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BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

IN THE MATTER OF THE FOURTH REQUEST)	
TO AMEND THE SITE CERTIFICATE FOR THE)	PROPOSED ORDER ON
SUMMIT WESTWARD PROJECT)	AMENDMENT #3
)	

Oregon Department of Energy

June 30, 2004

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1

SUMMIT / WESTWARD PROJECT
SITE CERTIFICATE AMENDMENT #3
PROPOSED ORDER

2

3 **I. INTRODUCTION**

4 The Oregon Department of Energy (ODOE or “Department”) issues this order in accordance with
5 ORS 469.405 and OAR 345-027-0070 and OAR 345-027-0080. This order addresses a request by
6 Westward Energy LLC (Summit) for amendment #4 of its site certificate for the Summit/Westward
7 Project (the Summit Project). The Summit Project is a 520 megawatt natural gas-fired electric
8 generating facility located about 4.5 miles north of Clatskanie, Oregon.

9

10 In this request for amendment, Summit proposes to construct the facility in phases. Phased
11 construction requires an amendment because the construction schedule is a condition of the site
12 certificate, and because the construction schedule affects the payment schedule for carbon dioxide
13 offsets and for the bond or letter of credit required to assure facility retirement and site restoration.

14

15 The Energy Facility Siting Council (EFSC or “the Council”) issued the site certificate for the
16 Summit Project on October 3, 2002. The Council granted amendment #1 in February 2004, and
17 amendment #2 in April 2004. This amendment, if granted, will be amendment #3.¹

18

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

21

22 **II. PROCEDURAL HISTORY and EXPEDITED REVIEW**

23 Summit submitted the request to amend the site on May 16, 2004. Summit requested expedited
24 amendment review under OAR 345-027-0080, based on the following:

- 25
- 26 • Expedited review is needed in order to allow phased construction. The phased construction
27 is necessary in order for Summit and its financial partners to take advantage of one-time
28 only tax economic stimulus tax incentives that depend on the Summit/Westward project
29 commencing commercial operation by December 31, 2005.
 - 30
 - 31 • Construction must begin by August 2004 in order to meet the December 2005 deadline for
32 operation. Without expedited review, Westward Energy LLC and its financial partners
33 would lose the opportunity to take advantage of the one-time-only tax incentives. This
34 would unduly harm Westward Energy.
 - 35
 - 36 • Summit could not reasonably have foreseen the need for this amendment in time to submit
37 the request through the normal review process. Summit and its parent company have been
38 diligently marketing the project since the site certificate was issued. The volatility in the
39 energy market has put substantial roadblocks in the way of financing of generating facilities.
40 And, the business transaction needed to support the financing of phase 1 construction in

¹ In April 2004, Summit requested an extension of the construction deadlines. That request was entitled “request for amendment 3”. The amendment request addressed in this order is Summit’s fourth request for amendment. However, if construction begins before October 3, 2004, then the request for extension will be withdrawn and the amendment addressed in this order will be the third amendment of the site certificate.

1 order to take advantage of the aforementioned tax incentives only began to take shape in
2 March 2004.

- 3
4 • The proposed amendment would allow phased construction, phased payment schedules for
5 carbon dioxide offsets, and would reduce the amount of the site restoration bond. However,
6 Summit proposes no change to the facility itself. Therefore, the proposed amendment would
7 not likely result in any adverse impact to the environment, public safety, or other resources
8 protected by Council standards.
9

10 For these reasons, the Council Chair granted expedited review on May 24, 2004²

11
12 Pursuant to OAR 345-027-0080, ODOE issued notice to the Council's mailing list, affected
13 property owners as defined at OAR 345-021-0010(f), and ODOE's list of persons interested in the
14 Summit Project. The notice stated where the public could review the amendment request and set a
15 comment deadline of June 11, 2004. ODOE also issued notice to the agencies, tribes and
16 governments listed in OAR 345-002-0040 and asked for comments by June 11, 2004. ODOE
17 received one public comment, a letter from the Port of St. Helens. In this order, we discuss the
18 Port's comments in the section on the retirement and financial assurance standard.
19

20 In reviewing the proposed amendment, the Council applies substantive land use criteria in effect on
21 the date Summit submitted the request for amendment and all other state statutes, administrative
22 rules and local government ordinances in effect on the date of the amendment.
23

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

25 **A. Description of the Facility**

26 The Summit project is a 520 megawatt natural gas-fired electric generation facility, located about
27 4.5 miles north of Clatskanie, Oregon in Columbia County. The site is on land leased from the Port
28 of St. Helens, which owns more than 900 acres in the Port Westward Industrial Park. The facility
29 includes provisions for transmission services to be provided by Portland General Electric, water
30 supply to be provided by the Port of St. Helens under its existing water right, and processing of
31 waste water through brine crystallizers to achieve zero discharge of process and cooling water. The
32 site certificate includes a removal/fill permit for construction on wetlands, issued by Division of
33 State Lands (DSL), a Water Pollution Control Facilities (WPCF) permit issued by DEQ for
34 discharge of sanitary waste, and a second WPCF permit for discharge of process and cooling water
35 to on-site ponds that are needed in connection with the zero discharge facility.
36

37 Under amendment #1, approved in February 2004, Summit may contract with either Portland
38 General Electric or with Clatskanie Public Utility District (CPUD) for transmission services. Under
39 amendment #2, approved in April 2004, Summit may discharge process wastewater to the Port of
40 St. Helens, which would then discharge it to the Columbia river under its existing National Pollutant
41 Discharge Elimination System (NPDES) permit (a federal permit administered in Oregon by DEQ).
42

43 **B. Changes to the Facility Proposed by Summit**

44 In its request for amendment, Summit proposes to build the facility in two phases. In phase 1,
45 Summit would construct the first unit, with capacity of approximately 260 MW. Construction

² Karen Green letter to David Stewart-Smith May 24, 2004 "Letter Granting Expedited Review" In a letter dated June 21, 2004, Summit Westward explained that while it's plans had changed somewhat, expedited review was still needed in order to support financing the project in September. The letter is discussed at page XX.

1 would begin before October 3, 2004 as stated in the original site certificate. In phase 2 Summit
2 would build the remaining 260 MW unit. The required payments to the Oregon Climate Trust for
3 carbon dioxide offsets would also be phased. The Climate Trust would bill Summit for half the
4 payment at start of construction. The other half would be due when Summit begins construction of
5 phase 2. Required payments to the Climate Trust for contracting and selecting funds would be due
6 at the request of the Climate Trust. Summit further requested changes to the Memorandum of
7 Understanding between Summit and the Climate Trust, as discussed in section IV.D of this order.
8

9 Summit also proposes to reduce the required bond or letter of credit for retirement and site
10 restoration, using new cost estimation methods developed for the Oregon Department of Energy.
11 The amount of the bond would be reduced from approximately \$11 million to approximately \$2.4
12 million. The bond would be phased, with approximately \$1.7 million due at start of construction.
13 The bond would increase to \$2.4 million at start of construction on phase 2.
14

15 The amendment would not involve changes to the site or to the facility itself.
16

17 **C. Changes to Site Certificate Proposed by Summit**

18 Summit proposes to amend its Site Certificate as follows:
19

20 1. Amend Condition D.3(1)(c) as follows:
21

22 (c) A current detailed cost estimate, a comparison of that
23 estimate with the dollar amount of the bond or letter of credit
24 required by Condition (4) contained in the retirement fund,
25 and a plan for ensuring the availability of adequate funds for
26 completion of retirement.
27

28 2. Delete Condition D.3(5) as follows:
29

30 ~~(5) — The certificate holder shall describe in the report submitted to~~
31 ~~the Council, pursuant to OAR 345-026-0080, the status of the~~
32 ~~retirement fund or other instrument to ensure it has adequate~~
33 ~~funds to restore the site.~~
34

35 3. Amend Condition D.3(4) as follows:
36

37 (4) Before beginning construction of the facility, the certificate holder
38 shall submit to the State of Oregon through the Council a bond or
39 letter of credit in the amount of ~~\$11,062,500~~ 2,401,205 (in 20024
40 dollars as of the first second quarter) naming the State of Oregon,
41 acting by and through the Council, as beneficiary or payee.
42

43 (a) If the Certificate Holder finances energy facility construction in two
44 phases, then before beginning construction of Phase 1, the Certificate
45 Holder shall submit a bond or letter of credit in the amount of
46 \$4,700,000 \$1,762,225 (in 20024 dollars as of the first second
47 quarter). Before beginning construction of Phase 2, the Certificate
48 Holder shall increase the amount of such bond or letter of credit to

1 \$8,640,000 ~~\$2,401,205~~ (in 20024 dollars as of the first ~~second~~
2 quarter). [~~Amendment No. 1~~]

3
4 (b) The calculation of 20024 dollars as of the second quarter shall be
5 made using the U.S. Gross Domestic Product Implicit Price Deflator,
6 as published by the U.S. Department of Commerce, Bureau of
7 Economic Analysis, or any successor agency (the “Index”). If, at any
8 time, the Index is no longer published, the Council shall select a
9 comparable calculation of 20024 dollars. The form of the bond or
10 letter of credit and identity of the issuer shall be subject to approval
11 by the Council.

12
13 (b~~c~~) The amount of the bond or letter of credit account shall increase
14 annually by the percentage increase in the Index.

15
16 (e~~d~~) The certificate holder shall not revoke or reduce the bond or letter of
17 credit before retirement of the facility without approval by the
18 Council.

19
20 4. Amend Condition D.3(8) as follows:

21
22 (8) Not later than 10 years after the date of commercial operation of the
23 facility, or, if the facility commences commercial operation in phases,
24 not later than 10 years after the date of commercial operation of Phase
25 1, and every 10 years thereafter during the life of the energy facility,
26 the certificate holder shall complete an independent Phase I
27 Environmental Site Assessment of the energy facility site, in
28 accordance with an accepted industry standard, such as ASTM
29 Standard E1527. Within 30 days after its completion, the certificate
30 holder shall deliver the Phase I Environmental Site Assessment report
31 to the Department.

32
33 5. Amend Condition D.9(2)(a) as follows:

34
35 (a) The certificate holder shall disburse all selection and contracting
36 funds to The Climate Trust ~~prior to beginning construction upon the~~
37 request of The Climate Trust, in accordance with the terms of the
38 MOU.

39
40 6. Add the following as Condition D.9(10):

41
42 (10) If the certificate holder begins construction of Phase 1, but not Phase
43 2, the certificate holder shall comply with Conditions D.9(1) through
44 D.9(9) in connection with construction of Phase 1. If the certificate
45 holder later begins construction of Phase 2, the certificate holder shall
46 comply with Conditions D.9(1) through D.9(9) in connection with the
47 construction of Phase 2.

48
49 7. Amend Condition G.1(4) as follows:
50

1 (4) The certificate holder shall begin construction of the facility by
2 October 3, 2004. The certificate holder shall report promptly to
3 the Department the date that it began construction of the
4 facility, as defined in OAR 345-001-0010(10). In reporting the
5 beginning of construction, the certificate holder shall describe
6 all work on the site performed before beginning construction,
7 including work performed before the Council issued the site
8 certificate, and shall state the cost of that work, pursuant to
9 OAR 345-026-0048. If the certificate holder finances
10 construction of the facility in two phases, the certificate holder
11 shall report the beginning of construction of each phase.
12

13 8. Amend Condition G.1(5) as follows:
14

15 (5) The certificate holder shall complete construction of the
16 facility by April 3, 2007. The completion of construction date
17 is the day by which (1) the facility is substantially complete as
18 defined by the certificate holder's construction contract
19 documents; (2) acceptance testing is satisfactorily completed;
20 and, (3) the energy facility is ready to commence continuous
21 operation consistent with the Site Certificate. The certificate
22 holder shall report promptly to the Department the date it
23 completed construction of the facility. If the certificate holder
24 finances construction of the facility in two phases, the
25 certificate holder shall report the date of completion of each
26 phase.
27

28 **IV. FINDINGS ON COMPLIANCE WITH STANDARDS**

29

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

- 32 a) standards adopted by the Council pursuant to ORS 469.501,
33 b) other Oregon statutes and administrative rules identified in the project order, excluding those for
34 which the federal government has delegated the decision on compliance to a state agency other
35 than the Council, and
36 c) statewide planning goals as provided in OAR 345-022-0030
37

38 The permits issued by agencies other than the Council under this site certificate are: the WPCF
39 process wastewater permit issued by DEQ, a sanitary waste WPCF permit issued by DEQ and a
40 Removal/Fill (wetlands) permit issued by the State Lands Division. This amendment does not
41 affect any of those permits.
42

43 **A. Council Standards in OAR Chapter 345 Division 22**

44

45 **1. Organizational Expertise OAR 345-022-0010**

46 *(1) To issue a site certificate, the Council must find that the applicant has the organizational*
47 *expertise to construct, operate and retire the proposed facility in compliance with Council*

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

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

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

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

26 Discussion

27
28
29 In its Final Order on the ASC, the Council found that Summit met the Organizational Expertise
30 standard based on its relationship with Summit Power NW LLC and its intention to enter into
31 turnkey contracts with Siemens Westinghouse (SWPC) for engineering, procurement, construction,
32 operations and maintenance. This amendment does not involve any change in Summit's
33 organization or personnel, or its relationship with any of the above mentioned contractors. Nor does
34 it alter the scope of the project in a way that might require different expertise or experience.

35
36 Summit states that it has since entered into both an EPC contract and a 25 year operations and
37 maintenance contract with SWPC.

38
39 Section (2) of the standard does not apply because Summit did not take credit for any ISO program.

40
41 Sections (3) and (4) of the standard address third party permits (permits that the certificate holder
42 will not obtain directly but rely on a third party). Summit relies on third party agreements for water
43 supply, wastewater discharge and transmission services. Those agreements are not affected by the
44 proposed change in construction schedule.

1 **Conclusion**

2 ODOE recommends the Council find that the proposed amendment complies with the
3 Organizational Expertise Standard. No new conditions are recommended.
4

5 **2. Structural Standard OAR 345-022-0020**

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

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

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

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

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

20 **Discussion**

21 In its Final Order approving the Summit project, the Council found that the project satisfies the
22 Structural Standard. The proposed amendment changes the construction schedule and the
23 schedule for payment for retirement and carbon dioxide offsets. It does not change any seismic
24 conditions or hazards, or any of the conditions recommended to achieve compliance. Nor does
25 Summit propose any changes in the physical facility. Nothing in the proposed amendment alters
26 the basis for the Council's finding of compliance with the standard.

27 **Conclusion**

28 ODOE recommends the Council find that the proposed amendment complies with the Structural
29 standard. No new conditions are recommended.
30

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

32 To issue the amendment, the Council must find that

33 ****the design, construction, operation and retirement of the facility, taking into account*
34 *mitigation, are not likely to result in a significant adverse impact to soils including, but not limited*
35 *to, erosion and chemical factors such as salt deposition from cooling towers, land application of*
36 *liquid effluent, and chemical spills.*
37

38 In the Final Order approving the Summit project, the Council found that the construction and
39 operation of the Summit project would not have a significant adverse impact on soils. Site
40 Certificate condition D.5.(4) requires that related and supporting pipelines be constructed in existing
41 roadways. The Summit wastewater pipe approved in amendment #2 will comply with this
42 condition. In approving amendment #2 in April 2004, the Council found that the facility complied
43 with changes to the soil standard that the Council adopted in August 2003.
44

1
2 This proposed amendment affects the construction schedule and the payment of bonds or letters of
3 credit for carbon dioxide offsets and site restoration. However, Summit does not propose any
4 changes to the physical facility or to the site. Therefore this amendment does not change any of the
5 Council’s prior findings of compliance with the Soil Standard.
6

7 **Conclusion**
8

9 ODOE recommends the Council find that the proposed amendment complies with the Soil
10 Protection Standard. No new conditions are recommended.
11

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

13 To issue the amendment to the site certificate, the Council must find that:
14

15 *ORS 469.503(4) the facility complies with the statewide planning goals adopted by the Land*
16 *Conservation and Development Commission.*

17 *ORS 469.504(1) A proposed facility shall be found in compliance with the statewide*
18 *planning goals under ORS 469.503(4) if:*

19 ***

20 *(b) The council determines that:*

21 *(A) The proposed facility complies with applicable substantive criteria from the affected*
22 *local government’s acknowledged comprehensive plan and land use regulations that are required*
23 *by the statewide planning goals and in effect on the date the application is submitted, and with*
24 *any Land Conservation and Development Commission administrative rules and goals and any*
25 *land use statutes directly applicable to the facility under ORS 197.646(3)***.*

26
27 **Discussion**
28

29 In the Final Order approving the Summit project, the Council found that the project complied with
30 all applicable substantive criteria from Columbia County’s comprehensive plan and zoning
31 ordinance, and with LDCD rules applicable under ORS 197.646.
32

33 The proposed amendment does not change the site or the proposed use. The only changes are to the
34 construction schedule and the conditions regarding payments for carbon dioxide offsets and site
35 restoration. Therefore, nothing in this amendment changes the Council’s prior findings of
36 compliance with the applicable Land Use criteria.
37

38 **Conclusion**
39

40 ODOE recommends the Council find that the proposed amendment complies with its Land Use
41 standard. No new conditions are recommended.
42

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

44 To issue the amendment, the Council must find that “...the design, construction and operation
45 of the facility are not likely to result in significant adverse impact ...” to listed protected areas.
46

1 **Discussion**

2
3 In the Final Order approving the Summit project, the Council identified eight protected areas
4 within 20 miles of the site. None were closer than 12 miles from the site. The Council found that
5 the facility was not likely to result in adverse impact to any listed area, and imposed no conditions.
6

7 The proposed amendment does not change the site or its potential impact on any listed protected
8 area. The amendment would only change the construction schedule and the payments for carbon
9 dioxide offsets and site restoration.

10
11 **Conclusion**

12
13 ODOE recommends the Council find that the proposed amendment complies with the Protected
14 Area standard. No new conditions are recommended.
15

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

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

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

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

25 **Discussion**

26
27 In its Final Order approving the ASC, the Council found that Summit has demonstrated that it can
28 adequately restore the site to a useful, nonhazardous condition. The Council found that a bond or
29 letter of credit in the amount of \$11,062,500 (2002 dollars) was satisfactory to ensure adequate site
30 restoration, and conditioned the site certificate to require a bond or letter of credit in that amount.
31 The Council found that Summit has a reasonable likelihood of obtaining the required bond.
32

33 The amendment would change the site certificate conditions related to this standard in two ways. It
34 would reduce the estimate of site restoration costs considerably. Summit estimated a retirement
35 cost of \$1.7 million for a 1 unit plant, or \$2.4 million for a 2 unit plant. Summit also proposed that
36 the bond be phased, with \$1.7 million due at start of phase 1, increasing to \$2.4 million at the start
37 of phase 2.
38

39 The reduction in retirement cost estimate is based on two factors. First, the Port of St. Helens,
40 which owns the property and will lease it to Summit Power, stated that it will not wish to have the
41 sub-foundation removed at facility retirement³. The site is zoned RIPD (Resource Industrial
42 Development) and its expected use is as industrial land. Soil conditions at the site require a
43 substantial rock and gravel foundation to reduce potential damage from the maximum probable
44 seismic event (*see* Final Order on Site Certificate for the Summit/Westward Project, Structural
45 Standard). That sub-foundation would be expensive to remove, but would be useful for any future

³ May 27, 2004 letter from Paul Langner, Port of St. Helens, to Energy Facility Siting Council

1 industrial development on the site. Therefore, Summit stated that eventual facility retirement would
2 not include removal of the foundation work.

3
4 Second, Summit's new retirement cost estimate is based on an estimating methodology recently
5 developed for ODOE.⁴ Summit adapted the spreadsheets prepared for that methodology and
6 included them as part of its application for amendment. Among other issues, the methodology
7 allows credit for sale of scrap material and results in a lower retirement cost estimate than the \$11
8 million figure cited in the original site certificate.

9
10 On review of Summit's request as presented in the spreadsheet, ODOE recommends that the
11 retirement estimate include the cost of removing concrete slabs and other above grade foundation
12 structures. The recommendation is based on the fact that a new occupant of this industrial site
13 would probably not erect buildings with exactly the same footprint as the Summit facility. ODOE
14 also recommends adding funds for removal of the stormwater detention pond, and significantly
15 increasing the cost estimate for loading and disposal of debris. Finally, the request for amendment
16 did not include recommended costs for administration costs and hazardous material management.

17
18 Adding these costs, plus a 20% contingency, would increase the retirement cost of a one unit plant
19 to \$3,047,724. Making similar adjustments for a two unit plant would yield a retirement cost
20 estimate of approximately \$3.9 million.

21
22 By letter dated June 25, 2004, Summit provided revised cost spreadsheets for a two unit site. The
23 revised estimates included the foundation removal, detention pond removal, and increased costs of
24 removing and disposing debris as requested by ODOE. Using the spreadsheet methodology
25 described above, Summit arrived at a new total retirement cost of \$3,925,841 for the two unit plant.
26 This figure includes the 20% contingency and ODOE's recommended numbers for administrative
27 costs and hazardous materials management. This estimate appears acceptable.

28
29 Summit did not provide a revised estimate for a one unit plant. Therefore, for a one unit plant
30 ODOE recommends using the \$3,047,724 figure described above.

31
32 Summit also requests removal of two conditions that refer to status reports for the retirement fund.
33 These conditions appeared in several site certificates during a time period when applicants met
34 the retirement standard by depositing money into a sinking fund, which would grow to the required
35 amount over a period of years. Current Council rules, however, require a bond or letter of credit
36 rather than a sinking fund. Therefore, the reference to a retirement fund no longer applies. ODOE
37 recommends granting Summit's request to change these conditions and delete the reference to
38 period status reports on a retirement fund.

39
40 In approving the site certificate, the Council found that Summit was reasonably likely to obtain a
41 bond in the amount of \$11 million. Summit points out that the issuance of a bond for the much
42 smaller amount is all the more likely.

43
44

⁴ The new methodology was developed as a result of a dispute about the appropriate amount for the retirement bond for the COB project, a 1000 MW facility proposed near the California Oregon border. The issue is currently under review in the contested case in the COB Application for Site Certificate. Contrary to Westward's letter of June 21, 2004, the new methodology has not yet been accepted by the Council.

1 **Conclusion**

2
3 The proposed amendment does not affect Summit’s ability to meet the Financial Assurance and
4 Retirement standard. If anything, it reduces the amount of the required retirement bond, making
5 that bond easier to secure. ODOE recommends the Council find that that the proposed amendment
6 meets the standard. ODOE further recommends that conditions D.3(1), D.3(4), D.3(5) and D.3(8)
7 be amended as proposed by Summit, except that the retirement bond for phase 1 shall be \$3.048
8 million, and shall be increased at start of phase 2 construction to \$3.926 million.
9

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

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

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

16 **Discussion**

17
18
19 In its Final Order approving the site certificate, the Council classified the habitat areas to be affected
20 by the facility, and imposed conditions to ensure that the mitigation of impacts on those habitat
21 areas would be consistent with the fish and wildlife habitat mitigation goals and standards of OAR
22 635-415-0025. The proposed amendment changes only the schedule of construction but does not
23 change the facility design or the habitat characteristics of the site.
24

25 **Conclusion**

26
27 ODOE recommends the Council find that the proposed amendment complies with the Fish and
28 Wildlife Habitat Standard. No new conditions are recommended.
29

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

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

32
33 *“(1) For plant species that the Oregon Department of Agriculture has listed as*
34 *threatened or endangered under ORS 564.105(2), the design, construction, operation*
35 *and retirement of the proposed facility, taking into account mitigation:*

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

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

41 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*
42 *threatened or endangered under ORS 496.172(2), the design, construction, operation*
43 *and retirement of the proposed facility, taking into account mitigation, are not likely to*
44 *cause a significant reduction in the likelihood of survival or recovery of the species.”*
45
46

1 **Discussion**

2
3 In its Final Order approving the site certificate, the Council identified several listed species within
4 the project area. Based on recommendations from the Oregon Department of Fish and Wildlife, the
5 Council concluded that the facility would be constructed, operated and retired without significant
6 adverse impacts to these species.

7
8 The Department of Fish and Wildlife and Department of Agriculture have identified no new listed
9 species in the analysis area for this project. The proposed amendment does not change the facility
10 or the site, but only affects the construction schedule. Therefore the proposed amendment does not
11 affect the Council’s prior findings of compliance with the standard.

12
13 **Conclusion**

14
15 ODOE recommends the Council find that the proposed amendment complies with its Threatened
16 and Endangered Species standard. No new conditions are recommended.

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*
21 *Council must find that the design, construction, operation and retirement of the facility,*
22 *taking into account mitigation, are not likely to result in significant adverse impact to*
23 *scenic and aesthetic values identified as significant or important in applicable federal*
24 *land management plans or in local land use plans in the analysis area described in the*
25 *project order.*

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

30
31 **Discussion**

32
33 In the Final Order approving the site certificate, the Council found that the Summit/Westward
34 project had no adverse effect on any scenic or aesthetic resources identified in any local land use.
35 The proposed amendment does not affect the facility or the site. Columbia County has not added
36 any new scenic or aesthetic resources to its inventory within the analysis area for the facility.
37 Therefore the proposed amendment does not affect the Council’s prior findings of compliance. The
38 Council did impose conditions to minimize the facility’s impact on the viewshed of local residents.
39 The proposed amendment does not affect those conditions.

40
41 **Conclusion**

42
43 ODOE recommends the Council find that the proposed amendment complies with its Scenic and
44 Aesthetic Values standard. No new conditions are recommended.

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

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

3
4 *“*** the construction, operation and retirement of the facility, taking into account*
5 *mitigation, are not likely to result in significant adverse impacts to:*

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

8 *(b) For a facility on private land, archaeological objects, as defined in ORS*
9 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

10 *(c) For a facility on public land, archaeological sites, as defined in ORS*
11 *358.905(1)(c).”*

12 **Discussion**

13 In its Final Order approving the site certificate, the Council identified historic and archeological
14 resources in the Port Westward area, but none in the analysis area for the Summit/Westward project.
15 The Council also imposed conditions requiring Westward Energy to train construction personnel on
16 cultural-media identification and to work with certain tribes during groundbreaking activities. The
17 proposed amendment does not change the facility or the site. All current conditions continue to
18 apply.

19
20 **Conclusion**

21
22 ODOE recommends the Council find that the proposed amendment complies with its Historic,
23 Cultural and Archeological Resources standard. No new conditions are recommended.

24
25 **11. Recreational Standard OAR 345-022-0100**

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

27
28 *“***the design, construction and operation of a facility, taking into account mitigation,*
29 *are not likely to result in a significant adverse impact to important recreational*
30 *opportunities in the analysis area as described in the project order. The Council shall*
31 *consider the following factors in judging the importance of a recreational opportunity:*

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

33 *(b) The degree of demand;*

34 *(c) Outstanding or unusual qualities;*

35 *(d) Availability or rareness;*

36 *(e) Irreplaceability or irretrievability of the opportunity.”*

37
38 **Discussion**

39
40 In the final order approving the site certificate, the Council found that the facility would not affect
41 any recreational resources within the analysis area. The proposed amendment does not change the
42 facility or the site. Therefore the proposed amendment does not affect prior findings of compliance.

1 **Conclusion**

2
3 ODOE recommends the Council find that the proposed amendment complies with its Recreation
4 standard. No new conditions are recommended.
5

6 **12. Public Services Standard OAR 345-022-0010**

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

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

13
14 **Discussion**

15
16 In its Final Order approving the site certificate, the Council identified several potential impacts to
17 the listed public services, particularly in the area of traffic safety. The Council imposed conditions
18 requiring Summit to use portable toilets during construction, implement roadway related
19 improvements, and construct a fire protection system. The proposed amendment does not change
20 the facility or the site, and does not change any of the conditions imposed under this standard.
21

22 **Conclusion**

23
24 ODOE recommends the Council find that the proposed amendment complies with its Public
25 Services standard. No new conditions are recommended.
26

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

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

29
30 *“***(a) The applicant’s solid waste and wastewater plans are likely to minimize*
31 *generation of solid waste and wastewater in the construction, operation, and retirement*
32 *of the 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 are*
36 *likely to result in minimal adverse impact on surrounding and adjacent areas.”*

37
38 **Discussion**

39
40 In its Final Order approving the site certificate, the Council identified programs proposed by the
41 applicant to minimize generation of waste and recycle waste generated during construction and
42 operation. The Council imposed Summit commitments regarding waste minimization, disposal and
43 recycle as condition in the site certificate. In amendment #2, the Council authorized process water
44 discharge either to storage ponds or to the Port of St. Helens. The proposed amendment does not
45 change either the site or the facility. Therefore the existing conditions remain sufficient.
46
47

1 **Conclusion**

2
3 ODOE recommends the Council find that the proposed amendment complies with its Waste
4 Minimization standard. No new conditions are recommended.
5

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

7
8 In the Final Order approving the site certificate, the Council considered safety factors and imposed
9 conditions based on : (1) potential for cooling tower fogging and icing affecting driving conditions
10 on public roads, (2) potential health concerns regarding electric and magnetic fields from high-
11 voltage transmission lines, (3) coordination with the Oregon Public Utility Commission (the
12 “PUC”) to ensure that the certificate holder designs and builds the electrical transmission lines and
13 natural gas pipeline in accordance with the appropriate codes and standards, and
14 (4) pipeline safety monitoring consistent with OAR 345-027-0020(3)(b).
15

16 The proposed amendment does not change the facility or its design, and does not affect any
17 conditions imposed under this statute. Therefore the proposed amendment does not affect any prior
18 Council findings regarding public health and safety, and no new conditions are recommended.
19

20 **C. Requirements of Agencies Other than EFSC**

21
22 The facility requires WPCF permits from the Department of Environmental Quality for wastewater
23 discharge, a wetlands permit from Division of State Lands, and use of third party permits for water
24 use and process water discharge. None of these permits of agencies other than the Council is
25 affected by the proposed amendment.
26

27 The one requirement of an agency other than EFSC that the proposed amendment will affect is the
28 Department of Environmental Quality’s noise standards at OAR 340 Division 35. The Council
29 imposed conditions to minimize noise impact on local residents during construction, although
30 construction noise is exempt from the requirements of OAR 340 Division 35. The Council also
31 imposed conditions requiring silencers on short duration noise sources. Finally, the Council
32 imposed conditions requiring noise testing within 6 month of the start of operation.
33

34 The phased construction does require a modification to this condition. Specifically, Summit should
35 test within six months of the start of unit 1 operations, and again within six months of the start of
36 two unit operation if the project is constructed in two phases.
37

38 Accordingly, the Department recommends that condition (4) under the noise standard be modified
39 as follows:
40

41 (4) Within six months after the start of commercial operation of the energy facility, the
42 certificate holder shall retain a qualified noise specialist to measure noise levels associated with
43 the energy facility operation when the facility is operating in a maximum noise mode. If the
44 Summit/Westward Project is constructed in two stages, then the noise measurements shall be
45 performed within six months after the start of commercial operation of the first combustion
46 turbine unit and shall be repeated within six months after the start of commercial operation of
47 the second combustion turbine unit.
48

1 **D. OAR 345 Division 24 Carbon Dioxide Standard for Base Load Plants**

2
3 In the order approving the site certificate, the Council found that Summit would comply with the
4 standards of Division 24 by providing carbon dioxide (“CO₂”) offset funds to the Climate Trust. In
5 its request for amendment, Summit proposes three changes: (1) Summit proposes to split the CO₂
6 offset payments into equal halves, to reflect splitting the project into two phases. (2) Summit
7 proposes to make the payment for selection and contracting funds payable at the request of the
8 Climate Trust, and (3) Summit proposes changes to the Memo of Understanding (MOU) that would
9 make offset payments due when Summit obtains its financing, rather than at start of construction.⁵
10

11 In this order, we consider each of Summit’s requests. Also, we discuss appropriate corrections to
12 the site certificate description of the facility, specifically the description of power augmentation
13 through duct firing, and clarification of certain other conditions.
14

15 **Discussion**

16
17 Changes to Facility Description Regarding Power Augmentation

18
19 The Department recommends that the Council change to Section C.1.a, The Energy Facility, in the
20 description of “Major Structures and Equipment” and “Output” to reflect changes that were
21 incorporated into the Council’s rules in September 2003. This will update the site certificate
22 description to reflect current rules regarding power augmentation.
23

24 The current site certificate states that the duct burning that the facility will employ is not considered
25 power augmentation under Council rules. While that was true under the rules in effect when the
26 Council granted the original site certificate on October 3, 2002, it is no longer the case. When the
27 Council updated its rules in September 20003, it revised the definition of power augmentation by
28 adding OAR 345-001-0010(44), revising the definition of “new and clean basis” OAR 345-0001-
29 0010(34), and making other related changes in OAR 345, Division 24.
30

31 The earlier definition of power augmentation had tied its measurement to the average annual site
32 condition. However, the earlier description of power augmentation created an anomalous situation:
33 the Summit/Westward Project had duct burning, the most common form of power augmentation,
34 but because the facility was designed so that its duct burning would not be operated at the average
35 annual site condition, it was not possible to account for its carbon dioxide (“CO₂”) emissions under
36 the rule.
37

38 The Council’s 2003 rule revisions corrected that problem. A site certificate holder must now meet
39 the CO₂ standard for duct burning or other power augmentation at the times of the year that it
40 intends to employ the equipment. Therefore, the description in the first paragraph under “Major
41 Structures and Equipment” and the second paragraph under “Output” need to be corrected. The
42 Department recommends that the Council change site certificate section C.1.a “Major Structures
43 and Equipment” as follows:
44

⁵ In a letter dated June 21, 2004, Westward Energy, LLC, notified the Council that it had changed its plans and no longer intended to begin construction prior to completing financing for the facility. Therefore, the letter indicated that the changes that it requested to delay monetary path payments until it had financing were moot. Nevertheless, the Department recommends that the Council address the issue that the certificate holder raised regarding this issue in case the certificate holder should again change its plans.

1 Section C.1.a first paragraph: amend the sentence: “*Duct firing would be provided in the HRSGs*
2 *and would be used to supplement steam generation capacity during conditions under which exhaust*
3 *energy from the CTGs declines*” to read

4
5 *Duct firing, or “power augmentation,” would be provided in the HRSGs and would be used*
6 *to supplement steam generation capacity during conditions under which exhaust energy*
7 *from the CTGs declines.*

8
9 Also in section C.1.a, amend the first paragraph under “Output” as follows:

10
11 *During summer months, plant output from the base load facility would decrease because the*
12 *equipment is less efficient at higher temperatures. During these months the Project would*
13 *use duct firing to bring net electric output closer to the energy facility’s rated capacity.*
14 ~~*However, the Office does not consider this to be*~~ *This is “power augmentation” as that term*
15 ~~*is defined in Council rules under OAR chapter 345, divisions 1 and 24, because the duct*~~
16 ~~*firing would not result in the production of extra power in excess of the plant’s nominal*~~
17 ~~*capacity*~~

18
19 Proposed Changes to Site Certificate Conditions, Section D.9, Carbon Dioxide Standard for Base
20 Load Gas Plants.

21
22 The following discussion sequentially addresses proposed changes in the site certificate conditions.

23
24 **Bond or Letter of Credit for Monetary Path Payment Requirement.** The certificate holder
25 requested that it have the option of providing a bond or a letter of credit to meet its monetary path
26 obligations. While the current site certificate makes reference to both a bond and letter of credit, it
27 is not structured to distinguish clearly between using the two forms of security. If the certificate
28 holder provides a letter of credit, then The Climate Trust, as the qualified organization, will draw
29 funds directly from the letter of credit. On the other hand, if the certificate holder provides a bond,
30 The Climate Trust will draw funds directly from the certificate holder unless the certificate holder
31 fails to make payment as requested. In the latter case, The Climate Trust would then have recourse
32 to the bond. The Department recommends that the Council adopt several changes to conditions and
33 the memoranda of understanding (“MOUs”) to facilitate the use of either a bond or a letter of credit.

34
35 The changes to Condition D.9(1)(b) and (1)(d)(B) provide for alternative forms of MOUs with The
36 Climate Trust, depending on whether the certificate holder is using a bond or a letter of credit. (The
37 MOUs are discussed below.) Condition D.9(1)(b) also specifies that the certificate holder must
38 enter into an appropriate MOU with The Climate Trust before beginning construction of the facility.
39 Likewise, proposed changes to Condition D.9(2)(b) - (f) set out in detail the certificate holder’s
40 specific obligations for disbursing funds.

41
42 **Disbursement of Selection and Contracting Funds.** The certificate holder requested that the
43 Council remove the requirement in Condition D.9(2)(a) that it must disburse all selection and
44 contracting funds to The Climate Trust before beginning construction of the facility. It proposed
45 instead that the site certificate require disbursement “upon request of The Climate Trust in
46 accordance with the MOU.” The certificate holder noted that OAR 345-024-0710(4) allows the
47 qualified organization to request the selection and contracting funds at its discretion.

48
49 The Department recommends that the Council adopt the changes to Condition D.9(2)(a) as
50 requested by the certificate holder. However, the Department recommends that the Council note

1 that that removing the requirement that selection and contracting funds be disbursed before
2 beginning construction does not prohibit The Climate Trust from requesting such funds be
3 disbursed upon signing the MOU, which must occur before beginning construction. Likewise, The
4 Climate Trust might delay receipt of funds, at its discretion. The proposed change places no
5 constraints on when The Climate Trust can require the certificate holder to disburse selection and
6 contracting funds.

7
8 **Power Augmentation Clarification in Conditions.** Conditions D.9(3)(b) and (c) and D.9(4)(b)
9 and (c) relate to the calculation of CO₂ emissions from power augmentation. The Department
10 recommends that the Council clarify these conditions to be consistent with the newly stated
11 definition for power augmentation in OAR 345-001-0010(44) and the revised definition for “new
12 and clean basis” in OAR 345-024-0010(34). The Department further recommends that the Council
13 delegate to the Department certain technical decisions relating to calculating the emissions from
14 power augmentation in Conditions D.9(3)(b), D.9(4)(d), and D.9(5)(b)-(d) as it has done in previous
15 site certificates.

16
17 **Payment in Cash.** Condition D.9(6) provides for payment in certain instances “in cash.” The
18 Department recommends that the Council drop this requirement, lest too literal an interpretation
19 lead to the certificate holder delivering bags of cash to The Climate Trust. The intent of the
20 condition is that the certificate holder may disburse funds immediately and directly without using a
21 bond or letter of credit. This disbursement could be by check, electronically, or by other means of
22 direct payment.

23
24 **Clarification of Condition D.9(9).** Experience has shown the Department that the introductory
25 sentence of Condition D.9(9) may be confusing. Therefore, the Department recommends that the
26 Council restate that sentence to clarify its meaning. This does not change the intent or meaning of
27 the statement.

28
29 **Construction in Phases.** The certificate holder proposed a new Condition D.9(10) that would
30 provide it the option of constructing the facility in two phases and applying the conditions in
31 Section D.9 separately to each phase. The proposed condition referred only to conditions relating to
32 construction, whereas some of the conditions apply to the pre-construction and operational stages of
33 the facility. The Department recommends that the Council approve Condition D.9(10) with minor
34 changes so that it applies to each phase appropriately throughout the life of the site certificate and
35 the facility.

36
37 **Memoranda of Understanding with The Climate Trust.** The certificate holder requested that the
38 Council, through the MOUs, constrain The Climate Trust’s ability to request selection and
39 contracting funds and offset funds. The certificate holder requested that it be relieved of the
40 obligation to meet the requirements of the CO₂ standard until it reported that it had obtained
41 financing for the facility, even though it might have already begun construction. The Department
42 recommends that the Council deny the certificate holder’s request in this matter. (See footnote
43 number 1 as well.)

44
45 The requirement to provide a bond or letter of credit for the monetary path payment requirement
46 before beginning construction is in statute and in rule, as is the provision that the qualified
47 organization, i.e. The Climate Trust, can request offset funds when it is contractually obligated to
48 pay any funds to implement offset projects. The unconditioned ability of the qualified organization
49 to request selection and contracting funds is also in statute and rule. ORS 469.501(2)(d) and OAR
50 345, Division 24. Furthermore, the qualified organization is obligated to enter into contracts

1 obligating at least 60 percent of the offset funds within two years of the certificate holder beginning
2 construction of the facility. ORS 469.501(2)(e) and OAR 345, Division 24. Beginning of
3 construction is defined in statute. ORS 469.300(7). Therefore, there is no basis in statute or rule for
4 the Council to restrain the access of the qualified organization to the bond or letter of credit or to
5 impose additional restrictions on the access of the qualified organization to selection and
6 contracting funds or offset funds, once construction has begun. The statute and rules are written on
7 the principle that a certificate holder that begins construction must be able to meet all its site
8 certificate obligations fully and in a timely manner.

9
10 **MOU for Letter of Credit.** Notwithstanding the denial of the certificate holder’s request for
11 limitations in the MOU, the Department recommends that the Council adopt some conforming
12 changes to Attachment A, which is the MOU and form of letter of credit. The revised MOU would
13 become Attachment A-1 to this order and the site certificate. The proposed changes update
14 references to the original site certificate, reference phases of construction, delete references to a
15 bond, and remove the requirement in Section 1.3 that the certificate holder disburse selection and
16 contracting funds contemporaneously with the signing the MOU. The latter change, along with the
17 change in Section 1.5, makes the MOU consistent with the recommended change to Condition
18 D.9(2)(a).

19
20 In addition to those changes, the Department recommends that the Council adopt Section 1.7 to
21 clarify how to handle excess funds that may remain in the letter of credit after The Climate Trust
22 has fully withdrawn the offset funds. It also recommends that the Council clarify Section 4.2
23 regarding the responsibilities of The Climate Trust for its use of offset funds.

24
25 **MOU for a Bond.** The Department recommends that the Council adopt Attachment A-2 of this
26 Order as Attachment A-2 to the site certificate as the MOU for use of a bond as security for the
27 monetary path payment requirement. It is structured under the same general principles of the letter
28 of credit, but reflects the difference that the bond is security if the certificate holder does not meet
29 its obligations to disburse directly selection and contracting funds and offset funds as requested by
30 The Climate Trust. It also provides an approved form of a bond. It is consistent with the
31 recommended change to Condition D.9(2)(a).

32 **Conclusion**

33
34
35 ODOE recommends that the Council find that the proposed amendment complies with the Carbon
36 Dioxide standards at OAR 345 Division 24. The conditions in the site certificate should be
37 modified as follows:

38 **D.9. CARBON DIOXIDE STANDARD FOR BASE LOAD GAS PLANTS**

- 39
40 (1) Before beginning construction of the facility, the certificate holder shall submit to The
41 Climate Trust a bond or letter of credit in the amount of the monetary path payment
42 requirement (in 2002 dollars) as determined by the calculations set forth in Condition (3)
43 and based on the estimated heat rates and capacities certified pursuant to Condition (4) and
44 as adjusted in accordance with the terms of this Site Certificate pursuant to Condition (3)(c).
45 For the purposes of this Site Certificate, the “monetary path payment requirement” means
46 the offset funds determined pursuant to OAR 345-024-0550 and -0560 and the selection and
47 contracting funds that the certificate holder must disburse to The Climate Trust, as the
48 qualified organization, pursuant to OAR 345-024-0710 and this Site Certificate. The offset
49 fund rate for the monetary path payment requirement shall be \$0.85 per ton of carbon
50 dioxide (in 2002 dollars). The calculation of 2002 dollars shall be made using the Index set

1 forth in Condition D.3(4)(a) and as required below in subsection (g).
2

3 (a) The form of the bond or letter of credit and identity of the issuer shall be subject to
4 approval by the Council.
5

6 (b) The form of the Memorandum of Understanding (“MOU”) between the certificate
7 holder and The Climate Trust establishing the disbursement mechanism to transfer
8 selection and contracting funds and offset funds to The Climate Trust shall be
9 substantially in the form of ~~Attachment A to this Site Certificate. The MOU shall be~~
10 ~~substantially in the form of~~ Attachments A-1 or A-2 to this site certificate.
11 Attachment A-1 is an MOU for use with a letter of credit. Attachment A-2 is an
12 MOU for use with a bond as security. The certificate holder shall use the appropriate
13 MOU depending on whether it chooses to provide a letter of credit or a bond as
14 security. The certificate holder shall enter into the appropriate MOU with The
15 Climate Trust before beginning construction of the facility. [Amendment 3]
16

17 (c) Either the certificate holder or The Climate Trust may submit to the Council for the
18 Council’s resolution any dispute between the certificate holder and The Climate
19 Trust that concerns the terms of the bond, letter of credit, MOU concerning the
20 disbursement mechanism for the monetary path payments, or any other issues related
21 to the monetary path payment requirement. The Council’s decision shall be binding
22 on all parties.
23

24 (d) The bond or letter of credit shall remain in effect until such time as the certificate
25 holder has disbursed the full amount of the monetary path payment requirement to
26 The Climate Trust. The certificate holder may reduce the amount of the bond or
27 letter of credit commensurate with payments it makes to The Climate Trust. The
28 bond or letter of credit shall not be subject to revocation before disbursement of the
29 full monetary path payment requirement.
30

31 (e) In the event that the Council approves a new certificate holder for the energy
32 facility:
33

34 (A) The new certificate holder shall submit to the Council for the Council’s
35 approval the form of a bond or letter of credit that provides comparable
36 security to the bond or letter of credit of the current certificate holder. The
37 Council’s approval of a new bond or letter of credit will not require a Site
38 Certificate amendment.
39

40 (B) The new certificate holder shall submit to the Council for the Council’s
41 approval the form of an MOU between the new certificate holder and The
42 Climate Trust that is substantially in the form of Attachments A-1 or A-2
43 to this Site Certificate. In the case of a dispute between the new certificate
44 holder and The Climate Trust concerning the disbursement mechanism for
45 monetary path payments or any other issues related to the monetary path
46 payment requirement, either party may submit the dispute to the Council for
47 the Council’s resolution as provided in Condition (1)(c). Council approval of
48 a new MOU will not require a Site Certificate amendment. [Amendment 3]
49

1 (f) If calculations pursuant to Condition (5) demonstrate that the certificate holder must
2 increase its monetary path payments, the certificate holder shall increase the bond or
3 letter of credit sufficiently to meet the adjusted monetary path payment requirement
4 within the time required by Condition (3)(c). Alternately, the certificate holder may
5 disburse any additional required funds directly to The Climate Trust within the time
6 required by Condition (3)(c).
7

8 (g) The amount of the bond or letter of credit shall increase annually by the percentage
9 increase in the Index and shall be prorated within the year to the date of
10 disbursement to The Climate Trust from the date of Council approval of the Site
11 Certificate.
12

13 (2) The certificate holder shall disburse to The Climate Trust offset funds and selection and
14 contracting funds as requested by The Climate Trust. The certificate holder shall make
15 disbursements in response to requests from The Climate Trust in accordance with
16 subsections (a), (b), and (c).
17

18 (a) The certificate holder shall disburse all selection and contracting funds to The
19 Climate Trust ~~prior to beginning construction upon the request of the Climate Trust~~
20 in accordance with the terms of the MOU. [Amendment 3]
21

22 (b) ~~If the certificate holder has provided a letter of credit as security for the offset funds,~~
23 upon~~Upon~~ notice pursuant to subsection (c), The Climate Trust may request from the
24 issuer of the ~~bond or~~ letter of credit the full amount of all offset funds available or it
25 may request partial payment of offset funds at its sole discretion. Notwithstanding
26 the specific amount of any contract to implement an offset project, The Climate
27 Trust may request up to the full amount of offset funds the certificate holder is
28 required to provide to meet the monetary path payment requirement. [Amendment 3]
29

30 (c) ~~The certificate holder shall provide that the issuer of the bond or letter of credit~~
31 ~~disburse offset funds to The Climate Trust within three business days of a request by~~
32 ~~The Climate Trust for the offset funds in accordance with the terms of the bond or~~
33 ~~letter of credit. The Climate Trust may request disbursement of offset funds by~~
34 ~~providing notice to the issuer of the bond or letter of credit that The Climate Trust~~
35 ~~has executed a letter of intent to acquire an offset project. The Climate Trust may~~
36 request disbursement of offset funds pursuant to subsection (b) by providing notice
37 to the issuer of the letter of credit that The Climate Trust has executed a letter of
38 intent to acquire an offset project. The certificate holder shall require that the issuer
39 of the letter of credit disburse offset funds to The Climate Trust within three business
40 days of a request by The Climate Trust for the offset funds in accordance with the
41 terms of the letter of credit. [Amendment 3]
42

43 (d) If the certificate holder has provided a bond as security for the offset funds, upon
44 notice pursuant to subsection (e), The Climate Trust may request from the certificate
45 holder the full amount of all offset funds available or it may request partial payment
46 of offset funds at its sole discretion. Notwithstanding the specific amount of any
47 contract to implement an offset project, The Climate Trust may request up to the full
48 amount of offset funds the certificate holder is required to provide to meet the
49 monetary path payment requirement. [Amendment 3]
50

1 (e) The Climate Trust may request disbursement of offset funds pursuant to subsection
2 (d) by providing notice to the certificate holder that The Climate Trust has executed
3 a letter of intent to acquire an offset project and by providing an invoice to the
4 certificate holder for the offset funds. [Amendment 3]
5

6 (A) The certificate holder shall disburse offset funds to The Climate Trust in the
7 amount requested within ten business days of the certificate holder's next
8 scheduled construction draw, but in no case to exceed 40 calendar days from
9 the date of the invoice. [Amendment 3]
10

11 (B) The certificate holder shall provide The Climate Trust with a schedule listing
12 the dates for receipt of invoices prior to each construction draw and the dates
13 for each construction draw. [Amendment 3]
14

15 (C) If, in addition to providing written notification that The Climate Trust has
16 executed a letter of intent to sign an offset contract, The Climate Trust
17 provides written notification to the certificate holder certifying that the
18 receipt of offset funds within five business days is important to the timely
19 implementation of the offset project, the certificate holder shall disburse to
20 The Climate Trust the amount of offset funds requested within five business
21 days of the receipt of such notice. [Amendment 3]
22

23 (f) If the certificate holder has provided a bond as security for the offset funds and the
24 certificate holder fails to disburse offset funds within the time limits of subsection
25 (e), the full penal amount of the bond shall become payable immediately upon
26 demand by The Climate Trust. The full penal amount means all offset funds that the
27 certificate holder is required to disburse to The Climate Trust, taking into account
28 any previous disbursements, but irrespective of a partial payment that may have been
29 requested pursuant to subsection (d). [Amendment 3]
30

31 (3) The certificate holder shall submit all monetary path payment requirement calculations to
32 the Office for verification in a timely manner before submitting a bond or letter of credit for
33 Council approval and before entering into an MOU with The Climate Trust. The certificate
34 holder shall use the contracted design parameters for capacities and heat rates that it reports
35 pursuant to Condition (4) to calculate the estimated monetary path payment requirement,
36 along with the estimated annual hours of operation with operate power augmentation
37 technologies. The certificate holder shall use the Year One Capacities and Year One Heat
38 Rates that it reports for the facility pursuant to Condition (5) to calculate whether it owes
39 additional monetary path payments.
40

41 (a) The net carbon dioxide emissions rate for the base load gas plant shall not exceed
42 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with
43 carbon dioxide emissions and net electric power output measured on a new and clean
44 basis, as defined in OAR 345-001-0010.
45

46 (b) If the certificate holder uses power augmentation technologies, as defined in Council
47 rules, the net carbon dioxide emissions rate for incremental emissions for the facility
48 operating with power augmentation technologies that increase the capacity and heat
49 rate of the facility above the capacity and heat rate that it can achieve as a base load
50 gas plant ~~on a new and clean basis~~ (“power augmentation technologies”) shall not

1 exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power
2 output, with carbon dioxide emissions and net electric power output measured on a
3 new and clean basis adjusted for the average temperature, barometric pressure and
4 relative humidity at the site during the times of year when the site certificate holder
5 intends to operate the facility, as the ~~Council~~ Department may modify such basis
6 pursuant to Condition (4)(d). [Amendment 3]
7

8 (c) When the certificate holder submits the Year One Tests reports required in Condition
9 (5), it shall increase its monetary path payments if the calculation using reported data
10 shows that the adjusted monetary path payment requirement exceeds the monetary
11 path payment requirement for which the certificate holder had provided a bond or
12 letter of credit prior to beginning construction, pursuant to Condition (1). The
13 certificate holder shall submit its calculations to the Office of Energy for verification.
14

15 (A) The certificate holder shall make the appropriate calculations and fully
16 disburse any increased funds directly to The Climate Trust within 30 days of
17 filing the Year One Tests reports.
18

19 (B) In no case shall the certificate holder diminish the bond or letter of credit it
20 provided before beginning construction or receive a refund from The Climate
21 Trust based on the calculations made using the Year One Capacities and the
22 Year One Heat Rates.
23

24 (4) The certificate holder shall include an affidavit certifying the heat rates and capacities
25 reported in subsections (a) and (b).
26

27 (a) Before beginning construction of the facility, the certificate holder shall notify the
28 Council in writing of its final selection of a gas turbine vendor and heat recovery
29 steam generator vendor and shall submit written design information to the Council
30 sufficient to verify the base load gas plant's designed new and clean heat rate (higher
31 heating value) and its net power output at the average annual site condition.
32

33 (b) Before beginning construction of the energy facility, the certificate holder shall
34 submit written design information to the Council sufficient to verify the facility's
35 designed new and clean heat rate and its net power output at the average ~~site~~
36 condition temperature, barometric pressure and relative humidity at the times the
37 certificate holder intends to operate with duct burning or other power augmentation.
38 [Amendment 3]
39

40 (c) If the ~~net power output and heat rate that the~~ certificate holder reports pursuant to
41 subsection (b) ~~indicate~~ that the Project will use power augmentation technologies,
42 before beginning construction of the energy facility, the certificate holder shall
43 specify the estimated annual average hours that it will operate the power
44 augmentation technologies. [Amendment 3]
45

46 (d) If the Project uses power augmentation technologies, upon a timely request by the
47 certificate holder, the ~~Council~~ Office may approve modified parameters for testing
48 the power augmentation technologies on a new and clean basis, pursuant to OAR
49 345-024-0590(1). The ~~Council's~~ Office's approval of modified testing parameters

1 for power augmentation technologies shall not require a Site Certificate amendment.
2 [Amendment 3]
3

4 (5) Within the first 12 months of commercial operation of the facility, the certificate holder shall
5 conduct a 100-hour test at full power without power augmentation technologies (“Year One
6 Test-1”) and, if appropriate, a test at full power with power augmentation technologies
7 (“Year One Test-2”). A 100-hour test performed for purposes of the certificate holder’s
8 commercial acceptance of the facility shall suffice to satisfy this condition in lieu of testing
9 after beginning commercial operation.

10
11 (a) Year One Test-1 shall determine the actual heat rate (“Year One Heat Rate-1”) and
12 the net electric power output (“Year One Capacity-1”) on a new and clean basis,
13 without degradation, with the results adjusted for the average annual site condition
14 for temperature, barometric pressure, and relative humidity, and using a rate of
15 117 pounds of carbon dioxide per million Btu of natural gas fuel pursuant to OAR
16 345-001-0010(35).
17

18 (b) If appropriate, Year One Test-2 shall determine the actual heat rate (“Year One Heat
19 Rate-2”) and net electric power output (“Year One Capacity-2”) for the facility
20 operating with power augmentation technologies, without degradation, with the
21 results adjusted for the average site condition for temperature, barometric pressure,
22 and relative humidity at the times the certificate holder intends to operate power
23 augmentation technologies, and using a rate of 117 pounds of carbon dioxide per
24 million Btu of natural gas fuel pursuant to OAR 345-001-0010(35). The full power
25 test shall be 100 hours’ duration unless the ~~Council~~ Department has approved a
26 different duration pursuant to Condition (4)(d). [Amendment 3]
27

28 (c) The certificate holder shall notify the Office of Energy at least 60 days before
29 conducting the tests required in sub-sections (a) and (b), as appropriate unless the
30 certificate holder and the Department have mutually agreed that less notice will
31 suffice. [Amendment 3]
32

33 (d) Before conducting the tests required in subsections (a) and (b), as appropriate, the
34 certificate holder shall, in a timely manner, provide to the Office a copy of the
35 protocol for conducting the tests. The certificate holder shall not conduct the tests
36 until the Department has approved the testing protocols. [Amendment 3]
37

38 (e) Within two months after completing the Year One Test(s), the certificate holder shall
39 provide to the Council a report of the results of the Year One Test(s).
40

41 (6) If calculations pursuant to Condition (7) demonstrate that the certificate holder must
42 supplement its monetary path payments (“supplemental monetary path payment
43 requirement”), the certificate holder shall provide a bond or letter of credit sufficient to meet
44 the supplemental monetary path payment requirement within the time required by Condition
45 (7)(b). The bond or letter of credit shall not be subject to revocation before disbursement of
46 the supplemental monetary path payment requirement. Alternately, the certificate holder
47 may disburse ~~in cash~~ any such supplemental monetary path payments directly to The
48 Climate Trust within the time required by the Condition (7). [Amendment 3]
49

1 (7) If the certificate holder uses power augmentation technologies, the certificate holder shall
2 submit all supplemental monetary path payment requirement calculations to the Office for
3 verification. The certificate holder shall use the Year One Capacity-2 and Year One Heat
4 Rate-2 that it reports for the facility pursuant to Condition (5)(b) to calculate whether it owes
5 supplemental monetary path payments, pursuant to subsections (a) and (b).
6

7 (a) Each five years after beginning commercial operation of the facility (“five-year
8 reporting period”), the certificate holder shall report to the Office the annual average
9 hours the facility operated with power augmentation technologies during that five-
10 year reporting period, pursuant to OAR 345-024-0590(6). The certificate holder shall
11 submit five-year reports to the Office within 30 days of the anniversary date of
12 beginning commercial operation of the facility.
13

14 (b) If the Office determines that the facility exceeds the projected net total carbon
15 dioxide emissions calculated pursuant to Conditions (4) and (5), prorated for five
16 years, during any five-year reporting period described in subsection (a), the
17 certificate holder shall offset excess emissions for the specific reporting period
18 according to subsection (A) and shall offset the estimated future excess emissions
19 according to subsection (B), pursuant to OAR 345-024-0600(4). The certificate
20 holder shall offset excess emissions using the monetary path as described in OAR
21 345-024-0710, except that selection and contracting funds shall equal 20 percent of
22 the value of any offset funds up to the first \$250,000 (in 2002 dollars) and 4.286
23 percent of the value of any offset funds in excess of \$250,000 (in 2002 dollars). The
24 certificate holder shall disburse the funds to The Climate Trust within 30 days after
25 notification by the Office of the amount that the certificate holder owes.
26

27 (A) In determining the excess carbon dioxide emissions that the certificate holder must offset for
28 a five-year period, the Office shall apply OAR 345-024-0600(4)(a). The certificate holder shall
29 pay for the excess emissions at \$0.85 per ton of carbon dioxide emissions (in 2002 dollars). The
30 Office shall notify the certificate holder and The Climate Trust of the amount of payment
31 required, using the monetary path, to offset excess emissions.
32

33 (B) The Office shall calculate estimated future excess emissions and notify the
34 certificate holder of the amount of payment required, using the monetary
35 path, to offset them. To estimate excess emissions for the remaining period of
36 the deemed 30-year life of the facility, the Office shall use the parameters
37 specified in OAR 345-024-0600(4)(b). The certificate holder shall pay for the
38 estimated excess emissions at \$ 0.85 per ton of carbon dioxide (in
39 2002 dollars). The Office shall notify the certificate holder of the amount of
40 payment required, using the monetary path, to offset future excess emissions.
41

42 (8) The combustion turbine for the base load gas plant and power augmentation technologies, as
43 appropriate, shall be fueled solely with pipeline-quality natural gas or with synthetic gas
44 with a carbon content per million Btu no greater than pipeline-quality natural gas.
45

46 (9) ~~With respect to incremental capacity and fuel consumption increases for which the~~
47 ~~certificate holder has not previously complied with the carbon dioxide standard, the~~
48 ~~certificate holder shall comply substantially with Conditions (1) through (8) in lieu of the~~
49 ~~Council’s requiring an amendment, provided that After the certificate holder has complied~~
50 ~~with the conditions relating to the carbon dioxide standard before beginning construction,~~

1 incremental increases in capacity and heat rate that otherwise fall within the limits specified
2 in OAR 345-027-0050(2) do not require an amendment of the site certificate if the
3 certificate holder complies substantially with Conditions (1) through (8) and (10), except as
4 modified below, and if: [Amendment 3]
5

6 (a) The Council determines, pursuant OAR 345-027-0050, that the certificate holder
7 does not otherwise require an amendment, and further provided that:
8

9 (b) The certificate holder shall meet the appropriate carbon dioxide emissions standard
10 and monetary offset rate in effect at the time the Council makes its determination
11 pursuant to OAR 345-027-0050.
12

13 (10) If the certificate holder begins construction of Phase 1, but not Phase 2, the certificate holder
14 shall comply with Conditions D.9(1) through D.9(9) in connection with construction of for
15 Phase 1. If the certificate holder later begins construction of Phase 2, the certificate holder
16 shall comply with Conditions D.9(1) through D.9(9) in connection with the construction of
17 for Phase 2. [Amendment 3]
18
19

20 **V. PROPOSED ORDER AND SITE CERTIFICATE AMENDMENTS**

21
22 ODOE recommends that the Council find that the changes to the facility proposed in Summit's
23 Fourth Request for Amendment meet the Council's standards and should be issued as Amendment
24 #3. (Summit's Third Request for Amendment is tabled at this time). The site certificate section C.1
25 "Facility Description" should be amended to describe the division of the energy facility into two
26 units of approximately equal electrical generating capacity, with construction in two phases. Phase
27 1 refers to the construction of one combustion turbine and the heat recovery steam generator. Phase
28 2 refers to the construction of the second combustion turbine and associated connections to the heat
29 recovery steam generator.
30

31 The Department further recommends that section C.1.a of the site certificate be amended as shown
32 in the discussion of the Carbon Dioxide Standard, to reflect the current Council rules regarding
33 Power Augmentation. The Department further recommends that the conditions of the site
34 certificate be amended as shown in the sections of this order that discuss compliance with the
35 Council's Retirement and Financial Assurance Standard, DEQ's Noise Standard, and the Council's
36 Carbon Dioxide Standard. With the foregoing changes, ODOE recommends that the Council
37 approve Summit's Fourth Request for Amendment.
38
39

OREGON DEPARTMENT OF ENERGY

By: _____
David Stewart-Smith date
Asst. Director, Energy Resources Division

40