

1 applicant provided the additional information, and on May 4, 1992, ODOE determined that the NOI
2 was complete. That date is the date the NOI was deemed filed. OAR 345-20-020.
3

4 On August 26, 1992, ODOE issued a project order in response to the NOI. ORS 469.330(3).
5 The project order as amended by subsequent addenda (the "Project Order") set forth the standards,
6 application requirements and impact area requirements for the application.
7

8 On December 29, 1992, applicant submitted an application for site certificate to EFSC. In the
9 application, applicant proposed the construction of an energy facility near Hermiston, Oregon. The
10 energy facility proposed in the application includes a gas-fired cogeneration power plant and a related
11 or supporting gas pipeline and electric transmission line. ODOE reviewed the application, and
12 provided the application to other interested parties and agencies for review. OAR 345-20-040(1).
13 After the review, ODOE requested additional information. OAR 345-21-030. On June 8, 1993,
14 applicant submitted an Addendum to the application, which included the requested information. After
15 review of the additional information, on June 11, 1993, ODOE determined that the application was
16 complete. That date is the date the application was deemed filed. OAR 345-21-030(2).
17

18 On August 2, 1993, Senate Bill 1016, 1993 Or Laws, Chapter 569 ("SB 1016") was signed into
19 law, making certain changes to the siting process and standards applicable to this application, including
20 certain standards previously set forth in the Project Order. In general, the enactment of SB 1016
21 removes from consideration (in the EFSC siting process) certain design or operational issues that do
22 not relate to siting. SB 1016, Section 11(5).
23

24 On August 13, 1993, EFSC adopted temporary rules designed to conform with the changes in
25 law resulting from SB 1016.
26

27 During the course of review, ODOE requested additional information from the applicant. In
28 response to such requests the applicant submitted additional information, authorized by EFSC or the
29 Hearings Officer, as an amendment to the application. In addition, during the review period the
30 applicant submitted supplemental information to the application prior to September 3, 1993, the date
31 established by the Hearings Officer for the submittal of additional comments on the application.
32

33 ODOE provided public notice of an informational hearing on the application. The informational
34 hearing was held on August 25, 1993, in Hermiston, Oregon. John W. Burgess was the presiding
35 officer. At the informational hearing, representatives of ODOE and the applicant provided information
36 (e.g., draft ODOE staff report), and answered questions. OAR 345-21-033. Also, interested persons
37 made presentations, and asked questions. At the close of the hearing, an opportunity was given until
38 September 3, 1993 within which to submit additional written comments.
39

40 On September 17, 1993, the ODOE issued its final "Staff Report, Hermiston Generating
41 Project", which assesses the project's compliance with applicable statutes and rules, and recommends
42 approval of the Application with conditions for inclusion in the site certificate.
43

44 On October 8, 1993, following public notice, the EFSC reviewed a draft of the ODOE
45 proposed order at a public hearing in the affected area, in Hermiston, Oregon. At the hearing,

1 representatives of ODOE and the applicant provided information and answered questions. Additional
2 public testimony was also taken.

3
4 On October 19, 1993, ODOE issued its proposed order. On November 18, 1993, Lloyd K.
5 Marbet and the Don't Waste Oregon Committee ("Requestors") timely requested a contested case
6 hearing on the application pursuant to ORS 469.370. On November 19, 1993, the EFSC directed that
7 a contested case hearing be held, and appointed John W. Burgess as the hearing officer.

8
9 On November 23, 1993, ODOE issued a public notice of the contested case and of the
10 opportunity to request participation in the contested case. Hermiston 2000, the City of Hermiston, the
11 Oregon Public Utility Commission ("PUC") and Columbia Basin Institute ("CBI") submitted requests
12 to participate. The hearing officer allowed PUC to participate as an interested agency and the others
13 as limited parties. The applicant and Requestors were parties to the contested case. ODOE was an
14 interested agency.

15
16 Prehearing conferences were held by telephone on December 3, 1993 and on January 4, 1994.
17 On December 10, 1993, the applicant submitted its written testimony. On January 10, 1994,
18 Requestors submitted their written direct testimony consisting of the testimony of Kevin Bell and Jim
19 Lazar, and CBI submitted a written memorandum and supporting materials.

20
21 On December 24, 1993, applicant submitted a request to amend the application for a site
22 certificate. On January 5, 1994, the hearing officer issued an order which allowed the amendment.
23 The hearing officer established a procedure for the gathering of information regarding the amendment.
24 He directed ODOE to issue a public notice of the amendment which provided an opportunity for
25 persons to submit comments on the amendment and participate in the contested case. He also provided
26 an opportunity for parties to the contested case to address the amendment. No party to the contested
27 case or member of the general public requested to participate in the contested case on the amendment,
28 or submitted any comments on the amendment. At the hearing officer's direction, ODOE determined
29 that the application as amended was complete on January 14, 1994, and on January 28, 1994, ODOE
30 issued a staff report on the amendment.

31
32 On January 24, 1994, applicant, ODOE, the City of Hermiston and Hermiston 2000 submitted
33 responsive materials to the written direct testimony of Requestors and the materials of CBI.

34
35 On January 28, 1994, CBI submitted a "Notice of Withdrawal," withdrawing its petition for
36 intervention, together with a settlement agreement between CBI and applicant. CBI requested an order
37 dismissing it as a party.

38
39 On January 31, 1994, at the commencement of the contested case hearing, applicant and
40 Requestors announced that they had reached agreement on several points, and a series of stipulations
41 were read into the record. The principal stipulation was that Requestors withdrew all issues from the
42 contested case except for the validity of the need exemption rule, OAR 345-23-010(2). Requestors
43 and applicant also stipulated that: (1) there was no evidence in the record of the proceedings which
44 demonstrated need for power for the proposed energy facility pursuant to OAR chapter 345, Division
45 23; (2) the testimony of Kevin Bell and Jim Lazar is relevant, if at all, only to the issue of the validity

1 of the exemption rule; and (3) applicant withdrew its motion to strike the testimony of Kevin Bell and
2 Jim Lazar. All parties also agreed to waive any cross-examination.
3

4 On February 11, 1994, ODOE and Requestors submitted their post-hearing legal memoranda
5 on the validity of the exemption rule. On that same day, in response to a request from the hearing
6 officer for clarification of certain matters related to the amendment, applicant submitted additional
7 testimony.
8

9 On February 16, 1994, the hearing officer issued three orders: (1) granting the motion of
10 ODOE to supplement the contested case record with the record of the EFSC rule-making of
11 January 25, 1994; (2) removing the confidentiality requirement on Mr. Lazar's testimony; and (3)
12 dismissing CBI as a party to the contested case, making the settlement agreement a part of the record,
13 and ordering that all materials submitted in connection with the issues raised by CBI remain in the
14 record.
15

16 On February 18, 1994, applicant submitted a post-hearing legal memorandum in response to
17 the argument of Requestors on the validity of the exemption rule.
18

19 On March 2, 1994, the hearing officer issued his proposed order on the validity of the need
20 exemption rule, the amendment to the application for site certificate and on the issues raised by CBI.
21

22 On March 7, 1994, Applicant and Requestors submitted exceptions to the hearing officer's
23 proposed order.
24

25 On March 10 and 11, 1994, the EFSC met to consider the hearing officer's proposed order,
26 the ODOE proposed order, the exceptions and argument of the parties, and the entirety of the record
27 in the proceedings.
28

29 **CONTESTED CASE PROCEEDING**

30 **Need Exemption Rule**

31 **Statement of Facts**

32
33
34
35 EFSC first adopted a need exemption rule as a permanent rule in October 1992 after rulemaking
36 hearings. The 1992 rule was substantially the same as the need exemption rule adopted on January 25,
37 1994. Portions of the 1992 rulemaking hearings were made a part of the 1994 rulemaking record.
38

39 Before EFSC adopted the 1994 permanent rule, EFSC adopted a temporary need exemption rule
40 on August 13, 1993. The temporary rule was adopted in response to the 1993 legislature's enactment
41 of SB 1016.
42

43 EFSC adopted the 1994 permanent need exemption rule because the temporary rule was due
44 to expire. The 1994 permanent rule was worded the same as the temporary rule.
45

1 On January 18, 1994, EFSC held a public rulemaking hearing on the proposed permanent
2 exemption rule. Applicant, Requestors and ODOE submitted materials at the hearing related to the
3 emissions of CO₂, global warming, least cost plans, conservation and renewable resources, and the
4 state's energy policy.

5
6 EFSC appointed an ODOE staff member, Michael Grainey, as hearing officer for the hearing.
7 Another ODOE staff member, Dr. Philip H. Carver, Senior Policy Analyst, submitted testimony.

8
9 After the hearing, the hearing officer prepared a report, which contained summaries of the
10 testimony submitted, as well as his findings, reasoning, conclusions of law and recommendations.

11
12 On January 25, 1994, EFSC held a telephone conference call as part of its rulemaking.
13 Applicant, Requestors and ODOE attended the conference. During the conference, the hearing officer
14 made another summary of Requestors' testimony at EFSC's request.

15
16 Requestors did not object during the rulemaking proceeding that the hearing officer's summaries
17 of their testimony was inadequate or inaccurate.

18
19 On February 1, 1994, EFSC issued an order which adopted the need exemption rule. In the
20 order, EFSC stated its findings of fact and conclusions of law related to the rule. In the order, EFSC
21 adopted the reasoning and conclusions expressed in the hearing officer's report as its own.

22 23 **Requestors' Argument**

24
25 Requestors contended that the need exemption rule, OAR 345-23-010(2), is invalid. At the
26 hearing, Requestors and Applicants stipulated that the issues in the contested case were limited to:

- 27
28 (1) the rule was adopted without compliance with certain rulemaking procedures,
29
30 (2) the rule is inconsistent with the energy policy expressed in ORS Chapter 469, and
31
32 (3) the rule is not authorized by SB 1016 enacted by the 1993 legislature.

33
34 These are the only issues preserved by Requestors.

35
36 Each of Requestors' issues will be discussed.

37 38 **Noncompliance with Rulemaking Procedures**

39 40 **Statement of fiscal impact**

41
42 ORS 183.335(2)(b)(E) provides that before the adoption of a rule, the agency shall include with
43 its notice of intended action a "statement of fiscal impact." Requestors contended that the statement
44 of fiscal impact included with EFSC's notice of proposed rulemaking hearing was deficient for two
45 reasons.

1 (1) ORS 183.335(2)(b)(E) requires an agency to identify "state agencies *** and the public
2 which may be economically affected by the adoption" of a rule. Requestors contended that the
3 statement of fiscal impact was deficient in that it "only addressed the impact on applicants for site
4 certificates" and only the impact of the cost of reviewing applications for site certificates on state
5 agencies. (Req. Br. 3). However, only applicants and agencies, who participate in the review of
6 applications, would be fiscally impacted by the rules.

7
8 EFSC adopted the rules pursuant to its general rulemaking authority, ORS 469.490, and its
9 particular authority in ORS 469.501(a) to "adopt standards for the siting, construction, operation and
10 retirement of energy facilities," and in ORS 469.501(2) to adopt "exemptions *** from any need
11 standard." The standards contained in the rules (OAR Chapter 345 Division 22) are intended to be
12 applied by EFSC in making its evaluation of an application for site certificate. Some standards
13 contemplate review of the application by another agency, and that agency's providing information to
14 EFSC (e.g., Oregon Department of Fish and Wildlife on the standards on Fish and Wildlife and
15 Threatened and Endangered Species). ORS 469.350(2). Where the need exemption rule (OAR 345-
16 23-010) applies, an applicant would be relieved of the burden to provide evidence of need for the
17 proposed facility, and as a result no such evidence would be included in the record for EFSC to
18 evaluate. In short, the rules, including the need exemption rule, relate to EFSC's evaluation of the
19 application, and only the applicant and the reviewing agencies, who participate in the evaluation, would
20 be fiscally impacted.

21
22 Requestors contended that the statement of fiscal impact should have identified other impacts
23 on state agencies such as "the consequences for the electricity rates and natural gas rates paid by state
24 agencies and the health care costs resulting from emissions of air, water, and solid wastes from the
25 project." (Req. Br. 3). However, such claimed impacts relate to the operation of the proposed
26 facility. Whereas, EFSC's rules apply to the process of evaluating applications, not regulation of the
27 operation of a facility.

28
29 In order to comply with ORS 183.355(2)(b)(E), the fiscal impact statement must consider the
30 direct impacts of energy facility siting rules, not the indirect impacts which might result from the
31 construction and operation of energy facilities. All rules will have an indirect impact on the public
32 at large. However, the legislature intended evaluation of impacts upon groups directly affected by
33 rules. The rule in question here directly affects only applicants for site certificates and some of the
34 agencies which review such applications.

35
36
37 (2) Requestors similarly argued that the statement of fiscal impact was deficient because it did
38 not examine impacts "upon the public includ[ing] effects upon electricity rate and natural gas rates paid
39 by the public." (Req. Br. 4). Requestors claimed that the proposed facility was not cost-effective.
40 *Id.* Requestors' argument is based upon the impacts which they believe may occur as a result of the
41 construction and operation of the proposed facility.

42
43 However, the rules in question apply to the process whereby EFSC evaluates applications, not
44 the regulation of the facility which may result from that process.

1 Requestors further argued that in the statement of fiscal impact EFSC "should have considered
2 the relative employment impacts of the various alternatives [to the proposed facility], among other
3 potential economic effects on businesses." (Req. Br. 4). Because EFSC did not, Requestors claimed
4 that EFSC did not "utilize available information to project any significant economic effect *** on
5 businesses" as required by ORS 183.335(2)(b)(E).
6

7 Requestors' argument is once again based upon their perception of impacts which may result
8 from operation of the proposed facility. The answer to their argument is the same as discussed above:
9 because the rules apply to the process of evaluation of applications, not the regulation of the facility
10 which may result from that process, EFSC had to provide an estimate of economic impact for only
11 those businesses which would be impacted by the process.
12

13 Moreover, in the fiscal impact statement EFSC did state that adoption of the rules "is expected
14 to have no fiscal impact on most applicants," and that
15

16 "**** The cost of preparing and reviewing applications for energy
17 facilities site certificates is not expected to change significantly."
18

19 In other words, EFSC did provide "an estimate *** of economic impact" on the only businesses
20 (applicants for site certificates) which it had identified would be economically affected by the adoption
21 of the rules as required by ORS 183.335(2)(b)(E). Requestors did not claim that that estimate is
22 insufficient as to applicants. The statute does not require an agency to provide an estimate of
23 economic impact for a business which would not be economically affected.
24

25 In addition, the question of fiscal impact implies some change. The rule involved here has been
26 in place essentially unchanged since 1992. The fiscal impact statement accompanied a proposed 1994
27 rule that merely limited the need exemption rule in place since 1992. The decision on the 1994 rule
28 did not result in any material change to the fiscal impact of the rule.
29
30

31 **Advisory committee**

32

33 In ORS 183.025(2), the legislature declared that the policy of the state is that "whenever
34 possible the public be involved in the development of public policies by agencies and the drafting of
35 rules." The legislature went on to suggest that an agency "may appoint an advisory committee ***
36 or use any other means of obtaining public views that will assist the agency in drafting the rule." If
37 an agency decides not to appoint an advisory committee, ORS 183.335(2)(b)(F) provides that the
38 agency shall include in the notice of intended action "an explanation as to why no advisory committee
39 was used."
40

41 EFSC included an explanation of its decision not to appoint an advisory committee with its
42 notice of proposed rulemaking hearing. EFSC explained that it was proposing to adopt current
43 temporary rules without change, and that because there were "no policy or technical issues to be
44 resolved," EFSC did not feel the need for an advisory committee.
45

1 Requestors claimed that the explanation was defective and, therefore, the need exemption rule
2 is invalid. Requestors did not cite any authority which provides for review of the adequacy of an
3 explanation given by an agency, let alone that an inadequate explanation can result in invalidating a
4 rule.
5

6 In addition, Requestors did not claim that EFSC's decision not to appoint an advisory
7 committee was contrary to the policy on public involvement in ORS 183.025(2). In fact, the decision
8 was not. EFSC had adopted substantially the same need exemption rule during October 1992 as a
9 permanent rule. After the 1993 legislature enacted SB 1016, EFSC made, on August 13, 1993, a
10 change to the "need exemption" rule adopted in 1992 that was non-material in both wording and in
11 policy. EFSC adopted the rule in question as a permanent rule on January 25, 1994, without change
12 in the wording of the temporary rule. Before adoption of the rule, EFSC held a rulemaking hearing
13 at which Requestors submitted testimony. Applicant as well as ODOE staff also submitted testimony.
14

15 Requestors did not claim that an advisory committee would have provided necessary assistance.
16 In fact, after EFSC had adopted essentially the same rule three times over about a 16-month period
17 in furtherance of the same policy, it is no wonder that EFSC believed that there were "no policy or
18 technical issues to be resolved."
19

20 In summary, EFSC presented a reasonable explanation. ORS 183.335(2)(b)(F). Requestors'
21 argument is hypertechnical at best and they did not claim that the alleged defect had any significant
22 effect on adoption of the need exemption rule, ORS 183.335(10)(a).
23
24

25 **Roles of ODOE staff**

26
27 Requestors claimed error in that an ODOE staff member acted as hearing officer at the
28 rulemaking hearing, and another ODOE staff member presented testimony in support of the proposed
29 rules at the hearing. However, Requestors cited no provision of ORS 183.310 to 183.410 which
30 prohibits such involvement of agency staff or makes invalid a rule adopted where there was such
31 involvement.
32

33 Requestors stated that the ODOE staff member, who acted as hearing officer, submitted a report
34 of the testimony at the hearing, and made recommendations. Significantly, however, Requestors did
35 not claim that his report was inadequate or inaccurate or that his recommendations were bias.
36

37 Agency staff very often have the professional and technical expertise which is needed in the
38 development and adoption of rules. It would be counterproductive to reasoned rulemaking if agency
39 staff did not play roles in the process. In the present case, the facts indicate that the two ODOE staff
40 members were assisting in the development of a sound technical record for consideration by EFSC
41 within the bounds of the deliberative process. The fact that EFSC adopted the hearing officer's
42 reasonings and conclusions does not mean that EFSC did not consider the material submitted at the
43 hearing. There is no basis to invalidate the rule based upon involvement of ODOE staff.
44

45 **Consideration of materials**

1 ORS 183.335(3)(a) provides that an agency "shall consider fully a written or oral submission"
2 made at the rulemaking hearing. Requestors claimed noncompliance with this provision because the
3 hearing officer did not convey to EFSC their actual testimony which was submitted at the rulemaking
4 hearing.
5

6 In his report, submitted to EFSC, the hearing officer summarized Requestors' testimony as well
7 as other testimony presented on the question of the need exemption rule. The Hearing Officer
8 identified the Requestors' testimony as the same testimony submitted by Requestors in the contested
9 case proceedings in which they were challenging the validity of the need exemption rule. (Hearing
10 Officer's Report, p. 3) He again summarized Requestors' testimony during a conference call which
11 their attorney attended. Because the comment period had been closed, on advice of counsel EFSC did
12 not receive any comments or testimony from Requestors during the conference call. However, the
13 closing of the comment period did not preclude Requestors from making any objections to the
14 adequacy or accuracy of the Hearing Officer's summaries of their testimony. Requestors did not object
15 during the rulemaking proceeding that either summary of their testimony by the hearing officer was
16 inadequate or inaccurate, and they made no such claim in their post-hearing brief in the contested case
17 proceeding. In its order, which adopted the rules, EFSC stated that it had "considered the public
18 comment, the record and the hearing officer's report." (Or. 1). ORS 183.335(3)(a) requires an
19 agency to "consider fully" submitted materials. The facts show that EFSC did consider fully the
20 hearing officer's summaries of testimony which are not claimed to be inadequate or inaccurate. EFSC
21 complied with ORS 183.335(3)(a). Without even a claim that EFSC's consideration of the summaries
22 had a significant effect on adoption of the need exemption rule, Requestors' contention is insubstantial.
23 ORS 183.335(10)(a).
24

25 **Findings of fact**

26
27 Requestors claimed that findings of fact made by EFSC in its order, which adopted the need
28 exemption rule, were deficient. This argument is another argument made in support of Requestors'
29 contention that the rule is invalid because of noncompliance with rulemaking procedures.
30

31 The applicable rulemaking procedures are set out in ORS 183.310 to 183.410. Requestors cited
32 no provision in the rulemaking procedures which required EFSC to make findings of fact or which
33 allows review of the adequacy of the findings made by EFSC. In fact, the authorities are contrary to
34 Requestors' claim. *See*, ORS 183.355(12)(adoption of a rule "need not be based upon or supported
35 by an evidentiary record"); *Marbet v. PGE*, 277 Or 447, 461, 561 P2d 154 (1977)("the agency is not
36 bound to facts or arguments in the record of the rulemaking proceeding"); *Int'l Cncl Shopping Cntrs*
37 *v. Env. Quality Comm.*, 27 Or App 321, 325, 556 P2d 138 (1977). The cases relied upon by
38 Requestors are inappropriate because they involved contested case proceedings.
39

40 Applicant appeared to suggest that although findings of fact were not required, the rulemaking
41 record must "reveal in some form that the required determination was made" by EFSC in adopting
42 the need exemption rule. (App. Br. 19). Applicant's suggestion goes beyond Requestors' argument.
43 Applicant relied upon *Kids Against the Cut v. Wage and Hour Comm.*, 41 Or App 179, 597 P2d 1264
44 (1979), but the statute at issue in *Kids* is materially different from ORS 469.501(2) which authorizes
45 EFSC to adopt exemptions.

1 In *Kids*, the statute clearly required the agency to make a factual determination before the
2 adoption of rules. Whereas, ORS 469.501(2) required EFSC in adopting an exemption to exercise its
3 discretion according to the state's energy policy and its own consideration of the implementation of
4 the strategy on global warmings. EFSC had to interpret policies and make quasi-legislative choices
5 within those policies. Reading a requirement of findings of fact into the statute is inappropriate under
6 such circumstances.

7
8 In any event, EFSC's order, which adopted the need exemption rule, contained findings of fact
9 regarding the exemption, and adopted the hearing officer's reasoning and conclusions on the
10 exemption. The findings of fact were based upon materials in the record.

11
12 Requestors' criticism of the findings is based upon the formal requirements for findings in
13 contested case proceedings. Neither the APA nor the *Kids* case require formal findings of fact. *See*,
14 ORS 185.355(12); *Kids Against the Cut v. Wage and Hour Comm.*, *supra*, 41 Or App at 182. EFSC's
15 order reasonably explained the basis for its determination. Requestors have not cited any relevant
16 authority which requires more.

17 18 **Inconsistent with Energy Policy**

19
20 Requestors entitled this argument as the need exemption rule is invalid because it is
21 "inconsistent with the energy policy expressed in ORS Chapter 469." However, the argument which
22 they made in their post-hearing brief does not follow the title.

23
24 Requestors begin with a restatement of the title. They next quote ORS 469.010, 469.190 and
25 469.310, the statutes with which the exemption rule must be consistent. ORS 469.501(2). Next,
26 Requestors stated that EFSC "has not indicated how exempting [the proposed facility] and other gas-
27 fired power plants is consistent with any of these policies." (Req. Br. 12). This statement appears
28 to be merely a variation of their previous contention that EFSC's findings of fact are deficient; that
29 is, EFSC has not made a showing of rational reasoning. As discussed, no showing was required, but
30 the showing made was reasonable.

31
32 Requestors then criticized the analysis made by EFSC in making the determination that the
33 exemption rule was consistent with the state's energy policy. They argued that an "approach consistent
34 with state policies would include at least an examination of the costs and benefits," and "avoiding such
35 an examination is not consistent with the legislative policy directives." (Req. Br. 12). In other words,
36 Requestors' argument was not that the rule is inconsistent with the state's energy policies, but that
37 EFSC erred in making its analysis on consistency.

38
39 Requestors did not argue that if EFSC had made the analysis which they consider the correct
40 one, EFSC would not have adopted the exemption rule. Because Requestors' argument addressed only
41 EFSC's analysis, Requestors' argument does not foreclose EFSC from reconsidering the issue of
42 consistency and adopting the same exemption rule. That possibility illustrates that Requestors'
43 argument, despite its title, was not that the rule was inconsistent with the state's energy policy.

44
45 Moreover, Requestors cited no authority which supports a review of the adequacy of EFSC's

1 explanation on consistency made in its order which adopted the exemption rule. No provision in the
2 APA expressly requires such review. If anything, the APA does not require such review. *See*, ORS
3 183.335(12)(adoption of a rule "need not be based upon or supported by an evidentiary record"). In
4 addition, no provision in ORS Chapter 469 expressly provides for review of the adequacy of EFSC's
5 explanation on consistency made in its order.
6

7 In any event, as previously discussed, EFSC held a rulemaking hearing in which applicant,
8 Requestors and ODOE submitted materials related to the emissions of CO₂, global warming, least cost
9 plans, conservation and renewable resources, and the state's energy policy. After the hearing, EFSC
10 issued an order which adopted the need exemption rule. The order contained EFSC's findings of fact,
11 reasoning and conclusions of law.
12

13 In its findings, EFSC explained the way the "need rule addresses these costs" of emissions of
14 gases that contribute to global warming. (Finding #2). EFSC then found that a benchmark of
15 "stabilizing CO₂ emissions at the 1990 level" has been adopted. (Finding #4). The need exemption
16 rule is for "unlimited amounts of high efficiency cogeneration and limited amounts of renewable
17 resource and efficient *** natural gas facilities," and these "facilities emit less CO₂ than new or
18 existing coal or oil plants and existing natural gas plants." (Finding #5). EFSC further found that "the
19 Northwest Power Planning Council's regional energy plan and Oregon utility's least cost plans filed
20 with [PUC] indicated a need for approximately 950 megawatts of low cost natural gas resources in
21 addition to energy conservation and renewable resources." (Finding #8).
22

23 In its conclusions of law, EFSC adopted "the reasoning and conclusions of the hearing officer
24 as expressed in his report of January 19, 1994." (Concl. #1). As part of his reasoning, the hearing
25 officer, in effect, explained the relationship between EFSC's findings of fact and the conclusions of
26 law on the costs of emissions, the consistency of the exemption rule with the state's energy policy and
27 consideration of the implementation of the strategy on global warming. (HO Rep. 2-7).
28

29 Requestors disagree with EFSC's findings, reasoning and conclusions, but their disagreement
30 is not a reason for invalidating the exemption rule.
31

32 In addition, in their post-hearing brief and exceptions Requestors have made various arguments
33 under the title "inconsistency with energy policy expressed in ORS Chapter 469". However, these
34 arguments do not relate to consistency with ORS Chapter 469, but address the adequacy of EFSC's
35 analysis and findings in the 1994 rulemaking. Because these arguments do not relate to issues
36 preserved in the case, these arguments are waived.
37
38

39 **Authorized by SB 1016**

40
41 ORS 469.320(2)(c) exempts certain high-efficiency cogeneration facilities (with a heat rate below
42 6000 Btu/Kwh or a minimum of 33% of their total energy output going to steam) from the need to
43 obtain a site certificate. Requestors argued that the exception indicates that the legislature preferred
44 only natural gas-fired facilities which perform at a high level of efficiency (6000 Btu/Kwh or less),
45 and EFSC's rule exempts gas-fired facilities which perform above 6000 but below 8000 Btu/Kwh.

1 From this, Requestors concluded that the exemption rule is inconsistent with the legislative preference
2 and, therefore, is invalid. Requestors' argument is without merit.

3
4 In ORS 469.501(2), the legislature delegated to EFSC the authority to adopt "exemptions ***
5 from any need standard." The only kinds of facilities which the legislature excluded from EFSC's
6 exemption authority are "coal or nuclear power plants." ORS 469.501(2). The need exemption rule,
7 OAR 345-23-010(2) applies only to natural gas-fired facilities, not coal or nuclear power plants.

8
9 Moreover, the legislature required that the exemption must be "consistent with the state's
10 energy policy in ORS 469.010, 469.190 and 469.310." *Id.* The legislature did not also require that
11 the exemption must be consistent with ORS 469.320(2)(c).

12
13 Requestors read too much into ORS 469.320(2)(c). That statute relates to an exception from
14 the need to obtain a site certificate. ORS 469.501(2) relates to EFSC's authority to exempt certain
15 facilities from the requirement to show need in their application for site certificate. The policies of
16 the two statutes are not the same. If the legislature had intended an exemption under ORS 469.501(2)
17 to be consistent with ORS 469.320(2)(c), the legislature would have added that statute to the other
18 statutes listed in ORS 469.501(2). The legislative history of SB 1016 indicates that the legislature was
19 aware of EFSC's 1992 need exemption rule.

20 21 Amendment to Application

22
23 On December 24, 1993, applicant submitted a request to amend the application for site
24 certificate. *See*, OAR 345-21-055(2). On January 5, 1994, the hearing officer allowed the
25 amendment. OAR 345-21-055(2).

26
27 The hearing officer determined that he would consider the amendment according to the
28 standards in OAR Chapter 345 Division 22 within the context of the contested case proceeding. The
29 hearing officer established a procedure to gather information from interested agencies and the general
30 public about the amendment. He gave the Requestors and CBI an opportunity to submit materials on
31 the way the amendment may affect their issues. They did not submit any material. No agency or
32 member of the public submitted any comment or requested to participate in the contested case.

33
34 The hearing officer directed ODOE to determine whether the application was still complete in
35 light of the amendment. OAR 345-21-055(3). ODOE found that the application was complete. The
36 hearing officer also directed ODOE to submit a staff report which made an analysis of the amendment
37 according to the standards in OAR Chapter 345 Division 22. ODOE submitted a staff report which
38 concluded that the application, as amended, complied with the standards.

39
40 On February 3, 1994, the hearing officer requested the applicant to provide clarification of
41 certain points of the amendment. The applicant submitted the testimony of Jean G. Hopkins and
42 attached materials, which are made part of the record.

43
44 The amendment made changes to conform Figures in the application to the narrative, and made
45 changes to the design of the energy facility.

1 **1. Changes to conform to narrative**

2
3 The narrative of the application provided that the energy facility would include facilities to
4 achieve zero discharge of water, for stormwater control and treatment, and for metering of natural gas.
5 The Figures in the application did not include these facilities. The amendment added these facilities
6 to a new Figure B-2, which replaced the former Figures B-2A, B-2a and C-2. The addition of the
7 facilities did not result in a design change.

8
9 The narrative of the application described the location and design of equipment and structures.
10 The amendment conformed Figures B-2 and B-3 with the narrative, for example: the conceptual
11 elevation drawing (Figure B-3) was corrected to reflect the approximate sizes of the equipment
12 enclosures, and the gas turbine and steam turbine were shown to be in enclosures rather than inside
13 buildings.

14
15 **2. Changes to design of facility**

16
17 *Reorientation.* The amendment reoriented the energy facility within the site boundary 180
18 degrees. The primary purpose of the change is to improve the ease of the electrical interconnection
19 from the switchyard to the existing Umatilla Electric Cooperative Association ("UECA") transmission
20 system west of the site. The change would not adversely affect operation of the facility.

21
22 Hessler Associates, Inc., analyzed the potential noise impact of the reorientation, and concluded
23 that the facility "can comply with all requirements of the Oregon noise emissions regulations with
24 implementation of adequate noise abatement measure." (Footnote omitted).

25
26 ENSR Consulting and Engineering evaluated the impact of fogging and icing which would
27 result from reorientation of the cooling towers. ENSR predicted icing in two of the five years
28 modeled. The maximum predicted frequency of icing (cumulative over a given year) is 1.5 hours, and
29 all icing is predicted to occur on nearby railroad tracks, south-southwest of the cooling towers. No
30 icing is predicted on either Walker or Westland Roads.

31
32 In addition, no fogging is predicted on Westland Road and a maximum of six minutes in one
33 of the five years modeled is predicted on Walker Road. A maximum of 18.5 hours (cumulative over
34 a given year) of fogging is predicted on the Lamb-Weston access road.

35
36 *Access.* The amendment relocated the access roads from the Lamb-Weston private road to
37 account for the revisions to the site plan. One access road would intersect Lamb-Weston road just
38 west of the switchyard. The other access road would be just east of the cooling towers, and would
39 provide access for maintenance vehicles and equipment.

40
41 *Relocation of buildings.* The amendment changed the location of the control/administration
42 and maintenance/warehouse buildings. They would be free-standing rather than connected to the
43 combustion turbine and steam turbine structures as in the application. The purpose of the change is
44 to better utilize available space on the site.

1 **Replacement of water tanks.** The amendment replaced the two filtered water tanks with one
2 water tank of approximately two million gallons. The tank would be used for either filtered or raw
3 water storage.
4

5 **Filter cake.** The amendment reestimated the volume of filter cake which would be produced
6 by the zero discharge system from 10 tons per month in the application to 80 tons per month. In
7 submitting the application, applicant had relied upon information provided by a vendor of the zero
8 discharge system. Since submitting the application, applicant obtained the higher estimate. Through
9 its own independent analysis, applicant determined that the estimate of 80 tons per month
10 (approximately three cubic yards per day) was correct.
11

12 The estimate of about three cubic yards of filter cake per day would require about one truck
13 trip per day to a local landfill. The Finley Buttes Landfill Company in Boardman has space to hold
14 the predicted volume of filter cake.
15

16 **Cooling towers.** The amendment lowered the deck of the cooling towers from about 43 feet
17 to 40 feet above ground level to comply with building code requirements for wooden structures. This
18 change was considered in the above analyses made regarding noise, icing and fogging.
19

20 **Emission stacks.** The amendment changed the height of the two emission stacks from 190 feet
21 to a maximum of 213 feet. The purpose of the change would be to increase dispersion of the emission
22 plume and the reduction of air quality impacts. The stacks would require Federal Aviation
23 Administration permitting, and would have to meet FAA safety requirements.
24

25 In general, the emission stacks would not be visible from the Umatilla County Scenic-Historic
26 Road, except at a point about five miles southeast of the energy facility where the upper portion of the
27 stacks may be visible.
28

29 **Inlet air filters.** The amendment rotated the inlet air filters of the combustion turbine to the
30 centerline of the unit. This change was considered in the above analysis on noise.
31

32 **Cooling tower drift.** The amendment changed the cooling tower design to reduce the drift rate
33 from 0.008 to 0.004 percent of circulating water volume. The drift rate was reduced by incorporating
34 a drift eliminator, which would use finer baffles to recapture a higher percentage of the cooling water.
35

36 An analysis of the impact of drift deposition on vegetation and soils was made by Barbara
37 Malloch Leitner on December 20, 1993. She concluded that salt deposition would be well below the
38 threshold for sensitive crops.
39

40 **Auxiliary boiler.** The amendment eliminated the auxiliary boiler from the design of the facility.
41 The purpose of the boiler was to supply steam to Lamb-Weston during a power plant outage.
42 Applicant determined that the boiler was not necessary.
43

44 **Transmission line.** The amendment provided for an alternate route for the electric transmission
45 line. The alternate route would also follow the UECA corridor except for about 1 1/2 miles of line

1 which would be parallel to and about 125 feet south of the BPA corridor. The alternate route would
2 reduce the length of the transmission line by approximately 2,500 feet, reduce the land area impacted
3 by the transmission corridor and move the transmission corridor approximately 500 feet away from
4 the residential subdivisions west of Power Line Road in the City of Umatilla.

5
6 Because the evidence in the record on the amendment to the application must be considered by
7 EFSC in determining whether or not to issue a site certificate, findings of fact were made and the facts
8 were discussed in light of EFSC standards, *infra*.

9 10 Columbia Basin Institute Issues

11
12 On December 3, 1993, CBI submitted a request to intervene in the contested case proceeding.
13 OAR 345-15-016. On December 14, 1993, the hearing officer issued an order which allowed CBI to
14 participate as a limited party.

15
16 CBI contended that OAR 345-22-070 (standard on threatened and endangered species impact)
17 required consideration of the impact of water withdrawal from the Columbia River on the salmon
18 species which are on the list of threatened and endangered species, and that there was insufficient
19 evidence and inadequate analysis in the record on the impact.

20
21 CBI also contended that OAR 345-22-110 (standard on socio-economic impact) required
22 consideration of the impact of water withdrawal on the rate structure, and that there was insufficient
23 evidence and inadequate analysis in the record on the impact.

24
25 On January 10, 1994, CBI submitted a memorandum and other materials in support of its
26 contentions. On January 24, 1994, applicant, ODOE, the City of Hermiston and Hermiston 2000
27 submitted materials responding to the contentions of CBI.

28
29 On January 28, 1994, CBI and applicant entered into a settlement agreement. CBI submitted
30 a Notice of Withdrawal of its request for intervention and the settlement agreement to the hearing
31 officer. On February 16, 1994, the hearing officer issued an order which allowed CBI's withdrawal
32 and dismissed CBI as a party.

33
34 Because the issues raised by CBI are relevant to EFSC standards and there is evidence in the
35 record on the issues, findings of fact were made and the facts were discussed in light of the standards,
36 *infra*.

37 38 Requestors' Issues

39
40 Requestors made several contentions, but withdrew all of them, except the contention that the
41 need exemption rule was invalid. Their withdrawn contentions related to conditions of the site
42 certificate and the EFSC rule on amendment of a site certificate.

43
44 Because Requestors' issues did not relate to EFSC standards, there is no need to make findings
45 of fact on their issues. Therefore, there is no further discussion of Requestors' issues.

1
2
3 **FINDINGS OF FACT**

4 The findings of fact are in three sections. These are facts related to:

- 5 (1) the site, the applicant, and the construction and operation of the proposed facility,
6
7 (2) the impacts caused by the construction and operation of the proposed facility, and
8
9 (3) the exemption from the requirement to demonstrate need for the proposed facility.
10

11 *Section (1)*

12
13 This section states the findings of fact related to the site, the applicant, and the construction and
14 operation of the proposed facility.
15

16 **Site**

17
18 The proposed power plant would be located on approximately 15-acres of land about three miles
19 southwest of Hermiston, Oregon. The location of the power plant consists of primarily flat, vacant
20 land, most of which is vegetated with non-native grasses. The property is owned by Lamb-Weston,
21 Inc., a potato processing facility located on Westland Road adjacent to the proposed power plant. The
22 property would have to be leased or otherwise obtained from that company.
23

24 The power plant would be connected to the BPA substation near McNary dam by an electric
25 transmission line that would run to the north for about 12 miles. Applicant is considering two alternate
26 routes for the transmission line: (1) along the existing UECA transmission line corridor, and (2)
27 along the UECA corridor except for about 1 1/2 miles of line which would be parallel to and about
28 125 feet south of an existing BPA transmission line corridor. The total land area of this property is
29 approximately 110 acres. The second alternate transmission line is about 2,500 shorter in length than
30 the first alternate, and would reduce the land area impacted by the transmission corridor. The UECA
31 corridor is entirely within Umatilla county, and a short segment is also within the City of Umatilla.
32 Both alternate transmission lines would pass by a quarry east of the Umatilla River, and a narrow strip
33 of alluvium along the Umatilla River.
34

35 Natural gas to fuel the power plant would be provided by a new gas pipeline that would run
36 less than five miles north from the existing Pacific Gas Transmission pipeline to the power plant. The
37 total land area of this new corridor would be approximately 28 acres. The corridor follows an existing
38 road right-of-way for part of its length, and is entirely within Umatilla County.
39

40 As set forth below, the transmission line and natural gas pipeline are related or supporting
41 facilities. The site for this project includes both the transmission line and gas pipeline rights-of-way,
42 and the property where the power plant would be located (collectively, the "site").
43

44 The site is located in the central part of the Columbia Plateau physiographic province. The
45 Columbia Plateau is composed of hundreds of individual basalt flows which have been segregated into

1 five geological formations. The Columbia Plateau contains a complex system of folds and faults. The
2 site is within the Yakima Fold Belt. The Columbia Plateau also contains a number of identified
3 tectonic basins. The site is within the Umatilla Basin.
4

5 The site area is subject to periodic earthquake ground shaking, and is classified as Seismic
6 Zone 2B. The Maximum Credible Earthquake is estimated at a Richter magnitude of 5.5 with an
7 estimated Peak Bedrock Acceleration of 0.25 times gravity.
8

9 The surface and near subsurface deposits at the site of the proposed facility are sand, gravel
10 and gravel with clay lenses. All the soils are subject to excessive wind erosion, particularly when
11 disturbed. The topography of the site is a gentle northward slope (generally less than 5%) toward the
12 Columbia River. Ground water is at least 30 feet below ground surface, and is likely to average
13 between 50 and 80 feet below ground surface.
14

15 Applicant

16
17 Applicant is a Delaware limited partnership formed by PG&E Enterprises and Bechtel
18 Enterprises expressly to construct and operate this facility. The partners are Buckeye Power
19 Corporation (Buckeye), Larkspur Power Corporation (Larkspur) and PG&E Generating Company.
20 Buckeye and Larkspur are wholly-owned subsidiaries of Bechtel Enterprises. PG&E Generating Co.
21 is a wholly-owned subsidiary of PG&E Enterprises. Partnerships similar to applicant are not
22 uncommon in the development of similar facilities.
23

24 The proposed facility will be designed, managed, constructed and operated by three companies
25 which are affiliated with PG&E Enterprises and Bechtel Enterprises: U.S. Generating Company would
26 develop and arrange for the financing of the facility as well as manage its construction; Bechtel Power
27 Corporation would design and construct the facility; and U.S. Operating Services would operate and
28 retire the facility.
29

30 The personnel of the above three companies, which would manage, construct and operate the
31 proposed facility have extensive experience in those areas within the energy industry.
32

33 Applicant's equity contribution would be about \$88 million which is about 20% of the facility's
34 cost. The partners of applicant will make binding commitments to provide their equity contributions
35 upon issuance of permits and contemporaneous with closing of the debt financing for the facility. The
36 equity contributions will either be cash, a binding letter to a lender backed by PG&E and Bechtel, a
37 letter of credit from a rated bank or a combination of these forms of financings. Applicant represented
38 that the owning partners have used these forms of financing successfully in the development of nine
39 other energy facilities.
40

41 The applicant submitted a letter from Credit Suisse which stated that they have developed as
42 agent, co-agent and lead manager over \$500 million of project financing and underwriting
43 commitments over the past two years with U.S. Generating Co. Credit Suisse also stated that it is
44 interested in providing debt financing for the proposed facility. Credit Suisse further stated that it
45 believes that U.S. Generating Co. is a highly capable developer and that it is satisfied with the

1 commitments provided by the affiliates of U.S. Generating Co. to provide equity financing. Credit
2 Suisse represented that it is rated Aa2 by Moody's Investor Service and AAA by Standards and Poors[®]
3 and has provided over \$1 billion in financing commitments to approximately fifty energy projects.
4 Credit Suisse has indicated that it is "highly confident" that U.S. Generating Co. has the expertise and
5 resources "to successfully develop, finance, construct and operate the Hermiston project."
6

7 Applicant submitted an opinion of counsel that applicant would be capable of providing funds
8 as needed to construct, operate and retire the facility without violating its bond indenture provisions,
9 partnership agreement or similar restrictions or contractual obligations.
10

11 Applicant's strategic planning is based upon considerations of financial needs, operational
12 needs, marketing strategies, constraints, unexpected problems and other issues which may affect the
13 success of the facility.
14

15 Applicant has filed for an exemption from the requirement to show need for the power. OAR
16 345-23-010. A facility exempt from the need showing must have a contract for the sale of the power
17 before construction can begin. Applicant submitted letters of intent from Alberta Gas Company for
18 gas to be supplied to the facility. Applicant has also submitted a letter of intent from Pacific Gas
19 Transmission for transmission capacity to deliver the gas to the facility.
20

21 Applicant included copies of portions the Least Cost Plan of the Portland General Electric
22 Company in the application. The Least Cost Plan identifies the next generating resources that PGE
23 is considering. The cost estimated by PGE was 42 to 47 mills per kiloWatt hour (4.2 to 4.7
24 cents/kWh). Applicant also included copies of projections prepared by the Northwest Power Planning
25 Council (NWPPC) in the application. NWPPC estimates projects similar to the proposed facility to
26 cost between 38 to 58 mills/kWh (3.8-5.8 cents/kWh). Applicant also included the Bonneville Power
27 Administration (BPA) estimate of least cost resource costs as 28 mills/kWh (2.8 cents/kWh).
28 Applicant submitted this information in support of its financial qualifications and to show that it would
29 have a market for its power. Applicant represented that power produced by the proposed facility will
30 be twenty five percent less expensive than the facility proposed by PGE in the Least Cost Plan.
31 Applicant also represented that the facility will produce power at well below the estimates by NWPPC
32 and BPA.
33

34 **Facility**
35

36 Applicant requests the approval of the site for the siting, construction, operation and eventual
37 retirement of a natural gas-fired cogeneration power plant (the "energy facility"). The energy facility
38 would include two major structures. Each structure would contain a combustion turbine, a Heat
39 Recovery Steam Generator (HRSG), a steam turbine, a condenser and miscellaneous supporting
40 equipment. The front end of each HRSG would be aligned with the combustion turbine and an
41 emission stack approximately 188 to 213 feet high would connect to the opposite end of each HRSG.
42 Each steam turbine would be located alongside of its respective combustion turbine/HRSG and would
43 be connected by various steam supply piping. A set of common buildings would contain the
44 warehouse, administrative/office building and the control room for the two units. Cooling towers for
45 each of the units would be located near each unit or in a common area, depending on design

1 requirements. There would be a water tank of approximately two million gallons for filtered or
2 unfiltered water.

3
4 Other components of the energy facility include a steam pipeline with a diameter of 8-10 inches
5 that would supply steam to the adjacent Lamb-Weston plant. A water pipeline for cooling and process
6 water would connect to a main supply line from the Port of Umatilla's regional supply system at the
7 site boundary. Additional lines will connect to the domestic water and sanitary wastewater disposal
8 systems of the Lamb-Weston plant located adjacent to the proposed power plant.

9
10 Natural gas would be supplied to the energy facility by a pipeline. The new pipeline would
11 be less than 16 inches in diameter and four to five miles long, connecting the energy facility with the
12 Pacific Gas Transmission (PGT) pipeline, which is a large interstate bulk gas pipeline located to the
13 south of the energy facility. The new pipeline is a related or supporting facility. ORS 469.020(13).
14 It is not an energy facility as defined in ORS 469.300(10)(e)(B). As a result, the site certificate
15 requested by Applicant would include construction and operation of the natural gas pipeline.

16
17 Each generator of the power plant would be connected to an electric transmission line through
18 a transformer, which would increase the voltage from 18 kV or 13.8 kV to 230 kV. The electric
19 transmission line would run from the energy facility to the BPA McNary Substation about 12 miles
20 north of the energy facility. Regardless of which alternate route is used, the new line would run along
21 the route of an existing 115 kV transmission line corridor owned by UECA for most of its length.
22 New easements along the existing right-of-way would be required in several instances as follows: (1)
23 in certain areas, the width of the existing UECA right-of-way will need to be increased to meet current
24 REA standards; (2) a short segment (approximately 1/4 mile) of new right-of-way will be needed at
25 the northern end where the line will connect to the BPA McNary substation; and (3) if the second
26 alternate route is used, a new segment of approximately 1 1/2 miles (paralleling an existing BPA
27 transmission corridor) will be needed. The transmission line is a related or supporting facility. ORS
28 469.020(13). It is not an energy facility as defined in ORS 469.300(10)(c). As a result, the site
29 certificate requested by applicant would include the construction and operation of the transmission line.

30
31 The gas pipeline and transmission line are the only related or supporting facilities required for
32 the operation of the energy facility. Collectively, the energy facility and its related or supporting
33 facilities are referred to as the "facility" or as the "project."

34
35 Applicant must obtain the following permits or approvals in order to construct and operate the
36 facility:

- 37
38 (1) Hazardous Waste Generator Registration (DEQ);
39
40 (2) Air Contaminant Discharge Permit (DEQ);
41
42 (3) General Stormwater Discharge Permit for Construction Activities (DEQ);
43
44 (4) Building Codes Agency Permits: Plumbing, Structural/Mechanical/Energy, Elevator, Fire
45 Marshal, Electrical, Pressure Vessel (Boiler);

- 1 (5) Permit for Performing Miscellaneous Operations on a State Highway (ODOT);
- 2
- 3 (6) Access Permit (ODOT);
- 4
- 5 (7) Conditional Use Permit (Umatilla County);
- 6
- 7 (8) Zoning Permit (Umatilla County);
- 8
- 9 (9) Utility Permit (Umatilla County);
- 10
- 11 (10) Access Permit (Umatilla County);
- 12
- 13 (11) Type II Land Division (Umatilla County);
- 14
- 15 (12) Conditional Use Permit (City of Umatilla).
- 16

17 The proposed facility would use a proven technology. Other energy facilities with similar
18 technology are operating successfully throughout the United States.

19
20 *Section (2)*

21
22 This section states findings of fact related to the impacts caused by the proposed facility.

23
24 **Land Use**

25
26 The land use impact area is the area within one-half mile of the site.

27
28 The portion of the site containing the proposed energy facility is on approximately 15 acres of
29 land in Umatilla County.

30
31 The portion of the site containing the gas pipeline right-of-way, approximately four miles long,
32 is completely within Umatilla County.

33
34 The portion of the site containing both alternate transmission lines is approximately 12 miles
35 long, and is primarily within unincorporated Umatilla County, with a short segment in the City of
36 Umatilla. A portion of the transmission lines are within the city of Umatilla's urban growth boundary
37 (UGB), which is under the joint land use jurisdiction of Umatilla County and the City of Umatilla.

38
39 The proposed energy facility is located in an area designated Industrial on the Umatilla County
40 comprehensive plan. This portion of the site is zoned Light Industrial (LI).

41
42 A short stretch of the pipeline closest to the power plant would be on land with a plan
43 designation of Industrial and is zoned Light Industrial. The remainder of the pipeline is on land
44 designated North and South County Agricultural and is zoned Exclusive Farm Use (EFU).

1 The first mile of the first alternate transmission line is on land planned by the County as
2 Industrial and is zoned Light Industrial (LI). For about the next two miles, the location of the line is
3 designated West County Irrigation District and zoned EFU-40. Proceeding from this point, the line
4 continues north and east to the City of Umatilla Urban Growth Boundary (UGB) on land designated
5 North and South County Agricultural and zoned EFU. Entering the UGB from the south, the proposed
6 corridor is designated Suburban Residential and is zoned F1 (EFU, 19 acres) by the County. Within
7 the UGB (but outside of the city) county zoning designations apply, but the city's comprehensive plan
8 designations apply (rather than the county's).

9
10 The transmission line then enters the City and passes through several zoning districts. The City
11 of Umatilla's zoning ordinance allows "Community Service" uses in any zoning district as a
12 conditional use.

13
14 The transmission line then leaves the city but remains within the UGB. For the remainder of
15 the route, the line passes through lands with the following County zoning designations: F1 (EFU, 19
16 acres); F2 (General Rural, 19 acres); and R1 (Agricultural-Residential, 4 acres). The City
17 comprehensive plan designations for this segment are R1 (Residential, Single Family); FP (Flood
18 Plain) where the transmission line crosses the Umatilla River, NR (Natural Resource); SR (Suburban
19 Residential); and PF (Public Facilities).

20
21 The northern end of the transmission line, where approximately 1/4 mile of new right-of-way
22 will be required to connect to the BPA McNary Substation, is within the UGB, on land zoned F1 by
23 the County, and planned as PF (Public Facilities) and R-O/S (Recreation-Open Space) by the City.
24 This new right-of-way is on federally-owned land. There is no applicable federal land management
25 plan.

26
27 The second alternate transmission line also passes through the County's M2 (Heavy Industrial)
28 district. The M2 district allows utility facilities as conditional uses according to the same criteria as
29 F2 and R1 districts.

30
31 The Land Conservation and Development Commission (LCDC) has acknowledged the Umatilla
32 County comprehensive plan and land use regulations. LCDC has also acknowledged the City of
33 Umatilla's comprehensive plan and land use regulations.

34
35 ODOE requested the City of Umatilla and Umatilla County to review the application and
36 identify applicable substantive criteria from each government's acknowledged comprehensive plan and
37 land use regulations. After review, both governments responded that the application correctly
38 identifies, interprets and complies with, the applicable substantive criteria and regulations. Both
39 governments recommended that the site certificate contain conditions for further assurance of
40 applicant's compliance. These recommendations are included in the conditions which follow. (See
41 Land Use standard, *infra*). In addition, both the City of Umatilla Planning Commission and Umatilla
42 County reviewed the second alternate transmission line, and concluded that the second alternate line
43 also complies with applicable land use criteria.

44
45 ODOE also requested the Oregon Department of Land Conservation and Development (DLCD)

1 to review the application in light of applicable statutes, statewide planning goals and administrative
2 rules. After review, DLCDC responded that the application complies with the applicable statutes, goals
3 and rules.

4 5 **Protected Areas**

6
7 For purposes of evaluating the effect of the facility on protected areas, the area within 20 miles
8 of the facility, gas pipeline and the alternate transmission lines was considered the impact area.

9
10 There are seven protected areas within the impact area. These are the Cold Springs National
11 Wildlife Refuge, the Umatilla National Wildlife Refuge, the Power City State Wildlife Area, the
12 Coyote Springs State Wildlife Area, the Irrigon Fish Hatchery, the Hat Rock State Park, and the
13 Hermiston Agricultural Research and Extension Center.

14
15 The proposed facility is not located within any of the protected areas.

16
17 All of the protected areas with the exception of the Power City state wildlife area are four or
18 more miles from the site (which is 1.5 miles from the transmission line at its closest). The areas
19 would be shielded from noise, light and glare by the land features and existing development between
20 the site and the areas.

21
22 Hazardous materials would be handled in accordance with applicable laws, and the facility has
23 design features to prevent the release of hazardous materials.

24
25 The facility would have to comply with air quality requirements. The steam turbine condenser
26 would be cooled by a cooling tower. Some naturally occurring salts in the Columbia River water used
27 in the process would drift from the tower and would drop around the vicinity of the energy facility.
28 Applicant has studied the areas where low concentrations of salts would be deposited. The protected
29 areas would not be affected by the cooling tower plumes.

30 31 32 33 **Fish and Wildlife**

34
35 Applicant developed the methods used in wildlife surveys in consultation with Oregon
36 Department of Fish and Wildlife. For purposes of evaluating the effect of the facility on fish and
37 wildlife, the area within the boundaries of the energy facility and within 500 feet on either side of the
38 proposed rights-of-way for the alternate gas pipeline and the alternate transmission lines was
39 considered as the impact area.

40
41 In 1992 and 1994, the applicant engaged Woodward Clyde Consultants to conduct wildlife
42 surveys in the impact area. Woodward Clyde reported the results of these surveys in a report,
43 Vegetation and Wildlife Investigation, Hermiston Generating Project and in technical memoranda dated
44 May 7, 1993 and January 7, 1994. On April 29 and June 1 and 2, 1992, two observers of Woodward
45 Clyde walked an area about 500 feet wide along the first alternate transmission line route. On April 9,

1 1993, four observers walked the gas pipeline route from the PGT pipeline construction site to the site
2 of the proposed facility. Woodward Clyde conducted additional surveys on April 16 and 26, and
3 May 9 and 21, 1993.

4
5 During 1992 and 1993, Woodward Clyde observed no threatened or endangered species and
6 no critical habitat for such species. Woodward Clyde observed four sensitive species of birds listed
7 by ODFW within the impact area for the gas pipeline and the electric transmission line: the Long-
8 billed curlew (*Numenius americanus*), Swainson's Hawk (*Buteo Swainsonii*), Grasshopper sparrow
9 (*Ammodramus savannarum*), and bank swallow (*Riparia riparia*). On the basis of the 1994 survey,
10 Woodward Clyde concluded that the second alternate transmission line would not have any greater
11 adverse effect on animal resources than the first alternate transmission line would.

12
13 There are no significant fish or wildlife resources or habitats at the portion of the site
14 containing the energy facility. The energy facility is to be located in an industrial area, and not within
15 the floodplain or riparian zone of the Umatilla River.

16
17 The applicant has indicated that it would avoid the upgrade and construction of the transmission
18 line and construction of the gas pipeline during nesting seasons, if possible. The pipeline would pass
19 under the High Line Canal.

20
21 ODFW has reviewed the applicant's plans for use of water by the facility, and ODFW advised
22 ODOE that the use or discharge of water would not adversely impact fish or aquatic habitat in the
23 Umatilla or Columbia Rivers. The facility will not discharge anything into the rivers, so there will
24 be no impacts.

25
26 The facility will withdraw water from the Columbia River for its operation. The rate of water
27 withdrawal which the facility would require on an average daily basis is approximately 4.2 cubic feet
28 per second, with a peak usage of approximately 5.8 cfs. The amount of water required for the
29 operation of the facility represents approximately 0.004 percent of the lowest annual mean discharge
30 of the Columbia River at McNary Dam, and represents about 0.005 percent of the flow through
31 McNary Pool during a period of extremely low flow (80,000 cfs). This rate of withdrawal would not
32 change water temperature in the McNary Pool, surface elevations, or affect flow or spill management
33 at McNary Dam.

34
35
36
37 **Threatened and Endangered Species**

38
39 For purposes of evaluating the effect on threatened and endangered species, the area within five
40 miles of the energy facility site and within five hundred feet of the proposed rights-of-way for the gas
41 pipeline and the alternate electric transmission lines was considered the impact area.

42
43 Applicant also contracted with Woodward Clyde for site-specific biological surveys for wildlife
44 and sensitive plants. Applicant consulted with ODFW on the methods used in the surveys.

1 The 1992, 1993 and 1994 surveys (which included field surveys and reviews of pertinent
2 literature) identified no threatened or endangered plant species. The surveys did identify two plant
3 species of concern: Columbia Milkvetch and sagebrush mariposa. Both plant species are on the
4 Oregon Natural Heritage Program (ONHP) List 4. List 4 is for species or subspecies that are of
5 concern but not currently threatened or endangered. They also observed habitat suitable for
6 Lawrence's Milkvetch, but they did not find any of the plants in the impact area.

7
8 Woodward Clyde did not observe any threatened or endangered wildlife species during the
9 surveys. Bald eagles are known to winter along the Columbia River near the Umatilla River.
10 Peregrine falcons could occasionally migrate through the impact area during spring and fall. During
11 the 1994 survey, Woodward Clyde did find evidence (remains of birds) of the use of a lattice tower
12 as a feeding platform by one or more raptors.

13
14 In 1993, ODFW listed two salmon species in the Columbia River as threatened: Snake River
15 spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and Snake River fall chinook salmon
16 (*Oncorhynchus tshawytscha*). These salmon species originate in the Snake River Basin, but migrate
17 past the site area through McNary Dam as adults and juveniles (smolts).

18
19 Snake River chinook salmon migrate through the McNary reach of the Columbia River from
20 May through June when spring flows average between 313,000 and 399,000 cfs. Even in very low
21 water years, Columbia River spring flows are seldom below 200,000 to 220,000 cfs which are
22 recommended for fish passage in the lower Columbia. The ninety percent daily exceedence flow for
23 May (the level exceeded every day during the month in nine years out of ten) is approximately 230,000
24 cfs at McNary Dam. In June, the ninety percent daily exceedence flow is 310,000 cfs.

25
26 Applicant has committed to mitigate indirect effects of the project and to consult with ODF&W
27 in developing mitigation for such effects.

28
29 Because applicant's surveys and reports did not identify any threatened or endangered plant
30 species, the Department of Agriculture concluded that construction of the energy facility, transmission
31 line and gas pipeline would be consistent with the requirements under ORS 564.105(3).

32 Scenic and Aesthetic

33
34
35 For purposes of evaluating the effect of the facility on scenic and aesthetic areas, the line of
36 sight from the highest point of the energy facility, gas pipeline and alternate transmission lines for a
37 distance of up to 30 miles was considered the impact area.

38
39 The Umatilla County Comprehensive Plan lists 10 sites or vistas that justify limits to conflicting
40 land use. Of these sites, Hat Rock, Wallula Gap, Lake Wallula, Lake Umatilla, and Cold Springs
41 Reservoir are within the impact area. The energy facility, gas pipeline and electric transmission line
42 would not be visible from any of the areas or vistas identified in the Comprehensive Plan.

43
44 The County also identified the Umatilla County Scenic-Historic Road as having scenic value.
45 This road is about four miles east of the energy facility. The only parts of the facility that would be

1 visible from the Umatilla County Scenic-Historic Road are the upper portion of the stacks, the plumes
2 of the cooling towers, and the northern end of the transmission line. The terrain of the area is
3 relatively flat.

4
5 **Historic, Cultural and Archaeological**

6
7 For purposes of evaluating the effect of the facility on historical, cultural or archaeological
8 resources, the area within the boundaries of the site was considered as the impact area.

9
10 Heritage Research Associates, Inc. of Eugene, Oregon, conducted cultural resources studies
11 of the impact area. The study included a literature search and survey of the impact area by observers
12 walking the study areas. Heritage identified the West Extension Irrigation Canal as likely eligible for
13 the National Register of Historic Places.

14
15 The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) asked to consult with the
16 applicant before the commencement of construction for the purpose of developing procedures to
17 prevent inadvertent impacts to undiscovered cultural resources.

18
19 **Recreation**

20
21 For purposes of evaluating the effect of the facility on recreational opportunities, the area
22 within five miles of the energy facility and within the boundaries of the proposed rights-of-way for the
23 gas pipeline and the alternate transmission lines was considered the impact area.

24
25 There are several recreational areas within the impact area. The recreation opportunities
26 include the Umatilla River, several facilities in the City of Hermiston and the Hermiston Agricultural
27 Research and Extension Center, a protected area. There are no state parks or county recreational areas
28 within the impact area. The energy facility site is zoned for industrial use, not recreation.

29
30 The recreational facilities in the City of Hermiston within the impact area are:

- 31
32 (a) Umatilla River;
33
34 (b) the Umatilla County Fairgrounds;
35
36 (c) a community recreational center;
37
38 (d) three small neighborhood parks with picnic and playground facilities;
39
40 (e) three large parks with ball fields, basketball courts, tennis courts, playgrounds and picnic
41 facilities;
42
43 (f) a ball field with four fields; and
44
45 (g) Butte Park hiking trails, jogging trails and soccer field.

1 The recreational opportunities along the Umatilla River are not formal, managed recreation
2 areas. There are opportunities for fishing hiking and wildlife viewing. The banks of the river, where
3 the alternate transmission lines cross, do not have any hiking trails or other developed recreational
4 facilities. Either alternative transmission line would be placed adjacent to an existing BPA
5 transmission corridor which crosses the river at this point. The first alternate would be to the north
6 of the BPA corridor, the second would be to the south. The applicant would replace about every
7 second existing wooden pole with a new steel pole. The applicant has represented that the steel poles
8 would be placed as far from the river banks as possible. There are no other recreation areas along
9 the right-of-way of the alternate transmission lines. The gas pipeline would be placed underground
10 through areas zoned for farm use.

11
12 Most of the recreational opportunities in the area are along the Columbia River. The Columbia
13 River is outside the impact area of the facility.

14
15 The applicant has studied the potential impacts on recreation from the air pollution which would
16 be generated by the energy facility. The applicant must comply with the requirements of the air
17 quality regulations of the Department of Environmental Quality (DEQ).

18
19 The applicant has submitted to ODOE an analysis of impacts from noise. The operation of the
20 Lamb-Weston facility and the proposed energy facility would be heard at the Umatilla River near the
21 facility. The noise which would result from operation of the proposed energy facility combined with
22 noise from the Lamb-Weston facility would not exceed regulatory limits. The area of the Umatilla
23 River where the noise would be heard is not formally managed for recreation.

24
25 The proposed energy facility would not be visible from recreational areas in Hermiston, nor
26 from areas near the Columbia River. The upgrade of the transmission line along the existing right-of-
27 way would not significantly affect its visibility.

28
29 The estimated vehicle traffic during operation of the proposed facility would be a small portion
30 of the over 500 trips occurring currently in connection with operation of Lamb-Weston plant and the
31 approximately 3,000 trips occurring daily at Westland Road. The Public Works Department does not
32 expect the increased traffic generated by the energy facility during operation would result in significant
33 traffic impact on Westland Road. The applicant estimated that during the two-year construction
34 period, there would be approximately 225 automobile and 56 truck trips daily. About seven trucks
35 would enter and leave the energy facility site during the morning and evening peak traffic hours.

36
37 The State Department of Parks and Recreation did not identify any impact to the recreational
38 opportunities along the Umatilla River or in the City of Hermiston, and did not object to issuance of
39 a site certificate for the facility.

40 **Socio-economic**

41
42
43 For purposes of evaluation of the socio-economic effect of the energy facility, the area within
44 30 miles of the energy facility site of the facility was considered the impact area.
45

1 Operation of the proposed facility would result in the creation of approximately 25 permanent
2 jobs. Fifteen employees would work from 8:00 a.m. to 5:00 p.m., and five employees would work
3 the evening and nighttime shifts. The applicant expects to hire most if not all plant employees from
4 the local area (including the Tri-cities area in Washington). Therefore, the operation of the project
5 should not create any significant impacts resulting from an increase in local populations generated by
6 the facility.

7
8 The applicant expects construction of the facility to last approximately two years. The average
9 construction work force would be approximately 270 workers, with a maximum at about 450 workers.
10 Based on the applicant's experience, the peak period of construction employment would be relatively
11 short, approximately six months. The applicant expects that about 55 to 225 workers would be hired
12 from outside the region. The remaining 225 to 395 workers would be drawn from the regional labor
13 pool.

14
15 Construction of the facility will generate noise. Noise generated by construction is exempt
16 from DEQ noise control regulations as specified in OAR 340-35-035(5)(g) and (h). Construction noise
17 may be relatively high. Although the noise levels from construction may be annoying, they should
18 be temporary. The applicant should consult with local authorities and neighbors to the energy facility
19 site to minimize the annoyance from construction noise.

20
21 During operation of the facility, domestic waste water would be treated by the Lamb-Weston
22 treatment system according to an agreement between applicant and Lamb-Weston. The facility would
23 not deliver waste water to the Hermiston treatment facility or any other municipal treatment facility.

24
25 The facility would obtain process and cooling water from the Port of Umatilla's regional water
26 supply system. The Port has a water right permit to use up to 155 cubic feet per second of water from
27 the Columbia River, which it must apply to beneficial use by October 1, 1997, unless the time is
28 extended by the Water Resources Department. Applicant needs a maximum of 5.8 cubic feet per
29 second of water for operation of the energy facility at full power. Applicant has entered into contract
30 negotiations with the Port for delivery of water to the site of the energy facility, and the Port has
31 indicated its willingness to provide water for the project. Applicant's use of water may affect the
32 hydropower potential of the Columbia River, but the estimate of the effect on the average residential
33 customer is less than two cents per year within the impact area.

34
35 Lamb-Weston would supply water for domestic use by agreement, from its existing water
36 supply system. Lamb-Weston's system is adequate to provide water for domestic use by the proposed
37 facility. The proposed facility would not require any modifications other than connections from Lamb-
38 Weston to the facility. Review and approval by the Oregon State Department of Human Resources,
39 Health Division, would not be required. Stormwater would be contained on site and used as make-up
40 water in the cooling system.

41
42 The proposed facility would generate approximately 40 tons of non filter solid waste per year
43 and about 960 tons of filter cake from the cooling water treatment system per year. Local landfills
44 would be able to accommodate this waste.

1 The Oregon State Police and the Umatilla County Sheriff's Department would provide police
2 protection. According to the Sheriff's Department, the facility is not expected to cause significant
3 adverse effects to the department and its ability to provide adequate service to the area. Second
4 response calls for emergency services would be provided by the Hermiston Police Department through
5 its mutual aid agreement with the Sheriff's Department. The Hermiston Police Department anticipates
6 no problems with providing police services to the site.
7

8 The Hermiston Fire Department does not expect that the facility would cause significant adverse
9 impacts on the Department's existing capabilities, as long as the facility would provide all fire
10 protection equipment and facilities required by the Oregon Fire Code.
11

12 Public schools in the area are operated by the Hermiston School District, the Umatilla Public
13 School System, the Stanfield Public School System, the Echo Public School System, the Morrow
14 County School District, and the Pendleton Public School System. With the exception of the Echo
15 Public School System, most of the schools in the other systems are at or near capacity, and are
16 currently undertaking measures to expand capacity. The portion of the construction work force drawn
17 from outside the local area is not expected to include a significant number of families. Health Care
18 services are adequate and are provided by Good Shepherd Community Hospital and St. Anthony
19 Hospital in Pendleton. Libraries are available in most of the surrounding communities and are not
20 expected to be significantly impacted by the construction or operation of the facility.
21

22 Temporary housing for construction workers would significantly increase the demand for short-
23 term housing in the region, particularly for a short peak period of approximately six months.
24 Accommodations can be arranged for construction workers in motels, rental units, and RV parks in
25 the region. Applicant stated at the EFSC hearing on the draft proposed order that Applicant has
26 committed to working with the City of Hermiston and Umatilla County to handle the short term
27 housing needs of construction workers.
28

29 **Noise**
30

31 The applicant retained Hessler Associates, Inc. to measure noise levels at sensitive receptors
32 near the energy facility site. Information from the surveys indicates that noise levels are generally
33 high in the area due to the proximity of Interstates 82 and 84 and other industrial noise sources in the
34 area. DEQ rules allow a new industrial source on a previously unused industrial site to increase the
35 ambient statistical L_{50} and L_{10} noise levels by up to 10 decibels. In addition, the DEQ rules contain
36 an upper limit on noise generated by the new source alone. The upper hourly statistical level limits
37 are L_{50} of 50 dBA, L_{10} of 55 DBA and L_1 of 60 DBA from 10 p.m. to 7 a.m.; and L_{50} of 55 DBA,
38 L_{10} of 60 DBA and L_1 of 75 DBA from 7 a.m. to 10 p.m..
39

40 Based on currently available measured data, it appears the facility will be able to comply with
41 the limit on increases in overall ambient noise due in part to the fact that existing ambient noise levels
42 are generally high. In addition, the facility can comply with the upper limits on noise generated by
43 new sources through a combination of noise abatement and other measures.
44

45 In operating the energy facility, the applicant must comply with the limits of OAR 340-35-035.

1 This can be done through design and selection of components, location and orientation of components,
2 shielding and noise dampening and other techniques.

3
4 **Waste**

5
6 For purposes of evaluating the effect of the facility on solid and hazardous wastes, the area
7 within the boundaries of the site of the energy facility was considered the impact area.

8
9 Non-hazardous and hazardous wastes (both solid and liquid) would be generated during the
10 construction and operation of the facility. These materials would include waste metals, construction
11 debris, cans and bottles, lubricants, solvents, paint, tires, weld rod, batteries, spent SCR catalyst,
12 dewatered filter cake and dissolved solids in the cooling tower drift. Landfills in the area have
13 adequate capacity to accept the wastes generated by the facility. No permit is required so long as the
14 wastes would be properly disposed of in a licensed landfill in accordance with applicable law.

15
16 The largest contributor to solid waste would be the non-hazardous filter cake generated by the
17 cooling tower water softener system. Filter cake would contribute about 80 tons per month of solid
18 waste to the landfills. The applicant considered, but elected not to discharge the cooling tower
19 blowdown for irrigation on nearby farm land. The applicant considered a number of other options for
20 cooling the energy facility. Each option had environmental risks. The other options resulted in
21 unacceptable economic penalties, excessive use of water, excessive wastewater discharge or other
22 environmental impacts that exceeded the impact of generating and disposing of the filter cake.

23
24 The applicant has committed to reduce the amount of waste produced during construction and
25 operation. Plans include use of non-hazardous solvents, use of materials that can be neutralized for
26 beneficial reuse, and reuse of scrap lumber. Plans also include restricted use of treated lumber and
27 control of paint inventories to avoid waste, over supply, or exceeding shelf-life.

28
29 The applicant has committed to implementation of a recycling program for materials such as
30 aluminum, glass, metals, paper, wood, batteries and used tires, and to investigate the possible
31 recycling or reuse of lubricant, coolant and degreaser drums, use of paint which has exceeded its
32 technical shelf-life for off-site projects, recycling of solvents and antifreeze, recycling of aerosol cans
33 and reuse of soiled rags. The applicant would also encourage its SCR catalyst supplier to recycle spent
34 catalyst material. The applicant would conduct periodic audits of the effectiveness of its waste
35 minimization and recycling program, and would revise the program to reflect the audit results and
36 changes in waste minimization and recycling technology.

37
38 The applicant has submitted to ODOE information about the effects of the waste water vapor
39 from the cooling towers. The analyses addressed potential impacts of total dissolved solids on native
40 vegetation and farm crops. The dissolved solids include salts and minerals suspended in the cooling
41 water taken from the Columbia River. The dissolved solids are concentrated through recirculating and
42 reusing the water for cooling. The facility would use either a brine concentrator or reverse osmosis
43 system to remove dissolved solids from the cooling tower circulating water. The cooling tower design
44 would limit drift to 0.004 percent of the circulating water flow.

1 The "Assessment of Cooling Tower Drift on Vegetation: Hermiston Cogeneration Project" was
2 prepared for the applicant by Barbara Malloch Leitner. The assessment was given to ODOE on
3 August 9, 1993. A second assessment, dated December 20, 1993, was submitted with the amendment
4 to the application. Both assessments concluded that there would be no significant harmful impact on
5 native vegetation or farm crops from the drift.
6

7 An assessment of fog and ice impacts was conducted by Art Samberg, ENSR Consulting and
8 Engineering, and was given to ODOE on August 9, 1993. A second assessment, dated December 15,
9 1993, was submitted with the amendment to the application. The second assessment was based upon
10 reorientation of the facility. The second assessment estimated the frequency and length of time of
11 fogging or icing events in a five year period. Icing is estimated to occur on an average of two out of
12 five years at a maximum frequency (cumulative over a given year) of 1.5 hours on the railroad tracks
13 adjacent to the proposed energy facility. There is no predicted icing on either Walker or Westland
14 Roads. There is no predicted fogging on Westland Road. Fog on Walker Road is predicted to occur
15 with a frequency of six minutes per year. The estimated frequency of fog on the local access road
16 from Westland Road to the Lamb-Weston facility is 18.5 hours per year. No ice or fog was estimated
17 to occur on the nearby interstate freeways.
18

19 Retirement

20
21 The applicant expects the useful life of the facility to be 30 years. The applicant has committed
22 to restore the site to a useful condition following retirement.
23

24 The site of the energy facility is currently an unused part of an existing industrial site. The
25 applicant expects that this portion of the site would be restored for industrial use when the energy
26 facility is retired. The applicant expects to restore the energy facility by dismantling the buildings and
27 removing unneeded equipment, and has committed to planting native vegetation as part of the
28 restoration.
29

30 The gas pipeline and electrical transmission line will be owned by Cascade Natural Gas and
31 UECA, respectively. When the energy facility is retired, these related or supporting facilities will
32 remain in service as part of their systems.
33

34 The applicant proposes to design the facility to comply with all applicable standards for
35 containing spills of any hazardous material, such as the acid used in some processes.
36

37 The applicant has committed to develop a decommissioning plan for the facility. The plan
38 would describe how the site would be restored for the anticipated use after the facility was retired.
39

40 The applicant has also committed to establish a fund to restore the site. The applicant would
41 evaluate the remaining useful life of the facility every year after the tenth year of operation. If the
42 applicant decides to retire the facility before its expected 30-year life, the applicant would establish
43 the fund and a schedule of contributions to the fund to insure that there would be enough money
44 available to restore the site. In addition, the applicant has committed to use any money, which it
45 would receive from salvaging the equipment, for site restoration to the extent needed to meet the

1 decommissioning and restoration plan.

2
3 The applicant estimates, and the EFSC finds, that restoring the site would cost no more than
4 \$5 million in 1993 dollars.

5
6 *Section (3)*
7

8 This section states the findings of fact related to applicant's request for an exemption to
9 demonstrate need for the proposed facility under OAR 345-23-010(2).

10
11 The proposed facility would surpass the efficiency standard required for the exemption. The
12 applicant submitted information in Exhibit B of its application that calculates the "Fuel Chargeable to
13 Power Heat Rate." The calculations were made using conservative assumptions about how the facility
14 would be operated. For example, the applicant assumed that there would be no steam supplied to the
15 Lamb-Weston plant. This assumption would result in a higher fuel input for a given electrical power
16 output. The rate calculated by the applicant at the stated conditions is 7,081 BTU/Kwh which is less
17 than the standard for the exemption. The nominal electric generating capacity of the energy facility
18 is reasonably expected to be 474.2 megawatts at annual average site conditions.

19
20 No contract for the purchase of the electricity that would be produced is required at this stage
21 of the development of the facility. The application for a site certificate was deemed complete by
22 ODOE and filed on June 11, 1993.

23
24 **ULTIMATE FINDINGS OF FACT,**
25 **REASONING AND CONCLUSIONS OF LAW**
26

27 Any person who proposes to construct an energy facility in Oregon must obtain a site certificate
28 from EFSC. ORS 469.320, 469.360, 469.370, as amended by Oregon Laws 1993, SB 1016. In order
29 to issue a site certificate for the proposed facility, EFSC must determine that the preponderance of the
30 evidence in the record supports the following conclusions:

- 31
- 32 1) The facility complies with the requirements of ORS 469.300 to 469.570 and 469.590 to
33 469.621 and the rules implementing those statutes applicable to the facility;
 - 34
35 2) Except as specifically provided for land use, and except for those statutes and rules for which
36 the decision on compliance has been delegated by the Federal Government to a state agency
37 other than EFSC, the facility complies with all other Oregon statutes and administrative rules
38 applicable to the issuance of a site certificate for the proposed facility; and
39
 - 40 3) The facility complies with the statewide planning goals adopted by the Land Conservation and
41 Development Commission.

42
43 SB 1016, Section 23(1) (1993).
44

45 Excluded from EFSC's jurisdiction, and from the preemptive nature of the site certificate, are

1 permits or compliance criteria constituting "design or operational issues that do not relate to siting the
2 proposed facility." 1993 Oregon Laws, SB 1016, Section 11(5).

3
4 EFSC is required under Oregon Laws 1993, SB 1016, Section 22, to adopt standards for the
5 siting, construction, operation and retirement of energy facilities. To implement this authority, EFSC
6 adopted administrative rules, which contain standards with which the proposed facility must comply.
7 The standards may be divided into three categories: (1) the site, (2) the applicant and (3) the impacts
8 caused by the construction, operation and retirement of the facility. EFSC must also impose conditions
9 in the site certificate to ensure compliance with the applicable standards, and to protect public health
10 and safety. Oregon Laws 1993, SB 1016, Sec. 11(2).

11 The Site

12 (a) Structural standard

13
14 The structural standard imposes two requirements. First the facility must be "designed to
15 minimize vulnerability to seismic hazards." OAR 345-22-020(1)A seismic hazard is defined in ORS
16 455-447(1)(d) as:

17 "**** a geologic condition that is a potential danger to life and property which includes
18 but is not limited to earthquake, landslide, liquefaction, tsunami flooding, fault
19 displacement, and subsidence."

20 The second requirement is that the facility shall be

21 "**** designed, constructed, operated and retired so as to avoid, to the greatest extent
22 possible, adverse impacts on soils such as compaction, erosion, mass wasting and
23 slumping."

24 OAR 345-22-020(2).

25 *Discussion*

26 Applicant has obtained services from an outside geological consultant, Riverside Technology,
27 Inc., to assist in site characterization. The area within the boundaries of the site is located in the
28 central part of the Columbia Plateau physiographic province. In particular, the area is within the
29 Yakima Fold Belt, which is a part of the system of folds and faults within the Columbia Plateau. The
30 site area is subject to periodic earthquake ground shaking, and is classified as Seismic Zone 2B. The
31 Maximum Credible Earthquake is estimated at a Richter magnitude of 5.5 with an estimated Peak
32 Bedrock Acceleration of 0.25 times gravity.

33
34 The Oregon Department of Geology and Mineral Industries has reviewed applicant's
35 conclusions and believes that the characterization is appropriate. Applicant has committed to detailed
36 studies of the energy facility site prior to construction, to confirm that this characterization is correct.
37
38
39
40
41
42
43
44
45

1 To minimize vulnerability to earthquake hazards, applicant has committed to design and
2 construct all structures of the facility to minimize potential damage and to comply with requirements
3 of the State of Oregon Structural Specialty Code. The State of Oregon Structural Code is modeled
4 after the Uniform Building Code (UBC), as amended by the Oregon Building Codes Agency. Sec. 102
5 of the Code states that:

6
7 "The purpose of this code is to provide uniform performance standards providing reasonable
8 safeguards for health, safety, welfare, comfort, and security of the residents of this state who
9 are users and occupants of buildings ***."

10
11 The code minimizes vulnerability to earthquake hazards by imposing more rigorous design and
12 structural requirements on structures located on sites which have been shown to be potentially subject
13 to higher ground motions during anticipated seismic events. Consequently, EFSC finds that applicant's
14 compliance with the structural code will minimize vulnerability to earthquake hazards.

15
16 The risks of other seismic hazards are low. Because the topography of the site area is a gentle
17 northward slope (generally less than 5%) toward the Columbia River, there is slight probability of
18 landslides. Because the ground water is at least 30 feet--and probably averages 50 to 80 feet below
19 the surface in the site area, there is also slight probability of liquefaction. Because there are no known
20 or potentially active faults in the site area, there is slight risk of surface faulting.

21
22 Furthermore, the applicant has committed to take measures for the protection against such
23 hazards, and the conditions that follow will ensure that the facility will be designed, constructed,
24 operated and retired to minimize vulnerability to earthquakes and other seismic hazards as required
25 by the above standard.

26
27 The second requirement requires avoidance of adverse impacts on soil. The language "to the
28 greatest extent possible" does not demand avoidance of any adverse impact on soils. EFSC interprets
29 this provision to allow some adverse impact, but not a significant adverse impact. In general, all the
30 soils in the area have a low clay content and are subject to excessive wind erosion, particularly when
31 disturbed. Therefore, applicant has committed to apply water to graded surfaces during construction
32 to reduce the potential for wind erosion, and to provide silt fences or similar structures as necessary
33 to further reduce soil erosion. Following construction, disturbed areas of the site will be replanted
34 with native vegetation. Revegetation will provide more permanent protection against wind erosion.

35
36 In the site area, the bedrock is overlain by interbedded gravel, and sand and gravel with clay
37 lenses. Because the soils could be subject to compaction by some of the heavier structures that make
38 up the energy facility, applicant has committed to design and construct the heavier structures of the
39 facility in more competent materials below the surface soils.

40
41 Due to the siting of the project on lands with a gentle topography, mass wasting, slumping,
42 sliding and other adverse impacts to soils are not expected to occur, and the facility can be designed
43 to avoid significant adverse impacts. The alternate transmission lines do pass by two areas of concern:
44 a quarry east of the Umatilla River, and a narrow strip of alluvium along the Umatilla River. The
45 transmission towers can be placed or designed and constructed to avoid adverse impacts on soils in

1 these areas, either by avoiding them altogether or by anchoring the towers in more competent materials
2 below the surface soils.

3
4 The foregoing measures avoid adverse impacts to soils to the greatest extent possible, given the
5 location of the site, and the desirability of utilizing the existing UECA transmission line corridor (the
6 first alternate transmission line would follow the UECA corridor and the second alternate would follow
7 all but 1 1/2 miles of the corridor).

8
9 Applicant's commitments to protect against erosion and compaction during construction are
10 reasonably expected to avoid significant adverse impact. In addition, nothing in the operation of the
11 facility may reasonably be expected to cause a significant adverse impact on soils, and applicant's
12 observance of the conditions under the Retirement standard will protect against any such impacts at
13 that time. At retirement, any disturbed areas of the site will again be replanted with native vegetation.

14
15 The following conditions will minimize the vulnerability of the facility to seismic hazards and
16 provide further protection against adverse impacts on soils.

17
18 Based on the foregoing, the facility will comply with the structural standard. The following
19 conditions ensure that the standard will be met.

20
21 *Conditions*

22
23 (1) Prior to the start of construction, the applicant shall conduct a detailed survey
24 of the energy facility site. The survey will include core drilling and trenching sufficient to learn: 1,
25 the overburden soil types and thicknesses under energy facility structures; 2, the depth and
26 characterization of the bedrock under the site; 3, if evidence of seismic faulting not considered in the
27 application is present or if there are indications that the seismic classification of the portion of the site
28 containing the energy facility is not correct in the application. The survey shall also characterize
29 ground response to potential seismic events. The survey shall be peer reviewed by the Oregon
30 Department of Geology and Mineral Industries or by a private qualified registered geologist that is
31 independent from the Applicant and the Applicant's contractors and subcontractors. If a private
32 geologist is used, the choice of peer reviewer shall be approved by EFSC in consultation with the
33 Oregon Department of Geology and Mineral Industries.

34
35 (2) If the detailed survey reveals evidence that is not as described in the ASC, then
36 the Applicant shall revise the facility design parameters to comply with corresponding UBC
37 requirements. If pre-construction seismic analysis reveals features unique to the energy facility site
38 that justify enhanced seismic design, the Applicant shall design safety structures critical to public
39 health or safety in consultation with the BCA, subject to approval by EFSC. Critical structures include
40 hazardous material storage areas and control rooms.

41
42 (3) Except as provided for in condition 2 above, the Applicant shall design and
43 construct the proposed facility to be consistent with Seismic Zone 2B requirements, in compliance with
44 the laws and regulations administered by BCA.

1 (4) The Applicant shall place electrical transmission towers to avoid, to the greatest
2 extent possible given the existing UECA corridor, the narrow strip of alluvium along the Umatilla
3 River that may be subject to liquefaction. If this strip cannot be avoided, the transmission towers shall
4 be constructed so as to otherwise mitigate for the risk of liquefaction.
5

6 (5) Placement of electrical transmission towers will include setbacks from cut slopes
7 associated with the quarry east of the Umatilla River, along the electrical transmission line route.
8

9 (6) Topsoils and subsoils resulting from excavation for the gas pipeline should be
10 segregated and the topsoil restored to minimize impacts on soil fertility.
11

12 (b) Land use standard
13

14 This standard requires that the facility be in compliance with statewide planning goals. OAR
15 345-22-030. The facility is in compliance where:
16

17 "(A)*** the facility complies with applicable substantive criteria from the
18 affected local government's acknowledged comprehensive plan and land
19 use regulations ***, and
20

21 "(B) The facility complies with any Land Conservation and Development
22 Commission administrative rules and goals and any land use statutes
23 directly applicable to the facility under ORS 197.646(3) ***."
24

25 OAR 345-22-030(1)(b)(A) and (B).
26

27 *Discussion*
28

29 ORS 469.503(2) allows applicants to demonstrate compliance with the statewide planning goals
30 either by obtaining local land use approvals or by showing compliance with applicable state or local
31 land use criteria to the EFSC. Applicant has elected compliance through the latter method. The City
32 of Umatilla and the County of Umatilla have land use jurisdiction over the proposed facility. Both
33 governments reviewed the original application and as amended by the provision on alternate electric
34 transmission lines, and found that the facility complies with the applicable substantive criteria from
35 the acknowledged comprehensive plan and land use regulations.
36

37 In addition, DLCD reviewed the application in light of applicable statutes, statewide planning
38 goals and administrative rules, and found that the facility complies with the statutes, goals and rules
39 to the limited extent they may apply directly to the facility. No land use statutes or administrative
40 rules apply directly to the proposed facility for the reasons set forth in the Application. The statewide
41 goals do not apply directly to the facility due to the fact that no amendments to either the city's or the
42 county's comprehensive plans or land use regulations are required. Nevertheless, in the event that a
43 statewide goal did apply to the proposed facility, the Application demonstrates compliance with the
44 applicable statewide goals.
45

1 The Comprehensive Plan of the City of Umatilla expressly provides that its provisions are not
2 applicable substantive criteria for individual land use applications. While the city's comprehensive
3 plan policies and goals are not applicable substantive criteria, the Application describes how the
4 proposed facility complies with the policies and goals relevant to that portion of the transmission line
5 within the city's UGB.
6

7 Conversely, Umatilla County's development ordinance expressly provides that proposed uses
8 in the Light Industrial zone, including utility facilities such as the proposed energy facility, must be
9 in conformance with the policies in the County's comprehensive plan. The Application describes how
10 the proposed facility complies with the applicable comprehensive plan policies.
11

12 The discussion of land use provisions in the application, which the city, county and DLCD
13 relied upon in making their findings, demonstrates that the facility, gas pipeline and transmission line
14 would be in compliance with such provisions. Applicant's discussion is, with minor modifications,
15 as follows:
16

17 **Energy Facility**
18

19 **Applicable County Zoning Regulations**
20

21 ***(a) Conditional Use Criteria***
22

23 Utility facilities are a conditional use in the county's Light Industrial (LI) zone. Umatilla
24 County Development Ordinance (UCDO) Section 3.184(16). As a utility facility in the LI zone, the
25 power plant is subject to two sets of conditional use criteria: the general criteria for conditional uses
26 in the LI zone (UCDO Sections 3.185 and 7.050); and the more specific criteria for utility facilities
27 as conditional uses (UCDO Section 7.060(55)).
28

29 The general criteria for conditional uses in the LI zone (UCDO Sections 3.185 and 7.050) are
30 evaluated below. The applicable requirement is cited, after which the Project is evaluated against the
31 requirement.
32

33 ***UCDO Section 3.185.*** "The following general criteria shall be used to review all conditional
34 uses listed in the LI Zone, notwithstanding any other criteria listed in this Ordinance for a particular
35 use:
36

- 37 *(1) The use will be compatible with other uses allowed in the LI Zone;*
38

39 The LI zone permits industrial uses such as warehouses, manufacturing of processed materials,
40 machine shops, bottling works, food processing facilities, nurseries and greenhouses, grain
41 elevators, flour mills, and other uses. Conditional uses permitted include utility facilities,
42 major manufacturing, junk yards, sand or gravel storage, wood processing facilities, gas
43 stations, gravel extraction and processing facilities and other uses listed in Section 3.184 of the
44 UCDO.
45

1 The power plant is located on a site that is presently undeveloped. It will introduce another
2 industrial facility within an area that presently contains a potato processing plant, railroad
3 tracks, warehouses, animal stockyards, agricultural activities, and several rural residences.
4 Generally, the power plant will result in the intensification of industrial activity in an area that
5 is designated for that use. During construction, the Project will result in minor inconveniences
6 caused by increases in noise, dust and traffic. However, these impacts are not considered
7 significant. During operation, the Project will not result in land use incompatibilities. It will
8 not cause significant land use conflicts with nearby uses nor will it be adversely affected by the
9 operations associated with these uses. Once operational, the Project will be a low intensity use.
10 It will employ about 25 workers over a 24-hour period with the greatest number of employees
11 (15) working during the eight to five shift. The Project will not generate significant increases
12 in noise, dust or vibrations that could adversely affect nearby land uses.
13

14 The parking areas for the power plant will be paved so that dust will not be a concern. Access
15 to the energy facility site will be via the existing Lamb-Weston access road which is in
16 compliance with county standards. Project traffic will include employees (25 employees over
17 3 shifts) commuting to and from the energy facility site and infrequent deliveries to the Project.
18

- 19 (2) *The use will be in conformance with policies listed in the text of the Comprehen-*
20 *sive Plan;*
21

22 Conformity with comprehensive plan policies is addressed below.
23

- 24 (3) *The use would not have an adverse impact on existing industrial uses in that it*
25 *would not be incompatible with the noise, dust, vibrations and odors that may*
26 *emanate from or be caused by the existing adjacent industrial uses."*
27

28 Existing industrial uses in the area include a potato processing plant, railroad tracks, ware-
29 houses, and animal stockyards. The Project will serve as a source of process steam for the
30 Lamb-Weston potato processing plant and is therefore supportive of one of the primary existing
31 industrial uses in the area. The Project is not sensitive to existing levels of noise, dust,
32 vibrations and odors, and will not be constrained by existing conditions.
33

34 UCDO Section 7.050 provides the county's Hearing Officer with general authority to impose
35 conditions on conditional uses. Umatilla County has indicated that pursuant to this section it
36 would like general landscaping for the entire energy facility site (not just the parking area).
37 As stated below, a landscaping plan for the entire energy facility will be prepared and
38 implemented.
39

40 In addition, Section 7.060(55) of the county's zoning code identifies specific conditional use
41 criteria relevant to utility facilities. They include the following:
42

- 43 (a) *The facility is designed to minimize conflicts with scenic values and adjacent*
44 *recreational residential, forest, grazing and farm uses as outlined in policies of*
45 *the Comprehensive Plan;*

1 Conformity with these comprehensive plan policies is addressed below. In addition, issues
2 relating to scenic values are addressed in the description of the EFSC Scenic and Aesthetic
3 standard. Of the listed uses, only farm uses are in the proximity of the energy facility site.
4 The power plant will not conflict with farm uses. The gas pipeline will only temporarily
5 disturb farming during construction. Placement of the pipeline underground and use of the
6 existing transmission line rights-of-way will minimize conflicts with farm uses.
7

8 (b) *The facility be of a size and design to help reduce noise or other detrimental*
9 *effects when located adjacent to recreational residential dwellings;*

10
11 There are no recreational residential dwellings adjacent to the power plant.
12

13 (c) *The Hearings Officer may require that the facility be fenced and landscaped*
14 *buffering and/or screening be provided;*
15

16 The power plant will be fenced and landscaped. A landscaping plan will be developed to
17 include, as appropriate, a combination of native and ornamental plants. The landscaping plan
18 will allow easy access to equipment, while partially screening the power plant and providing
19 visual buffering.
20

21 (d) *The facility does not materially alter the stability of the overall land use pattern*
22 *of the area;*
23

24 The power plant is an industrial use in an area designated and developed for industrial uses.
25 It will help assure the successful development of this area for industrial uses and, in particular,
26 will be complementary with the Lamb-Weston potato processing plant as a source of process
27 steam.
28

29 (e) *The facility does not constitute an unnecessary fire hazard, and consideration be*
30 *made for minimum fire safety measures which can include but are not limited to:*
31

32 (A) *The site be maintained free of litter and debris;*
33

34 Litter and debris will be stored in on-site dumpsters, with periodic hauling via
35 a private contractor to a properly licensed facility. Energy facility site
36 maintenance will be performed on a regular basis to assure that the grounds are
37 kept free of litter and debris.
38

39 (B) *Using non-combustible or fire retardant treated materials for structures*
40 *and fencing;*
41

42 As described in Exhibit B, the power plant will be constructed from fire
43 retardant materials, and will incorporate a comprehensive on-site fire
44 suppression system.
45

1 (C) *Clearing site of all combustible materials within thirty (30) feet of struc-*
2 *tures;*
3

4 As part of the maintenance plan for the Project, clearing of combustible
5 materials from the energy facility site at regular intervals will be required,
6 including all areas within 30 feet of structures.
7

8 (f) *Major transmission tower, poles and similar gear shall consider locations within*
9 *or adjacent to existing rights-of-way in order to take the least amount of timber-*
10 *land out of production and maintain the overall stability and land use patterns*
11 *of the area, and construction methods consider minimum soil disturbance to*
12 *maintain water quality;*
13

14 The portion of the electrical transmission line within the LI zone will utilize an existing
15 transmission right-of-way held by Umatilla Electric Cooperative. Only a very small portion
16 of the natural gas lateral pipeline is within the LI zone. The pipeline will be buried, and will
17 require a new right-of-way to connect with the PGT main line to the south. Beginning at the
18 energy facility site, the pipeline route generally parallels County Road No. 1327 south for
19 about 2 miles.
20

21 (g) *The facility shall adequately protect fish and wildlife resources by meeting mini-*
22 *imum Oregon State Department of Forestry regulations;*
23

24 This criterion is applicable only to forest lands which are not included in this Project.
25 Nevertheless, the Project is located approximately 1/4 mile west of the Umatilla River, and is
26 well outside of both the flood plain and riparian zone of the river. No wildlife resources are
27 inventoried in the area of the energy facility site. As a result, fish and wildlife resource will
28 not be impacted by the power plant or by those portions of the electrical transmission line or
29 natural gas line within the LI zone.
30

31 (h) *Access roads or easements be improved to a standard and follow grades recom-*
32 *mended by the Public Works Director;*
33

34 The power plant is located on a fifteen-acre site, which is bounded on the north by the existing,
35 fully-improved access road to Lamb-Weston's potato processing facility. The power plant is
36 bounded on the west by Westland Road. Access to the energy facility site will be from Lamb-
37 Weston's existing access road. From the energy facility plant site, Interstate-84 can be
38 accessed from Westland Road and Interstate-82 can be accessed from Lamb Road. The only
39 access improvements that will be required are the on-site road system shown on Exhibit B of
40 the SCA. These roads will be constructed to county standards.
41

42 (i) *Road construction be consistent with the intent and purposes set forth in the*
43 *Oregon Forest Practices Act or the 208 Water Quality Program to minimize soil*
44 *disturbance and help maintain water quality;*
45

1 A construction management plan to minimize erosion and maintain water quality is required
2 in conjunction with the construction stormwater permit contained in Exhibit M of the SCA.
3 This plan will minimize soil disturbance and maintain water quality during road construction.
4

5 (j) *Land or construction clearing shall be kept to a minimum to minimize soil distur-*
6 *bances and help maintain water quality;*
7

8 See immediately above.
9

10 (k) *Complies with other conditions deemed necessary by the Hearings Officer.*
11

12 No other conditions on the construction or operation of the power plant have been identified
13 as necessary by Umatilla County.
14

15 (a) *Other Standards.*
16

17 Several other standards for uses in the LI zone apply to the proposed power plant and its related
18 and supporting facilities. These include: (1) Limitations on Use (UCDO Section 3.186); (2) Design
19 Review (UCDO Section 3.187); (3) Dimensional Standards (UCDO Section 3.188); and (4)
20 Supplementary Regulations (UCDO Chapter 4). These regulations are discussed below.
21

22 *Limitations on Use (UCDO Section 3.186).* This code section contains two applicable
23 requirements. The first is that all activities be conducted wholly within a building, or if not conducted
24 in a building, that the activities be screened unless the activity is more than 500 feet from surrounding
25 non-industrial uses or public roads. The second is that all noise, vibration, dust, odor, smoke,
26 appearance or other objectionable factors involved in any activity shall comply with appropriate state
27 and federal regulations. As described above and in Exhibit B of the SCA, activities will be conducted
28 within buildings with few exceptions. In addition, the energy facility site will be landscaped to screen
29 any exterior activities from view. The closest residential use is approximately 500 feet north of the
30 plant site. As described in Exhibits M and CC of the SCA, all applicable state and federal regulations
31 will be met during operation of the energy facility.
32

33 *Design Review (UCDO Section 3.187).* This code section provides that the Planning Director
34 may require landscaping around the building(s) or property line to insure conformance with county
35 policies, and require compliance with parking, setback and vision clearance standards. Proposed
36 landscaping for the Project is described above. The Project will include parking and access
37 improvements in conformity with county requirements. Setbacks are described immediately below.
38

39 *Dimensional Standards (UCDO Section 3.188).* This section establishes standards for lot size,
40 lot width, setbacks, and stream setbacks. The energy facility will be located on a lot containing
41 approximately 15 acres, well above the minimum lot size. Minimum lot width is well above the 100
42 foot requirement. The following setbacks will be observed: front yard -- 20 feet; side yard -- 20 feet;
43 rear yard -- 20 feet. Sewage disposal stream setbacks do not apply to this proposal as Lamb-Weston's
44 existing sanitary system will be utilized.
45

1 *Supplementary Regulations (UCDO Chapter 4).* Chapter 4 of the UCDO contains supple-
2 mentary regulations regarding signs, off-street parking and loading, access and vision clearance, fences
3 and riparian areas. Any signs erected in connection with the proposed power plant will comply with
4 the sign standards in UCDO Sections 4.010 to 4.040. Section 4.110 requires one parking space per
5 employee and one additional space per 200 square feet of building space. This standard will be met
6 or exceeded, as will the standards for off-street loading.

7
8 The access standards in UCDO Section 4.220 encourage shared access in industrial zones. The
9 existing access road to the energy facility site will be shared with Lamb-Weston, so that there is only
10 one access point onto Westland Road. There is no other access onto Westland Road within 200 feet.
11 In addition, the 15-foot vision clearance standard in UCDO Section 4.230(2) will be met.

12
13 Finally, any fences constructed in connection with the power plant will comply with applicable
14 Uniform Building Code requirements and will be placed outside of vision clearance areas. No riparian
15 vegetation is present at the energy facility site and UCDO Section 4.600 does not apply to this
16 component of the Project.

17
18 **(b) *Applicable County Comprehensive Plan Policies***

19
20 The following Umatilla County Comprehensive Plan Policies are applicable to the proposed
21 energy facility. The compliance of the Project with these policies is addressed below.

22
23 ***Economic Policies:*** The following economic policies are relevant to the proposed power plant:

- 24
25 1. *Encourage diversification within existing and potential resource-based industries.*
26
27 10. *Encourage industry and manufacturing diversification while preserving the more*
28 *productive agricultural lands.*

29
30 The proposed power plant will add approximately 25 full-time, year-round jobs to the county's
31 economy, helping to offset seasonal unemployment and underemployment. This will be done
32 on non-agricultural lands. As a new source of employment in a sector that is not highly
33 developed in the county, the proposed Project directly supports these policies.

- 34
35
36 7. *Cooperate with development-oriented entities in promoting advantageous aspects of the*
37 *area.*

38
39 The Project links with and promotes the area's comparative advantages in availability of labor,
40 reasonably priced land, access to energy sources, and excellent transportation access. It
41 supports this policy.

- 42
43 8. *Evaluate economic development proposals upon the following: will the proposal: (a)*
44 *increase or decrease available [water] supplies; (b) improve or degrade [water]*
45 *qualities; (c) balance [water] withdrawal with recharge rates; (d) be a beneficial use;*

1 (e) have sufficient quantities available to meet needs of the proposed project and other
2 existing and reasonably anticipated needs; and (f) reduce other opportunities and, if so,
3 will the loss be compensated by other equal opportunities?
4

5 This policy concerns the availability of water for future economic growth in the county. The
6 proposed power plant is located within one of the Port of Umatilla's industrial areas. The Port
7 has applied for, and received a water right permit to allow for future industrial development.
8 In other words, a supply of water for this project has already been set aside, and by helping
9 to fund the delivery system needed to complete the water supply to this area of the county, the
10 proposed power plant is supportive of this policy. Cooling water from the facility will be
11 treated and reused for water make up. The Project is supportive of this policy.
12

13 13. *Provide for two types of industrial classification: light industry with less offensive odors*
14 *and likely compatibility with commercial uses and heavy industry which may generate*
15 *noise, offensive odors, vehicular traffic, or require large amounts of energy and require*
16 *isolation from people-oriented land uses.*
17

18 The proposed power plant is compatible with commercial uses. Noise and odors generated by
19 the project are within applicable Oregon DEQ limits. Traffic generation, with 25 employees,
20 is quite low and well within the capacity of surrounding streets. There is no health or safety
21 reason to isolate the proposed facility and doing so would make the proposed co-generation of
22 steam to supply Lamb-Weston difficult if not impossible.
23

24 ***Agriculture Policies:*** As noted above, the power plant is located outside of agriculturally designated
25 areas, and is not on land currently in farm use (the gas pipeline and the transmission line are addressed
26 in the subsections following this one). As a source of process steam to the Lamb-Weston potato
27 processing plant, the power plant is supportive of agricultural uses in Umatilla County. As a result,
28 to the limited extent they apply to the power plant, the power plant is consistent with the policies.
29

30 ***Open Space, Scenic and Historic Areas, and Natural Resources Policies:*** There are no
31 inventoried significant open space, scenic, historic, or natural resource areas in the vicinity of the
32 power plant or that portion of the natural gas pipeline or electrical transmission line within the LI
33 zoning district. The only inventoried site in the vicinity, the Westland School, burned down in the late
34 1980s. There is no wetland and/or riparian vegetation on site. Although there are no inventoried
35 significant scenic sites or views in the area, Exhibit S of the ASC contains a description of the scenic
36 impacts of the Project, and proposed measures to mitigate for potential adverse visual impacts.
37

38 Policy 26 of the county's Open Space, Scenic and Historic Areas, and Natural Resources
39 Comprehensive Plan element calls for the county to "cooperate with the [Umatilla] Tribes, Oregon
40 State Historic Preservation Office, and others involved in identifying and protecting Indian cultural
41 areas and archeological sites." In accordance with this policy, the county referred the ASC to the
42 Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") and the State Historic Preservation
43 Office for further consultation. The applicant commits to continue to consult with all of these entities.
44

45 CTUIR has pointed out that the Comprehensive Plan anticipates an on-going effort to identify and

1 inventory cultural resources. Exhibit T of the ASC contains the results of the site surveys conducted
2 for cultural and archeological resources at the location of the proposed energy facility.

3
4 ***Air, Land and Water Quality Policies:*** The following policies from Chapter IX of the County's
5 Comprehensive Plan are relevant to the proposed power plant:

- 6
7 1. *Discharges from existing and future developments shall not exceed applicable federal and state*
8 *environmental quality standards.*
9
10 7. *Consider cumulative noise impacts and compatibility of future developments, including the*
11 *adoption of appropriate mitigating requirements of plan updates.*
12

13 The Project must meet federal and state environmental quality standards. DEQ requires that
14 it be designed with the Best Available Control Technology to maintain air emissions within
15 state and federal air quality standards. Cooling water will be treated and reused beneficially
16 for cooling water make up, avoiding impacts to surface and groundwater, and reducing
17 demands on limited water supplies. Impacts to fish and wildlife are assessed in detail in
18 Exhibit P of the ASC and other sections of this Staff Report. The power plant is consistent
19 with Policy 1.
20

21 The power plant must comply with state noise regulations. The surrounding land uses are
22 predominantly industrial, commercial and agricultural, and are not noise sensitive as defined
23 by DEQ rule. The power plant is consistent with Policy 7.
24

25 ***Natural Hazards Policies:*** The power plant is located outside of the designated floodway and
26 floodplain boundaries of the Umatilla River. Seismic issues are addressed in Exhibit G of the SCA.
27 The power plant's design takes into account potential earthquake hazards. As described above, the
28 fifteen-acre site is generally level, and has no slopes exceeding 25 percent.
29

30 **Gas Pipeline**

31

32 The entire natural gas pipeline is within the land use jurisdiction of Umatilla County. This
33 subsection describes how the proposed natural gas pipeline, connecting the power plant with the PGT
34 gas pipeline to the south, is consistent with the applicable comprehensive plan policies and zoning
35 regulations of Umatilla County. As described above, the pipeline would temporarily remove about
36 27 acres of land from agricultural use. This land would be contained within approximately a 50 foot
37 wide, four-mile long corridor. Construction of the pipeline is expected to occur over 3 to 4 months.
38 Once installed, the pipeline will be covered, and soils replaced. The pipeline will be partially
39 constructed along County Road 1237 and would not seriously interfere with farm operations and
40 practices. Although it will temporarily affect a limited amount of agricultural lands, these lands will
41 be returned to agricultural production upon completion of the pipeline construction. The Project will
42 not permanently remove agricultural lands from production and the Project will be in conformance with
43 the Comprehensive Plan.
44

45 **Applicable County Zoning Regulations**

1 *Light Industrial Zone*

2
3 As discussed above, the section of the gas pipeline closest to the plant site is on land zoned
4 Light Industrial. The pipeline is a "utility facility," which is a conditional use in the LI zone. UCDO
5 Section 3.184(16). This portion of the pipeline is included in the discussion above of the consistency
6 of the plant site with the conditional use criteria of the County Development Ordinance.
7

8 *Exclusive Farm Use (EFU) Zone*

9
10 The county's EFU zone permits outright the "construction and maintenance of local feeder lines
11 of utility companies and agencies." UCDO Section 3.011.4. The pipeline corridor for the Project
12 consists only of a lateral to connect the plant site to the PGT line, much of which is along existing
13 road right-of-way. Therefore, its construction is permitted outright in the county's EFU zone.
14

15 *(a) Applicable County Comprehensive Plan Policies*

16
17 As a use allowed without review under the county's zoning code, the lateral natural gas pipeline
18 is consistent with the county's Comprehensive Plan. While the county's Agriculture Policies (Nos. 9a
19 and 9b) prohibit certain non-farm uses in particular areas and make others conditional uses, they do
20 not regulate this use. The only agricultural policy with any relevance is Policy 8, which states that
21 "the county shall require appropriate procedures/standards/policies be met in the Comprehensive Plan
22 and Development Ordinance when reviewing non-farm uses for compatibility with agriculture." As
23 noted above, the pipeline will largely utilize existing road right-of-way and will be buried, such that
24 the only impacts to agriculture are during the three to four month construction period. These impacts,
25 due to the limited area and time frame, are not significant. The proposal is consistent with Policy 8.
26

27 **Transmission Line**

28
29 As described above, almost all of the required upgrading of the existing Umatilla Electric
30 Cooperative Association (UECA) transmission line will occur on lands under the land use jurisdiction
31 of Umatilla County. The 1/4 mile of new transmission line is also within county jurisdiction. This
32 subsection describes how the first alternate transmission line is consistent with applicable zoning
33 regulations and comprehensive plan policies of Umatilla County. This subsection is also applicable
34 to the second alternate transmission line because that line passes through the same land use districts
35 as the first alternate, except that the second alternate passes through the County's M2 (Heavy
36 Industrial) district. The M2 district allows utility facilities as conditional uses according to the same
37 criteria as F2 and R1 districts.
38

39 **Applicable County Zoning Regulations**

40
41 *Light Industrial Zone*

42
43 As discussed above, the section of the transmission line closest to the plant site is on land zoned
44 Light Industrial. The transmission line is a "utility facility," which is a conditional use in the LI zone.
45 Section 3.184(16). The transmission line is included in the discussion above of the energy facility.

1 *EFU and EFU-40 Zones*

2
3 The majority of the transmission line corridor is in the county's EFU and EFU-40 zones. The
4 "maintenance and minor betterment of existing transmission lines and facilities of utility companies
5 and agencies" is an outright permitted use in both of these zones. UCDO Sections 3.011.5 (EFU) and
6 3.051.5 (EFU-40). The proposed upgrading of the existing transmission line operated by UECA
7 consists of the replacement of approximately every other existing wooden pole with single-shaft steel
8 poles which will carry both existing 115 kV and 12.47 kV lines, and the new 230 kV lines. The
9 remaining wood poles may be maintained to help support the existing 12.47 kV circuit. No new right-
10 of-way is required in the EFU and EFU-40 zones. The upgrading of UECA's existing transmission
11 lines within an existing right-of-way is "minor betterment of existing transmission lines and facilities"
12 and is a permitted use in the EFU and EFU-40 zones.

13
14 As a use allowed under the County's zoning code, the upgrade of the existing UECA
15 transmission line in the EFU and EFU-40 zones is consistent with the County's comprehensive plan.
16 Although the County's agricultural policies (Nos. 9a and 9b) prohibit certain non-farm uses in
17 particular areas and make others conditional uses, they do not regulate the upgrading of the
18 transmission line. The only agricultural policy with any relevance is Policy 8, which states that "the
19 county shall require appropriate procedures/standards/policies be met in the Comprehensive Plan and
20 Development Ordinance when reviewing non-farm uses for compatibility with agriculture." The
21 portion of the transmission line located in the EFU and EFU-40 zones will be an upgrade of the
22 existing UECA transmission line, entirely within the existing right-of-way. The impacts to agriculture
23 will be insignificant; the only disruption of soil will occur during a brief construction period, when
24 existing wooden poles will be replaced with single shaft steel poles within the existing right-of-way.
25 Thus, the proposal is consistent with Policy 8.

26
27 *F-1, F-2, and R-1 Zones*

28
29 As discussed above, the transmission line passes through land within the City of Umatilla's
30 urban growth boundary zoned by the county as F-1, F-2, and R-1. The one-quarter mile section of
31 new transmission line is located entirely within the F-1 zone. These three zones are not located within
32 city limits, but are only within the City of Umatilla's urban growth boundary.

33
34 A portion of the upgraded transmission line and all of the new transmission line is located on
35 land zoned F-1. The F-1 zone is an exclusive farm use zone. Included among the permitted uses
36 allowed outright within the F-1 zone are "utility facilities necessary for public service except
37 commercial facilities for the purpose of generating power for public use by sale." Section
38 3.012(5)(prior zoning ordinance). The transmission line is a utility facility necessary for public
39 service, and does not generate power for public use by sale. Therefore, a zoning permit or land use
40 approval is not required.

41
42 A "utility facility" is a conditional use in both the F-2 (general rural) and R-1 (agri-
43 cultural/residential) zones. See Sections 3.024(14) and 3.072(6)(prior zoning ordinance). Therefore,
44 the portion of the upgraded transmission line within the F-2 and R-1 zones must satisfy county
45 conditional use criteria. The joint management agreement between the city and the county requires

1 that the city's comprehensive plan be applied if the county's conditional use criteria require the
2 application of comprehensive plan policies or goals.

3
4 *(a) Conditional Use Criteria*
5

6 Section 7.060(55) of the Umatilla County Zoning Ordinance identifies the conditional use
7 criteria relevant to utility facilities. These are analyzed below:
8

- 9 *(a) The facility is designed to minimize conflicts with scenic values and adjacent*
10 *recreational residential, forest, grazing and farm uses as outlined in policies of*
11 *the Comprehensive Plan;*
12

13 As discussed above, the policies of the City of Umatilla Comprehensive Plan apply within the
14 urban growth boundary. There are no recreational residential or forest uses adjacent to the
15 existing UECA powerline corridor. The city's Comprehensive Plan does not identify any
16 scenic values associated with the relevant section of the power line. Some agricultural uses are
17 located adjacent to the existing right-of-way. However, the location and design of the
18 transmission line avoids any conflict with grazing and farm uses, and any unidentified scenic
19 values, by utilizing the existing right-of-way and upgrading the existing facility operated by the
20 Umatilla Electric Cooperative.
21

- 22 *(b) The facility be of a size and design to help reduce noise or other detrimental*
23 *effects when located adjacent to recreational residential dwellings;*
24

25 The relevant portion of the transmission line is not located adjacent to recreational residential
26 dwellings.
27

- 28 *(c) The Hearings Officer may require that the facility be fenced and landscaped*
29 *buffering and/or screening be provided;*
30

31 The transmission line will be suspended from steel poles, which have minimal visual impact
32 at ground level. Thus, landscaping is not appropriate.
33

- 34 *(d) The facility does not materially alter the stability of the overall land use pattern*
35 *of the area;*
36

37 The Project will utilize an existing powerline right-of-way and will upgrade the existing poles
38 from wood to steel. It does not introduce a new land use to the area, nor will it result in any
39 significant secondary effect (noise, traffic, population growth, etc.) that could alter the stability
40 of the land use pattern of the area.
41

- 42 *(e) The facility does not constitute an unnecessary fire hazard, and consideration be*
43 *made for minimum fire safety measures which can include but are not limited to:*
44

- 45 *(A) The site be maintained free of litter and debris;*

1 The facility will be located in the existing Umatilla Electric Cooperative
2 powerline right-of-way, which is maintained by the UECA. Applicant
3 anticipates that UECA will continue to maintain the right-of-way, including
4 removal of litter and debris, to minimize the fire hazard associated with the
5 facility.
6

7 (B) *Using non-combustible or fire retardant treated materials for structures
8 and fencing;*
9

10 The upgraded transmission line will use steel poles, rather than the existing
11 wooden poles.
12

13 (C) *Clearing site of all combustible materials within thirty (30) feet of struc-
14 tures;*
15

16 See discussion above, under criterion (A).
17

18 (f) *Major transmission tower, poles and similar gear shall consider locations within
19 or adjacent to existing rights-of-way in order to take the least amount of timber-
20 land out of production and maintain the overall stability and land use patterns
21 of the area, and construction methods consider minimum soil disturbance to
22 maintain water quality;*
23

24 The relevant portion of the transmission line will utilize the existing transmission right-of-way
25 held by UECA. Replacement of existing wooden poles with steel poles will require only
26 temporary and very limited soil disturbance.
27

28 (g) *The facility shall adequately protect fish and wildlife resources by meeting mini-
29 mum Oregon State Department of Forestry regulations;*
30

31 This regulation applies only on forest lands. Nevertheless, where the transmission line crosses
32 the Umatilla River, poles will be placed to avoid riparian habitat. As discussed in Exhibit P of
33 the ASC, upgrading the electrical transmission line will result, at most, in a temporary distur-
34 bance to ground-nesting birds and small mammals. Those impacts will be mitigated by
35 scheduling construction outside the nesting season or developing other mitigation in
36 coordination with the Oregon Department of Fish and Wildlife.
37

38 (h) *Access roads or easements be improved to a standard and follow grades recom-
39 mended by the Public Works Director;*
40

41 No access improvements will be required in conjunction with upgrading the transmission line.
42

43 (i) *Road construction be consistent with the intent and purposes set forth in the
44 Oregon Forest Practices Act or the 208 Water Quality Program to minimize soil
45 disturbance and help maintain water quality;*

1 No road construction will be required in conjunction with upgrading the transmission line.

2
3 (j) *Land or construction clearing shall be kept to a minimum to minimize soil distur-*
4 *bances and help maintain water quality;*

5
6 Soil disturbance will be minimal, given the single steel pole structure from which the
7 transmission line will be suspended. Areas of soil disturbance will be small in dimension and
8 separated from each other.

9
10 (k) *Complies with other conditions deemed necessary by the Hearings Officer."*

11
12 No other conditions on upgrading the existing transmission line have been identified as
13 necessary by Umatilla County.

14
15 **Applicable City of Umatilla Zoning Regulations**

16
17 This section addresses the relevant portion of the City of Umatilla's comprehensive plan and
18 land use regulations.

19
20 ***Power Plant***

21
22 The power plant is not located within the city's planning jurisdiction.

23
24
25 ***Gas Pipeline***

26
27 The gas pipeline is not located within the city's planning jurisdiction.

28
29
30
31
32 ***Transmission Line***

33
34 As indicated on Figure I-4, the existing UECA transmission line corridor passes through several
35 zoning districts inside the city limits of the City of Umatilla. The city's zoning ordinance allows
36 certain Community Service uses, "which, by reason of their public convenience, necessity, unusual
37 character or effect on the neighborhood, may be appropriate in any district, but not suitable for listing
38 within the other sections of this ordinance." Zoning Ordinance No. 554 (UZ0), Section 3.120. These
39 community service uses are permitted throughout the city as conditional uses. "Community Service"
40 uses include "[p]ower substation or other public utility building or use." UZ0 Section 3.121.

41
42 UZ0 Section 7.020(4) identifies the standards of approval for conditional uses, including
43 Community Service uses, as follows:

44
45 "For such facilities as a utility substation, water storage tank, radio or

1 television transmitter, etc., the Planning Commission shall determine that
2 the site is so located as to best serve the intended area with a minimum
3 effect on surrounding property. Towers, tanks, poles, overhead wires,
4 pumping stations and similar structures shall be located, designed and
5 installed with suitable regard for aesthetic values."
6

7 The first alternate transmission line upgrade complies with this standard. The upgrade
8 will follow an existing right-of-way within the city limits, but with new easements that may
9 increase the width of the right-of-way. It will replace approximately every other wooden pole
10 that supports the existing 115 kV line and 12.47 kV line with steel poles that will support both
11 the existing lines and the new 230 kV line. The remaining wood poles may be maintained to
12 help support the existing 12.47 kV circuit. This minimizes the effect on surrounding property,
13 as compared with establishing an additional right-of-way or duplicating facilities within or
14 adjoining the existing right-of-way.
15

16 The second alternate transmission line also complies with the standard. The second
17 alternate would replace wooden poles with steel poles and reuse the wooden poles as described
18 above. In addition, the second alternate satisfies the standard in that it would move the
19 transmission line farther away from residential subdivisions west of Power Line Road in the City
20 of Umatilla and it would reduce the land area impacted by the transmission line.
21

22 Similarly, upgrading existing facilities minimizes the aesthetic impacts of the 230 kV
23 powerline. Use of steel poles will have little if any additional visual impact as compared to the
24 existing wooden poles.
25

26 (a) *Applicable City Comprehensive Plan Goals and Policies*
27

28 According to the city's Comprehensive Plan, the plan is not intended to deal with
29 detailed site planning issues. The city's comprehensive plan is implemented, for purposes of
30 reviewing specific development proposals, through the zoning code provisions addressed above.
31 Nevertheless to assure a complete analysis of all possible issues, the following analysis addresses
32 those Goals and Policies of the city's comprehensive plan that may be relevant to the Project.
33

34 **Land Use Element:** The following two policies may be relevant to the proposed transmission
35 line:
36

37 "Development proposals will be required to conform to the City's
38 Zoning and Subdivision Ordinance."
39

40 "The comprehensive plan will designate types of developable areas
41 that will be derived from primary and secondary categories of
42 development suitability."
43

44 As addressed above, the upgrading of the UECA transmission line conforms to the city's
45 Zoning Ordinance. No land division is required for the upgrade. The transmission line is

1 located on lands designated as developable in the comprehensive plan.
2

3 ***Open Space, Scenic and Historic Areas, and Natural Resources Element:*** The comprehensive
4 plan provides that: "the City will protect natural resource areas and require that the long-range
5 availability and use of the following will not be limited or impaired by development: mineral
6 and aggregate deposits, energy resources, domestic water supplies, fish and wildlife habitats,
7 ecologically and scientifically significant areas, agricultural land not needed for urbanization, and
8 historically significant sites/areas." Comprehensive Plan at 10.
9

10 By following the existing UECA transmission line right-of-way, the new transmission line will
11 avoid or minimize any impacts on inventoried Goal 5 resources.
12

13 ***Development Hazards Element:*** This element of the city's comprehensive plan provides that
14 the city will prohibit development in areas with natural limitations unless it is shown that design
15 or engineering techniques can avoid adverse effects. Again, by following existing right-of-way
16 that is already developed for the same use, the transmission line will avoid development hazards.
17

18 ***Recreation Element:*** The recreation element of the city's comprehensive plan states that "the
19 city will retain and promote, where possible, the development of linear parks and pathways
20 along shore lines and utility easements and neighborhood parks." There are no publicly-
21 designated linear parks or pathways along the UECA transmission line that are to be retained,
22 and no facilities are planned along the line. Evidence is not available that would enable EFSC
23 to determine whether the proposed transmission line upgrade from 115 kV to 230 kV would
24 change the suitability or unsuitability of the transmission line corridor for a linear park or
25 pathway.
26

27 ***Economics Element:*** This element of the comprehensive plan requires the city to coordinate
28 with the Port of Umatilla and the State Department of Economic Development on local and
29 regional economic development projects. The Economic Development Department has been
30 given the opportunity to review this Project through the EFSC coordination process. The
31 applicant has worked closely with the Port of Umatilla.
32

33 ***Urban Facilities and Services:*** The upgrading of the UECA transmission line does not require
34 any facilities or services, nor does it affect existing services.
35

36 Both the city and the county recommended inclusion of certain conditions in the site
37 certificate for further assurance of applicant's compliance. Their recommendations are included
38 in the following conditions.
39

40 At the hearing on the Application before the EFSC on October 8, 1993, testimony was
41 received by the Council that an adjacent property, owned by Mr. Howard S. Gass was a more
42 appropriate location for the proposed energy facility. Mr. Gass' property contains approximately
43 350 acres adjoining the proposed site of the energy facility. Mr. Gass' property is zoned EFU
44 by the County. The energy facility would be a conditional use in the EFU zone. Section 3.106
45 (Limitations on Conditional Uses (in the EFU zone)) requires all conditional uses in the EFU

1 zone to be situated upon generally unsuitable land for the production of farm crops, and requires
2 that "alternative sites within *** 'exception areas' were evaluated and found not to be
3 acceptable."
4

5 EFSC's rules do not require an applicant for a site certificate for this type of energy
6 facility to evaluate alternative sites (cf. OAR 345-24-050 and 345-24-070, requiring an analysis
7 of alternative sites for linear facilities that are "energy facilities" as defined in ORS 469.300).
8 EFSC either rejects or approves the applicant's location as proposed.
9

10 Even if EFSC considered a proposed alternative site for this facility in its deliberations
11 on the site proposed by the applicant, Mr. Gass has not made a showing that the site he owns
12 is a better option.
13

14 Mr. Gass' written submission shows that his property is currently in farm use. As a
15 result, it is unlikely that a showing could be made that the land is unsuitable for farm crops.
16 In addition, given that the proposed site of the energy facility is an exception area zoned for
17 Light Industrial Use, which permits the proposed energy facility use as a conditional use, a
18 finding that alternative sites were found not to be acceptable can not be made.
19

20 Based on the foregoing analysis, which the EFSC finds correctly applies and interprets
21 the applicable substantive land use criteria of the County and the City, the land use standard in
22 OAR 345-22-030 is satisfied and the proposed facility complies with the statewide planning goals
23 under OAR 345-22-000(2)(c).
24

25 *Conditions*

26
27 (1) Following issuance of the site certificate by the Energy Facility Siting
28 Council, and prior to commencing construction of the facility, the applicant shall obtain all
29 appropriate land use permits and approvals and pay all required fees of Umatilla County and the
30 City of Umatilla. Umatilla County and the City of Umatilla shall continue to exercise
31 enforcement authority over such land use permits and approvals.
32

33 (2) The applicant shall file with the Umatilla County Planning Department a
34 landscaping plan for the power plant prior to issuance of a building permit. The landscaping
35 plan shall incorporate native vegetation where feasible and shall provide screening and visual
36 buffering for the power plant and its parking and loading areas to the extent reasonably feasible.
37

38 (3) The power plant shall incorporate an on-site fire suppression system and shall
39 be constructed from fire retardant materials to the extent reasonably feasible. The power plant
40 design shall incorporate spill prevention and containment designs for the storage of all hazardous
41 materials. Compliance with all applicable fire suppression and hazardous material safety
42 requirements shall be established in consultation with the Hermiston Fire Department, the State
43 Fire Marshall, and the Building Codes Agency.
44

45 (4) The applicant shall file a site plan with the County which shall consist of a

1 map showing the property lines, location of buildings, access road or roads and the names of
2 the owner and developer of the site of the energy facility. The site plan shall also show that
3 county ordinances related to parking and loading requirements, setbacks, signs, and vision
4 clearance are satisfied. This shall be submitted to the county prior to the county issuing the
5 building permit.
6

7 (5) If the applicant purchases all or any part of the site of the energy facility, the
8 applicant shall file with the county an application for a minor partition in conformance with the
9 information included in the site certificate application, and file and record a final plat in
10 accordance with county ordinances.
11

12 (6) Prior to commencing construction of the energy facility, the applicant shall
13 submit a plan acceptable to EFSC, in consultation with Umatilla County, for responding to an
14 emergency at the Umatilla Army Depot. The plan shall be developed in consultation with the
15 Umatilla County Chemical Stockpile Emergency Preparedness Program.
16

17 (7) With the exception of the alternate alignment described in HGC's amendment
18 to the application for site certificate (dated December 24, 1993), and the one-quarter mile section
19 of new right-of-way required immediately south of the McNary substation, the transmission line
20 upgrade shall be constructed substantially along the route of the existing UECA right-of-way.
21 Any new right-of-way required for the transmission line shall avoid populated areas to the extent
22 practicable. HGC shall configure the transmission lines to reduce EMF. Upon certification and
23 throughout the construction and operation of the facility, HGC shall provide on request by the
24 public, information in HGC's possession or publicly available related to EMF levels associated
25 with the power plant and related transmission lines.
26

27 (8) To minimize the impact on future development in the City of Umatilla, the
28 transmission line upgrade shall follow easements 60 feet from the centerline in either direction
29 (120 feet total) except as necessary to comply with other federal, state, and local regulations or
30 other Site Certificate conditions.
31

32 (9) The applicant shall take all reasonable precautions to minimize dust and noise
33 during construction.
34

35 (10) At the time of filing for the required city land use approval, applicant shall
36 file a map at a scale satisfactory to the city describing the transmission line corridor to allow the
37 city to appropriately depict the corridor on the official city zoning map.
38

39 **The Applicant**

40 (a) Organizational, managerial and technical expertise standard

41 To meet this standard, applicant must have "a reasonable probability of successful
42 construction and operation of the facility." OAR 345-22-010(1).
43
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45

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Discussion

Although applicant was formed expressly for constructing and operating the facility, its partners are wholly-owned subsidiaries, two of Bechtel Enterprises and one of PG&E Enterprises, which respectively are wholly-owned subsidiaries of Bechtel Group, Inc., and Pacific Gas and Electric Company. All these companies have significant experience in managing, constructing or operating energy facilities similar to the proposed facility. In this instance, three companies affiliated with Bechtel Enterprises and PG&E Enterprises would manage, construct and operate the proposed facility: U.S. Generating Company, Bechtel Power Corporation and U.S. Operating Services Company. Each of these companies has experience related to energy facilities, has available technical expertise and performed similar work in the past.

Therefore, applicant has a reasonable probability of successful construction and operation of the facility. The first requirement of the above standard is satisfied.

The above standard also requires that the applicant:

**** have all necessary state permits and approvals to allow construction and operation of the facility in the manner contemplated by the applicant in the application. If the applicant will not itself obtain any necessary permit or approval, but will rely on a permit or approval issued to a third party, the Council must determine that the named third party has a reasonable likelihood of obtaining the necessary permit or approval, and that the applicant has a reasonable likelihood of entering into a contractual or other arrangement with the third party. ***."

OAR 345-22-010(2)

The other state permits and approvals to be obtained by Applicant for the construction and operation of the facility either are addressed in this Order (i.e., land use permits), are federally-delegated permits or approvals not subject to the siting process (SB 1016, Section 23(1)(b)), or are permits or approvals involving design or operational issues that do not relate to the siting the energy facility (SB 1016, Section 11(5)). One third-party approval will be necessary to allow operation of the energy facility. Other than this approval, no other third-party permit or approval is necessary to allow construction or operation of the facility.

The one third-party approval that will be required relates to applicant's intent to obtain the water necessary for the operation of the facility from the Port of Umatilla's regional water supply system. The Port has designed this system to deliver water to the Port's industrial properties and other users in the area near the intersection of Interstate Highways 82 and 84 including the site of the energy facility. This regional water supply system is scheduled to begin service in 1994. Preliminary engineering for the system is presently underway.

1 One of the major planned users of the system is the City of Hermiston. The City of
2 Hermiston is proposing to fund its portion of the system cost through issuance of general
3 obligation bonds. Voter approval of the bonds is being sought in November 1993. Even if the
4 bond measure is not approved, the Port will proceed with construction of the system in a manner
5 that will allow it to supply water to the facility as well as to other users.
6

7 The Port already has a permit to use up to 155 cubic feet per second of water from the
8 Columbia River. Under the terms of the permit the Port must commence construction of the
9 system and apply at least some portion of its permitted right to beneficial uses by October 1,
10 1997 unless the time is extended by the Water Resources Department. Applicant will use up to
11 5.8 cubic feet per second of water for operation of its facility at full power. Applicant has
12 entered into contract negotiations with the Port for delivery of water to the facility, as have other
13 potential users of the system.
14

15 Based upon the above, the Port has a "reasonable likelihood" of applying at least some
16 portion of its water right to a beneficial use by October 1, 1997, or within the period of any
17 approved extensions. Applicant has a "reasonable likelihood of entering" into a contract with
18 the Port to obtain the water necessary to operate the facility. OAR 345-22-010(2).
19

20 Therefore, the second requirement of the above standard is also met. Applicant's
21 observance of the following conditions would ensure that applicant obtains the previously-listed
22 permit necessary for construction and operation of the facility.
23

24 *Conditions*

25
26 (1) Applicant shall obtain all necessary state and local permits or approvals
27 required for the construction and operation of the facility prior to the commencement of
28 construction. Said permits and approvals are listed in section (1) of the Findings of Fact of this
29 order.
30

31 (2) A quantity of water sufficient to supply the energy facility shall be applied
32 to beneficial use under the Port of Umatilla Water Right Permit Number 49497 by October 1,
33 1997, unless the time limits for the permit are otherwise extended.
34

35 (3) The applicant shall have a contract or other binding arrangement with the
36 Port of Umatilla for a quantity of water sufficient to supply the energy facility prior to
37 commencement of construction.
38

39 (b) Financial Assurance Standard

40 This standard has two requirements. First, the applicant and all co-owners:
41

42 "***shall possess, or have reasonable assurance of obtaining, the
43 funds necessary to cover the estimated construction, operating and
44 retirement costs for the design lifetime of the facility including
45

1 related fuel-cycle costs ***."

2
3 OAR 345-22-050(1).

4
5 *Discussion*

6
7 Although applicant is a newly formed partnership without previous experience, its
8 partners are wholly-owned subsidiaries of PG&E Enterprises and Bechtel Enterprises, whose
9 three affiliates would actually manage, construct, operate and retire the facility. The personnel
10 of the affiliates have extensive experience in the management, construction and operation of
11 energy facilities. In addition, the proposed facility would utilize a successful technology. The
12 expertise of the personnel and the proven nature of the facility should reasonably allow applicant
13 to attract financing.

14
15 Applicant's equity contribution would be about \$88 million, approximately 20 percent
16 of the cost of the facility. Applicant's partners would make their equity contributions according
17 to forms of financing used successfully in the development of other energy facilities. The letter
18 from Credit Suisse supports the ability of applicant to obtain financing.

19
20 At this stage of development of the facility, applicant is not required to have a contract
21 for the sale of power. However, as a condition to the exemption from the requirement to
22 demonstrate need, applicant must have a contract before commencing construction of the facility.

23
24 Finally, applicant has undertaken strategic planning based upon consideration of its
25 financial needs, operational needs, marketing strategies, constraints, unexpected problems and
26 other issues which may affect the success of the facility.

27
28 The applicant has also committed to plan for and fund the retirement of the facility.
29 Retirement costs are estimated at \$5 million, a fraction of the estimated construction costs.

30
31 Based upon the above facts, applicant has reasonable assurance of obtaining the necessary
32 financing to cover the estimated construction, operating and retirement costs for the design
33 lifetime (30 years) of the project. Moreover, applicant's observance of the following conditions
34 provides further financial assurance.

35
36 The second requirement of the above standard is that applicant and all co-owners:

37
38 "**** will be capable of providing funds as needed to construct,
39 operate, and retire the facility without violating their respective
40 bond indenture provisions, articles of incorporation, common stock
41 covenants, or similar agreements."

42
43 OAR 345-22-050(2).

44
45 Applicant submitted an opinion of counsel that applicant would be capable of providing

1 funds as needed to construct, operate and retire the facility without violating its bond indenture
2 provisions, partnership agreement or similar restrictions or contractual obligations.
3

4 Therefore, based upon the above facts applicant has satisfied both requirements of the
5 above standard. Conditions assuring that funds will be available to cover the estimated costs of
6 retiring the facility are contained in the section addressing the retirement standard. OAR 345-
7 22-130.
8

9 *Conditions*

10
11 (1) Prior to commencement of construction of the facility and within a reasonable
12 time after they become available, the Applicant shall submit to the EFSC evidence that the
13 Applicant has received commitments for equity contributions and project financing with a
14 repayment period not longer than the duration of the power sales contract required under
15 Condition (2) under the discussion on the Need For Power standard, in amounts sufficient for
16 construction and operation of the facility. Evidence may be in the form of a certificate attached
17 to the site certificate. This condition may be satisfied by delivery to EFSC of an executed
18 certificate substantially in the form attached hereto as Exhibit A.
19

20 (2) Within five days after the construction financial closing, the Applicant shall submit
21 to EFSC evidence that the equity contributions and loans have been made to the Applicant in
22 amounts sufficient for the construction and post-construction financing of the facility. This
23 condition may be satisfied by delivery to EFSC of an executed certificate substantially in the
24 form attached hereto as Exhibit B.
25

26 (3) In the event that the Applicant desires to commence construction of the facility
27 prior to the construction financial closing, the Applicant shall submit to the State of Oregon,
28 through EFSC, prior to commencing construction, a bond or other comparable security in the
29 amount of \$5 million, which funds shall be used to restore the site (including the transmission
30 line and gas pipeline rights-of-way) if the Applicant fails to complete construction of the facility
31 by the deadlines set forth in the Site Certificate. The bond or other comparable security shall
32 be issued by a surety acceptable to EFSC in a form acceptable to EFSC. Construction activities
33 along the transmission line and gas pipeline rights-of-way undertaken prior to the construction
34 financing closing shall, to the extent feasible, be minimized.
35

36 **Impacts Caused by Construction, Operation, or Retirement**

37
38 Ten standards relate to the impacts which construction, operation or retirement of this
39 energy facility may cause.
40

41 (a) General Standard of Review

42
43 This standard relates to the requirements of Oregon Laws 1993, Senate Bill 1016, Section
44 22 (2)(b). This subsection of the General Standard of Review requires that EFSC must
45 determine that the facility complies with other Oregon statutes and rules applicable to the

1 issuance of a site certificate for the facility (other than the applicable siting standards in ORS
2 Chapter 469 and their implementing rules). Compliance with statutes and rules relating to
3 federally-delegated programs, those involving design or operational issues that do not relate to
4 siting the facility, and those relating to land use, are also excepted from this standard.
5

6 *Discussion*

7
8 For this facility, the only applicable rule of another agency not addressed through one
9 of the siting standards in OAR 345 Division 22, with which EFSC must determine compliance
10 is OAR 340-35-035, which imposes noise limits for new industrial or commercial noise sources.
11

12 Based on currently available measured data, it appears that the more stringent noise
13 standard will be the limitations on new industrial noise sources alone, rather than the limit on
14 increases in overall ambient noise levels. While the noise emissions that will be generated by
15 the energy facility cannot be determined with precision until final design of the project, there
16 is expert opinion in the record, and EFSC finds that by utilizing standard industry practices, the
17 facility can comply with applicable noise limits. Such practices include, but are not limited to,
18 the design and selection of components, the location and orientation of components, shielding
19 and noise dampening, or other techniques. The applicant has committed to operating the facility
20 in compliance with applicable DEQ noise regulations, and the conditions below require
21 monitoring to assure that the noise limits will be met. Based on the foregoing, the DEQ noise
22 regulations will be met.
23

24 *Conditions*

25
26 (1) The applicant shall design, select, locate and/or orient components of the
27 energy facility, or use shielding, noise dampening or other techniques necessary to ensure that
28 the operation of the energy facility complies with OAR 340-35-035.
29

30 (2) The applicant shall perform noise surveys in accordance with the
31 requirements of OAR 340-35-035 within two months of: (a) the date the first unit commences
32 operation; (b) the date first unit is operating at full rated capacity; (c) the date the second unit
33 commences operation; and (d) the date both units are operating at full rated capacity. The unit
34 operating conditions shall be documented when measurements are made in accordance with
35 subparts (a) and (c) above. When taking the measurements required by (b) above, the applicant
36 shall conduct the surveys with the operating unit operating at within ten percent of rated power
37 When taking the measurements required by (d) above, the applicant shall conduct the surveys
38 with both units operating at within ten percent of rated power
39

40 (3) During construction, and operation of the facility, the applicant shall make
41 information in the applicant's possession about the noise levels generated by the facility available
42 to the public. In selecting sensitive receptors for the noise surveys and analysis, the applicant
43 shall comply with applicable DEQ rules and consider all noise sensitive properties within one-
44 half mile of the energy facility (the impact area).
45

1 (4) The applicant shall consult with Umatilla County and the City of Umatilla and
2 with neighbors to the energy facility site to minimize the impacts of construction noise.

3
4 (b) Protected Area Standard

5
6 This standard prohibits the siting of an energy facility in any of the listed protected areas.
7 OAR 345-22-040(1). The proposed site is not within any of the protected areas.

8
9 The standard permits the siting of a facility outside the listed protected areas so long as
10 the "design, construction and operation of the facility *** will not result in significant adverse
11 impact" to any of the protected areas.

12
13 *Discussion*

14
15 There are seven protected areas within 20 miles of the site, but none is within four miles
16 of the site except for the Power City state wildlife area (1.5 miles from the transmission line).
17 The topography is reasonably expected to shield those seven protected areas from noise, light
18 and glare which may result from construction or operation of the proposed facility. In addition,
19 because the facility must comply with air quality requirements, no significant adverse impact on
20 those protected areas from air pollution is reasonably expected. Although waste water vapor
21 may drift from the cooling towers and deposit low concentrations of salts in the vicinity of the
22 energy facility site, no drift is reasonably expected in the protected areas.

23
24 Therefore, the above standard is met.

25
26 (c) Fish and wildlife standard

27
28 According to this standard, the "design, construction, operation and retirement" of the
29 proposed facility must be "consistent with the fish and wildlife mitigation goals and standards
30 of OAR 635-415-030." OAR 345-22-060. The applicable mitigation goals and standards are
31 those for state sensitive species, which require no net loss of habitat units or values.

32
33 *Discussion*

34
35 During 1992, 1993 and 1994, applicant engaged Woodward Clyde Consultants to conduct
36 wildlife surveys at the site of the proposed facility including the rights-of-way of the gas pipeline
37 and the alternate transmission lines. Woodward Clyde observed no threatened or endangered
38 species, and no critical habitat for such species. Woodward Clyde did observe four sensitive
39 birds listed by ODFW in the impact area for the gas pipeline and first alternate transmission
40 line. These were the Long-billed curlew (*Numenius americanus*), Swainson's Hawk (*Buteo*
41 *Swainsonii*), Grasshopper sparrow (*Ammodramus savannarum*), and bank swallow (*Riparia*
42 *riparia*).

43
44 Because the portion of the site containing the energy facility is within an industrial area,
45 and not within the flood plain or riparian zone of the Umatilla River, no net loss of habitat units

1 or habitat value is reasonably expected during construction of the energy facility. Operation and
2 retirement of the facility are not expected to affect threatened, endangered, or sensitive species
3 or their habitat. The gas pipeline and the alternate transmission lines can be designed and
4 constructed to avoid impacts to habitat units or values for the four sensitive bird species,
5 primarily by scheduling construction outside of the nesting season. The portions of the pipeline
6 and the alternate transmission lines potentially affected by such scheduling constraints are small
7 enough so that the overall construction schedule should not be affected.
8

9 In addition, the discharge of water during operation of the facility would not adversely
10 affect fish or aquatic habitat in either the Columbia or Umatilla River due to the fact that there
11 will be no wastewater discharge to the rivers. Moreover, the rate of water withdrawal during
12 operation of the facility is so low that it is reasonably expected that operation of the facility
13 would not impact aquatic habitat or change the amount of habitat available for fish species.
14

15 Under the above standard, EFSC has an interest in the effect of water withdrawal on fish
16 and wildlife during operation of the proposed facility. The standard applies to the "design,
17 construction, *operation* and retirement of a facility." (Emphasis added).
18

19 Water withdrawal by operation of the facility alone is not reasonably expected to have
20 an adverse impact on aquatic habitat or fish species. Nevertheless, Applicant has committed to
21 mitigate for indirect impacts associated with the project, and to consult with ODFW in
22 developing mitigation for such impacts.

23 Because EFSC has an interest in the effect of water withdrawal by the facility, EFSC has
24 an interest in the mitigation in which applicant may become involved which may relate to that
25 effect, at least to the extent in requiring that the mitigation is consistent with ODFW mitigation
26 goals and standards.
27

28 Therefore, the requirement of the above standard is satisfied. The following conditions
29 ensure consistency with ODFW's mitigation goals and standards.
30

31 *Conditions*

32
33 (1) Areas disturbed by construction of the power plant, gas pipeline and
34 transmission line shall be revegetated upon completion of construction. Revegetation shall
35 emphasize the use of native species.
36

37 (2) If feasible, the applicant shall schedule the construction of the gas pipeline
38 and transmission line to occur outside the nesting season for the state sensitive species previously
39 identified in the Woodward-Clyde field surveys (mid-April to August 1). If the applicant cannot
40 schedule construction activities outside the nesting season, pre-construction biological surveys
41 shall be conducted at the energy facility site, along the affected portion of the transmission line
42 or gas pipeline right-of-way to identify location of nest sites. If the surveys do not locate any
43 nest sites of the state sensitive species named above, construction may proceed. If the surveys
44 do locate nest sites, the applicant shall submit to EFSC mitigation plans acceptable to EFSC in
45 consultation with ODFW. The applicant shall not commence construction in the area of the

1 identified nest sites until EFSC, in consultation with ODFW, has approved the mitigation plan.
2 EFSC will make every reasonable effort to review the plans, consult with ODFW, and revise
3 or approve the plans as quickly as possible.
4

5 (3) The transmission line shall either span or otherwise avoid wetland areas.
6 Poles shall be set back from the Umatilla River as much as possible.
7

8 (4) Because of susceptibility of soils in the project area to wind erosion,
9 precautions will be taken during construction to minimize erosion. This shall include watering
10 of the site and pipeline access road and/or use of dust palliatives.
11

12 (5) The applicant shall notify the Northeast Regional office of the Oregon
13 Department of Fish and Wildlife at least one week before the start of construction for the power
14 plant, transmission line or pipeline.
15

16 (6) If appropriate, topsoils and subsoils should be segregated during excavation
17 for the pipeline to minimize impacts on soil fertility.
18

19 (7) Applicant shall consult with ODOE and ODFW on any mitigation because
20 of water withdrawal which is provided according to the terms of the settlement agreement with
21 Columbia Basin Institute.
22

23 (d) Threatened or endangered species standard
24

25 This standard requires that the design, construction operation and retirement of the
26 facility be consistent with any applicable conservation program adopted pursuant to ORS
27 496.172(3) or ORS 564.105(3). If no conservation program applies, and none does in this case
28 for the reasons discussed below, the facility must not have the potential to appreciably reduce
29 the likelihood of the survival or recovery of any threatened or endangered species listed under
30 ORS 496.172(2) or ORS 564.105(2). These standards relate to the protection of both wildlife
31 and plant species listed as threatened or endangered.
32

33
34 *Discussion*
35

36 ODFW has listed the two salmon species as threatened, but has not adopted a recovery
37 plan at this time. Woodward Clyde observed no wildlife or plant species listed as threatened
38 and endangered during its field surveys. Therefore, the requirement in the above standard for
39 compliance with conservation programs for such species adopted by ODFW and the Department
40 of Agriculture does not apply. OAR 345-22-070(a).
41

42 The two chinook salmon species, listed as threatened by ODFW, migrate past the site of
43 the facility from May through June when the spring flows average between 313,000 and 399,000
44 cfs. Even in very low water years, spring flows are seldom below 200,000 to 220,000 cfs
45 which are recommended for fish passage. The withdrawal of 4.2 to 5.8 cfs of water during

1 operation of the facility would not appreciably reduce the likelihood of salmon passage. EFSC
2 has an interest in the effect of water withdrawal during operation of the facility under this
3 standard as well as the previously discussed prior standard.
4

5 Because bald eagles are known to winter along the Columbia River near the Umatilla
6 River and Peregrine falcons occasionally migrate through the impact area, a following condition
7 is imposed for protection of the eagles and falcons, as well as other birds. In addition, because
8 the Columbia Milkvetch (*Astragalus succumbens*) is a species of plant which is of concern, a
9 following condition is imposed for its protection.
10

11 Applicant's observance of the following conditions, is reasonably expected to insure that
12 the "facility does not have the potential to appreciably reduce the likelihood of the survival or
13 recovery of any threatened or endangered species." OAR 345-22-070(b).
14

15 *Conditions*

16
17 (1) Raptor protection shall be employed in the design and construction of the
18 transmission towers according to the methods described by Olendorff et. al., 1981. All
19 energized facilities shall be designed with either a minimum separation of nine feet, or other
20 measures to reduce the potential for electrocution of raptors or other birds.
21

22 (2) If construction of the transmission line occurs during the spring growing
23 season for Columbia Milkvetch, any population of the plant within 50 feet of the proposed
24 transmission line poles shall be flagged and avoided by construction activities.
25

26 (e) Scenic and aesthetic standard

27 This standard requires that the:

28
29 "**** design, construction, operation and retirement of the
30 proposed facility, taking into account mitigation, will not result in
31 significant adverse impact to scenic and aesthetic values identified
32 as significant or important in the acknowledged local land use plan
33 for the site or its vicinity."
34
35
36

37 OAR 345-22-080.
38

39 *Discussion*

40
41 Considering the line of sight from the highest point of the energy facility, gas pipeline
42 and the alternate transmission lines for a distance up to 30 miles, there are five sites or vistas
43 listed in the Umatilla County Comprehensive Plan: Hat Rock, Wallula Gap, Lake Wallula, Lake
44 Umatilla and Cold Springs Reservoir. Because the proposed facility would not be visible from
45 any of the five areas, the facility would not result in significant adverse impact to those areas.

1 In addition, the county has identified the Umatilla County Scenic-Historic Road, which
2 is about four miles east of the site of the proposed facility, as having scenic value. Only the
3 upper portion of the stacks, the plumes of the cooling towers and the northern end of the
4 transmission line would be visible from that road. Because of the relatively flat terrain and the
5 height of the structures, topographic screening is impractical. However, applicant's observance
6 of the following conditions would mitigate the visibility of the structures so that the impact on
7 views from the road will be minor. As a result, the design, construction and operation of the
8 facility "will not result in significant adverse impact to scenic and aesthetic values."
9

10 Therefore, the above standard is met.

11 *Conditions*

12
13
14 (1) To minimize visual intrusion caused by the stacks, the stacks shall be
15 painted in a matte finished neutral color to minimize the potential for glare caused by reflective
16 surfaces. Colors shall be chosen to blend with the surrounding area.
17

18 (2) Landscaping shall be used to screen the energy facility from the nearest
19 residence and roadways to the extent reasonably feasible. Shrubbery and trees planted along the
20 perimeter of the energy facility site and other landscaping shall be well-maintained and include
21 low-maintenance and indigenous plants.
22

23 (3) To minimize project visibility at night, outdoor lighting shall be limited
24 to the extent necessary to maintain safety conditions.
25

26 (f) Historic, cultural and archaeological standard

27
28 This standard contains two requirements. First, the construction, operation and
29 retirement of the facility must "not result in significant adverse impacts to historic, cultural or
30 archaeological resources." OAR 345-22-090(1).
31

32 Heritage Research Associates, Inc., conducted a cultural resources study of the impact
33 area, which included a walking survey. Heritage did not identify any historic, cultural or
34 archaeological resource which is listed on the state or federal registers referred to in the above
35 standard, but Heritage did identify the West Extension Irrigation Canal, which may be eligible
36 for the registers. Heritage recommended avoidance of the canal during construction. Heritage
37 stated ways of avoidance:
38

39 "*** Avoidance should be possible by ensuring that transmission
40 towers/poles are placed away from the canal banks, and by
41 avoiding any disturbance at the canal crossing when the electrical
42 lines are strung. ***."
43

44 (HRA Letter Report 94-1, p. 9).
45

1 The second requirement is that construction, operation and retirement of the facility must
2 comply with state laws regarding "Indian graves, removal of historic materials and
3 archaeological objects and sites." OAR 345-22-090(2). Applicant has warranted that it will
4 comply with these standards. Applicant will also be required to comply with the newly-adopted
5 requirements of SB 61, where applicable.
6

7 Therefore, both requirements of the above standard are satisfied. The following
8 conditions ensure compliance with the requirements of the standard.
9

10 *Conditions*

11
12 (1) The applicant shall consult with the Confederated Tribes of the Umatilla
13 Indian Reservation (CTUIR) before commencing construction. The applicant shall provide the
14 CTUIR with an opportunity to conduct a review of the oral history of the tribes. The purpose
15 of the consultation and review is to identify areas having a high potential for cultural resources
16 within the impact area. If deemed necessary by the CTUIR based on the oral history review,
17 the applicant shall conduct additional pre-construction field surveys in cooperation with the
18 CTUIR.
19

20 (2) The applicant shall notify CTUIR before starting construction and shall
21 provide the opportunity for a CTUIR representative, knowledgeable in cultural resources of the
22 area, to be available for on-site monitoring during construction activities.
23

24 (3) If cultural resources are discovered during project construction or
25 construction-related activities, the applicant shall stop all work in the immediate area of the find.
26 Applicant shall consult with the CTUIR and SHPO. The applicant shall not restart work in the
27 affected area until CTUIR or SHPO have concurred that the applicant has identified actions to
28 minimize or avoid further impacts.
29

30 (4) Applicant shall take all reasonable steps by ensuring that the transmission
31 towers/poles are placed away from the canal banks, and by avoiding any disturbance at the canal
32 crossing when electrical lines are strung, to avoid disturbance of the West Extension Irrigation
33 Canal during construction and operation of the transmission line.
34

35 (5) Applicant shall consult with the irrigation district in which the canal is
36 located before construction or the upgrading of the transmission line in the area of the canal in
37 order to learn whether there are any applicable restrictions.
38

39 (g) Recreation standard

40
41 This standard provides that the "design, construction and operation of a facility, taking
42 into account mitigation, will not result in a significant adverse impact to important recreational
43 opportunities in the impact area." OAR 345-22-100(1).
44

45 *Discussion*

1 There are informal recreational opportunities along the Umatilla River within the impact
2 area (e.g., fishing, hiking and wildlife viewing). The Columbia River and its recreational
3 opportunities are outside the impact area.
4

5 Applicant would upgrade the transmission line which would span the Umatilla River.
6 In making the upgrade, applicant has committed to placement of poles as far from the river
7 banks as possible. At the point where either alternate transmission line would span the river
8 there are no hiking trails or other recreational facilities developed along the banks. A small part
9 of the upgrade would be to the transmission line as it runs through the City of Umatilla, which
10 allows the transmission line as a community service use, and which has no current formal
11 recreational opportunities along this portion of the corridor. Because there are no recreational
12 facilities, the upgrade of the transmission line would not result in a significant adverse impact
13 to recreational opportunities.
14

15 Because the gas pipeline would be constructed underground through areas zoned for farm
16 use, construction of the pipeline would also not result in a significant adverse impact to
17 recreational opportunities.
18

19 There are several recreational areas in the City of Hermiston within the impact area.
20 However, the facility would not be visible from any of those areas, and the view of the
21 transmission line from those areas would not be significantly changed because of the upgrade.
22 The level of noise which would result from operation of the facility will be within the regulatory
23 limits and, therefore, it is reasonable to infer that noise from the operation of the facility would
24 not have a significant adverse impact on those recreational areas. Similarly, applicant has
25 committed to compliance with the requirements of DEQ air quality regulations. It is reasonable
26 to infer that because DEQ requirements are designed to prevent significant deterioration of air
27 quality in the area, the effect on air quality as a result of the operation of the facility would not
28 have a significant adverse impact on those recreational areas.
29

30 During construction of the facility, there would be an increase in vehicle traffic on
31 Westland Road, the primary thoroughfare in the area. However, it is reasonably expected that
32 only about seven trucks would enter and leave the site during peak morning and evening traffic
33 hours. During operation of the facility, the increase in vehicle traffic on Westland Road would
34 also be small. The Public Works Department reasonably expects that the increase in traffic
35 would not have a significant impact on travel on Westland Road. Because the increase in vehicle
36 traffic during construction and operation is not reasonably expected to impact travel on Westland
37 Road, it is reasonable to infer that the increase in traffic would not result in a significant impact
38 on recreational opportunities which are served by Westland Road.
39

40 In sum, because the facility has been sited in a manner that avoids recreational
41 opportunities, the design, construction, operation and retirement of the facility will not result in
42 a significant adverse impact to recreational opportunities. There is no need to weigh the relative
43 importance of the recreational opportunities in applying the standard.
44

45 (h) Socio-economic standard

1 Under this standard, "the construction and operation of the facility, taking into account
2 mitigation, will not result in significant adverse impact to the ability of the communities within
3 the study area to provide essential government services, including sewers and sewage treatment,
4 water, stormwater drainage, solid waste management, libraries, police and fire protection, health
5 care and schools." OAR 345-22-110.
6

7 *Discussion*

8

9 During the construction period (about two years), applicant expects to engage about 270-
10 450 workers, about one-half of whom may be drawn from the regional labor pool.
11

12 The peak period of construction employment will last approximately four to six months,
13 primarily in the summer. During this peak period, housing may be in short supply and
14 temporary housing for workers may be needed. Due to the short-term nature of the
15 construction, impacts to government services including libraries, police and fire protection,
16 health care, and schools are not expected to be significant since most workers coming from out
17 of the area for short periods will not bring their families with them. Sanitary sewer service,
18 water and stormwater services will be provided on-site during construction. As discussed, the
19 slight increase in vehicle traffic on Westland Road is not reasonably expected to have a
20 significant impact on travel on that thoroughfare. (See Recreation standard).
21

22 To operate the facility, applicant expects to hire about 25 employees, all of whom may
23 be from the local area. An agreement between applicant and Lamb-Weston is expected to
24 provide that domestic water for the facility would be supplied by Lamb-Weston's existing water
25 supply system and that treatment of the domestic waste from operation of the facility would be
26 treated by Lamb-Weston's treatment system. In addition, applicant intends to collect stormwater
27 on the energy facility site for use as make-up water in the cooling system. It is reasonably
28 expected that the non-filter cake solid waste (about 40 tons per year) and the about 960 tons of
29 filter cake per year from the cooling water treatment system would be accommodated by local
30 landfills. Police and fire departments, as well as other service providers, in the area do not
31 expect the facility to have a significant adverse effect on their ability to provide services.
32

33 Moreover, construction and operation of the facility is expected to have some positive
34 effects. The hiring of over 200 construction workers from the region and about 25 employees
35 from the local area should stimulate the local economy and increase local tax revenues. The
36 relationship between applicant and Lamb-Weston, an important employer in the area, may
37 reasonably be expected to result in the latter's ability to reduce operating costs and improve its
38 competitiveness.
39

40 Therefore, the above standard is met. The following conditions ensure that significant
41 adverse impacts on the ability of communities to provide essential government services will not
42 occur.
43

44 *Conditions*

45

1 (1) The applicant shall make a good faith effort to hire most or all permanent
2 workers for the project from the local areas.

3
4 (2) The applicant shall make a good faith effort to hire as many construction
5 workers from the local area as feasible, including the Tri-city area.

6
7 (3) The applicant shall enter into an Irrevocable Consent Agreement (ICA)
8 with Umatilla County. The ICA will formally acknowledge that the applicant agrees to waive
9 its right to oppose the formation and equitable funding of any Local Improvement District (LID)
10 for that portion of Westland Road fronting the power plant property and extending south from
11 the plant to its intersection with Interstate Highway 84.

12
13 (4) Rail delivery shall be used to the extent practical to minimize heavy-haul
14 truck trips during construction.

15
16 (5) Traffic control measures shall be used during construction to reduce the
17 impact of traffic on Westland Road.

18
19 (6) Applicant shall consult with local officials to provide assistance to
20 construction workers in need of housing and to minimize the impact on housing in the area.

21
22 (i) Waste minimization standard

23
24 This standard requires an applicant to the extent reasonably practical to:

25
26 "**** reduce generation of solid waste and wastewater in the
27 construction and operation of the facility, and when solid waste or
28 wastewater is generated, recycle and reuse such wastes."

29
30 OAR 345-22-120.

31
32
33
34 *Discussion*

35
36 Non-hazardous and hazardous wastes (both solid and liquid) would be generated during
37 construction and operation of the facility (e.g., waste metals, construction debris, cans, bottles).
38 As discussed, it is reasonably expected that operation of the facility would generate about 40
39 tons of non-filter cake solid waste per year and 960 tons of filter cake from the cooling tower
40 waste treatment system, all of which would be accommodated by local landfills. Applicant
41 considered various options for cooling the facility, each of which had environmental risks. In
42 addition, the other options had unacceptable economic penalties, used excessive water,
43 discharged excessive wastewater or had other environmental impacts greater than the generation
44 and disposal of the filter cake.

1 The design of the cooling towers would reduce the drift of wastewater to 0.004 percent
2 of the circulating water and the drift is not reasonably expected to have a significant adverse
3 impact on native vegetation or farm crops in the area.
4

5 Furthermore, applicant has committed to reduction of the quantity of waste produced
6 during construction and operation of the facility, for example: the use of non-hazardous
7 solvents; reuse of scrap lumber; control of paint inventories to avoid waste and over supply;
8 implementation of a recycling program; and the periodic audits of the effectiveness of its waste
9 minimization and recycling programs, including revision of the programs to achieve more
10 effectiveness.
11

12 Therefore, the requirements of the above standard are satisfied. The following conditions
13 ensure reduction of solid waste and wastewater, and recycling of such wastes.
14

15 *Conditions*

16
17 (1) Upon completion of construction the applicant shall dispose of all
18 temporary structures not required for future operation of the facility and all used timber, brush,
19 refuse, or flammable material resulting from clearing of lands or from construction of the
20 facility.
21

22 (2) During construction of the facility, the applicant shall identify means of
23 minimizing waste generation and shall recycle waste to the extent reasonably practicable. The
24 applicant shall also implement a waste minimization and recycling program to remain in effect
25 throughout the life of the Project.
26

27 (3) The applicant shall design the cooling towers to limit drift to less than
28 four-thousandths of one percent of the circulating water.
29

30 (4) The applicant shall operate the cooling tower circulating water system, the
31 cooling towers and the circulating water cleanup systems to maintain the total dissolved solids
32 in the circulating water at less than five thousand two hundred parts per million (5,200 ppm) on
33 an annual average basis.
34

35 (j) Retirement standard

36
37 This standard requires that, "taking into account mitigation, the site can be restored
38 adequately to a useful condition following facility retirement." OAR 345-22-130.
39

40 *Discussion*

41
42 The proposed site of the energy facility is currently an unused part of an industrial site.
43 The useful life of the facility is expected to be 30 years. Applicant has committed to design the
44 site in compliance with standards for containment of spills of hazardous materials in order to
45 avoid contamination of the site. At the end of the useful life of the energy facility, applicant

1 would dismantle the structures, remove buildings, remove unneeded equipment and plant species
2 of native vegetation.

3
4 The gas pipeline and electrical transmission line will be owned by Cascade Natural Gas
5 and UECA, respectively. When the energy facility is retired, these related or supporting
6 facilities will remain in service as part of their systems.

7
8 In addition, applicant has committed to development of a decommissioning plan, which
9 would describe restoration of the site, the establishment of a fund for restoration, and a
10 mechanism for funding the restoration fund. The cost of restoring the site is estimated to be no
11 more than \$5 million in 1993 dollars. If the facility were to be retired early, staff expects that
12 the money received from salvage of equipment will be sufficient to restore the site under most
13 circumstances.

14
15 Based on the foregoing, the retirement standard is met. The following conditions ensure
16 that the site will be restored to a useful condition following retirement of the energy facility.

17 *Conditions*

18
19
20 (1) The applicant shall prevent any condition from developing on the site
21 during construction, operation, and retirement that would preclude restoring the site to a useful
22 condition. Applicant shall have satisfied this requirement by complying with all applicable
23 federal, state, and local environmental and land use statutes and ordinances, including all rules
24 and regulations promulgated thereto and all governmental approvals issued pursuant thereto.

25
26 (2) Starting with the tenth year after the first unit has commenced commercial
27 operation, HGC shall evaluate the expected useful life of the facility. If in any year HGC
28 decides that the life of the facility is expected to be five years or less from the date of the
29 evaluation, then HGC shall develop a plan for decommissioning the facility. The
30 decommissioning plan shall include the following elements: (a) the requirements and procedure
31 for removing equipment and structures from the portion of the site containing the energy facility;
32 (b) any additional requirements and procedures needed to restore the energy facility site to a
33 useful condition; (c) a description of options for post-retirement land use, information on how
34 impacts to fish, wildlife and the environment will be minimized during the retirement process
35 and measures to protect the public against risk or danger resulting from post-retirement site
36 conditions; and (d) a description of how decommissioning will be funded. HGC shall submit
37 the plan to EFSC for approval within six months of deciding that the facility is to be retired.

38
39 (3) In addition, starting with the fifth year after the first unit has commenced
40 commercial operation, the applicant will establish a decommissioning fund and begin making
41 annual commitments to the fund in the amount of \$200,000 (in 1993 dollars) in the form of a
42 Letter of Credit, performance bond, or other security reasonably acceptable to the EFSC. The
43 terms of the security and identity of the issuer shall be subject to approval by EFSC, which
44 approval shall not be unreasonably withheld. Such annual commitments shall continue until the
45 total security in the decommissioning fund reaches \$5 million (in 1993 dollars). In the event the

1 security in the decommissioning fund is less than \$5 million (in 1993 dollars) at the time
2 Applicant notifies the EFSC of its intent to retire the energy facility (as specified in the
3 preceding condition), the annual commitments to the decommissioning fund shall be adjusted so
4 as to assure that the total security in the fund is \$5 million (in 1993 dollars) at the time of
5 retirement. Applicant shall describe the status of the fund in the annual report submitted to
6 EFSC. All funds received by the applicant from the salvage of equipment or buildings shall be
7 committed to the restoration of the energy facility site, to the extent necessary to fund the
8 approved restoration.
9

10 (4) The restoration plan shall use native vegetation to restore the energy
11 facility site to the maximum extent consistent with the anticipated use of the site after the facility
12 is retired.
13

14 **Exemption from Requirement to Demonstrate Need**

15
16 Applicant applied for an exemption to demonstrate need for the proposed facility under
17 OAR 345-23-010(2). That rule provides for an exemption for:
18

19 "Natural gas fired facilities with a fuel chargeable to power heat
20 rate of 8,000 Btu/kWh or less for which applications have been
21 determined to be complete under OAR 345-21-030 on or before
22 August 13, 1993, shall be exempt from the requirement to
23 demonstrate need if all but 20 percent of the capacity will be used
24 by energy suppliers operating in the Pacific Northwest Region as
25 defined in 16 USC 839 a. (14). ***."
26

27 *Discussion*

28
29 The proposed facility would surpass the above efficiency standard required for the
30 exemption. Although at this stage of development of the facility, applicant is not required to
31 have a contract for the purchase of the electricity which would be produced, the following
32 condition (2) requires such contract before applicant may commence construction of the facility.
33 The application for site certificate was determined to be complete by ODOE before August 13,
34 1993.
35

36 Therefore, the requirements for an exemption are satisfied. The following conditions
37 ensure compliance with the requirements for an exemption.
38

39 *Conditions*

40
41 (1) Commencement of construction of the first unit shall begin no later than thirty
42 months after final issuance of the site certificate. As used in Condition (1) and (3) of this
43 section, "final issuance of the site certificate" occurs upon completion of any judicial review and
44 any proceedings on remand to EFSC. If commencement of construction does not begin by the
45 end of the first year after final issuance of the site certificate, applicant may produce a letter of

1 intent or other commitment from energy suppliers operating in the Pacific Northwest, as defined
2 in 16 USC Section 839 (a), to purchase at least 80% of the capacity of the facility for a period
3 of at least ten years from the commercial operation date. That portion of the project's capacity
4 for which such a commitment from energy suppliers operating in the Pacific Northwest to
5 purchase 80% is demonstrated shall retain its exemption from need showing under OAR Chapter
6 345, Division 23. If such a demonstration is not made within the first year after final issuance
7 of the site certificate, applicant may apply within sixty days thereafter to amend its site
8 certificate to demonstrate the facility is needed in accordance with the EFSC rules and standards
9 in effect at the time. If the Applicant demonstrates need, this certificate shall in all other
10 respects remain in full force and effect in accordance with its terms, except EFSC shall attach
11 new conditions regarding construction start and completion dates, and power sales contract terms
12 consistent with the demonstrated need for power.
13

14 (2) The applicant shall, prior to commencing construction of the facility, or
15 a portion of the facility, provide the EFSC with a copy of a firm power sales contract or
16 contracts demonstrating that 80% of the capacity from the facility, or that portion of the facility
17 that the Applicant proposes to construct, will be purchased by an energy supplier or suppliers
18 operating in the Pacific Northwest, as defined by 16 USC Section 839(a), for a period of at least
19 ten years from the commercial operation date.
20

21 (3) Construction completion of the facility, which shall be defined as the
22 commercial operation date of the facility, shall occur within five years from the final issuance
23 of the site certificate. EFSC may grant extensions of the construction completion date in
24 accordance with OAR 345-27-030.
25

26 **Public Health And Safety**

27
28 EFSC is also required to impose conditions in the site certificate for protection of the
29 public health and safety. Oregon Laws 1993, SB 1016, Sec. 11(2).
30

31 *Discussion*

32
33 The following conditions are based, in part, on the requirements for natural gas pipelines
34 and electric transmission lines contained in OAR 345 Division 24. While these rules do not
35 apply to related or supporting facilities that do not meet the definitions of ORS 469.300(10),
36 such as the gas pipeline and electric transmission line associated with the proposed facility,
37 certain of these rules do serve as a guide for assuring that the public health and safety are
38 protected. In addition, the following conditions further ensure compliance with the standards
39 for issuance of a site certificate addressed above.
40

41 *Conditions*

42
43 (1) The applicant shall design, construct, operate and retire the facility in
44 accordance with all applicable statutes, rules, and ordinances.
45

1 (2) The pipeline shall be constructed in accordance with the requirements of the
2 U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part
3 192.

4
5 (3) The pipeline shall have mechanical structures that allow the pipeline to be
6 sealed off, in the event of leakage, in a manner that will minimize the release of flammable
7 materials. This is rebuttably presumed to be satisfied if the pipeline meets the requirements of
8 Title 49, Code of Federal Regulations, Part 192.

9
10 (4) The applicant shall develop a program, or assure the development of a
11 program by the entity responsible for the pipeline, using the best available, practicable
12 technology to monitor the proposed pipeline to ensure protection of public health and safety.

13
14 (5) The transmission line shall be designed so that alternating current electrical
15 fields shall not exceed 9 kV per meter at one meter above the ground surface in areas accessible
16 to the public.

17
18 (6) The transmission line shall be designed so that induced currents resulting from
19 the transmission line and related facilities will be as low as reasonably achievable. The applicant
20 shall agree to a program, or assure the entity responsible for the transmission line agrees to a
21 program, which shall provide reasonable assurance that all fences, gates, cattle guards, trailers,
22 or other permanent objects or structures that could become inadvertently charged with electricity
23 shall be grounded through the life of the line.

24
25 (7) The transmission line shall be designed, constructed, and operated in a
26 manner consistent with the National Electrical Safety Code, Section C2, 1990 Edition (American
27 National Standards Institute), as well as the Rural Electrification Administration standards, where
28 applicable.

29
30 **Monitoring and Reporting**

31
32 OAR Chapter 345, Division 26 contains reporting and monitoring requirements for
33 thermal power plants with site certificates. In the case of conflict between Division 26 rules and
34 provisions in the site certificate, the site certificate controls. OAR 345-26-015.

35
36 The following monitoring requirements will allow EFSC to determine continued
37 compliance with the terms and conditions of the certificate and with any applicable EFSC health
38 and safety standards.

39
40 (1) The following rules from OAR Chapter 345, Division 26 (January 7, 1985) apply
41 to this facility: OAR 345-26-005, 345-26-010, 345-26-015, 345-26-020, 345-26-025, 345-26-
42 050 and 345-26-145. The remainder of the Division 26 rules are either outside the scope of
43 EFSC's decisional authority under SB 1016, applicable only to nuclear power plants, or
44 superseded by specific requirements set out below.
45

1 (2) Prior to commencing construction for the first unit, the applicant shall submit to
2 EFSC a program acceptable to EFSC for monitoring and reporting to EFSC the status of
3 construction of the facility. The program shall include a description of a report to be submitted
4 to EFSC at least quarterly from the start of construction to commercial operation of the second
5 unit. The report shall include, but is not limited to:
6

7 (a) an assessment of the construction schedule for each unit, including any
8 changes to major milestones that affect the critical path for construction;
9

10 (b) an assessment of the financial condition of the project, including changes
11 to the power sales contract and the equity and loan commitments;
12

13 (c) an assessment of the construction staffing, including status of staffing, any
14 staffing problems that may affect construction schedule, and any deviation from plans to
15 hire most construction workers locally;
16

17 (d) any work stoppages of more than 30 days due to environmental concerns,
18 vulnerability to seismic hazards, discovery of cultural, historic, or archaeological sites,
19 or other reasons;
20

21 (e) any violations of the conditions of permits issued by any other Federal,
22 State or Local authority; including the background of the causes of the violation, the
23 mitigation or correction of the violation, and the impact of the violation on the project
24 schedule or financing;
25

26 (f) any violations of the conditions of permits issued to third parties that are
27 necessary for construction or operation of the facility, such as Water Right Permits or
28 Water Pollution Control Facility Permits; including the background of the causes of the
29 violation, the mitigation or correction of the violation, and the impact of the violation on
30 the project schedule or financing;
31

32 (g) copies of all correspondence and reports related to facility construction
33 which were submitted to a Federal, State, or Local authority, except material withheld
34 from public disclosure under Federal or State law. Abstracts of reports may be
35 submitted in place of full reports. However, full copies of abstracted reports must be
36 provided at the request of ODOE or EFSC;
37

38 (h) prior to commencing commercial operation of each unit, a written report
39 certified by an Oregon registered structural engineer documenting that that unit has been
40 constructed in compliance with the conditions in the site certificate adopted under the
41 structural standard;
42

43 (i) any noncompliance with the conditions of the site certificate, including the
44 background of the causes of the noncompliance, the mitigation or correction of the
45 noncompliance and any effect on the project schedule or financing; and

1 (j) any other information that EFSC requests that is considered necessary to
2 monitor and evaluate the applicant's compliance with the terms and conditions of the site
3 certificate.
4

5 (3) Prior to commencing preoperational testing for the first unit, the Applicant shall
6 submit to the EFSC a program acceptable to EFSC for monitoring and reporting to EFSC the
7 status of operation of the facility and of the decommissioning fund. The program shall include
8 a description of a report to be submitted to EFSC at least annually from the start of commercial
9 operation of the first unit through retirement of the last operating unit. The report shall include,
10 but is not limited to:
11

12 (a) results of performance tests, including project efficiency testing,
13 summaries of fuel use, average volume and mass of steam supplied to the cogeneration
14 host and the estimated fuel used to generate the host steam load;
15

16 (b) in the first report submitted after commencement of commercial operation,
17 unit heat rate in Btu per kilowatt hour produced, corrected to ISO conditions and
18 accounting for steam delivered to the steam host, and also facility capacity corrected to
19 52.8°F, 55% relative humidity, standard air pressure adjusted for elevation, no steam to
20 process, natural gas fuel, and normal steam turbine exhaust pressure, net of plant
21 auxiliary loads;
22

23 (c) the power production by the facility by unit, by month, including peak
24 capacity, average capacity, gross and net kilowatt hour production, availability, potential
25 capacity constrained by dispatch agreement, reasons and durations of planned and
26 unplanned outages, plans to improve capacity and availability and to correct recurring
27 problems;
28

29 (d) an assessment of the operations staffing, including status of staffing, any
30 staffing problems that may affect facility operation, and any deviation from plans to hire
31 most operations workers locally;
32

33 (e) any violations of the conditions of permits issued by any other Federal,
34 State or Local authority; including the background of the causes of the violation, the
35 mitigation or correction of the violation, and the impact of the violation on the project
36 operation or financing;
37

38 (f) any violations of the conditions of permits issued to third parties that are
39 necessary for construction or operation of the facility, such as Water Right Permits or
40 Water Pollution Control Facility Permits; including the background of the causes of the
41 violation, the mitigation or correction of the violation, and the impact of the violation on
42 the project operation or financing;
43

44 (g) copies of all correspondence related to facility operation which was
45 submitted to a Federal, State, or Local authority, except material withheld from public

1 disclosure under Federal or State law. Abstracts of reports may be submitted in place
2 of full reports. However, full copies of abstracted reports must be provided at the
3 request of ODOE or EFSC;

4
5 (h) an assessment of the financial condition of the project, including changes
6 to the power sales contract and the equity and loan commitments.

7
8 (i) any noncompliance with the conditions of the site certificate, including the
9 background of the cause of the noncompliance, the mitigation or correction of the
10 noncompliance and any effect on the project schedule or financing; and

11
12 (j) any other information that EFSC requests that is considered necessary to
13 monitor and evaluate the applicant's compliance with the terms and conditions of the site
14 certificate.

15
16 (4) Information To Be Reported Promptly

17
18 (a) The applicant shall report any material violation of any condition of the
19 site certificate by HGC or any of its contractors, subcontractors or agents to ODOE
20 within 72 hours.

21
22 (b) The applicant shall report to ODOE within 24 hours if the applicant or any
23 of its contractors, subcontractors or agents creates any condition by construction or
24 operation of the facility that endangers the public health and safety.

25
26 **Conclusions**

27
28 ORS 469.503(1) provides that in order to issue a site certificate EFSC must determine
29 that the preponderance of the evidence on the record supports the following conditions:

30
31 "(a) The facility complies with the requirements of [the Oregon
32 energy facility siting statutes] and the rules implementing [those
33 statutes] applicable to the facility ***.

34
35 "(b) *** the facility complies with all other [applicable] statutes
36 and administrative rules applicable to the facility ***.

37
38 "(c) The facility complies with statewide planning goals adopted by
39 the Land Conservation and Development Commission."

40
41 The findings of fact, ultimate findings of fact, reasoning and conclusions of law based on a
42 preponderance of evidence on the whole record of the two proceedings in this matter,
43 demonstrate that the proposed facility complies with the foregoing requirements, and that the site
44 certificate will include conditions to protect the public health and safety. ORS 469.503(1); OAR
45 345-22-000(2).


1 **ORDER**

2
3 Based upon the above findings of fact, ultimate findings of fact, reasoning and conclusions
4 of law, the application is approved, and the chairperson of the Oregon Energy Facility Siting
5 Council shall execute a Site Certificate substantially in the form of the "Thermal Power Plant
6 Site Certificate for the Hermiston Generating Project" attached to this order.
7

8
9 **NOTICE OF RIGHT TO APPEAL**

10
11 Any party to the contested case proceeding or any person adversely affected or aggrieved by
12 the council's order may appeal the issuance of the site certificate. Judicial review may be
13 obtained by filing a petition for review within 60 days after the date of service of this order.
14 Judicial review is pursuant to the provisions of ORS 469.403 to the Oregon Supreme Court.
15

16
17 Dated 3/11/94

18 
19 Melvin Ferguson
20 Chair
Energy Facility Siting Council