

1 **II. Description of the Proposed Amendment**

2 The Council has a specific rule for a request to extend construction beginning and
3 completion deadlines. OAR 345-027-0030 provides:
4

- 5 (1) The certificate holder may request an amendment to extend the deadlines
6 for beginning or completing construction of the facility that the Council
7 has specified in a site certificate or an amended site certificate. The
8 certificate holder shall submit a request that conforms to the requirements
9 of 345-027-0060 no later than six months before the date of the
10 applicable deadline, or, in the case of circumstances beyond the control of
11 the certificate holder and described in the request, no later than the
12 applicable deadline.
13
- 14 (2) A request within the time allowed in section (1) to extend the deadlines
15 for beginning or completing construction suspends those deadlines until
16 the Council acts on the request.
17
- 18 (3) The Council shall review the request for amendment as described in OAR
19 345-027-0070.
20
- 21 (4) If the Council grants an amendment under this rule, the Council shall
22 specify new deadlines for beginning or completing construction that are
23 not more than two years from the deadlines in effect before the Council
24 grants the amendment.
25
- 26 (5) For energy facilities subject to OAR 345-024-0550, OAR 345-024-0590,
27 or OAR 345-024-0620, the Council shall not grant an amendment
28 extending the deadline for beginning or completing construction unless
29 the certificate holder demonstrates compliance with the carbon dioxide
30 standard in effect at the time of the Council's order on the amendment.
31

32 Pursuant to OAR 345-027-0030, UGC requested to amend the Site Certificate to extend by
33 24 months the deadlines for beginning and completing construction of the facility. Pursuant
34 to OAR 345-027-0030(4), the Council can extend the deadlines for up to two years. This
35 request was timely under OAR 345-027-0030(1) because UGC submitted it more than six
36 months before the first applicable deadline.

37 Pursuant to Condition F.1(4) of the Site Certificate, the Certificate Holder is required to
38 begin construction of the facility by September 14, 2003. Pursuant to Condition F.1(5), the
39 Certificate Holder must complete construction of the facility by March 14, 2006. UGC
40 requested that the Council extend the deadline to begin construction of the facility to
41 September 14, 2005, and that the Council extend the deadline to complete construction of
42 the facility to March 14, 2008.
43

1 As noted in the letter from Mr. Richard Allan, attorney for UGC, that accompanied the
2 request to amend the Site Certificate, UGC believes that the Umatilla Generating Project is
3 a viable project, but that over the 18 months since the Council issued the Site Certificate,
4 the energy markets have not supported UGC's initial schedule for beginning and completing
5 construction of the project. UGC requested the extension of deadlines to maintain the
6 potential for future development of this project.

7
8 In addition to changing the construction beginning and completion dates, OAR 345-027-
9 0030 requires that the Council amend the site certificate conditions to comply with the
10 Council's current CO₂ emissions standard. The Council granted the current Site Certificate
11 before it adopted the most recent changes to the CO₂ standard. Therefore, the Council
12 must also amend the Site Certificate to incorporate the monetary offset rate of \$0.85 per
13 ton of excess CO₂ and the CO₂ net emissions rate of 0.675 lbs. CO₂/kWh for power
14 augmentation.

15
16 There are other related changes that make the form of the CO₂ conditions consistent with
17 the current CO₂ standard rules and with similar conditions the Council has adopted recently.
18 Attachment A to the Site Certificate is also updated to conform to the changes in the Site
19 Certificate. Changes are discussed below in Section IV.

20 21 **III. Procedural History**

22 **A. Department of Energy ("Office") Review Steps**

23 **1. UGC's Request**

24 UGC submitted the Second Request to Amend Site Certificate to the Council on March 13,
25 2003.

26
27 On March 19, 2003, the Office wrote UGC to recommend changes in conditions that were
28 needed for consistency with the conditions UGC proposed. The Office also recommended
29 other clarifications to conditions and changes that made the conditions consistent with
30 similar conditions the Council had adopted recently in site certificates. In a letter dated
31 March 21, 2003, from Mr. Allan, UGC agreed to incorporate the changes that the Office
32 identified into its request. The changes are incorporated below in Section IV.

33 34 **2. Notice to Site Certificate Holder**

35 On March 17, 2003, the Office mailed notice to UGC, pursuant to OAR 345-027-
36 0070(1)(c), that it would issue a proposed order no later than May 16, 2003.

37 38 **3. Review by Other Agencies, Local Governments and Tribes**

39 The Office, pursuant to OAR 345-027-0070(1)(a), identified potentially affected agencies,
40 local governments and tribes and asked them to review UGC's request for amendment. The
41 Office mailed a copy of the amendment request along with a review report form on
42 March 19, 2003, to those agencies, local governments and tribes and asked them to reply by
43 April 11, 2003. The Office sent the request to the following agencies, local governments
44 and tribes:

- | | | |
|----|--|-------------------------------------|
| 1 | Department of Geology and Mineral Industries | Department of Fish and Wildlife |
| 2 | Division of State Lands | Department of Agriculture |
| 3 | Water Resources Department | Department of Parks and Recreation |
| 4 | State Historic Preservation Office | Department of Environmental Quality |
| 5 | Office of State Fire Marshall | Public Utilities Commission |
| 6 | Building Codes Division | Department of Forestry |
| 7 | Northwest Power Planning Council | City of Hermiston |
| 8 | City of Stanfield | City of Umatilla |
| 9 | City of Echo | City of Irrigon |
| 10 | City of Pendleton | City of Boardman |
| 11 | Board of Commissioners, Umatilla County | |
| 12 | Board of Commissioners, Morrow County | |
| 13 | Confederated Tribes of the Umatilla Indian Reservation | |
| 14 | Department of Land Conservation and Development | |

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4 Replies

No agency stated objections to the requested amendment or recommended conditions. The State Historic Preservation Office asked procedural questions about the original review of the Application for a Site Certificate.

5 Initial Public Notice

On March 19, 2003, the Office mailed a notice of UGC’s request for amendment to all persons on the Council’s general mailing list and persons on the Council’s special mailing list for the Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments to the Office by April 11, 2003.

6. Public Comments on the Request

The Office received no public comments on the request for amendment.

7. Proposed Order

The Office issued its proposed order on April 16, 2003.

8. Public Notice of Proposed Order

On April 16, 2003, the Office mailed a notice of its proposed order to local governments, agencies and tribes, all persons on the Council’s general mailing list, and persons on the Council’s special mailing list for the Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments to the Office by May 19, 2003.

9. Comments on the Proposed Order

On May 12, 2003, the Department of Environmental Quality (“DEQ”) commented via e-mail that the Air Contaminant Discharge Permit (“ACDP”) for the facility required the facility to begin construction by July 18, 2003, unless UGC requests an extension, which it had not done. (DEQ informed the Office by e-mail on May 19, 2003, that it had received notification from UGC that it intends to request an extension of the ACDP from DEQ.) DEQ therefore recommended that the Council not grant the site certificate amendment to

1 extend the construction beginning date. DEQ also recommended that the Council and DEQ
2 coordinate the timing requirements of the ACDP and the site certificate. DEQ may extend
3 an ACDP for 18 months. The Council's rules provide for extension of construction
4 beginning or completion deadlines of up to 24 months, pursuant to OAR 345-027-0030(4).
5

6 The Council's site certificate process and the DEQ's ACDP process are entirely separate
7 except for the requirement in OAR 345-0021-0000(5)(b) that agencies responsible for
8 reviewing federally-delegated permit applications submit a letter to the Office indicating that
9 they have received an application and indicating the schedule for reviewing it. There is no
10 provision for subsequent coordination after the respective applications have been approved.
11 A site certificate holder for a fossil-fueled facility must maintain both a current site
12 certificate and a current ACDP. The Council finds that it shall not adopt site certificate
13 conditions that ties the site certificate amendments for extension of construction beginning
14 and completion deadlines to extensions of the ACDP.
15

16 **B. Council Review Steps**

17 **1. Council Notice**

18 The Office mailed UGC's request for amendment and a memo summarizing the request to
19 the Council on March 19, 2003. The Office mailed the proposed order to the Council on
20 April 16, 2003. It mailed the recommended final order to the Council on May 27, 2003.
21

22 **2. Council Action on Request for Amendment**

23 The Council took final action on the request for amendment during a regular meeting in
24 Corvallis, Oregon, June 6, 2003.
25

26 **IV. Proposed Changes to Site Certificate**

27 OAR 345-027-0060 requires that a request to amend a site certificate must include "the
28 specific language of the site certificate, including affected conditions, that the certificate
29 holder proposes to change, add or delete by an amendment." Specific language is set forth
30 below in Subsection IV.B, including the changes UGC proposed on March 21, 2003, at the
31 suggestion of the Office.
32

33 OAR 345-027-0060 requires that this request include:

34 ...an analysis of whether the facility, with the proposed change, would
35 comply with the requirements of ORS Chapter 469, applicable Council rules,
36 and applicable state and local laws, rules and ordinances if the Council
37 amends the site certificate as requested. For the purpose of this rule, a law,
38 rule or ordinance is 'applicable' if the Council would apply or consider the
39 law, rule or ordinance under OAR 345-027-0070(9).
40

41 OAR 345-027-0070(9) provides:

42 In making a decision to grant or deny issuance of an amended site certificate,
43 the Council shall apply the applicable substantive criteria, as described in
44 OAR 345-022-0030, in effect on the date the certificate holder submitted the
45 request for amendment and all other state statutes, administrative rules, and

1 local government ordinances in effect on the date the Council makes its
2 decision. * * *

3
4 The discussion of compliance with Council standards, state statutes, administrative rules,
5 local government ordinance, and applicable substantive criteria is contained in Section V
6 below.

7
8 **A. Considerations for Extending Construction Deadlines.**

9 OAR 345-027-0070(9)(b) identifies three factors the Council must consider when
10 considering an amendment that extends the deadlines for beginning or completing
11 construction. Each factor is considered below.

12
13 (A) Whether the Council has previously granted an extension of the
14 deadline.

15
16 The Council has not previously granted an extension of the deadline for beginning
17 construction or the deadline for completing construction for the Umatilla Generating
18 Project.

19
20 (B) Whether there has been any change of circumstances that affects a
21 previous Council finding that was required for issuance of a site
22 certificate or amended site certificate.

23
24 Section V discusses the findings for the Site Certificate and First Amended Site
25 Certificate. The discussion shows there are no changes of circumstances that affect
26 a previous Council finding required for issuance of the Site Certificate or the First
27 Amended Site Certificate other than the changes in the Council's CO₂ emissions
28 standard.

29
30 (C) Whether the facility complies with all Council standards ***.

31
32 Section V addresses this factor for each standard and finds that UGC complies.

33
34 OAR 345-027-0060(1)(g) requires for an amendment to extend the deadlines for beginning
35 or completing construction of the facility "an updated list of the owners of property located
36 within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f)."
37 UGC provided an updated list of property owners with its amendment request and the
38 Office updated its mailing list.

39
40 **B. Proposed Amendments to the Site Certificate**

41 The following changes include those UGC proposed in its request, dated March 13, 2003,
42 and those it incorporated by letter on March 21, 2003, at the suggestion of the Office.
43 Additions are double-underlined and deletions have a strikethrough.
44

1 **Site Certificate**

2 **Cover Page Title:** ~~Thermal Power Plant First~~Second Amended Site Certificate
3 for the Umatilla Generating Project
4

5 **First Page Title** ~~First~~Second Amended Site Certificate Umatilla Generating
6 Project
7

8 **A. Introduction**

9 ***

10 The findings of fact, reasoning and conclusions of law underlying the terms and
11 conditions of this Site Certificate are set forth in the following documents, which by
12 this reference are incorporated herein: (a) Council's Final Order in the Matter of the
13 Application for a Site Certificate for the Umatilla Generating Project, which the
14 Council granted on September 14, 2001; ~~and (b)~~ Council's Final Order in the Matter
15 of the Thermal Power Plant Site Certificate for the Umatilla Generating Project
16 Request for Amendment No. One, which the Council granted on February 26, 2002;
17 and, (c) the Council's Final Order in the Matter of the Site Certificate for the
18 Umatilla Generating Project Request for Amendment No. Two, which the Council
19 granted on June 6, 2003. [Amendments No. 1 & 2]
20

21 In interpreting this Site Certificate, any ambiguity shall be clarified by reference to,
22 and in the following priority, this Site Certificate, the record of the proceedings that
23 led to the Final Order, and the Application for a Site Certificate for the Umatilla
24 Generating Project. As used in this Site Certificate, the "application for site
25 certificate" or the "ASC" includes: (a) the revised Application for a Site Certificate
26 for the Umatilla Generating Project, which UGC submitted on February 20, 2001,
27 and which it further amended on April 10, 2001; ~~and (b)~~ the Certificate Holder's
28 Request for First Amendment to the Site Certificate for the Umatilla Generating
29 Project, dated November 28, 2001; and, (c) the Certificate Holder's Request for
30 Second Amendment to the Site Certificate for the Umatilla Generating Project,
31 dated March 13, 2003, and as amended March 21, 2003. [Amendments No. 1 & 2]
32

33 **Discussion.** The changes above are editorial and procedural. The change to the title page
34 simply eliminates unnecessary words.
35

36 **D.2.b. Financial Assurance**

37 (1) Prior to beginning construction, the Certificate Holder shall submit to the
38 State of Oregon through the Council a bond or letter of credit in the amount
39 of \$5,600,000 (in 2001 dollars) naming the State of Oregon, acting by and
40 through the Council, as beneficiary or payee.
41

- 42 (a) The calculation of 2001 dollars shall be made using the U.S. Gross
43 Domestic Product Implicit Price Deflator, ~~as published by the U.S.~~
44 ~~Department of Commerce, Bureau of Economic Analysis~~Chain-Weight,
45 as published by the Oregon Department of Administrative Services in its

1 series, "Oregon Economic and Revenue Forecast," or any successor
2 agency (the "Index"). The amount of the bond or letter of credit account
3 shall increase annually by the percentage increase in the Index and shall
4 be pro-rated within the year to the date of retirement. If, at any time, the
5 Index is no longer published, the Council shall select a comparable
6 calculation of 2001 dollars. The form of the bond or letter of credit and
7 identity of the issuer shall be subject to approval by the Council.
8 [Amendment No. 2]
9

10 **Discussion.** The index is most often used to determine the amount of the letter of credit or
11 bond that a certificate holder must provide. Bonds and letters of credit must cover an
12 amount sufficient for the life of the instrument, which is usually the next year. Therefore,
13 the certificate holder and the Office need a forecast of what the index will be six months to
14 a year in advance. The federal data are historical. They do not include forecasts. This
15 condition uses a regularly-published forecast upon which the certificate holder and the
16 Office can rely to index the amount of each letter of credit.
17

18 **D.5. Carbon Dioxide Standard for Base Load Gas Plants**

19 (1) Prior to beginning construction, the Certificate Holder shall submit to The
20 Climate Trust a bond or letter of credit in the amount of the monetary path
21 payment requirement (in ~~2001~~2003 dollars) as determined by the calculations
22 set forth in Condition 3 and based on the estimated heat rates and capacities
23 certified pursuant to Condition 4 and as adjusted in accordance with the
24 terms of this site certificate pursuant to Condition 3(c). For the purposes of
25 this site certificate, the "monetary path payment requirement" means the
26 offset funds determined pursuant to OAR 345-024-0550 and -0560 and the
27 selection and contracting funds that the Certificate Holder must disburse to
28 The Climate Trust, as the qualified organization, pursuant to OAR 345-024-
29 0710 and this site certificate. The offset fund rate for the monetary path
30 payment requirement shall be ~~\$0.57~~\$0.85 per ton of carbon dioxide (in
31 ~~2001~~2003 dollars). The calculation of ~~2001~~2003 dollars shall be made using
32 the index set forth below in sub-section (h). [Amendment No. 2]
33

34 (h) The calculation of ~~2001~~2003 dollars shall be made using the US
35 Gross Domestic Product Implicit Price Deflator, ~~as published by the~~
36 ~~US Department of Commerce, Bureau of Economic Analysis, Chain-~~
37 ~~Weight, as published by the Oregon Department of Administrative~~
38 ~~Services in its series, "Oregon Economic and Revenue Forecast,"~~ or
39 any successor agency ("the index"). The amount of the bond or
40 letter of credit shall increase annually by the percentage increase in
41 the index and shall be pro-rated within the year to the date of
42 disbursement to The Climate Trust from the date of Council approval
43 of the site certificate. If at any time the index is no longer published,
44 the Council shall select a comparable calculation of ~~2001~~2003
45 dollars. [Amendment No. 2]

1 ***

2 (3)(b) The net carbon dioxide emissions rate for incremental emissions for
3 the facility operating with power augmentation technologies that
4 increase the capacity and heat rate of the facility above the capacity
5 and heat rate that it can achieve as a base load gas plant on a new
6 and clean basis (“power augmentation technologies”) shall not
7 exceed ~~0.7000~~0.675 pounds of carbon dioxide per kilowatt hour of net
8 electric power output, with carbon dioxide emissions and net electric
9 power output measured on a new and clean basis, as the Council may
10 modify such basis pursuant to Condition 4(d). [Amendment No. 2]

11
12 **Discussion.** These conditions incorporate the current CO₂ emissions standard for power
13 augmentation technologies (0.675 lb. CO₂/kWh) and the current monetary offset rate (\$0.85
14 per ton of excess CO₂ emissions). The change to the index is for the same reasons as for
15 changes to Condition D.2.b(a): the certificate holder must provide a letter of credit that will
16 be large enough to meet a draw-down that may occur up to one or two years in the future.
17 The year of the index is changed to 2003 to reflect the adoption of a new rate with this
18 amendment.

19
20 (4)(d) Upon a timely request by the site Certificate Holder, the
21 ~~Council~~Office may approve modified parameters for testing the
22 power augmentation technologies on a new and clean basis ~~in a~~
23 ~~manner that accommodates technical limitations of the equipment,~~
24 pursuant to OAR 345-024-0590(1). The ~~Council’s~~Office’s approval
25 of modified testing parameters for power augmentation technologies
26 shall not require a site certificate amendment. [Amendment No. 2]

27
28 (5) Within the first 12 months of commercial operation, the Certificate Holder
29 shall conduct a 100-hour test at full power without power augmentation
30 technologies (“Year One Test-1”) and a test at full power with power
31 augmentation technologies (“Year One Test-2”). A 100-hour test performed
32 for purposes of the Certificate Holder’s commercial acceptance of the facility
33 shall suffice to satisfy this condition in lieu of testing after beginning
34 commercial operation. [Amendment No. 2]

35 ***

36
37 (b) Year One Test-2 shall determine the actual heat rate (Year One Heat
38 Rate-2) and net electric power output (“Capacity-2) for the facility
39 operating with power augmentation technologies, without
40 degradation, with the results adjusted for the average annual site
41 condition for temperature, barometric pressure and relative humidity,
42 and using a rate of 117 pounds of carbon dioxide per million Btu of
43 natural gas fuel pursuant to OAR 345-001-0010(34). The full power
44 test shall be 100 hours duration unless the ~~Council~~Office has

1 approved a different duration pursuant to Condition 4(d).
2 [Amendment No. 2]

3
4 (c) The site Certificate Holder shall notify the Office of Energy at least
5 60 days prior to conducting the 100-hour tests required in
6 subsections (a) and (b) unless a shorter time is mutually agreed upon.
7 [Amendment No. 2]

8
9 ***

10 (7)(b) If the Office determines that the facility exceeds the projected net
11 total carbon dioxide emissions calculated pursuant to Condition 4
12 and 5, prorated for five years, during any five-year reporting period
13 described in sub-section (a), the Certificate Holder shall offset excess
14 emissions for the specific reporting period according to subsection (i)
15 and shall offset the estimated future excess emissions according to
16 subsection (ii), pursuant to OAR 345-024-0600(4). The Certificate
17 Holder shall offset excess emissions using the monetary path as
18 described in OAR 345-024-0710, except that contracting and
19 selecting funds shall equal twenty (20) percent of the value of any
20 offset funds up to the first \$250,000 (in ~~2001~~2003 dollars) and 4.286
21 percent of the value of any offset funds in excess of \$250,000 (in
22 ~~2001~~2003 dollars). The Certificate Holder shall disburse the funds to
23 The Climate Trust within 30 days after notification by the Office of
24 the amount that the Certificate Holder owes. [Amendment No. 2]

25
26 (A) In determining the excess carbon dioxide emissions that
27 the Certificate Holder must offset for a five-year period, the
28 Office shall apply OAR 345-024-0600(4)(a). The Certificate
29 Holder shall pay for the excess emissions at ~~\$0.57~~\$0.85 per ton
30 of carbon dioxide emissions (in ~~2001~~2003 dollars). The Office
31 shall notify the Certificate Holder and The Climate Trust of the
32 amount of payment required, using the monetary path, to offset
33 excess emissions; [Amendment No. 2]

34
35 (B) The Office shall calculate estimated future excess
36 emissions and notify the Certificate Holder of the amount of
37 payment required, using the monetary path, to offset them. To
38 estimate excess emissions for the remaining period of the
39 deemed 30-year life of the facility, the Office shall use the
40 parameters specified in OAR 345-024-0600(4)(b). The
41 Certificate Holder shall pay for the estimated excess emissions
42 at ~~\$0.57~~\$0.85 per ton of carbon dioxide (in ~~2001~~2003 dollars).
43 The Office shall notify the Certificate Holder of the amount of
44 payment required, using the monetary path, to offset future
45 excess emissions. [Amendment No. 2]

1 **Discussion.** In addition to revising the emission offset rate and the monetary path rate and
2 indexing them to 2003 dollars, the amendments incorporate flexibility that the Council has
3 adopted in subsequent site certificates. The deletion in 4(d) reflects a change in OAR 345-
4 024-0590(1) and refers directly to the rule rather than paraphrasing it.

5
6 **F.1. Mandatory Conditions**

7 ***

8 (4) The Certificate Holder shall begin construction of the facility by September
9 14, ~~2003~~2005. The Certificate Holder shall report promptly to the Office the
10 date that it began construction of the facility, as defined in OAR 345-001-
11 0010(10). In reporting the beginning of construction, the Certificate Holder
12 shall describe all work on the site performed before beginning construction,
13 including work performed before the Council issued the site certificate, and
14 shall state the cost of that work, pursuant to OAR 345-026-0048.

15 [Amendment No. 2]

16
17 (5) The Certificate Holder shall complete construction of the facility by March
18 14, ~~2006~~2008. ~~Completion of construction shall be the first day of~~
19 ~~commercial operation of the facility.~~The completion of construction date is
20 the day by which (1) the facility is substantially complete as defined by the
21 Certificate Holder’s construction contract documents; (2) acceptance testing
22 is satisfactorily completed; and, (3) the energy facility is ready to commence
23 continuous operation consistent with the site certificate. The Certificate
24 Holder shall report promptly to the Office the date it completed construction
25 of the facility. [Amendment No. 2]

26
27 **Discussion.** The change in construction beginning and completion dates is the focus of
28 UGC’s request. The change in the definition of completion of construction is to clarify the
29 benchmarks for completion. The Council has found that using the more general term of
30 “date of commercial operation” as the benchmark has led to confusion with other certificate
31 holders.

32
33 **IN WITNESS WHEREOF**, this ~~First~~Second Amended Site Certificate has been
34 executed by the State of Oregon, acting by and through its Energy Facility Siting
35 Council, and the Umatilla Generating Company, L.P.

36
37 **Discussion.** This is a conforming change.

38
39 **Attachment A**

40 ~~First~~Second Amended Site Certificate Umatilla Generating Project

41 ***

42 **Recitals**

43 ***

44 3. As a condition to the siting of the Project, the Project Owner is required to
45 provide offset funds (“Offset Funds”) and selection and contracting funds

1 (“Selection and Contracting Funds”) to The Trust. In accordance with
2 Section D.5 of the ~~Thermal Power Plant First~~Second Amended Site
3 Certificate for the Umatilla Generating Project that the Oregon Energy
4 Facility Siting Council (“Council”) granted to the Project Owner, dated
5 ~~February 26, 2002~~ June 6, 2003 (the “ Site Certificate”), the Project Owner
6 shall establish a third-party letter of credit (the “Letter of Credit”) in The
7 Trust’s name, acceptable by the Council, sufficient to meet the monetary
8 path requirement. Under the terms and conditions of this Agreement, the
9 monetary path payments will be disbursed to The Trust as specified in the
10 Site Certificate and then by The Trust as specified in ORS 469.503(2)(d)(A).

11 ***

12 **1. Initial Base-Load Monetary Path Payment and Initial Power**
13 **Augmentation Monetary Path Payment.**

14
15 1.1 The Project Owner has used the monetary path payment requirement
16 calculations described in Section D.5 of the Site Certificate to calculate the
17 Initial Base-Load Monetary Path Payment amount and has submitted them
18 to the Office of Energy for verification. The Trust acknowledges that the
19 calculation of the Initial Base-Load Monetary Path Payment in ~~September~~
20 ~~14, 2001~~2003 dollars presented in Appendix A is correct and consistent with
21 the Site Certificate.

22
23 1.2 The Project Owner has used the monetary path payment requirement
24 calculations described in Section D.5 of the Site Certificate to calculate the
25 Initial Power Augmentation Monetary Path Payment amount and has
26 submitted them to the Office of Energy for verification. The Trust
27 acknowledges that the calculation of the Initial Power Augmentation
28 Monetary Path Payment in ~~September 14, 2001~~2003 dollars presented in
29 Appendix A is correct and consistent with the Site Certificate.

30
31 1.3 The Site Certificate requires that the Selection and Contracting Funds
32 portion of both the Initial Base-Load Monetary Path Payment and the Initial
33 Power Augmentation Monetary Path Payment be adjusted for inflation to the
34 date of disbursement to The Trust using the US Gross Domestic Product
35 Implicit Price Deflator, Chain-Weight, as published by the Oregon
36 Department of Administrative Services in its series, “Oregon Economic and
37 Revenue Forecast.” The Project Owner shall pay to The Trust the Inflation-
38 Adjusted Selection and Contracting Funds in the amount of \$_____.
39 contemporaneously with execution of this Agreement. The Trust
40 acknowledges that the calculations of the Inflation-Adjusted Selection and
41 Contracting Funds presented in Appendix A are correct and consistent with
42 the Site Certificate.

43
44 1.4 Based on the verified calculations of the Initial Base-Load Monetary Path
45 Payment and the Initial Power Augmentation Monetary Path Payment set

1 forth in Appendix A, the Project Owner shall pay to the Trust
2 \$ _____ in Offset Funds in ~~September 14, 2001~~2003 dollars pursuant
3 to Section 1.6 below. The Site Certificate requires that the Offset Funds
4 portion of both the Initial Base-Load Monetary Path Payment and the Initial
5 Power Augmentation Monetary Path Payment be adjusted for inflation from
6 ~~September 14, 2001~~ June 6, 2003, to the date of disbursement to The Trust
7 using the US Gross Domestic Product Implicit Price Deflator, Chain-
8 Weight, as published by the Oregon Department of Administrative Services
9 in its series, "Oregon Economic and Revenue Forecast."

10 ***

11 1.7 Because of the need to establish a Letter of Credit with sufficient funds to
12 cover withdrawal up to the end of a future period calculated by application
13 of the Index, the amount of the Letter of Credit on any date may be greater
14 than the entire amount of Offset Funds required by the Monetary Path, as
15 adjusted for inflation. If there are funds available in the Letter of Credit after
16 The Trust has withdrawn the entire amount of Offset Funds under the
17 Monetary Path Payment Requirement, the Project Owner may dissolve the
18 Letter of Credit after verification by the Office that the funds remaining in
19 the Letter of Credit are excess of the Project Owner's obligations pursuant
20 to Section 1.

21 ***

22 **2. Year One True Up Base-Load Monetary Path Payment and Year One**
23 **True Up Power Augmentation Monetary Path Payment.**

24 ***

25 2.2 Both the Year One True-Up Base-Load Monetary Path Payment and Year
26 One True-Up Power Augmentation Monetary Path Payment, if any, shall be
27 adjusted for ~~2001~~2003 dollars from the date of the Site Certificate to the
28 Disbursement Date using the US Gross Domestic Product Implicit Price
29 Deflator, Chain-Weight, as published by the Oregon Department of
30 Administrative Services in its series, "Oregon Economic and Revenue
31 Forecast."

32 ***

33 **3. Periodic Five-Year Power Augmentation Monetary Path Payments.**

34 ***

35 3.2 If the Office of Energy determines that there are excess emissions for the
36 five-year report period, the Office of Energy will specify the amount of
37 Selection and Contracting Funds and Offset Funds that the Project Owner
38 shall make available to The Trust. Each Periodic Five-Year Power
39 Augmentation Monetary Path Payment, if any, shall be adjusted for inflation
40 from ~~September 14, 2001~~ June 6, 2003, to the Disbursement Date using the
41 US Gross Domestic Product Implicit Price Deflator, Chain-Weight, as
42 published by the Oregon Department of Administrative Services in its series,
43 'Oregon Economic and Revenue Forecast.'

1 3.3 For any Periodic Five-Year Power Augmentation Monetary Path Payment,
2 the Selection and Contracting Funds shall equal twenty percent (20%) of the
3 value of any Offset Funds up to the first \$250,000 (in ~~2001~~2003 dollars) and
4 4.286 percent of the value of any Offset Funds in excess of \$250,000 (in
5 ~~2001~~2003 dollars).

6 ***

7 **4. Undertaking by The Trust.**

8 ***

9 4.2 With respect to the Offset Funds portions of any Initial Base-Load Monetary
10 Path Payment, Initial Power Augmentation Monetary Path Payment, Year
11 One Base-Load Monetary Path Payment, Year One Power Augmentation
12 Monetary Path Payment, and/or Periodic Five-Year Power Augmentation
13 Monetary Path Payments, The Trust shall spend at least 80 percent of the
14 Offset Funds for contracts to implement offsets, and may use up to 20
15 percent of the Offset Funds for monitoring, evaluation, administration, and
16 enforcement of contracts to implement offsets. The Trust shall spend Offset
17 Funds solely for contracts to implement offsets or for monitoring,
18 evaluation, administration, and enforcement of contracts to implement
19 offsets.

20 ***

21 **Appendix B to MOU**

22 ***

23 We are informed that this Letter of Credit is issued to you pursuant to the ~~Thermal~~
24 ~~Power Plant First~~Second Amended Site Certificate for the Umatilla Generating
25 Project, dated ~~February 26, 2002~~ June 6, 2003

26
27 **Discussion.** These changes conform the attachment to the Site Certificate and clarify the
28 obligations of the certificate holder regarding the letter of credit and the responsibility of
29 The Climate Trust regarding use of offset funds.

30
31 **Conclusion.** The Council adopts the amendments to Site Certificate conditions discussed
32 in Section IV, pursuant to the findings in Section V.

33
34 **V. Impact on Siting Standards**

35 In addressing the standards set forth in this section, the Council assesses the impacts of the
36 change that UGC proposed in its request.

37
38 OAR 345-027-0070(9) sets forth the Council's general standard for review of a request by
39 a site certificate holder for an amendment:

40
41 In making a decision to grant or deny issuance of an amended site certificate,
42 the Council shall apply state statutes, administrative rules, and local
43 government ordinances in effect on the date the Council makes its decision

44 ***

1 The following discussion of applicable standards addresses the current version of Chapter
2 345, Divisions 22 and Division 24, rules and applicable rules of other agencies.

3
4 **A. Organizational Expertise Standard, OAR 345-022-0010**

5 This standard has four paragraphs. The first two paragraphs, (0010(1) and 0010(2)), relate
6 to application qualifications and capability and the final two paragraphs, (0010(3) and
7 0010(4)), relate to third-party permits.

8
9 **Applicant Qualification and Capability, OAR 345-022-0010(1)**

10 To issue a site certificate, the Council must find that the applicant has the
11 organizational expertise to construct, operate and retire the proposed facility
12 in compliance with Council standards and conditions of the site certificate.
13 To conclude that the applicant has this expertise, the Council must find that
14 the applicant has demonstrated the ability to design, construct and operate
15 the proposed facility in compliance with site certificate conditions and in a
16 manner that protects public health and safety and has demonstrated the ability
17 to restore the site to a useful, non-hazardous condition. The Council may
18 consider the applicant's experience, the applicant's access to technical
19 expertise and the applicant's past performance in constructing, operating and
20 retiring other facilities, including, but not limited to, the number and severity
21 of regulatory citations issued to the applicant.

22
23 **Discussion.** The Council has made significant changes to this condition since it issued the
24 current Site Certificate. The major change to the condition is the reference to the ability of
25 the applicant to comply with site certificate conditions. Section D.2.a(1) of the Final Order
26 includes findings that PG&E National Energy Group ("NEG") has the organizational,
27 managerial and technical expertise to construct and operate the proposed facility. It notes
28 that the Hermiston Generating Project, which is also partially owned by a subsidiary of
29 NEG, has received no regulatory fines. The certificate holders will use the same
30 management firm that manages the Hermiston Generating Project to construct and operate
31 the facility. The findings in the Final Order demonstrate the UGC's ability to comply with
32 Council conditions, as required by the revised standard. The Council finds that a change in
33 the construction beginning and completion dates would not affect UGC's qualifications and
34 capability.

35 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-
36 0010(1).

37
38 **Applicant Qualification and Capability OAR 345-022-0010(2)**

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

1 **Discussion.** OAR 345-022-0010(2) is not addressed herein because UGC does not have an
2 ISO 9000 or 14000 certified program.

3
4 **Third-Party Services and Permits, OAR 345-022-0010(3)**

5 If the applicant does not itself obtain a state or local government permit or
6 approval for which the Council would ordinarily determine compliance but
7 instead relies on a permit or approval issued to a third party, the Council, to
8 issue a site certificate, must find that the third party has, or has a reasonable
9 likelihood of obtaining, the necessary permit or approval, and that the
10 applicant has, or has a reasonable likelihood of entering into, a contractual or
11 other arrangement with the third party for access to the resource or service
12 secured by that permit or approval.

13
14 **Discussion.** The Council finds that a change in the construction beginning and completion
15 dates would not affect third-party permits discussed in the ASC, Final Order, and Site
16 Certificate.

17
18 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-
19 0010(3).

20
21 **Third-Party Services and Permits, OAR 345-022-0010(4)**

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

30
31 **Discussion.** The Council finds that a change in the construction beginning and completion
32 dates would not affect the third-party permits discussed in the ASC, Final Order and Site
33 Certificate.

34
35 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-
36 0010(4).

37
38 **B. Retirement and Financial Assurance Standard, OAR 345-022-0050**

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

- 40 (1) The site, taking into account mitigation, can be restored adequately
41 to a useful, non-hazardous condition following permanent cessation
42 of construction or operation of the facility.
43 (2) The applicant has a reasonable likelihood of obtaining a bond or
44 letter of credit in a form and amount satisfactory to the Council to
45 restore the site to a useful, non-hazardous condition.

1
2 **Discussion.**

3 There has been a significant change in the form of the retirement and financial assurance
4 standard, but not in the substance. The Council has combined the substance of what
5 formerly was two standards into one.

6
7 Sections D.2.b and D.3.c of the Final Order includes findings that demonstrate UGC's
8 compliance with the current standard. As noted above, there is a change to Condition
9 D.2.b(1)(a) relating to the source of data for forecasting the index for 2001 dollars. The
10 Council finds that a change in the construction beginning and completion dates would not
11 affect UGC's compliance with the retirement and financial assurance standard.

12 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0050.

13
14 **C. Structural Standard, OAR 345-022-0020**

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

- 17 (a) The applicant, through appropriate site-specific study, has adequately
18 characterized the site as to seismic zone and expected ground motion
19 and ground failure, taking into account amplification, during the
20 maximum credible and maximum probable seismic events; and
21 (b) The applicant can design, engineer, and construct the facility to avoid
22 dangers to human safety presented by seismic hazards affecting the site
23 that are expected to result from all maximum probable seismic events. As
24 used in this rule "seismic hazard" includes ground shaking, landslide,
25 liquefaction, lateral spreading, tsunami inundation, fault displacement,
26 and subsidence;
27 (c) The applicant, through appropriate site-specific study, has adequately
28 characterized the potential geological and soils hazards of the site and its
29 vicinity that could, in the absence of a seismic event, adversely affect, or
30 be aggravated by, the construction and operation of the proposed
31 facility; and
32 (d) The applicant can design, engineer and construct the facility to avoid
33 dangers to human safety presented by the hazards identified in subsection
34 (c). ***
35

36 **Discussion.** The Council has made substantive changes to the applicability of the structural
37 standard to other types of facilities, but the changes do not affect the Umatilla Generating
38 Project. Exhibit H (Geology) and Exhibit I (Soil Conditions) of the ASC provide
39 information relating to seismic, geologic and soils hazards. In the Final Order, Section
40 D.3.b, the Council found that the applicant met the structural standard, with conditions. The
41 Council finds that a change in the construction beginning and completion dates would not
42 affect UGC's compliance with the structural standard.

43
44 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0020.

1
2 **D. Soil Protection Standard, OAR 345-022-0022**

3 To issue a site certificate, the Council must find that the design, construction
4 and operation of the facility, taking into account mitigation, are not likely to
5 result in a significant adverse impact to soils including, but not limited to,
6 erosion and chemical factors such as salt deposition from cooling towers,
7 land application of liquid effluent, and chemical spills.
8

9 **Discussion.** The Council finds that a change in the construction beginning and completion
10 dates would not affect UGC's compliance with the soil protection standard.
11

12 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0022.
13

14 **E. Land Use Standard, OAR 345-022-0030**

- 15 (1) To issue a site certificate, the Council must find that the proposed
16 facility complies with the statewide planning goals adopted by the
17 Land Conservation and Development Commission.
- 18 (2) The Council shall find that a proposed facility complies with section
19 (1) if:
- 20 (a) The applicant elects to obtain local land use approvals under
21 ORS 469.504(1)(a) and the Council finds that the facility has
22 received local land use approval under the acknowledged
23 comprehensive plan and land use regulations of the affected
24 local government; or
- 25 (b) The applicant elects to obtain a Council determination under
26 ORS 469.504(1)(b) and the Council determines that:
- 27 (A) The proposed facility complies with applicable
28 substantive criteria as described in section (3) and the
29 facility complies with any Land Conservation and
30 Development Commission administrative rules and
31 goals and any land use statutes directly applicable to
32 the facility under ORS 197.646(3);
- 33 (B) For a proposed facility that does not comply with one
34 or more of the applicable substantive criteria as
35 described in section (3), the facility otherwise
36 complies with the statewide planning goals or an
37 exception to any applicable statewide planning goal is
38 justified under section (4); or
- 39 (C) For a proposed facility that the Council decides, under
40 sections (3) or (6), to evaluate against the statewide
41 planning goals, the proposed facility complies with the
42 applicable statewide planning goals or that an
43 exception to any applicable statewide planning goal is
44 justified under section (4).***
45

1 **Discussion.** UGC is not proposing to alter the nature, location, or impacts of the energy
2 facility or any of its related or supporting facilities as part of this request to amend the Site
3 Certificate. The applicable substantive land use criteria and other state statutes,
4 administrative rules, and local government ordinances relating to land use have not changed
5 materially from the standards applied by the Council in the Final Order approving the Site
6 Certificate for the Umatilla Generating Project or the First Amended Site Certificate. The
7 Council finds that a change in the construction beginning and completion dates would not
8 affect UGC's compliance with the land use standard.
9

10 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0030.
11

12 **F. Protected Area Standard, OAR 345-022-0040**

- 13 (1) Except as provided in sections (2) and (3), the Council shall not issue
14 a site certificate for a proposed facility located in the areas listed
15 below. To issue a site certificate for a proposed facility located
16 outside the areas listed below, the Council must find that, taking into
17 account mitigation, the design, construction and operation of the
18 facility are not likely to result in significant adverse impact to the
19 areas listed below. Cross-references in this rule to federal or state
20 statutes or regulations are to the version of the statutes or regulations
21 in effect as of March 29, 2002: ***
22

23 **Discussion.** The Council has updated this rule for cross-reference purposes from September
24 1, 2000, to March 29, 2002. The Office reviewed an updated list of protected areas. This
25 update did not affect the findings in the Final Order for the Thermal Power Plant Site
26 Certificate for the Umatilla Generating Project. The Council finds that a change in the
27 construction beginning and completion dates will not affect UGC's compliance with the
28 protected area standard.
29

30 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0040.
31

32 **G. Fish and Wildlife Habitat Standard, OAR 345-022-0060**

33 To issue a site certificate, the Council must find that the design,
34 construction, operation and retirement of the facility, taking into account
35 mitigation, are consistent with the fish and wildlife habitat mitigation goals
36 and standards of OAR 635-415-0025 in effect as of September 1, 2000.
37

38 **Discussion.** The Council finds that a change in the construction beginning and completion
39 dates would not affect UGC's compliance with the fish and wildlife habitat standard.
40

41 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0060.
42

43 **H. Threatened and Endangered Species Standard, OAR 345-022-0070**

44 To issue a site certificate, the Council, after consultation with appropriate
45 state agencies, must find that:

- 1 (1) For plant species that the Oregon Department of Agriculture has
2 listed as threatened or endangered under ORS 564.105(2), the
3 design, construction, operation and retirement of the proposed
4 facility, taking into account mitigation:
5 (a) Are consistent with the protection and conservation
6 program, if any, that the Oregon Department of
7 Agriculture has adopted under ORS 564.105(3); or
8 (b) If the Oregon Department of Agriculture has not
9 adopted a protection and conservation program, are
10 not likely to cause a significant reduction in the
11 likelihood of survival or recovery of the species; and
12 (2) For wildlife species that the Oregon Fish and Wildlife Commission
13 has listed as threatened or endangered under ORS 496.172(2), the
14 design, construction, operation and retirement of the proposed
15 facility, taking into account mitigation, are not likely to cause a
16 significant reduction in the likelihood of survival or recovery of the
17 species.
18

19 **Discussion.** The Council's threatened and endangered species standard was addressed in
20 Exhibit Q of the ASC and in Section D.4.d of the Final Order. Field surveys for threatened
21 and endangered plant and animal species revealed no evidence of such species at the energy
22 facility site. The Council finds that a change in the construction beginning and completion
23 dates would have no impact on threatened and endangered species.
24

25 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0070.
26

27 **I. Scenic and Aesthetic Values Standard, OAR 345-022-0080**

- 28 (1) Except for facilities described in sections (2), to issue a site
29 certificate, the Council must find that the design, construction,
30 operation and retirement of the facility, taking into account
31 mitigation, are not likely to result in significant adverse impact to
32 scenic and aesthetic values identified as significant or important in
33 applicable federal land management plans or in local land use plans in
34 the analysis area described in the project order. ***
35

36 **Discussion.** The Council has made a substantive change to the applicability of the scenic
37 and aesthetic values standard to other types of facilities, but the change does not affect the
38 Umatilla Generating Project. The impact of the energy facility on scenic and aesthetic
39 values was addressed in Exhibit R of the ASC. The Council finds that a change in the
40 construction beginning and completion dates would not affect UGC's compliance with the
41 scenic and aesthetic value standard.
42

43 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-22-080.
44

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

- 2 (1) Except for facilities described in sections (2) and (3), to issue a site
3 certificate, the Council must find that the construction, operation and
4 retirement of the facility, taking into account mitigation, are not likely
5 to result in significant adverse impacts to:
6 (a) Historic, cultural or archaeological resources that have been
7 listed on, or would likely be listed on the National Register of
8 Historic Places;
9 (b) For a facility on private land, archaeological objects, as
10 defined in ORS 358.905(1)(a), or archaeological sites, as
11 defined in ORS 358.905(1)(c); and
12 (c) For a facility on public land, archaeological sites, as defined in
13 ORS 358.905(1)(c). ***
14

15 **Discussion.** The Council has made substantive changes to the applicability of the historic,
16 cultural, and archeological resources standard to other types of facilities, but the changes do
17 not affect the Umatilla Generating Project. The Council finds that a change in the
18 construction beginning and completion dates would not affect UGC's compliance with the
19 historic, cultural and archeological resources standard.
20

21 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0090.
22

23 **K. Recreation Standard, OAR 345-022-0100**

- 24 (1) Except for facilities described in section (2), to issue a site certificate,
25 the Council must find that the design, construction and operation of a
26 facility, taking into account mitigation, are not likely to result in a
27 significant adverse impact to important recreational opportunities in
28 the analysis area as described in the project order. The Council shall
29 consider the following factors in judging the importance of a
30 recreational opportunity:
31 (a) Any special designation or management of the location;
32 (b) The degree of demand;
33 (c) Outstanding or unusual qualities;
34 (d) Availability or rareness;
35 (e) Irreplaceability or irretrievability of the opportunity. ***
36

37 **Discussion.** The Council has made a substantive change to the applicability of the
38 recreation standard to other types of facilities, but the change does not affect the Umatilla
39 Generating Project. The Council finds that a change in the construction beginning and
40 completion dates would not affect UGC's compliance with the recreation standard.
41

42 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0100.
43

1 **L. Public Services Standard, OAR 345-022-0110**

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

10
11 **Discussion.** Section D.4.h of the Final Order, the Council addressed what was then called
12 the socio-economic impact standard. The Council subsequently renamed it as the public
13 services standard. The Council also made substantive changes to the applicability of the
14 public services standard to other types of facilities, but the changes do not affect the
15 Umatilla Generating Project. The Council finds that a change in the construction beginning
16 and completion dates would not affect UGC's compliance with the public services standard.

17
18 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0110.

19
20 **M. Waste Minimization Standard, OAR 345-022-0120**

- 21 (1) Except for facilities described in sections (2) and (3), to issue a site
22 certificate, the Council must find that, to the extent reasonably
23 practicable:
24 (a) The applicant's solid waste and wastewater plans are likely to
25 minimize generation of solid waste and wastewater in the
26 construction, operation, and retirement of the facility, and
27 when solid waste or wastewater is generated, to result in
28 recycling and reuse of such wastes;
29 (b) The applicant's plans to manage the accumulation, storage,
30 disposal and transportation of waste generated by the
31 construction and operation of the facility are likely to result in
32 minimal adverse impact on surrounding and adjacent areas.
33 ***

34 **Discussion.** The Council has made substantive changes to the applicability of the waste
35 minimization standard to other types of facilities, but the changes do not affect the Umatilla
36 Generating Project. The Council finds that a change in the construction beginning and
37 completion dates would not affect UGC's compliance with the waste minimization standard.

38
39 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-022-0120.

40
41 **N. Carbon Dioxide Standard**
42 **Standard for Base Load Gas Plants, OAR 345-024-0550**

43 To issue a site certificate for a base load gas plant, the Council must find that
44 the net carbon dioxide emissions rate of the proposed facility does not
45 exceed 0.675 pounds of carbon dioxide per kilowatt hour of net electric

1 power output, with carbon dioxide emissions and net electric power output
2 measured on a new and clean basis. For a base load gas plant designed with
3 power enhancement or augmentation options that increase the capacity and
4 the heat rate of the plant above the capacity and heat rate that the base load
5 gas plant can achieve on a new and clean basis, the Council shall apply the
6 standard for a non-base load power plant, as described in OAR 345-024-
7 0590, to the incremental carbon dioxide emissions from the designed
8 operation of the power enhancement or augmentation options. ***
9

10 **Monetary Offset Rate, OAR 345-024-0580**

11 The monetary offset rate is 85 cents per ton of carbon dioxide emissions.
12 After two years from September 17, 2001, the Council may by rule increase
13 or decrease the monetary offset rate. The Council shall base any change to
14 the monetary offset rate on empirical evidence of the cost of carbon dioxide
15 offsets and the Council's finding that the standard will be economically
16 achievable with the modified rate for natural gas-fired power plants. The
17 Council may increase or decrease the monetary offset rate no more than 50
18 percent in any two-year period.
19

20 **Standard for Non-Base Load Power Plants, OAR 345-024-0590**

21 To issue a site certificate for a non-base load power plant, the Council must
22 find that the net carbon dioxide emissions rate of the proposed facility does
23 not exceed 0.675 pounds of carbon dioxide per kilowatt hour of net electric
24 power output, with carbon dioxide emissions and net electric power output
25 measured on a new and clean basis. For a base load gas plant designed with
26 power enhancement or augmentation options that increase the capacity and
27 the heat rate of the plant above the capacity and heat rate that the base load
28 gas plant can achieve on a new and clean basis, the Council shall apply this
29 standard to the incremental carbon dioxide emissions from the designed
30 operation of the power enhancement or augmentation options. ***
31

32 **Discussion.** Section IV details the amendments that update the carbon dioxide standard,
33 pursuant to OAR 345-027-0030(5), and make certain related conditions consistent with
34 current Council practice.
35

36 **Conclusion.** The Council finds that UGC meets the requirements of OAR 345-024-0550
37 and OAR 345-027-0030(5).
38

39 **O. Noise OAR 340-035-0035(1)(b)(B)**

40 The Council applies and enforces the Department of Environmental Quality (“DEQ”) noise
41 standards for energy facilities under its jurisdiction. The DEQ noise standard, OAR 340-
42 035-0035(1)(b)(B), has two elements. The first element requires that industrial noise
43 sources not increase the noise level by more than 10 dBA in any one hour above existing
44 ambient noise levels. This maximum increase clause is known as the “ambient degradation
45 rule.” The second element provides that “the ambient statistical noise * * * shall include all

1 noises generated or indirectly caused by or attributable to that source including all its
2 related activities.”

3
4 **Discussion.** The Council finds that a change in the construction beginning and completion
5 dates would not affect UGC’s compliance with the DEQ noise standard.

6
7 **Conclusion.** The Council finds that UGC meets the requirements of OAR 340-035-
8 0035(1)(b)(B).

9
10 **P. Wetlands, OAR 345-022-0000**

11 The Division of State Lands (“DSL”) has updated its regulations, OAR 141-85-005, *et seq.*,
12 relating to fill and other operations taking place within wetlands. These regulations require
13 persons to obtain a fill-removal permit if more than 50 cubic yards of material will be
14 removed or altered within “waters of the state.” The overall standard that the Council
15 considered in granting a fill-removal permit was whether the proposed activity would not
16 “unreasonably interfere with the paramount policy of this state to preserve the use of its
17 waters for navigation, fishing and public recreation.” ORS 196.825(2).

18
19 **Discussion.** Conditions in Section E.1.b of the Site Certificate prohibit UGC from having
20 an impact on wetlands, so the updated DSL rules would not affect UGC's compliance with
21 the conditions relating to wetlands. The Council finds that a change in the construction
22 beginning and completion dates would not affect UGC’s compliance with DSL
23 requirements.

24
25 **Conclusion.** The Council finds that approval of this amendment request will satisfy the
26 Council’s obligation to determine compliance with DSL requirements.

27
28 **Q. Public Health and Safety, ORS 469.401(2)**

29 The Council is required to impose conditions in the site certificate for the protection of
30 public health and safety.

31
32 **Discussion.** The Site Certificate has eight conditions relating to public health and safety.
33 These concern electrical fields, magnetic fields, and coordination with the Public Utility
34 Commission. The Council finds that a change in the construction beginning and completion
35 dates would not affect UGC’s compliance with any of those conditions.

36
37 **Conclusion.** The Council finds that UGC can continue to meet the Council’s conditions
38 that protect public health and safety, pursuant to ORS 469.401(2).

39
40 **VI. Conclusion**

41 The Council finds that the actions in UGC’s request are consistent with current Council
42 rules, with other applicable statutes and rules, and with statewide land use planning goals and
43 would not cause a significant adverse impact to public health and safety or the environment.
44 In preparing this final order, the Council limited its consideration to the effects that may be
45 produced by the change to the facility described in UGC’s Request for the Second

1 Amendment to the Site Certificate for the Umatilla Generating Project, as modified by its
2 letter of March 21, 2003. In considering those effects, the Council reviewed state statutes,
3 administrative rules, and local government ordinances.

4
5 Based on the above findings, the Council concludes that it should amend the Site Certificate
6 for the Umatilla Project as UGC requests with modifications to the conditions as noted
7 above in Section IV.

8
9 **FINAL ORDER**

10
11 Based on the above findings of fact, discussions and conclusions of law, the Energy Facility
12 Siting Council determines that it shall approve amendment number two and that the
13 chairperson of the Council shall execute the site certificate amendment in the form of the
14 “Second Amended Site Certificate for the Umatilla Generating Project.” This incorporates
15 Amendment Number One to the Thermal Power Plant Site Certificate for the Umatilla
16 Generating Project. The Second Amended Site Certificate for the Umatilla Generating
17 Project, including Attachment A, is attached to this order and is incorporated by reference
18 into this order.

19
20 Ordered this 6th day of June 2003.

21
22
23
24
25
26
27 _____
28 Dr. Roslyn Elms-Sutherland, Chair
29 Energy Facility Siting Council

30 **Notice of the Right to Appeal**

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

1 CERTIFICATE OF SERVICE

2
3 I hereby certify that on June ____, 2003, I served true and correct copies of the Final
4 Order In the Matter of the Site Certificate for the Umatilla Generating Project Request for
5 Amendment No. Two and the Second Amended Site Certificate for the Umatilla Generating
6 Project via mail to the service list below.

7
8 Dated: June ____, 2003

9
10
11
12 _____
13 Sam Sadler
14 Office of Energy

15 SERVICE LIST

16
17
18 Harry Rubin
19 c/o Paula Foster
20 PG&E National Energy Group
21 7600 Wisconsin Ave.
22 Bethesda, MD 20814

23
24 F. Joseph Feyder
25 Vice President
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28 Bethesda, MD 20814-6161

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40 Don Beckham
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