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**PORT WESTWARD GENERATING PROJECT  
SITE CERTIFICATE AMENDMENT #8  
DRAFT PROPOSED ORDER**

**I. INTRODUCTION**

The Oregon Department of Energy (Department) recommends that the Energy Facility Siting Council (Council) issue this order in accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by Portland General Electric Company (PGE) for Amendment #8 to its site certificate for the Port Westward Generating Project (PWGP). The Port Westward Generating Project is a 650-megawatt generating plant comprised of an existing natural gas-fired combined cycle base load generating facility, with power augmentation and a proposed non-base load flexible peaking, load-following and renewable energy integration generating facility, located about 4.5 miles north of Clatskanie, Oregon.

In its request for Amendment #8, PGE requests extension by 24 months the deadline for completion of construction of Unit 2.

The Council issued the Final Order for the PWGP on November 8, 2002. Final Orders were issued by the Council on the following Amendments:

- Amendment #1 on December 5, 2003
- Amendment #2 on September 24, 2004
- Amendment #3 on January 28, 2005
- Amendment #4 on May 19, 2006
- Amendment #5 on September 29, 2006
- Amendment #6 on February 23, 2009, and
- Amendment #7 on January 13, 2010

This Draft Proposed Order is for PGE's current request for amendment of its site certificate, Amendment #8.

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

**II. PROCEDURAL HISTORY AND AMENDMENT PROCESS**

On November 8, 2010, PGE submitted to the Department a request for amendment of the site certificate (Amendment #8).<sup>1</sup> On November 22, 2010, the Department sent copies of the amendment request to the reviewing agencies. The Department requested agency comments by December 14, 2010. The Department received no substantive comments from reviewing agencies.

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<sup>1</sup> Certificate Holder's Request for Eighth Amendment to the Site Certificate for the Port Westward Generating Project.

1 On November 22, 2010, the Department sent notice of the amendment request to all  
2 persons on the Council's general mailing list, to persons on the mailing list established for the  
3 facility, and to an updated list of property owners supplied by the certificate holder. The  
4 Department requested public comments by December 14, 2010. The Department received one  
5 public comment related to changes in the site boundary made in a prior amendment of the site  
6 certificate.

7  
8 The Department issued this Draft Proposed Order on January 5, 2011. On the same day,  
9 the Department issued a notice of the draft proposed order in accordance with OAR 345-027-  
10 0070 specifying a deadline for public comments and requests for a contested case proceeding.

### 11 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

12  
13  
14 PGE requests an amendment to the site certificate to extend by 24 months the deadline  
15 for completing construction of Unit 2 of the PWGP. If approved, the amendment would extend  
16 the deadline for completing construction from May 8, 2011, to May 8, 2013.

17  
18 In its amendment request, PGE explained the reason for the request as follows:

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

29  
30 It should be note that the Oregon Public Utility Commission (OPUC) did acknowledge  
31 the aforementioned Integrated Resource Plan while this amendment was undergoing review.

#### 32 **A. Amendment Procedure**

33  
34  
35 OAR 345-027-0030, sets out the requirements for a certificate holder to request an  
36 extension of the deadlines for beginning and completing construction.<sup>2</sup>

#### 37 **OAR 345-027-0030**

#### 38 **Amendment to Extend Construction Beginning and Completion Deadlines**

39  
40  

---

<sup>2</sup> The Council amended OAR 345-027-0030, effective May 15, 2007, after the site certificate became effective and before the request to amend the site certificate to extend the date of completing construction was submitted. OAR 345-027-0030(5) codifies the Council's application of updated carbon dioxide standard requirements when reviewing applications to amend site certificates to extend the deadline for construction. The amended rule rephrased section (5), but the substance of that section has been part of the Council's rules since 1999.

1           (1) *The certificate holder may request an amendment to extend the deadlines for*  
2 *beginning or completing construction of the facility that the Council has specified in a*  
3 *site certificate or an amended site certificate. The certificate holder shall submit a*  
4 *request that conforms to the requirements of 345-027-0060 no later than six months*  
5 *before the date of the applicable deadline, or, if the certificate holder demonstrates good*  
6 *cause for the delay in submitting the request, no later than the applicable deadline.*  
7

8           (2) *A request within the time allowed in section (1) to extend the deadlines for beginning*  
9 *or completing construction suspends those deadlines until the Council acts on the*  
10 *request.*  
11

12           (3) *The Council shall review the request for amendment as described in OAR 345-027-*  
13 *0070.*  
14

15           (4) *If the Council grants an amendment under this rule, the Council shall specify new*  
16 *deadlines for beginning or completing construction that are not more than two years*  
17 *from the deadlines in effect before the Council grants the amendment.*  
18

19           (5) *To grant an amendment extending the deadline for beginning or completing*  
20 *construction of an energy facility subject to OAR 345-024-0550, 345-024-0590, or 345-*  
21 *024-0620, the Council must find that the facility complies with the carbon dioxide*  
22 *standard in effect at the time of the Council's order on the amendment.*  
23

24           Pursuant to these rules, the Council may grant an extension of no more than two years  
25 from the current deadlines. The Council rule requires the certificate holder to submit the request  
26 “no later than six months before the date of the applicable deadline, or, if the certificate holder  
27 demonstrates good cause for the delay in submitting the request, no later than the applicable  
28 deadline.” Under the current site certificate, the deadline to complete construction of the PWGP  
29 is May 8, 2011 (Condition F.1.(6)).<sup>3</sup>  
30

31           PGE submitted its request to extend the deadline for completing construction on  
32 November 4, 2010, six months before the deadline. The Department recommends that the  
33 Council find that the request to extend the construction deadline was filed in a timely manner.  
34

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

36           *In making a decision to grant or deny issuance of an amended site certificate, the Council*  
37 *shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in*  
38 *effect on the date the certificate holder submitted the request for amendment and all other*  
39 *state statutes, administrative rules, and local government ordinances in effect on the date*  
40 *the Council makes its decision.*  
41

---

<sup>3</sup> Condition F.1.(6) states: “The Certificate Holder shall begin construction of the facility by May 8, 2011. The completion of construction date is the day by which (1) the facility is substantially complete as defined by the Certificate Holder’s construction contract documents; (2) acceptance testing is satisfactorily completed; and, (3) the energy facility is ready to commence continuous operation consistent with the Site Certificate....”

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

3  
4 *“(A) Whether the Council has previously granted an extension of the deadline.”*  
5

6 When it approved Amendment #2 to the Site Certificate, the Council granted an  
7 extension of the deadline for completing construction of the PWGP. Amendment #2 extended the  
8 deadline for beginning construction from November 8, 2004 to November 8, 2006, and it  
9 extended the deadline for completing construction from May 8, 2007 to May 8, 2009.  
10

11 After the Council’s approval of Amendment #2, PGE began and completed construction  
12 of Unit 1 of the PWGP in a timely manner. Unit 1 of the PWGP includes related or supporting  
13 facilities that are intended to serve both Unit 1 and Unit 2 of the PWGP.  
14

15 The Council approved Amendment #6 to the Site Certificate on February 23, 2009 to  
16 extend the construction completion deadline of Unit 2 of the PWGP from May 8, 2009 to May 8,  
17 2011. The extension was given to provide sufficient time for the Certificate Holder to seek an  
18 amendment to the Site Certificate (Amendment #7) to reconfigure Unit 2. Amendment #7 to the  
19 Site Certificate was approved on January 13, 2010.  
20

21 The Council’s Order approving Amendment#7 authorized the configuration of Unit 2 as a  
22 non-based load power plant with an option of either of multiple reciprocating engine-generator  
23 sets and/or aeroderivative combustion turbine generators, along with associated equipment, with a  
24 combined nominal generating capacity of up to 200 megawatts (MW).  
25

26 The Department recommends that the Council find that it has granted two extensions of  
27 the deadline for beginning and completing construction of the PWGP and that a third extension  
28 of the deadline for completing construction of the PWGP under the conditions outlined by PGE  
29 would be reasonable.  
30

31 *“(B) Whether there has been any change of circumstances that affects a previous Council  
32 finding that was required for issuance of a site certificate or amended site certificate.”*  
33

34 Based on the findings discussed under Sections IV and V below, the Department  
35 recommends that the Council find that there has not been any change of circumstances that  
36 affects a previous Council finding that was required for issuance of a site certificate or amended  
37 site certificate.  
38

39 *“(C) Whether the facility complies with all Council standards...”*  
40

41 In Sections IV and V below, we discuss compliance of the facility with all Council  
42 standards, as required under OAR 345-027-0070(10).  
43

44 **B. Amendments to the Site Certificate as Proposed by PGE**  
45

1 PGE proposes the following amendments to conditions included in the Seventh Amended  
2 Site Certificate for the PWGP. Proposed additions are shown in double-underlined bold typeface  
3 and proposed deletions have a strikethrough.  
4

5 ***F.1. Mandatory Conditions in Site Certificates***  
6 ***Beginning and Completing Construction***  
7

8 (6) *The Certificate Holder shall complete construction of the facility by May 8,*  
9 *~~2011~~2013. The completion of construction date is the day by which (1) the facility*  
10 *is substantially complete as defined in the Certificate Holder's construction*  
11 *contract documents; (2) acceptance testing is satisfactorily completed; and, (3)*  
12 *the energy facility is ready to commence continuous operation consistent with the*  
13 *Site Certificate. Completion of construction of the Port Westward to BPA Allston*  
14 *Substation Transmission Line separately shall not satisfy this requirement.*  
15 *[Amendment Nos. ~~2~~ 2,6 & 68]*  
16

17 **IV. THE COUNCIL'S SITING STANDARDS**  
18

19 The Council must decide whether the amendment complies with the facility siting  
20 standards adopted by the Council. In addition, the Council must impose conditions for the  
21 protection of the public health and safety, for the time of commencement and completion of  
22 construction, and for ensuring compliance with the standards, statutes and rules addressed in the  
23 project order. ORS 469.401(2).  
24

25 The Council is not authorized to determine compliance with regulatory programs that  
26 have been delegated to another state agency by the federal government. ORS 469.503(3).  
27 Nevertheless, the Council may consider these programs in the context of its own standards to  
28 ensure public health and safety, resource efficiency, and protection of the environment.  
29

30 The Council has no jurisdiction over design or operational issues that do not relate to  
31 siting, such as matters relating to employee health and safety, building code compliance, wage  
32 and hour or other labor regulations, or local government fees and charges. ORS 469.401(4).  
33

34 In making its decision on an amendment of a site certificate, the Council applies the  
35 applicable state statutes, administrative rules and local government ordinances that are in effect  
36 on the date the Council makes its decision, except when applying the Land Use standard. In  
37 making findings on the Land Use standard, the Council applies the applicable substantive criteria  
38 in effect on the date the certificate holder submitted the request for amendment. OAR 345-027-  
39 0070(9).  
40

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

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

45 *(a) The facility complies with the requirements of the Oregon Energy Facility*  
46 *Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards*  
47 *adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the*

1 facility outweigh the damage to the resources protected by the standards the facility does  
2 not meet as described in section (2);

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

13 The requirements of OAR 345-022-0000 are discussed in the sections that follow.  
14 Applicable statutes and rules of agencies other than EFSC are discussed below, in section V.A of  
15 this order. The proposed amendment does not affect any permits issued by agencies other than  
16 the Council.  
17

## 18 **B. Standards Regarding the Applicant**

### 19 **1. Organizational Expertise OAR 345-022-0010**

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

32 (2) The Council may base its findings under section (1) on a rebuttable presumption that  
33 an applicant has organizational, managerial and technical expertise, if the applicant has  
34 an ISO 9000 or ISO 14000 certified program and proposes to design, construct and  
35 operate the facility according to that program.  
36

37 (3) If the applicant does not itself obtain a state or local government permit or approval  
38 for which the Council would ordinarily determine compliance but instead relies on a  
39 permit or approval issued to a third party, the Council, to issue a site certificate, must  
40 find that the third party has, or has a reasonable likelihood of obtaining, the necessary  
41 permit or approval, and that the applicant has, or has a reasonable likelihood of entering  
42 into, a contractual or other arrangement with the third party for access to the resource or  
43 service secured by that permit or approval.  
44  
45

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

## 8

### 9 **Discussion**

10           The first two sections of the Organizational Standard require that the certificate holder  
11 demonstrate its ability to construct, operate and retire the facility in accordance with Council  
12 standards and the terms of the site certificate. PGE has proposed no change to the site, the  
13 facility, or its construction or operation. We address retirement below, in the discussion of the  
14 Council's Retirement and Financial Assurance standard.

15  
16           Sections 3 and 4 of the standard address permits for which the applicant will rely on a  
17 permit or approval issued to a third party. PGE has proposed no change to the site, the facility, or  
18 its construction or operation that would rely on a permit or approval issued to a third party.

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

### 23

### 24 **Conclusion**

25           The Department recommends that the Council find that the applicant would meet the  
26 Council's Organizational Expertise standard if Amendment #8 were approved.

### 27

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

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

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

33  
34           (2) *The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*  
35 *form and amount satisfactory to the Council to restore the site to a useful, non-hazardous*  
36 *condition.*

### 37

### 38 **Discussion**

39  
40           In section D.3 of the Final Order for the Port Westward Generating Project, dated  
41 November 8, 2002, the Council found that the applicant demonstrated that it could adequately  
42 restore the site to a useful, non-hazardous condition following facility retirement. The Council  
43 imposed 15 site certificate conditions in section D.3 of the site certificate to ensure compliance  
44 with the Retirement and Financial Assurance standard. The conditions of approval were  
45 amended by the Council in the Orders approving Amendments 1 and 3. The extension of the

1 deadline to complete construction does not affect the Council’s findings that the construction and  
2 operation of the facility will comply with the Retirement and Financial Assurance standard.

3  
4 Because PGE has proposed no change to the site, the facility, or its construction or  
5 operation, the Department recommends that the Council find that the findings in the Final Orders  
6 are sufficient to demonstrate compliance with the Retirement and Financial Assurance standard.

7  
8 **Conclusion**

9 The Department recommends that the Council find that the PWGP would meet the  
10 Council’s Retirement and Financial Assurance standard if Amendment #8 were approved.

11  
12 **C. Standards about the Impacts of Construction and Operation**

13  
14 **1. Land Use OAR 345-022-0030**

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

18  
19 *(2) The Council shall find that a proposed facility complies with section (1) if:*

20 *(a) The applicant elects to obtain local land use approvals under ORS*  
21 *469.504(1)(a) and the Council finds that the facility has received local land use*  
22 *approval under the acknowledged comprehensive plan and land use regulations*  
23 *of the affected local government; or*

24 *(b) The applicant elects to obtain a Council determination under ORS*  
25 *469.504(1)(b) and the Council determines that:*

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

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

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

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

1 *substantive criteria and apply them or to evaluate the proposed facility against the*  
2 *statewide planning goals.*

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

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

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

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

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

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

22 *(C) The proposed facility is compatible with other adjacent uses or will be*  
23 *made compatible through measures designed to reduce adverse impacts.*  
24

## 25 **Discussion**

26 In section D.4 of the Final Order for the Port Westward Generating Project, dated  
27 November 8, 2002, the Council found that the applicant demonstrated compliance with the Land  
28 Use standard. The Council imposed 5 site certificate conditions in section D.4 of the site  
29 certificate to ensure compliance with the Land Use standard. The Council's Final Order for the  
30 PWGP Amendment # 2, dated September 24, 2004, Amendment # 6 dated March 27, 2009 and  
31 Amendment # 7 dated March 12, 2010 addressed changes in applicable land use provisions since  
32 issuance of the PWGP Site Certificate on November 8, 2002. Since that decision, Columbia  
33 County and the City of Rainier have amended some of their land use provisions. Additionally,  
34 Columbia County revised their Columbia County Zoning Ordinance §1100 Flood Hazard  
35 Overlay. These changes and amendments do not affect any of the Council's prior findings with  
36 respect to PGE's ability to comply with the Land Use standard.  
37

38 Because PGE has proposed no change to the site, the facility, or its construction or  
39 operation, the Department recommends that the Council conclude that the findings in the Final  
40 Orders are sufficient to demonstrate compliance with the Land Use standard.  
41

## 42 **Conclusion**

43 The Department recommends that the Council find that the PWGP would comply with  
44 the Council's Land Use standard if Amendment #8 were approved.  
45

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

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

8  
9 **Discussion**

10  
11 In Section D.13 of the Final Order of November 8, 2002, the Council found that, with the  
12 imposition of the ten conditions of approval set forth in section D.13 of the Site Certificate, the  
13 facility would not adversely affect the listed public services. The Council’s final order of March  
14 12, 2010, approving Amendment No. 7, amended Condition D.13 (2) to require that the  
15 Certificate holder complete a new Traffic Improvement Agreement and pay a new Traffic  
16 Improvement Contribution to Columbia County. The extension of the deadline to complete  
17 construction does not affect that Council’s findings that the construction and operation of the  
18 facility will be consistent with the Public Services Standard.

19 Because PGE has proposed no change to the site, the facility, or its construction or  
20 operation, the Department recommends that the Council conclude that the findings in the Final  
21 Orders are sufficient to demonstrate compliance with the Public Services standard.

22  
23 **Conclusion**

24 The Department recommends that the Council find that the PWGP would comply with  
25 the Public Services standard if Amendment #8 were approved.

26  
27 **3. Waste Minimization OAR 345-022-0120**

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

30 *(a) The applicant’s solid waste and wastewater plans are likely to minimize*  
31 *generation of solid waste and wastewater in the construction and operation of the*  
32 *facility, and when solid waste or wastewater is generated, to result in recycling*  
33 *and reuse of such wastes;*

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

37  
38 **Discussion**

39  
40 The Waste Minimization standard was addressed in Section D.14 of the Final Order of  
41 November 8, 2002. The Council imposed five conditions in section D.14 of the Site Certificate  
42 to ensure compliance with the Waste Minimization standard. The extension of the deadline to  
43 complete construction does not affect the Council’s findings that the construction and operation  
44 of the facility will be consistent with the Waste Minimization Standard

1 Because PGE has proposed no change to the site, the facility, or its construction or  
2 operation, the Department recommends that the Council find that the findings in the Final Orders  
3 are sufficient to demonstrate compliance with the Waste Minimization standard.  
4

#### 5 **Conclusion**

6 The Department recommends that the Council find that the PWGP would comply with  
7 the Waste Minimization standard if Amendment #8 were approved.  
8

#### 9 **4. Structural Standard OAR 345-022-0020**

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

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

18 *(b) The applicant can design, engineer, and construct the facility to avoid dangers*  
19 *to human safety presented by seismic hazards affecting the site that are expected*  
20 *to result from maximum probable ground motion events. As used in this rule*  
21 *“seismic hazard” includes ground shaking, ground failure, landslide,*  
22 *liquefaction, lateral spreading, tsunami inundation, fault displacement, and*  
23 *subsidence;*

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

28 *(d) The applicant can design, engineer and construct the facility to avoid dangers*  
29 *to human safety presented by the hazards identified in subsection (c).*  
30

#### 31 **Discussion**

32  
33 The Structural standard was addressed in Section D.5 of the Final Order of November 8,  
34 2002. The Council imposed eight conditions in section D.5 of the Site Certificate to ensure  
35 compliance with the Structural standard. The Council added a ninth condition in its Order  
36 approving Amendment 5. The extension of the deadline to complete construction does not affect  
37 the Council’s findings that the construction and operation of the facility will be consistent with  
38 the Structural Standard  
39

40 Because PGE has proposed no change to the site, the facility, or its construction or  
41 operation, the Department recommends that the Council find that the findings in the Final Orders  
42 are sufficient to demonstrate compliance with the Structural standard.  
43

#### 44 **Conclusion**

45 The Department recommends that the Council find that the PWGP would comply with  
46 the Structural standard if Amendment #8 were approved.

1  
2 **5. Soil Protection OAR 345-022-0022**

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

8  
9 **Discussion**

10 The Soil Protection standard was addressed in Section D.6 of the Final Order of  
11 November 8, 2002. The Council imposed ten conditions in section D.6 of the Site Certificate to  
12 ensure compliance with the Soil Protection standard. Condition D.6(1) was amended by the  
13 Council's Order approving Amendment 1. The extension of the deadline to complete  
14 construction does not affect the Council's findings that the construction and operation of the  
15 facility will be consistent with the Soil Protection Standard.

16  
17 Because PGE has proposed no change to the site, the facility, or its construction or  
18 operation, the Department recommends that the Council find that the findings in the Final Orders  
19 are sufficient to demonstrate compliance with the Soil Protection standard.

20  
21 **Conclusion**

22 The Department recommends that the Council find that the PWGP would comply with  
23 the Council's Soil Protection standard if Amendment #8 were approved.

24  
25 **6. Protected Areas OAR 345-022-0040**

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

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

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

38 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131*  
39 *et seq. and areas recommended for designation as wilderness areas pursuant to*  
40 *43 U.S.C. 1782;*

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

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

43  
44  
45 **Discussion**  
46

1 The Protected Areas standard was addressed in Section D.7 of the Final Order of  
2 November 8, 2002. The Council did not impose any conditions to ensure compliance with the  
3 Protected Areas standard. The extension of the deadline to complete construction does not affect  
4 the Council's findings that the construction and operation of the facility will be consistent with  
5 the Protected Areas standard.

6  
7 Because PGE has proposed no change to the site, the facility, or its construction or  
8 operation, the Department recommends that the Council conclude that the findings in the Final  
9 Orders are sufficient to demonstrate compliance with the Protected Areas standard.

#### 10 11 **Conclusion**

12 The Department recommends that the Council find that the PWGP would comply with  
13 the Council's Protected Areas standard if Amendment #8 were approved.

#### 14 15 **7. Scenic Resources OAR 345-022-0080**

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

#### 22 23 **Discussion**

24  
25 The Scenic Resources standard was addressed in Section D.10 of the Final Order of  
26 November 8, 2002. The Council imposed seven conditions in section D.10 of the Site Certificate  
27 to ensure compliance with the Scenic Resources standard. The extension of the deadline to  
28 complete construction does not affect the Council's findings that the construction and operation  
29 of the facility will be consistent with the Scenic Resources Standard.

30  
31 Because PGE has proposed no change to the site, the facility, or its construction or  
32 operation, the Department recommends that the Council find that the findings in the Final Orders  
33 are sufficient to demonstrate compliance with the Scenic Resources standard.

#### 34 35 **Conclusion**

36 The Department recommends that the Council find that the PWGP would comply with  
37 the Council's Scenic Resources standard if Amendment #8 were approved.

#### 38 39 **8. Historic, Cultural and Archaeological Resources OAR 345-022-0090**

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

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

45 *(b) For a facility on private land, archaeological objects, as defined in ORS*  
46 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

1 (c) For a facility on public land, archaeological sites, as defined in ORS  
2 358.905(1)(c).  
3

#### 4 **Discussion**

5  
6 The Historic, Cultural and Archaeological Resources standard was addressed in Section  
7 D.11 of the Final Order of November 8, 2002. The Council imposed five conditions in section  
8 D.11 of the Site Certificate to ensure compliance with the Historic, Cultural and Archaeological  
9 Resources standard. The conditions of approval were amended by the Council in the Orders  
10 approving Amendments 1 and 5. The extension of the deadline to complete construction does  
11 not affect the Council's findings that the construction and operation of the facility will be  
12 consistent with the Historic, Cultural and Archaeological Resources Standard.  
13

14 Because PGE has proposed no change to the site, the facility, or its construction or  
15 operation, the Department recommends that the Council find that the findings in the Final Orders  
16 are sufficient to demonstrate compliance with the Historic, Cultural and Archaeological  
17 Resources standard.  
18

#### 19 **Conclusion**

20 The Department recommends that the Council find that the PWGP would comply with  
21 the Council's Historic, Cultural and Archaeological Resources standard if Amendment #8 were  
22 approved.  
23

#### 24 **9. Recreation OAR 345-022-0100**

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

- 31 *(a) Any special designation or management of the location;*
- 32 *(b) The degree of demand;*
- 33 *(c) Outstanding or unusual qualities;*
- 34 *(d) Availability or rareness;*
- 35 *(e) Irreplaceability or irretrievability of the opportunity.*  
36

#### 37 **Discussion**

38 The Recreation standard was addressed in Section D.12 of the Final Order of November  
39 8, 2002. The Council did not impose any conditions to ensure compliance with the Recreation  
40 standard. The extension of the deadline to complete construction does not affect the Council's  
41 findings that the construction and operation of the facility will be consistent with the Recreation  
42 standard.  
43

44 Because PGE has proposed no change to the site, the facility, or its construction or  
45 operation, the Department recommends that the Council find that the findings in the Final Orders  
46 are sufficient to demonstrate compliance with the Recreation standard.

1  
2 **Conclusion**

3 The Department recommends that the Council find that the PWGP would comply with  
4 the Council’s Recreation standard if Amendment #8 were approved.  
5

6 **D. Standards to Protect Wildlife**  
7

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

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

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

14 *(a) Are consistent with the protection and conservation program, if any,*  
15 *that the Oregon Department of Agriculture has adopted under ORS*  
16 *564.105(3); or*

17 *(b) If the Oregon Department of Agriculture has not adopted a protection*  
18 *and conservation program, are not likely to cause a significant reduction*  
19 *in the likelihood of survival or recovery of the species; and*  
20

21 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed*  
22 *as threatened or endangered under ORS 496.172(2), the design, construction and*  
23 *operation of the proposed facility, taking into account mitigation, are not likely to*  
24 *cause a significant reduction in the likelihood of survival or recovery of the*  
25 *species.*  
26

27 **Discussion**  
28

29 The Threatened and Endangered Species standard was addressed in Section D.9 of the  
30 Final Order of November 8, 2002. The Council imposed eight conditions in section D.9 of the  
31 Site Certificate to ensure compliance with the Threatened and Endangered Species standard. The  
32 Council’s Order approving Amendment 3 added a ninth condition and amended another  
33 condition. The extension of the deadline to complete construction does not affect the Council’s  
34 findings that the construction and operation of the facility will be consistent with the Threatened  
35 and Endangered Species standard.  
36

37 Because PGE has proposed no change to the site, the facility, or its construction or  
38 operation, the Department recommends that the Council find that the findings in the Final Orders  
39 are sufficient to demonstrate compliance with the Threatened and Endangered Species standard.  
40

41 **Conclusion**

42 The Department recommends that the Council find that the PWGP would comply with  
43 the Council’s Threatened and Endangered Species standard if Amendment #8 were approved.  
44

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

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

6  
7 **Discussion**

8  
9 The Fish and Wildlife Habitat standard was addressed in Section D.8 of the Final Order  
10 of November 8, 2002. The Council imposed 24 conditions in section D.8 of the Site Certificate  
11 to ensure compliance with the Fish and Wildlife Habitat standard. The conditions of approval  
12 were amended by the Council in the Orders approving Amendments 1, 2 and 3. A new condition  
13 was added by the Council's Order approving Amendment 7. The extension of the deadline to  
14 complete construction does not affect the Council's findings that the construction and operation  
15 of the facility will be consistent with the Fish and Wildlife Habitat standard.

16  
17 Because PGE has proposed no change to the site, the facility, or its construction or  
18 operation, the Department recommends that the Council find that the findings in the Final Orders  
19 are sufficient to demonstrate compliance with the Fish and Wildlife Habitat standard.

20  
21 **Conclusion**

22 The Department recommends that the Council find that the PWGP would comply with  
23 the Council's Fish and Wildlife Habitat standard if Amendment #8 were approved.

24  
25 **E. Carbon Dioxide Standard for Base Load Gas Plants OAR 345-024-0550**

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

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

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

1  
2 (3) If the applicant elects to comply with the standard using the means described  
3 in OAR 345-024-0560(2), the Council shall determine the amount of carbon  
4 dioxide emissions reduction that is reasonably likely to result from each of the  
5 proposed offsets. In making this determination, the Council shall not allow credit  
6 for offsets that have already been allocated or awarded credit for carbon dioxide  
7 emissions reduction in another regulatory setting. The fact that an applicant or  
8 other parties involved with an offset may derive benefits from the offset other than  
9 the reduction of carbon dioxide emissions is not, by itself, a basis for withholding  
10 credit for an offset. The Council shall base its determination of the amount of  
11 carbon dioxide emission reduction on the following criteria and as provided in  
12 OAR 345-024-0680:

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

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

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

21  
22 (4) Before beginning construction, the certificate holder shall notify the  
23 Department of Energy in writing of its final selection of a gas turbine vendor and  
24 shall submit a written design information report to the Department sufficient to  
25 verify the facility's designed new and clean heat rate and its nominal electric  
26 generating capacity at average annual site conditions for each fuel type. In the  
27 report, the certificate holder shall include the proposed limits on the annual  
28 average number of hours of facility operation on distillate fuel oil, if applicable.  
29 In the site certificate, the Council may specify other information to be included in  
30 the report. The Department shall use the information the certificate holder  
31 provides in the report as the basis for calculating, according to the site  
32 certificate, the amount of carbon dioxide emissions reductions the certificate  
33 holder must provide under OAR 345-024-0560.  
34

### 35 Discussion

36 In section D.15 of the Final Order for the Port Westward Generating Project, dated  
37 November 8, 2002, the Council found that the applicant demonstrated that it comply with the  
38 Carbon Dioxide standard. The Council imposed ten site certificate conditions in section D.15 of  
39 the site certificate to ensure compliance with the Carbon Dioxide standard. A new condition was  
40 added by the Council's Order approving Amendment 1, and conditions were amended by the  
41 Council's Order approving Amendment 6 to reflect the Council's rulemaking increasing the  
42 monetary offset rate. The Council found that the proposed Unit 2 meets the carbon dioxide  
43 standard for non-base load gas power plants, OAR 345-024-0590 and amended the conditions of  
44 approval in its Order approving Amendment #7. The carbon dioxide standard and the monetary  
45 path rate have not been updated since approval of Amendment #7.  
46

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

#### 5 **Conclusion**

6 The Department recommends that the Council find that the PWGP would comply with  
7 Carbon Dioxide standard if Amendment #8 were approved.  
8

### 9 **V. OTHER APPLICABLE REGULATORY REQUIREMENTS**

#### 10 **A. Requirements under Council Jurisdiction**

11 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-  
12 022-0000, the Council must determine that a facility complies with “all other Oregon statutes  
13 and administrative rules identified in the project order, as amended, as applicable to the issuance  
14 of a site certificate for the proposed facility.” In the Final Orders, the Council found that the  
15 other applicable Oregon statutes and administrative rules were the Department of Environmental  
16 Quality noise control regulations, the regulations adopted by the Department of State Lands for  
17 removal or fill of material affecting waters of the state and the Council’s statutory authority to  
18 consider protection of public health and safety.  
19

#### 20 **1. Noise Control Regulations for Industry and Commerce OAR 340-035-0035**

21 *(1) Standards and Regulations:*

22 *(b) New Noise Sources:*

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

#### 36 **Discussion**

37 DEQ noise regulations for industrial and commercial noise sources apply to the PWGP.  
38 The DEQ noise regulations were addressed in Section E.1.a. of the Final Order of  
39 November 8, 2002. The Council imposed 5 conditions in section E.1.a. of the Site Certificate to  
40 ensure compliance with the DEQ noise regulations. The Council amended and added conditions  
41 in its Order approving Amendment 7. The extension of the deadline to complete construction  
42 does not affect the Council’s findings that the construction and operation of the facility will  
43 comply with the DEQ noise regulations.  
44

1 Because PGE has proposed no change to the site, the facility, or its construction or  
2 operation, the Department recommends that the Council find that the findings in the Final Orders  
3 are sufficient to demonstrate compliance with the DEQ noise standards applicable to the facility.  
4

5 **Conclusion**

6 The Department recommends that the Council find that the PWGP would comply with  
7 the applicable noise control regulations if Amendment #8 were approved.  
8

9 **2. Removal-Fill Law**

10 The Oregon Removal-Fill Law (ORS 196.800 through 990) and DSL regulations (OAR  
11 141-085-0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of  
12 material is removed, filled or altered within any “waters of the state” at the proposed site.  
13

14 **Discussion**

15  
16 The DSL removal/fill regulations were addressed in Section E.1.b. of the Final Order of  
17 November 8, 2002. The Council approved the removal/fill permit and imposed two conditions in  
18 section E.1.b. of the Site Certificate to ensure compliance with the DSL removal/fill regulations.  
19 The conditions of approval were amended by the Council in the Orders approving Amendments  
20 1 and 3. The extension of the deadline to complete construction does not affect the Council’s  
21 findings that the construction and operation of the facility will comply with the DSL removal/fill  
22 regulations.  
23

24 Because PGE has proposed no change to the site, the facility, or its construction or  
25 operation, the Department recommends that the Council find that the findings in the Final Orders  
26 are sufficient to demonstrate compliance with the DSL removal/fill permit requirements.  
27

28 **Conclusion**

29 The Department recommends that the Council find that the PWGP would comply with  
30 the applicable DSL removal/fill permit requirements if Amendment #8 were approved.  
31

32 **3. Public Health and Safety**

33  
34 Under ORS 469.310, the Council is charged with ensuring that the “siting, construction and  
35 operation of energy facilities shall be accomplished in a manner consistent with protection of the  
36 public health and safety....” State law further provides that “the site certificate shall contain  
37 conditions for the protection of the public health and safety....” ORS 469.401(2).  
38

39 **Discussion**

40  
41 The Council addressed public health and safety in Section E.1.c. of the Final Order of  
42 November 8, 2002. The Council imposed nine conditions in section E.1.c. of the Site Certificate  
43 to ensure the public health and safety. The conditions of approval were amended by the Council  
44 in the Orders approving Amendments 1 and 5. The extension of the deadline to complete  
45 construction does not affect the Council’s findings that the construction and operation of the  
46 facility protect the public health and safety.

1  
2 Because PGE has proposed no change to the site, the facility, or its construction or  
3 operation, the Department recommends that the Council find that the findings in the Final Orders  
4 are sufficient to demonstrate compliance with the Public Health and Safety standard.  
5

## 6 **Conclusion**

7 The Department recommends that the Council find that the PWGP would comply with  
8 the Public Health and Safety standard if Amendment #8 were approved.  
9

## 10 **B. Requirements That Are Not Under Council Jurisdiction**

### 11 **1. Federally-Delegated Programs**

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

19  
20 In the Final Order on the Application, the Council found that the certificate holder must  
21 obtain a federal Air Contaminant Discharge Permit (ACDP) from the Oregon Department of  
22 Environmental Quality (DEQ) before beginning construction of the proposed facility. The  
23 certificate holder must also comply with requirements of DEQ's 1200-C General National  
24 Pollutant Discharge Elimination System (NPDES) Stormwater Discharge permit and an Erosion  
25 and Sediment Control Plan (ESCP) to minimize erosion at the site during construction  
26 operations.  
27

### 28 **2. Requirements That Do Not Relate to Siting**

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

## 37 **VI. GENERAL APPLICATION OF CONDITIONS**

38 The conditions described in this order include conditions that are specifically required by  
39 OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site  
40 Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,  
41 Division 26 (Construction and Operation Rules for Facilities). The conditions described in this  
42 order, or added to the site certificate by this order, include conditions based on representations in  
43 the request for amendment and the supporting record. The Council deems these representations  
44 to be binding commitments made by the certificate holder. Also included are conditions Council  
45 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions  
46 22 and 24, or to protect public health and safety.

1  
2 In addition to all other conditions described or included in this order, the site certificate  
3 holder is subject to all conditions and requirements contained in the rules of the Council and in  
4 local ordinances and state law in effect on the date the amended site certificate is executed.  
5 Under ORS 469.401(2), upon a clear showing of a significant threat to the public health, safety  
6 or the environment that requires application of later-adopted laws or rules, the Council may  
7 require compliance with such later-adopted laws or rules.  
8

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

## 14 **VII. GENERAL CONCLUSION**

15 The amendment proposed by PGE would extend the construction completion date for  
16 Unit 2 of the PWGP from May 8, 2011, to May 8, 2013. The Department recommends that the  
17 Council adopt the revisions proposed by PGE. The Department recommends that the Council  
18 adopt revisions to Conditions F.1.(6) as set forth in Section VII.A below.  
19

20 Based on the findings and conclusions included in this order, the Department  
21 recommends that the Council make the following findings:  
22

- 23 1. The proposed Amendment #8 complies with the requirements of the Oregon  
24 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to  
25 469.619.
- 26 2. The proposed Amendment #8 complies with the applicable standards adopted by  
27 the Council pursuant to ORS 469.501.
- 28 3. The proposed Amendment #8 complies with all other Oregon statutes and  
29 administrative rules applicable to the amendment of the site certificate for the  
30 PWGP that are within the Council's jurisdiction.

31 Accordingly, the Department recommends that the Council find that the facility complies  
32 with the General Standard of Review (OAR 345-022-0000). The Department recommends that  
33 the Council find, based on a preponderance of the evidence on the record, that the site certificate  
34 may be amended as requested by the certificate holder and set forth below.  
35

### 36 **A. The Department's Recommended Revisions**

37  
38 New text requested by the certificate holder and recommended by the Department is  
39 shown below in double-underlined bold typeface and recommended deletions have a  
40 strikethrough. All changes recommended by the Department are identical to the changes  
41 requested by the applicant.  
42

#### 43 ***F.1. Mandatory Conditions in Site Certificates*** 44 ***Beginning and Completing Construction*** 45

1 (6) *The Certificate Holder shall complete construction of the facility by May 8,*  
2 *~~2011~~2013. The completion of construction date is the day by which (1) the facility*  
3 *is substantially complete as defined in the Certificate Holder's construction*  
4 *contract documents; (2) acceptance testing is satisfactorily completed; and, (3)*  
5 *the energy facility is ready to commence continuous operation consistent with the*  
6 *Site Certificate. Completion of construction of the Port Westward to BPA Allston*  
7 *Substation Transmission Line separately shall not satisfy this requirement.*  
8 *[Amendment Nos. 2, 6 & 68]*  
9

10  
11 **VIII. ORDER**

12 The Department recommends that the Council approve Amendment #8 and issue an  
13 amended site certificate for the PWGP subject to the terms and conditions set forth above.  
14

15 Issued this 29<sup>th</sup> day of December, 2010.  
16

17 OREGON DEPARTMENT OF ENERGY  
18

19  
20 By: \_\_\_\_\_  
21 Thomas M. Stoops  
22 Siting Manager, Oregon Department of Energy  
23

24 **Notice of the Right to Appeal**  
25 ***[Text to be added to Final Order]***  
26