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BEFORE THE  
ENERGY FACILITY SITING COUNCIL  
OF THE STATE OF OREGON

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In the Matter of the Fourth Amended ) FINAL ORDER FOR  
Thermal Power Plant Site Certificate for ) PARTIAL TRANSFER OF  
the Coyote Springs Cogeneration Project ) SITE CERTIFICATE  
(Amendment No. 9) )

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**Summary**

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The Energy Facility Siting Council (“Council”) approves the request for a partial transfer of the Site Certificate with amendments to the Site Certificate, as noted in this order.

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**A. Summary and Background of the Request for Partial Transfer of the Site Certificate**

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Pursuant to Oregon Revised Statutes Chapter 469 and OAR 345-027-0100(6), the Department received from Avista Corporation (“Avista”) on October 25, 2004, a request to the Council that it approve the transfer of partial ownership interest in the Coyote Springs Cogeneration Project (“Project”), Phase 2 (“Phase 2”), and to make associated amendments to the Third Amended Thermal Power Plant Site Certificate (“Site Certificate”), as amended by the Council on Nov. 8, 2002, for the Project.

The Project consists of Phase 1, a 241-megawatt natural gas-fired electric generating facility owned by Portland General Electric (“PGE”), and Phase 2, a 280-megawatt, natural gas-fired electric generating facility jointly owned by Avista Corporation and Mirant Oregon, LLC (“Mirant”). The current Site Certificate authorizes Avista and Mirant to construct, operate and retire Phase 2. It also authorizes PGE to construct, operate and retire Phase 1 of the Coyote Springs Cogeneration Project.

Avista proposed to transfer Mirant’s one-half ownership interest in Phase 2 to Avista. As part of the transfer proposal, Avista proposed to amend the Site Certificate to reflect Avista as the sole owner of Phase 2.

The requested transfer would have no effect on PGE or its ability to own and operate Phase 1.

**A.1. Name and Address of Transferee**

Avista Corporation  
1411 East Mission Avenue  
Spokane, WA 99220

**A.2. Regulatory Background**

PGE owns and operates Phase 1 of the Project, which consists of a 241 megawatt, natural gas-fired electric generating facility, located on a 20-acre parcel within the Port of Morrow Industrial Park, in Boardman, Oregon. Phase 1 is described in greater detail in the Council’s Final Order approving PGE’s original Application for Site Certificate. Phase 1 was constructed

1 and permitted to accommodate the anticipated future development of a second similar generating  
2 unit ("Phase 2"), which was constructed immediately adjacent to Phase 1 and which shares and  
3 jointly own certain facilities in common with Phase 1. In 2000, the Council approved the transfer  
4 of ownership of Phase 2 from PGE to Avista. In 2002, it approved the transfer of one-half  
5 ownership interest in Phase 2 to Mirant.  
6

7 Phase 2, which consists of a 280-megawatt, natural gas-fired electric generating facility,  
8 is now owned jointly by Avista and Mirant and operated by PGE. Construction of Phase 2 was  
9 completed on July 1, 2003, at which time Phase 2 commenced commercial operation.  
10

11 The Council issued the original Site Certificate to PGE on September 16, 1994. To date,  
12 the Site Certificate has been amended on eight occasions. The Council granted PGE a first  
13 amendment to the Site Certificate on December 6, 1996. Amendment No.1 incorporated into the  
14 Site Certificate specific conditions that were originally commitments made by PGE in its Site  
15 Certificate application and supporting documents. The Council's order approving the amendment  
16 further approved an amendment to incorporate the applicability of then-current OAR 345-27-050  
17 through OAR 345-27-080 and OAR 345-27-095.  
18

19 The Council granted PGE a second amendment to the Site Certificate on March 7, 1997.  
20 Amendment No. 2 allowed PGE to use #2 low-sulfur distillate oil for back-up fuel for the natural  
21 gas-fired combustion turbines at Coyote Springs.  
22

23 The Council granted a third amendment to the Site Certificate on August 28, 1998.  
24 Amendment No. 3 removed the Site Certificate conditions relating to development of Phase 2 of  
25 the Project that had required PGE to demonstrate either that the facility met the need for facility  
26 standard or qualified for an exemption under former OAR 345-23-010(2). In place of the need  
27 for facility standard, Amendment No. 3 imposed Site Certificate conditions ensuring compliance  
28 with the applicable carbon dioxide ("CO<sub>2</sub>") emissions standard, ORS 469.503(2)(a). In addition,  
29 Amendment No. 3 removed the authorization to use #2 low-sulfur distillate oil as back-up fuel  
30 for Phase 2.  
31

32 The Council granted PGE's fourth amendment to the Site Certificate, with modifications,  
33 on October 22, 1998. The Council executed Amendment No. 4 in the form of the "First  
34 Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Plant,"  
35 which incorporated Amendment Nos. 1 through 4. In Amendment No. 4, PGE requested a  
36 change to the Site Certificate conditions relating to the construction completion date for Phase 2.  
37 The amendment, as granted, extended the construction completion deadline for Phase 2 from  
38 September 16, 1999, to September 16, 2001.  
39

40 The Council granted Amendment No. 5. on June 15, 2000. Amendment No. 5 granted a  
41 second extension of the construction completion deadline from September 16, 2001, to  
42 September 16, 2003. In addition, it provided the option to use power augmentation in Phase 2 (a  
43 "hybrid plant"), as set forth in OAR 345-024-0550, and applied the current CO<sub>2</sub> standard for  
44 base load gas plants to Phase 2. It also clarified that the milestone for completion of construction  
45 is the date of commercial operation of the facility.  
46

1 On June 15, 2000, the Council also granted Amendment No. 6, immediately after  
2 granting Amendment No. 5. Amendment No. 6 approved a partial transfer of the Site Certificate  
3 from PGE to Coyote Springs 2, LLC, an indirect wholly-owned subsidiary of Avista (“CS2”),  
4 and amended the Site Certificate as needed to authorize the partial transfer. Specifically, it  
5 transferred to CS2 the rights to own, construct, operate and retire Phase 2 and required that  
6 Avista Power, LLC (“Avista Power”) hold all authority necessary to ensure that CS2 meet its  
7 obligations under the Site Certificate. The Council executed the “Second Amended Thermal  
8 Power Plant Site Certificate for the Coyote Springs Cogeneration Project,” which incorporated  
9 Amendments No. 1 through No. 6 on June 23, 2000.

10  
11 In February 2001, the Council granted Amendment No. 7, which transferred ownership  
12 interests in CS2 from Avista Power to Avista. Upon the Council’s approval of the transfer,  
13 Avista assumed sole authority and responsibility to ensure that construction of Phase 2 complied  
14 with the conditions of the Site Certificate. On February 22, 2001, the Council executed the  
15 “Second Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration  
16 Project,” which incorporated Amendments No. 1 through No. 7.

17  
18 On November 8, 2002, the Council granted Amendment No. 8, which transferred direct  
19 ownership of Phase 2 from CS2 to Avista and Mirant. The transfer placed equal responsibility on  
20 Avista and Mirant as one-half co-owners to ensure Phase 2 meets Site Certificate requirements.  
21 With the amendment, CS2 ceased to exist as an owner of Phase 2.

22  
23 Under the current Third Amended Site Certificate, PGE owns, operates and is responsible  
24 for Phase 1 while Avista and Mirant, as co-owners, are authorized to construct, operate and retire  
25 Phase 2.

26  
27 **B. Procedural History**

28 **B.1. Transferees’ Request**

29 On Oct. 25, 2004, the Department received Avista’s request for partial transfer of the  
30 Project’s Site Certificate, dated Oct. 22, 2004.

31  
32 **B.2. Notice**

33 Pursuant to OAR 345-027-0100(8), on November 12, 2004, the Department mailed a  
34 notice of its receipt of the application for the transfer to all persons on the Council’s general  
35 mailing list and persons on the special mailing list for the Project. That notice specified that the  
36 Council would hold an informational hearing on the request at the Council meeting on December  
37 2, 2004, in Salem, Oregon, and that persons could submit comments in writing to the Council  
38 until November 30, 2004.

39  
40 The Department mailed the request for partial transfer to Council members on November  
41 17, 2004. The Council listed the informational hearing and planned Council decision on the  
42 transfer request in its published agenda for the December 2, 2004, meeting, which the  
43 Department mailed to the Council, to the Council’s general mailing list and to the persons on the  
44 special mailing list for the Project on November 22, 2004.

45  
46 **B.3. Informational Hearing**

1 The Council conducted the informational hearing as part of its regularly scheduled  
2 meeting on December 2, 2004. Pursuant to OAR 345-027-0100(9), the informational hearing  
3 was not a contested case hearing. The Department presented a summary of the request. No  
4 member of the public made comment at the informational hearing.  
5

6 **B.4. Public Comments**

7 The close of the written public comment period was November 30, 2004. The Council  
8 received no written comments.  
9

10 **B.5. Draft Final Order**

11 The Department issued a Draft Final Order on November 23, 2004, and mailed it to the  
12 Council on the same day. The Department gave notice to the public in the Council's published  
13 agenda for the December 2, 2004, meeting, that the Council would both hold an informational  
14 hearing and make a decision on the transfer request at that meeting in Salem.  
15

16 **B.6. Council Decision Meeting**

17 The Council held a meeting in Salem on December 2, 2004. At the meeting, the  
18 Department presented information about the Draft Final Order. Following the presentation, the  
19 Council approved the order for Amendment No. 9 in a vote of 5-0 and approved the Fourth  
20 Amendment Site Certificate in a vote of 5-0.  
21

22 **C. General Findings of Fact Related to the Request for Partial Transfer**

23 **C.1. Description of the Proposed Transfer**

24 Avista and Mirant jointly own Phase 2 and hold equal responsibility for ensuring that  
25 Phase 2 meets Site Certificate requirements. As of this date, Mirant's ultimate parent entity is  
26 undergoing bankruptcy proceedings. As a result, Avista is pursuing approvals in several  
27 regulatory arenas to assume Mirant's one-half ownership interest in Phase 2, including approval  
28 from the Council. The transfer would place sole responsibility on Avista for ensuring that Phase  
29 2 meets Site Certificate requirements. Under 345-027-0100(1)(a), a Site Certificate amendment  
30 is required when a transfer in ownership results in a request to also transfer responsibility for  
31 meeting Site Certificate requirements.  
32

33 In its transfer request to the Council, Avista provided a letter from Mirant dated October,  
34 21, 2004, in which Mirant states it has agreed to sell its interest in Phase 2 to Avista and has  
35 consented to the filing of the transfer request. Avista also provided a letter from PGE dated  
36 October 22, 2004, in which PGE states that it has reviewed the transfer request and has  
37 consented to its filing. The requested transfer has no effect on PGE or its ability to own and  
38 operate Phase 1.  
39

40 **C.2. Anticipated Date of Transfer of Ownership**

41 Avista wishes to transfer Mirant's one-half ownership interest in Phase 2 as soon as  
42 possible. OAR 345-027-0100(3) and (4) prohibits the parties from closing the transactions prior  
43 to Council approval. Avista must also receive other regulatory approvals prior to any transfer.

44 **C.3. Request for Council Approval**

45 The Council's rules concerning Site Certificate transfers state:  
46

1 “A transfer of ownership requires a transfer of the Site Certificate when the person who  
2 will have the legal right to possession and control of the site or the facility does not have  
3 the authority under the Site Certificate to construct, operate, or retire the facility.” OAR  
4 345-027-0100(1)(a).”  
5

6 PGE, Avista and Mirant are the current holders of the Site Certificate. PGE holds those  
7 rights, and is responsible for those obligations, for all purposes relevant to Phase 1. Avista and  
8 Mirant hold those rights, and are responsible for those obligations, for all purposes relevant to  
9 Phase 2. Avista and Mirant have joint and several liability as “co-owners” to the State of Oregon  
10 for performance of their responsibilities under the Site Certificate.  
11

12 While Avista, as a “co-owner,” has the authority under the Site Certificate to construct,  
13 operate and retire Phase 2, it requests a partial transfer of the site certificate that will recognize  
14 Avista as solely liable to the State of Oregon for performance of the responsibilities related to  
15 Phase 2 under the Site Certificate. The requested approval to transfer ownership interests in  
16 Phase 2 will remove Mirant from the Site Certificate.  
17

18 Such approval requires the Council to amend the Site Certificate to replace all references  
19 to the term “co-owners,” defined as Avista and Mirant, with “Avista.” Such approval also  
20 requires the Council to amend the Site Certificate to award Avista the sole authority to construct,  
21 operate and retire the facility.  
22

#### 23 **C.4. Requested Amendments to Site Certificate**

##### 24 **C.4.1 Applicant Proposals to be Approved by the Council**

25 Avista proposed to amend the Site Certificate largely to replace language referring to  
26 “co-owners” with language referring solely to Avista. Avista also proposed clarifying language  
27 about the Department of Energy’s name changes over the past few years.  
28

29 In addition, Avista proposed to amend the Site Certificate as follows. The Council  
30 approved amendment of the Site Certificate as described in this section.  
31

#### 32 **I. SITE CERTIFICATION**

33  
34 ~~**E.** The Co-owners shall appoint a Project Director to act as a single point of contact  
35 between the Co-owners and the Office of Energy. Prior to the transfer of the  
36 ownership interest in phase two to the Co-owners, the Co-owners shall provide the  
37 Office of Energy with the name and contact information for the initial Project  
38 Director. The Co-owners may change the Project Director at any time. Change in the  
39 Project Director does not require Council approval or amendment of this Site  
40 Certificate. The Co-owners shall notify the Office of Energy in writing of any change  
41 in the Project Director within 10 business days of such change. [Amendment 8]~~  
42

#### 43 **IV. MANDATORY CONDITIONS**

44  
45 The following mandatory conditions are either specifically required by OAR 345-  
46 027-0020 or are appropriate under OAR 345-027-0020(4)(o) or OAR 345-027-0023

1 (Feb. 2000) to address project and site-specific conditions and requirements. These  
2 mandatory conditions shall apply in addition to, and should be read together with, the  
3 specific additional conditions provided in this Site Certificate to ensure compliance  
4 with the siting standards of OAR Chapter 345, Divisions 22, 23 and 24.  
5

6 (1) PGE, with respect to phase one, and Avista ~~the Co-owners~~, with respect to  
7 phase two, shall comply with all applicable laws, regulations and ordinances of  
8 state, federal and local authorities, including all conditions contained in any  
9 permits, licenses and approvals issued by such authorities. PGE and Avista ~~the~~  
10 ~~Co-owners~~ shall comply with the conditions of the Site Certificate. The duty of  
11 PGE and Avista ~~the Co-owners~~ to comply applies notwithstanding a failure or  
12 oversight in the proposed order or Site Certificate to identify all applicable laws,  
13 regulations and ordinances. PGE and Avista ~~the Co-owners~~ shall design,  
14 construct, operate and retire phases one and two, respectively, in accordance with  
15 the requirements of the Oregon Energy Facility Siting Statute, ORS 469.300 et  
16 seq., and EFSC rules applicable to the facility. ~~Avista Corporation and Mirant~~  
17 ~~Oregon each assume joint and several liability to the State of Oregon for~~  
18 ~~performance of the responsibilities of the Co-owners under the Site Certificate.~~  
19 [rev. Amendment 6, 8, 9]  
20

21 \*\*\*\*\*  
22

23 (19) ~~The transfer of direct ownership of CS2 to the Co-owners shall not occur~~  
24 ~~before January 1, 2003. The transfer of Mirant Oregon, LLC's ("Mirant")~~  
25 ~~ownership interest in phase two to Avista shall not occur until (i) the Bankruptcy~~  
26 ~~Court for the Northern District of Texas (the "Bankruptcy Court") approves the~~  
27 ~~sale of Mirant's ownership interest in phase two to Avista, (ii) the waiting period~~  
28 ~~required by 15 U.S.C § 18a(a) for the consummation of the acquisition of~~  
29 ~~Mirant's ownership interest in phase two (the "Waiting Period") has expired or~~  
30 ~~has been terminated by the Federal Trade Commission and the Assistant Attorney~~  
31 ~~General pursuant to 15 U.S.C. § 18a(b)(2), (iii) the Federal Energy Regulatory~~  
32 ~~Commission has issued such approvals as are necessary for Avista to proceed~~  
33 ~~with the acquisition of Mirant's interest in phase two, and (iv) (a) Avista delivers~~  
34 ~~to the Council evidence of the Bankruptcy Court's approval of the sale of~~  
35 ~~Mirant's ownership interest in phase two to Avista, (b) the Waiting Period has~~  
36 ~~expired or the Federal Trade Commission's website indicates that the Waiting~~  
37 ~~Period has been terminated, (c) Avista provides the EFSC with evidence that the~~  
38 ~~Federal Energy Regulatory Commission has issued the approvals necessary for~~  
39 ~~Avista to proceed with the acquisition of Mirant's interest in phase two, and (d)~~  
40 ~~Avista delivers to the Council a letter of credit that replaces any existing letter or~~  
41 ~~letters of credit provided by Avista and/or Mirant to satisfy the Mandatory~~  
42 ~~Condition 16. [Amendment 8; rev. Amendment 9]~~  
43

#### 44 C.5. Applicable Regulations

45 OAR 345-027-0100(10) directs the Council to approve a transfer if the Council finds that  
46 the Transferee meets the following standards:

- 1
- 2 (a) The transferee complies with the standards described in OAR
- 3 345-022-0010, OAR 345-022-0050 and, if applicable, OAR
- 4 345-024-0710(1);
- 5
- 6 (b) The transferee is lawfully entitled to possession or control of the site or
- 7 the facility described in the Site Certificate;
- 8
- 9 (c) The transferee agrees to abide by all the terms and conditions of the Site
- 10 Certificate to be transferred as determined by the Council; and
- 11
- 12 (d) The facility complies with the statutes, local government ordinances and
- 13 Council rules in effect on the date of the Council’s order that the Council
- 14 decides should apply to the transferred facility based on the transferee’s
- 15 consent or upon a clear showing of a significant threat to the public health,
- 16 safety or the environment. In the order, the Council shall include any new or
- 17 amended Site Certificate conditions necessary to assure compliance with
- 18 these statutes, local government ordinances and Council rules.
- 19

20 These standards are addressed below in Section D: “Compliance with Applicable

21 Regulations.”

22

23 **D. Compliance with Applicable Regulations (OAR 345-027-0100(10))**

24 **D.1. Compliance with OAR 345-027-0100(10)(a)**

25 **D.1.1. Organizational Expertise (OAR 345-022-0010)**

26 The organizational expertise standard has four sections. Subsections (1) and (2) relate to

27 applicant qualifications and capability. Subsections (3) and (4) relate to third-party services and

28 permits.

29

30 **a. Applicant Qualification and Capability (OAR 345-022-0010(1) and (2))**

31 Section (1) of this standard provides that:

32

33 To issue a Site Certificate, the Council must find that the applicant has the

34 organizational expertise to construct, operate and retire the proposed facility

35 in compliance with Council standards and conditions of the Site Certificate.

36 To conclude that the applicant has this expertise, the Council must find that

37 the applicant has demonstrated the ability to design, construct and operate the

38 proposed facility in compliance with Site Certificate conditions and in a

39 manner that protects public health and safety and has demonstrated the

40 ability to restore the site to a useful, non-hazardous condition. The Council

41 may consider the applicant’s experience, the applicant’s access to technical

42 expertise and the applicants’ past performance in constructing, operating and

43 retiring other facilities, including, but not limited to, the number and severity

44 of regulatory citations issued to the applicant.

45

1           **Discussion.** In its February 2001 amendment to the Site Certificate and in its November  
2 2002 amendment to the Site Certificate, the Council found that Avista possessed the expertise  
3 necessary to construct and operate Phase 2. Its qualifications and capability will remain  
4 unchanged under the current proposed Site Certificate amendment.  
5

6           Because construction of Phase 2 is complete, the portions of OAR 345-022-0010(1) that  
7 require the Council to find that the applicant possesses the organizational expertise to construct  
8 the proposed facility will have been satisfied under the current Site Certificate.  
9

10           Transferee's In-House Expertise. Avista's qualifications and capability remain  
11 unchanged since the Council approved the transfer of ownership interests from Avista Power to  
12 Avista in February 2001.  
13

14           Transferee's Power Facility Development History. Avista's qualifications and capability  
15 remain unchanged since the Council approved the transfer of ownership interests from Avista  
16 Power to Avista in February 2001.  
17

18           Transferee's Access to and Management of Outside Expertise. With the proposed  
19 transfer, Avista does not intend any current change in its contractual relationship with PGE, the  
20 Operation and Maintenance ("O&M") operator responsible for managerial and technical  
21 expertise to ensure the safe operation of Phase 2.  
22

23           **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
24 from Mirant to Avista satisfies the requirements of OAR 345-022-0010(1).  
25

26           Section (2) of this standard provides that:  
27

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

34           **Discussion.** This subsection does not impose a requirement; rather, it provides a  
35 rebuttable presumption of the managerial and technical expertise upon which an applicant may  
36 rely. Avista is not asking to rely on this subsection.  
37

38           **Conclusion.** The Council finds that OAR 345-022-0010(2) does not apply to this  
39 transfer.  
40

41           **b. Third-Party Services and Permits (OAR 345-022-0010(3) and (4)).**

42           Section (3) of this standard requires that:  
43

44                   If the applicant does not itself obtain a state or local government permit or  
45 approval for which the Council would ordinarily determine compliance but  
46 instead relies on a permit or approval issued to a third party, the Council, to issue

1 a Site Certificate, must find that the third party has, or has a reasonable  
2 likelihood of obtaining, the necessary permit or approval, and that the applicant  
3 has, or has a reasonable likelihood of entering into, a contractual or other  
4 arrangement with the third party for access to the resource or service secured by  
5 that permit or approval.  
6

7 Additionally, the final section (4) of the standard provides:  
8

9 If the applicant relies on a permit or approval issued to a third party and the third  
10 party does not have the necessary permit or approval at the time the Council  
11 issues the Site Certificate, the Council may issue the Site Certificate subject to  
12 the condition that the certificate holder may not commence construction or  
13 operation as appropriate until the third party has obtained the necessary permit  
14 or approval and the applicant has a contract or other arrangement for access to  
15 the resource or service secured by that permit or approval.  
16

17 **Discussion.** Section V.B.2 of the Site Certificate identifies three third-party permits and  
18 services on which the applicant is relying: industrial water supply from the Port of Morrow; use  
19 of the Port of Morrow's industrial wastewater disposal system for process wastewater disposal;  
20 and sanitary wastewater disposal into the City of Boardman's sewage treatment system. Avista  
21 and Mirant are currently beneficiaries of these third-party permits and services, and prior to the  
22 transfer of Mirant's interest in Phase 2 to Avista, these third party permits and services will be  
23 assigned to Avista with respect to Phase 2. The transfer of ownership interests in Phase 2 will not  
24 affect the Project's ability to continue to comply with the conditions of these permits.  
25

26 **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
27 from Mirant to Avista satisfies the requirements of OAR 345-022-0010(3) and (4).  
28

29 **D.1.2. Retirement and Financial Assurance (OAR 345-022-0050)<sup>1</sup>**

30 The retirement and financial assurance standard provides:  
31

- 32 (1) To issue a Site Certificate, the Council must find that: The site, taking  
33 into account mitigation, can be restored adequately to a useful, non-  
34 hazardous condition following permanent cessation of construction or  
35 operation of the facility.  
36 (2) The applicant has a reasonable likelihood of obtaining a bond or letter of  
37 credit in a form and amount satisfactory to the Council to restore the site  
38 to a useful, non-hazardous condition.  
39

40 Further, Council rule OAR 345-027-0020 requires the following mandatory conditions:  
41

42 The Council shall impose the following conditions in every Site Certificate.  
43 The Council may impose additional conditions.  
44

\*\*\*

1 (8) Before beginning construction of the facility, the certificate holder shall  
2 submit to the State of Oregon, through the Council, a bond or letter of credit,  
3 satisfactory to the Council, in an amount specified in the Site Certificate to  
4 restore the site to a useful, non-hazardous condition. The certificate holder  
5 shall maintain a bond or letter of credit in effect at all times until the facility  
6 has been retired. The Council may specify different amounts for the bond or  
7 letter of credit during construction and during operation of the facility.  
8

9 **Discussion.** The Council currently holds a letter of credit from Avista in the amount of  
10 \$1,537,355 that expires on December 31, 2004, and a letter of credit from Mirant in the amount  
11 of \$1,526,697 that expires on December 31, 2004. The draw certificates for both companies state  
12 that each company must provide the Council with evidence of a successor letter of credit three  
13 months prior to the expiration date of its current letter of credit. Because of the changes proposed  
14 in Avista's request, neither company has provided such evidence to the Council. On December 1,  
15 2004, the Department issued a notice to Avista and to Mirant that each company was in violation  
16 of the notice requirement. The letters initiated a 30-day "cure" period in which each company  
17 has the ability to provide the evidence required before the Council can draw on the letters of  
18 credit. That 30-day period expires on December 31, 2004. The Department determined such  
19 notice to be prudent despite the fact that it anticipates that the security requirement will be  
20 satisfied before the expiration dates of the current letters.  
21

22 If the proposed transfer of Mirant's one-half interest in Phase 2 is completed on or prior to  
23 December 31, 2004, Avista proposed that the Council release each of the existing letters of credit  
24 posted by Avista and Mirant in exchange for a single letter of credit from Avista in the amount  
25 of \$3,140,946, the amount needed to satisfy the Council's regulatory requirements for the year  
26 2005. Avista anticipates that the new letter of credit will be in substantially the same form as the  
27 existing \$1,537,355 letter of credit issued by the Union Bank of California and currently posted  
28 with the Council and will be issued by the same financial institution. If the proposed transfer of  
29 Mirant's one-half interest in Phase 2 is completed after December 31, 2004, Avista anticipates  
30 that Mirant and Avista will each post new letters of credit in the same form as each of their  
31 existing letters of credit and otherwise satisfying the applicable requirements. Upon the  
32 subsequent closing of the transfer, Avista proposed that the Council release each of the new  
33 letters of credit posted by Avista and Mirant, and Avista will post a single letter of credit in the  
34 required amount to satisfy the Council's regulatory requirements.  
35

36 The Council has on several previous occasions found that Avista satisfied the requirements of  
37 OAR 345-022-0050. The transfer of partial ownership of Phase 2 from Mirant to Avista does  
38 not change this finding.  
39

40 **Conclusion.** The Council approved the transfer on December 2, 2004. The Council finds  
41 that, if the transfer from Mirant to Avista closes before December 31, 2004, Avista must provide  
42 a letter of credit in the amount of \$3,140,946 and issued by the Union Bank of California. The  
43 Council finds that if the transfer transaction does not close before December 31, 2004, the  
44 provisions of Condition 16 as written prior to this order remain in full force and effect.  
45

46 The Council finds that if the transfer transaction closes after December 31, 2004, Avista must

1 then provide a single letter of credit in the amount of \$3,140,946 issued by Union Bank of  
2 California. Upon receipt of the substitute letter of credit for the full amount from Avista, the  
3 Council will release the letters of credit from Mirant and Avista as co-owners.

4  
5 The Council finds that the transfer of one-half ownership interest in Phase 2 from Mirant to  
6 Avista satisfies the requirements of OAR 345-022-0050.

7  
8 **D.1.3. CO<sub>2</sub> Emissions Standard (OAR 345-024-0710(1))**

9 The relevant portion of the cited standard provides,

10  
11 If the applicant elects to meet the applicable carbon dioxide emissions  
12 standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-  
13 0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a  
14 bond or letter of credit in a form reasonably acceptable to the Council to  
15 ensure the payment of the offset funds and the additional funds required  
16 under section (4).\*\*\*

17  
18 **Discussion.** CS2 provided financial assurance for the calculated carbon dioxide  
19 emissions from Phase 2 in the form of a letter of credit naming The Climate Trust as beneficiary.  
20 The Council approved the form and amount of the letter of credit (\$2,382,207.96) on November  
21 17, 2000. Fleet National Bank issued the letter of credit on January 3, 2001. That letter of credit  
22 has been fully disbursed to The Climate Trust as provided for in OAR 345-024-0710. However,  
23 Avista may owe the Climate Trust funds in the future depending on plant performance, including  
24 the amount of duct burning employed. The Site Certificate requires Avista to demonstrate that it  
25 has assumed sole responsibility of the Memorandum of Agreement with The Climate Trust.

26  
27 **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
28 from Mirant to Avista satisfies the requirements of OAR 345-024-0710(1).

29  
30 **D.2. Compliance with OAR 345-027-0100(10)(b): Transferee's Right to Possession and**  
31 **Control of Site and Facility**

32 Avista and Mirant each own 50 percent of Phase 2 of the Project. After the proposed  
33 transfer of ownership, Avista will be the sole party “lawfully entitled to possession or control of  
34 the site or the facility described in the Site Certificate” as it applies to Phase 2 as required by  
35 OAR 345-027-0100(10).

36 **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
37 from Mirant to Avista satisfies the requirements of OAR 345-027-0100(10)(b).

38  
39 **D.3. Compliance with OAR 345-027-0100(10)(c): Compliance with Site Certificate**

40 The Site Certificate requires the facility to be designed, constructed, operated and retired  
41 as described more specifically in various conditions in the Site Certificate. The only substantial  
42 changes that will be brought about by the proposed transfer of Phase 2’s ownership are identified  
43 in the Request for Partial Transfer submitted by Avista and described with specificity in this  
44 order.

1 Avista is able and agrees to assume all of Mirant’s obligations under the Site Certificate  
2 upon Council approval of the transfer of partial ownership interest in Phase 2 from Mirant to  
3 Avista.  
4

5 **Conclusion.** The Council finds that the transfer of one-half ownership interest in Phase 2  
6 from Mirant to Avista satisfies the requirements of OAR 345-027-0100(10)(c).  
7

8 **D.4. Compliance with OAR 345-027-0100(10)(d): Compliance with Other Statutes,**  
9 **Ordinances, and Council Rules**

10 In its request, Avista stated that it had identified no other new or existing statutes, local  
11 government ordinances, or Council rules that are applicable to this Site Certificate.  
12

13 The Council considered and adopted amendments in Amendment No. 5 (June 2000) that  
14 bring the Site Certificate up to date with current Council standards.<sup>2</sup> The Council identified no  
15 other new or existing statutes, local government ordinances, or Council rules that it proposed  
16 should be applicable to this Site Certificate as a result of the requested change in ownership. The  
17 Council’s review of the transfer request identified no significant threat to the public health,  
18 safety, or environment that would require new conditions for the Site Certificate.  
19

20 **Conclusion.** The Council finds that the facility complies with the statutes, local  
21 government ordinances and Council rules in effect on the date of this order and that no new  
22 conditions are required to satisfy OAR 345-027-0100(10)(d).  
23

24 **E. Conclusions about the Request for Partial Transfer and Amendment**

25 The Council finds that the Request for Partial Transfer of Site Certificate, to transfer one-  
26 half ownership interest in Phase 2 from Mirant to Avista, is consistent with current Council  
27 rules, with other applicable state statutes and rules, and with statewide land use planning goals  
28 and would not cause a significant adverse impact to public health and safety or the environment.

29 In preparing this order, the Council has considered state statutes, administrative rules, and local  
30 government ordinances in effect at this time, and whether the facility complies with all Council  
31 standards in effect at this time.  
32

33 Based on the above findings, reasoning and conclusions, the Council amends the Third  
34 Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project as  
35 Avista requested in its Request for Partial Transfer of Site Certificate for the Coyote Springs  
36 Cogeneration Project and amended by the Council, and as shown in the Council’s attached  
37 proposed Fourth Amended Site Certificate (incorporating Amendments #1 through #9).  
38 //

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<sup>2</sup> As discussed previously, the combining of the Financial Assurance and Retirement standards under the Council’s April 2002 rulemaking provided no substantive changes and is not an issue here.

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1 **FINAL ORDER**  
2

3 Based on the above findings of fact, discussion and conclusions of law, the Energy  
4 Facility Siting Council approves Avista’s Request for Partial Transfer of Site Certificate  
5 (Transfer of Phase Two Ownership Interest in Site Certificate) for the Coyote Springs  
6 Cogeneration Project. The Council Chair shall execute the Site Certificate amendment in the  
7 form of the “Fourth Amended Thermal Power Plant Site Certificate for the Coyote Springs  
8 Cogeneration Project,” which shall incorporate Amendments No. 1 through No. 9.

9  
10 Issued December 2, 2004.  
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12  
13

14 \_\_\_\_\_  
15 Karen H. Green  
16 Chair  
17 Energy Facility Siting Council  
18  
19

20 **Notice of the Right to Appeal**

21 You have the right to appeal this order to the Oregon Supreme Court pursuant to Oregon  
22 Revised Statutes (ORS) 469.405. To appeal you must file a petition for judicial review with the  
23 Supreme Court within 60 days from the day this order was served on you. If this order was  
24 personally delivered to you, the date of service is the date you received this order. If this order  
25 was mailed to you, the date of service is the date it was mailed, not the day you received it. If  
26 you do not file a petition for judicial review within the 60-day time period, you lose your right to  
27 appeal.  
28