

1 Declaration of Mailing
2 I, Therese J. Zemel, certify under penalty of
3 perjury under the laws of the State of
4 Washington, that on the below date, true and
5 correct copies of this document were sent
6 via U.S. mail to all parties of record as
7 specified by the Council's Service List dated
8 12/16/02 at the addresses provided therein.
9 Dated this _____ day of April, 2003, at
10 Bellingham, Washington.

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**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

RESPONSE TO ORDER 773 BY
WHATCOM COUNTY

COMES NOW Whatcom County, by and through its attorney, David M. Grant, Deputy Prosecuting Attorney in and for Whatcom County, and files this statement of issues in response to the Council's Order 773 entered in this matter on December 16, 2002. Given Whatcom County's duty to protect public interest lands, water, environment, and provide for the general health safety and welfare of the citizens within its jurisdiction, the County has, at present, the following concerns related to Application No. 2002-01:

1. Conformance or compliance with all existing local land use plans and zoning ordinances, including local land use regulations, has not yet been fully established. For example, under local land use regulations, in order to be found in compliance a project such as the one proposed would necessarily have to comply with all the requirements of WCC 20.88.100 which governs all major development projects and Chapter 16.16 WCC which regulates land uses which impact critical areas such as wetlands. At present, the application is insufficient to determine conformity with such local zoning and land use regulatory schemes that would be applicable to the project but for the existence of EFSEC jurisdiction.

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2. The geology of the site and vicinity is of concern insofar as the general seismicity should be defined utilizing all available data in a separate seismic assessment report. The seismic assessment report should include at a minimum, but not limited to: existing water well log data, petroleum exploration well and geophysical data, geotechnical data, known and postulated fault structures that may project through the vicinity, and all other relevant published and electronically available geological and geophysical information within a ten mile radius. Following site evaluation approval, a site-specific probabilistic seismic hazard assessment (PSHA) should be a requirement of construction permits (a copy of which should be included in the County building permit application). The project should be designed consistent with the findings thereof. To ensure continued public safety and to alleviate concern, the approval should include an ongoing monitoring and public reporting program adopting accepted industry monitoring standards that measure structural and geotechnical performance in response to observed seismic activity.
3. Construction activities, including but not limited to its timing, on site stormwater and erosion controls, dust, and traffic impacts must be considered. Such activities should be conducted in conformance with local regulatory schemes and mitigation requirements.
4. Whatcom County strives to enhance the quality of its airshed and therefore seeks to minimize the Projects' potential for adverse impacts to the affected airshed within its jurisdiction, in terms of all criteria pollutants and Greenhouse Gases. The Project's mitigation measures as well as the issuance of the PSD and conditions of the PSD permit are of concern to the County.
5. The Project presents a number of potential impacts to local water resources. As the project is located within the Terrell Creek watershed, concern for impacts to the hydrologic regime and water quality of the watershed exists. Impacts to other watercourses and watersheds must be avoided. The plant should be constructed to minimize fresh water usage. It should be operated to avoid impacts to nearby saltwater resources. Surface water runoff as well as operational wastewater and process water discharges must be managed to avoid adverse impacts to the surrounding watershed and the Strait of Georgia. The construction and operation of the plant must be conducted to avoid adverse impacts to all fisheries resources.
6. As proposed the Project will result in a loss of existing wetlands. Adequate mitigation must be provided. The adequacy of those measures currently proposed has not been established.
7. The project will require modifications to the existing natural gas pipeline which serves the site to accommodate the additional needs of the facility. The manner in which the service will be upgraded at the site and whether upstream modifications within the county may be required is of concern.

- 1 8. As presently described the transmission line corridor impacts are acceptable. Any
2 departure from the proposal may be of concern. It is the County's position that the
3 connection to the existing transmission corridor must be done in a manner to minimize its
4 impacts within the vicinity of the line and its connection.
- 5 9. The flow of natural gas into Washington State is not an infinite resource. Whatcom County
6 already has many consumers of natural gas, both for residential and commercial uses.
7 Some of these consumers are required to switch to alternative fuels at times of natural gas
8 shortages. The availability of natural gas impacts its price for all consumers, including
9 those in Whatcom County. Therefore, the impact of any diversion of existing natural gas
10 resources to fuel the cogeneration plant is of concern and its impact on pricing and
11 availability to local consumers, both existing and future, is of concern to the County.
- 12 10. The construction and operation of the facility will increase the existing noise levels for
13 those living and working in the vicinity of the plant. Existing within the probable zone of
14 impact are residential and community (e.g., park) uses, such as Birch Bay. Additional
15 residential uses are currently in the planning phase. As a result, construction and
16 operational noise mitigation must be designed and implemented to minimize detectable
17 noise levels and sound frequencies not only to adjacent properties, but for people and
18 wildlife within the area which may also be impacted by noise/sounds emanating from the
19 site. It is important to Whatcom County that the plant not have any significant adverse
20 noise impacts to persons and wildlife nearby.
- 21 11. Although the project will be built within an industrial zone, the project will not be without
22 both visual and lighting impacts to the surrounding area. As suggested by the Applicant,
23 the project should be constructed and operated in a manner to minimize its visual and
24 lighting impacts. "Spillover lighting" must be avoided.
- 25 12. The construction and operation of the plant will have impacts on the flow of traffic on and
perhaps the surfaces of county roadways in the area of the site. As recognized by the
Applicant, both the short term impacts from construction and the long term impacts from
operation must be considered. If significant impacts are found, appropriate mitigation must
be provided.
13. As mentioned in the application, given the nature of the facility, the risks of fire, explosion,
spills of hazardous or toxic material as well as the management and handling of the same
must be considered in view of their potential impacts on existing fire, police and
emergency services within the county. Emergency management plans should be
coordinated and consistent with Whatcom County's Comprehensive Emergency
Management Plan (February, 2002).
14. By virtue of WAC 463-42-655 the Council has recognized that decommissioning of
projects have certain environmental and land use consequences. As the decommissioning

1 will eventually have environmental, safety and land use impacts within the county,
2 Whatcom County desires to ensure that site restoration will be planned in accordance with
3 regulatory requirements and that the option(s) presented will offer the least risk to the
4 public, best restore the site, and best fit within the land use and planning efforts of the
5 County.

6 In view of the aforementioned concerns, in order for Whatcom County to fulfill its
7 obligation to protect public interest lands, water, and environment, and protect the general
8 health, welfare and safety of the people within its jurisdiction, the County respectfully submits
9 that the adjudicative hearing to be held in this matter should include the following general
10 subject areas in accordance with WAC 463-3-300:

- 11 (1) Consistency of the proposal with land use regulations.
- 12 (2) Physical site suitability and related safety considerations.
- 13 (3) NPDES, PSD, or other permits.
- 14 (4) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric.
- 15 (5) On-site and local impacts (societal): Such as housing, services, recreation,
16 economics, transportation, health, and tax base.
- 17 (6) Peripheral area impacts (all categories).
- 18 (7) Adverse impacts minimization and consideration of conditions of certification.

19 Whatcom County further submits that it should be allowed to participate fully in the
20 hearing on the aforementioned issues and general subject areas, as such may cause impacts
21 within its jurisdictional boundaries. Whatcom County reserves the right to amend its statement
22 of issues as amendments to the application or negotiations with the applicant occur.

23 DATED this 2nd day of April, 2003.

24 Respectfully submitted,

25 _____ / S / _____
David M. Grant, WSBA# 15770
Deputy Prosecuting Attorney for Whatcom County