

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

Council Order No. 787

Prehearing Order No. 6

ORDER ON AMENDED STIPULATION
BETWEEN APPLICANT AND COUNSEL
FOR THE ENVIRONMENT

Nature of the Proceeding:

This matter involves Application No. 2002-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) by BP West Coast Products, L.L.C., for certification to construct and operate the BP Cherry Point Cogeneration Project, a 720-megawatt natural gas-fired combustion turbine electrical cogeneration facility located in Whatcom County, Washington.

Procedural Setting:

In accordance with WAC 463-30-250 and WAC 463-30-270, the Council convened a hearing on the proposed Stipulation Between Counsel for the Environment and BP West Coast Products, L.L.C., on December 9, 2003, at the commencement of adjudicative proceeding held in Bellingham, Washington. The hearing was held before Council Chair, James Luce, and Councilmembers Richard Fryhling (Department of Community, Trade and Economic Development), Hedia Adelsman (Department of Ecology), Tony Ifie (Department of Natural Resources), Tim Sweeney (Utilities and Transportation Commission), Chris Towne (Department of Fish and Wildlife), Dan McShane (Whatcom County). The Council was assisted by Administrative Law Judge Julian C. Dewell.

Parties were represented as follows:

Applicant, BP West Coast Products, LLC, by Karen M. McGaffey and Elizabeth McDougall, Perkins Coie LLP, Seattle;

Counsel for the Environment, Mary Barrett, Assistant Attorney General (AAG), Olympia;

Whatcom County, by David M Grant, Deputy Prosecuting Attorney, Bellingham.

Discussion:

In an EFSEC adjudicative proceeding, stipulations of facts and settlement agreements must be stated on the record or submitted in writing and are subject to approval by the Council. WAC 463-30-250. The Council's approval of a stipulation of facts or settlement agreement means that the

Council accepts the stipulation of facts or settlement agreement as binding between the settling parties. Stipulations and settlement agreements do not bind the Council or parties other than the stipulating or settling parties. Non-stipulating or non-settling parties may present relevant contrary evidence and arguments during the adjudicative proceeding.

To the extent that a stipulation of facts or settlement agreement is approved by the Council, approval does not cede the Council's jurisdiction and authority to the parties. The Council retains its jurisdiction and authority with respect to the proposed project, the Council's recommendation to the Governor, and the contents and enforcement of any site certification agreement. On December 8, 2003, having considered the proposed Stipulation Between Counsel for the Environment and BP West Coast Products, L.L.C., (the Stipulation), Exhibit 10.0, and supporting Exhibits 10.1, 10.2 and 10.3, and having heard the testimony of witnesses Mark Moore and David Sjoding, the Council accepted the Stipulation contingent upon: 1) inclusion of changes to the Stipulation proposed by the Council on December 8, 2003 and agreed to by the Applicant and Counsel for the Environment; 2) receipt of additional information from the Applicant clarifying Exhibits 10.1 and 10.2; and 3) receipt of public input at the meeting held on December 9, 2003. The Council's contingent acceptance of the Stipulation was also made subject to the explicit caveat that its acceptance did not constitute a decision on the terms of a site certification agreement, if one is issued, with respect to the matters addressed in the Stipulation.

The Council heard no testimony in opposition to the Stipulation at the hearing on the settlement agreement or during the public testimony session.

On December 10, 2003, legal counsel for the Applicant and the Counsel for the Environment presented to the Council a revised Stipulation, labeled as Amended Stipulation Between Counsel for the Environment and BP West Coast Products, LLC (Amended Stipulation), Exhibit 10.0A. Exhibit 10.0A was reviewed by the Council and accepted, subject to receipt and acceptance by the Council of information clarifying Exhibits 10.1 and 10.2 and again subject to the caveat that Council acceptance of the Amended Stipulation does not bind the Council to any decision on the terms of any site certification agreement, if one occurs, with regard to matters addressed in the stipulation.

On December 30, 2003, the Council received the requested clarification to Exhibit 10.0 and the testimony of Mark Moore (by letter dated December 30, 2003, which is hereby marked as Exhibit 10.4), and revised Exhibit 10.2 (hereby marked Exhibit 10.2A).

Decision:

The Council has considered Exhibits 10.4 and 10.2A and hereby approves the Amended Stipulation with the caveat that the Council's decision is not a decision on the terms of any site certification agreement, if one occurs, with regard to matters addressed in the Amended Stipulation. Approval of the Amended Stipulation does not bind the Council to incorporate the conditions outlined in the Amended Stipulation as binding conditions of any site certification agreement issued by EFSEC. The Council retains its full jurisdiction and authority with respect to the proposed project, the Council's recommendation to the Governor, and the contents and enforcement of any site certification agreement.

Objections to this prehearing order must be filed within 10 calendar days after the date it is mailed. If no objections are made it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

DATED and effective at Olympia, Washington, the ____ of January, 2004.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

James O. Luce, EFSEC Chair