

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. 4  
COUNCIL ORDER NO. 784

THIRD PREHEARING CONFERENCE  
ORDER RECEIVING PROPOSED  
SETTLEMENT AGREEMENT, SETTING  
HEARING DATES, AND DEALING  
WITH HEARING PROCEDURES AND  
PROPOSED PERMITS

**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 (Project), a 720-megawatt natural gas-fired combustion turbine electrical cogeneration facility. The proposed Project is to 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 (Bonneville).

EFSEC and Bonneville issued a draft Environmental Impact Statement (DEIS) for public comment under the Washington State Environmental Policy Act (SEPA), and the National Environmental Policy Act (NEPA) on September 5, 2003. The public comment period on the DEIS ended on November 3, 2003. Notice has been given that EFSEC will conduct an examination of the project through a formal adjudicative proceeding, which is scheduled for December 8 through 12, 2003, at Fox Hall, Bellingham, Washington. A Public Hearing Session will also be scheduled in Bellingham, Washington, during the period of the Adjudicative Hearing.

**Procedural Setting:**

The Council convened the Third Prehearing Conference in the formal adjudication process for this matter on November 3, 2003, in Olympia, Washington, pursuant to due and proper notice to

all parties. The Conference was held before Council Chair Jim Luce, and Council members: Richard Fryhling (Community, Trade and Economic Development), Charles Carelli (Department of Ecology), Tony Ifie (Department of Natural Resources), Tim Sweeney (Utilities and Transportation Commission), Chris Towne (Department of Fish and Wildlife), and Julian C. Dewell, Administrative Law Judge. Participation was both in personal presence at the conference room and by telephone.

### **Participants:**

The following persons participated in the Third Prehearing Conference:

Applicant: **BP West Coast Products, LLC**, by Karen M. McGaffey, and Elizabeth McDougall, Attorneys at Law, Seattle.

Counsel for the Environment: **Mary Barrett**, Assistant Attorney General (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 (by telephone).

### **1. Hearing Dates and Location:**

a. Adjudicative Hearing: The adjudicative hearing dates were confirmed for December 8 through 12, 2003, at Fox Hall, Bellingham, Washington.

b. Public Hearing Session: The public hearing session, pursuant to RCW 80.50.090 (3), was scheduled for December 9, 2003, starting at 7:00 p.m., at the Blaine Performing Arts Center, Blaine, Washington.

c. Schedule for Land Use Hearing: After a discussion with legal counsel for the Applicant and Whatcom County, who collectively indicated that approximately 4 to 5 witnesses might be called, if a settlement agreement cannot be reached, the Land Use Hearing, pursuant to RCW 80.50.090 (2), was scheduled for the afternoon of December 9, 2003, to be held at Fox Hall, in Bellingham, Washington, to commence promptly after the luncheon break in the Adjudicative Hearing that day.

d. Settlement Agreements Between Parties and Schedule for Settlement Hearing: The Applicant and Counsel for the Environment entered into a Stipulation on October 17, 2003. The Stipulation was received in the EFSEC office on October 21, 2003. A Settlement Hearing was scheduled for December 8, 2003, as the first item of business for the hearing on that date. Legal counsel were instructed to include witnesses that will testify in support of this stipulation in the witness schedule to be filed with EFSEC by December 3, 2003.

e. Schedule for Additional Prehearing Conferences: It was determined that no additional Prehearing Conference will be required. However, in the event additional settlements are filed, they will be set for hearing as the first item of business on December 8, 2003, along with the settlement between Counsel for the Environment and the Applicant.

## **2. Applicant's Report on Other Settlement Agreements and Schedule for Hearings:**

Discussion was held with the Applicant and other parties concerning other or potential settlement agreements. The Chair encouraged all parties to strive to reach settlement of the outstanding issues, as it is the policy of EFSEC to encourage settlement. It was determined that should any additional settlement agreements be entered into in this matter, such agreements will be filed with the Council by December 1, 2003, and any witnesses brought in support of the settlements will be included in the witness schedule due by December 3, 2003.

## **3. Number of Witnesses, Consolidation of Examination, and Coordination of Witnesses:**

The Applicant's legal counsel agreed to coordinate with all other parties and prepare a witness schedule taking into account the number of witnesses that will appear, and the consolidation of their examination. This witness schedule will be submitted to the Council by December 3, 2003.

## **4. Hearing Coordination:**

a. Numbering of Parties' Prefiled Testimony and Applicant's Rebuttal Testimony: The parties were reminded of the numbering requirements for the parties' prefiled testimony, due on November 7, 2003, and the applicant's rebuttal testimony, due on November 28, 2003. The parties were instructed to contact Irina Makarow for exhibit numbers.

The Applicant informed the Council that the scheduled date for filing of their rebuttal testimony fell on the Friday after Thanksgiving, and that the EFSEC office would be closed that day. The Applicant agreed to make all efforts to submit their prefiled rebuttal on Wednesday November 26<sup>th</sup>, 2003, and no later than December 1<sup>st</sup>, 2003.

b. Numbering and Distribution of Cross Examination Exhibits Prior to the Adjudicative Hearing: A discussion was held concerning numbering and distribution of cross examination exhibits prior to the adjudicative hearing and legal counsel were instructed to file such items with Council staff, and provide copies to all other parties at least 24 hours prior to first hearing date, in the requisite number of copies established in the Hearing Guidelines adopted in this matter.

c. Other Hearing Related Coordination: A discussion was held concerning special visual aids, accommodation of witnesses, etc., and legal counsel were told to notify Irina Makarow no later than December 1, 2003, on such matters.

## **5. Issuance of Other Permits for Public Comment:**

a. Process for Issuance of, and Public Comment Opportunity for, the Draft State Waste Discharge Permit and Proposed 401 Certification Conditions: A discussion was held in connection with the process of issuance of, and public comment for, the draft State Waste Discharge Permit and proposed 401 Certification Conditions and the following action was taken:

1. The state Waste Discharge Permit draft will be available to the public starting November 7, 2003, and all parties will be mailed a copy of the draft permit and the associated fact sheet. Written comments will be accepted through December 12, 2003, and oral comments will be taken at the Public Hearing on December 9, 2003.

2. Draft of Section 401 Certification conditions, as recommended by Shapiro and Associates, will be available to the public on November 7, 2003, and all parties will be mailed a copy. Written comments will be accepted through December 12, 2003, and oral comments will be taken at the Public Hearing on December 9, 2003.

b. Issuance of Draft Prevention of Significant Deterioration Permit for Public Comment: EFSEC staff announced that the draft Prevention of Significant Deterioration Permit will be issued and distributed to the public and stakeholders no later than November 7, 2003, in accordance with state and federal regulations. The period for public comment will end on December 12, 2003.

c. Presentation of Additional Testimony to Council on Draft State Waste Discharge Permit, and proposed 401 Certification Conditions, and the draft Prevention of Significant Deterioration Permit: The Applicant and all other parties were instructed at the prehearing conference that should they require additional testimony to be presented to the Council during the Adjudicative Hearings on these drafts, the number of witnesses to be presented, the coordination of their examination and the schedule for their availability must be submitted to the Council and all other parties no later than November 17, 2003. This deadline is hereby extended to Friday November 21, 2003. In the event such hearing is required on this matter, it will be scheduled during the Adjudicative Hearing period. Applicant's legal counsel will coordinate such matters.

## **6. Post Hearing Briefing Schedule:**

After discussion of EFSEC's customary requirements for sequential post hearing briefs, including drafts of proposed Findings of Fact and Conclusions of Law, draft of the proposed Order, and the proposed Site Certification Agreement to be submitted by the Applicant, the Applicant and parties were notified that the schedule for filing post hearing briefs with EFSEC would be finalized the last day of the Adjudicative Hearings. The Applicant and other parties were reminded that the post hearing briefing schedule established could affect the time required by the Council to make a recommendation to the Governor.

**7. Other Matters Before the Council:**

The only other matter discussed between the Council and the parties was that if any party wishes to receive copies of the public comments on the DEIS, they should notify Irina Makarow as soon as possible, after this Third Prehearing Conference.

**8. 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 November, 2003.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL.

By

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Charles Carelli  
Acting EFSEC Chair