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BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

IN THE MATTER OF THE REQUEST FOR)	
AMENDMENT #3 OF THE SITE CERTIFICATE)	FINAL ORDER ON
FOR THE SOUTH MIST PIPELINE EXTENSION)	AMENDMENT #3
)	

Oregon Energy Facility Siting Council

April 23, 2004

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1

SOUTH MIST PIPELINE EXTENSION
FINAL ORDER APPROVING
AMENDMENT #3

2

3 **I. INTRODUCTION**

4 The Oregon Energy Facility Siting Council (“EFSC” or “the Council”) issues this order in
5 accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by Northwest
6 Natural Gas (NWN) for amendment of its site certificate for the South Mist Pipeline Extension (SMPE).
7

8 The Council issued the site certificate for the SMPE on March 13, 2003. The Council approved a
9 corridor 200 feet wide and approximately 62 miles long, and imposed conditions limiting the location of
10 the pipeline and construction activities within that 200-foot corridor.
11

12 The Council has amended the site certificate twice before. Amendment #1, issued August 28, 2003,
13 granted NWN additional workspace and access routes outside the 200 corridor, added a new soil
14 mitigation method to the Agricultural Mitigation Plan and reduced the minimum separation between the
15 pipeline and other underground structures from 24 inches to 12 inches. Amendment #2, issued on
16 December 5, 2003, allowed NWN to change the diversion and discharge points for water used in
17 hydrostatic testing.
18

19 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this order.
20

21 **II. PROCEDURAL HISTORY**

22 NWN submitted the amendment request on February 18, 2004 to the Oregon Department of Energy
23 (ODOE or “the Department”), which serves as staff to the Council. In accordance with OAR 345-027-
24 0070, ODOE sent copies of the request on February 19, 2004 to the agencies, local governments and
25 tribes listed in OAR 345-020-0040 and requested comments by March 19, 2004. ODOE also sent notice
26 to the Council’s mailing list, the mailing list for the SMPE, and all property owners within 500 feet of
27 the SMPE site, requesting public comments by March 19, 2004. ODOE received no comments on the
28 application for amendment from the public. Washington County Land Development Services did
29 request one new condition, which the Council adopts.
30

31 On March 19, 2004, ODOE issued a proposed order recommending approval of the amendment.
32 ODOE issued notice of the proposed order, stating that any person could ask the Council to hold a
33 contested case proceeding. The notice stated that the deadline to request a contested case was April 19,
34 2004, and that the Council would determine whether a contested case proceeding was justified. The
35 Council did receive one public comment on the proposed order, but no request for contested case. The
36 Council met on April 23, 2004 in Tigard, Oregon to consider the amendment.
37

38 In reviewing this amendment, the Council considered whether the changes to the facility comply
39 with all Council standards (OAR 345-027-0070). The Council applied the applicable substantive land
40 use criteria in effect on the date NWN submitted the amendment request and all other state statutes,
41 administrative rules and local ordinances in effect on the date of this order.
42

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

2
3 **A. Description of the Facility**

4 The SMPE is a 24-inch diameter natural gas transmission pipeline, approximately 62 miles in length.
5 The site of the facility is a 200-foot wide corridor. The site certificate authorizes NWN to locate the
6 pipeline anywhere within the corridor, subject to conditions. The corridor at its northernmost point
7 begins at a NWN valve station (the “Bacona Blowdown Station”) near the Washington-Columbia
8 county border. It travels south through Dairy Creek Valley, and proceeds south and east along mostly
9 rural roads and property lines just west of North Plains, Hillsboro, Sherwood and Wilsonville, crossing
10 the Willamette River at a point near Graham Road in Clackamas County. South of the Willamette River
11 the corridor proceeds south and east along rural roads and property lines until its southernmost point at
12 the Williams Company’s Molalla Gate Station near the intersection of Barnards and Dryland roads.
13

14 Although the approved corridor is 200 feet wide, the Council imposed conditions limiting the
15 permanent easements that NWN can acquire to 40 feet and limiting the width of temporary construction
16 easements to 80 feet. Where the corridor in the Exclusive Farm Use (EFU) zone includes public road
17 right-of-way (RROW), the Council imposed conditions limiting permanent, private easements outside
18 the public RROW to 20 feet, and limiting temporary construction easements outside the public RROW
19 to 50 feet. Along certain roads the site certificate limits the pipeline location to the public RROW.
20

21 **B. Changes to the Facility Proposed by NWN**

22 The Site Certificate authorizes NWN to build the pipeline within an approved 200 foot corridor. For
23 any temporary access and construction laydown outside the 200 foot corridor, NWN must request a site
24 certificate amendment. In its request for amendment 3, NWN requests temporary access and workspace
25 outside the 200 foot corridor on 48 properties. NWN also wishes to realign the pipeline on 5 properties,
26 and it wishes permanent access easements outside the 200-foot corridor on 2 additional properties. All
27 of these changes would constitute changes to the site. All of the easements requested are contiguous to
28 the original 200 foot corridor.
29

30 **C. Changes to Site Certificate Proposed by NWN**

31 NWN proposes the following changes to the site certificate:

32
33 Conditions Under OAR 345-027-0020(10): Add the following condition:

- 34
35 11) Notwithstanding OAR 345-027-0020(1) Condition 1, the permanent maintenance
36 easement may deviate outside of the Leisy road right-of-way to accommodate the
37 transition of the SMPE from the Leisy Road alignment to the Padget Road alignment as
38 described in Amendment No. 2 (NWN Application for Amendment No. 3, Exhibit 2,
39 Panel 12).
40

41 General Land Use Conditions: Add the following conditions:

- 42
43 13) Easements allowed under Amendment #3. (a) Notwithstanding General Land Use
44 Conditions 2 and 6, the permanent maintenance easement on the Tonges and Simpson
45 property may be shifted to the west to abut the proposed expanded Oregon Department of
46 Transportation right-of-way for Highway 219 (NWN Application for Amendment No. 3,
47 Exhibit 2, Panel 16); a permanent easement is allowed as modified on the Waibel and

1 Evans properties (NWN Application for Amendment No. 3, Exhibit 2, Panel 13); and a
2 permanent access easement is allowed across the Lakeside and Davis properties (NWN
3 Application for Amendment No. 3, Exhibit 2, Panel 14); (b) Notwithstanding General
4 Land Use Conditions 3, 5 and 6, the temporary access and construction laydown
5 easements described and shown in Exhibits 2, 3, and 4 to Application for Amendment
6 No. 3 to the site certificate area are authorized.

7
8 Special Conditions for Temporary Laydown Area: Add the following condition:

9
10 6) Conditions (1) through (4) above shall apply to the temporary easements described in
11 Exhibits 2, 3, and 4 of Application for Amendment No. 3.

12 13 **IV. FINDINGS ON COMPLIANCE WITH STANDARDS**

14
15 Under the General Standard of Review, OAR 345-022-0000(1), to issue the requested amendment
16 the Council must determine that it complies with:

- 17 a) standards adopted by the Council pursuant to ORS 469.501,
18 b) other Oregon statutes and administrative rules identified in the project order, excluding those for
19 which the federal government has delegated the decision on compliance to a state agency other than
20 the Council, and
21 c) statewide planning goals as provided in OAR 345-022-0030

22
23 Amendment #3 does not affect any requirements of state agencies other than EFSC. Subpart (b) of
24 the rule does not apply to this amendment.

25 26 **A. Council Standards in OAR Chapter 345 Division 22**

27 28 **1. Organizational Expertise OAR 345-022-0010**

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

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

42 *(3) If the applicant does not itself obtain a state or local government permit or approval for*
43 *which the Council would ordinarily determine compliance but instead relies on a permit or approval*
44 *issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has*

1 a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or
2 has a reasonable likelihood of entering into, a contractual or other arrangement with the third party
3 for access to the resource or service secured by that permit or approval.

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

11 Discussion

12
13 This amendment does not change NWN's organization or personnel. Nor does it alter the scope of
14 the project in a way that might require additional expertise or experience. Therefore the Council's
15 findings of compliance with this standard in the final order approving the site certificate and the orders
16 approving amendments 1 and 2 apply here as well. Sections (3) and (4) of the standard do not apply
17 because no third party permits are involved.

18 Conclusion

19
20 The Council finds that the proposed amendment complies with the Organization Expertise Standard.
21 No changes to conditions are required.

22 2. Structural Standard OAR 345-022-0020

23 To issue the amendment, the Council must find that:

24 (a) The applicant, through appropriate site-specific study, has adequately characterized the site
25 as to seismic zone and expected ground motion and ground failure, taking into account amplification,
26 during the maximum credible and maximum probable seismic events; and

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

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

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

38 Discussion

39 In its Final Order approving the SMPE, the Council found that the SMPE satisfies the Structural
40 Standard. (See Final Order, at 11-15; Attachment C, at 9-18.) The proposed amendment does not
41 change the location of the pipeline or any of the design, construction or surveillance measures

1 recommended to ensure compliance. Nothing in the proposed amendment alters the basis for the
2 Council’s finding of compliance with the standard.

3
4 **Conclusion**

5
6 The Council finds that that the proposed amendment complies with the Structural standard. No
7 changes to conditions are required.
8

9 **3. Soil Standard OAR 345-022-0022**

10 To issue the proposed amendment, the Council must find that

11 ****the design, construction and operation of the facility, taking into account mitigation, are not likely*
12 *to result in a significant adverse impact to soils including, but not limited to, erosion and chemical*
13 *factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical*
14 *spills.*

15 In approving the site certificate, the Council found that the SMPE meets the Soil Standard based on
16 mitigation described in the ASC and the Agricultural Impact Mitigation Plan (AIMP). The analysis area
17 for soils in the application for site certificate included all of the areas where NWN proposes to add
18 workspaces and access routes.
19

20 Soils impacts on temporary access easements will be minimized because NWN has selected access
21 routes that use existing farm roads or paths wherever possible. Significant soil impacts on temporary
22 workspaces and laydown areas will be prevented because all conditions applicable to existing
23 workspaces and laydown areas will apply.
24

25 To make it clear that Site Certificate conditions for temporary laydown area apply to the easements
26 described in this amendment request, the Department recommends the new condition (6) under “Special
27 Conditions for Temporary Laydown Area” proposed by NWN, stating that the conditions imposed on
28 temporary laydown area apply to the easements depicted in Exhibits 2,3 and 4 of the Application for
29 Amendment 3.
30

31 **Conclusion**

32
33 The proposed condition makes it clear that the conditions for soil restoration that apply to the site as
34 originally approved will apply to the temporary easements as well. With this condition, the Council
35 finds that that the proposed amendment complies with the Soil Protection Standard.
36

37 **4. Land Use Standard OAR 345-0222-0030**

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

39 *(1)*** the proposed facility complies with the statewide planning goals adopted by the Land*
40 *Conservation and Development Commission.*

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

42 *****

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

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

5
6 **a. Compliance with County Substantive Criteria**

7 In approving the site certificate, the Council found that the SMPE met the applicable substantive
8 criteria from the land use codes of Washington, Clackamas and Marion Counties.

9
10 The proposed amendment allows pipeline alignment or temporary access and workspace outside the
11 original 200-foot corridor on 55 properties. All affected properties are included in the original corridor.
12 No previously unanalyzed property is affected, nor is any previously unanalyzed zone included. The
13 proposed use is the same use analyzed in Attachment A of the Final Order approving the Application for
14 Site Certificate. NWN listed the changes to applicable zoning ordinances as of June, 2003 (application
15 for amendment 1), and confirmed that there have been no relevant code changes since. Therefore, the
16 proposed amendment does not alter the findings of compliance with applicable substantive criteria from
17 the land use plans of affected local governments as described in Attachment A to the Final Order
18 approving the ASC.

19
20 In comment, Washington County did request one new condition¹, requiring NWN to obtain access
21 permits for the additional private road intersections with County/public roads. This condition will be
22 added to the site certificate.

23
24 **b. Compliance with ORS 215**

25 NWN states that it is not appropriate to conduct a new analysis under ORS 215.275 because they
26 are not proposing a new use in the EFU zone. NWN further states that EFSC need not consider site
27 specific alternatives because the SMPE is already sited in the EFU zone. NWN cites *Friends of Parrett*
28 *Mountain v. Northwest Natural Gas Company*, 336 Or 93, 79 P3d 869(2003):

29
30 “[O]ne component comprises the facility at issue: the proposed pipeline.***[T]he pipeline
31 contains no obvious dividing points marked by separate physical structures and therefore affords
32 no occasion to consider whether distinct physical structures might require different justifications
33 under ORS 215.275(2).” *Id.* At 109.

34
35 However, amendment #3 has 55 distinct easement requests. The Council could approve or reject
36 any one of them without affecting the other 54. Unlike the SMPE as a whole, this amendment does
37 contain obvious dividing points, because the easement requests are separated by substantial distances.
38 And, for each easement, the option of staying within the approved corridor could be considered an
39 alternative. For this reason, NWN listed each easement and stated its reason for each one.

40
41 NWN’s request affects 55 properties. Of these 55 properties, 13 are in Forest, Industrial or Rural
42 Residential zones and ORS 215.275 does not apply. The remaining 42 easements are in the EFU zone.

43
44 Necessity of easements under ORS 215.275(2)
45

¹ Terry Lawler, Washington County Land Development email to Adam Bless, ODOE, 3/10/2004

1 Although there are 42 separate easement requests in the EFU zone, the easements fall into broad
2 categories so that many of the easement requests have the same justification under ORS 215.275(2).
3 Some easements are requested for a combination of reasons, so that they fall into more than one
4 category. For example, in several locations NWN must use an underground bore to avoid habitat. To
5 accomplish the bore, extra workspace is sometimes necessary for engineering feasibility reasons. These
6 easements are therefore necessary under a combination of ORS 215.275(2)(a) and (f).

7
8 Taking into account the fact that some easements are necessary for more than one reason, NWN
9 identified eight general categories that account for all 42 requested easements in the EFU zone²:

10
11 Bores: NWN's final design includes many underground bores that NWN did not commit to in the
12 Application for Site Certificate. Bores were needed for a variety of reasons. Some were necessary
13 under ORS 215.275(2)(a) because there was no other technically feasible way to cross a busy road,
14 railroad, or river. Others are necessary under ORS 215.275(2)(f) to avoid habitat. And others are
15 proposed to avoid a significant adverse impact to accepted farm practices or a significant cost increase to
16 the farm operation under ORS 215.275(4). All of the workspaces needed for bores are locationally
17 dependent, because the workspace must be close to the bore itself. This category accounts for
18 approximately half of the easement requests in the EFU zone. The amendment includes temporary
19 workspace outside the original corridor to accommodate bores in the properties of³: Segura/Reyes,
20 Kreuger, Hughes/Jensen, Scharlepp, Cropp, Clean Water Services, Simpson, Tankersly, Holten/Ramer,
21 Stark, Anderson, Littlejohn, Wachlin, Sabbe, Sproul, Byers, Bissman, Smith, Ellison, Haener, Campbell
22 and Klinge.

23
24 Access routes to minimize impact on habitat: On some properties NWN will avoid impact to stream
25 habitat by approaching it from both sides. This impacts the stream less than having construction
26 vehicles cross it. Avoiding adverse impact to the streams is required in conditions imposed under the
27 EFSC habitat standard. To accomplish this, NWN requests access routes outside the corridor. They are
28 justified under ORS 215.275(2)(f) and are locationally dependent because the access routes must
29 provide access to the pipeline alignment in the EFU zone. The properties that fall into this category are:
30 Kindel, Guisinger, Miners, Ochoa, and Schmidlin. NWN has also requested access at the Shirazi
31 property to facilitate boring under wetlands.

32
33 NWN also requests one permanent alignment change based on this same justification. At the Waibel
34 and Evans properties, south of Padgett Road, the approved corridor leaves the road and travels cross
35 country over farm land. NWN proposes to realign the pipeline to the bottom of a hill, on the same
36 properties. The realignment is an action to minimize impact on farm operations under ORS 215.275(4)
37 because the bottom area is degraded pasture while the current alignment is more productive farm land.
38 The proposed new alignment is shorter and would affect slightly less acreage. As noted in the
39 discussion of the EFSC Habitat Standard, the proposed new alignment also reduces the acreage of
40 impacted wetland from 1.53 acres to 0.9.

41
42 Access to construction site at segments of the corridor that are distant from the road: There are long
43 segments of the corridor that are distant from the road, particularly in Dairy Creek Valley. NWN
44 proposes to use existing farm roads to transport equipment and material to the construction site, as a way

² NWN March 17, 2004 letter from Ron Gullberg to Adam Bless "Response to Request for Additional Information on Application for Amendment No. 3 to the South Mist Pipeline Extension ("SMPE") Site Certificate"

³ This order refers to properties by name for brevity. The full description of the property with zoning, tract number and identification of aerial photo panel is Exhibit 2 to the request for amendment 3.

1 of minimizing construction vehicle impact on the farmed land within the corridor. The access easements
2 are proposed as a measure to minimize and mitigate impact on farm operations under ORS 215.275(4).
3 This justification applies to the properties owned by Krueger, Fisher/Avery, Eggiman, Ochoa,
4 Schmidlin, Stadelman and Clean Water Services.

5
6 Widened corridor needed to allow narrower corridor upstream: On certain corridor segments, NWN
7 proposes to narrow the construction corridor in category 3 habitat or better, farmland in high value
8 crops, or along busy roads where worker safety is a concern. Narrowing the construction corridor is
9 technically feasible only if there is a wider area for staging of equipment and material. The justification
10 for these easements is a combination of ORS 215.275(2)(f), ORS 215.275(4) and ORS 215.275(2)(a).
11 Easements of this kind are requested at the properties of Hughes-Jensen, Simpson, Hanson, Kenner,
12 Hausman, , Sabbe, Femrite and McCoy.

13
14 Extra Space needed for Topsoil Storage: At some locations (for example, Cropp) NWN must excavate
15 an embankment, store a large amount of soil, and will then restore the embankment. At other locations,
16 the SMPE must cross underneath the existing 16-inch South Mist Feeder pipeline or another company's
17 pipeline, requiring an extra deep trench. These locations require extra space for topsoil storage. The
18 applicable criterion is ORS 215.275(2)(a). The easement requests in this category are on properties of
19 Taylor, Schmidlin, Cropp, Haener and Campbell.

20
21 Anomalies caused by EFSC Conditions: At three locations, (Taylor, Gregg, Bissman) NWN must
22 request additional easement outside the original corridor in order to meet other EFSC conditions. In the
23 Dairy Creek valley, a site certificate condition limits NWN's permanent easement to the 40-foot wide
24 easement for the existing 16-inch diameter South Mist Feeder Pipeline (SMF), which NWN constructed
25 in 1989. However, at the Taylor property (intersection of Dairy Creek and Meacham roads) NWN
26 cannot stay within that easement without taking out a small riparian area classified as habitat category
27 two⁴. NWN therefore located the corridor at this property along Dairy Creek Road. This alignment is
28 what the Council approved in the original site certificate, and the permanent easement meets General
29 Land Use Condition 2. However, where the SMPE corridor rejoins the existing 16-inch SMF pipeline
30 easement, the SMPE must cross underneath the existing 16-inch pipeline. This requires an extra deep
31 trench and extra soil storage. NWN therefore requests permission to use the land in between the two
32 pipelines as temporary workspace for equipment staging and storage for the extra soil.

33
34 At the Gregg property, a site certificate condition requires NWN to place the pipeline in the right of
35 way for Leisy road. Because of an offset where Leisy Road intersects Hornecker road, the paved road at
36 this intersection actually includes land outside its right of way. A portion of the road is technically on
37 private property. The transition from Leisy road to Padgett road is too sharp to accomplish successfully
38 in the road right of way. Therefore, NWN proposes an alignment that follows the natural path through
39 the intersection. This changes the site certificate condition, but the pipe would still be placed on land
40 that is in road use. The change in alignment is necessary for technical feasibility. ORS 215.275(2)(a).

41
42 At the Bissman property, where the approved corridor intersects Ladd Hill Road, NWN must add an
43 HDD bore in order to meet the Council's "split zone" condition. The bore under the right of way is
44 necessary because of EFU land on the west side of the road, and a dwelling on the residential site of the
45 road. Therefore, NWN requests workspace outside the corridor in order to accomplish the bore. The
46 easement is needed under ORS 215.275(2)(f) in order to comply with the EFSC "split zone" condition.

⁴ see ASC Figure P-2 sheet 9 of 181

1
2 ODOT Road Widening: At the Tonges and Simpson properties along highway 219, south of Hillsboro,
3 NWN's current alignment is adjacent to the highway in compliance with Land Use Conditions 2 and 3.
4 ODOT has acquired new road right of way and will widen the highway. NWN requests permission to
5 move the pipeline west, by the same amount that ODOT is expanding the road. The net result will meet
6 Land Use Conditions 2 and 3 for the new ODOT right of way. In the Final Order on the ASC, the
7 Council found that placing the pipeline outside road right of way is justified for public safety. And in
8 *Parrett Mountain*, the Court found that the applicant need not consider road right of way in the EFU
9 zone as an alternative to use of that zone.

10
11 "True-ups" after civil survey: On several properties NWN proposes to move the corridor slightly to
12 reflect the results of the final survey. In all cases, the corridor would move by only a few feet. The
13 adjustment is needed because NWN did not have access to the properties prior to receiving the site
14 certificate, and was therefore unable to provide a true survey showing the corridor's exact location. This
15 category reconciles what was found in the field by survey with what the Council approved in the Site
16 Certificate. The true up is necessary in order to comply with the mandatory site certificate condition
17 requiring NWN to supply the Council with a final and accurate survey of the site after completion. The
18 properties in this category are: Hughes-Jensen, Shirazi, Clean Water Services, Tonges, Anderson,
19 January, Koenig and Klinge.

20
21 In summary, all 42 EFU properties affected by this amendment are included in at least one of the
22 above categories. Each category is justified based on technical feasibility, compliance with the EFSC
23 Habitat standard, the statutory requirement to minimize and mitigate farm impact under ORS
24 215.275(4), public safety, or a combination of the above. All easements are locationally dependent
25 because the workspace and access must be next to the construction. The Council therefore finds that all
26 requested easements are necessary under one or more of the ORS 215.275(2) criteria.

27
28 Impact on farming and conditions to minimize and mitigate under ORS 215.275(4) and (5)

29
30 The ORS 215.275(4) and (5) requirements to restore farm land and to impose clear and objective
31 conditions to mitigate and minimize the impact on farm lands extend to this amendment. The Site
32 Certificate has conditions that limit the width of permanent and temporary easements, limit easements
33 outside public right of way along roads, and require mitigation under the AIMP and PCCMP.

34
35 The requested easements are for laydown area and access. NWN does not propose any clearing,
36 construction or trenching on these easements. The only impact is the temporary impact of vehicle traffic
37 and storage of equipment, material, or topsoil. Extensive inspection of the construction that NWN
38 performed on the southern 12 miles of the SMPE in 2003 showed that long term impact on laydown
39 areas and access routes was not significant and that the areas were restored once construction was done.

40
41 In response to the Department of Energy's March 5, 2004 letter requesting additional information,
42 NWN noted that all of the areas requested in amendment 3 were included in the agricultural inventory in
43 the ASC. In all cases, the farm use and activity in the land requested outside the corridor is identical to
44 the land inside the corridor. The impacts on farm land would therefore be the same as those analyzed in
45 the original Final Order approving the Site Certificate, and the measures to minimize and mitigate
46 impacts would be the same as well.

1 All conditions that mitigate and minimize impact on farm lands apply to the access routes and
2 workspaces in this amendment. In particular, the Agricultural Impact Mitigation Plan (AIMP) was
3 found to be an acceptable set of such measures for the site certificate. The AIMP applies to the project
4 as a whole, including the easements listed in this amendment. The “special conditions (1) through (4)
5 for temporary laydown area” will apply to this amendment. The site certificate also includes conditions
6 that reduce impact on temporary workspaces and access routes based on commitments by NWN
7 regarding amendment #1 in August 2003. These apply to the amendment #3 easements as well.
8

9 Several of the requested easements result in a net reduction in farm impact, because they support
10 bores that avoid farmed land or because they are access routes on existing farm roads that will reduce
11 construction traffic on farmed land within the corridor.
12

13 At bore sites, experience with the SMPE construction of autumn 2003 showed that there was
14 considerable soil disturbance, but the impact was temporary and NWN used the methods in the AIMP to
15 restore the soil after the bore was complete. Moreover, the impact at the bore site is offset by the
16 reduction in surface impact that NWN will achieve by boring.
17

18 For temporary access easements, NWN has selected access routes that are already used as farm
19 roads. In most cases they are rocked or graveled and in some cases paved. By reducing traffic on
20 farmed land, these access easements actually reduce net impact.
21

22 Two of the proposed easements involve changes to the permanent alignment. One change replaces a
23 corridor segment on farm land with a slightly different route on the same property, and will in fact
24 shorten the route in farmed wetlands and lessen the construction impacts. The other alignment change
25 reflects ODOT’s plans to widen the road. The new alignment will move to the west by the same amount
26 that ODOT widens the road right of way. The end result remains consistent with the general land use
27 condition governing permanent easement along arterial roads.
28

29 In summary, the impacts on farm operations from this amendment are the same as those analyzed in
30 the Final Order Approving the Site Certificate. NWN proposes the same measures under ORS
31 215.275(4) to restore the farm land after construction. The conditions imposed under ORS 215.275(5)
32 in the current site certificate remain appropriate conditions for this amendment. No new or different
33 conditions are required.
34

35 **Conclusion**

36

37 NWN argues that a separate analysis of each access route and workspace is not required because the
38 SMPE is a single utility facility and was approved as one. Without comment on this argument, each
39 request for easement outside the 200-foot corridor was compared with the alternative of staying within
40 the corridor. Each is necessary for engineering feasibility, habitat mitigation, or to minimize impact on
41 adjacent farms under ORS 215.275(4). All are locationally dependent because they must be adjacent to
42 the construction site. The Council therefore finds that the requested easements listed in Exhibit 2 of the
43 application for amendment 3 are permitted under ORS 215.213(1)(d) and ORS 215.275, and concludes
44 that amendment #3 meets the its Land Use Standard.
45

1 **5. Protected Area Standard OAR 345-022-0040**

2 To approve the amendment, the Council must find that “...*the design, construction and*
3 *operation of the facility are not likely to result in significant adverse impact ...*” to listed protected areas.

4
5
6 **Discussion**

7
8 The SMPE crosses one listed area, the Willamette River Greenway. The Council found that the
9 crossing was permitted under OAR 345-022-0040(2) because NWN had studied alternative locations for
10 the Willamette crossing and found them to have greater impacts.

11
12 The amendment does not affect the location of the Willamette river crossing. NWN requests
13 additional laydown area to accommodate the Willamette bore, but the affected area is not in the
14 Willamette Greenway and will have no impact on it. No other listed protected areas are affected.

15
16 **Conclusion**

17
18 The Council finds that the proposed amendment complies with the Protected Area standard. No
19 additional conditions are required.

20
21 **6. Financial Assurance and Retirement Standards OAR 345-022-0050**

22 To issue the amendment, the Council must find that:

23
24 *(1) The site, taking into account mitigation, can be restored adequately to a useful, non-*
25 *hazardous condition following permanent cessation of construction or operation of the*
26 *facility.*

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

30
31 **Discussion**

32
33 In its Final Order approving the ASC, the Council found that the SMPE as a whole complied with
34 the standard. In August of 2003, NWN provided the Council with the bond required by OAR 345-027-
35 0020(8) in the amount of \$700,000 in 2001 dollars.

36
37 Amendment #3 will not change the overall scope of the SMPE. The need for temporary access and
38 laydown area was contemplated in the original ASC. The impacts on property described in the
39 amendment request are the same impacts discussed in the ASC under the Council’s Soil standard. The
40 restoration of land used for temporary access and laydown area is the same process described in the
41 AIMP for construction easements within the 200-foot corridor. The site certificate includes conditions
42 requiring the immediate restoration of construction easements. There is no reason why the easements
43 requested in amendment #3 would increase the cost of compliance with these conditions or NWN’s
44 financial ability to meet them.

45

1 **Conclusion**

2
3 The proposed amendment does not affect NWN’s ability to meet Financial Assurance and
4 Retirement standard, or the conditions associated with it. The Council finds that that the proposed
5 amendment meets the standard. No additional conditions are required.
6

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

8 To issue the amendment, the Council must find that:

9
10 *“***the design, construction, operation and retirement of the facility, taking into account*
11 *mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of*
12 *OAR 635-415-0025 in effect as of September 1, 2000.”*

13 **Discussion**

14
15
16 In its Final Order approving the ASC, the Council found that the SMPE met the standard based on
17 habitat studies and NWN’s Conceptual Mitigation Plan. The Council imposed conditions adding more
18 specificity to the Conceptual Mitigation Plan and providing specific requirements for a Detailed
19 Mitigation Plan to be submitted after construction, subject to staff review.
20

21 Staff inspection of the construction in autumn 2003 showed that NWN avoided impact to habitat and
22 wetlands where possible, and complied with all the terms of the Conceptual Mitigation Plan. NWN
23 submitted its Detailed Mitigation Plan for the portion of the SMPE constructed in 2003, and it was
24 satisfactory.
25

26 Amendment #3 involves 55 properties. However, the temporary workspaces and access routes in
27 this amendment have the potential to impact habitat or wetlands only on 6 properties⁵. All of the
28 proposed workspace and access easements fall within the 680-foot wide analysis area for habitat impacts
29 that NWN studied in the ASC.
30

31 Using aerial photography, NWN determined that none of the requested easements contained habitat
32 different from that documented in the ASC. NWN identified three properties with potential impact on
33 fish habitat and four sites where previously delineated wetlands extend into the additional workspace or
34 access areas. NWN field surveyed these sites in February 2004. All sites had the same vegetation and
35 hydrology as described in the ASC for the approved SMPE corridor.
36

37 *Wetland sites:* Of the four sites with potential for wetland impacts, there will be no removal or fill on
38 three. The fourth site is the permanent alignment change that NWN requested at the Waibel property,
39 south of Padgett road. The pipeline construction on this segment of permanent easement will affect
40 0.9acre of wetland. However, this acreage is less than the 1.537 acres that would be impacted by the
41 original route, as discussed in the ASC. NWN will restore all four wetlands to preexisting conditions if
42 they are impacted.
43

⁵ URS memo from Bridget Canty et al. to Mike Hayward, Feb. 26, 2004. URS reviewed 20 sites, but at 14 of these the potential impact was limited to Cultural Resources.

1 *Fisheries Resources:* NWN identified three sites of potential impact. One is an access road that
2 parallels Gumm Creek, which is a ditched stream approximately 6 feet wide. No impact is expected
3 because NWN proposes to use an existing farm road. The second site is a temporary workspace
4 easement along a tributary to Gumm Creek. The stream is likely to be dry during summer construction,
5 and activity in the work area will be restricted well back from the top of the streambank. Therefore no
6 adverse impact is expected. The third site is adjacent to Davis Creek, which flows under highway 219
7 through a concrete box culvert. The Davis Creek crossing is described in the ASC (crossing #43). The
8 additional workspace proposed here is not expected to increase the effects of this crossing as described
9 in the ASC.

11 **Conclusion**

13 The habitat potentially affected by amendment #3 has the same characteristics as the habitat in the
14 original corridor, and falls within the 680 foot analysis area for the ASC. No adverse impact is expected
15 in workspaces or access roads. At one site, the permanent easement will change and will affect 0.9 acres
16 of delineated wetland. However, this is less than the 1.537 acres that would be impacted by the original
17 route. In all cases, the conditions, Best Management Practices and Conceptual Mitigation Plan
18 provisions that were found to meet the ODFW habitat mitigation goals for the original corridor will
19 apply to the new easements as well. Therefore, the Council finds that amendment #3 complies with the
20 Fish and Wildlife Habitat Standard. No new conditions are required.

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

23 To issue the amendment, the Council must find that:

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

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

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

33 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*
34 *threatened or endangered under ORS 496.172(2), the design, construction, operation and*
35 *retirement of the proposed facility, taking into account mitigation, are not likely to cause a*
36 *significant reduction in the likelihood of survival or recovery of the species.”*

38 **Discussion**

39
40 In its Final Order approving the Application for Site Certificate, the Council found that the SMPE
41 was not likely to adversely affect the survival or recovery of any species listed as threatened or
42 endangered.

43
44 As discussed under the Council’s Fish and Wildlife Habitat Standard, NWN identified 6 sites where
45 construction activity in the requested easements could potentially affect wetlands, terrestrial or fish
46 habitat. After a field survey, NWN concluded that the temporary workspace and access would have no

1 permanent effect on any wetland habitat. A permanent alignment change at the Waibel property, south
2 of Padgett Road, would affect wetlands, but the wetland was found not to perform critical function.
3

4 The upland habitat in the proposed new easements has the same characteristics as habitat within the
5 200-foot corridor, and was already characterized as part of the 680-foot analysis area for the ASC.
6 NWN identified three locations where requested easements could impact fisheries habitat, but after the
7 field survey found that the construction will have no permanent impact. In all cases, wetlands and
8 fisheries habitat will be restored to pre-construction conditions. No listed species were observed during
9 the survey. In summary, the habitat and species at the requested easements are no different from that
10 described in the ASC. Therefore, Council findings of compliance in the Final Order approving the ASC
11 remain valid under this amendment.
12

13 **Conclusion**

14
15 The Council finds that the proposed amendment complies with its Threatened and Endangered
16 Species standard. No additional conditions are required.
17

18 **9. Scenic and Aesthetic Values Standard OAR 345-022-0080**

19 To issue the amendment, the Council must find that:

20 *“(1) Except for facilities described in sections (2), to issue a site certificate, the Council*
21 *must find that the design, construction, operation and retirement of the facility, taking into*
22 *account mitigation, are not likely to result in significant adverse impact to scenic and*
23 *aesthetic values identified as significant or important in applicable federal land management*
24 *plans or in local land use plans in the analysis area described in the project order.*

25 *(2) The Council may issue a site certificate for a special criteria facility under OAR 345-*
26 *015-0310 without making the findings described in section (1). However, the Council may*
27 *apply the requirements of section (1) to impose conditions on a site certificate issued for such*
28 *a facility.”*

29 **Discussion**

30
31
32 In the Final Order on the ASC, the Council found that the SMPE would not adversely affect scenic
33 and aesthetic resources primarily because the pipeline would be underground, except for a the relatively
34 small visual impact from valves required by operational consideration and 49 CFR 192 safety
35 regulations. The proposed access routes and workspaces in this request will not cause additional impact
36 to scenic resources because no permanent structures are proposed, and because mitigation already
37 required by conditions under the Soil Protection and Fish and Wildlife Habitat Standards require the
38 restoration of soil and vegetation.
39

40 **Conclusion**

41 The Council finds that the proposed amendment complies with its Scenic and Aesthetic Values
42 standard. No additional conditions are required.
43

44 **10. Historic, Cultural and Archeological Resources Standard OAR 345-022-0090**

45 To issue the amendment, the Council must find that:
46

1 *“*** the construction, operation and retirement of the facility, taking into account*
2 *mitigation, are not likely to result in significant adverse impacts to:*

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

5 *(b) For a facility on private land, archaeological objects, as defined in ORS*
6 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

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

8 **Discussion**

9
10 In its Final Order approving the site certificate, the Council found that the SMPE met the standard
11 based on an archeological survey of the corridor and conditions requiring steps to prevent damage to
12 cultural resources. The site certificate requires NWN to have an archeologist present at identified
13 archeological sites.

14
15 NWN conducted a field survey of 12 sites, located on 17 properties, with potential cultural or
16 archeological significance⁶. The surveyors found no cultural resources at any of the sites. At all 12
17 sites, the surveyors concluded that buried cultural resources were unlikely to be present because of
18 previous ground disturbance from logging, clearing, grading and leveling or other agricultural activity.
19 At four of the sites, NWN’s use is confined to an existing logging or farm road. The others sites are
20 temporary workspaces. NWN is proposing to use these sites for temporary staging, laydown area or
21 workspace but does not propose trenching or excavation. The same conditions imposed under the
22 Historic, Cultural and Archeological standard in the site certificate that apply to the approved corridor
23 will apply to these easements as well.

24
25 **Conclusion**

26
27 The Council finds that the existing conditions, as currently written, apply to the access roads and
28 workspaces outside the corridor described in this amendment and are sufficient to ensure compliance
29 with the Historic, Cultural and Archeological Standard. No additional conditions are required.

30
31 **11. Recreational Standard OAR 345-022-0100**

32 To issue the amendment, the Council must find that:

33
34 *“***the design, construction and operation of a facility, taking into account mitigation, are*
35 *not likely to result in a significant adverse impact to important recreational opportunities in*
36 *the analysis area as described in the project order. The Council shall consider the following*
37 *factors in judging the importance of a recreational opportunity:*

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

39 *(b) The degree of demand;*

40 *(c) Outstanding or unusual qualities;*

41 *(d) Availability or rareness;*

⁶ URS memo from Bridget Canty et al. to Mike Hayward, NWN, Feb. 26, 2004

1 (e) Irreplaceability or irretrievability of the opportunity.”

2
3 **Discussion**

4
5 In its Final Order on the ASC, the Council found that the SMPE would not adversely affect any
6 important recreational opportunity in the analysis area. The finding was based on the fact that the SMPE
7 is underground for its entire length (except for valves required for operation or for safety), the temporary
8 nature of increased traffic and other construction related impacts, and the fact that NWN will bore under
9 major rivers and streams. The Council did not impose any conditions.

10
11 None of the access roads, workspaces or alignment changes requested in amendment #3 are located
12 near recreational opportunities described in the ASC.

13
14 **Conclusion**

15
16 The Council finds that amendment #3 complies with its Recreational Standard. No new conditions
17 are required.

18
19 **12. Public Services Standard OAR 345-022-0010**

20 To issue the amendment, the Council must find that:

21 *“*** the construction and operation of the facility, taking into account mitigation, are not*
22 *likely to result in significant adverse impact to the ability of public and private providers*
23 *within the analysis area described in the project order to provide: sewers and sewage*
24 *treatment, water, storm water drainage, solid waste management, housing, traffic safety,*
25 *police and fire protection, health care and schools.”*

26
27 **Discussion**

28
29 In its Final Order on the ASC, the Council found that the SMPE complies with the standard based on
30 letters from local fire departments, police departments and other public services providers indicating that
31 they expected no adverse impact on their ability to provide their services. The Council imposed
32 conditions to address the impact on traffic and traffic safety, ensure that construction along roads does
33 not affect police, fire and ambulance service, and coordinate with school districts and county road
34 departments.

35
36 In this request, NWN requests temporary workspace and temporary access to locations where the
37 corridor is not along roads. The workspaces requested along Scholls Ferry road will serve to improve
38 traffic safety by reducing the construction impact on this unusually busy road. At several locations,
39 NWN requests space in order to bore under roads, also reducing impact on traffic safety. Therefore the
40 proposed amendment has no effect on the potential impacts to traffic safety, police, fire or emergency
41 vehicle passage from the facility.

42
43 **Conclusion**

44
45 The Council finds that the proposed amendment meets its Public Services standard. No additional
46 conditions are required.

1 **13. Waste Minimization Standard OAR 345-022-0120**

2 To issue the amendment, the Council must find that:

3
4 *“(a) The applicant’s solid waste and wastewater plans are likely to minimize*
5 *generation of solid waste and wastewater in the construction, operation, and retirement of*
6 *the facility, and when solid waste or wastewater is generated, to result in recycling and reuse*
7 *of such wastes;*

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

11
12 **Discussion**

13
14 In the Site Certificate, the Council imposed conditions governing the handling and recycling of solid
15 waste, disposal of water from hydrostatic testing and minimizing the use of water for pressure testing by
16 recycling. These conditions apply to construction activities wherever they occur, including any
17 temporary laydown areas or access routes approved under this proposed amendment. Therefore this
18 amendment would have no effect on NWN’s compliance with this standard or the conditions imposed
19 under it.

20
21 **Conclusion**

22
23 The Council finds that the proposed amendment meets its Waste Minimization standard. No
24 additional conditions are required.

25
26 **B. Public Health and Safety ORS 469.401(2)**

27
28 In the Site Certificate, the Council imposed conditions affecting construction practices, design, and
29 surveillance using best practical technologies. These conditions continue to apply, and are not affected
30 by the use of additional temporary laydown area or access routes. No changes to any safety related
31 conditions are proposed. Therefore the amendment has no effect on findings in the Final Order on the
32 ASC regarding public health and safety.

33
34 **V. ISSUES RAISED IN PUBLIC COMMENT**

35
36 The Department of Energy accepted public comments on the application for amendment #3 until the
37 close of business on March 19, 2004. The Department received no public comments on the application.

38
39 The Department accepted comments and requests for contested case on the Proposed Order until the
40 close of business April 19, 2004. No one requested a contested case. The Department did receive one
41 comment, from Stacey Rungay, a property owner along the pipeline route. Ms. Rungay argued that the
42 pipeline should be in the road for the length of her property. However, her property is not one of those
43 affected by this amendment.

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VI. ORDER AND SITE CERTIFICATE AMENDMENTS

The Council finds that the changes to the facility described in NWN’s Application for Amendment #3 to the Site Certificate for the SMPE comply with the Council’s standards. The Council adopts the changes proposed by NWN and listed at section III.C of this order, and the Land Use condition suggested by Washington County Land Development stating that: “NW Natural shall obtain access permits from the County for private road intersections with County/public roads”.

The Council approves Amendment #3 and issues the third amended site certificate for the South Mist Pipeline Extension, subject to the terms and conditions set forth above.

THE ENERGY FACILITY SITING COUNCIL

By: _____
Hans Neukomm
Vice-Chair, Energy Facility Siting Council

_____ date

14