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

In the Matter of the Third Amended) FINAL ORDER on
Site Certificate for the) TRANSFER of SITE CERTIFICATE
Klamath Cogeneration Project)

6 **Summary**

7 The Energy Facility Siting Council (“Council”) approves the request for a transfer of
8 the Site Certificate for the Klamath Cogeneration Project.

9
10 **A. Summary and Background of the Request for Transfer of the Site Certificate**

11 Pursuant to Oregon Revised Statutes Chapter 469 and OAR 345-027-0100, the Oregon
12 Department of Energy (“ODOE” or “Department”) originally received on August 20, 2007 a
13 request for transfer of the site certificate for the Klamath Cogeneration Project (“KCP” or
14 “Facility”). The request was made jointly by the City of Klamath Falls (“City”) and Klamath
15 Energy LLC (“Klamath Energy”). The City is the original owner and holder of the site
16 certificate. Klamath Energy is a subsidiary of PPM Energy, Inc. (“PPM”), which has
17 managed and operated the facility under contractual agreements with the City since it began
18 operating in 2001. The applicants request a transfer of the site certificate from the City to
19 Klamath Energy. Klamath Energy would also assume ownership of the Facility.

20
21 The KCP is a nominal 500 megawatt (MW) natural gas-fired electric cogeneration
22 plant. The site is located approximately 4.5 miles northwest of the City, on land adjacent to
23 the Collins Wood Products plant. In addition to electric generation, the Facility provides
24 process steam to the Collins Wood Products plant for cogeneration.

25
26 **A.1. Name and Address of Transferee**

27 Klamath Energy LLC
28 c/o PPM Energy Inc.
29 1125 NW Couch, Ste. 700
30 Portland, OR 97209

31
32 **A.2. Regulatory Background**

33
34 The Council originally issued the site certificate on August 15, 1997. The site
35 certificate was amended for the first time in April 1998, and a second time in December 1998.
36 This transfer would be amendment No. 3 to the site certificate.

37
38 Other than the transfer from the City to Klamath Energy, applicants propose no other
39 changes to the facility or its operations, and request no other amendments to the site
40 certificate.

1 **B. Procedural History**

2 **B.1. Transferees' Request**

3 The Department originally received the request for transfer of the KCP Site Certificate
4 on August 20, 2007.

5
6 **B.2. Notice**

7 Because the City and Klamath Energy requested no changes to the site certificate
8 other than the transfer, the Department conducted the review under Council rules at OAR
9 345-027-0100(1) through (10).

10
11 On August 21, 2007, the Department mailed the notice described at OAR 345-027-
12 0100(6) to the reviewing agencies, the Council's general mailing list, and the list of property
13 owners and other persons on the mailing list maintained for the KCP. The Department
14 described the transfer request and requested written comments by September 14, 2007. The
15 notice stated that the transfer request was posted on the Department's web site. The
16 Department deferred scheduling of the informational hearing described at OAR 345-027-
17 0100(7) until discussion with the applicants.

18
19 On August 28, 2007, the City and Klamath Energy provided a revised version of the
20 transfer request, providing additional information at the Department's request. The August
21 28, 2007 revision is the basis for the Council's review and for this order.

22
23 **B.3. Informational Hearing**

24 After further review and discussion with the applicants, the Department scheduled the
25 informational hearing described at OAR 345-027-0100(7). The hearing was scheduled as part
26 of the Council's regular meeting on September 21, 2007, located in Klamath Falls.

27
28 On September 7, 2007, the Department mailed notice of the information hearing to the
29 reviewing agencies, Council's general mailing list, adjacent property owners and persons on
30 the special list established for the KCP. The notice was mailed in the agenda package for the
31 Council's regular meeting. The notice stated that at the conclusion of the information
32 hearing, the Council may issue its order approving, denying, or conditionally approving the
33 transfer.

34
35 **B.4. Public Comments**

36 The close of the period for written public comment was September 14, 2007. One
37 local resident, Joyce Barrett, commented that the transfer was acceptable to her. The
38 Department received no comments in opposition.

39
40 **B.5. Draft Final Order**

41 The Department issued a Draft Final Order on September 14, 2007, and mailed it to
42 the Council on the same day.

43
44 **B.6. Council Decision Meeting**

45 The Council held a meeting in Klamath Falls on September 21, 2007. That meeting
46 served as the informational hearing and as the Council's decision meeting. Pursuant to OAR
47 345-027-0100(7), the information hearing was not a contested case hearing. The Department
48 presented information about the Draft Final Order. The City and Klamath Energy testified in

1 favor of the transfer and offered to answer any Council questions. The deadline for written
2 comments was past, but the public was invited to comment in person at the information
3 hearing.

4
5 **C. General Findings of Fact Related to the Request for Transfer**

6 **C.1. Description of the Proposed Transfer**

7 The City holds the site certificate and is responsible for compliance with its
8 conditions. Under a contractual agreement with the City, PPM and its wholly owned
9 subsidiary Pacific Klamath Energy (“PKE”) constructed the facility and have managed and
10 operated it since it began operating in 2001. The transfer would place sole responsibility on
11 Klamath Energy for ensuring that the KCP meets Site Certificate requirements. Under 345-
12 027-0100(4), the request for transfer includes a written statement by Klamath Energy,
13 certifying that it agrees to abide by all terms and conditions of the site certificate.
14

15 The transfer request includes a memorandum of understanding (“MOU”) between the
16 City and PPM, stating the agreement to take certain actions. These actions include good faith
17 negotiations of an Asset Purchase Agreement and an agreement for the City to continue
18 providing cooling water to the KCP. Because the KCP was financed with revenue bonds
19 issued by the City, the MOU includes an agreement to negotiate and execute a Bond
20 Redemption and Defeasance Agreement. The MOU lists conditions precedent including an
21 appraisal of transaction, unqualified opinion of bond council, judicial validation, and
22 regulatory approvals that include but are not limited to EFSC, the Federal Energy Regulatory
23 Commission, and necessary credit support and letters of credit.
24

25 **C.2. Anticipated Date of Transfer of Ownership**

26 The City wishes to transfer ownership of KCP to Klamath Energy as soon as possible.
27 The City and Klamath Energy cannot close the transaction prior to Council approval of the
28 site certificate transfer. The City and Klamath Energy must also receive other regulatory
29 approvals prior to any transfer.
30

31 **C.3. Request for Council Approval**

32 The Council’s rules concerning Site Certificate transfers state:

33
34 “A transfer of ownership requires a transfer of the Site Certificate when the person
35 who will have the legal right to possession and control of the site or the facility does
36 not have the authority under the Site Certificate to construct, operate, or retire the
37 facility.” OAR 345-027-0100(1)(a).”
38

39 The City is the current holder of the Site Certificate and is responsible for all
40 obligations under the site certificate. The City and Klamath Energy request a transfer of the
41 site certificate that will recognize Klamath Energy as solely liable to the State of Oregon for
42 performance of the responsibilities under the Site Certificate. The requested approval to
43 transfer ownership interests in KCP will remove the City from the Site Certificate.
44

45 Such approval requires the Council to amend the Site Certificate to replace all
46 references to the term “site certificate holder” defined as the “City of Klamath Falls” with

1 “Klamath Energy.” Such approval also requires the Council to amend the Site Certificate to
2 award Klamath Energy the sole authority to operate and retire the facility.

3
4 **C.4. Requested Amendments to Site Certificate**

5 The only amendments to the Site Certificate requested are those necessary to replace
6 references to the City with references to Klamath Energy. No changes in operations or
7 retirement are proposed, and no changes to the site certificate terms or conditions are
8 requested.

9
10 **C.5. Applicable Regulations**

11 OAR 345-027-0100(8) states that the Council may approve a transfer if it finds that:

12
13 (a) The transferee complies with the standards described in OAR
14 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1);
15 and

16
17 (b) The transferee is lawfully entitled to possession or control of the site or the
18 facility described in the Site Certificate;

19
20 These standards are addressed below in Section D: “Compliance with Applicable
21 Regulations.”

22
23 **D. Compliance with Applicable Regulations (OAR 345-027-0100(8))**

24 **D.1. Compliance with OAR 345-027-0100(8)(a)**

25 **D.1.1. Organizational Expertise (OAR 345-022-0010)**

26 The organizational expertise standard has four sections. Subsections (1) and (2) relate
27 to applicant qualifications and capability. Subsections (3) and (4) relate to third-party
28 services and permits.

29
30 **a. Applicant Qualification and Capability (OAR 345-022-0010(1) and (2))**

31 Section (1) of this standard provides that:

32
33 To issue a Site Certificate, the Council must find that the applicant has the
34 organizational expertise to construct, operate and retire the proposed
35 facility in compliance with Council standards and conditions of the Site
36 Certificate. To conclude that the applicant has this expertise, the Council
37 must find that the applicant has demonstrated the ability to design,
38 construct and operate the proposed facility in compliance with Site
39 Certificate conditions and in a manner that protects public health and
40 safety and has demonstrated the ability to restore the site to a useful, non-
41 hazardous condition. The Council may consider the applicant’s
42 experience, the applicant’s access to technical expertise and the
43 applicants’ past performance in constructing, operating and retiring other
44 facilities, including, but not limited to, the number and severity of
45 regulatory citations issued to the applicant.
46

1 **Discussion:** The transferee, Klamath Energy LLC, is a wholly owned subsidiary of
2 PPM Energy, Inc (PPM). As parent company, PPM will provide the organizational,
3 managerial and technical expertise to enable Klamath Energy to operate KCP following
4 KCP's purchase from the City.

5 PPM, through its direct subsidiaries, developed and owns or manages three natural
6 gas-fired generation facilities, including KCP and the Klamath Generation Peakers in Oregon
7 and the West Valley Generation Project in Utah. PPM also owns or operates wind farms in
8 Oregon, including the Klondike facility and the Leaning Juniper wind project.

9
10 The KCP was constructed beginning in 1999 and began commercial operation in
11 2001. PKE, a subsidiary of PPM, has managed and operated the KCP under contract to the
12 City since the facility began operating in 2001. As required by the site certificate and OAR
13 345-026-0080, KCP reports annually to the Council on plant operations, plant reliability, and
14 compliance with the site certificate. Klamath Energy reports that plant reliability has
15 exceeded 98% over its first five years of operation. Klamath Energy does not anticipate any
16 changes in plant operations. In response to OAR 345-021-0010(1)(d)(B), which requires
17 information about personnel responsible for operating the facility, Klamath Energy has
18 identified the same individuals who are currently performing those functions for PKE.

19
20 **Conclusion:** The Council finds that the transfer of the site certificate from the City to
21 Klamath Energy satisfies the requirements of OAR 345-022-0010(1).

22
23 Section (2) of this standard provides that:

24
25 The Council may base its findings under section (1) on a rebuttable
26 presumption that an applicant has organizational, managerial and
27 technical expertise, if the applicant has an ISO 9000 or ISO 14000
28 certified program and proposes to design, construct and operate the
29 facility according to that program.

30
31 **Discussion:** This subsection does not impose a requirement; rather, it provides a
32 rebuttable presumption of the managerial and technical expertise upon which an applicant
33 may rely. Klamath Energy is not asking to rely on this subsection.

34
35 **Conclusion:** The Council finds that OAR 345-022-0010(2) does not apply to this
36 transfer.

37
38 **b. Third-Party Services and Permits (OAR 345-022-0010(3) and (4)).**

39 Section (3) of this standard requires that:

40
41 If the applicant does not itself obtain a state or local government permit or
42 approval for which the Council would ordinarily determine compliance but
43 instead relies on a permit or approval issued to a third party, the Council, to
44 issue a Site Certificate, must find that the third party has, or has a reasonable
45 likelihood of obtaining, the necessary permit or approval, and that the
46 applicant has, or has a reasonable likelihood of entering into, a contractual or

1 other arrangement with the third party for access to the resource or service
2 secured by that permit or approval.

3
4 Additionally, the final section (4) of the standard provides:

5
6 If the applicant relies on a permit or approval issued to a third party and the
7 third party does not have the necessary permit or approval at the time the
8 Council issues the Site Certificate, the Council may issue the Site Certificate
9 subject to the condition that the certificate holder may not commence
10 construction or operation as appropriate until the third party has obtained the
11 necessary permit or approval and the applicant has a contract or other
12 arrangement for access to the resource or service secured by that permit or
13 approval.

14
15 **Discussion:** The Final Order and Site Certificate do not identify any third party
16 permits needed to construction or operation of the KCP. However, KCP relies on the City to
17 provide certain services and permits which the City previously provided for itself as plant
18 owner.

19
20 *Cooling Water:* The site certificate states that the energy facility will reuse treated
21 effluent from the City's Spring Street Wastewater Treatment Plant (SSWTP). The energy
22 facility will also obtain water from the City's existing municipal water supply system, and
23 from Collins to make steam for Collins.

24
25 The request for transfer includes a Memorandum of Understanding (MOU) between
26 the City and PPM, signed by both parties on July 17, 2007. The MOU includes an agreement
27 to negotiate, execute and deliver a Cooling Water agreement. Therefore, the MOU
28 demonstrates reasonable likelihood that the City and PPM will enter into the necessary
29 contractual arrangement for access to cooling water under permits held by the City.

30
31 The site certificate includes conditions at section IV.S, related to a new water permit
32 which the City obtained from Water Resources Department for operation of the energy
33 facility. Condition IV.S.1 states that the holder of the permit is the City. Klamath Energy has
34 stated¹ that this water right will remain with the City, but that the water supply needed for
35 plant operations would be part of a Cooling Water agreement between the City and Klamath
36 Energy.

37
38 *Wastewater Discharge:* The site certificate includes three conditions on wastewater
39 discharge. Condition IV.J.1 requires KCP to manage the cooling tower system so as to
40 comply with the limits on total dissolved solids in KCP's industrial discharge permit.
41 Condition IV.J.6 requires KCP to manage discharge of industrial wastewater so as to comply
42 with provisions in the Reclaimed Water Use Plan for KCP as required under the City's
43 SSWTP NPDES permit. Condition IV.K.1 places limits on the net consumption of effluent
44 from the SSWTP.

¹ Personal communication from Mike Roberts, Klamath Energy to Adam Bless, ODOE, Sept. 10, 2007

1
2 These conditions continue to apply. After the transfer, the City will become a “third
3 party” with respect to KCP, and the permits held by the City will become third party permits.
4 The MOU states that the City and PPM will negotiate, execute and deliver a Cooling Water
5 agreement, which would include water from the SSWTP.
6

7 On September 12, 2007, the City and Klamath Energy issued a letter addressed to
8 Adam Bless of ODOE, formalizing the agreement for the City to continue provide water to
9 KCP in the same manner as described in the site certificate.² The letter also formalizes the
10 agreement for the City to provide wastewater discharge services through the SSWTP.
11 Moreover, PPM has stated that it plans no changes in the way KCP is operated. Therefore,
12 the City has the necessary third party permits, and there is an agreement for the City to
13 continue providing service. However, the Council will adopt a condition, making execution
14 of the agreement for continued access to the City’s NPDES permit and municipal water
15 rights, under terms consistent with the current site certificate, a precondition of the site
16 certificate transfer.
17

18 **Conclusion:** The Council will adopt conditions to require execution of agreements
19 between the City and PPM for continued access to water under the City’s municipal water
20 right and continued access to effluent and discharge service to the SSWTP, consistent with
21 the City’s NPDES permit and the terms of the site certificate, prior to the site certificate
22 transfer. The Council finds that the transfer of the site certificate from the City to Klamath
23 Energy, as so conditioned, satisfies the requirements of OAR 345-022-0010(3) and (4).
24

25 **D.1.2. Retirement and Financial Assurance (OAR 345-022-0050)**

26 The retirement and financial assurance standard provides:
27

- 28 (1) To issue a Site Certificate, the Council must find that: The site, taking
29 into account mitigation, can be restored adequately to a useful, non-
30 hazardous condition following permanent cessation of construction or
31 operation of the facility.
32 (2) The applicant has a reasonable likelihood of obtaining a bond or letter
33 of credit in a form and amount satisfactory to the Council to restore
34 the site to a useful, non-hazardous condition.
35

36 Further, Council rule OAR 345-027-0020 requires the following mandatory
37 conditions:
38

39 The Council shall impose the following conditions in every Site
40 Certificate. The Council may impose additional conditions.
41

41 ***

- 42 (8) Before beginning construction of the facility, the certificate holder
43 shall submit to the State of Oregon, through the Council, a bond or letter
44 of credit, satisfactory to the Council, in an amount specified in the Site

² Letter from Jeff Ball and Peter Van Alderwerelt to Adam Bless, ODOE, Sept. 12, 2007

1 Certificate to restore the site to a useful, non-hazardous condition. The
2 certificate holder shall maintain a bond or letter of credit in effect at all
3 times until the facility has been retired. The Council may specify different
4 amounts for the bond or letter of credit during construction and during
5 operation of the facility.
6

7 **Discussion:** Conditions IV.D.3 and IV.D.4 of the current site certificate direct the
8 City to maintain a Termination fund of \$6.85 million in 1997 dollars. The fund is indexed
9 according to the Implicit Price Deflator for the Gross Domestic Product as published by the
10 U.S. Department of Commerce's Bureau of Economic Analysis. In 2007, the amount of the
11 fund is \$8.6 million.
12

13 Condition IV.D.5 of the site certificate states that in lieu of funding part or all of the
14 Termination Fund with cash or investment securities, the City may cause a performance and
15 payment bond, surety bond or letter of credit to be delivered to the Council. In its request for
16 transfer, Klamath Energy states that it will submit to the Council a bond or letter of credit in
17 the amount of \$8.6 million. The bond or letter of credit will be inflation adjusted annually,
18 according to the index named in the site certificate.
19

20 Klamath Energy submitted a letter dated August 27, 2007 from Royal Bank of
21 Scotland, stating that PPM has sufficient available letter of credit capacity to support this
22 request under its existing uncommitted financing arrangement with the Bank. The letter
23 states that there is reasonable likelihood that the Bank would provide an annual letter of
24 credit. The Council will add a condition requiring submittal of the bond or letter of credit, in
25 a form acceptable to the Council, promptly upon execution of the transfer.
26

27 **Conclusion:** Subject to the above condition, the Council finds that the transfer of the
28 site certificate from the City to Klamath Energy satisfies the requirements of OAR 345-022-
29 0050.
30

31 **D.1.3. CO₂ Emissions Standard (OAR 345-024-0710(1))**

32 The relevant portion of the cited standard provides,
33

34 If the applicant elects to meet the applicable carbon dioxide emissions
35 standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-
36 0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide
37 a bond or letter of credit in a form reasonably acceptable to the Council to
38 ensure the payment of the offset funds and the additional funds required
39 under section (4).***
40

41 **Discussion:** The site certificate for KCP was issued in 1997. Statutes related to
42 carbon dioxide at ORS 469.503 had not been enacted at the time. Therefore, CO₂ emissions
43 standards at OAR 345-024-0710(1) do not apply to this transfer request.
44

45 However, the transferee is required to comply with all terms and conditions of the site
46 certificate. Any change in terms and conditions requires a site certificate amendment, which

1 would be reviewed in accordance with rules and procedures at OAR 354-027-0050 through
2 0070. No such amendment is requested in this case.

3
4 Conditions related to emissions of carbon dioxide and other pollutants are in section
5 IV.B of the site certificate. These conditions resulted from a contested case held in 1997. At
6 that time, electric generating plants in Oregon were subject to the Council's Need for Power
7 standard, OAR 345 Division 23. In 1995, the Oregon legislature directed the Council to
8 award a single 500 mW exemption from that standard. Three applicants sought the
9 exemption. Pursuant to implementing rules, the Council held a contested case to determine
10 which facility would receive the exemption, applying criteria related to the relative
11 environmental impact of the proposed projects, in particular emissions of CO₂ and other air
12 pollutants. The KCP won the contested case, based on a set of programs to reduce or offset
13 air emissions in general and CO₂ emissions in particular.

14
15 The commitments made by KCP in the application were adopted in that contested case
16 as the basis for conditions IV.B.1 through IV.B.25 of the site certificate. Part of KCP's
17 proposal to offset its CO₂ emissions was the sale of process steam to the adjacent
18 Weyerhaeuser wood products plant. (Weyerhaeuser later sold the wood products plant to
19 Collins.) KCP proposed to sell steam at an average rate of 200,000 lb./hour, which would
20 reduce emissions by displacing fuel that would otherwise be burned in boilers at the Collins
21 plant.

22
23 Condition IV.B.1 of the site certificate states that:

24
25 "1. KCP shall make available from the Energy Facility to off-site industrial use the
26 steam energy equivalent of at least 200,000 pounds of steam per hour at 375 psig and
27 455 F (which is equal to 242.8 MMBtu/hr) on an annual average basis. The amount,
28 temperature and pressure of steam supplied shall be measured at the point of
29 interconnection of the Energy Facility with its off-site industrial use. KCP shall report
30 this information to the Council on an annual basis. KCP shall calculate the steam energy
31 equivalent of the steam it makes available to off-site industrial use using accepted values
32 for the energy content of the steam, such as those found in steam tables published by the
33 American Society of Mechanical Engineers.

34
35 KCP's off-site industrial use shall be at least the steam energy equivalent of 200,000
36 pounds of steam per hour at 375 psig and 455 F on a five year basis, measured in
37 discrete, successive five-year periods. "Use" of the steam means that the steam is used to
38 displace another source of carbon dioxide emissions from fossil fuels that would have
39 otherwise occurred or continued to occur. At the end of each five year period following
40 commercial operation, KCP shall determine and report to the Council the hourly average
41 steam volume, pressure and temperature delivered to off-site industrial use for the
42 applicable five year period. Should the hourly average steam used by KCP's off-site
43 industrial use be less than the steam energy equivalent of 200,000 pounds per hour at 375
44 psig and 455 F, KCP shall develop, present to the Council for approval, and implement a
45 plan to make available and sell to another steam use the steam energy equivalent not used
46 by KCP's existing off-site industrial use at the same or similar cost incentive as provided

1 to KCP's existing off-site industrial use. If within twelve months after Council approval,
2 KCP has not contracted to make available and sell to another steam user the steam energy
3 equivalent not used by KCP's existing off-site industrial use, then KCP shall develop,
4 present to the Council for approval, and implement a program to offset an amount of CO₂,
5 NO_x or PM-10, or any combination thereof, equivalent to the monetized incremental
6 emissions resulting from the existing off-site industrial use of less than the steam energy
7 equivalent of an average of 200,000 pounds of steam per hour at 375 psig and 455 F. In
8 any event, KCP shall offset an amount equivalent to the monetized incremental emissions
9 resulting from the existing off-site industrial use of less than the steam energy equivalent
10 of an average of 200,000 pounds of steam per hour at 375 psig and 455 F, measured on a
11 five year basis, for 30 years. Calculations of monetized emissions shall use the same
12 methodology and monetary values of emissions employed in the 500 megawatt exemption
13 Final Order.”
14

15 The first five years ended in June 2006. KCP reported that steam sales for the first five
16 years averaged a rate of 70,000 lb./hour instead of the expected 200,000. Under the above
17 condition, KCP must develop a program to offset an amount of CO₂, NO_x or PM-10, or any
18 combination thereof, equivalent to the shortfall in steam sales. The program is subject to
19 Council approval.
20

21 On August 31, 2007, PPM, in partial fulfillment of the offset requirement, presented
22 an offer to make payments to the Oregon Climate Trust in an amount sufficient to offset the
23 CO₂ emissions equivalent to the shortfall in steam sales. The plan also addresses potential
24 paths to account for expected future shortfalls in steam sales during years five through thirty
25 of plant operations. The Council’s review of that plan is the subject of a separate Council
26 deliberation. The plan is under review and is on the Council’s agenda for its meeting in
27 Klamath Falls on September 21, 2007. The Council therefore finds that KCP is complying
28 satisfactorily with condition IV.B.1 of the site certificate.
29

30 Other elements of KCP’s proposal in the 500 MW contested case involve funding of
31 various programs to offset emissions. These include payments to the Oregon Forest
32 Resources Trust for reforestation, funding of the Methane Energy Trust, funding of programs
33 to promote solar electricity in Asia, and a program to promote geothermal heating in Klamath
34 Falls. KCP met the conditions related to these programs by providing the required funds, and
35 in this way fulfilled its obligations. No further conditions to the transfer are necessary.
36

37 KCP was originally proposed as a 318 MW generating facility. Amendment No. 1 of
38 the site certificate authorized KCP to increase the capacity from 318 MW to 500 MW.
39 Conditions IV.B.24 and IV.B.25, added in amendment 1, directed KCP to fund the Climate
40 Trust at a rate of \$0.57 per ton of CO₂ for emissions due to the increase in generating
41 capacity. KCP met these conditions by providing the required funds. No further conditions to
42 the transfer are necessary.
43

44 **Conclusion:** The Council finds that rules at OAR 345-024-0710 do not apply to KCP,
45 but that Klamath Energy has provided evidence of continued compliance with the conditions
46 in section IV.B of the site certificate related to carbon dioxide, consistent with the site

1 certificate and the 500 MW contested case.

2
3 **D.2. Compliance with OAR 345-027-0100(10)(b): Transferee's Right to Possession**
4 **and Control of Site and Facility**

5 Appendix M-1 of the Request for Transfer is a letter date August 20, 2007 from PPM
6 General Counsel, regarding Klamath Energy's legal authority to own and operate the KCP.
7 The letter states that:

8
9 “***I am of the opinion, based upon my best knowledge, that subject to Klamath
10 Energy meeting all applicable federal, state and local laws (including all rules and regulations
11 promulgated pursuant thereto), Klamath Energy has the legal authority without violating its
12 Articles of Organization, Operating Agreement, membership interest covenants or similar
13 agreements, to own and operate the Klamath Cogeneration Project***”

14
15 **Conclusion:** The Council finds that Klamath Energy is lawfully entitled to possession
16 or control of the site or the Facility described in the Site Certificate, subject to closing the
17 transaction described in the application.

18
19 **D.3. Compliance with Site Certificate**

20 The Site Certificate requires the facility to be designed, constructed, operated and
21 retired as described more specifically in various conditions in the Site Certificate. The only
22 change that will be brought about by the proposed transfer is the change of certificate holder
23 from the City to Klamath Energy. Pursuant to OAR 345-027-0100(4), Klamath Energy
24 certified in its request that it agrees to abide by all terms and conditions of the site certificate
25 currently in effect.

26
27 **E. Preconditions of the Transfer**

28 In connection with the site certificate, the Klamath Cogeneration Project requires
29 certain permits that are administered by state agencies other than EFSC but for which EFSC
30 determines compliance under ORS 469.401. As original site certificate holder, these permits
31 were secured directly by the City, and must now be either transferred or assigned to Klamath
32 Energy through the respective agencies, or subject to an agreement between Klamath Energy
33 and the City that ensures continued access to the resources or services of the permit.
34 Moreover, the transfer is contingent on certain additional regulatory approvals and court
35 actions. Certain permits and approvals are identified in sections D.1.b of this order. Other
36 preconditions are identified in the MOU presented as Appendix A-2 of the Request for
37 Transfer.

38
39 Prior to assuming the site certificate, Klamath Energy must secure:

- 40
41 i An agreement for the City to continue supplying clean water from its municipal water
42 system, consistent with Condition IV.O.1 of the site certificate.
43 ii An agreement for the City to continue supplying reclaimed water from the SSWTP,
44 consistent with conditions IV.J.1, IV.J.6 and IV.K.1 of the site certificate.
45 iii An agreement for the City to continue accepting process discharge water under its
46 NPDES permit.

- 1 iv Continued use of the water described in section IV.S of the site certificate, which
- 2 describes a new water right obtained by the City specifically for plant operations.
- 3 v Oregon State Fire Marshal Hazardous Material Management Program

4
5 Other requirements not under EFSC jurisdiction but nonetheless applicable are:

- 6
- 7 Title V Air permit issued by DEQ under a federal delegation
- 8 Title IV Acid Rain program registration administered by DEQ under federal
- 9 delegation
- 10 Hazardous Materials Program administered by DEQ under federal delegation
- 11 City of Klamath Falls Industrial Discharge Permit, under the NPDES program
- 12 administered by DEQ under federal delegation
- 13 Approval by FERC under the Federal Power Act
- 14

15 In addition, Klamath Energy proposes to secure a letter of credit in the amount required under the
16 Retirement and Financial Assurance Standard. The Council therefore attaches the following
17 condition to the site certificate transfer:

18
19 III.A(12): The transfer of the site certificate from the City of Klamath Falls (City) to Klamath
20 Energy LLC (Klamath Energy) shall not occur until Klamath Energy delivers evidence to the
21 Council that:

22 (i) The City and Klamath Energy or PPM have entered into the Cooling Water
23 Agreement described in the Memorandum of Understanding included in the Request for Transfer
24 and dated July 17, 2007.

25 (ii) The City and Klamath Energy or PPM have entered into an agreement for Klamath
26 Energy to discharge process waste water and sanitary waste water to the Spring Street Water
27 Treatment Plant (SSWTP) , to be discharged under the SSWTP's NPDES permit

28 (iii) The City has received the Order of the Circuit Court of Klamath County, validating
29 the City's legal authority to enter into and perform its obligations in connection with the transfer,
30 as described in item 4.3 of the Memorandum of Understanding dated July 17, 2007 and included
31 in the Request for Transfer,

32 (iv) the Federal Energy Regulatory Commission has issued such approvals as are
33 necessary for Klamath Energy to proceed with the acquisition of the Facility

34 (v) Contracts for delivery of steam to the steam host have been assigned from the City to
35 Klamath Energy or PPM,

36 (vi) Title V and Title IV air quality permits are transferred by DEQ from the City to
37 Klamath Energy or PPM, and

38 (vii) Klamath Energy delivers to the Council a letter of credit in the amount of \$8.6
39 million that replaces the Termination Fund maintained by the City to satisfy Conditions IV.D.3,
40 IV.D.4 and IV.D.5.

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42
43 **F. Conclusions about the Request for Transfer**

44 The Council finds that the Request for Transfer of Site Certificate from the City to
45 Klamath Energy is consistent with current Council rules and the terms and conditions of the
46 site certificate.

1
2 Based on the above findings, reasoning and conclusions, the Council amends the Site
3 Certificate for the Klamath Cogeneration Project as the City of Klamath Falls and Klamath
4 Energy requested in the Request for Transfer of Site Certificate for the Klamath Cogeneration
5 Project and as conditioned in section E of this order, and as shown in the Council's proposed
6 Third Amended Site Certificate.

7
8 **FINAL ORDER**
9

10 Based on the above findings of fact, discussion and conclusions of law, the Energy
11 Facility Siting Council approves the Request for Transfer of Site Certificate for the Klamath
12 Cogeneration Project from the City of Klamath Falls to Klamath Energy LLC. The Council
13 Chair shall execute the Site Certificate amendment in the form of the "Third Amended Site
14 Certificate for the Klamath Cogeneration Project," which shall incorporate Amendments No.
15 1 through No. 3.

16
17 Issued September 21, 2007
18
19
20

21
22 _____
23 David Ripma
24 Chair
25 Energy Facility Siting Council
26

27 **Notice of the Right to Appeal**

28 You have the right to appeal this order to the Oregon Supreme Court pursuant to
29 Oregon Revised Statutes (ORS) 469.405. To appeal you must file a petition for judicial
30 review with the Supreme Court within 60 days from the day this order was served on you. If
31 this order was personally delivered to you, the date of service is the date you received this
32 order. If this order was mailed to you, the date of service is the date it was mailed, not the
33 day you received it. If you do not file a petition for judicial review within the 60-day time
34 period, you lose your right to appeal.
35