

**WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**RESOLUTION NO. 331**

*AMENDMENT NO. 4*

***CHERRY POINT COGENERATION PROJECT***  
**Transfer of SCA to BP West Coast Products, LLC**

**Nature of Action**

Cherry Point Cogen, LLC, an affiliate of BP, p.l.c., 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 10, 2011 (**Attachment 1**), the Certificate Holder requested the Energy Facility Site Evaluation Council (EFSEC or Council) approve an amendment to the SCA that transfers the SCA and associated permits to BP West Coast Products, LLC, a wholly-owned affiliate of BP p.l.c.

**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. However, the SCA requires construction to begin on or before December 21, 2014.

In order to more closely align the Project with the corporate organization and asset management structure of BP's worldwide business, the Certificate Holder has requested that the Council transfer the SCA to BP West Coast Products, LLC.

**Procedural Status**

EFSEC's SCA amendment procedure is governed by Chapter 80.50 RCW and Chapter 463.66 WAC.

The Certificate Holder 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 June 10, 2011.

At the monthly meeting of July 19, 2011, the Council determined a schedule for action on the request as follows: August 15, 2011, conduct a public informational meeting in Olympia, with

public comments to be received through August 16, 2011; and consider and take action on the request at the special meeting on August 24, 2011.

Notice of the public informational meeting was mailed to approximately 680 people. The notice was also published in the Bellingham Herald and the Vancouver Sun. The notice advised that the Certificate Holder had requested an amendment to the SCA and that an informational hearing to consider the matter would be conducted on August 15, 2011. 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 August 16, 2011.

An informational hearing in which the public was given an opportunity to comment on this matter was held in Olympia on August 15, 2011.

The Council considered the amendment request at its August 24, 2011 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 state's interest. In return, the certificate holder commits to comply with the terms of the SCA.

BP West Coast Products, LLC agrees to abide by all of the terms and conditions of the SCA upon transfer. Prior to commencing construction of the Project, BP West Coast Products, 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.

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, Al Wright, 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 July 21, 2011.

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

WAC 463-66-080 provides:

A 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.

Public health, safety and welfare will not be affected in any manner not previously analyzed during review of the Project application. BP West Coast Products LLC 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 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 SCA.

**RESOLUTION**

The Council approves the transfer of the SCA and associated permits to BP West Coast Products, LLC, a wholly-owned affiliate of BP, p.l.c. for the BP Cherry Point Cogeneration Project:

DATED at Olympia, Washington and effective on August 24, 2011.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

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

Attested: \_\_\_\_\_/s/\_\_\_\_\_  
Al Wright, EFSEC Manager

Attachments

1. BP SCA Amendment Request dated June 10, 2011
2. Summary of Public Comments