

**WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**RESOLUTION NO. 322**

*AMENDMENT NO. 2*

***CHERRY POINT COGENERATION PROJECT***

**Transfer of SCA to New LLC, Removal of Certain Laydown Areas and Modification to Wetland Mitigation Provisions**

**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 January 31, 2008 (**Attachment 1**), BP requested the Energy Facility Site Evaluation Council (EFSEC or Council) to approve the following amendments to the Project SCA:

- Transfer of the SCA and associated permits to Cherry Point Cogeneration LLC, a newly formed affiliate of BP p.l.c.
- Remove laydown areas 1 and 3 and associated stormwater treatment facilities from the SCA, as they will no longer be used for the Cogeneration project.
- Modify wetland mitigation provisions to reflect changes in the wetland mitigation plan, to compensate for some additional impacts associated at the Cogeneration site.

**Background**

**SCA Transfer:**

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 Project. Construction of the project has been postponed indefinitely.

In order to more closely align the Project with the corporate organization and asset management structure of BP's worldwide business, BP recently formed Cherry Point Cogen LLC. BP has requested that the Council transfer the SCA to Cherry Point Cogen LLC.

**Laydown Areas:**

BP also requests the Council to amend the SCA to remove provisions related to Laydown Areas 1 and 3, as these areas will no longer be used in connection with the Project constructions. The April 2003 Revised Application for Site Certification identified 4 areas to be used for equipment and materials storage. Upon the conclusion of construction, the Project was to turn over laydown Areas 1, 2 and 3 to the Refinery for further use; Laydown area 4 was to be restored.

In November 2006, BP informed the Council that it no longer intended to use Laydown area 2 for the Project and therefore wanted to turn it over to the Refinery for their use. On February 13, 2007 the Council approved this request with the issuance of Resolution No. 320.

BP has now determined that it will not use Laydown Areas 1 or 3. The Refinery wishes to utilize these areas for Refinery facilities, and has agreed to make other developed areas available to the Project when construction begins. Accordingly, BP requests that the conditions relating to these areas and the stormwater systems associated with them be removed from the SCA. BP still intends to utilize Laydown Area 4 for the Project as described in the revised application.

### **Wetlands**

BP requests the Council to amend the SCA's wetland mitigation provisions to take into account additional wetland mitigation being proposed to compensate for slightly greater impacts at the Project site, and additional impacts associated with Refinery activities that are unrelated to the Project.

Originally, the Project was expected to result in the permanent fill of 30.51 acres of wetlands, and temporary impacts to 4.86 acres of wetlands. In order to compensate for these impacts, BP proposed to create, restore and enhance wetlands in 2 Compensatory Mitigation Areas, which together occupy approximately 110 acres.

By not using laydown areas 1, 2 and 3, wetlands impacts associated with the Project will be substantially reduced. Further engineering design has shown that the Project is likely to result in an additional 2.5 acres of permanent impact in the southeast corner of the project. With these changes the Project would permanently impact 12.19 acres of wetlands.

The Refinery has plans to develop laydown areas 1, 2 and 3 after obtaining appropriate permits. The Refinery's planned development would have wetland impacts that are similar to the impacts originally contemplated from the Project.

Although the Council only has jurisdiction over areas associated with the Project, the US Army Corp of Engineers (Corp) has jurisdiction over impacts to all wetlands. The impacts associated with the Project and the Refinery's proposed activities will be addressed in a single amendment to the existing Section 404 Permit from the Corp. BP has modified its Compensatory Mitigation Plan (comp plan) to address impacts associated with the Project and the proposed refinery activities. Under the revised comp plan compensated mitigation areas 1 and 2 will be expanded by approximately 12 acres to a total of 122.6 acres.

### **Procedural Status**

EFSEC's SCA 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 SCA amendment request was submitted in writing on January 31, 2008.

At the monthly meeting of February 11, 2008 the Council determined a schedule for action on the request as follows: March 11, 2008 conduct a public informational meeting in Olympia, with public comments to be received through March 11, 2008; and consider and take action on the request at the monthly council meeting March 11, 2008.

Notice of the public informational meeting was mailed to approximately 425 people. The notice was also published in the Bellingham Herald and the Vancouver Sun. The notice advised that BP had requested an amendment to the SCA and that an informational hearing to consider the matter would be conducted on March 11, 2008. The notice also said that comments could be made either orally at that time or in writing prior to the conclusion of the public comment period ending at 5:00 PM on March 11, 2008.

An informational hearing in which the public was given an opportunity to comment on this matter was held in Olympia on March 11, 2008.

The Council considered the amendment request at its March 11, 2008 monthly meeting. The Council also determined that the definition of begin construction in Article II, Section 5 of the SCA should be expanded to include the following language: "Activities associated with implementing the Wetland Compensatory Mitigation Plan will not constitute the beginning of construction for purposes of this Agreement"

### **Public Comment**

Public comments regarding this matter are summarized in **Attachment 2**.

### **Discussion**

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

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

1. The intent 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's interest. In return, the certificate holder commits to comply with the terms of the SCA.

*Transfer of the SCA and associated permits:* Cherry Point Cogen LLC agrees to abide by all of the terms and conditions of the SCA upon transfer. Prior to commencing construction of the Project, Cherry Point Cogen LLC will ensure that it has the organizational, financial, managerial and technical capability to comply with the SCA, including the credit quality provisions contained in Article IV Section A of the SCA.

*Laydown Areas 1 and 3:* The SCA permits the Project to use nearby areas for construction laydown, and that areas west of Blaine road would ultimately be used by the Refinery after the project is constructed. Due to the delay in constructing the Project, the Refinery requires the use of these areas and will make other areas within the Refinery available for laydown uses when Project constructions begins.

*Wetlands:* The SCA also contemplates that impacts to wetlands would be mitigated pursuant to a mitigation plan approved by the US Army Corp of Engineers. The requested amendment reduces the wetland impacts associated with the Project but continues to mitigate those impacts pursuant to a plan subject to the Corp's approval.

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

**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 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, 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 February 15, 2008

2. 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 previous findings that (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.

**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.

As described, the proposed changes in Project design will reduce the impacts associated with the Project. Public health, safety and welfare will not be affected in any manner not previously analyzed during review of the Project application. BP will continue to abide by all terms and conditions of the SCA. The SEPA checklist further demonstrates that the requested amendment will not result in any significant additional environmental impacts.

**D. Conclusion**

The Council concludes that the proposed amendment of the BP 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 BP SCA to reflect the proposed changes to the Project.

## RESOLUTION

For the foregoing reasons, the Council approves the following requests for the BP Cherry Point Cogeneration Project:

- Transfer of the SCA and associated permits to Cherry Point Cogeneration LLC, a newly formed affiliate of BP p.l.c.
- Remove laydown areas 1 and 3 and associated stormwater treatment facilities from the SCA, as they will no longer be used for the Cogeneration project.
- Modify wetland mitigation provisions to reflect changes in the wetland mitigation plan, to compensate for some additional impacts associated at the Cogeneration site.

DATED at Olympia, Washington and effective on March 11, 2008.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: \_\_\_\_\_/s/\_\_\_\_\_  
James O. Luce, Chair

Attested: \_\_\_\_\_/s/\_\_\_\_\_  
Allen J. Fiksdal, EFSEC Manager

### Attachments

1. BP SCA Amendment Request dated January 31, 2008
2. Summary of Public Comments