

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2002-01

BP WEST COAST PRODUCTS, LLC.

BP CHERRY POINT COGENERATION
PROJECT

PREHEARING ORDER NO. 2
COUNCIL ORDER NO. 779

SECOND PREHEARING CONFERENCE
ORDER FINALIZING INTERVENTION,
REVIEWING STIPULATIONS AND
AGREEMENTS, REVIEWING ISSUES
AND DISCOVERY MATTERS AND
SETTING HEARING DATE

Nature of the Proceedings

On June 10, 2002, BP West Coast Products, LLC (herein "BP" or the "Applicant"), submitted application No. 2002-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the BP Cherry Point Cogeneration Project, a 720-megawatt natural gas-fired combustion turbine electrical cogeneration facility. The proposed BP Cherry Point Cogeneration Project will be located within Whatcom County, adjacent to the BP oil refinery and near the community of Birch Bay.

Associated with the Project will be an approximately one mile electrical transmission line and a 1,400-foot natural gas pipeline. The siting of the transmission line is under the jurisdiction of the Bonneville Power Administration (BPA).

EFSEC and BPA are conducting an environmental review of this Project and will be issuing a draft Environmental Impact Statement (DEIS) for public comment under the Washington State Environmental Policy Act (SEPA), and the National Environmental Policy Act (NEPA). EFSEC will also conduct an examination of the project through a formal adjudicative proceeding.

Procedural Setting:

On December 16, 2002, the Council, through Julian C. Dewell, ALJ, issued its First Prehearing Conference Order, which dealt preliminarily with intervention, scheduling the final determination of the Petitions for Intervention of Whatcom County and Province of British Columbia for the Second Prehearing Conference, adopting Hearing Guidelines, determining that Stipulations and Settlements, Issue Identification and Discovery would be considered at the

Second Prehearing Conference. In the interim, on April 15, 2003 (electronic copy) and April 28, 2003 (hard copy), BP revised its Application, which, among other things, eliminated air cooling and substituted water cooling. On June 8, 2003, Notice of Intent to Hold Prehearing Conference on July 15, 2003, and Notice of Schedule for Submittal of Issues List July 7, 2003, was given. On July 7, 2003, Counsel for the Environment issued the Consolidated Statement of Issues by Counsel for the Environment, which included issues for Counsel for the Environment, Whatcom County and Province of British Columbia.

The Council convened the Second Prehearing Conference in the formal adjudication process for this matter on July 15, 2003, in Olympia, Washington, pursuant to due and proper notice to all appropriate persons. The Conference was held before Council Chair Jim Luce, and Council members: Richard Fryhling (Community, Trade & Economic Development), Charles Carelli (Department of Ecology), Tony Ifie (Department of Natural Resources), Tim Sweeney (Utilities and Transportation Commission), Dan McShane (Whatcom County) and the Administrative Law Judge, Julian C. Dewell.

Participants:

The following persons participated in the Second Prehearing Conference:

Applicant:	BP WEST COAST PRODUCTS, LLC , by Karen M. McCaffey and Elizabeth McDougall, Attorneys at Law, Seattle.
Counsel for the Environment:	Michael Lufkin , Assistant Attorney General, Olympia.
Council Member Agencies:	Washington Utilities and Transportation Commission , by Sally G. Johnston, AAG, Olympia.
Intervenors:	Whatcom County , by David M. Grant, Deputy Prosecuting Attorney, Bellingham (by telephone). The Province of British Columbia , by David A. Bricklin, Attorney at Law, Seattle.

1. Rulings on Intervention:

Subject to the provisions of the First Prehearing Order, with regard to Rulings and Background on Intervention, as it relates to Whatcom County and the Province of British Columbia, the Council determined, in part, that Whatcom County and the Province of British Columbia would be allowed to participate in the Adjudicative Proceedings as Intervenors, with certain conditions imposed. These conditions have been met.

Whatcom County has responded and has participated with Counsel for the Environment in the Consolidated Issues list, which specifies those issues in which Whatcom County is interested. The Council will determine which issues Whatcom County will be allowed to be involved in and any limitations upon witness examination at a later date.

Province of British Columbia has responded and has participated with Counsel for the Environment in the Consolidated Issues list, which specifies those issues in which Province of British Columbia is interested. The Council will determine which issues Province of British Columbia will be allowed to be involved in and any limitations upon witness examination at a later date.

2. Stipulations and Settlements:

Upon inquiry, it was ascertained that there are no Stipulations and Settlement Agreements at this time.

3. Issue Identification:

Pursuant to the First Prehearing Conference Order, Michael Lufkin, Counsel for the Environment, met with representatives of Whatcom County and Province of British Columbia, and these parties identified consolidated issues that they desire the Council to consider at the Adjudicative Hearing. The Consolidated Issues List is attached to this Order as Appendix A.

In addition to the appended Consolidated Issues List, Counsel representing the Utilities and Transportation Commission (WUTC) indicated that the WUTC may request to be dismissed from these proceedings. However, based upon the Petition by WUTC, if it remains in these proceedings, it has asserted issues as follows:

Concerns for design, construction, operation and maintenance in compliance with state and federal rules and regulations.

Also in addition to the appended Consolidated Issues List, the Applicant requested that the following issues be added: Project Description; and Purpose, Need and Benefits of the Project. Counsel for the Applicant agreed to submit such request to the Council in writing.

Counsel for the Applicant requested that further consolidation and refinement of issues be reserved until a later time.

4. Discovery:

No action was taken with regard to Discovery as the parties indicated they are carrying informal discovery at this time and there are no problems.

5. Dispositive Motions:

The parties indicated there are no Dispositive Motions to be made at this time.

6. Amendments to Pleadings:

The parties indicated there were no amendments to pleadings at this time.

7. Progress Regarding Admissions of Fact, Submittal of Exhibits, and Limitation and Consolidation of Witnesses:

The parties indicated that such matters were premature at this time.

8. Scheduling of Adjudicative Hearing:

After a lengthy discussion and deliberation by the Council, it was determined that the Adjudicative Hearings and the Public Witness Testimony session should be held in Whatcom County. Further, after all parties had input and discussion, the Council determined the schedule for the Adjudicative Hearing, based upon the assumption that the DEIS will be issued to the public on or before August 15, 2003, will be as follows:

- a. August 15: DEIS filed and notice given for Late Intervention.
- b. August 29: BP prefiles testimony and exhibits [2 weeks after DEIS issued].
- c. September 5: Deadline for late intervention requests [3 weeks after DEIS issued].
- d. Week of September 8, public hearing for comment on DEIS [4 weeks after DEIS issued].
- e. September 29: End of DEIS comment period [45 days after DEIS issued].
- f. October 17: Parties, other than BP, respond to BP's prefiled testimony and exhibits by filing their own prefiled testimony and exhibits [7 weeks after BP prefiles testimony].
- g. November 7: BP files its rebuttal testimony [3 weeks after other parties file their prefiled testimony].
- h. November 17: Begin Adjudicative Hearing.

Should the issuance of the Draft EIS be delayed, the remaining steps in the schedule above would be delayed accordingly, but the intervals between the stages would remain the same.

It was further determined that a 3rd Prehearing Conference may be required, in the event of additional requests for intervention, stipulations and settlements, discovery issues, admissions of fact and genuineness of documents or other procedural matters.

9. Notice to parties:

Any objection to the provisions of this order must be filed within ten days after the date of mailing of this order, pursuant to WAC 463-30-270(3). Unless modified, this prehearing conference order shall control further proceedings in this matter.

DATED at Olympia, Washington and effective this ____ day of July, 2003.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL.

By

Julian C. Dewell
Administrative Law Judge