR03  
29 Portland, OR 97204

30 **I.B. DESCRIPTION OF THE FACILITY**

31 The Council granted the Site Certificate for the facility on November 8, 2002, and The Port  
32 Westward Generating Project is a natural gas-fired combustion turbine electric generating plant.  
33 EFSC approved the original site certificate for the facility on November 8, 2002, authorizing up to

<sup>1</sup> Portland General Electric, *Certificate Holder's Request for Ninth Amendment to the Site Certificate for the Port Westward Generating Project*, October 30, 2012.

<sup>2</sup> Tetzloff, Rick, “PGE Responses to ODFW comments,” January 10, 2013.

1 650 megawatts of generating capacity in two phases.<sup>3</sup> Construction on the first phase began in  
2 February 2005 and Unit 1 began operation in July 2007.

3 The certificate holder originally proposed Unit 2 as a second base load, natural gas-fired,  
4 combustion turbine combined cycle unit. The Council has subsequently approved eight amendments  
5 to the Site Certificate.<sup>4</sup> This amendment will be Amendment #9.

6 Relevant to this request, Amendment #7 authorizes the certificate holder to change Unit 2 from a  
7 base load to a variable load generating plant. The certificate holder designed Unit 2 as a combination  
8 of reciprocating and combustion turbines totaling 200 megawatts. The amended site certificate also  
9 authorized expansion of the energy facility site by 8.5 acres.<sup>5</sup> Amendment #8 extended the date for  
10 completing construction to May 8, 2013 and set a deadline for making full beneficial use of water  
11 under Transfer Application T-10955 of October 1, 2014.

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<sup>3</sup> Oregon Energy Facility Siting Council, *Final Order on the Application for Site Certificate for Port Westward Generating Project* (“*Final Order on the Application*”), November 8, 2002.

<sup>4</sup> Final Orders were issued by the Council on the following amendments: Amendment #1 on December 5, 2003; Amendment #2 on September 24, 2004; Amendment #3 on January 28, 2005; Amendment #4 on May 19, 2006; Amendment #5 on September 29, 2006; Amendment #6 on February 23, 2009; Amendment #7 on January 13, 2010; and Amendment #8 on August 19, 2011. Amendment #7 and #8 are relevant to this 9<sup>th</sup> amendment request.

<sup>5</sup> Oregon Energy Facility Siting Council, *Final Order on the Certificate Holder’s Request for Amendment #7 to the Site Certificate for Port Westward Generating Project*, (“*Final Order on Amendment #7*”), January 13, 2010.

1 **II. THE AMENDMENT PROCESS**

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

3 **II.A.1. SUMMARY OF PROPOSED CHANGES TO SITE CERTIFICATE CONDITIONS**

4 PGE requests an amendment to the site certificate to extend the deadline for completing  
5 construction of Unit 2 of the PWGP by 24 months. If approved, the amendment would extend the  
6 deadline for completing construction from May 8, 2013, to May 8, 2015.

7 RFA #9 also proposes extending the deadline to complete approved changes and make full  
8 beneficial use of water under Transfer Application T-10955 by 12 months. If approved, the  
9 amendment would extend the deadline for extend the deadline for making full and beneficial use of  
10 water from October 1, 2014 to October 1, 2015.

11 In its *Request for Amendment #8*, submitted in November 2010, PGE explained the reason for  
12 requesting an extension of the deadline for completing construction as follows:

13 *The Certificate Holder has been involved in a required regulatory process before the Oregon*  
14 *Public Utilities Commission ("OPUC") for review and acknowledgment of its integrated*  
15 *resource plan (IRP). On October 15, 2010, the staff of the OPUC issued its recommendations*  
16 *on PGE's IRP. PGE expects the Commission to acknowledge the plan in 2010. Included in*  
17 *PGE's IRP is an identified need for up to 200 MW of flexible capacity resources. PGE's IRP*  
18 *identifies Unit 2 as a self-build alternative for satisfying that need. The requested extension of*  
19 *the deadline for completing construction will allow adequate time, after the OPUC*  
20 *acknowledges PGE's IRP, for contracting, and ordering of equipment before the Certificate*  
21 *Holder would have to begin construction of Unit 2.<sup>6</sup>*

22 In RFA #9, PGE notes that the Council approved Amendment #8 to extend the deadline to  
23 complete construction to May 8, 2013. RFA #9 also summarizes PGE's progression through the  
24 OPUC's approval processes for the IRP and RFP in the two years since the *Request for Amendment*  
25 *#8* was submitted.

26 *On November 23, 2010 the OPUC acknowledged the IRP plan. The OPUC order*  
27 *acknowledging PGE's request for proposal plan (RFP) for resources to satisfy the needs*  
28 *identified in the IRP plan was issued on June 7, 2012. PGE issued the RFP on June 8, 2012*  
29 *and bids were submitted in response by August 8, 2012. In accordance with the OPUC*  
30 *approved schedule, PGE expects to identify the initial short list of bidders on November 6,*  
31 *and to select a final short list of bidders on November 27, 2012. Under the OPUC*  
32 *competitive bidding guidelines, the evaluation of all bids (including the PWGP bid) will be*  
33 *conducted by a separate department at PGE under the auspices of an independent evaluator*  
34 *retained by the OPUC. PGE cannot proceed with construction of PWGP unless and until its*  
35 *bid is selected in the RFP.*

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<sup>6</sup> Portland General Electric, *Certificate Holder's Request for Eighth Amendment to the Site Certificate for the Port Westward Generating Project*, November 4, 2010.

1            *Thus, the requested extension of the deadline for completing construction will allow*  
2            *adequate time for the RFP process, contracting, and ordering of equipment before the*  
3            *Certificate Holder must complete construction of Unit 2.*

4            **II.A.2.            CERTIFICATE HOLDER'S PROPOSED CHANGES TO SITE CERTIFICATE**

5            PGE proposes the following amendments to conditions included in the Eighth Amended Site  
6            Certificate for the PWGP. Proposed additions are shown in double-underlined bold typeface and  
7            proposed deletions have a strikethrough.

8            Condition D.13(11)(e), which concerns a water right transfer for Unit 2, would be amended as  
9            follows:

10            *(11) (e) The approved changes shall be completed and full beneficial use of the water*  
11            *shall be made on or before October 1, ~~2014~~ 2015. A Claim of Beneficial Use prepared*  
12            *by a Certified Water Rights Examiner shall be submitted by the Certificate Holder to the*  
13            *Department within one year after the deadline for completion of the changes and full*  
14            *beneficial use of the water.*

15            Condition F.1(6), concerning the deadline for completion of construction would be amended as  
16            follows:

17            *(6) The Certificate Holder shall complete construction of the facility by May 8,*  
18            *~~2013~~2015. The completion of construction date is the day by which (1) the facility is*  
19            *substantially complete as defined in the Certificate Holder's construction contract*  
20            *documents; (2) acceptance testing is satisfactorily completed; and, (3) the energy facility*  
21            *is ready to commence continuous operation consistent with the Site Certificate.*  
22            *Completion of construction of the Port Westward to BPA Allston Substation*  
23            *Transmission Line separately shall not satisfy this requirement.*

24            In its January 10, 2013 response to ODFW comments, PGE also requested the following change to  
25            Condition D.8(8), concerning pre-construction surveys of the facility site:

26            *(8) As possible and practicable, the Certificate Holder shall conduct site preparation*  
27            *for construction of the PW2 facility in a manner that minimizes potential for impacting*  
28            *nesting native birds protected by the Migratory Bird Treaty Act (MBTA), such as*  
29            *conducting initial site clearing outside of the breeding season for most birds (generally*  
30            *March-July). Prior to commencement of construction activity during the breeding season,*  
31            *a qualified biologist will conduct a walk-down of the construction site to determine the*  
32            *presence of any active bird nests and to rescue and relocate any nongame protected*  
33            *wildlife (OAR 635-045-0002) that may be encountered according to methods to be*  
34            *provided by ODFW. Surveys will be conducted by a qualified wildlife biologist and will*  
35            *include complete coverage of all areas to be disturbed using systematic transects spaced*  
36            *a maximum of 5 meters apart. As applicable considering construction schedule, PGE*  
37            *will also conduct a survey beginning in March prior to construction to detect any*  
38            *streaked horned larks that could be using the very limited amount of potential breeding*

1 habitat on site. PGE's survey protocol methods will be coordinated with ODFW.  
2 Construction personnel will be trained regarding avian awareness issues and reporting  
3 of bird nests and dead birds found at the construction site (also see Condition D.8(1) for  
4 wildlife awareness requirements). The Certificate Holder will consult with USFWS and  
5 ODFW regarding any active bird nests found within the construction disturbance area.

6 **II.A.3. ODOE'S RECOMMENDED CHANGES TO THE SITE CERTIFICATE**

7 In the Proposed Order on Amendment #9, ODOE recommends that the Council adopt PGE's  
8 proposed amendments to Conditions D.13(11)(e), F.1(6), and D.8(8) as shown in section II.A.2  
9 above.

10 **II.B. APPLICABLE STANDARDS**

11 **II.B.1. PROCESS FOR EXTENDING CONSTRUCTION DEADLINES [OAR 345-027-0030]**

12 By rule, the site certificate must specify the dates by which the certificate holder must begin and  
13 complete construction of the facility.<sup>7</sup> OAR 345-027-0030 sets out the requirements for a certificate  
14 holder to request an extension of these deadlines.<sup>8</sup>

15 **OAR 345-027-0030**

16 *(1) The certificate holder may request an amendment to extend the deadlines for beginning*  
17 *or completing construction of the facility that the Council has specified in a site certificate or*  
18 *an amended site certificate. The certificate holder shall submit a request that conforms to the*  
19 *requirements of 345-027-0060 no later than six months before the date of the applicable*  
20 *deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the*  
21 *request, no later than the applicable deadline.*

22 *(2) A request within the time allowed in section (1) to extend the deadlines for beginning or*  
23 *completing construction suspends those deadlines until the Council acts on the request.*

24 *(3) The Council shall review the request for amendment as described in OAR 345-027-0070.*

25 *(4) If the Council grants an amendment under this rule, the Council shall specify new*  
26 *deadlines for beginning or completing construction that are not more than two years from the*  
27 *deadlines in effect before the Council grants the amendment.*

28 *(5) To grant an amendment extending the deadline for beginning or completing construction*  
29 *of an energy facility subject to OAR 345-024-0550, 345-024-0590, or 345-024-0620, the*

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<sup>7</sup> OAR 345-027-0020(4).

<sup>8</sup> The Council amended OAR 345-027-0030, effective May 15, 2007, after the site certificate became effective and before the request to amend the site certificate to extend the date of completing construction was submitted. OAR 345-027-0030(5) codifies the Council's application of updated carbon dioxide standard requirements when reviewing applications to amend site certificates to extend the deadline for construction. The amended rule rephrased section (5), but the substance of that section has been part of the Council's rules since 1999.

1            *Council must find that the facility complies with the carbon dioxide standard in effect at the*  
2            *time of the Council's order on the amendment.*

3            Pursuant to these rules, the Council may grant an extension of no more than two years from the  
4            current deadlines. The Council rule requires the certificate holder to submit the request “no later than  
5            six months before the date of the applicable deadline, or, if the certificate holder demonstrates good  
6            cause for the delay in submitting the request, no later than the applicable deadline.” Under the current  
7            site certificate, the deadline to complete construction of the PWGP is May 8, 2013 (Condition  
8            F.1.(6)).<sup>9</sup>

9            PGE submitted its request to extend the deadline for completing construction on October 30,  
10            2012, more than six months before the current deadline. The Council finds that the request to extend  
11            the construction deadline was filed in a timely manner.

12            **II.B.2.            REVIEW CRITERIA FOR PROPOSED AMENDMENTS [OAR 345-027-0070(10)]**

13            OAR 345-027-0070(10) provides:

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

19            Under OAR 345-027-0070(10)(b), for an amendment that extends the deadlines for beginning or  
20            completing construction, the Council must consider:

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

22            When it approved Amendment #2 to the Site Certificate, the Council granted an extension of the  
23            deadline for completing construction of the PWGP. Amendment #2 extended the deadline for  
24            beginning construction from November 8, 2004 to November 8, 2006, and it extended the deadline  
25            for completing construction from May 8, 2007 to May 8, 2009.

26            After the Council’s approval of Amendment #2, PGE began and completed construction of Unit 1  
27            of the PWGP in a timely manner. Unit 1 of the PWGP includes related or supporting facilities that are  
28            intended to serve both Unit 1 and Unit 2 of the PWGP.

29            The Council approved Amendment #6 to the Site Certificate on February 23, 2009 to extend the  
30            construction completion deadline of Unit 2 of the PWGP from May 8, 2009 to May 8, 2011. The  
31            extension was given to provide sufficient time for the Certificate Holder to seek an amendment to the  
32            Site Certificate (Amendment #7) to reconfigure Unit 2. Amendment #7 to the Site Certificate was  
33            approved on January 13, 2010.

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<sup>9</sup> Condition F.1.(6) states: “The Certificate Holder shall begin construction of the facility by May 8, 2013. The completion of construction date is the day by which (1) the facility is substantially complete as defined by the Certificate Holder’s construction contract documents; (2) acceptance testing is satisfactorily completed; and, (3) the energy facility is ready to commence continuous operation consistent with the Site Certificate....”

1 The Council's Order approving Amendment#7 authorized the configuration of Unit 2 as a non-  
2 base load power plant with an option of either of multiple reciprocating engine-generator sets or aero-  
3 derivative combustion turbine generators, or both, along with associated equipment, with a combined  
4 nominal generating capacity of up to 200 megawatts (MW).

5 The Council has previously granted two extensions of the deadline for completing construction of  
6 the PWGP. The Council approved Amendment #8 to the Site Certificate on August 19, 2011 to  
7 extend the construction completion deadline of Unit 2 of the PWGP from May 8, 2011 to May 8,  
8 2013. In its Request for Amendment #8, the Certificate Holder noted that the extension would allow  
9 adequate time for the Oregon Public Utility Commission (OPUC) to complete the acknowledgement  
10 process for PGE's Integrated Resource Plan (IRP), which identifies Unit 2 as a self-build alternative  
11 for meeting flexible capacity resources.<sup>10</sup> As summarized in section II.A.2 above, OPUC  
12 acknowledged PGE's IRP in late 2010, and PGE issued a Request for Proposals for the construction  
13 of Unit 2 in July 2012.<sup>11</sup> PGE expects to begin construction of Unit 2 in March 2013, but does not  
14 expect to complete construction prior to the current deadline of May 8, 2013.

15 The Council finds that, based on PGE's demonstrated progress through external processes  
16 necessary for completion of construction, a third extension of the deadline for completing  
17 construction of the PWGP under the conditions outlined by PGE would be reasonable.

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

20 Based on the findings discussed under Section III below, the Council finds that there has not been  
21 any change of circumstances that affects a previous Council finding that was required for issuance of  
22 a site certificate or amended site certificate.

23 *“(C) Whether the facility complies with all Council standards...”*

24 In Section III.A below, we discuss compliance of the facility with all Council standards, as  
25 required under OAR 345-027-0070(10).

## 26 **II.C. PROCEDURAL HISTORY**

27 On October 30, 2012, ODOE received PGE's submittal of a request for a ninth amendment to the  
28 Site Certificate.

29 On October 31, 2012, ODOE notified the Certificate Holder that RFA #9 had been received and  
30 that ODOE expected to issue a proposed order by January 10, 2013.

31 On November 14, 2012, ODOE sent notice of the amendment request to all persons on the  
32 Council's general mailing list, to the special list established for the facility, to an updated list of  
33 property owners supplied by the Certificate Holder, and to a list of reviewing agencies as defined in  
34 OAR 345-001-0010(52). The notice included a request for public comments and set a comment

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<sup>10</sup> Portland General Electric, *Certificate Holder's Request for Eighth Amendment to the Site Certificate for the Port Westward Generating Project*, November 4, 2010, pg. 5.

<sup>11</sup> Portland General Electric, *Request for Proposals: Power Supply Resources*, June 8, 2012.

1 deadline of December 17, 2012. In addition to the mailing, ODOE posted the notice on the agency  
2 website.

3 On November 14, 2012, the Certificate Holder sent copies of RFA #9 to a distribution list  
4 approved by ODOE, which included reviewing agencies,<sup>12</sup> with a memorandum from ODOE  
5 requesting agency comments by December 17, 2012. Public and reviewing agency comments on RFA  
6 #9 are discussed in section II.E below, and in section III under applicable standards.

7 On January 9, 2013, ODOE notified the certificate holder that the issuance of a Proposed Order  
8 on RFA #9 would be delayed beyond 60 days from the public notice on the RFA.<sup>13</sup> The certificate  
9 holder had previously requested this delay in order to provide time to submit additional information  
10 requested by the Oregon Department of Fish and Wildlife.<sup>14</sup>

11 ODOE issued a proposed order on February 4, 2013. On the same day, ODOE issued a notice of  
12 proposed order in accordance with OAR 345-027-0070, specifying a March 6, 2013 deadline for  
13 public comments and requests for a contested case proceeding. In addition to the mailing, ODOE  
14 posted the notice on the agency website.

15 On March 4, 2013, ODOE received a comment letter that could be interpreted as request for  
16 contested case. In a March 14, 2013 memorandum, ODOE staff recommended the Council treat the  
17 comment letter as a request for a contested case proceeding and presented an analysis of the content  
18 of the request under OAR 345-027-0070(7). The Council found that it does not have jurisdiction over  
19 the sole issue raised in the request. On March 15, 2013, the Council voted to deny a contested case  
20 proceeding and adopted ODOE's analysis and recommended findings in the March 14 memorandum  
21 as the basis for the denial.

22 EFSC considered the proposed order at a public meeting in Salem, Oregon, on March 15, 2013.

## 23 **II.D. PUBLIC COMMENTS ON THE REQUEST FOR AMENDMENT #9**

24 In response to the November 15, 2012 public notice of the amendment request, ODOE received  
25 written comments from the following members of the public:

26 **Steve J. Dragich** (December 17, 22, 27, and 28, 2012)

27 Mr. Dragich and ODOE corresponded via email between December 17 and December 28, 2012,  
28 about his concerns about possible violations of federal safety rules on the Kelso-Beaver ("KB")  
29 Pipeline. ODOE staff explained that interstate gas pipelines are not within the Council's jurisdiction  
30 and provided information about how to contact the Federal Energy Regulatory Commission, which  
31 has jurisdiction over the Kelso-Beaver Pipeline.<sup>15</sup>

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<sup>12</sup> "Reviewing agencies" are defined in OAR 345-001-0010(52), and include any special advisory groups appointed by the Council under ORS 469.480.

<sup>13</sup> OAR 345-027-0070(4) requires ODOE to notify the certificate holder in writing of the circumstances that justify the delay if a proposed order on a request for amendment is expected to be issued more than 60 days from the date of the public notice described in OAR 345-027-0070(1)(d).

<sup>14</sup> Green, Chris, letter to Rick Tetzloff, "Re: Delay in Issuance of Proposed Order on Port Westward Generating Project Amendment #9," January 9, 2013.

<sup>15</sup> Dragich, Steve J., emails to Chris Green on December 17, 22, 27, and 28, 2012. See also Chris Green emails to Mr. Dragich on December 21, 27, and 28, 2012.

1 **Daniel Serres, Columbia Riverkeeper (December 17, 2012)**

2 Mr. Serres, Conservation Director for Columbia Riverkeeper, submitted a comment letter raising  
3 several concerns, including noise and light pollution during construction and the cumulative effect on  
4 public services and air and water quality of several potential industrial developments in the vicinity of  
5 the Port Westward Industrial Park. In addition, Mr. Serres attached a October 2012 report “AERMOD  
6 Modeling of the Air Quality Impacts of the Proposed Morrow Pacific Project,” a proposed coal  
7 offloading facility that he states is similar to one being proposed for the Port Westward area.<sup>16</sup> The  
8 letter largely considers cumulative impacts of several potential projects not included in the site  
9 certificate. To the extent they address council standards relevant to this amendment, the comments  
10 are addressed in Section III.

11 **II.E. REVIEWING AGENCY COMMENTS ON THE REQUEST FOR AMENDMENT #9**

12 In response to the Memorandum to Reviewing Agencies on RFA #9,<sup>17</sup> ODOE received written  
13 comments from the following reviewing agencies:

14 **Mike McCabe, Oregon Department of State Lands (December 7, 2012)**

15 Mr. McCabe, Natural Resources Coordinator for Oregon Department of State Lands (DSL),  
16 submitted a comment letter noting that wetlands and the Columbia River are both adjacent to the  
17 facility and considered Waters of the State under the jurisdiction of the Oregon Removal-Fill Law.  
18 The letter lists applicable requirements for removal-fill permits and the Joint Permit Application  
19 process shared by DSL and the US Army Corps of Engineers.<sup>18</sup>

20 **Susan Barnes, Oregon Department of Fish and Wildlife (December 18, 2012)**

21 Per her request, ODOE granted Ms. Barnes, Regional Conservation Biologist for Oregon  
22 Department of Fish and Wildlife’s Northwest Region, a one-day extension of the comment deadline  
23 on RFA #9 on December 17, 2012. Ms. Barnes followed up with a formal comment letter on  
24 December 18, 2012. The comment letter outlines ODFW’s concerns that habitat categorizations and  
25 wildlife surveys originally conducted for the 2002 approval of the original site certificate are now  
26 over ten years old and possibly outdated.

27 In the letter, ODFW also recommends that the applicant update the April 2002 Biological  
28 Assessment and July 2004 Addendum to address new information for Threatened and Endangered  
29 fish and wildlife species in the vicinity of the facility, including the streaked horned lark and the bald

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<sup>16</sup> Serres, Daniel, letter to Chris Green “Re: PGE’s Request for Amendment No. 9 to the Site Certificate for the Port Westward Generating Project,” December 17, 2012.

<sup>17</sup> Green, Chris, “Re: Request for comments on the Ninth Request to Amend the Energy Facility Site Certificate for the Port Westward Generating Project (Columbia County, Ore.),” November 15, 2012.

<sup>18</sup> McCabe, Mike, letter to Chris Green, “Review of Port Westward Generating Project, Request for Amendment #9, as Related to the Oregon Removal-Fill Law,” December 7, 2012.

1 eagle.<sup>19</sup> ODFW's comment letter includes four specific recommendations for actions by the  
2 Applicant:<sup>20</sup>

- 3 (1) That the Applicant "provide current information or a revised assessment of any changes to  
4 habitat conditions within the project boundaries with particular attention to areas disturbed by  
5 temporary impacts such as laydown areas or other Unit 1 construction staging areas."
- 6 (2) If preliminary investigations indicate use of the site by fish or wildlife has changed, that the  
7 Applicant conduct current wildlife surveys for special status wildlife species<sup>21</sup> in addition to  
8 wildlife surveys with 0.25 miles of the site to locate great blue heron rookeries.
- 9 (3) That the Applicant address habitat suitability within the Project area for streaked horned lark  
10 and potential impacts to streaked horned lark habitat from the facility.
- 11 (4) That the Applicant continue to determine the nest location and nesting status of the Crims  
12 Island bald eagle nest site.

13 In response to this comment, ODOE, ODFW, and the certificate holder met in January 2013 to  
14 discuss the best approach for providing updated information on habitat conditions. The results of this  
15 discussion and the supplemental information provided by PGE are discussed in section II.F below.

## 16 **II.F. ADDITIONAL INFORMATION PROVIDED BY THE CERTIFICATE HOLDER**

### 17 **PGE's January 10, 2013 response to ODFW comments**

18 As described in section II.E above, ODFW submitted comments on RFA #9 expressing concern  
19 that habitat characterization and mapping assessment in Exhibit P of the 2002 *Application for Site*  
20 *Certificate* were now over ten years old and possibly outdated. After consulting with ODOE and  
21 ODFW staff, a PGE wildlife biologist conducted a site visit on January 4, 2013. PGE provided  
22 ODOE and ODFW photos from this site visit documenting current habitat conditions. On January 10,  
23 2013, PGE submitted a letter responding to ODFW's December 2012 comments and summarizing  
24 more recent discussions and subsequent agreements with ODFW staff. The letter specifically  
25 responded to the four recommendations contained in ODFW's December 2012 letter.<sup>22</sup>

- 26 (1) PGE summarizes the findings of the January 4, 2013 site visit, including current conditions at  
27 the Unit 2 footprint and Unit 1 laydown areas. Although the response letter acknowledges  
28 some ongoing disagreement on exact habitat categorizations, it states that PGE and ODFW  
29 agree that current mitigation measures in the Site Certificate are adequate to meet the  
30 mitigation goal for the area and that no additional mitigation should be required.

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<sup>19</sup> Barnes, Susan, letter to Chris Green "RE: Oregon Department of Fish and Wildlife Comments on the Ninth (9<sup>th</sup>) Request to Amend the Site Certificate for the Port Westward Generating Project," December 18, 2012.

<sup>20</sup> Barnes, Susan, letter to Chris Green, December 18, 2012. See also a procedural summary of ODFW and PGE's comments on habitat issues in section II.E and II.F of this proposed order.

<sup>21</sup> In the letter Ms. Barnes indicates that ODFW defines "special status species" to include state and federal Threatened and Endangered species, federal Candidate species and Species of Concern, state Sensitive Species (Critical and Vulnerable), priority species as identified in the Oregon Conservation Strategy, and Protected Wildlife as defined in OAR 635-045-0002.

<sup>22</sup> Tetzloff, Rick, "PGE Responses to ODFW comments," January 10, 2013.

- 1 (2) Based on a review of the ODFW sensitive species list, results of 2001 surveys included in the  
2 *Application for Site Certificate*, and findings of the January 4, 2013 site visit, PGE states that  
3 preconstruction surveys required by Site Certificate conditions are sufficient to prevent  
4 unintended take of threatened species during construction, with a proposed modification of  
5 condition D.8(8). PGE's proposed modification is discussed in greater detail below.
- 6 (3) PGE notes that ODFW's proposed critical habitat for streak horned larks is located  
7 approximately 2 miles from the Unit 2 site and 1.3 miles from the nearest proposed laydown  
8 area. PGE also states that concerns about impacts on streak horned larks is addressed in the  
9 modified condition D.8(8).
- 10 (4) PGE states that since the construction of Unit 1, the bald eagle has been removed from state  
11 and federal endangered species lists. PGE summarizes the monitoring program for bald  
12 eagles required by Site Certificate conditions, ODFW's recommendation to follow the  
13 USFWS's National Bald Eagle Management Guidelines, and recent observation of bald eagle  
14 nests in the vicinity of the site.

15 In order to address ODFW concerns, PGE's response letter included the proposed modification to  
16 Condition D.8(8) described in section II.A.2 of this Proposed Order.

17 On January 17, 2013, ODFW submitted a letter confirming that PGE's January 10, 2013  
18 responses had been developed in coordination with ODFW, and that ODFW's "determinations,  
19 opinions, and recommendations as stated in the letter are accurate and satisfactory to ODFW."<sup>23</sup>

#### 20 **PGE's January 10, 2013 response to Columbia Riverkeeper comments**

21 PGE also submitted a response letter addressing Columbia Riverkeeper's December 17, 2012  
22 comments. In this letter, PGE states that "CRK's comments focus largely on the potential impacts of  
23 unrelated projects," including proposed coal and oil export facilities in the vicinity of PWGP. PGE  
24 notes that the Council has considered and addressed many of the potential impacts raised in Mr.  
25 Serres' in previous Council findings and Site Certificate conditions for PWGP, and that potential  
26 impacts of other proposed projects in the area do not form the basis for denying PGE's Request for  
27 Amendment.

#### 28 **II.G. PUBLIC COMMENT ON THE PROPOSED ORDER ON AMENDMENT #9**

##### 29 **Steve J. Dragich (March 1, 2013)**

30 Mr. Dragich submitted a letter under the heading "Comment/Contested" reiterating concerns he  
31 raised in earlier comments on RFA #9 about the proximity of the Kelso-Beaver ("KB") Pipeline to his  
32 residence and possible violations of federal regulations for setbacks of such facilities.<sup>24</sup> Mr. Dragich's  
33 letter does not raise any issue under EFSC jurisdiction; the KB Pipeline falls under the jurisdiction of  
34 the Federal Energy Regulatory Commission, and the letter alleges a possible violation located outside  
35 of the state of Oregon.

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<sup>23</sup> Barnes, Susan, letter to Chris Green, "RE: Port Westward Generating Project Amendment #9 – PGE's Responses to ODFW's Comments," January 17, 2013.

<sup>24</sup> Dragich, Steve J., letter to Chris Green, "Comment/Contested." March 1, 2013.

1 Mr. Dragich's letter does not expressly ask the Council to conduct a contested case proceeding on  
2 the Proposed Order. However, because the intent of the letter is unclear, Council has elected to treat it  
3 as a request for contested case.

4 OAR 345-027-0070(7) reads in part:

5 *"... If the Council does not have jurisdiction over the issue raised in the request, the Council*  
6 *must deny the request."*

7 Council does not have jurisdiction over the sole issue raised in Mr. Dragich's letter and must  
8 deny the request pursuant to OAR 345-027-0070(7).

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

2 The Council must decide whether the proposed amendment complies with the facility siting  
3 standards adopted by the Council. In addition, the Council must impose conditions for the protection  
4 of the public health and safety, for the time of commencement and completion of construction, and  
5 for ensuring compliance with the standards, statutes and rules addressed in the project order.<sup>25</sup>

6 The Council is not authorized to determine compliance with regulatory programs that have been  
7 delegated to another state agency by the federal government.<sup>26</sup> Nevertheless, the Council may  
8 consider these programs in the context of its own standards to ensure public health and safety,  
9 resource efficiency, and protection of the environment.

10 The Council has no jurisdiction over design or operational issues that do not relate to siting, such  
11 as matters relating to employee health and safety, building code compliance, wage and hour or other  
12 labor regulations, or local government fees and charges.<sup>27</sup>

13 In making its decision on a site certificate amendment, the Council applies the applicable state  
14 statutes, administrative rules and local government ordinances that are in effect on the date the  
15 Council makes its decision, except when applying the Land Use standard. In making findings on the  
16 Land Use standard, the Council applies the applicable substantive criteria in effect on the date the  
17 certificate holder submitted the request for amendment.<sup>28</sup>

18 As described in section I.B of this Proposed Order, PWGP was originally approved as a base load  
19 facility, to be completed in two phases. The Certificate Holder originally proposed Unit 2 as a second  
20 base load, natural gas-fired, combustion turbine combined cycle unit. Amendment #7, approved in  
21 2010, authorizes the Certificate Holder to instead construct Unit 2 as a variable load generating plant  
22 totaling 200 megawatts. Amendment #7 also authorized expansion of the energy facility site by 8.5  
23 acres.

24 As a result, the Council's review of the design, construction, and operation of the facility as  
25 currently proposed is contained primarily in the *Final Order on the Application for Site Certificate*  
26 and the *Final Order on the Request for Amendment #7*. The *Final Order on the Application for Site*  
27 *Certificate* contained findings based on the originally-proposed configuration of Unit 1 and Unit 2.  
28 These findings still apply when determining the compliance of Unit 1 with Council standards. The  
29 *Final Order on the Request for Amendment #7* contains findings on the reconfigured Unit 2.  
30 Accordingly, the review of compliance with Council standards in section III of this Final Order relies  
31 on Council findings from each of these previous orders.

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<sup>25</sup> ORS 469.401(2).

<sup>26</sup> ORS 469.503(3).

<sup>27</sup> ORS 469.401(4).

<sup>28</sup> OAR 345-027-0070(9).

1 **III.A. ENERGY FACILITY SITING STANDARDS**

2 **III.A.1. GENERAL STANDARDS OF REVIEW**

3 **Council Standard: OAR 345-022-0000**

4 *(1) To issue a site certificate for a proposed facility or to amend a site certificate, the*  
5 *Council shall determine that the preponderance of evidence on the record supports the*  
6 *following conclusions:*

7 *(a) The facility complies with the requirements of the Oregon Energy Facility Siting*  
8 *statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards adopted by*  
9 *the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh*  
10 *the damage to the resources protected by the standards the facility does not meet as*  
11 *described in section (2);*

12 *(b) Except as provided in OAR 345-022-0030 for land use compliance and except for*  
13 *those statutes and rules for which the decision on compliance has been delegated by the*  
14 *federal government to a state agency other than the Council, the facility complies with all*  
15 *other Oregon statutes and administrative rules identified in the project order, as amended, as*  
16 *applicable to the issuance of a site certificate for the proposed facility. If the Council finds*  
17 *that applicable Oregon statutes and rules, other than those involving federally delegated*  
18 *programs, would impose conflicting requirements, the Council shall resolve the conflict*  
19 *consistent with the public interest. In resolving the conflict, the Council cannot waive any*  
20 *applicable state statute.*

21 \* \* \*

22 This order addresses the requirements of OAR 345-022-0000 in the findings of fact, reasoning,  
23 recommended conditions, and conclusions of law discussed in the sections that follow. Based upon  
24 consideration of all of the evidence in the record, this order states a general conclusion regarding the  
25 amendment request in section V.

26 **III.A.2. ORGANIZATIONAL EXPERTISE**

27 **Council Standard: OAR 345-022-0010**

28 *(1) To issue a site certificate, the Council must find that the applicant has the*  
29 *organizational expertise to construct, operate and retire the proposed facility in compliance*  
30 *with Council standards and conditions of the site certificate. To conclude that the applicant*  
31 *has this expertise, the Council must find that the applicant has demonstrated the ability to*  
32 *design, construct and operate the proposed facility in compliance with site certificate*  
33 *conditions and in a manner that protects public health and safety and has demonstrated the*  
34 *ability to restore the site to a useful, non-hazardous condition. The Council may consider the*  
35 *applicant's experience, the applicant's access to technical expertise and the applicant's past*  
36 *performance in constructing, operating and retiring other facilities, including, but not limited*  
37 *to, the number and severity of regulatory citations issued to the applicant.*

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

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

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

18                   **Findings of Fact**

19                   In the *Final Order on the Application*, the Council found that the certificate holder, PGE, has the  
20 organizational expertise to construct, operate and retire the Port Westward Generating Project in  
21 compliance with Council standards and the conditions of the Site Certificate.<sup>29</sup> The Council adopted  
22 conditions in section D.2 of the Site Certificate to ensure compliance with the Organizational  
23 Expertise standard.

24                   In the *Final Order on Amendment #7*, the Council found that the certificate holder, PGE, has the  
25 organizational expertise to construct, operate, and retire Unit 2 in compliance with Council standards  
26 and the conditions of the Site Certificate.<sup>30</sup>

27                   Those previous findings and conditions are incorporated herein by this reference.

28                   The proposed amendment would not transfer the site certificate to a new site certificate holder,  
29 and there has been no change of circumstances affecting the certificate holder's qualifications.

30                   **Conclusions of Law**

31                   For the reasons discussed above, the Council concludes that the certificate holder would comply  
32 with the Organizational Expertise Standard if Amendment #9 were approved.

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<sup>29</sup> *Final Order on the Application*, pp. 41-46.

<sup>30</sup> *Final Order on Amendment #7*, pp. 9-11.

1 **III.A.3. STRUCTURAL STANDARD**

2 **Council Standard: OAR 345-022-0020**

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

5 (a) *The applicant, through appropriate site-specific study, has adequately characterized*  
6 *the site as to Maximum Considered Earthquake Ground Motion identified at International*  
7 *Building Code (2003 Edition) Section 1615 and maximum probable ground motion, taking*  
8 *into account ground failure and amplification for the site specific soil profile under the*  
9 *maximum credible and maximum probable seismic events; and*

10 (b) *The applicant can design, engineer, and construct the facility to avoid dangers to*  
11 *human safety presented by seismic hazards affecting the site that are expected to result from*  
12 *maximum probable ground motion events. As used in this rule "seismic hazard" includes*  
13 *ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami*  
14 *inundation, fault displacement, and subsidence;*

15 (c) *The applicant, through appropriate site-specific study, has adequately characterized*  
16 *the potential geological and soils hazards of the site and its vicinity that could, in the absence*  
17 *of a seismic event, adversely affect, or be aggravated by, the construction and operation of*  
18 *the proposed facility; and*

19 (d) *The applicant can design, engineer and construct the facility to avoid dangers to*  
20 *human safety presented by the hazards identified in subsection (c).*

21 (2) *The Council may issue a site certificate for a facility that would produce power from*  
22 *wind, solar or geothermal energy without making the findings described in section (1).*  
23 *However, the Council may apply the requirements of section (1) to impose conditions on a*  
24 *site certificate issued for such a facility.*

25 \* \* \*

26 **Findings of Fact**

27 In the *Final Order on the Application*, the Council found that the design, construction and  
28 operation of PWGP would meet the Council's Structural Standard.<sup>31</sup> The Council adopted conditions  
29 in section D.5 of the Site Certificate to ensure compliance with the Structural Standard.

30 In the *Final Order on Amendment #7*, the Council found that the design, construction, and  
31 operation of the reconfigured Unit 2 would meet the Council's Structural Standard, taking into  
32 account the conditions adopted in section D.5 of the Site Certificate.<sup>32</sup>

33 Those previous findings and conditions are incorporated herein by this reference.

34 The amendment would not transfer the site certificate to a new site certificate holder, and there  
35 has been no change of circumstances affecting the certificate holder's qualifications.

<sup>31</sup> *Final Order on the Application*, pp. 56-64.

<sup>32</sup> *Final Order on Amendment #7*, pp. 11-12.

1 **Conclusions of Law**

2 For the reasons discussed above, the Council concludes that the design, construction, and  
3 operation of PWGP would comply with the Structural Standard if Amendment #9 were approved.

4 **III.A.4. SOIL PROTECTION**

5 **Council Standard: OAR 345-022-0022**

6 *To issue a site certificate, the Council must find that the design, construction and*  
7 *operation of the facility, taking into account mitigation, are not likely to result in a significant*  
8 *adverse impact to soils including, but not limited to, erosion and chemical factors such as salt*  
9 *deposition from cooling towers, land application of liquid effluent, and chemical spills.*

10 **Findings of Fact**

11 In the *Final Order on the Application*, the Council found that the design, construction and  
12 operation of the PWGP would not result in a significant adverse impact to soils.<sup>33</sup> The Council  
13 adopted conditions in section D.6 of the Site Certificate to ensure compliance with the Soil Protection  
14 standard.

15 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
16 operation of the reconfigured Unit 2 of PWGP would not likely result in significant adverse impacts  
17 to soils, taking into account the conditions adopted in section D.6 of the site certificate.<sup>34</sup>

18 The Council's previous findings and conditions are incorporated herein by this reference.

19 The proposed amendment would not change the site boundary or alter the types of soil  
20 disturbance that are anticipated during construction and operation of PWGP. There has been no  
21 change in facts or circumstances that would affect the Council's previous findings.

22 **Conclusions of Law**

23 For the reasons discussed above, the Council concludes that the design, construction, and  
24 operation of PWGP would comply with the Soil Protection Standard if Amendment #9 were  
25 approved.

26 **III.A.5. LAND USE**

27 **Council Standard: OAR 345-022-0030**

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

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

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<sup>33</sup> *Final Order on the Application*, pp. 64-70.

<sup>34</sup> *Final Order on Amendment #7*, pp. 12-13.

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

3                   (A) *The proposed facility complies with applicable substantive criteria as*  
4 *described in section (3) and the facility complies with any Land Conservation and*  
5 *Development Commission administrative rules and goals and any land use statutes directly*  
6 *applicable to the facility under ORS 197.646(3);*

7                   (B) *For a proposed facility that does not comply with one or more of the*  
8 *applicable substantive criteria as described in section (3), the facility otherwise complies*  
9 *with the statewide planning goals or an exception to any applicable statewide planning goal*  
10 *is justified under section (4); or*

11                   (C) *For a proposed facility that the Council decides, under sections (3) or (6), to*  
12 *evaluate against the statewide planning goals, the proposed facility complies with the*  
13 *applicable statewide planning goals or that an exception to any applicable statewide*  
14 *planning goal is justified under section (4).*

15                   (3) *As used in this rule, the “applicable substantive criteria” are criteria from the*  
16 *affected local government’s acknowledged comprehensive plan and land use ordinances that*  
17 *are required by the statewide planning goals and that are in effect on the date the applicant*  
18 *submits the application. If the special advisory group recommends applicable substantive*  
19 *criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special*  
20 *advisory group does not recommend applicable substantive criteria, the Council shall decide*  
21 *either to make its own determination of the applicable substantive criteria and apply them or*  
22 *to evaluate the proposed facility against the statewide planning goals.*

23                   (4) *The Council may find goal compliance for a proposed facility that does not otherwise*  
24 *comply with one or more statewide planning goals by taking an exception to the applicable*  
25 *goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal*  
26 *pertaining to the exception process or any rules of the Land Conservation and Development*  
27 *Commission pertaining to the exception process, the Council may take an exception to a goal*  
28 *if the Council finds:*

29                   (a) *The land subject to the exception is physically developed to the extent that the*  
30 *land is no longer available for uses allowed by the applicable goal;*

31                   (b) *The land subject to the exception is irrevocably committed as described by the*  
32 *rules of the Land Conservation and Development Commission to uses not allowed by the*  
33 *applicable goal because existing adjacent uses and other relevant factors make uses allowed*  
34 *by the applicable goal impracticable; or*

35                   (c) *The following standards are met:*

36                   (A) *Reasons justify why the state policy embodied in the applicable goal should*  
37 *not apply;*

38                   (B) *The significant environmental, economic, social and energy consequences*  
39 *anticipated as a result of the proposed facility have been identified and adverse impacts will*

1            *be mitigated in accordance with rules of the Council applicable to the siting of the proposed*  
2            *facility; and*

3                            *(C) The proposed facility is compatible with other adjacent uses or will be made*  
4            *compatible through measures designed to reduce adverse impacts.*

5                            \* \* \*

6            **Findings of Fact**

7            In the *Final Order on the Application*, the Council found that PWGP was located entirely within  
8            the RIPD zone in Columbia County. The Council found that PWGP complied with statewide  
9            planning goals and Columbia County’s “applicable substantive criteria” for that zone.<sup>35</sup> The Council  
10           adopted conditions in section D.4 of the Site Certificate to ensure compliance with statewide planning  
11           goals and applicable substantive criteria.

12           In the *Final Order on Amendment #7*, the Council found that no applicable changes to Columbia  
13           County’s substantive land use criteria affected the design, construction and operation of the  
14           reconfigured Unit 2 as proposed by the Certificate Holder.<sup>36</sup>

15           The Council’s previous findings and conditions are incorporated herein by this reference.

16           In its consideration of a site certificate amendment request, the Council applies the “applicable  
17           substantive criteria,” as described in the rule above, that are in effect on the date the certificate holder  
18           submitted the amendment request.<sup>37</sup> In accordance with ORS 469.504(5), ODOE requested the  
19           Special Advisory Group to provide a list of the applicable substantive criteria.<sup>38</sup> The Special Advisory  
20           Group did not respond to ODOE’s request during the comment period on RFA #9. Subsequently, the  
21           Columbia County staff confirmed that the County has not made any changes to comprehensive plan  
22           policies or land use regulations that would impact the property since the Council issued the *Final*  
23           *Order on Amendment #7* in 2010.<sup>39</sup>

24           The proposed amendment would not affect the Council’s previous findings, change the site  
25           boundary or alter the proposed land use. There has been no change in facts or circumstances that  
26           would affect the Council’s previous findings.

27           **Conclusions of Law**

28           For the reasons discussed above, the Council concludes that the design, construction, and  
29           operation of PWGP would comply with the Land Use Standard if Amendment #9 were approved.

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<sup>35</sup> *Final Order on the Application*, pp. 53-56.

<sup>36</sup> *Final Order on Amendment #7*, pp. 13-14.

<sup>37</sup> OAR 345-027-0070(10).

<sup>38</sup> Request for Comments on the Request for Amendment #9, November 15, 2012. On August 2, 2001, the Council appointed the Columbia County Board of Commissioners as the Special Advisory Group for PWGP.

<sup>39</sup> Higgins, Glen, Columbia County Planning Manager, email to Chris Green, ODOE project officer, January 29, 2013.

1        **III.A.6.        PROTECTED AREAS**

2        **Council Standard: OAR 345-022-0040**

3                *(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate*  
4                *for a proposed facility located in the areas listed below. To issue a site certificate for a*  
5                *proposed facility located outside the areas listed below, the Council must find that, taking*  
6                *into account mitigation, the design, construction and operation of the facility are not likely to*  
7                *result in significant adverse impact to the areas listed below. References in this rule to*  
8                *protected areas designated under federal or state statutes or regulations are to the*  
9                *designations in effect as of May 11, 2007:*

10                *(a) National parks, including but not limited to Crater Lake National Park and Fort*  
11                *Clatsop National Memorial;*

12                *(b) National monuments, including but not limited to John Day Fossil Bed National*  
13                *Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;*

14                *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et*  
15                *seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C.*  
16                *1782;*

17                *(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon*  
18                *Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain,*  
19                *Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay*  
20                *Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William*  
21                *L. Finley;*

22                *(e) National coordination areas, including but not limited to Government Island,*  
23                *Ochoco and Summer Lake;*

24                *(f) National and state fish hatcheries, including but not limited to Eagle Creek and*  
25                *Warm Springs;*

26                *(g) National recreation and scenic areas, including but not limited to Oregon Dunes*  
27                *National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon*  
28                *Cascades Recreation Area, and Columbia River Gorge National Scenic Area;*

29                *(h) State parks and waysides as listed by the Oregon Department of Parks and*  
30                *Recreation and the Willamette River Greenway;*

31                *(i) State natural heritage areas listed in the Oregon Register of Natural Heritage*  
32                *Areas pursuant to ORS 273.581;*

33                *(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine*  
34                *Sanctuary, OAR Chapter 142;*

35                *(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers*  
36                *designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as*  
37                *potentials for designation;*

1                   (L) Experimental areas established by the Rangeland Resources Program, College of  
2                   Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the  
3                   Starkey site and the Union site;

4                   (m) Agricultural experimental stations established by the College of Agriculture,  
5                   Oregon State University, including but not limited to:

6                   Coastal Oregon Marine Experiment Station, Astoria

7                   Mid-Columbia Agriculture Research and Extension Center, Hood River

8                   Agriculture Research and Extension Center, Hermiston

9                   Columbia Basin Agriculture Research Center, Pendleton

10                  Columbia Basin Agriculture Research Center, Moro

11                  North Willamette Research and Extension Center, Aurora

12                  East Oregon Agriculture Research Center, Union

13                  Malheur Experiment Station, Ontario

14                  Eastern Oregon Agriculture Research Center, Burns

15                  Eastern Oregon Agriculture Research Center, Squaw Butte

16                  Central Oregon Experiment Station, Madras

17                  Central Oregon Experiment Station, Powell Butte

18                  Central Oregon Experiment Station, Redmond

19                  Central Station, Corvallis

20                  Coastal Oregon Marine Experiment Station, Newport

21                  Southern Oregon Experiment Station, Medford

22                  Klamath Experiment Station, Klamath Falls;

23                         (n) Research forests established by the College of Forestry, Oregon State  
24                         University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett  
25                         Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel  
26                         Tract;

27                         (o) Bureau of Land Management areas of critical environmental concern,  
28                         outstanding natural areas and research natural areas;

29                         (p) State wildlife areas and management areas identified in OAR chapter 635,  
30                         Division 8.

31                         \* \* \*

1       **Findings of Fact**

2           In the *Final Order on the Application*, the Council found that the design, construction and  
3       operation of PWGP were not likely to result in significant adverse impacts to protected areas.<sup>40</sup> The  
4       Council adopted conditions in section D.7 of the Site Certificate to ensure compliance with the  
5       Protected Areas standard.

6           In the *Final Order on Amendment #7*, the Council found that no new protected areas had been  
7       designated within the analysis area, but that Crim’s Island, located approximately 0.3 miles east of the  
8       energy facility site, had been added to the Julia Butler Hansen National Wildlife Refuge. The Council  
9       considered the potential impacts of PWGP on all protected areas and found that the design,  
10      construction and operation of the reconfigured Unit 2 was not likely to result in a significant adverse  
11      impact to any protected area listed in OAR 345-022-0040, taking into account the conditions adopted  
12      in section D.7 of the Site Certificate.<sup>41</sup>

13           The Council’s previous findings and conditions are incorporated herein by reference.

14           The proposed amendment would not change the site boundary or alter the potential impacts of the  
15      facility on protected areas. There has been no change in facts or circumstances that would affect the  
16      Council’s previous findings.

17       **Conclusions of Law**

18           For the reasons discussed above, the Council concludes that the design, construction, and  
19      operation of PWGP would comply with the Protected Areas Standard if Amendment #9 were  
20      approved.

21       **III.A.7.       RETIREMENT AND FINANCIAL ASSURANCE**

22       **Council Standard: OAR 345-022-0050**

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

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

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

30       **Findings of Fact**

31           In the *Final Order on Amendment #7*, the Council found that the PWGP site could be restored  
32      adequately to a useful, non-hazardous condition following permanent cessation of construction or  
33      operation of the facility.<sup>42</sup> The Council found that \$9.305 million (1<sup>st</sup> Quarter 2010 dollars) adjusted

<sup>40</sup> *Final Order on the Application*, pp. 70-74.

<sup>41</sup> *Final Order on Amendment #7*, pp. 14-15.

<sup>42</sup> *Final Order on Amendment #7*, pp. 15-18.

1 annually as described in Condition D.3(5)(f), is a conservative estimate of the cost to restore the  
2 PWGP site, including Units 1 and 2, to a useful, non-hazardous condition.<sup>43</sup> The Council found that  
3 the applicant had demonstrated a reasonable likelihood of obtaining a bond or letter of credit for that  
4 amount. The Council adopted conditions in section D.3 of the Site Certificate to ensure compliance  
5 with the Retirement and Financial Assurance standard.

6 The Council's previous findings and conditions are incorporated herein by this reference.

7 There has been no change of circumstances that would affect these findings.

8 Under Condition D.3(5)(b), the amount of the bond or letter of credit may be adjusted to reflect  
9 the final design configuration of Unit 2, and the amount is further adjusted to present dollars as of the  
10 date of issuance of the bond or letter of credit. After the initial bond or letter of credit has been issued  
11 prior to the beginning of construction, the amount is adjusted annually to track changes in the value of  
12 the dollar. If the proposed extension of the deadline for beginning construction is approved, Condition  
13 D.3(5) would ensure that the amount of financial assurance, as adjusted, remains consistent with the  
14 Council's previous findings on site restoration costs.

15 There has been no change of facts or circumstances affecting the basis for the Council's site  
16 restoration cost estimate. For these reasons and in accordance with OAR 345-027-0070(10)(d), the  
17 Council finds that the amount of the bond or letter of credit required under OAR 345-022-0050 is  
18 adequate.

#### 19 **Conclusions of Law**

20 For the reasons discussed above, the Council concludes that the certificate holder would meet the  
21 Retirement and Financial Assurance Standard if the Request for Amendment #9 were approved.

#### 22 **III.A.8. FISH AND WILDLIFE HABITAT**

##### 23 **Council Standard: OAR 345-022-0060**

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

#### 28 **Findings of Fact**

29 In the *Final Order on the Application* the Council found that the design, construction and  
30 operation of PWGP would be consistent with the Oregon Department of Fish and Wildlife (ODFW)  
31 habitat mitigation goals and standards.<sup>44</sup> The Council adopted conditions in section D.8 of the Site  
32 Certificate to ensure compliance with the Fish and Wildlife Habitat standard.

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<sup>43</sup> *Final Order on Amendment #7*, pp. 15-18.

<sup>44</sup> *Final Order on the Application*, pp. 74-84.

1 In the *Final Order on Amendment #7*, the Council found that the design construction, and  
2 operation of the reconfigured Unit 2 would be consistent with ODFW habitat mitigation goals and  
3 standards, taking into account the conditions adopted in section D.8 of the Site Certificate.<sup>45</sup>

4 The Council's previous findings and conditions are incorporated herein by this reference.

5 In response to ODFW's comments on RFA #9, PGE, ODOE, and ODFW developed a  
6 coordinated procedure for confirming current habitat conditions at the site. In order to address  
7 ODFW's concerns that the site could contain suitable nesting habitat for sensitive bird species  
8 (including streaked horned lark), PGE and ODFW developed proposed revisions to Condition D.8(8)  
9 described in section II.A.2 of this order.

10 ODFW's comments, PGE's response, and the development of the proposed revisions to  
11 Condition D.8(8) are discussed in further detail in section II.E of this order. The proposed amendment  
12 would not change the site boundary or the size or number of PWGP components already authorized  
13 for construction. Other than the circumstances described above which warrant the imposition of  
14 Condition D.8(8), there has been no change in facts or circumstances that would affect the Council's  
15 previous findings of compliance with the ODFW habitat mitigation goals and standards.

#### 16 **Conclusions of Law**

17 For the reasons discussed above and subject to compliance with proposed site certificate  
18 condition D.8(8) described herein, the Council concludes that the design, construction, and operation  
19 of PWGP would comply with the Fish and Wildlife Habitat Standard if Amendment #9 were  
20 approved.

#### 21 **III.A.9. THREATENED AND ENDANGERED SPECIES**

##### 22 **Council Standard: OAR 345-022-0070**

23 *To issue a site certificate, the Council, after consultation with appropriate state agencies,*  
24 *must find that:*

25 *(1) For plant species that the Oregon Department of Agriculture has listed as threatened*  
26 *or endangered under ORS 564.105(2), the design, construction and operation of the proposed*  
27 *facility, taking into account mitigation:*

28 *(a) Are consistent with the protection and conservation program, if any, that the*  
29 *Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

30 *(b) If the Oregon Department of Agriculture has not adopted a protection and*  
31 *conservation program, are not likely to cause a significant reduction in the likelihood of*  
32 *survival or recovery of the species; and*

33 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*  
34 *threatened or endangered under ORS 496.172(2), the design, construction and operation of*

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<sup>45</sup> *Final Order on Amendment #7*, pp. 18-22.

1                    *the proposed facility, taking into account mitigation, are not likely to cause a significant*  
2                    *reduction in the likelihood of survival or recovery of the species.*

3                    **Findings of Fact**

4                    In the *Final Order on the Application*, the Council found that the design, construction and  
5                    operation of PWGP would not have the potential to significantly reduce the likelihood of the survival  
6                    or recovery of any threatened or endangered plant or wildlife species listed under Oregon law.<sup>46</sup> The  
7                    Council adopted conditions in section D.9 of the Site Certificate to ensure compliance with the  
8                    Threatened and Endangered Species standard.

9                    In the *Final Order on Amendment #7*, the Council found that the design, construction, and  
10                    operation of the reconfigured Unit 2 would not have the potential to significantly reduce the  
11                    likelihood of the survival or recovery of any threatened or endangered plant or wildlife species listed  
12                    under Oregon law, taking into account the conditions adopted in section D.9 of the Site Certificate.<sup>47</sup>

13                    The Council's previous findings and conditions are incorporated herein by this reference.

14                    PGE's proposed revisions to Condition D.8(8), discussed in section II.E and III.A.8 of this  
15                    Proposed Order, include provisions for rescuing and relocating nongame protected wildlife prior to  
16                    construction of Unit 2.

17                    The Council has previously considered the potential impacts of design, construction and  
18                    operation of the PWGP on bald eagles, a species that had been listed as a state Threatened Species.  
19                    On March 9, 2012, the Oregon Fish and Wildlife Commission removed the bald eagle from the state  
20                    endangered species list.<sup>48</sup> The bald eagle continues to be protected under the federal Migratory Bird  
21                    Treaty Act and under the Bald and Golden Eagle Protection Act.

22                    The proposed amendment would not change the site boundary or the size or number of PWGP  
23                    components already authorized for construction. Other than the circumstances described above which  
24                    warrant the imposition of Condition D.8(8), there has been no change in facts or circumstances that  
25                    would affect the Council's previous findings that design, construction and operation of PWGP would  
26                    not have the potential to significantly reduce the likelihood of the survival or recovery of any  
27                    threatened or endangered plant or wildlife species addressed by OAR 345-022-0070.

28                    **Conclusions of Law**

29                    For the reasons discussed above and subject to compliance with proposed Condition D.8(8)  
30                    described herein, the Council concludes that the design, construction, and operation of PWGP would  
31                    comply with the Threatened and Endangered Species Standard if Amendment #9 were approved.

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<sup>46</sup> *Final Order on the Application*, pp. 84-92.

<sup>47</sup> *Final Order on Amendment #7*, pp. 21-22.

<sup>48</sup> <http://www.dfw.state.or.us/news/2012/March/030912.asp> (visited on January 28, 2013).

1        **III.A.10.    SCENIC RESOURCES**

2        **Council Standard: OAR 345-022-0080**

3                    *(1) Except for facilities described in section (2), to issue a site certificate, the Council*  
4                    *must find that the design, construction and operation of the facility, taking into account*  
5                    *mitigation, are not likely to result in significant adverse impact to scenic resources and*  
6                    *values identified as significant or important in local land use plans, tribal land management*  
7                    *plans and federal land management plans for any lands located within the analysis area*  
8                    *described in the project order.*

9                    \* \* \*

10       **Findings of Fact**

11                    In the *Final Order on the Application*, the Council found that the design, construction and  
12                    operation of PWGP were not likely to result in significant impacts to identified significant or  
13                    important scenic resources and values within the analysis area.<sup>49</sup> The Council adopted conditions in  
14                    section D.10 of the Site Certificate to ensure compliance with the Scenic Resources standard.

15                    In the *Final Order on Amendment #7*, the Council considered applicable federal land  
16                    management plans, local land use plans, and “key observation points” identified in the Application  
17                    for Site Certificate. The Council found that the design, construction and operation of the proposed  
18                    Unit 2 were not likely to result in any significant adverse impact to any scenic resources identified in  
19                    federal, state, or local management plans as significant or important, taking into account the  
20                    conditions adopted in section D.10 of the Site Certificate.<sup>50</sup>

21                    The Council’s previous findings and conditions are incorporated herein by this reference.

22                    The proposed amendment would not change the site boundary or alter the potential visual impacts  
23                    of the PWGP components already authorized for construction. The proposed amendment would have  
24                    no effect on the Council’s previous findings regarding the potential impacts of the facility on scenic  
25                    resources. There has been no change in facts or circumstances that would affect the Council’s  
26                    previous findings.

27       **Conclusions of Law**

28                    For the reasons discussed above, the Council concludes that the design, construction, and  
29                    operation of PWGP would comply with the Scenic Resources Standard if Amendment #9 were  
30                    approved.

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<sup>49</sup> *Final Order on the Application*, pp. 92-96.

<sup>50</sup> *Final Order on Amendment #7*, pp. 22-23.

1 **III.A.11. HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES**

2 **Council Standard: OAR 345-022-0090**

3 (1) *Except for facilities described in sections (2) and (3), to issue a site certificate, the*  
4 *Council must find that the construction and operation of the facility, taking into account*  
5 *mitigation, are not likely to result in significant adverse impacts to:*

6 (a) *Historic, cultural or archaeological resources that have been listed on, or would*  
7 *likely be listed on the National Register of Historic Places;*

8 (b) *For a facility on private land, archaeological objects, as defined in ORS*  
9 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

10 (c) *For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).*

11 \* \* \*

12 **Findings of Fact**

13 In the *Final Order on the Application*, the Council found that the design, construction and  
14 operation of PWGP were not likely to result in significant adverse impacts to identified historic,  
15 cultural and archaeological resources (collectively referred to herein as “cultural resources”) for the  
16 area within the PWGP site boundary. The Council adopted conditions in section D.11 of the Site  
17 Certificate to ensure compliance with the Historic, Cultural, and Archaeological Resources standard.

18 In the *Final Order on Amendment #7*, the Council considered applicable federal land  
19 management plans, local land use plans, and “key observation points” identified in the Application  
20 for Site Certificate. The Council found that the design, construction and operation of the proposed  
21 Unit 2 were not likely to result in any significant adverse impact to any scenic resources identified in  
22 federal, state, or local management plans as significant or important, taking into account the  
23 conditions adopted in section D.11 of the Site Certificate.<sup>51</sup>

24 The Council’s previous findings and conditions are incorporated herein by this reference.

25 The proposed amendment would not change the site boundary or alter the potential impacts of the  
26 facility on cultural resources. There has been no change in facts or circumstances that would affect  
27 the Council’s previous findings.

28 **Conclusions of Law**

29 For the reasons discussed above, the Council concludes that the design, construction, and  
30 operation of PWGP would comply with the Scenic Resources Standard if Amendment #9 were  
31 approved.

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<sup>51</sup> *Final Order on Amendment #7*, pp. 23.

1 **III.A.12. RECREATION**

2 **Council Standard: OAR 345-022-0100**

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

8 (a) *Any special designation or management of the location;*

9 (b) *The degree of demand;*

10 (c) *Outstanding or unusual qualities;*

11 (d) *Availability or rareness;*

12 (e) *Irreplaceability or irretrievability of the opportunity.*

13 \* \* \*

14 **Findings of Fact**

15 In the *Final Order on the Application*, the Council found that the design, construction and  
16 operation of PWGP were not likely to result in significant adverse impacts to recreational  
17 opportunities within a five-mile analysis area around the energy facility site and the transmission  
18 corridor.<sup>52</sup> The Council adopted conditions in section D.12 of the site certificate to ensure compliance  
19 with the Recreation standard.

20 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
21 operation of the proposed Unit 2 were not likely to result in any significant adverse impact to  
22 important recreation opportunities, taking into account the conditions adopted in section D.12 of the  
23 Site Certificate.<sup>53</sup> The Council's previous findings are incorporated herein by this reference.

24 The Council's previous findings and conditions are incorporated herein by this reference.

25 The proposed amendment would not change the site boundary or alter the potential impacts of  
26 PWGP on recreational opportunities. There has been no change in facts or circumstances that would  
27 affect the Council's previous findings.

28 **Conclusions of Law**

29 For the reasons discussed above, the Council concludes that the design, construction and  
30 operation of PWGP would comply with the Recreation Standard if Amendment #9 were approved.

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<sup>52</sup> *Final Order on the Application*, pp. 100-102.

<sup>53</sup> *Final Order on Amendment #7*, pp. 24-25.

1 **III.A.13. PUBLIC SERVICES**

2 **Council Standard: OAR 345-022-0110**

3 (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the  
4 Council must find that the construction and operation of the facility, taking into account  
5 mitigation, are not likely to result in significant adverse impact to the ability of public and  
6 private providers within the analysis area described in the project order to provide: sewers  
7 and sewage treatment, water, storm water drainage, solid waste management, housing,  
8 traffic safety, police and fire protection, health care and schools.

9 \* \* \*

10 **Findings of Fact**

11 In the *Final Order on the Application*, the Council found that, with the imposition of conditions  
12 in Section D.13, the design, construction, and operation of PWGP were not likely to result in  
13 significant adverse impacts to public services listed in OAR 345-022-0110(1).

14 In the *Final Order on Amendment #7*, the Council found that, with the incorporation of a revised  
15 Condition D.13(2), the design, construction, and operation of Unit 2 were not likely to result in  
16 significant adverse impacts to public services listed in OAR 345-022-0110(1).

17 The revised Condition D.13(2) required the certificate holder to enter into an Amended Traffic  
18 Improvement Agreement with Columbia County consistent an updated traffic impact analysis study  
19 within six months of the approval of Amendment #7.<sup>54</sup> In the *Final Order on Amendment #8*, Council  
20 recognized that Columbia County and the certificate holder had not reached an agreement on the  
21 parameters of the traffic study within the six months prescribed by the condition, and approved  
22 further revisions Condition D.13(2) to replace the six month deadline for entering into an Amended  
23 Traffic Improvement Agreement with a requirement to enter into the agreement before beginning  
24 construction of Unit 2.<sup>55</sup> On February 12, 2012, PGE and Columbia County entered into an Amended  
25 Traffic Improvement Agreement pertain to Unit 2 of PWGP.<sup>56</sup>

26 The Council's previous findings and conditions are incorporated herein by this reference.

27 The proposed amendment would not change the site boundary or alter the potential impacts of  
28 PWGP on the public services listed in OAR 345-022-0110(1). There has been no change in facts or  
29 circumstances that would affect the Council's previous findings.

30 **Conclusions of Law**

31 For the reasons discussed above, the Council concludes that the design, construction and  
32 operation of PWGP would comply with the Public Services Standard if Amendment #9 were  
33 approved.

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<sup>54</sup> *Final Order on Amendment #7*, pg. 24.

<sup>55</sup> *Final Order on Amendment #8*, pp. 11-14.

<sup>56</sup> Higgins, Glen, email to Chris Green, January 29, 2013.

1 **III.A.14. WASTE MINIMIZATION**

2 **Council Standard: OAR 345-022-0120**

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

5 *(a) The applicant's solid waste and wastewater plans are likely to minimize generation of*  
6 *solid waste and wastewater in the construction and operation of the facility, and when solid*  
7 *waste or wastewater is generated, to result in recycling and reuse of such wastes;*

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

11 **Findings of Fact**

12 In the *Final Order on the Application*, the Council found that the design, construction and  
13 operation of PWGP would comply with the Council's Waste Minimization Standard.<sup>57</sup> The Council  
14 adopted conditions in section D.14 of the site certificate to ensure compliance with the Waste  
15 Minimization standard.

16 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
17 operation of the proposed Unit 2 would comply with the Waste Minimization standard, taking into  
18 account the conditions adopted in section D.14 of the Site Certificate.<sup>58</sup>

19 The Council's previous findings and conditions are incorporated herein by this reference.

20 The proposed amendment would not change the site boundary or alter the Council's prior  
21 findings with respect to PWGP's compliance with the Waste Minimization Standard. There has been  
22 no change in facts or circumstances that would affect the Council's previous findings.

23 **Conclusions of Law**

24 For the reasons discussed above, the Council concludes that the design, construction and  
25 operation of PWGP would comply with the Waste Minimization Standard if Amendment #9 were  
26 approved.

27 **III.A.15. CARBON DIOXIDE STANDARD FOR BASE LOAD GAS PLANTS**

28 **Council Standard: OAR 345-024-550**

29 *To issue a site certificate for a base load gas plant, the Council must find that the net*  
30 *carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of*  
31 *carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions*  
32 *and net electric power output measured on a new and clean basis. For a base load gas plant*  
33 *designed with power or augmentation technology as defined in OAR 345-001-0010, the*

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<sup>57</sup> *Final Order on the Application*, pp. 114-117.

<sup>58</sup> *Final Order on Amendment #7*, pg. 26.

1 Council shall apply the standard for a non-base load power plant, as described in OAR 345-  
2 024-0590, to the incremental carbon dioxide emissions from the designed operation of the  
3 power augmentation technology. The Council shall determine whether the base load carbon  
4 dioxide emissions standard is met as follows:

5 (1) The Council shall determine the gross carbon dioxide emissions that are reasonably  
6 likely to result from the operation of the proposed energy facility. The Council shall base  
7 such determination on the proposed design of the energy facility. The Council shall adopt site  
8 certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded  
9 on a new and clean basis;

10  
11 (2) For any remaining emissions reduction necessary to meet the applicable standard, the  
12 applicant may elect to use any of the means described in OAR 345-024-0560, or any  
13 combination thereof. The Council shall determine the amount of carbon dioxide emissions  
14 reduction that is reasonably likely to result from the applicant's offsets and whether the  
15 resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions  
16 standard;

17  
18 (3) If the applicant elects to comply with the standard using the means described in OAR 345-  
19 024-0560(2), the Council shall determine the amount of carbon dioxide emissions reduction  
20 that is reasonably likely to result from each of the proposed offsets. In making this  
21 determination, the Council shall not allow credit for offsets that have already been allocated  
22 or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The  
23 fact that an applicant or other parties involved with an offset may derive benefits from the  
24 offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for  
25 withholding credit for an offset. The Council shall base its determination of the amount of  
26 carbon dioxide emission reduction on the following criteria and as provided in OAR 345-  
27 024-0680:

28 (a) The degree of certainty that the predicted quantity of carbon dioxide emissions  
29 reduction will be achieved by the offset;

30 (b) The ability of the Council to determine the actual quantity of carbon dioxide  
31 emissions reduction resulting from the offset, taking into consideration any proposed  
32 measurement, monitoring and evaluation of mitigation measure performance;

33 (c) The extent to which the reduction of carbon dioxide emissions would occur in the  
34 absence of the offsets;

35  
36 (4) Before beginning construction, the certificate holder shall notify the Department of  
37 Energy in writing of its final selection of a gas turbine vendor and shall submit a written  
38 design information report to the Department sufficient to verify the facility's designed new  
39 and clean heat rate and its nominal electric generating capacity at average annual site  
40 conditions for each fuel type. In the report, the certificate holder shall include the proposed  
41 limits on the annual average number of hours of facility operation on distillate fuel oil, if  
42 applicable. In the site certificate, the Council may specify other information to be included in  
43 the report. The Department shall use the information the certificate holder provides in the

1 *report as the basis for calculating, according to the site certificate, the amount of carbon*  
2 *dioxide emissions reductions the certificate holder must provide under OAR 345-024-0560.*

3 **Findings of Fact**

4 In the *Final Order on the Application*, the Council found that the design, construction and  
5 operation of PWGP would comply with the Council's Carbon Dioxide Standard for Base Load Gas  
6 Plants.<sup>59</sup> The council adopted conditions in section D.15 of the site certificate to ensure compliance  
7 with the Carbon Dioxide standard.

8 The Council's previous findings and conditions are incorporated herein by this reference.

9 PWGP Unit 1 was constructed as a base load gas plant and began operating in 2007. In its  
10 *Request for Amendment #7*, the Certificate Holder proposed PWGP Unit 2 as a non-base load power  
11 plant.<sup>60</sup> The compliance of Unit 2 with the Council's Carbon Dioxide Standard for Non-Base Load  
12 Power Plants is discussed separately in Section III.A.16 below.

13 The proposed amendment would not alter the Council's prior findings with respect to PWGP's  
14 compliance with the Carbon Dioxide Standard for Base Load Gas Plants. There has been no change in  
15 facts or circumstances that would affect the Council's previous findings.

16 **Conclusions of Law**

17 For the reasons discussed above, the Council finds that the design, construction and operation of  
18 PWGP would comply with the Carbon Dioxide Standard for Base Load Gas Plants if Amendment #9  
19 were approved.

20 **III.A.16. CARBON DIOXIDE STANDARD FOR NON-BASE LOAD POWER PLANTS**

21 **Council Standard: OAR 345-024-590**

22 *To issue a site certificate for a non-base load power plant, the Council must find that the*  
23 *net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of*  
24 *carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions*  
25 *and net electric power output measured on a new and clean basis. For a base load gas plant*  
26 *designed with power augmentation technology as defined in OAR 345-001-0010, the Council*  
27 *shall apply this standard to the incremental carbon dioxide emissions from the designed*  
28 *operation of the power augmentation technology. The Council shall determine whether the*  
29 *carbon dioxide emissions standard is met as follows:*

30 *(1) The Council shall determine the gross carbon dioxide emissions that are reasonably*  
31 *likely to result from the operation of the proposed energy facility. The Council shall base*  
32 *such determination on the proposed design of the energy facility, the limitation on the hours*  
33 *of generation for each fuel type and the average temperature, barometric pressure and*  
34 *relative humidity at the site during the times of the year when the facility is intended to*

<sup>59</sup> *Final Order on the Application*, pp. 117-130.

<sup>60</sup> Portland General Electric Company, *Request for Amendment #7 the Seventh Amendment to the Site Certificate for Port Westward Generating Plant*, September 18, 2009.

1 operate. For a base load gas plant designed with power augmentation technology, the  
2 Council shall base its determination of the incremental carbon dioxide emissions on the  
3 proposed design of the facility, the proposed limitation on the hours of generation using the  
4 power augmentation technology and the average temperature, barometric pressure and  
5 relative humidity at the site during the times of the year when the facility is intended to  
6 operate with power augmentation technology. The Council shall adopt site certificate  
7 conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new  
8 and clean basis; however, the Council may modify the parameters of the new and clean basis  
9 to accommodate average conditions at the times when the facility is intended to operate and  
10 technical limitations, including operational considerations, of a non-base load power plant  
11 or power augmentation technology or for other cause \*\*\*

12 \*\*\**(4) Before beginning construction, the certificate holder shall notify the Department*  
13 *of Energy in writing of its final selection of an equipment vendor and shall submit a written*  
14 *design information report to the Department sufficient to verify the facility's designed new*  
15 *and clean heat rate and its nominal electric generating capacity at average annual site*  
16 *conditions for each fuel type. For a base load gas plant designed with power augmentation*  
17 *technology, the certificate holder shall include in the report information sufficient to verify*  
18 *the facility's designed new and clean heat rate, tested under parameters the Council orders*  
19 *pursuant to section (1), and the nominal electric generating capacity at average site*  
20 *conditions during the intended use for each fuel type from the operation of the proposed*  
21 *facility using the power augmentation technology. The certificate holder shall include the*  
22 *proposed limit on the annual average number of hours for each fuel used, if applicable. The*  
23 *certificate holder shall include the proposed total number of hours of operation for all fuels,*  
24 *subject to the limitation that the total annual average number of hours of operation per year*  
25 *is not more than 6,600 hours. In the site certificate, the Council may specify other*  
26 *information to be included in the report. The Department shall use the information the*  
27 *certificate holder provides in the report as the basis for calculating, according to the site*  
28 *certificate, the gross carbon dioxide emissions from the facility and the amount of carbon*  
29 *dioxide emissions reductions the certificate holder must provide under OAR 345-024-0600;*

30 *(5) (a) Every five years after commencing commercial operation, the certificate holder*  
31 *shall report to the Council the facility's gross carbon dioxide emissions. The certificate*  
32 *holder shall calculate actual gross carbon dioxide emissions using the new and clean heat*  
33 *rate and the actual hours of operation on each fuel during the five-year period or shall report*  
34 *to the Council the actual measured or calculated carbon dioxide emissions as reported to*  
35 *either the Oregon Department of Environmental Quality or the U.S. Environmental*  
36 *Protection Agency pursuant to a mandatory carbon dioxide emissions reporting requirement.*

37 *(b) The certificate holder shall specify its election of method used to measure or calculate*  
38 *carbon dioxide emissions in the notification report described at section (4) of this rule. That*  
39 *election, once made, shall apply for each five year period unless the site certificate is*  
40 *amended to allow a different election. If the certificate holder calculates actual carbon*  
41 *dioxide emissions using the new and clean heat rate and the actual hours of operation, the*  
42 *certificate holder shall also report to the Council the facility's actual annual hours of*  
43 *operation by fuel type. If the actual gross carbon dioxide emissions exceed the projected*

1            *gross carbon dioxide emissions for the five-year period calculated under section (4), the*  
2            *certificate holder shall offset any excess emissions for that period and shall offset estimated*  
3            *future excess carbon dioxide emissions using the monetary path as described in OAR 345-*  
4            *024-0600(3) and (4) or as approved by the Council.*

5            **Findings of Fact**

6            In its *Request for Amendment #7*, the Certificate Holder proposed PWGP Unit 2 as a non-base  
7            load power plant.<sup>61</sup> In the *Final Order on Amendment #7*, the Council found that the design,  
8            construction and operation of Unit 2 would comply with the Council’s Carbon Dioxide Standard for  
9            Non-Base Load Power Plants.<sup>62</sup> In approving Amendment #7, the Council adopted conditions in  
10           section D.15 of the Site Certificate to ensure compliance with the Carbon Dioxide Standard for Non-  
11           Base Load Power Plants.

12           The Carbon Dioxide Standard and the monetary path rate have not been amended since approval  
13           of Amendment #7.

14           The Council’s previous findings and conditions are incorporated herein by this reference.

15           The proposed amendment would not alter the Council’s prior findings with respect to PWGP’s  
16           compliance with the Carbon Dioxide Standard for Non-Base Load Power Plants. There has been no  
17           change in facts or circumstances that would affect the Council’s previous findings.

18           **Conclusions of Law**

19           For the reasons discussed above, the Council finds that the design, construction and operation of  
20           PWGP would comply with the Carbon Dioxide Standard for Non-Base Load Power Plants if  
21           Amendment #9 were approved.

22           **III.B. OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION**

23           Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-  
24           0000), the Council must determine whether a facility complies with “all other Oregon statutes and  
25           administrative rules identified in the project order, as amended, as applicable to the issuance of a site  
26           certificate for the proposed facility.” The statutes and administrative rules that the Council has  
27           previously considered applicable to the site certificate for the PWGP include the Department of  
28           Environmental Quality (DEQ) noise control regulations, the regulations adopted by the Department of  
29           State Lands (DSL) for removal or fill of material affecting waters of the state, the Oregon Water  
30           Resources Department (OWRD) regulations for water rights and the Council’s statutory authority to  
31           consider protection of public health and safety.

32           **III.B.1. NOISE CONTROL REGULATIONS**

33           **Noise Control Regulations for Industry and Commerce: OAR 340-035-0035**

34           *(1) Standards and Regulations:*

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<sup>61</sup> Ibid.

<sup>62</sup> *Final Order on Amendment #7*, pg. 39-54.

1                   \* \* \*

2                   **(b) New Noise Sources:**

3                   \* \* \*

4                   **(A) New Sources Located on Previously Used Sites.** *No person owning or controlling a*  
5 *new industrial or commercial noise source located on a previously used industrial or*  
6 *commercial site shall cause or permit the operation of that noise source if the statistical noise*  
7 *levels generated by that new source and measured at an appropriate measurement point,*  
8 *specified in subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as*  
9 *otherwise provided in these rules. For noise levels generated by a wind energy facility*  
10 *including wind turbines of any size and any associated equipment or machinery,*  
11 *subparagraph (1)(b)(B)(iii) applies.*

12                   \* \* \*

13                   **Findings of Fact**

14                   In the *Final Order on the Application*, the Council concluded that the PWGP would comply with  
15 the state noise control regulations.<sup>63</sup> The Council adopted conditions in section E.1.a of the Site  
16 Certificate to ensure compliance with state noise control regulations.

17                   In the *Final Order on Amendment #7*, the Council concluded that the reconfigured Unit 2 would  
18 comply with state noise control regulations, taking into account the conditions adopted in section  
19 E.1.a of the Site Certificate.<sup>64</sup>

20                   The Council’s previous findings and conditions are incorporated herein by this reference.

21                   The proposed amendment to extend the construction beginning and completion dates would not  
22 change the site certificate conditions that ensure compliance with the noise regulations. The proposed  
23 amendment would not change the type or number of potential noise sources already authorized for  
24 construction. There has been no change of facts or circumstances affecting the basis for the Council’s  
25 previous findings regarding compliance with the noise control regulations.

26                   **Conclusions of Law**

27                   For the reasons discussed above, the Council concludes that the design, construction, and  
28 operation of PWGP would comply with the applicable noise control regulations in OAR 340-035-  
29 0035 if Amendment #9 were approved.

30                   **III.B.2.       REMOVAL-FILL LAW**

31                   Pursuant to OAR 345-022-0000, the Council must determine compliance with applicable statutes,  
32 ORS 196.800-.990, and applicable Department of State Lands (“DSL”) regulations, OAR 141-085-  
33 0005 *et seq.* relating to fill and other operations taking place within wetlands. These regulations  
34 require persons to obtain a removal/fill permit if more than 50 cubic yards of material will be

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<sup>63</sup> *Final Order on the Application*, pp. 133-141.

<sup>64</sup> *Final Order on Amendment #7*, pp. 26-34.

1 removed or altered within “waters of the state.” The overall standard to be considered in granting a  
2 removal/fill permit is whether the proposed activity would not “unreasonably interfere with the  
3 paramount policy of this state to preserve the use of its waters for navigation, fishing and public  
4 recreation.”<sup>65</sup>

### 5 **Findings of Fact**

6 In the *Final Order on the Application*, the Council found that the design, construction and  
7 operation of PWGP would comply with the Oregon Removal-Fill Law.<sup>66</sup> The Council adopted  
8 conditions in section E.1.b of the site certificate to ensure compliance with Removal-Fill  
9 requirements.

10 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
11 operation of the reconfigured Unit 2 would comply with Removal-Fill requirements, taking into  
12 account the conditions adopted in section E.1.b of the Site Certificate.<sup>67</sup>

13 The Council’s previous findings and conditions are incorporated herein by this reference.

14 The proposed amendment to extend the construction beginning and completion dates would not  
15 change the site boundary or alter the Council’s prior findings with respect to PWGP’s compliance  
16 with Removal-Fill requirements. There has been no change in facts or circumstances that would affect  
17 the Council’s previous findings.

### 18 **Conclusions of Law**

19 For the reasons discussed above, the Council find that the design, construction and operation of  
20 PWGP would comply with Removal-Fill requirements if Amendment #9 were approved.

### 21 **III.B.3. WATER RIGHT TRANSFER**

22 Under ORS Chapters 537 and 540 and OAR Chapter 690, Oregon Water Resources Department  
23 (OWRD) administers water rights for appropriation and use of the water resources of the state. The  
24 Council must determine whether the design, construction, and operation of PWGP complies with  
25 these statutes and administrative rules.<sup>68</sup>

26 The Certificate Holder’s request in *RFA #9* for a one-year extension of the deadline for full  
27 beneficial use of water under Transfer Application T-10955 is subject to the requirements of OWRD  
28 rules at OAR 690-380-6020.<sup>69</sup>

### 29 **The Requirement: OAR 690-380-6020**

30 *(1) An order authorizing a water right transfer sets a time limit in which to beneficially*  
31 *use the water. If the transfer is not completed within the time limit, the owner may file an*

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<sup>65</sup> ORS 196.825(2).

<sup>66</sup> *Final Order on the Application*, pp. 141-150.

<sup>67</sup> *Final Order on Amendment #7*, pg. 34.

<sup>68</sup> OAR 345-022-0000(1).

<sup>69</sup> OAR 690-380-5140(2) states that “Extensions of time to complete a transfer may be granted pursuant to OAR 690-380-6020.”

1 application for an extension of time. The application shall contain sufficient information for  
2 the director to determine reasonable diligence in the attempt to complete the project within  
3 the initial time allowed.

4 (2) If multiple receiving owners are involved, a separate application is required from  
5 each receiving owner requesting an extension.

6 (3) Extensions are granted for one year, from October 1 to October 1 of each year. An  
7 extension for up to five years may be granted for transfers involving municipal or quasi-  
8 municipal use. Extensions may be granted for longer time if the applicant can justify the need  
9 for a longer period of time by submission of pertinent evidence.

10 (4) In reviewing an application for an extension of time, the director shall determine  
11 whether reasonable diligence was made by the applicant to complete the project within the  
12 time period established under OAR 690-380-5140. Reasonable diligence shall include, but is  
13 not limited to:

14 (a) The purchase and installation of water delivery system;

15 (b) The expansion or restructuring of the existing delivery system;

16 (c) Actual use of a portion of the water according to the terms of the transfer order; or

17 (d) For municipal, quasi-municipal and group domestic uses only, the continued increase  
18 in population and number of service connections.

19 (5) Applications for succeeding extensions shall show reasonable diligence within the  
20 time allowed by the previous extension and shall be subject to the Department review based  
21 on section (4) of this rule.

## 22 Findings of Fact

23 Water for PWGP Unit 1 is supplied through a 5.4 cubic feet per second (cfs) industrial water right  
24 transferred in 2006 from PGE's Trojan Nuclear Plant, Certificate No. 73396. The authorized point of  
25 diversion is the PGE intake structure on Bradbury Slough of the Columbia River. Unit 2 would  
26 require an additional 3.0 cfs, for a total estimated peak water use of 8.4 cfs. In its *Request for*  
27 *Amendment #7*, PGE requested a permanent water right transfer of 3.0 cfs from Certificate No. 73396.  
28 The water would be diverted from the existing Beaver/Port Westward intake structure.<sup>70</sup>

29 In the *Final Order on Amendment #7*, the Council found the requested transfer in compliance  
30 with OWRD rules at OAR Chapter 690, Division 380, and instructed OWRD to issue a Final Order  
31 substantially consistent with the "Draft Preliminary Determination" issued by WRD on December 7,  
32 2009 on the matter of transfer application T-10955.<sup>71</sup> The Council adopted conditions in section D.13  
33 of the Site Certificate to ensure compliance with OWRD rules at OAR Chapter 690, Division 380.

<sup>70</sup> PGE, *Request for Amendment #7*, Appendix O-2.

<sup>71</sup> *Final Order on Amendment #7*, pp. 35-39.

1 The Council’s previous findings and conditions are incorporated herein by this reference.

2 In RFA #9, the Certificate Holder requests an extension of the deadline to make full and  
3 beneficial use of water under Transfer Application T-10955 from October 1, 2014 to October 1, 2015.  
4 This extension would involve an amendment to Condition D.13(11)(e) of the Site Certificate as  
5 follows:

6 *(11) (e) The approved changes shall be completed and full beneficial use of the water*  
7 *shall be made on or before October 1, 2014 2015. A Claim of Beneficial Use prepared*  
8 *by a Certified Water Rights Examiner shall be submitted by the Certificate Holder to the*  
9 *Department within one year after the deadline for completion of the changes and full*  
10 *beneficial use of the water.*

11 OAR 690-380-6020(4) provides that the director must review applications for extension by  
12 determining whether the applicant demonstrated “reasonable diligence” in attempting to complete the  
13 project within the time period originally approved.<sup>72</sup> PGE does not rely on any of the examples of  
14 “reasonable diligence” included in OAR 690-380-6020(4)(a) through (d), but states that it has  
15 established reasonable diligence by its “diligent pursuit of OPUC approval of the IRP, its preparation  
16 of the RFP, its prompt issuance of the RFP upon OPUC approval, and its inclusion of Unit 2 in the  
17 competitive RFP process.”<sup>73</sup> In section 1.6 of RFA #9, PGE documents its progress in pursuing and  
18 obtaining OPUC approval of the IRP and RFP since 2010.<sup>74</sup> PGE cannot construct and operate Unit 2  
19 of PWGP unless its bid is selected in the RFP, and therefore cannot make full beneficial use of water  
20 under the transfer application until that process is complete.

21 The Council finds that PGE has demonstrated reasonable diligence in to complete the project  
22 within the time period established in OAR 690-380-5140.

### 23 **Conclusions of Law**

24 The Council concludes that the proposed amendment to Condition D.13(11)(e) and the attached  
25 Application of Extension of Time for Transfer of a Water Right in the matter of T-10955 meets the  
26 Oregon Water Resources Department (OWRD) standards for extension of time for a water right  
27 transfer at OAR 690-380-6020. The Council instructs OWRD to grant an extension of water right  
28 transfer T-10955.

### 29 **III.B.4. PUBLIC HEALTH AND SAFETY**

30 Under ORS 469.310, the Council is charged with ensuring that the “siting, construction and  
31 operation of energy facilities shall be accomplished in a manner consistent with protection of the  
32 public health and safety.” Further, ORS 469.401(2) provides that “the site certificate shall contain  
33 conditions for the protection of the public health and safety.”

<sup>72</sup> In the context of OAR Chapter 690, “director” refers to the director of the Oregon Water Resources Department.

<sup>73</sup> RFA #9, pg. 14.

<sup>74</sup> RFA #9, pg. 6.

1 In the *Final Order on the Application*, the Council found that the design, construction and  
2 operation of PWGP will protect public health and safety.<sup>75</sup> The Council adopted conditions in section  
3 E.1.c of the site certificate to ensure compliance with the Public Health and Safety standard.

4 In the *Final Order on Amendment #7*, the Council found that the design, construction and  
5 operation of the reconfigured Unit 2 will protect public health and safety, taking into account the  
6 conditions adopted in section E.1.c of the Site Certificate.<sup>76</sup> The Council's previous findings and  
7 conditions are incorporated herein by this reference.

8 The proposed amendment would not change the site boundary or alter the potential impacts of  
9 PWGP on public health and safety. There has been no change in facts or circumstances that would  
10 affect the Council's previous findings.

#### 11 **Conclusions of Law**

12 For the reasons discussed above, the Council finds that the design, construction and operation of  
13 PWGP would comply with Public Health and Safety standard if Amendment #9 were approved.

### 14 **III.B.5. WATER POLLUTION CONTROL FACILITIES PERMIT**

#### 15 **The Requirement**

16 The development of an onsite sewage treatment system incorporating a septic tank, dosing tank,  
17 and bottomless sand filter is considered a form of wastewater discharge that requires a Water  
18 Pollution Control Facilities ("WPCF") permit from DEQ. The WPCF permit is a state level permit  
19 that falls under Council jurisdiction.

#### 20 **Findings of Fact**

21 In the *Final Order on the Application*, the Council determined that DEQ should issue a WPCF  
22 permit for PWGP.<sup>77</sup>

23 The proposed amendment would not affect the issuance of or compliance with the WPCF permit.  
24 There has been no change in facts or circumstances that would affect the Council's previous findings.

25 The Council's previous findings and conditions are incorporated herein by this reference.

#### 26 **Conclusions of Law**

27 For the reasons discussed above, the Council finds that the design, construction and operation of  
28 PWGP would continue to meet the Council's conditions of the Water Pollution Control Facilities  
29 permit, pursuant to ORS 469.401, if Amendment #9 were approved.

75 *Final Order on the Application*, pp. 150-158.

76 *Final Order on Amendment #7*, pg. 34.

77 *Final Order on the Application*, pp. 158-159.

1 **III.C. REQUIREMENTS THAT ARE NOT UNDER COUNCIL JURISDICTION**

2 **III.C.1. FEDERALLY-DELEGATED PROGRAMS**

3 The Council does not have jurisdiction for determining compliance with statutes and rules for  
4 which the federal government has delegated the decision on compliance to a state agency other than  
5 the Council.<sup>78</sup> Nevertheless, the Council may rely on the determinations of compliance and the  
6 conditions in the federally-delegated permits issued by these state agencies in deciding whether the  
7 proposed facility meets other standards and requirements under its jurisdiction.

8 In the Final Order on the Application, the Council found that the certificate holder must obtain a  
9 federal Air Contaminant Discharge Permit (ACDP) from the Oregon Department of Environmental  
10 Quality (DEQ) before beginning construction of the proposed facility.<sup>79</sup> The certificate holder must  
11 also comply with requirements of DEQ's 1200-C General National Pollutant Discharge Elimination  
12 System (NPDES) Stormwater Discharge permit and an Erosion and Sediment Control Plan (ESCP) to  
13 minimize erosion at the site during construction operations.<sup>80</sup>

14 **III.C.2. REQUIREMENTS THAT DO NOT RELATE TO SITING**

15 The Council does not have authority to preempt the jurisdiction of any state agency or local  
16 government over matters that are not included in and governed by the site certificate or amended site  
17 certificate.<sup>81</sup> Such matters include design-specific construction or operating standards and practices  
18 that do not relate to siting. Nevertheless, the Council may rely on the determinations of compliance  
19 and the conditions in the permits issued by these state agencies and local governments in deciding  
20 whether the facility meets other standards and requirements under its jurisdiction.

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<sup>78</sup> ORS 469.503(3).

<sup>79</sup> *Final Order on the Application*, pp. 160-161.

<sup>80</sup> *Ibid.*

<sup>81</sup> ORS 469.401(4).

1 **IV. GENERAL APPLICATION OF CONDITIONS**

2 The conditions described in this order include conditions that are specifically required by OAR  
3 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific  
4 Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345, Division 26  
5 (Construction and Operation Rules for Facilities). The conditions described in this order, or added to  
6 the site certificate by this order, include conditions based on representations in the request for  
7 amendment and the supporting record. The Council deems these representations to be binding  
8 commitments made by the certificate holder. Also included are conditions Council finds necessary to  
9 ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24, or to protect  
10 public health and safety.

11 In addition to all other conditions described or included in this order, the site certificate holder is  
12 subject to all conditions and requirements contained in the rules of the Council and in local  
13 ordinances and state law in effect on the date the amended site certificate is executed. Upon a clear  
14 showing of a significant threat to the public health, safety or the environment that requires application  
15 of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or  
16 rules.<sup>82</sup>

17 The Council recognizes that many specific tasks related to the design, construction, operation and  
18 retirement of the facility will be undertaken by the certificate holder's agents or contractors.  
19 Nevertheless, the certificate holder is responsible for ensuring that all agents and contractors comply  
20 with all provisions of the site certificate.

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<sup>82</sup> ORS 469.401(2).

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

2 The Certificate Holder has submitted a request to amend the Site Certificate for the Port  
3 Westward Generating Project. Subject to compliance with the additional conditions discussed in this  
4 Order, the Council finds that a preponderance of evidence on the record supports the following  
5 conclusions:

- 6 1. The proposed Ninth Amended Site Certificate for Port Westward Generating Project  
7 complies with the requirements of the Oregon Energy Facility Siting statutes ORS 469.300 to  
8 469.520.
- 9 2. The proposed Ninth Amended Site Certificate for Port Westward Generating Project  
10 complies with the standards adopted by the Council pursuant to ORS 469.501.
- 11 3. The proposed Ninth Amended Site Certificate for Port Westward Generating Project  
12 complies with all other Oregon statutes and administrative rules applicable to the amendment  
13 of the site certificate that are within the Council's jurisdiction.

14 Based on the findings of fact, reasoning, conditions, and conclusions of law in this Order, the  
15 Council concludes that the applicant has satisfied the requirements for issuance of the requested Ninth  
16 Amended Site Certificate for the Port Westward Generating Project, subject to compliance with the  
17 conditions stated in the Final Order, previous amendments and in this proposed amendment.

18 For the reasons discussed in section II.G of this order, the Council finds that the request for a  
19 contested case proceeding did not raise any issue of fact or law within Council jurisdiction. The  
20 Council hereby denies the request for a contested case proceeding.

21 The Council approves Amendment #9 and issues an amended site certificate for the Port  
22 Westward Generating Project, subject to the terms and conditions set forth above.

23 Issued this 15<sup>th</sup> day of March, 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.*