

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 323

AMENDMENT NO. 3

***CHERRY POINT COGENERATION PROJECT
No Use Water 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 February 19, 2008 (**Attachment 1**) BP requested the Energy Facility Site Evaluation Council (EFSEC or Council) to approve the following amendment to the Project SCA:

- Allow BP to fund a project that would reduce water use at the nearby Intalco Aluminum Smelter and make the unused water available for use by the Cogeneration project, rather than requiring BP to fund the BP-Intalco water reuse project contemplated at the time the SCA was issued.

Background

No Use Water Project:

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.

As originally permitted, the Project was a 720 MW combined-cycle cogeneration facility. The April 2003 application for site certification estimated that the facility would use approximately 2,300 gallons per minute of water. Rather than relying upon additional ground or surface water withdrawals to supply this water, BP entered into an agreement with the Whatcom County PUD and Alcoa to reuse water that was currently being discharged from the Intalco facility to the Strait of Georgia.

Under the terms of the Reuse Agreement, BP would have provided funding for Intalco and the PUD to install equipment necessary to capture non-contact once-through cooling water from the Intalco facility, return it to the PUD's industrial water line and convey it to BP for use at the Project and the Refinery. The Reuse Project was designed to allow the industrial reuse of approximately 2,780 gpm of water from Intalco.

Recently, the PUD and BP discussed alternatives to the Reuse Project. BP had learned from the Washington Department of Health (DOH) that implementation of the Reuse Project would make

it impossible for the PUD to continue to provide emergency backup potable water to the BP refinery. The PUD operates a pipeline that delivers water to the Intalco facility, the BP refinery and other industrial water customers. Using this line, the PUD provides water primarily for industrial use by Intalco and BP, but it also has contracts to provide backup potable water to BP in the event that circumstances prevented it from relying upon its primary potable water sources. DOH recently informed BP that if once-through cooling water from Intalco were returned to the pipeline, the PUD would not be able to use the line to provide potable water to BP. Discussion between the PUD, Intalco and BP led to agreement that an alternative approach to the Reuse Agreement would avoid BP's potential potable water loss.

Intalco also raised concerns about the Reuse project. Although the Reuse Agreement required BP to pay for the initial installation of necessary equipment, it left Intalco with obligations for on-going operation and maintenance expenses. Intalco no longer believes that the Reuse Project is the most cost-effective way of accomplishing the desired water savings.

The PUD, Intalco and BP have come up with an alternative proposal that is reflected in the Utility Water Reduction Project Agreement (No Use Agreement). Under the No Use Agreement, BP would provide funding for Intalco to install a compressor cooling system that would eliminate the use of approximately 3.6 million gallons per day (an average of 2,500 gpm) of water currently used for once-through cooling. The No Use Agreement provides that Intalco will release its contractual right to this water, and BP would enter into an agreement with the PUD to use this water for the Project, should it be constructed.

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 February 6, 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.

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 states interest. In return, the certificate holder commits to comply with the terms of the SCA.

The SCA contemplates that the Project will not require the additional withdrawal of surface or ground water to meet the Project's water demand. BP, Intalco and the PUD originally came up with a plan that would avoid additional withdrawals from the Nooksack River by reusing cooling water from Intalco. BP, Intalco and PUD have now come up with an alternative proposal that would avoid additional withdrawals from the Nooksack River by substantially reducing the amount of water used by Intalco. Both approaches accomplish the same goal, allowing operation of both the Intalco facility and the Project without withdrawing additional water from the Nooksack River.

The Council finds that the proposed changes to the SCA are consistent with the 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:

- Allow BP to fund a project that would reduce water use at the nearby Intalco Aluminum Smelter and make the unused water available for use by the Cogeneration project, rather than requiring BP to fund the BP-Intalco water reuse project contemplated at the time the SCA was issued.

DATED at Olympia, Washington and effective on March 12, 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 February 19, 2008
2. Summary of Public Comments