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

In the Matter of the Request for Amendment #4)	FINAL ORDER ON
of the Site Certificate for the Klamath)	AMENDMENT #4
Cogeneration Project)	

OREGON ENERGY FACILITY SITING COUNCIL

March 27, 2009

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

4 **I. INTRODUCTION**
5

6 The Oregon Energy Facility Siting Council (EFSC or “the Council”) issues this order in
7 accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by the
8 certificate holder, Klamath Energy LLC (“Klamath Energy” or “certificate holder”), for
9 amendment of the site certificate for the Klamath Cogeneration Project (KCP). The facility is a
10 nominal 525-megawatt (MW) natural gas-fired electric cogeneration facility¹. The facility site is
11 located about 4.5 miles northwest of the City of Klamath Falls on land adjacent to the Collins
12 Wood Products plant. The facility qualifies as a cogeneration facility because, in addition to
13 electric generation, it provides process steam to the Collins Wood Products plant.
14

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

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

24 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms in this order.
25

26 **II. PROCEDURAL HISTORY AND AMENDMENT PROCESS**
27

28 On November 25, 2008, Klamath Energy submitted to the Oregon Department of Energy
29 (ODOE or “the Department”) a request for amendment of the Site Certificate for the Klamath
30 Cogeneration Project.² On December 2, 2008, the Department sent copies of the amendment
31 request to the reviewing agencies. The Department requested agency comments by January 9,
32 2009. The Department received no substantive comments from reviewing agencies.
33

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

¹ The KCP was initially described as a nominal 500-MW natural gas-fired electric cogeneration facility. As a consequence of upgrading the combustion turbines, Klamath Energy increased the facility’s electrical output by 25 megawatts and lowered the plant heat rate by about 100 BTU/kwh. The Department analyzed the upgrades under OAR 345-027-0050(3) and concluded they did not necessitate amendment of the KCP site certificate. The Department’s analysis was summarized in a letter from Adam Bless, ODOE, to Mike Roberts, Iberdrola Renewables, dated December 31, 2008.

² Fourth Request to Amend Site Certificate (Regarding Financial Assurance and Water Rights) for the Klamath Cogeneration Project.

1 The Department issued a proposed order on February 23, 2009. On the same day, the
2 Department issued a notice of the proposed order in accordance with OAR 345-027-0070
3 specifying a March 25 deadline for public comments and requests for a contested case
4 proceeding.

5
6 On March 27, 2009, the Council took action on the amendment request during its regular
7 meeting in Pendleton, Oregon.

8 9 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

10
11 Klamath Energy requests an amendment to the site certificate to: (1) modify the
12 applicable financial assurance amount and (2) eliminate the requirement that the facility use
13 water pursuant to a water right permit held by the City of Klamath Falls but instead allow the use
14 of water pursuant to an existing water right certificate.

15
16 In its amendment request, Klamath Energy explained the proposed modifications as
17 follows:

18
19 “Financial Assurance. Klamath Energy seeks to amend the Site Certificate to modify the
20 financial assurance required under Sections III.A.12.vii and IV.D.3, to a new financial
21 assurance amount of \$4,385,000 in 2007 dollars. This amendment relies on the current
22 methodology approved by the Department of Energy (Department) ...”

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

32
33 “As background for this change request, the Oregon Water Resources Department issued
34 Certificate of Water Right No. 48602 (‘Certificate 48602’) to the Weyerhaeuser
35 Company of October 5, 1979. Certificate 48602 authorizes the use of the waters of ‘Well
36 No. 6’ for the purpose of ‘manufacturing including restroom and lunch room facilities’ in
37 an amount up to 1.34 cubic feet per second. Certificate 48602 further describes the
38 authorized well location and authorized place of use....”

39
40 “Weyerhaeuser’s successor, Collins Products, entered into various agreements with the
41 City of Klamath Falls (the prior Certificate Holder) to provide make-up water to the
42 facility in return for steam and other consideration. At the time the Council issued the
43 Final Order and original Site Certificate in August 1997, however, it was unclear
44 whether use of water by the facility from Well No. 6 was authorized under Certificate
45 48602 or whether the City was required to obtain a new and separate water right. Given
46 the uncertainty, the Council required the City to obtain a new water right permit from the

1 Oregon Water Resources Department for operation of the facility (Water Right Permit
2 13234). As detailed in Section IV.S of the Site Certificate, the water right permit issued
3 by the Water Resources Department authorizes the City to use water from the same point
4 of appropriation (Well No. 6), on the same place of use, and at the same rate as was
5 previously and concurrently authorized by the Department pursuant to Certificate 48602.
6

7 “Before a new water right certificate was issued to the City pursuant to the terms of
8 Water Right Permit 13234, in 1999, the Oregon legislature amended Oregon’s water laws
9 by adding ORS 540.520(9), which makes clear that a water right transfer is not required
10 for a general industrial use that was not included in a water right certificate issued for a
11 specific industrial use if:
12

13 “(a) The quantity of water used for the general industrial use is not greater than
14 the rate allowed in the original water right and not greater than the quantity of
15 water 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
18 owned by the holder of the original water right at the time the water right permit
19 was 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
25 water right;
26

27 “(B) The water right certificate number;
28

29 “(C) A description of the location of the industrial facility owned by the
30 holder of the original water right at the time the water right permit was
31 issued; and
32

33 “(D) A description of the general industrial use to be made of the water
34 after the change.’ ORS 540.520(9)
35

36 “Thus, the Oregon legislature clarified that when a water right certificate has been issued
37 for a specific industrial use (here, the specific use authorized by Certificate 48602 was
38 ‘manufacturing including restroom and lunch room facilities’), the use of water for
39 general industrial purposes (here, the operation of the energy facility) was in fact
40 authorized under such water right certificate if the statutory conditions were met.
41

42 “As a result of this statutory change, on September 10, 2004, Collins Products, as the
43 owner and operator of Well No. 6, sent a letter to the Oregon Water Resources
44 Department providing the information required by ORS 540.520(9) to change the specific
45 industrial use identified in Certificate 48602 to general industrial use.... On May 25,
46 2006, the Oregon Water Resources Department acknowledged the notification... In sum,

1 the specific to general industrial notification obviated the need for the City (and now the
2 current certificate holder) to maintain a separate water right. As such, Klamath Energy
3 asks that the Site Certificate be modified to eliminate the requirement that the City
4 maintain a separate water right for the use of water from Well No. 6 for the facility.”
5

6 **A. Amendment Procedure**
7

8 Under OAR 345-027-0050(1), a Site Certificate amendment request is required if a
9 Certificate Holder proposes to design, construct, operate or retire a facility in a manner different
10 from the description in the Site Certificate, and the proposed change meets one or more of three
11 defined criteria. Klamath Energy’s proposed changes trigger the need for a Site Certificate
12 amendment under OAR 345-027-0050(1)(b) and (c), as discussed below:
13

14 *(b) Could impair the certificate holder’s ability to comply with a site certificate*
15 *condition; or*
16

17 The Council finds that the changes proposed by Klamath Energy could impair the
18 Certificate Holder’s ability to comply with Site Certificate conditions in Sections
19 III.A.12.vii, IV.D.O and IV.D.S.
20

21 *(c) Could require a new condition or a change to a condition in the site*
22 *certificate.*
23

24 The Council finds that the changes proposed by Klamath Energy would
25 necessitate changes to conditions in the Site Certificate, as outlined below.
26

27 **B. Amendments to the Site Certificate as Proposed by Klamath Energy**
28

29 Klamath Energy proposes to change conditions in the Third Amended Site Certificate as
30 follows:

- 31 • Sections III.A.12.vii and IV.D.3 concerning financial assurance
- 32 • Section IV.O concerning socio-economic impacts
- 33 • Section IV.S concerning water rights
34

35 Proposed additions are double-underlined and proposed deletions have a strikethrough.
36

37 ***III.A. Mandatory Conditions in Site Certificates OAR 345-27-020***
38

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

41 ***

42 (vii) *Klamath Energy or PPM delivers to the Council a letter of credit in the*
43 *amount of \$8.6 million that replaces the Termination Fund maintained by*
44 *the certificate holder to satisfy Conditions IV.D.3, IV.D.4 and IV.D.5.*
45 *[Amendment 3] The amount of the letter of credit shall be reduced to*

1 \$4.385 million (2007 dollars) upon the Council's approval of
2 Amendment 4. [Amendment 4]
3

4 **IV.D. Financial Assurance**
5

6 For conditions 3, 4 and 5 in section IV.D. of this Amended Site Certificate, the index by
7 which the future value of money shall be converted to ~~2007+1996 or 1997~~ dollars shall be
8 the Implicit Price Deflator for the Gross Domestic Product as published by the
9 U.S. Bureau of Economic Analysis of the Department of Commerce or a successor
10 agency. These values are published annually each February in the "Economic Report of
11 the President".

12 ***

- 13 3. ~~Klamath Energy or PPM shall maintain a separate fund established to~~
14 ~~provide for termination or decommissioning costs (the Decommissioning~~
15 ~~Fund), with such fund allowed to consist of a balance of cash, Investment~~
16 ~~Securities, and other holdings to be available to pay costs of termination~~
17 ~~or decommissioning, including Site restoration, of the project. For the two~~
18 ~~CT Energy Facility, The Decommissioning Termination Fund Amount~~
19 ~~shall be \$4.3856.85 million in 2007+1997 dollars. Amounts in the two~~
20 ~~funds may vary, but their combined value shall be \$6.85 million in 1997~~
21 ~~dollars. [Amendment 4]~~
22

23 **IV.O. Socio-Economic Impacts**
24

- 25 1. The KCP shall use water from the City's municipal water supply system to
26 meet its service and potable water requirements, and may use water from
27 Collins Product's Well No. 6 to meet make-up water needs. (ASC, pages
28 B-4 and U-4; Fig F-1; Fig B-1.) [Amendment 4]
29

30 **IV.S. Water Rights**
31

32 ~~The conditions in section IV.S. relate to a new water permit which the City shall obtain~~
33 ~~from the Oregon Water Resources Department (Department) for operation of the Energy~~
34 ~~Facility. Pursuant to agreement with Collins Products as the holder of Certificate of~~
35 ~~Water Right No. 48602, the KCP may use water for general industrial use as~~
36 ~~authorized by Certificate of Water Right No. 48602 and ORS 540.520(9). [Amendment~~
37 ~~4]~~
38

- 39 1. ~~The holder of the permit shall be the City of Klamath Falls.~~
40 2. ~~The source of the water shall be a well in the Klamath River basin.~~
41 3. ~~The purpose or use of the water shall be for municipal use.~~
42 4. ~~The maximum rate of use shall not exceed 1.34 cubic feet per second taken~~
43 ~~together with Collins certificate 48602.~~
44 5. ~~The period of use shall be year round.~~
45 6. ~~The date of priority for the permit is October 28, 1996.~~

- 1 7. ~~The point of diversion location is the NW 1/4 of the NE 1/4 of section 24 in~~
2 ~~Township 39S, Range 8E, W. M.; 700 feet south and 1970 feet west from~~
3 ~~the NE corner of section 24.~~
- 4 8. ~~The place of use is located as follows:~~
5 ~~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~~
6 ~~SE 1/4; SW 1/4 SE 1/4; SE 1/4 SE 1/4; SECTION 13 and NE 1/4 NE 1/4;~~
7 ~~NW 1/4 NE 1/4; NE 1/4 NW 1/4; SECTION 24; TOWNSHIP 39 SOUTH,~~
8 ~~RANGE 8 EAST, W.M.~~
9 ~~NE 1/4 SW 1/4; NW 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4;~~
10 ~~SECTION 18; TOWNSHIP 39 SOUTH, RANGE 9 EAST, W.M.~~
- 11 9. ~~The amount of water used under this right, together with the amount~~
12 ~~secured under any other right existing for the same lands is limited to a~~
13 ~~total diversion of 52.22 cubic feet per second or a lesser amount if~~
14 ~~delineated in the City's Water Management and Conservation Plan.~~
- 15 10. ~~Measurement, recording and reporting conditions:~~
- 16 a. ~~Before water use may begin under this permit, the permittee shall~~
17 ~~install a meter or other suitable measuring device as approved by~~
18 ~~the Water Resources Department Director (Director), to measure~~
19 ~~the amount of water used under this permit. The permittee shall~~
20 ~~maintain the meter or measuring device in good working order,~~
21 ~~shall keep a complete record of the amount of water used under~~
22 ~~this permit each month and shall submit a report which includes~~
23 ~~the recorded water use measurements to the Water Resources~~
24 ~~Department annually or more frequently as may be required by the~~
25 ~~Director. Further, the Director may require the permittee to~~
26 ~~report general water use information, including the place and~~
27 ~~nature of use of water under the permit.~~
- 28 b. ~~The permittee shall allow the watermaster access to the meter or~~
29 ~~measuring device; provided however, where the meter or~~
30 ~~measuring device is located within a private structure, the~~
31 ~~watermaster shall request access upon reasonable notice.~~
- 32 11. ~~Use of water under authority of this permit may be regulated by the Water~~
33 ~~Resources Department if analysis of data available after the permit is~~
34 ~~issued discloses that the appropriation will measurably reduce the surface~~
35 ~~water flows necessary to maintain the free-flowing character of a scenic~~
36 ~~waterway in quantities necessary for recreation, fish and wildlife in effect~~
37 ~~as of the priority date of the right or as those quantities may be~~
38 ~~subsequently reduced.~~
- 39 12. ~~The water user shall develop a plan to monitor and report the impact of~~
40 ~~water use under this permit on water levels within the aquifer that~~
41 ~~provides water to the permitted well(s). The plan shall be submitted to the~~
42 ~~Water Resources Department within one year of the date the permit is~~
43 ~~issued and shall be subject to the approval of the Department. At a~~
44 ~~minimum, the plan shall include a program to periodically measure static~~
45 ~~water levels within the permitted well(s) or an adequate substitute such as~~
46 ~~water levels in nearby wells. The plan shall also stipulate a reference~~

1 ~~water level against which any water level declines will be compared. The~~
2 ~~water user shall in no instance allow excessive decline, as defined in the~~
3 ~~Oregon Water Resources Commission rules, to occur within the aquifer as~~
4 ~~a result of use under this permit.~~

5 ~~13. If at any time the well or its use acts as a conduit for groundwater~~
6 ~~contamination or allows loss of artesian pressure, the Water Resources~~
7 ~~Department may require that the land owner repair the well in~~
8 ~~accordance with the current well construction standards.~~

9 ~~14. Prior to receiving a certificate of water right, the permit holder shall~~
10 ~~submit the results of a pump test, performed within the last ten years,~~
11 ~~meeting the Water Resources Department's standards, to the Water~~
12 ~~Resources Department. The Director may require water level or pump~~
13 ~~test results every ten years thereafter.~~

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

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

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

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

25 ~~19. Actual construction of the well shall begin within one year from date the~~
26 ~~Water Resources Department issues the permit. Unless the Water~~
27 ~~Resources Department grants an extension, construction of the means of~~
28 ~~conveyance to the Energy Facility Site shall be completed within five~~
29 ~~years of the date the Water Resources Department issues the permit.~~
30 ~~Unless the Water Resources Department grants an extension, complete~~
31 ~~application of the water to the use shall be made within five years of the~~
32 ~~date the Water Resources Department issues the permit.~~

34 **IV. THE COUNCIL'S SITING STANDARDS**

35
36 The Council must decide whether the amendment complies with the facility siting
37 standards adopted by the Council. In addition, the Council must impose conditions for the
38 protection of the public health and safety, for the time of commencement and completion of
39 construction, and for ensuring compliance with the standards, statutes and rules addressed in the
40 project order. ORS 469.401(2).

41
42 The Council is not authorized to determine compliance with regulatory programs that
43 have been delegated to another state agency by the federal government. ORS 469.503(3).
44 Nevertheless, the Council may consider these programs in the context of its own standards to
45 ensure public health and safety, resource efficiency and protection of the environment.

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

5 In making its decision on an amendment of a site certificate, the Council applies the
6 applicable state statutes, administrative rules and local government ordinances that are in effect
7 on the date the Council makes its decision, except when applying the Land Use standard. In
8 making findings on the Land Use standard, the Council applies the applicable substantive criteria
9 in effect on the date the certificate holder submitted the request for amendment. OAR 345-027-
10 0070(9).
11

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

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

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

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

30 * * *

31
32 The requirements of OAR 345-022-0000 are discussed in the sections that follow.
33 Applicable statutes and rules of agencies other than EFSC are discussed below, in section V.A of
34 this order. Klamath Energy has requested one change that would affect a permit issued by an
35 agency other than the Council, specifically the Water Right issued by the Water Resources
36 Department (WRD). Because the water right is not held by Klamath Energy but is held by
37 Collins Wood Products, this order discusses it in section IV.B.1, which addresses permits issued
38 to third parties. The proposed amendment does not affect any other permits issued by agencies
39 other than the Council.
40

41 **B. Standards about the Applicant**

42
43 **1. Organizational Expertise OAR 345-022-0010**

44 *(1) To issue a site certificate, the Council must find that the applicant has the*
45 *organizational expertise to construct, operate and retire the proposed facility in*
46 *compliance with Council standards and conditions of the site certificate. To conclude*

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

9
10 (2) *The Council may base its findings under section (1) on a rebuttable presumption that*
11 *an applicant has organizational, managerial and technical expertise, if the applicant has*
12 *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*
13 *operate the facility according to that program.*

14
15 (3) *If the applicant does not itself obtain a state or local government permit or approval*
16 *for which the Council would ordinarily determine compliance but instead relies on a*
17 *permit or approval issued to a third party, the Council, to issue a site certificate, must*
18 *find that the third party has, or has a reasonable likelihood of obtaining, the necessary*
19 *permit or approval, and that the applicant has, or has a reasonable likelihood of entering*
20 *into, a contractual or other arrangement with the third party for access to the resource or*
21 *service secured by that permit or approval.*

22
23 (4) *If the applicant relies on a permit or approval issued to a third party and the third*
24 *party does not have the necessary permit or approval at the time the Council issues the*
25 *site certificate, the Council may issue the site certificate subject to the condition that the*
26 *certificate holder shall not commence construction or operation as appropriate until the*
27 *third party has obtained the necessary permit or approval and the applicant has a*
28 *contract or other arrangement for access to the resource or service secured by that*
29 *permit or approval.*

30 31 **Discussion**

32 The standard has four sections. The first two sections deal with the site certificate
33 holder’s ability to construct, operate and retire the facility in accordance with Council standards
34 and the terms of the site certificate. Klamath Energy has proposed no change to the site, the
35 facility, or its construction or operation. We address retirement below, in the discussion of the
36 Council’s Retirement and Financial Assurance standard.

37
38 Sections 3 and 4 of the standard address permits for which the applicant will rely on a
39 permit or approval issued to a third party. In this case, Klamath Energy would rely on an existing
40 water right issued to Collins Wood Products. The original site certificate for the KCP required
41 the certificate holder (then the City of Klamath Falls) to use process water pursuant to a water
42 right permit held by the City of Klamath Falls. Klamath Energy seeks to amend the site
43 certificate to eliminate this requirement and to instead allow the use of water pursuant to an
44 existing water right certificate. Klamath Energy does not seek to change the source from which
45 the water is withdrawn, the point of appropriation, or the amount of water authorized for use at
46 the facility in order to satisfy the facility’s service and potable water requirements.

1
2 The Oregon Water Resources Department (WRD) issued Certificate of Water Right No.
3 48602 (“Certificate 48602”) to the Weyerhaeuser Company on October 5, 1979.³ Certificate
4 48602 authorizes use of the waters of “Well No. 6” for the purpose of “manufacturing including
5 restroom and lunch room facilities” in an amount up to 1.34 cubic feet per second.
6

7 Weyerhaeuser’s successor, Collins Products, entered into agreements with the City of
8 Klamath Falls to provide make-up water to the facility in return for steam and other
9 consideration. At the time the Council issued the Final Order and original Site Certificate in
10 August 1997, it was unclear whether use of water by the facility from Well No. 6 was authorized
11 under Certificate 48602 or whether the certificate holder was required to obtain a new and
12 separate water right. Accordingly, the Council required the City of Klamath Falls to obtain a new
13 water right permit from the WRD for operation of the facility (Water Right Permit 13234). The
14 water right permit authorized the City to use water from the same point of appropriation (Well
15 No. 6), on the same place of use, and at the same rate as was previously authorized by the WRD
16 under Certificate 48602.
17

18 In 1999, before the WRD issued a new water right certificate to the City pursuant to
19 Water Right Permit 13234, the Oregon Legislature amended Oregon’s water laws by adding
20 ORS 540.520(9), making it clear that a water right transfer is not required for a general industrial
21 use that was not included in a water right certificate issued for a specific industrial use if:
22

23 “(a) The quantity of water used for the general industrial use is not greater than the
24 rate allowed in the original water right and not greater than the quantity of water
25 diverted to satisfy the authorized specific use under the original water right;
26

27 “(b) The location where the water is to be used for general industrial use was owned
28 by the holder of the original water right at the time the water right permit was
29 issued; and
30

31 “(c) The person who makes the change in water use provides the following
32 information to the Water Resources Department:
33

34 “(A) The name and mailing address of the person using water under the water
35 right;
36

37 “(B) The water right certificate number;
38

39 “(C) A description of the location of the industrial facility owned by the holder
40 of the original water right at the time the water right permit was issued;
41 and
42

43 “(D) A description of the general industrial use to be made of the water after the
44 change.” ORS 540.520(9)
45

³ Klamath Cogeneration Project: Fourth Request to Amend Site Certificate, Exhibit B.
KLAMATH COGENERATION PROJECT
FINAL ORDER ON AMENDMENT #4 – March 27, 2009

1 By this action, the Oregon Legislature clarified that when a water right certificate has
2 been issued for a specific industrial use, the use of that water for general industrial purposes was
3 authorized under that water right certificate, provided the statutory conditions are met.
4

5 In response to that statutory change, on September 10, 2004, Collins Products, as the
6 owner and operator of Well No. 6, sent a letter to the WRD providing the information required
7 by ORS 540.520(9) to change the specific industrial use identified in Certificate 48602 to general
8 industrial use⁴. On May 25, 2006, the WRD acknowledged the notification and indicated it
9 appeared Collins Products had included all of the information required under the statute and
10 rules⁵. By this action, the certificate holder eliminated the need for the City of Klamath Falls to
11 maintain a separate water right in lieu of its documented arrangement with Collins Products to
12 make use of water from Well No. 6 for the facility pursuant to Certificate 48602.
13

14 With this single exception, the proposed amendments would not affect any of the
15 Council's prior findings with respect to Klamath Energy's qualifications or capabilities or its
16 ability to rely on third-party permits.
17

18 **Conclusion**

19 The Council finds that, subject to the Department's recommended revisions included in
20 Section VII.A below, the KCP meets the Council's Organizational Expertise standard.
21

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

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

24 *(1) The site, taking into account mitigation, can be restored adequately to a useful, non-*
25 *hazardous condition following permanent cessation of construction or operation of the*
26 *facility.*
27

28 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
29 *form and amount satisfactory to the Council to restore the site to a useful, non-hazardous*
30 *condition.*
31

32 **Discussion**

33 The Council finds that the proposed amendment to modify the financial assurance
34 amount applicable to the KCP is consistent with the methodology currently being applied by the
35 Department in estimating the future cost of facility retirement and site restoration and that the
36 proposed amendment would not affect any of the Council's prior findings with respect to
37 Klamath Energy's ability to restore the site to a useful, non-hazardous condition following
38 permanent cessation of construction or operation of the facility and to obtain a bond or letter of
39 credit in a form and amount satisfactory to the Council to restore the site to a useful, non-
40 hazardous condition.
41

42 When the site certificate for the KCP was first issued, the Department had not yet
43 implemented the Energy Facility Retirement Cost Estimating Guide, a guide intended to bring
44 some uniformity to the task of estimating the cost of energy facility retirement and site

⁴ Klamath Cogeneration Project: Fourth Request to Amend Site Certificate, Exhibit C.

⁵ Klamath Cogeneration Project: Fourth Request to Amend Site Certificate, Exhibit D.

1 restoration for various types of energy facilities. Accordingly, KE applied its best efforts in
 2 demonstrating the future cost of facility retirement and site restoration. Those efforts produced
 3 an estimated cost of \$6.85 million (1997 dollars). Taking note of the fact that using the Energy
 4 Facility Retirement Cost Estimating Guide would reduce the required surety amount, KE's
 5 representative worked with the Department's consultant to provide information necessary for
 6 estimating the cost of facility retirement and site restoration using the guide. These joint efforts
 7 produced an estimated cost of facility retirement and site restoration in the amount of \$4.511
 8 million (1st Quarter 2009 dollars), shown in Table 1.

9
 10 **Table 1: Site Restoration Cost Estimate (1st Quarter 2009 Dollars⁶)**

Cost Estimate Component	Estimated Cost
<u>Preliminary Work</u> Cut and cap lines, remove fences and gates, drain tanks, evacuate sludge	\$54,483
<u>Site Grading</u> Backfill, topsoil application, seeding	\$212,656
<u>Underground Utility Removal</u> Remove firewater, sewer and gas lines, ductbank, vaults, tanks	\$72,623
<u>Concrete Wrecking</u> Slab on grade, foundations, superstructure	\$184,780
<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.	\$237,339
<u>Steel Wrecking</u> Superstructure and interiors	\$396,832
<u>Thermal Protection and Liners Wrecking</u> Pond liner and insulation	\$14,978
<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	\$321,213
<u>Mechanical Wrecking</u> Cooling water, gas, steam, raw water and fresh water piping	\$284,290
<u>Electrical Wrecking</u> Transformers, wiring, MCC, towers	\$88,992
<u>Load and Haul</u> Load and haul debris and scrap steel, tipping fees	\$638,755
<u>General Costs</u> Permits, mobilization, engineering, overhead, utility disconnects	\$548,239
<u>Subtotal</u> Performance Bond	\$3,055,180 \$30,552
<u>Gross Cost</u>	\$3,085,732
Administration and Project Management (10%)	\$308,573
Future Developments Contingency (20%)	\$617,146
Environmental Assessment and Remediation	\$500,000
TOTAL WITH ODOE CONTINGENCIES	\$4,511,451
TOTAL ROUNDED TO NEAREST \$1,000	\$4,511,000

⁶ 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 123.5558/109.496.

1
2 The Council finds the financial assurance amount applicable to the KCP shall be \$4.511
3 million (in 1st Quarter 2009 dollars) as set forth in Table 1 above.
4

5 **Conclusion**

6 The Council finds that, subject to the Department’s recommended revisions included in
7 Section VII.A below, the KCP meets the Council’s Retirement and Financial Assurance
8 standard.
9

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

11
12 **1. Land Use OAR 345-022-0030**

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

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

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

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

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

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

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

45 *(4) The Council may find goal compliance for a proposed facility that does not otherwise*
46 *comply with one or more statewide planning goals by taking an exception to the*
47 *applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide*

1 *planning goal pertaining to the exception process or any rules of the Land Conservation*
2 *and Development Commission pertaining to the exception process, the Council may take*
3 *an exception to a goal if the Council finds:*

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

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

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

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

13 *(B) The significant environmental, economic, social and energy*
14 *consequences anticipated as a result of the proposed facility have been*
15 *identified and adverse impacts will be mitigated in accordance with rules*
16 *of the Council applicable to the siting of the proposed facility; and*

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

19 * * *

20
21 **Discussion**

22 Because Klamath Energy has proposed no change to the site, the facility, or its
23 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
24 demonstrate compliance with the Land Use standard.

25
26 **Conclusion**

27 The Council finds that the KCP complies with the Council's Land Use standard.

28
29 **2. Public Services OAR 345-022-0110**

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

36 * * *

37
38 **Discussion**

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

1
2 The Council finds that the findings in the Final Orders are sufficient to demonstrate
3 compliance with the Public Services standard.
4

5 **Conclusion**

6 The Council finds that the KCP complies with the Public Services standard.
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 Council finds that the findings in the Final Orders are sufficient to
23 demonstrate Klamath Energy's compliance with the Waste Minimization standard.
24

25 **Conclusion**

26 The Council finds that the KCP complies with the Waste Minimization standard.
27

28 **4. Structural Standard OAR 345-022-0020**

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

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

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

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

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

3 * * *

4
5 **Discussion**

6 Because Klamath Energy has proposed no change to the site, the facility, or its
7 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
8 demonstrate Klamath Energy's compliance with the Structural standard.

9
10 **Conclusion**

11 The Council finds that the KCP complies with the Structural standard.

12
13 **5. Soil Protection OAR 345-022-0022**

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

19
20 **Discussion**

21 Because Klamath Energy has proposed no change to the site, the facility, or its
22 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
23 demonstrate Klamath Energy's compliance with the Soil Protection standard.

24
25 **Conclusion**

26 The Council finds that the KCP complies with the Council's Soil Protection standard.

27
28 **6. Protected Areas OAR 345-022-0040**

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

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

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

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

44 *(d) National and state wildlife refuges, including but not limited to Ankeny,*
45 *Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer*
46 *Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark,*

1 Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch
2 Rocks, Umatilla, Upper Klamath, and William L. Finley;
3 (e) National coordination areas, including but not limited to Government Island,
4 Ochoco and Summer Lake;
5 (f) National and state fish hatcheries, including but not limited to Eagle Creek
6 and Warm Springs;
7 (g) National recreation and scenic areas, including but not limited to Oregon
8 Dunes National Recreation Area, Hell's Canyon National Recreation Area, and
9 the Oregon Cascades Recreation Area, and Columbia River Gorge National
10 Scenic Area;
11 (h) State parks and waysides as listed by the Oregon Department of Parks and
12 Recreation and the Willamette River Greenway;
13 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage
14 Areas pursuant to ORS 273.581;
15 (j) State estuarine sanctuaries, including but not limited to South Slough
16 Estuarine Sanctuary, OAR Chapter 142;
17 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers
18 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers
19 listed as potentials for designation;
20 (l) Experimental areas established by the Rangeland Resources Program, College
21 of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw
22 Butte) site, the Starkey site and the Union site;
23 (m) Agricultural experimental stations established by the College of Agriculture,
24 Oregon State University, including but not limited to: Coastal Oregon Marine
25 Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension
26 Center, Hood River
27 Agriculture Research and Extension Center, Hermiston Columbia Basin
28 Agriculture Research Center, Pendleton Columbia Basin Agriculture Research
29 Center, Moro North Willamette Research and Extension Center, Aurora East
30 Oregon Agriculture Research Center, Union Malheur Experiment Station,
31 Ontario Eastern Oregon Agriculture Research Center, Burns Eastern Oregon
32 Agriculture Research Center, Squaw Butte Central Oregon Experiment Station,
33 Madras Central Oregon Experiment Station, Powell Butte Central Oregon
34 Experiment Station, Redmond Central Station, Corvallis
35 Coastal Oregon Marine Experiment Station, Newport Southern Oregon
36 Experiment Station, Medford Klamath Experiment Station, Klamath Falls;
37 (n) Research forests established by the College of Forestry, Oregon State
38 University, including but not limited to McDonald Forest, Paul M. Dunn Forest,
39 the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak
40 area and the Marchel Tract;
41 (o) Bureau of Land Management areas of critical environmental concern,
42 outstanding natural areas and research natural areas;
43 (p) State wildlife areas and management areas identified in OAR chapter 635,
44 Division 8.

45 * * *

1 **Discussion**

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

6 **Conclusion**

7 The Council finds that the KCP complies with the Council’s Protected Areas standard.
8

9 **7. Scenic Resources OAR 345-022-0080**

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

16 * * *

17
18 **Discussion**

19 Because Klamath Energy has proposed no change to the site, the facility, or its
20 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
21 demonstrate Klamath Energy’s compliance with the Scenic Resources standard.
22

23 **Conclusion**

24 The Council finds that the KCP complies with the Council’s Scenic Resources standard.
25

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

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

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

32 *(b) For a facility on private land, archaeological objects, as defined in ORS*
33 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

34 *(c) For a facility on public land, archaeological sites, as defined in ORS*
35 *358.905(1)(c).*

36 * * *

37
38 **Discussion**

39 Because Klamath Energy has proposed no change to the site, the facility, or its
40 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
41 demonstrate Klamath Energy’s compliance with the Historic, Cultural and Archaeological
42 Resources standard.
43

44 **Conclusion**

45 The Council finds that the KCP complies with the Council’s Historic, Cultural and
46 Archaeological Resources standard.

1
2 **9. Recreation OAR 345-022-0100**

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

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

14 * * *

15
16 **Discussion**

17 Because Klamath Energy has proposed no change to the site, the facility, or its
18 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
19 demonstrate Klamath Energy's compliance with the Recreation standard.
20

21 **Conclusion**

22 The Council finds that the KCP complies with the Council's Recreation standard.
23

24 **D. Standards to Protect Wildlife**

25
26 **1. Threatened and Endangered Species OAR 345-022-0070**

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

- 29 (1) *For plant species that the Oregon Department of Agriculture has listed as*
30 *threatened or endangered under ORS 564.105(2), the design, construction and*
31 *operation of the proposed facility, taking into account mitigation:*
32 (a) *Are consistent with the protection and conservation program, if any,*
33 *that the Oregon Department of Agriculture has adopted under ORS*
34 *564.105(3); or*
35 (b) *If the Oregon Department of Agriculture has not adopted a protection*
36 *and conservation program, are not likely to cause a significant reduction*
37 *in the likelihood of survival or recovery of the species; and*
38 (2) *For wildlife species that the Oregon Fish and Wildlife Commission has listed*
39 *as threatened or endangered under ORS 496.172(2), the design, construction and*
40 *operation of the proposed facility, taking into account mitigation, are not likely to*
41 *cause a significant reduction in the likelihood of survival or recovery of the*
42 *species.*

43
44 **Discussion**

45 Because Klamath Energy has proposed no change to the site, the facility, or its
46 construction or operation, the Council finds that the findings in the Final Orders are sufficient to

1 demonstrate Klamath Energy’s compliance with the Threatened and Endangered Species
2 standard.

3
4 **Conclusion**

5 The Council finds that the KCP complies with the Council’s Threatened and Endangered
6 Species standard.

7
8 **2. Fish and Wildlife Habitat OAR 345-022-0060**

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

13
14 **Discussion**

15 Because Klamath Energy has proposed no change to the site, the facility, or its
16 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
17 demonstrate Klamath Energy’s compliance with the Fish and Wildlife Habitat standard.

18
19 **Conclusion**

20 The Council finds that the KCP complies with the Council’s Fish and Wildlife Habitat
21 standard.

22
23 **E. Carbon Dioxide Standard for Base Load Gas Plants OAR 345-024-0550**

24 *To issue a site certificate for a base load gas plant, the Council must find that the net*
25 *carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of*
26 *carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide*
27 *emissions and net electric power output measured on a new and clean basis. For a base*
28 *load gas plant designed with power or augmentation technology as defined in OAR 345-*
29 *001-0010, the Council shall apply the standard for a non-base load power plant, as*
30 *described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the*
31 *designed operation of the power augmentation technology. The Council shall determine*
32 *whether the base load carbon dioxide emissions standard is met as follows:*

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

38 (2) *For any remaining emissions reduction necessary to meet the applicable*
39 *standard, the applicant may elect to use any of the means described in OAR 345-*
40 *024-0560, or any combination thereof. The Council shall determine the amount of*
41 *carbon dioxide emissions reduction that is reasonably likely to result from the*
42 *applicant's offsets and whether the resulting net carbon dioxide emissions meet*
43 *the applicable carbon dioxide emissions standard;*

44 (3) *If the applicant elects to comply with the standard using the means described*
45 *in OAR 345-024-0560(2), the Council shall determine the amount of carbon*
46 *dioxide emissions reduction that is reasonably likely to result from each of the*

1 *proposed offsets. In making this determination, the Council shall not allow credit*
2 *for offsets that have already been allocated or awarded credit for carbon dioxide*
3 *emissions reduction in another regulatory setting. The fact that an applicant or*
4 *other parties involved with an offset may derive benefits from the offset other than*
5 *the reduction of carbon dioxide emissions is not, by itself, a basis for withholding*
6 *credit for an offset. The Council shall base its determination of the amount of*
7 *carbon dioxide emission reduction on the following criteria and as provided in*
8 *OAR 345-024-0680:*

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

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

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

17 *(4) Before beginning construction, the certificate holder shall notify the*
18 *Department of Energy in writing of its final selection of a gas turbine vendor and*
19 *shall submit a written design information report to the Department sufficient to*
20 *verify the facility's designed new and clean heat rate and its nominal electric*
21 *generating capacity at average annual site conditions for each fuel type. In the*
22 *report, the certificate holder shall include the proposed limits on the annual*
23 *average number of hours of facility operation on distillate fuel oil, if applicable.*
24 *In the site certificate, the Council may specify other information to be included in*
25 *the report. The Department shall use the information the certificate holder*
26 *provides in the report as the basis for calculating, according to the site*
27 *certificate, the amount of carbon dioxide emissions reductions the certificate*
28 *holder must provide under OAR 345-024-0560.*
29

30 **Discussion**

31 Because Klamath Energy has proposed no change to the site, the facility, or its
32 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
33 demonstrate Klamath Energy's compliance with the Carbon Dioxide standard.
34

35 **Conclusion**

36 The Council finds that the KCP complies with Carbon Dioxide standard.
37

38 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS**

39 **A. Requirements under Council Jurisdiction**

40 Under ORS 469.503(3) and under the Council's General Standard of Review (OAR 345-
41 022-0000, the Council must determine that a facility complies with "all other Oregon statutes
42 and administrative rules identified in the project order, as amended, as applicable to the issuance
43 of a site certificate for the proposed facility." In the Final Orders, the Council found that the
44 other applicable Oregon statutes and administrative rules were the Department of Environmental
45 Quality noise control regulations, the regulations adopted by the Department of State Lands for
46

1 removal or fill of material affecting waters of the state and the Council’s statutory authority to
2 consider protection of public health and safety.

3
4 **1. Noise Control Regulations for Industry and Commerce OAR 340-035-0035**

5 *(1) Standards and Regulations:*

6 * * *

7 *(b) New Noise Sources:*

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

18 * * *

19
20 **Discussion**

21 DEQ noise regulations for industrial and commercial noise sources apply to the KCP.
22 Because Klamath Energy has proposed no change to the site, the facility, or its construction or
23 operation, the Council finds that the findings in the Final Orders demonstrate Klamath Energy’s
24 compliance with the DEQ noise standards applicable to the facility.

25
26 **Conclusion**

27 The Council finds that the KCP complies with the applicable noise control regulations.

28
29 **2. Removal-Fill Law**

30 The Oregon Removal-Fill Law (ORS 196.800 through 990) and DLS regulations (OAR
31 141-085-0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of
32 material is removed, filled or altered within any “waters of the state” at the proposed site.

33
34 **Discussion**

35 Because Klamath Energy has proposed no change to the site, the facility, or its
36 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
37 demonstrate Klamath Energy’s compliance with DSL removal/fill permit requirements.

38
39 **Conclusion**

40 The Council finds that the KCP complies with the applicable DSL removal/fill permit
41 requirements.

42
43 **3. Public Health and Safety**

44 Under ORS 469.310, the Council is charged with ensuring that the “siting, construction
45 and operation of energy facilities shall be accomplished in a manner consistent with protection of

1 the public health and safety....” State law further provides that “the site certificate shall contain
2 conditions for the protection of the public health and safety....” ORS 469.401(2).

3 4 **Discussion**

5 Because Klamath Energy has proposed no change to the site, the facility, or its
6 construction or operation, the Council finds that the findings in the Final Orders are sufficient to
7 demonstrate Klamath Energy’s compliance with the Public Health and Safety standard.

8 9 **Conclusion**

10 The Council finds that the KCP complies with the Public Health and Safety standard.

11 12 **B. Requirements That Are Not Under Council Jurisdiction**

13 14 **1. Federally-Delegated Programs**

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

21
22 In the Final Order on the Application, the Council found that the certificate holder must
23 obtain a federal Air Contaminant Discharge Permit (ACDP) from the Oregon Department of
24 Environmental Quality (DEQ) before beginning construction of the proposed facility. The
25 certificate holder was also required to comply with the requirements of DEQ’s National Pollutant
26 Discharge Elimination System (NPDES) permit program; DEQ’s program regulating the design,
27 operation, monitoring and removal of underground storage tanks that contain certain toxic and
28 hazardous materials, including petroleum, under ORS Chapter 466 and OAR Chapter 346,
29 Division 150; and DEQ’s program relating to the generation, treatment, storage and disposal of
30 hazardous wastes, under ORS Chapter 466 and OAR Chapter 340, Divisions 100 through 113.

31 32 **2. Requirements That Do Not Relate to Siting**

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

40 41 **VI. GENERAL APPLICATION OF CONDITIONS**

42 The conditions described in this order include conditions that are specifically required by
43 OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site
44 Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,
45 Division 26 (Construction and Operation Rules for Facilities). The conditions described in this
46 order, or added to the site certificate by this order, include conditions based on representations in

1 the request for amendment and the supporting record. The Council deems these representations
2 to be binding commitments made by the certificate holder. Also included are conditions Council
3 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions
4 22 and 24, or to protect public health and safety.

5
6 In addition to all other conditions described or included in this order, the site certificate
7 holder is subject to all conditions and requirements contained in the rules of the Council and in
8 local ordinances and state law in effect on the date the amended site certificate is executed.
9 Under ORS 469.401(2), upon a clear showing of a significant threat to the public health, safety
10 or the environment that requires application of later-adopted laws or rules, the Council may
11 require compliance with such later-adopted laws or rules.

12
13 The Council recognizes that many specific tasks related to the design, construction,
14 operation and retirement of the facility will be undertaken by the certificate holder's agents or
15 contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents and
16 contractors comply with all provisions of the site certificate.

17 **VII. GENERAL CONCLUSION**

18 The proposed amendment would modify the financial assurance amount applicable to the
19 KCP and eliminate the requirement that the facility use water pursuant to a water right permit
20 held by the City of Klamath Falls and, instead, would allow the use of water pursuant to an
21 existing water right certificate. The Council adopts revisions to Conditions III.A.(12)(vii),
22 IV.D.3, IV.O.1 and IV.S, all as set forth below.

23
24
25 Based on the findings and conclusions included in this order, the Council makes the
26 following findings:

- 27
28 1. The proposed Amendment #4 complies with the requirements of the Oregon
29 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to
30 469.619.
- 31 2. The proposed Amendment #4 complies with the applicable standards adopted by
32 the Council pursuant to ORS 469.501.
- 33 3. The proposed Amendment #4 complies with all other Oregon statutes and
34 administrative rules applicable to the amendment of the site certificate for the
35 KCP that are within the Council's jurisdiction.

36
37 Accordingly, the Council finds that the facility complies with the General Standard of
38 Review (OAR 345-022-0000). The Council finds, based on a preponderance of the evidence on
39 the record, that the site certificate may be amended as requested by the certificate holder subject
40 to the revisions recommended by the Department and set forth below.

41 **A. The Department's Recommended Revisions**

42
43
44 New text recommended by the Department is shown below in double-underlined bold
45 typeface and recommended deletions have a strikethrough. All changes recommended by the
46 Department are identical to the changes requested by the applicant with the exception of the base

1 period of the financial assurance amount and the face amount of the required letter of credit. In
2 recommending changes to Conditions III.A.(12)(vii), IV.D.(3), IV.D.(4) and IV.D.(5), the
3 Department changed the base period of the financial assurance amount from 2007 dollars to 1st
4 Quarter 2009 dollars and the face amount of the required letter of credit from \$4.385 million
5 (2007 dollars) to \$4.511 million (1st Quarter 2009 dollars), consistent with intervening changes
6 in the applicable index.

7
8 **III.A. Mandatory Conditions in Site Certificates OAR 345-27-020**

9
10 (12) *The transfer of the site certificate from the City to Klamath Energy shall not occur*
11 *until Klamath Energy delivers to EFSC evidence that:*

12 ***

13 (vii) *Klamath Energy or PPM delivers to the Council a letter of credit in the*
14 *amount of \$8.6 million that replaces the Termination Fund maintained by*
15 *the certificate holder to satisfy Conditions IV.D.3, IV.D.4 and IV.D.5.*
16 *[Amendment 3] The amount of the letter of credit shall be reduced to*
17 *\$4.511 million (1st Quarter 2009 dollars) upon the Council's approval of*
18 *Amendment 4. [Amendment 4]*

19
20 **IV.D. Financial Assurance**

21
22 *For conditions 3, 4 and 5 in section IV.D. of this Amended Site Certificate, the index by*
23 *which the future value of money shall be converted to 1st Quarter 2009~~1996 or 1997~~*
24 *dollars shall be the Implicit Price Deflator for the Gross Domestic Product as published*
25 *by the U.S. Bureau of Economic Analysis of the Department of Commerce or a successor*
26 *agency. These values are published annually each February in the "Economic Report of*
27 *the President".*

28 ***

29 3. *Klamath Energy*~~*or PPM*~~ *shall maintain a separate fund established to*
30 *provide for termination or decommissioning costs (the Decommissioning*
31 *Fund), with such fund allowed to consist of a balance of cash, Investment*
32 *Securities, and other holdings to be available to pay costs of termination*
33 *or decommissioning, including Site restoration, of the project. ~~For the two~~*
34 *~~CT Energy Facility, The Decommissioning~~ Termination Fund Amount*
35 *shall be \$4.511~~6.85~~ million in 1st Quarter 2009~~1997~~ dollars. ~~Amounts in~~*
36 *the two funds may vary, but their combined value shall be \$6.85 million in*
37 *1997 dollars. [Amendment 4]*

38
39 **IV.O. Socio-Economic Impacts**

40
41 1. *The KCP shall use water from the City's municipal water supply system to*
42 *meet its service and potable water requirements, and may use water from*
43 *Collins Product's Well No. 6 to meet make-up water needs. (ASC, pages*
44 *B-4 and U-4; Fig F-1; Fig B-1.) [Amendment 4]*

45
46 **IV.S. Water Rights**

1
2 *The conditions in section IV.S. relate to a new water permit which the City shall obtain*
3 *from the Oregon Water Resources Department (Department) for operation of the Energy*
4 *Facility. Pursuant to agreement with Collins Products as the holder of Certificate of*
5 *Water Right No. 48602, the KCP may use water for general industrial use as*
6 *authorized by Certificate of Water Right No. 48602 and ORS 540.520(9). [Amendment*
7 *4]*
8

- 9 ~~1. The holder of the permit shall be the City of Klamath Falls.~~
10 ~~2. The source of the water shall be a well in the Klamath River basin.~~
11 ~~3. The purpose or use of the water shall be for municipal use.~~
12 ~~4. The maximum rate of use shall not exceed 1.34 cubic feet per second taken~~
13 ~~together with Collins certificate 48602.~~
14 ~~5. The period of use shall be year round.~~
15 ~~6. The date of priority for the permit is October 28, 1996.~~
16 ~~7. The point of diversion location is the NW 1/4 of the NE 1/4 of section 24 in~~
17 ~~Township 39S, Range 8E, W. M.; 700 feet south and 1970 feet west from~~
18 ~~the NE corner of section 24.~~
19 ~~8. The place of use is located as follows:~~
20 ~~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~~
21 ~~SE 1/4; SW 1/4 SE 1/4; SE 1/4 SE 1/4; SECTION 13 and NE 1/4 NE 1/4;~~
22 ~~NW 1/4 NE 1/4; NE 1/4 NW 1/4; SECTION 24; TOWNSHIP 39 SOUTH,~~
23 ~~RANGE 8 EAST, W.M.~~
24 ~~NE 1/4 SW 1/4; NW 1/4 SW 1/4; SW 1/4 SW 1/4; SE 1/4 SW 1/4;~~
25 ~~SECTION 18; TOWNSHIP 39 SOUTH, RANGE 9 EAST, W.M.~~
26 ~~9. The amount of water used under this right, together with the amount~~
27 ~~secured under any other right existing for the same lands is limited to a~~
28 ~~total diversion of 52.22 cubic feet per second or a lesser amount if~~
29 ~~delineated in the City's Water Management and Conservation Plan.~~
30 ~~10. Measurement, recording and reporting conditions:~~
31 ~~a. Before water use may begin under this permit, the permittee shall~~
32 ~~install a meter or other suitable measuring device as approved by~~
33 ~~the Water Resources Department Director (Director), to measure~~
34 ~~the amount of water used under this permit. The permittee shall~~
35 ~~maintain the meter or measuring device in good working order,~~
36 ~~shall keep a complete record of the amount of water used under~~
37 ~~this permit each month and shall submit a report which includes~~
38 ~~the recorded water use measurements to the Water Resources~~
39 ~~Department annually or more frequently as may be required by the~~
40 ~~Director. Further, the Director may require the permittee to~~
41 ~~report general water use information, including the place and~~
42 ~~nature of use of water under the permit.~~
43 ~~b. The permittee shall allow the watermaster access to the meter or~~
44 ~~measuring device; provided however, where the meter or~~
45 ~~measuring device is located within a private structure, the~~
46 ~~watermaster shall request access upon reasonable notice.~~

- 1 ~~11. Use of water under authority of this permit may be regulated by the Water~~
2 ~~Resources Department if analysis of data available after the permit is~~
3 ~~issued discloses that the appropriation will measurably reduce the surface~~
4 ~~water flows necessary to maintain the free-flowing character of a scenic~~
5 ~~waterway in quantities necessary for recreation, fish and wildlife in effect~~
6 ~~as of the priority date of the right or as those quantities may be~~
7 ~~subsequently reduced.~~
- 8 ~~12. The water user shall develop a plan to monitor and report the impact of~~
9 ~~water use under this permit on water levels within the aquifer that~~
10 ~~provides water to the permitted well(s). The plan shall be submitted to the~~
11 ~~Water Resources Department within one year of the date the permit is~~
12 ~~issued and shall be subject to the approval of the Department. At a~~
13 ~~minimum, the plan shall include a program to periodically measure static~~
14 ~~water levels within the permitted well(s) or an adequate substitute such as~~
15 ~~water levels in nearby wells. The plan shall also stipulate a reference~~
16 ~~water level against which any water level declines will be compared. The~~
17 ~~water user shall in no instance allow excessive decline, as defined in the~~
18 ~~Oregon Water Resources Commission rules, to occur within the aquifer as~~
19 ~~a result of use under this permit.~~
- 20 ~~13. If at any time the well or its use acts as a conduit for groundwater~~
21 ~~contamination or allows loss of artesian pressure, the Water Resources~~
22 ~~Department may require that the land owner repair the well in~~
23 ~~accordance with the current well construction standards.~~
- 24 ~~14. Prior to receiving a certificate of water right, the permit holder shall~~
25 ~~submit the results of a pump test, performed within the last ten years,~~
26 ~~meeting the Water Resources Department's standards, to the Water~~
27 ~~Resources Department. The Director may require water level or pump~~
28 ~~test results every ten years thereafter.~~
- 29 ~~15. Failure to comply with any of the provisions of this permit may result in~~
30 ~~action including, but not limited to, restrictions on the use, civil penalties,~~
31 ~~or cancellation of the permit.~~
- 32 ~~16. This permit is for the beneficial use of water without waste. The water~~
33 ~~user is advised that new regulations may require the use of best practical~~
34 ~~technologies or conservation practices to achieve this end.~~
- 35 ~~17. By law, the land use associated with this water use must be in compliance~~
36 ~~with statewide land use goals and any local acknowledged land use plan~~
37 ~~in effect on the date this Amended Site Certificate is executed.~~
- 38 ~~18. The use of water shall be limited when it interferes with any prior surface~~
39 ~~or ground water rights.~~
- 40 ~~19. Actual construction of the well shall begin within one year from date the~~
41 ~~Water Resources Department issues the permit. Unless the Water~~
42 ~~Resources Department grants an extension, construction of the means of~~
43 ~~conveyance to the Energy Facility Site shall be completed within five~~
44 ~~years of the date the Water Resources Department issues the permit.~~
45 ~~Unless the Water Resources Department grants an extension, complete~~

1 *application of the water to the use shall be made within five years of the*
2 *date the Water Resources Department issues the permit.*
3

4 **VIII. ORDER**

5 The Council approves Amendment #4 and issues an amended site certificate for the
6 Klamath Cogeneration Project subject to the terms and conditions set forth above.
7

8 Issued this 27th day of March, 2009.
9

10 OREGON ENERGY FACILITY SITING COUNCIL
11

12
13 By: _____
14 Robert Shiprack, Chair Date
15

16
17 **NOTICE OF THE RIGHT TO APPEAL**

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