

DRAFT

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

In the Matter of the Request for Amendment #4)
of the Site Certificate for the Klamath)
Cogeneration Project)

**PROPOSED ORDER
ON AMENDMENT #4**

OREGON ENERGY FACILITY SITING COUNCIL

February 23, 2009

TABLE OF CONTENTS

1
2
3
4 **I. INTRODUCTION**..... 2
5 **II. PROCEDURAL HISTORY AND AMENDMENT PROCESS**..... 2
6 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**..... 3
7 A. Amendment Procedure..... 4
8 B. Amendments to the Site Certificate as Proposed by Klamath Energy..... 5
9 **IV. THE COUNCIL’S SITING STANDARDS** 8
10 A. General Standard of Review OAR 345-022-0000 9
11 B. Standards about the Applicant 9
12 1. Organizational Expertise OAR 345-022-0010..... 9
13 2. Retirement and Financial Assurance OAR 345-022-0050 12
14 C. Standards about the Impacts of Construction and Operation..... 14
15 1. Land Use OAR 345-022-0030 14
16 2. Public Services OAR 345-022-0110..... 15
17 3. Waste Minimization OAR 345-022-0120..... 16
18 4. Structural Standard OAR 345-022-0020 16
19 5. Soil Protection OAR 345-022-0022..... 17
20 6. Protected Areas OAR 345-022-0040..... 17
21 7. Scenic Resources OAR 345-022-0080 19
22 8. Historic, Cultural and Archaeological Resources OAR 345-022-0090..... 19
23 9. Recreation OAR 345-022-0100 20
24 D. Standards to Protect Wildlife 20
25 1. Threatened and Endangered Species OAR 345-022-0070 20
26 2. Fish and Wildlife Habitat OAR 345-022-0060..... 21
27 E. Carbon Dioxide Standard for Base Load Gas Plants OAR 345-024-0550..... 21
28 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS**..... 23
29 A. Requirements under Council Jurisdiction..... 23
30 1. Noise Control Regulations for Industry and Commerce OAR 340-035-0035 23
31 2. Removal-Fill Law 24
32 3. Public Health and Safety..... 24
33 B. Requirements That Are Not Under Council Jurisdiction..... 24
34 1. Federally-Delegated Programs..... 24
35 2. Requirements That Do Not Relate to Siting 25
36 **VI. GENERAL APPLICATION OF CONDITIONS** 25
37 **VII. GENERAL CONCLUSION**..... 25
38 A. The Department’s Recommended Revisions..... 26
39 **VIII. ORDER** 29
40

LIST OF TABLES

41
42
43
44 Table 1: Site Restoration Cost Estimate (1st Quarter 2009 Dollars)..... 13
45
46

1
2 **KLAMATH COGENERATION PROJECT**
3 **PROPOSED ORDER ON AMENDMENT #4**
4

5 **I. INTRODUCTION**
6

7 The Oregon Department of Energy (Department) issues this order in accordance with
8 ORS 469.405 and OAR 345-027-0070. This order addresses a request by the certificate holder,
9 Klamath Energy LLC (“Klamath Energy” or “certificate holder”), for amendment of the site
10 certificate for the Klamath Cogeneration Project (KCP). The facility is a nominal 500-megawatt
11 (MW) natural gas-fired electric cogeneration facility. The facility site is located about 4.5 miles
12 northwest of the City of Klamath Falls on land adjacent to the Collins Wood Products plant. The
13 facility qualifies as a cogeneration facility because, in addition to electric generation, it provides
14 process steam to the Collins Wood Products plant.
15

16 In its request for Amendment #4, Klamath Energy requests modification of the applicable
17 financial assurance amount and elimination of the requirement that the facility use water
18 pursuant to a water right permit held by the City of Klamath Falls but instead allow the use of
19 water pursuant to an existing water right certificate.
20

21 The Energy Facility Siting Council (Council) issued the Final Order for the KCP on
22 August 15, 1997, and the Final Orders for Amendment #1 on April 17, 1998, Amendment #2 on
23 December 11, 1998, and Amendment #3 on September 21, 2007 (the “Final Orders”). This
24 amendment is Amendment #4.
25

26 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms in this order.

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27
28 **II. PROCEDURAL HISTORY AND AMENDMENT PROCESS**
29

30 On November 25, 2008, Klamath Energy submitted to the Department a request for
31 amendment of the Site Certificate for the Klamath Cogeneration Project.¹ On December 2, 2008,
32 the Department sent copies of the amendment request to the reviewing agencies. The Department
33 requested agency comments by January 9, 2009. The Department received no substantive
34 comments from reviewing agencies.
35

36 On December 2, 2008, the Department sent notice of the amendment request to all
37 persons on the Council’s general mailing list, to persons on the mailing list established for the
38 facility and to an updated list of property owners supplied by the certificate holder. The
39 Department requested public comments by January 9, 2009. The Department received no public
40 comments.
41

42 The Department issued this Proposed Order on February 23, 2009. On the same day, the
43 Department issued a notice of the proposed order in accordance with OAR 345-027-0070
44 specifying a deadline for public comments and requests for a contested case proceeding.

¹ Fourth Request to Amend Site Certificate (Regarding Financial Assurance and Water Rights) for the Klamath
Cogeneration Project.

1 | **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

Deleted: ¶

2
3 Klamath Energy requests an amendment to the site certificate to: (1) modify the
4 applicable financial assurance amount and (2) eliminate the requirement that the facility use
5 water pursuant to a water right permit held by the City of Klamath Falls but instead allow the use
6 of water pursuant to an existing water right certificate.

7
8 In its amendment request, Klamath Energy explained the proposed modifications as
9 follows:

10 “Financial Assurance. Klamath Energy seeks to amend the Site Certificate t modify the
11 financial assurance required under Sections III.A.12.vii and IV.D.3, to a new financial
12 assurance amount of \$4,385,000 in 2007 dollars. This amendment relies on the current
13 methodology approved by the Department of Energy (Department) ...”

14
15
16 “Water Rights. Klamath Energy seeks to amend the Site Certificate to eliminate the
17 requirement that the facility use water pursuant to a water right permit held by the City of
18 Klamath Falls, and to instead allow the use of water pursuant to an existing water right
19 certificate. Klamath Energy does not seek to change the source from which the water is
20 withdrawn, the point of appropriation, or the amount of water authorized for use at the
21 facility in order to meet the facility’s service and potable water requirements. Thus,
22 Klamath Energy seeks to amend only the water rights requirements for the facility’s
23 operation in Sections IV.O.1 and IV.S.

24
25 “As background for this change request, the Oregon Water Resources Department issued
26 Certificate of Water Right No. 48602 (‘Certificate 48602’) to the Weyerhaeuser
27 Company of October 5, 1979. Certificate 48602 authorizes the use of the waters of ‘Well
28 No. 6’ for the purpose of ‘manufacturing including restroom and lunch room facilities’ in
29 an amount up to 1.34 cubic feet per second. Certificate 48602 further describes the
30 authorized well location and authorized place of use....

31
32 “Weyerhaeuser’s successor, Collins Products, entered into various agreements with the
33 City of Klamath Falls (the prior Certificate Holder) to provide make-up water to the
34 facility in return for steam and other consideration. At the time the Council issued the
35 Final Order and original Site Certificate in August 1997, however, it was unclear
36 whether use of water by the facility from Well No. 6 was authorized under Certificate
37 48602 or whether the City was required to obtain a new and separate water right. Given
38 the uncertainty, the Council required the City to obtain a new water right permit from the
39 Oregon Water Resources Department for operation of the facility (Water Right Permit
40 13234). As detailed in Section IV.S of the Site Certificate, the water right permit issued
41 by the Water Resources Department authorizes the City to use water from the same point
42 of appropriation (Well No. 6), on the same place of use, and at the same rate as was
43 previously and concurrently authorized by the Department pursuant to Certificate 48602.

44
45 “Before a new water right certificate was issued to the City pursuant to the terms of
46 Water Right Permit 13234, in 1999, the Oregon legislature amended Oregon’s water laws

1 by adding ORS 540.520(9), which makes clear that a water right transfer is not required
2 for a general industrial use that was not included in a water right certificate issued for a
3 specific industrial use if:

4
5 “(a) The quantity of water used for the general industrial use is not greater than
6 the rate allowed in the original water right and not greater than the quantity of
7 water diverted to satisfy the authorized specific use under the original water right;

8
9 “(b) The location where the water is to be used for general industrial use was
10 owned by the holder of the original water right at the time the water right permit
11 was issued; and

12
13 “(c) The person who makes the change in water use provides the following
14 information to the Water Resources Department:

15
16 “(A) The name and mailing address of the person using water under the
17 water right;

18
19 “(B) The water right certificate number;

20
21 “(C) A description of the location of the industrial facility owned by the
22 holder of the original water right at the time the water right permit was
23 issued; and

24
25 “(D) A description of the general industrial use to be made of the water
26 after the change.’ ORS 540.520(9)

27
28 “Thus, the Oregon legislature clarified that when a water right certificate has been issued
29 for a specific industrial use (here, the specific use authorized by Certificate 48602 was
30 ‘manufacturing including restroom and lunch room facilities’), the use of water for
31 general industrial purposes (here, the operation of the energy facility) was in fact
32 authorized under such water right certificate if the statutory conditions were met.

33
34 “As a result of this statutory change, on September 10, 2004, Collins Products, as the
35 owner and operator of Well No. 6, sent a letter to the Oregon Water Resources
36 Department providing the information required by ORS 540.520(9) to change the specific
37 industrial use identified in Certificate 48602 to general industrial use.... On May 25,
38 2006, the Oregon Water Resources Department acknowledged the notification... In sum,
39 the specific to general industrial notification obviated the need for the City (and now the
40 current certificate holder) to maintain a separate water right. As such, Klamath Energy
41 asks that the Site Certificate be modified to eliminate the requirement that the City
42 maintain a separate water right for the use of water from Well No. 6 for the facility.”

43
44 **A. Amendment Procedure**

45
46 Under OAR 345-027-0050(1), a Site Certificate amendment request is required if a
47 Certificate Holder proposes to design, construct, operate or retire a facility in a manner different

KLAMATH COGENERATION PROJECT

PROPOSED ORDER ON AMENDMENT #4 – February 23, 2009

Page 4

1 from the description in the Site Certificate, and the proposed change meets one or more of three
2 defined criteria. Klamath Energy's proposed changes trigger the need for a Site Certificate
3 amendment under OAR 345-027-0050(1)(b) and (c), as discussed below:

4
5 *(b) Could impair the certificate holder's ability to comply with a site certificate
6 condition; or*

7
8 The Department recommends that the Council find that the changes proposed by
9 Klamath Energy could impair the Certificate Holder's ability to comply with Site
10 Certificate conditions in Sections III.A.12.vii, IV.D.O and IV.D.S.

11
12 *(c) Could require a new condition or a change to a condition in the site
13 certificate.*

14
15 The Department recommends that the Council find that the changes proposed by
16 Klamath Energy would necessitate changes to conditions in the Site Certificate, as
17 outlined below.

18 19 **B. Amendments to the Site Certificate as Proposed by Klamath Energy**

20
21 Klamath Energy proposes to change conditions in the Third Amended Site Certificate as
22 follows:

- 23 • Sections III.A.12.vii and IV.D.3 concerning financial assurance
- 24 • Section IV.O concerning socio-economic impacts
- 25 • Section IV.S concerning water rights

26
27 Proposed additions are double-underlined and proposed deletions have a strikethrough.

28 29 ***III.A. Mandatory Conditions in Site Certificates OAR 345-27-020***

30
31 (12) *The transfer of the site certificate from the City to Klamath Energy shall not occur
32 until Klamath Energy delivers to EFSC evidence that:*

33 ***

34 (vii) *Klamath Energy or PPM delivers to the Council a letter of credit in the
35 amount of \$8.6 million that replaces the Termination Fund maintained by
36 the certificate holder to satisfy Conditions IV.D.3, IV.D.4 and IV.D.5.
37 [Amendment 3] The amount of the letter of credit shall be reduced to
38 \$4.385 million (2007 dollars) upon the Council's approval of
39 Amendment 4. [Amendment 4]*

40 41 ***IV.D. Financial Assurance***

42
43 *For conditions 3, 4 and 5 in section IV.D. of this Amended Site Certificate, the index by
44 which the future value of money shall be converted to 2007-1996 or 1997 dollars shall be
45 the Implicit Price Deflator for the Gross Domestic Product as published by the
46 U.S. Bureau of Economic Analysis of the Department of Commerce or a successor*

1 agency. These values are published annually each February in the "Economic Report of
2 the President".

3 ***

- 4 3. ~~Klamath Energy or PPM shall maintain a separate fund established to~~
5 ~~provide for termination or decommissioning costs (the Decommissioning~~
6 ~~Fund), with such fund allowed to consist of a balance of cash, Investment~~
7 ~~Securities, and other holdings to be available to pay costs of termination~~
8 ~~or decommissioning, including Site restoration, of the project. For the two~~
9 ~~CT Energy Facility, The Decommissioning Termination Fund Amount~~
10 ~~shall be \$4,3856.85 million in 2007/1997 dollars. Amounts in the two~~
11 ~~funds may vary, but their combined value shall be \$6.85 million in 1997~~
12 ~~dollars. Amendment 4~~

13
14 **IV.O. Socio-Economic Impacts**

- 15
16 1. The KCP shall use water from the City's municipal water supply system to
17 meet its service and potable water requirements, and may use water from
18 Collins Product's Well No. 6 to meet make-up water needs. (ASC, pages
19 B-4 and U-4; Fig F-1; Fig B-1.) Amendment 4

20
21 **IV.S. Water Rights**

22
23 ~~The conditions in section IV.S. relate to a new water permit which the City shall obtain~~
24 ~~from the Oregon Water Resources Department (Department) for operation of the Energy~~
25 ~~Facility. Pursuant to agreement with Collins Products as the holder of Certificate of~~
26 ~~Water Right No. 48602, the KCP may use water for general industrial use as~~
27 ~~authorized by Certificate of Water Right No. 48602 and ORS 540.520(9). Amendment~~
28 ~~4~~

- 29
30 1. ~~The holder of the permit shall be the City of Klamath Falls.~~
31 2. ~~The source of the water shall be a well in the Klamath River basin.~~
32 3. ~~The purpose or use of the water shall be for municipal use.~~
33 4. ~~The maximum rate of use shall not exceed 1.34 cubic feet per second taken~~
34 ~~together with Collins certificate 48602.~~
35 5. ~~The period of use shall be year round.~~
36 6. ~~The date of priority for the permit is October 28, 1996.~~
37 7. ~~The point of diversion location is the NW 1/4 of the NE 1/4 of section 24 in~~
38 ~~Township 39S, Range 8E, W. M.; 700 feet south and 1970 feet west from~~
39 ~~the NE corner of section 24.~~
40 8. ~~The place of use is located as follows:~~
41 ~~NE 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4; NE 1/4 SE 1/4; NW 1/4~~
42 ~~SE 1/4; SW 1/4 SE 1/4; SE 1/4 SE 1/4; SECTION 13 and NE 1/4 NE 1/4;~~
43 ~~NW 1/4 NE 1/4; NE 1/4 NW 1/4; SECTION 24; TOWNSHIP 39 SOUTH;~~
44 ~~RANGE 8 EAST, W.M.~~
45 ~~NE 1/4 SW 1/4; NW 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4;~~
46 ~~SECTION 18; TOWNSHIP 39 SOUTH, RANGE 9 EAST, W.M.~~

- 1 ~~9. The amount of water used under this right, together with the amount~~
2 ~~secured under any other right existing for the same lands is limited to a~~
3 ~~total diversion of 52.22 cubic feet per second or a lesser amount if~~
4 ~~delineated in the City's Water Management and Conservation Plan.~~
- 5 ~~10. Measurement, recording and reporting conditions:~~
6 ~~a. Before water use may begin under this permit, the permittee shall~~
7 ~~install a meter or other suitable measuring device as approved by~~
8 ~~the Water Resources Department Director (Director), to measure~~
9 ~~the amount of water used under this permit. The permittee shall~~
10 ~~maintain the meter or measuring device in good working order,~~
11 ~~shall keep a complete record of the amount of water used under~~
12 ~~this permit each month and shall submit a report which includes~~
13 ~~the recorded water use measurements to the Water Resources~~
14 ~~Department annually or more frequently as may be required by the~~
15 ~~Director. Further, the Director may require the permittee to~~
16 ~~report general water use information, including the place and~~
17 ~~nature of use of water under the permit.~~
18 ~~b. The permittee shall allow the watermaster access to the meter or~~
19 ~~measuring device; provided however, where the meter or~~
20 ~~measuring device is located within a private structure, the~~
21 ~~watermaster shall request access upon reasonable notice.~~
- 22 ~~11. Use of water under authority of this permit may be regulated by the Water~~
23 ~~Resources Department if analysis of data available after the permit is~~
24 ~~issued discloses that the appropriation will measurably reduce the surface~~
25 ~~water flows necessary to maintain the free flowing character of a scenic~~
26 ~~waterway in quantities necessary for recreation, fish and wildlife in effect~~
27 ~~as of the priority date of the right or as those quantities may be~~
28 ~~subsequently reduced.~~
- 29 ~~12. The water user shall develop a plan to monitor and report the impact of~~
30 ~~water use under this permit on water levels within the aquifer that~~
31 ~~provides water to the permitted well(s). The plan shall be submitted to the~~
32 ~~Water Resources Department within one year of the date the permit is~~
33 ~~issued and shall be subject to the approval of the Department. At a~~
34 ~~minimum, the plan shall include a program to periodically measure static~~
35 ~~water levels within the permitted well(s) or an adequate substitute such as~~
36 ~~water levels in nearby wells. The plan shall also stipulate a reference~~
37 ~~water level against which any water level declines will be compared. The~~
38 ~~water user shall in no instance allow excessive decline, as defined in the~~
39 ~~Oregon Water Resources Commission rules, to occur within the aquifer as~~
40 ~~a result of use under this permit.~~
- 41 ~~13. If at any time the well or its use acts as a conduit for groundwater~~
42 ~~contamination or allows loss of artesian pressure, the Water Resources~~
43 ~~Department may require that the land owner repair the well in~~
44 ~~accordance with the current well construction standards.~~
- 45 ~~14. Prior to receiving a certificate of water right, the permit holder shall~~
46 ~~submit the results of a pump test, performed within the last ten years,~~

1 ~~meeting the Water Resources Department's standards, to the Water~~
2 ~~Resources Department. The Director may require water level or pump~~
3 ~~test results every ten years thereafter.~~

4 ~~15. Failure to comply with any of the provisions of this permit may result in~~
5 ~~action including, but not limited to, restrictions on the use, civil penalties,~~
6 ~~or cancellation of the permit.~~

7 ~~16. This permit is for the beneficial use of water without waste. The water~~
8 ~~user is advised that new regulations may require the use of best practical~~
9 ~~technologies or conservation practices to achieve this end.~~

10 ~~17. By law, the land use associated with this water use must be in compliance~~
11 ~~with statewide land use goals and any local acknowledged land use plan~~
12 ~~in effect on the date this Amended Site Certificate is executed.~~

13 ~~18. The use of water shall be limited when it interferes with any prior surface~~
14 ~~or ground water rights.~~

15 ~~19. Actual construction of the well shall begin within one year from date the~~
16 ~~Water Resources Department issues the permit. Unless the Water~~
17 ~~Resources Department grants an extension, construction of the means of~~
18 ~~conveyance to the Energy Facility Site shall be completed within five~~
19 ~~years of the date the Water Resources Department issues the permit.~~
20 ~~Unless the Water Resources Department grants an extension, complete~~
21 ~~application of the water to the use shall be made within five years of the~~
22 ~~date the Water Resources Department issues the permit.~~

23 24 **IV. THE COUNCIL'S SITING STANDARDS**

25
26 The Council must decide whether the amendment complies with the facility siting
27 standards adopted by the Council. In addition, the Council must impose conditions for the
28 protection of the public health and safety, for the time of commencement and completion of
29 construction, and for ensuring compliance with the standards, statutes and rules addressed in the
30 project order. ORS 469.401(2).

31
32 The Council is not authorized to determine compliance with regulatory programs that
33 have been delegated to another state agency by the federal government. ORS 469.503(3).
34 Nevertheless, the Council may consider these programs in the context of its own standards to
35 ensure public health and safety, resource efficiency and protection of the environment.

36
37 The Council has no jurisdiction over design or operational issues that do not relate to
38 siting, such as matters relating to employee health and safety, building code compliance, wage
39 and hour or other labor regulations, or local government fees and charges. ORS 469.401(4).

40
41 In making its decision on an amendment of a site certificate, the Council applies the
42 applicable state statutes, administrative rules and local government ordinances that are in effect
43 on the date the Council makes its decision, except when applying the Land Use standard. In
44 making findings on the Land Use standard, the Council applies the applicable substantive criteria
45 in effect on the date the certificate holder submitted the request for amendment. OAR 345-027-
46 0070(9).

A. General Standard of Review OAR 345-022-0000

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

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

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

* * *

The requirements of OAR 345-022-0000 are discussed in the sections that follow. Applicable statutes and rules of agencies other than EFSC are discussed below, in section V.A of this order. Klamath Energy has requested one change that would affect a permit issued by an agency other than the Council, specifically the Water Right issued by the Water Resources Department (WRD). Because the water right is not held by Klamath Energy but is held by Collins Wood Products, this order discusses it in section IV.B.1, which addresses permits issued to third parties. The proposed amendment does not affect any other permits issued by agencies other than the Council.

B. Standards about the Applicant

1. Organizational Expertise OAR 345-022-0010

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

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has

1 *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*
2 *operate the facility according to that program.*

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

11
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*
14 *site 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*
16 *third party has obtained the necessary permit or approval and the applicant has a*
17 *contract or other arrangement for access to the resource or service secured by that*
18 *permit or approval.*

19
20 **Discussion**

21 The standard has four sections. The first two sections deal with the site certificate
22 holder's ability to construct, operate and retire the facility in accordance with Council standards
23 and the terms of the site certificate. Klamath Energy has proposed no change to the site, the
24 facility, or its construction or operation. We address retirement below, in the discussion of the
25 Council's Retirement and Financial Assurance standard.

26
27 Sections 3 and 4 of the standard address permits for which the applicant will rely on a
28 permit or approval issued to a third party. In this case, Klamath Energy would rely on an existing
29 water right issued to Collins Wood Products. The original site certificate for the KCP required
30 the certificate holder (then the City of Klamath Falls) to use process water pursuant to a water
31 right permit held by the City of Klamath Falls. Klamath Energy seeks to amend the site
32 certificate to eliminate this requirement and to instead allow the use of water pursuant to an
33 existing water right certificate. Klamath Energy does not seek to change the source from which
34 the water is withdrawn, the point of appropriation, or the amount of water authorized for use at
35 the facility in order to satisfy the facility's service and potable water requirements.

36
37 The Oregon Water Resources Department (WRD) issued Certificate of Water Right No.
38 48602 ("Certificate 48602") to the Weyerhaeuser Company on October 5, 1979.² Certificate
39 48602 authorizes use of the waters of "Well No. 6" for the purpose of "manufacturing including
40 restroom and lunch room facilities" in an amount up to 1.34 cubic feet per second.

41
42 Weyerhaeuser's successor, Collins Products, entered into agreements with the City of
43 Klamath Falls to provide make-up water to the facility in return for steam and other
44 consideration. At the time the Council issued the Final Order and original Site Certificate in
45 August 1997, it was unclear whether use of water by the facility from Well No. 6 was authorized

² Klamath Cogeneration Project: Fourth Request to Amend Site Certificate, Exhibit B.
KLAMATH COGENERATION PROJECT
PROPOSED ORDER ON AMENDMENT #4 – February 23, 2009

1 under Certificate 48602 or whether the certificate holder was required to obtain a new and
2 separate water right. Accordingly, the Council required the City of Klamath Falls to obtain a new
3 water right permit from the WRD for operation of the facility (Water Right Permit 13234). The
4 water right permit authorized the City to use water from the same point of appropriation (Well
5 No. 6), on the same place of use, and at the same rate as was previously authorized by the WRD
6 under Certificate 48602.

7
8 In 1999, before the WRD issued a new water right certificate to the City pursuant to
9 Water Right Permit 13234, the Oregon Legislature amended Oregon's water laws by adding
10 ORS 540.520(9), making it clear that a water right transfer is not required for a general industrial
11 use that was not included in a water right certificate issued for a specific industrial use if:

- 12
13 “(a) The quantity of water used for the general industrial use is not greater than the
14 rate allowed in the original water right and not greater than the quantity of water
15 diverted to satisfy the authorized specific use under the original water right;
16
17 “(b) The location where the water is to be used for general industrial use was owned
18 by the holder of the original water right at the time the water right permit was
19 issued; and
20
21 “(c) The person who makes the change in water use provides the following
22 information to the Water Resources Department:
23
24 “(A) The name and mailing address of the person using water under the water
25 right;
26
27 “(B) The water right certificate number;
28
29 “(C) A description of the location of the industrial facility owned by the holder
30 of the original water right at the time the water right permit was issued;
31 and
32
33 “(D) A description of the general industrial use to be made of the water after the
34 change.” ORS 540.520(9)
35

36 By this action, the Oregon Legislature clarified that when a water right certificate has
37 been issued for a specific industrial use, the use of that water for general industrial purposes was
38 authorized under that water right certificate, provided the statutory conditions are met.
39

40 In response to that statutory change, on September 10, 2004, Collins Products, as the
41 owner and operator of Well No. 6, sent a letter to the WRD providing the information required
42 by ORS 540.520(9) to change the specific industrial use identified in Certificate 48602 to general
43 industrial use³. On May 25, 2006, the WRD acknowledged the notification and indicated it
44 appeared Collins Products had included all of the information required under the statute and

³ Klamath Cogeneration Project: Fourth Request to Amend Site Certificate, Exhibit C.
KLAMATH COGENERATION PROJECT
PROPOSED ORDER ON AMENDMENT #4 – February 23, 2009

1 rules⁴. By this action, the certificate holder eliminated the need for the City of Klamath Falls to
2 maintain a separate water right in lieu of its documented arrangement with Collins Products to
3 make use of water from Well No. 6 for the facility pursuant to Certificate 48602.

4
5 With this single exception, the proposed amendments would not affect any of the
6 Council's prior findings with respect to Klamath Energy's qualifications or capabilities or its
7 ability to rely on third-party permits.

8
9 **Conclusion**

10 The Department recommends that the Council find that, subject to the Department's
11 recommended revisions included in Section VII.A below, the KCP would meet the Council's
12 Organizational Expertise standard if Amendment #4 were approved.

13
14 **2. Retirement and Financial Assurance OAR 345-022-0050**

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

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

19
20 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
21 *form and amount satisfactory to the Council to restore the site to a useful, non-hazardous*
22 *condition.*

23
24 **Discussion**

25 The Department recommends that the Council find that the proposed amendment to
26 modify the financial assurance amount applicable to the KCP is consistent with the methodology
27 currently being applied by the Department in estimating the future cost of facility retirement and
28 site restoration and that the proposed amendment would not affect any of the Council's prior
29 findings with respect to Klamath Energy's ability to restore the site to a useful, non-hazardous
30 condition following permanent cessation of construction or operation of the facility and to obtain
31 a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a
32 useful, non-hazardous condition.

33
34 When the site certificate for the KCP was first issued, the Department had not yet
35 implemented the Energy Facility Retirement Cost Estimating Guide, a guide intended to bring
36 some uniformity to the task of estimating the cost of energy facility retirement and site
37 restoration for various types of energy facilities. Accordingly, KE applied its best efforts in
38 demonstrating the future cost of facility retirement and site restoration. Those efforts produced
39 an estimated cost of \$6.85 million (1997 dollars). Taking note of the fact that using the Energy
40 Facility Retirement Cost Estimating Guide would reduce the required surety amount, KE's
41 representative worked with the Department's consultant to provide information necessary for
42 estimating the cost of facility retirement and site restoration using the guide. These joint efforts
43 produced an estimated cost of facility retirement and site restoration in the amount of \$4.544
44 million (1st Quarter 2009 dollars), shown in Table 1.

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4 Klamath Cogeneration Project: Fourth Request to Amend Site Certificate, Exhibit D.
KLAMATH COGENERATION PROJECT
PROPOSED ORDER ON AMENDMENT #4 – February 23, 2009

1

Table 1: Site Restoration Cost Estimate (1st Quarter 2009 Dollars⁵)

<i>Cost Estimate Component</i>	<i>Estimated Cost</i>
<u>Preliminary Work</u>	
Cut and cap lines, remove fences and gates, drain tanks, evacuate sludge	\$54,931
<u>Site Grading</u>	
Backfill, topsoil application, seeding	\$214,403
<u>Underground Utility Removal</u>	
Remove firewater, sewer and gas lines, ductbank, vaults, tanks	\$73,220
<u>Concrete Wrecking</u>	
Slab on grade, foundations, superstructure	\$186,299
<u>Building Wrecking</u>	
Turbine generator building, control room and electrical equipment room, future warehouse and maintenance shop, water treatment building, cooling tower chemical building, fire protection pump house building, etc.	\$239,290
<u>Steel Wrecking</u>	
Superstructure and interiors	\$400,092
<u>Thermal Protection and Liners Wrecking</u>	
Pond liner and insulation	\$15,100
<u>Equipment Wrecking</u>	
Combustion turbine generators, inlet evaporative coolers, fuel heaters, HRSGs, turbine exhaust stacks, steam turbine generator, water-cooled surface condenser, feed water pumps, condensate pumps, miscellaneous pumps, air compressors, standby auxiliary boiler, gas metering station, raw water tank, demineralized water tank, condensate tank	\$323,852
<u>Mechanical Wrecking</u>	
Cooling water, gas, steam, raw water and fresh water piping	\$286,625
<u>Electrical Wrecking</u>	
Transformers, wiring, MCC, towers	\$89,724
<u>Load and Haul</u>	
Load and haul debris and scrap steel, tipping fees	\$644,004
<u>General Costs</u>	
Permits, mobilization, engineering, overhead, utility disconnects	\$552,744
Subtotal	\$3,080,284
Performance Bond	\$30,803
Gross Cost	\$3,111,087
Administration and Project Management (10%)	\$311,109
Future Developments Contingency (20%)	\$622,217
Environmental Assessment and Remediation	\$500,000
TOTAL WITH ODOE CONTINGENCIES	\$4,544,413
TOTAL ROUNDED TO NEAREST \$1,000	\$4,544,000

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6

The Department recommends that if the Council approves Amendment #4 during the 1st Quarter of 2009 the financial assurance amount applicable to the KCP shall be \$4.544 million (in 1st Quarter 2009 dollars) as set forth in Table 1.

⁵ The unit costs in mid-2004 dollars are adjusted to present value by application of the Gross Domestic Product (GDP) Implicit Price Deflator for the first quarter 2009 divided by the average of the quarterly GDP Implicit Price Deflator for the second quarter 2004 and third quarter 2004 or 124.5711/109.496.

1 **Conclusion**

2 The Department recommends that the Council find that, subject to the Department’s
3 recommended revisions included in Section VII.A below, the KCP would meet the Council’s
4 Retirement and Financial Assurance standard if Amendment #4 were approved.
5

6 **C. Standards about the Impacts of Construction and Operation**

7
8 **1. Land Use OAR 345-022-0030**

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

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

13 *(a) The applicant elects to obtain local land use approvals under ORS*
14 *469.504(1)(a) and the Council finds that the facility has received local land use*
15 *approval under the acknowledged comprehensive plan and land use regulations*
16 *of the affected local government; or*

17 *(b) The applicant elects to obtain a Council determination under ORS*
18 *469.504(1)(b) and the Council determines that:*

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

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

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

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

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

- 1 (a) *The land subject to the exception is physically developed to the extent that the*
2 *land is no longer available for uses allowed by the applicable goal;*
3 (b) *The land subject to the exception is irrevocably committed as described by the*
4 *rules of the Land Conservation and Development Commission to uses not allowed*
5 *by the applicable goal because existing adjacent uses and other relevant factors*
6 *make uses allowed by the applicable goal impracticable; or*
7 (c) *The following standards are met:*
8 (A) *Reasons justify why the state policy embodied in the applicable goal*
9 *should not apply;*
10 (B) *The significant environmental, economic, social and energy*
11 *consequences anticipated as a result of the proposed facility have been*
12 *identified and adverse impacts will be mitigated in accordance with rules*
13 *of the Council applicable to the siting of the proposed facility; and*
14 (C) *The proposed facility is compatible with other adjacent uses or will be*
15 *made compatible through measures designed to reduce adverse impacts.*

16 * * *

17
18 **Discussion**

19 Because Klamath Energy has proposed no change to the site, the facility, or its
20 construction or operation, the Department recommends that the Council find that the findings in
21 the Final Orders are sufficient to demonstrate compliance with the Land Use standard.
22

23 **Conclusion**

24 The Department recommends that the Council find that the KCP would comply with the
25 Council's Land Use standard if Amendment #4 were approved.
26

27 **2. Public Services OAR 345-022-0110**

28 (1) *Except for facilities described in sections (2) and (3), to issue a site certificate, the*
29 *Council must find that the construction and operation of the facility, taking into account*
30 *mitigation, are not likely to result in significant adverse impact to the ability of public*
31 *and private providers within the analysis area described in the project order to provide:*
32 *sewers and sewage treatment, water, storm water drainage, solid waste management,*
33 *housing, traffic safety, police and fire protection, health care and schools.*
34 * * *

35
36 **Discussion**

37 The original site certificate for the KCP required the certificate holder (then the City of
38 Klamath Falls) to use process water pursuant to a water right permit held by the City of Klamath
39 Falls. Klamath Energy seeks to amend the site certificate to eliminate this requirement and to
40 instead allow the use of water pursuant to an existing water right certificate. Klamath Energy
41 does not seek to change the source from which the water is withdrawn, the point of
42 appropriation, or the amount of water authorized for use at the facility in order to satisfy the
43 facility's service and potable water requirements. Accordingly, the proposed change would not
44 result in any change to the impacts addressed in the Final Orders.
45

1 The Department recommends that the Council find that the findings in the Final Orders
2 are sufficient to demonstrate compliance with the Public Services standard.

3
4 **Conclusion**

5 The Department recommends that the Council find that the KCP would comply with the
6 Public Services standard if Amendment #4 were approved.

7
8 **3. Waste Minimization OAR 345-022-0120**

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

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

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

18 * * *

19
20 **Discussion**

21 Because Klamath Energy has proposed no change to the site, the facility, or its
22 construction or operation, the Department recommends that the Council find that the findings in
23 the Final Orders are sufficient to demonstrate Klamath Energy's compliance with the Waste
24 Minimization standard.

25
26 **Conclusion**

27 The Department recommends that the Council find that the KCP would comply with the
28 Waste Minimization standard if Amendment #4 were approved.

29
30 **4. Structural Standard OAR 345-022-0020**

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

33 *(a) The applicant, through appropriate site-specific study, has adequately*
34 *characterized the site as to Maximum Considered Earthquake Ground Motion*
35 *identified at International Building Code (2003 edition) Section 1615 and*
36 *maximum probable ground motion, taking into account ground failure and*
37 *amplification for the site specific soil profile under the maximum credible and*
38 *maximum probable seismic events; and*

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

45 *(c) The applicant, through appropriate site-specific study, has adequately*
46 *characterized the potential geological and soils hazards of the site and its vicinity*

1 *that could, in the absence of a seismic event, adversely affect, or be aggravated*
2 *by, the construction and operation of the proposed facility; and*
3 *(d) The applicant can design, engineer and construct the facility to avoid dangers*
4 *to human safety presented by the hazards identified in subsection (c).*

5 * * *

6
7 **Discussion**

8 Because Klamath Energy has proposed no change to the site, the facility, or its
9 construction or operation, the Department recommends that the Council find that the findings in
10 the Final Orders are sufficient to demonstrate Klamath Energy's compliance with the Structural
11 standard.

12
13 **Conclusion**

14 The Department recommends that the Council find that the KCP would comply with the
15 Structural standard if Amendment #4 were approved.

16
17 **5. Soil Protection OAR 345-022-0022**

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

23
24 **Discussion**

25 Because Klamath Energy has proposed no change to the site, the facility, or its
26 construction or operation, the Department recommends that the Council find that the findings in
27 the Final Orders are sufficient to demonstrate Klamath Energy's compliance with the Soil
28 Protection standard.

29
30 **Conclusion**

31 The Department recommends that the Council find that the KCP would comply with the
32 Council's Soil Protection standard if Amendment #4 were approved.

33
34 **6. Protected Areas OAR 345-022-0040**

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

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

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

1 (c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131
2 et seq. and areas recommended for designation as wilderness areas pursuant to
3 43 U.S.C. 1782;

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

9 (e) National coordination areas, including but not limited to Government Island,
10 Ochoco and Summer Lake;

11 (f) National and state fish hatcheries, including but not limited to Eagle Creek
12 and Warm Springs;

13 (g) National recreation and scenic areas, including but not limited to Oregon
14 Dunes National Recreation Area, Hell's Canyon National Recreation Area, and
15 the Oregon Cascades Recreation Area, and Columbia River Gorge National
16 Scenic Area;

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

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

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

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

26 (l) Experimental areas established by the Rangeland Resources Program, College
27 of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw
28 Butte) site, the Starkey site and the Union site;

29 (m) Agricultural experimental stations established by the College of Agriculture,
30 Oregon State University, including but not limited to: Coastal Oregon Marine
31 Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension
32 Center, Hood River

33 Agriculture Research and Extension Center, Hermiston Columbia Basin
34 Agriculture Research Center, Pendleton Columbia Basin Agriculture Research
35 Center, Moro North Willamette Research and Extension Center, Aurora East
36 Oregon Agriculture Research Center, Union Malheur Experiment Station,
37 Ontario Eastern Oregon Agriculture Research Center, Burns Eastern Oregon
38 Agriculture Research Center, Squaw Butte Central Oregon Experiment Station,
39 Madras Central Oregon Experiment Station, Powell Butte Central Oregon
40 Experiment Station, Redmond Central Station, Corvallis

41 Coastal Oregon Marine Experiment Station, Newport Southern Oregon
42 Experiment Station, Medford Klamath Experiment Station, Klamath Falls;

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

1 (o) Bureau of Land Management areas of critical environmental concern,
2 outstanding natural areas and research natural areas;
3 (p) State wildlife areas and management areas identified in OAR chapter 635,
4 Division 8.

5 * * *

6
7 **Discussion**

8 Because Klamath Energy has proposed no change to the site, the facility, or its
9 construction or operation, the Department recommends that the Council find that the findings in
10 the Final Orders are sufficient to demonstrate Klamath Energy's compliance with the Protected
11 Areas standard.

12
13 **Conclusion**

14 The Department recommends that the Council find that the KCP would comply with the
15 Council's Protected Areas standard if Amendment #4 were approved.

16
17 **7. Scenic Resources OAR 345-022-0080**

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

24 * * *

25
26 **Discussion**

27 Because Klamath Energy has proposed no change to the site, the facility, or its
28 construction or operation, the Department recommends that the Council find that the findings in
29 the Final Orders are sufficient to demonstrate Klamath Energy's compliance with the Scenic
30 Resources standard.

31
32 **Conclusion**

33 The Department recommends that the Council find that the KCP would comply with the
34 Council's Scenic Resources standard if Amendment #4 were approved.

35
36 **8. Historic, Cultural and Archaeological Resources OAR 345-022-0090**

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

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

42 *(b) For a facility on private land, archaeological objects, as defined in ORS*
43 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

44 *(c) For a facility on public land, archaeological sites, as defined in ORS*
45 *358.905(1)(c).*

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Discussion

Because Klamath Energy has proposed no change to the site, the facility, or its construction or operation, the Department recommends that the Council find that the findings in the Final Orders are sufficient to demonstrate Klamath Energy’s compliance with the Historic, Cultural and Archaeological Resources standard.

Conclusion

The Department recommends that the Council find that the KCP would comply with the Council’s Historic, Cultural and Archaeological Resources standard if Amendment #4 were approved.

9. Recreation OAR 345-022-0100

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

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

* * *

Discussion

Because Klamath Energy has proposed no change to the site, the facility, or its construction or operation, the Department recommends that the Council find that the findings in the Final Orders are sufficient to demonstrate Klamath Energy’s compliance with the Recreation standard.

Conclusion

The Department recommends that the Council find that the KCP would comply with the Council’s Recreation standard if Amendment #4 were approved.

D. Standards to Protect Wildlife

1. Threatened and Endangered Species OAR 345-022-0070

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

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

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

13 **Discussion**

14 Because Klamath Energy has proposed no change to the site, the facility, or its
15 construction or operation, the Department recommends that the Council find that the findings in
16 the Final Orders are sufficient to demonstrate Klamath Energy's compliance with the Threatened
17 and Endangered Species standard.
18

19 **Conclusion**

20 The Department recommends that the Council find that the KCP would comply with the
21 Council's Threatened and Endangered Species standard if Amendment #4 were approved.
22

23 **2. Fish and Wildlife Habitat 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

29 **Discussion**

30 Because Klamath Energy has proposed no change to the site, the facility, or its
31 construction or operation, the Department recommends that the Council find that the findings in
32 the Final Orders are sufficient to demonstrate Klamath Energy's compliance with the Fish and
33 Wildlife Habitat standard.
34

35 **Conclusion**

36 The Department recommends that the Council find that the KCP would comply with the
37 Council's Fish and Wildlife Habitat standard if Amendment #4 were approved.
38

39 **E. Carbon Dioxide Standard for Base Load Gas Plants OAR 345-024-0550**

40 *To issue a site certificate for a base load gas plant, the Council must find that the net*
41 *carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of*
42 *carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide*
43 *emissions and net electric power output measured on a new and clean basis. For a base*
44 *load gas plant designed with power or augmentation technology as defined in OAR 345-*
45 *001-0010, the Council shall apply the standard for a non-base load power plant, as*
46 *described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the*

1 *designed operation of the power augmentation technology. The Council shall determine*
2 *whether the base load carbon dioxide emissions standard is met as follows:*

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

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

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

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

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

31 *(c) The extent to which the reduction of carbon dioxide emissions would*
32 *occur in the absence of the offsets;*

33 *(4) Before beginning construction, the certificate holder shall notify the*
34 *Department of Energy in writing of its final selection of a gas turbine vendor and*
35 *shall submit a written design information report to the Department sufficient to*
36 *verify the facility's designed new and clean heat rate and its nominal electric*
37 *generating capacity at average annual site conditions for each fuel type. In the*
38 *report, the certificate holder shall include the proposed limits on the annual*
39 *average number of hours of facility operation on distillate fuel oil, if applicable.*
40 *In the site certificate, the Council may specify other information to be included in*
41 *the report. The Department shall use the information the certificate holder*
42 *provides in the report as the basis for calculating, according to the site*
43 *certificate, the amount of carbon dioxide emissions reductions the certificate*
44 *holder must provide under OAR 345-024-0560.*
45

1 **Discussion**

2 Because Klamath Energy has proposed no change to the site, the facility, or its
3 construction or operation, the Department recommends that the Council find that the findings in
4 the Final Orders are sufficient to demonstrate Klamath Energy’s compliance with the Carbon
5 Dioxide standard.

6
7 **Conclusion**

8 The Department recommends that the Council find that the KCP would comply with
9 Carbon Dioxide standard if Amendment #4 were approved.

10
11 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS**

12
13 **A. Requirements under Council Jurisdiction**

14 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-
15 022-0000, the Council must determine that a facility complies with “all other Oregon statutes
16 and administrative rules identified in the project order, as amended, as applicable to the issuance
17 of a site certificate for the proposed facility.” In the Final Orders, the Council found that the
18 other applicable Oregon statutes and administrative rules were the Department of Environmental
19 Quality noise control regulations, the regulations adopted by the Department of State Lands for
20 removal or fill of material affecting waters of the state and the Council’s statutory authority to
21 consider protection of public health and safety.

22
23 **1. Noise Control Regulations for Industry and Commerce OAR 340-035-0035**

24 *(1) Standards and Regulations:*

25 * * *

26 *(b) New Noise Sources:*

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

37 * * *

38
39 **Discussion**

40 DEQ noise regulations for industrial and commercial noise sources apply to the KCP.
41 Because Klamath Energy has proposed no change to the site, the facility, or its construction or
42 operation, the Department recommends that the Council find that the findings in the Final Orders
43 demonstrate Klamath Energy’s compliance with the DEQ noise standards applicable to the
44 facility.

1 **Conclusion**

2 The Department recommends that the Council find that the KCP would comply with the
3 applicable noise control regulations if Amendment #4 were approved.
4

5 **2. Removal-Fill Law**

6 The Oregon Removal-Fill Law (ORS 196.800 through 990) and DLS regulations (OAR
7 141-085-0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of
8 material is removed, filled or altered within any “waters of the state” at the proposed site.
9

10 **Discussion**

11 Because Klamath Energy has proposed no change to the site, the facility, or its
12 construction or operation, the Department recommends that the Council find that the findings in
13 the Final Orders are sufficient to demonstrate Klamath Energy’s compliance with DSL
14 removal/fill permit requirements.
15

16 **Conclusion**

17 The Department recommends that the Council find that the KCP would comply with the
18 applicable DSL removal/fill permit requirements if Amendment #4 were approved.
19

20 **3. Public Health and Safety**

21 Under ORS 469.310, the Council is charged with ensuring that the “siting, construction
22 and operation of energy facilities shall be accomplished in a manner consistent with protection of
23 the public health and safety...” State law further provides that “the site certificate shall contain
24 conditions for the protection of the public health and safety....” ORS 469.401(2).
25

26 **Discussion**

27 Because Klamath Energy has proposed no change to the site, the facility, or its
28 construction or operation, the Department recommends that the Council find that the findings in
29 the Final Orders are sufficient to demonstrate Klamath Energy’s compliance with the Public
30 Health and Safety standard.
31

32 **Conclusion**

33 The Department recommends that the Council find that the KCP would comply with the
34 Public Health and Safety standard if Amendment #4 were approved.
35

36 **B. Requirements That Are Not Under Council Jurisdiction**

37 **1. Federally-Delegated Programs**

38 Under ORS 469.503(3), the Council does not have jurisdiction for determining
39 compliance with statutes and rules for which the federal government has delegated the decision
40 on compliance to a state agency other than the Council. Nevertheless, the Council may rely on
41 the determinations of compliance and the conditions in the federally-delegated permits issued by
42 these state agencies in deciding whether the proposed facility meets other standards and
43 requirements under its jurisdiction.
44
45

1 In the Final Order on the Application, the Council found that the certificate holder must
2 obtain a federal Air Contaminant Discharge Permit (ACDP) from the Oregon Department of
3 Environmental Quality (DEQ) before beginning construction of the proposed facility. The
4 certificate holder was also required to comply with the requirements of DEQ's National Pollutant
5 Discharge Elimination System (NPDES) permit program; DEQ's program regulating the design,
6 operation, monitoring and removal of underground storage tanks that contain certain toxic and
7 hazardous materials, including petroleum, under ORS Chapter 466 and OAR Chapter 346,
8 Division 150; and DEQ's program relating to the generation, treatment, storage and disposal of
9 hazardous wastes, under ORS Chapter 466 and OAR Chapter 340, Divisions 100 through 113.

10
11 **2. Requirements That Do Not Relate to Siting**

12 Under ORS 469.401(4), the Council does not have authority to preempt the jurisdiction
13 of any state agency or local government over matters that are not included in and governed by
14 the site certificate or amended site certificate. Such matters include design-specific construction
15 or operating standards and practices that do not relate to siting. Nevertheless, the Council may
16 rely on the determinations of compliance and the conditions in the permits issued by these state
17 agencies and local governments in deciding whether the facility meets other standards and
18 requirements under its jurisdiction.

19
20 **VI. GENERAL APPLICATION OF CONDITIONS**

21 The conditions described in this order include conditions that are specifically required by
22 OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site
23 Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,
24 Division 26 (Construction and Operation Rules for Facilities). The conditions described in this
25 order, or added to the site certificate by this order, include conditions based on representations in
26 the request for amendment and the supporting record. The Council deems these representations
27 to be binding commitments made by the certificate holder. Also included are conditions Council
28 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions
29 22 and 24, or to protect public health and safety.

30
31 In addition to all other conditions described or included in this order, the site certificate
32 holder is subject to all conditions and requirements contained in the rules of the Council and in
33 local ordinances and state law in effect on the date the amended site certificate is executed.
34 Under ORS 469.401(2), upon a clear showing of a significant threat to the public health, safety
35 or the environment that requires application of later-adopted laws or rules, the Council may
36 require compliance with such later-adopted laws or rules.

37
38 The Council recognizes that many specific tasks related to the design, construction,
39 operation and retirement of the facility will be undertaken by the certificate holder's agents or
40 contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents and
41 contractors comply with all provisions of the site certificate.

42
43 **VII. GENERAL CONCLUSION**

44 The proposed amendment would modify the financial assurance amount applicable to the
45 KCP and eliminate the requirement that the facility use water pursuant to a water right permit
46 held by the City of Klamath Falls and, instead, would allow the use of water pursuant to an

1 existing water right certificate. The Department recommends that the Council adopt revisions to
2 Conditions III.A.(12)(vii), IV.D.3, IV.O.1 and IV.S, all as set forth below.

3
4 Based on the findings and conclusions included in this order, the Department
5 recommends that the Council make the following findings:

- 6
7 1. The proposed Amendment #4 complies with the requirements of the Oregon
8 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to
9 469.619.
- 10 2. The proposed Amendment #4 complies with the applicable standards adopted by
11 the Council pursuant to ORS 469.501.
- 12 3. The proposed Amendment #4 complies with all other Oregon statutes and
13 administrative rules applicable to the amendment of the site certificate for the
14 KCP that are within the Council's jurisdiction.

15
16 Accordingly, the Department recommends that the Council find that the facility complies
17 with the General Standard of Review (OAR 345-022-0000). The Department recommends that
18 the Council find, based on a preponderance of the evidence on the record, that the site certificate
19 may be amended as requested by the certificate holder subject to the revisions recommended by
20 the Department and set forth below.

21 22 **A. The Department's Recommended Revisions**

23
24 New text recommended by the Department is shown below in double-underlined bold
25 typeface and recommended deletions have a strikethrough. All changes recommended by the
26 Department are identical to the changes requested by the applicant with the exception of the base
27 period of the financial assurance amount and the face amount of the required letter of credit. In
28 recommending changes to Conditions III.A.(12)(vii), IV.D.(3), IV.D.(4) and IV.D.(5), the
29 Department changed the base period of the financial assurance amount from 2007 dollars to 1st
30 Quarter 2009 dollars and the face amount of the required letter of credit from \$4.385 million
31 (2007 dollars) to \$4.544 million (1st Quarter 2009 dollars), consistent with intervening changes
32 in the applicable index.

33 34 ***III.A. Mandatory Conditions in Site Certificates OAR 345-27-020***

35
36 (12) *The transfer of the site certificate from the City to Klamath Energy shall not occur*
37 *until Klamath Energy delivers to EFSC evidence that:*

38 ***

39 (vii) *Klamath Energy or PPM delivers to the Council a letter of credit in the*
40 *amount of \$8.6 million that replaces the Termination Fund maintained by*
41 *the certificate holder to satisfy Conditions IV.D.3, IV.D.4 and IV.D.5.*
42 *[Amendment 3] The amount of the letter of credit shall be reduced to*
43 *\$4.544 million (1st Quarter 2009 dollars) upon the Council's approval*
44 *of Amendment 4. [Amendment 4]*

45 46 ***IV.D. Financial Assurance***

1
2 For conditions 3, 4 and 5 in section IV.D. of this Amended Site Certificate, the index by
3 which the future value of money shall be converted to 1st Quarter 2009~~1996 or 1997~~
4 dollars shall be the Implicit Price Deflator for the Gross Domestic Product as published
5 by the U.S. Bureau of Economic Analysis of the Department of Commerce or a successor
6 agency. These values are published annually each February in the "Economic Report of
7 the President".

8 ***

- 9 3. ~~Klamath Energy or PPM~~ shall maintain a separate fund established to
10 provide for termination or decommissioning costs (the Decommissioning
11 Fund), with such fund allowed to consist of a balance of cash, Investment
12 Securities, and other holdings to be available to pay costs of termination
13 or decommissioning, including Site restoration, of the project. ~~For the two~~
14 ~~CT Energy Facility, The Decommissioning~~ Termination Fund Amount
15 shall be ~~\$4.5446~~.85 million in 1st Quarter 2009~~1997~~ dollars. ~~Amounts in~~
16 ~~the two funds may vary, but their combined value shall be \$6.85 million in~~
17 ~~1997 dollars.~~ [Amendment 4]

18 IV.O. Socio-Economic Impacts

- 19 1. The KCP shall use water from the City's municipal water supply system to
20 meet its service and potable water requirements, and may use water from
21 Collins Product's Well No. 6 to meet make-up water needs. (ASC, pages
22 B-4 and U-4; Fig F-1; Fig B-1.) [Amendment 4]

23 IV.S. Water Rights

24 ~~The conditions in section IV.S. relate to a new water permit which the City shall obtain~~
25 ~~from the Oregon Water Resources Department (Department) for operation of the Energy~~
26 ~~Facility. Pursuant to agreement with Collins Products as the holder of Certificate of~~
27 ~~Water Right No. 48602, the KCP may use water for general industrial use as~~
28 ~~authorized by Certificate of Water Right No. 48602 and ORS 540.520(9).~~ [Amendment
29 4]

- 30 1. ~~The holder of the permit shall be the City of Klamath Falls.~~
31 2. ~~The source of the water shall be a well in the Klamath River basin.~~
32 3. ~~The purpose or use of the water shall be for municipal use.~~
33 4. ~~The maximum rate of use shall not exceed 1.34 cubic feet per second taken~~
34 ~~together with Collins certificate 48602.~~
35 5. ~~The period of use shall be year round.~~
36 6. ~~The date of priority for the permit is October 28, 1996.~~
37 7. ~~The point of diversion location is the NW 1/4 of the NE 1/4 of section 24 in~~
38 ~~Township 39S, Range 8E, W. M.; 700 feet south and 1970 feet west from~~
39 ~~the NE corner of section 24.~~
40 8. ~~The place of use is located as follows:~~

~~NE 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4; NE 1/4 SE 1/4; NW 1/4 SE 1/4; SW 1/4 SE 1/4; SE 1/4 SE 1/4; SECTION 13 and NE 1/4 NE 1/4; NW 1/4 NE 1/4; NE 1/4 NW 1/4; SECTION 24; TOWNSHIP 39 SOUTH, RANGE 8 EAST, W.M.
NE 1/4 SW 1/4; NW 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4; SECTION 18; TOWNSHIP 39 SOUTH, RANGE 9 EAST, W.M.~~

- ~~9. The amount of water used under this right, together with the amount secured under any other right existing for the same lands is limited to a total diversion of 52.22 cubic feet per second or a lesser amount if delineated in the City's Water Management and Conservation Plan.~~
- ~~10. Measurement, recording and reporting conditions:~~
- ~~a. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Water Resources Department Director (Director), to measure the amount of water used under this permit. The permittee shall maintain the meter or measuring device in good working order; shall keep a complete record of the amount of water used under this permit each month and shall submit a report which includes the recorded water use measurements to the Water Resources Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.~~
- ~~b. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.~~
- ~~11. Use of water under authority of this permit may be regulated by the Water Resources Department if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.~~
- ~~12. The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Water Resources Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water level declines will be compared. The water user shall in no instance allow excessive decline, as defined in the Oregon Water Resources Commission rules, to occur within the aquifer as a result of use under this permit.~~

- 1 ~~13. If at any time the well or its use acts as a conduit for groundwater~~
2 ~~contamination or allows loss of artesian pressure, the Water Resources~~
3 ~~Department may require that the land owner repair the well in~~
4 ~~accordance with the current well construction standards.~~
5 ~~14. Prior to receiving a certificate of water right, the permit holder shall~~
6 ~~submit the results of a pump test, performed within the last ten years,~~
7 ~~meeting the Water Resources Department's standards, to the Water~~
8 ~~Resources Department. The Director may require water level or pump~~
9 ~~test results every ten years thereafter.~~
10 ~~15. Failure to comply with any of the provisions of this permit may result in~~
11 ~~action including, but not limited to, restrictions on the use, civil penalties,~~
12 ~~or cancellation of the permit.~~
13 ~~16. This permit is for the beneficial use of water without waste. The water~~
14 ~~user is advised that new regulations may require the use of best practical~~
15 ~~technologies or conservation practices to achieve this end.~~
16 ~~17. By law, the land use associated with this water use must be in compliance~~
17 ~~with statewide land use goals and any local acknowledged land use plan~~
18 ~~in effect on the date this Amended Site Certificate is executed.~~
19 ~~18. The use of water shall be limited when it interferes with any prior surface~~
20 ~~or ground water rights.~~
21 ~~19. Actual construction of the well shall begin within one year from date the~~
22 ~~Water Resources Department issues the permit. Unless the Water~~
23 ~~Resources Department grants an extension, construction of the means of~~
24 ~~conveyance to the Energy Facility Site shall be completed within five~~
25 ~~years of the date the Water Resources Department issues the permit.~~
26 ~~Unless the Water Resources Department grants an extension, complete~~
27 ~~application of the water to the use shall be made within five years of the~~
28 ~~date the Water Resources Department issues the permit.~~
29

30 **VIII. ORDER**

31 The Department recommends that the Council approve Amendment #4 and issue an
32 amended site certificate for the Klamath Cogeneration Project subject to the terms and conditions
33 set forth above.

34
35 Issued this 23rd day of February, 2009.

36
37 OREGON DEPARTMENT OF ENERGY

38
39
40 By: _____
41 Thomas M. Stoops
42 Siting Manager, Oregon Department of Energy
43
44

45 **Notice of the Right to Appeal**
46 **[Text to be added to Final Order]**