

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

POSTHEARING ORDER NO. 1

COUNCIL ORDER NO. 788

ORDER ON REQUEST BY APPLICANT
AND WHATCOM COUNTY TO DELAY
COUNCIL DECISION ON LAND USE
CONSISTENCY AND POSTPONE
POSTHEARING BRIEFING SCHEDULE

Nature of the Proceeding: This matter involves an application by BP West Coast Products, LLC (“Applicant” or “BP”) for certification to construct and operate the BP Cherry Point Cogeneration Project , a 720-megawatt (MW) combined cycle cogeneration natural gas-fired energy facility adjacent to the BP Cherry Point Refinery in Whatcom County.

Pertinent Procedural History: An adjudicative hearing in this matter was held from December 8 through 11, 2004, in Bellingham, Washington, before Council chair, James O. Luce, and Councilmembers Richard Fryhling (Department of Community, Trade & 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), and Dan McShane (Whatcom County). Julian C. Dewell, Administrative Law Judge, acted a facilitator. A land use hearing was held concurrently with the adjudicative hearing, on December 9, 10, and 11, 2003, also in Bellingham.

Parties appearing before the Council during the adjudicative and land-use hearings were represented by: BP West Coast Products, LLC, by Karen M. McGaffey and Elizabeth McDougall; Whatcom County, by David M. Grant, Deputy Prosecuting Attorney; and Counsel for the Environment, by Mary Barrett, Assistant Attorney General.

On December 11, 2003, the Council continued the land use hearing and required the Applicant and Whatcom County to simultaneously submit briefs on land use consistency on January 19, 2004, with reply briefs to be submitted on January 26, 2004. The parties both submitted initial briefs on January 19, 2004, and the Applicant submitted a reply brief on January 26, 2004. David Grant advised Allen Fiksdal, Council Manager, by e-mail that Whatcom County was not submitting a reply brief. In connection with the adjudicative hearing, the initial brief of the Applicant was due February 5, 2004; the other parties’ briefs were due on February 20, 2004; and the Applicant’s response brief was due March 5, 2004.

On January 29, 2004, counsel for the Applicant wrote to Allen Fiksdal, EFSEC Manager, indicating that “BP and Whatcom County jointly request that the Council defer any ruling on Land Use Consistency” as those parties were in discussions over the land use questions “and would like some additional time to try to resolve these questions through negotiation.” In addition, counsel for Applicant advised that BP and Whatcom County also “jointly request that the current schedule for posthearing briefing be postponed” as the parties “may be able to reach a mutually acceptable solution regarding the outstanding issues.”

At the Council’s February 2, 2004 meeting, legal counsel for the Applicant, Karen M. McGaffey, appeared and made an oral request that the Council continue the decision on the land use consistency and legal counsel for Whatcom County, David Grant, appearing by phone, concurred in this request. Counsel for the Environment, Mary Barrett, also appearing by phone, did not oppose the request for postponement. The Council advised the parties that during any delay, certain EFSEC administrative costs would continue to accrue and that any delay in the land use and adjudicative proceeding decision would delay decisions on the PSD permit and the final EIS, which could in turn delay the Council’s recommendation to the Governor. Ms. McGaffey and Mr. Grant acknowledged this possibility on behalf of the Applicant and Whatcom County. The parties also agreed to furnish EFSEC with a suggested date to which the matter would be continued, and the proposed schedule was e-mailed to EFSEC staff on February 4, 2004. The Applicant and the County proposed the following process and schedule:

March 15 - Target date for reaching a conceptual agreement between the Applicant and Whatcom County. If reached, the conceptual agreement would concern the scope of additional work to be done and the framework for developing a final settlement based on the results of that work. A status report would be filed with the Council for consideration at their March 15, 2004 regular Council meeting.

June 15 -- Target date for a final agreement between the Applicant and the County. This target would provide time for performing additional field work, and then negotiating language of a final agreement to be presented to the Council.

Decision of the Council: Based on the foregoing, after due deliberation and in order to encourage settlement between the parties, the Council hereby grants a delay in the time for making its decision on the land use consistency, and postpones the posthearing briefing schedule as follows:

March 15 - Target date for reaching a conceptual agreement between the Applicant and Whatcom County. If reached, the conceptual agreement would concern the scope of additional work to be done and the framework for developing a final settlement based on the results of that work.

June 15 -- Target date for a final agreement between the Applicant and the County.

Status Reports:

The Applicant and Whatcom County shall file a status report with the Council for consideration at the Council's regular meeting on Monday March 15, 2004, and shall appear before the Council in person or by phone at the Council's March 15, 2004 meeting, for further clarification of the report and any conceptual agreement, as may be necessary.

The Applicant and Whatcom County shall file a second status report with the Council no later than 5 p.m. Friday April 30, 2004, and shall appear before the Council in person or by phone at the Council's May 3, 2004 meeting, for further clarification of the status report as may be warranted.

If a conceptual agreement is not reached by March 15, 2004, the Applicant and the County will propose a new posthearing briefing schedule in their status report due March 15, 2004.

The Council's decision to delay the land use consistency decision and postpone the posthearing briefing schedule is granted with all parties recognizing that such delay will likewise delay the Council's decision in connection with the adjudicative proceedings as a whole, the decision on the PSD permit, the issuance of the final EIS, and the issuance of a recommendation to the Governor. The parties also recognize that during the period of any delay EFSEC will continue to incur administrative expenses.

DATED and effective at Olympia, Washington, this _____ day of February, 2004.

James O. Luce
EFSEC Chair