

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 317

***AMENDMENT NO. 1
CHERRY POINT COGENERATION PROJECT
SITE CERTIFICATION AGREEMENT***

Nature of Action.

BP West Coast Products LLC (BP) is the Certificate Holder of the Site Certification Agreement (SCA) governing the Cherry Point Cogeneration Project (Cherry Point Project or Project). By letter dated June 20, 2006, BP requested that the Council amend the SCA for the Cherry Point Project to allow the following changes:

1. Allow BP the flexibility to proceed with construction of the entire 720 MW cogeneration facility approved by the Council, or to construct the facility in two phases using either GE or Siemens turbines;
2. Allow BP to use treated refinery fuel gas in the Heat Recovery Steam Generator (HRSG) duct burners instead of natural gas, so long as it will comply with the same Prevention of Significant Deterioration (PSD) permit emission limitations applicable when operating the duct burners with natural gas;
3. Allow BP to lengthen the construction period from 27 to 33 months;
4. Allow BP to use aqueous rather than anhydrous ammonia;
5. Change the SCA so that the International Building Code of 2003 (IBC-2003), rather than the Uniform Building Code of 1997 (UBC-1997), will govern the project civil and structural design;
6. Allow BP to determine during the final project design whether stack silencers for the Phase I project are required to meet applicable noise regulations and noise limits agreed to in the stipulation with Whatcom County;
7. Change the description of the Ferndale Pipeline compressor facilities found in the SCA.

Background.

On December 21, 2004, Governor Gary Locke executed a Site Certification Agreement on behalf of the State of Washington authorizing the construction and operation of the Cherry Point Cogeneration Project. As of October 2006, BP has not begun construction of the Project.

Procedural Status.

EFSEC's amendment procedure is governed by chapter 80.50 RCW and Chapter 463-66 WAC. BP and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, the request for amendment of the SCA was submitted in writing on June 27, 2006.

- The Council considered the request at its July 11, 2006 Monthly Meeting.
- The public hearing required by Chapter 463-66-030 WAC was conducted in Ferndale, Washington, on October 3, 2006.
- Notice of this matter was mailed to approximately 424 people on September 8, 2006, and was published in local newspapers. The Notice advised that BP had requested an amendment to the SCA, that a public hearing would be held on October 3, 2006, in Ferndale, Washington, and that comments could be made either orally at that time or in writing prior to the conclusion of the public comment period noted as the end of business day, October 6, 2006.
- The Council duly noticed its intent to consider this request and act upon it at its October 10, 2006, Monthly Meeting, in Olympia, Washington. Notice of the proposed date of the Council's action on this request was included in notice of the public hearing (see above), in a Determination of Non-Significance issued by EFSEC's SEPA official on September 11, 2006, and EFSEC's notice and agenda of the October 10, 2006, Monthly Meeting.

Public Comment.

Public Comments regarding this matter are summarized in Attachment 1 to this Resolution.

Discussion.

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend a SCA:

In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare.

WAC 463-66-050 explains that the Council's consideration of public health, safety, and welfare includes environmental concerns, as follows:

In reviewing whether a proposed amendment is consistent with the public health, safety, and welfare, the council shall consider the short-term and long-term environmental impacts of the proposal.

The Council has considered these factors and has concluded that the proposed amendment would be consistent with each. Each of the Council's conclusions is discussed below.

A. Consistency with intention of the original SCA.

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the original SCA. In general, the intention of every SCA is to grant state authorization to a certificate holder to construct and operate an energy project that has been determined to be in the state interest. In return, the certificate holder commits to comply with the terms of the SCA.

First, the request to be able to construct the project in phases is consistent with the original intent. In approving BP's Application, the Council found that the Project is in the public interest. See Council Order No. 803 at 15. The intention of the original SCA was to authorize the construction of a cogeneration project adjacent to the BP Cherry Point refinery so that the state and region would benefit from the availability of electricity generated efficiently and with minimal adverse environmental impacts. *Id.* at 15-16. The requested amendment will assist BP in securing the power purchase agreements and financing necessary to make the Project, and its benefits, a reality.

Second, allowing BP to use refinery fuel gas to fire the duct burners is consistent with the original intent. BP originally proposed that natural gas would be the only fuel used at the Project. Consistent with BP's proposal, the SCA limits operation of the Project to natural gas. Having the option to fuel the Project's duct burners with refinery fuel gas would be consistent with the original intent because, once treated, the refinery fuel gas would have properties similar to natural gas and would not result in increased emissions.

Third, allowing BP to lengthen the construction period from 27 months to 33 months would be consistent with the original intent. The original SCA requires the construction to occur on a continuous basis, without interruption, according to the construction schedule proposed by BP. Although BP originally proposed to construct the Project over a 27-month period, a 33-month construction schedule now appears more appropriate. The slightly longer schedule will spread out the same construction activities, requiring fewer tasks to be completed simultaneously and fewer workers to be on-site at a particular time. This change is consistent with the original intent to require continuous construction on a reasonable schedule.

Fourth, allowing BP to use aqueous ammonia rather than anhydrous ammonia is consistent with the original SCA. The intent of the SCA is to authorize the use of ammonia to control emissions from the facility, and to require ammonia to be stored safely on site for this purpose. This change should reduce the hazards of handling ammonia and BP will follow applicable regulations to ensure safe handling of the aqueous ammonia.

Fifth, requiring BP to comply with the seismic provisions of IBC-2003 rather than UBC-1997 is consistent with the original SCA. The intent of the original SCA was to require the Project to be constructed in accordance with generally accepted seismic criteria. IBC-2003 has now superseded UBC-1997 as the accepted standard in this regard.

Finally, allowing BP to specify the appropriate noise mitigation measures during the final design phase is consistent with the intent of the SCA. The substantive noise mitigation requirement in the SCA is to meet the applicable noise regulations for the Project and the noise limits

established in the BP-Whatcom County Amended Stipulation and Settlement Agreement. Allowing BP to specify the appropriate noise mitigation measures during the final design phase will provide the best solutions for effective noise mitigation.

The Council finds that the proposed changes to the SCA are consistent with this intent.

B. Consistency with applicable laws and rules.

Under WAC 463-66-040(2), the Council must consider applicable laws and rules, including chapter 43.21C RCW and chapter 197-11 WAC (the State Environmental Policy Act and SEPA rules), WAC 463-66-050, and WAC 463-66-070 through -080.

1. Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC).

In general, SEPA requires an agency to perform a threshold determination to determine whether a proposed action will have a significant adverse effect on the environment. See WAC 197-11-310. The Council's SEPA responsible official, EFSEC Manager Allen Fiksdal, has reviewed the proposed changes to the SCA and has determined they do not have any probable significant adverse environmental impact. EFSEC issued a Determination of Non-Significance on September 11, 2006. EFSEC also issued an Addendum to the Final Environmental Impact Statement on September 11, 2006.

2. Consistency with WAC 463-66-050.

WAC 463-66-050 requires the Council to consider the short-term and long-term environmental impacts of the proposal. The Council has considered these impacts in the Cherry Point Cogeneration Project Final EIS (issued December 2004). The proposed amendments to the Project SCA will not change the way environmental impacts are spread over the lifetime of the facility.

WAC 463-66-050 also requires the Council to consider reasonable alternative means by which the proposal might be achieved and the availability of funding to implement the proposal. BP's proposal to construct the Project in phases will assist BP in securing the power purchase agreements and financing that are necessary to make the Project, and its benefits, a reality.

3. Consistency with WAC 463-66-070 and -080.

WAC 463-66-080 provides:

An [SCA] amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor.

On the other hand, WAC 463-66-070 provides:

An amendment request which does not substantially alter the substance of any provisions of the SCA, or which is determined not to have a significant

detrimental effect upon the environment, shall be effective upon approval by the council. Such approval may be in the form of a council resolution.

Based on its findings below that the (i) the proposed amendment has no environmental impact and no impact on public health, safety, and welfare; and (ii) does not alter the Certificate Holder's legal responsibilities under the SCA, the Council finds that this amendment may be approved by Council resolution pursuant to WAC 463-66-070.

The requested amendment can be approved by Council resolution because it would not substantially alter the substance of any provision in the SCA and would not have a significant detrimental effect on the environment. Each part of BP's amendment request is addressed in turn below.

C. Consistency with the public health, safety, and welfare.

Under WAC 463-66-040(3) and -050, the Council must consider whether the proposed amendment would be consistent with public health, safety, and welfare, including environmental aspects of the public welfare.

Allowing phased construction of the Cherry Point Project would not have significant detrimental effects on the environment. The environmental effects associated with construction and operation of the smaller Phase I facility would be less than those associated with the originally permitted project. If the cumulative effects of Phase I and Phase II are significantly greater than those associated with the originally permitted project, BP would be required to seek an additional amendment to the SCA (and any underlying permits if necessary) before construction could proceed.

Allowing BP to use refinery fuel gas would not have significant detrimental effects on the environment. The original SCA required that the Project be fueled by natural gas in order to exclude the possibility of operating the facility on diesel oil, which would result in substantially greater air emissions. BP now seeks the flexibility to use refinery fuel gas to fire the Project's duct burners. The refinery fuel gas would have characteristics similar to natural gas, and the Project would comply with the same emission limits regardless of whether duct burners were fueled with natural gas or refinery fuel gas. For this reason, the amendment would not adversely effect the environment. The Prevention of Significant Deterioration/Notice of Construction Permit must undergo amendment to allow this change. The permit will only be issued if there are no adverse impacts to ambient air quality from the project.

Allowing BP to lengthen the construction period from 27 months to 33 months would not have significant detrimental effects on the environment. Although BP originally proposed to construct the Project over a 27-month period, a 33-month construction schedule could be more appropriate. The slightly longer schedule will spread out the same construction activities, requiring fewer tasks to be completed simultaneously and fewer workers to be on-site at a particular time. This change will not adversely affect the environment.

Allowing BP to use aqueous ammonia rather than anhydrous ammonia would reduce the hazards associated with handling the ammonia. In either case, BP must follow applicable regulations to ensure safe handling of the ammonia.

Requiring BP to comply with the seismic and other provisions of IBC-2003 rather than UBC-1997 would not have detrimental impacts on the environment. Both are designed to ensure that the facility is designed properly. Whatcom County has adopted IBC-2003 for all construction within the county.

Allowing BP to determine whether stack silencers are necessary in order to meet its noise limit commitments would not have detrimental impacts on the environment. The BP-Whatcom County Amended Stipulation and Settlement Agreement does not require specific equipment modifications or noise mitigation devices to meet the noise limits for the Cherry Point Project. BP must still employ whatever measures are necessary to meet these limits.

Finally, revising the description of the Ferndale Pipeline facilities would not have detrimental impacts on the environment. The Ferndale Pipeline is not under EFSEC's jurisdiction and is merely described in (rather than being regulated by) the SCA.

Public health, safety and welfare will therefore not be affected in any manner not previously analyzed during review of the project application. Furthermore, the activities will not cause any significant adverse environmental impact. BP will continue to abide by all the terms and conditions of the SCA for the Cherry Point Project.

D. PSD Amendment Request

BP is also requesting an amendment of its PSD/NOC Permit No. EFSEC/2002-01 to allow it to construct the facility that was originally permitted or to allow it to construct the Phase I facility described above. In addition to requesting this amendment to the PSD permit, BP is requesting that the Council extend the PSD permit's commencement of construction deadline for an additional 18 months.

The Council recognizes that in this case the review process to amend the PSD/NOC permit requires more time than does the review of the amendment to the SCA. However, BP cannot proceed with actual construction of the revised project without first securing a valid PSD/NOC permit in accordance with applicable state and federal laws and regulations. As a result, and as stated below in "Conclusions", EFSEC's amendment of the SCA is conditioned on BP securing a valid amendment of PSD/NOC Permit No. EFSEC/2002-01.

E. Conclusion.

The Council concludes that the proposed amendment of the Cherry Point Cogeneration Project SCA as described above is consistent with public health, safety, and welfare; the applicable law; and the intent of the original SCA. The Council hereby determines that it is appropriate to approve an amendment to the Cherry Point Cogeneration Project SCA to reflect the proposed changes to the project; *Provided*, this amendment shall be null and void if BP does not secure an

amendment to Cherry Point Cogeneration Project PSD/NOC Permit No. EFSEC/2002-01 in accordance with state and federal laws and regulations.

RESOLUTION

For the foregoing reasons, the Council amends the Cherry Point Cogeneration Project SCA to reflect the following project changes:

1. Allow BP the flexibility to proceed with construction of the entire 720 MW cogeneration facility approved by the Council, or to construct the facility in two phases using either GE or Siemens turbines;
2. Allow BP to use treated refinery fuel gas in the Heat Recovery Steam Generator (HRSG) duct burners instead of natural gas, so long as it will comply with the same Prevention of Significant Deterioration (PSD) permit emission limitations applicable when operating the duct burners with natural gas;
3. Allow BP to lengthen the construction period from 27 to 33 months;
4. Allow BP to use aqueous rather than anhydrous ammonia;
5. Change the SCA so that the International Building Code of 2003 (IBC-2003), rather than the Uniform Building Code of 1997 (UBC-1997), will govern the Project civil and structural design;
6. Allow BP to determine during the final project design whether stack silencers for the Phase I project are required to meet applicable noise regulations and noise limits agreed to in the stipulation with Whatcom County;
7. Change the description of the Ferndale Pipeline compressor facilities found in the SCA;

These changes will be incorporated into the Site Certification Agreement as Amendment No. 1.

Provided, this amendment shall be null and void if BP does not secure an amendment to Cherry Point Cogeneration Project PSD/NOC Permit No. EFSEC/2002-01 in accordance with state and federal laws and regulations.

DATED at Olympia, Washington and effective on this October 10th, 2006.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: _____
James O. Luce, Chair

Attested: _____
Allen J. Fiksdal, EFSEC Manager

Attachments:

1. Summary of Public Comments Received in the Matter of BP West Coast Products LLC June 2006 Request to amend the Cherry Point Cogeneration Project Site Certification Agreement.
2. Cherry Point Cogeneration Project Site Certification Agreement, Amendment No. 1, as modified by EFSEC Resolution No. 317.

Resolution No. 317 – Attachment 1

Summary of Public Comments Received in the Matter of BP West Coast Products LLC June 2006 Request to amend the Cherry Point Cogeneration Project Site Certification Agreement.

1. Dan Mahar (e-mail dated September 22, 2006), representing the Northwest Clean Air Agency, requested that the amendment to the PSD/NOC permit (EFSEC/2002-01) require the certificate holder to install continuous emission monitors for sulfur dioxide on the combustion turbine stacks.
2. Bob Wiesen (comment form submitted October 3, 2006), expressed support for the proposal.
3. Garin Wallace (comment form submitted October 3, 2006), was concerned with noise levels, and that the analyses were performed in areas northwest of the project towards Birch Bay. Mr. Wallace was worried that noise levels might increase at his residence, especially if buffer trees and vegetation were cut down.
4. Steve Irving (e-mail dated October 5, 2006), expressed concern with the Council allowing the changes to fuel use (i.e. refinery gas vs. natural gas), phasing, requiring stack silencers. The review of a smaller project from the start may have yielded different mitigation requirements. Full build-out of the project at a later date will not meet the original air quality and water use conditions.
5. Greg Nothstein (memorandum dated October 6, 2006), representing the CTED Energy Policy Division, indicated that, based on analysis performed by the WSU Energy Program, the changes to the Cherry Point Project would result in a more efficient project than the original proposal. As a result the project would emit relatively less carbon dioxide per megawatt-hour of electricity generated.
6. Cathy Cleveland (letter dated October 7, 2006), objected to: the increased VOC emissions resulting from the changes; the assumption that the project was located in an “attainment” area versus the county’s classification as “unclassified”; that EPA does not follow the intent of the law by not considering areas “not in attainment” in Canada; that the PSD application describes the area surrounding the project as primarily agricultural with some low-density residential areas, where as the Cherry Point Industrial Area is located adjacent to the “urban” zoned Birch Bay Growth t Management Area; noise currently coming from activities at the refinery; that the statements regarding nominal power generated (720 MW) did not include 18 MW that would be used by the refinery; that the PSD application is biased by not including data from 1197, and 2001 through 2005; that even if aqueous ammonia is employed by the SCR process, anhydrous ammonia will be released; assumptions made about the composition of particulate matter emitted by the project; and that use of refinery gas would cause substantial changes to the

original permit. Ms. Cleveland also objected to the short time allowed to provide comments and to inadequate notice of the public meeting.

7. Kathy Berg (oral comment October 3, 2006) was concerned that noise analyses were not performed where they impact residents the most. Noise emissions should be controlled at the stacks.
8. Kim Brooke (oral comment October 3, 2006) expressed concern with potential noise levels, and impacts to wildlife, habitat and wetlands, even if a wetlands mitigation plan will be implemented.
9. Wally Vaux (oral comment October 3, 2006) was in favor of the project and the changes.