

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

NOTICE OF INTENT TO HOLD  
ADJUDICATIVE PROCEEDING;

NOTICE OF OPPORTUNITY AND  
DEADLINE TO FILE PETITIONS FOR  
INTERVENTION - **OCTOBER 22, 2002**;

NOTICE OF SCHEDULE FOR  
RESPONSES TO PETITIONS FOR  
INTERVENTION  
Applicant's Response: **October 29, 2002**  
Parties Replies: **November 5, 2002**

NOTICE OF INTENT TO HOLD  
PREHEARING CONFERENCE –  
**NOVEMBER 5, 2002**

**The Application**

On June 10, 2002, BP West Coast Products, LLC, submitted Application No. 2002-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the BP Cherry Point Cogeneration Project, a 720-megawatt natural gas-fired combustion turbine electrical cogeneration facility. The proposed BP Cherry Point Cogeneration Project will be located in Whatcom County, near the community of Birch Bay.

Associated with the Project will be an approximately one mile electrical transmission line and a 1,400-foot natural gas pipeline. The siting of the transmission line is under the jurisdiction of the Bonneville Power Administration (BPA).

EFSEC and BPA are conducting an environmental review of this Project and will be issuing a draft Environmental Impact Statement for public comment under the Washington State Environmental Policy Act (SEPA), and the National Environmental Policy Act (NEPA). EFSEC will also conduct an examination of the project through a formal adjudicative proceeding.

**Notice of Intention to Conduct an Adjudicative Proceeding**

The Council is reviewing Application No. 2002-01 under the procedures set forth in Chapter 80.50 of the Revised Code of Washington (RCW) and Title 463 of the Washington Administrative Code (WAC) for reviewing applications for new major energy facilities. The statute requires the Council to hold an adjudicative proceeding under Chapter 34.05 RCW, the

BP Cherry Point Cogeneration Project  
Notice of Intent to Hold Adjudicative Proceeding;  
Notice of Deadline to File Petitions for Intervention - October 22, 2002;  
Notice of Intent to Hold Prehearing Conference November 5, 2002

Administrative Procedure Act. EFSEC intends to hold adjudicative hearings relating to Application No. 2002-01 in accordance with the procedural rules found in Chapter 463-30 WAC and Chapter 34.05 RCW.

### **Notice of Deadline for Submitting Petitions for Intervention – October 22, 2002**

The statutory parties to an adjudicative proceeding are the Applicant, BP West Coast Products, LLC., and the Counsel for the Environment (as defined in RCW 80.50.020(12)), Assistant Attorney General, Michael Lufkin. According to WAC 463-30-050, any state agency that is a member of EFSEC, or has opted to appoint a Council member for this proposal, may participate as a party. Any other person may petition to intervene as a party in this adjudicative proceeding under RCW 34.05.443, RCW 80.50.090, and WAC 463-30-400. The Council will consider the requests for intervention and determine whether or not to grant intervention.

An "intervenor," as defined in RCW 80.50.020(3), may be an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized. Any such "person" who wishes to participate in this proceeding may petition for intervention. The nature of intervenor status and a discussion of factors that the Council has used in deciding whether to grant petitions for intervention are set out later in this notice.

Each person admitted to an adjudicative proceeding as an intervenor is a party to the proceedings only for the purposes and subject to any limitations and conditions specified in the EFSEC order granting intervention.

**In this case, the deadline for submitting requests for intervention is October 22, 2002.**

The Council will consider requests for late intervention according to the requirements of WAC 463-30-400 and other considerations identified in this Notice of Opportunity and Deadline to file Petitions for Intervention – October 22, 2002. See the discussion below for further information. Also see Other Opportunities for Public Participation on page 5.

### **How to Intervene**

To be considered timely, Petitions for Intervention in the matter of Application No. 2002-01 must be received in the offices of the Council no later than the close of business (5 p.m.) on October 22, 2002. Petitions for Intervention will not be considered after that date except for good cause as discussed below. A copy of each petition must be served on BP West Coast Products, LLC and on Counsel for the Environment at the same time they are filed with the Council. The names and mailing addresses of the Council, all known parties, and their representatives appear in Attachment A.

Petitions for Intervention must be filed with:

Washington State Energy Facility Site Evaluation Council  
Attn: Allen J. Fiksdal, EFSEC Manager  
P.O. Box 43172  
925 Plum Street SE  
Olympia, WA 98504-3172

Persons wishing to intervene should consider relevant provisions of Chapter 463-30 WAC. In particular, WAC 463-30-400 establishes the following requirements for Petitions for Intervention:

All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded.

In considering whether to file a petition to become an intervenor, potential parties should recognize that persons who are granted intervenor status assume responsibilities they must meet in order for the adjudicative process to be an effective means for all participants to resolve the significant issues that are raised. Intervenors are expected to appear in the proceeding, either on their own behalf or by an attorney. Intervenors must study other parties' cases so they can participate knowledgeably. They must decide whether to cross-examine other parties' witnesses, and determine the nature and scope of the cross-examination. Intervenors also have the responsibility either to attend the entire proceeding, including prehearing conferences, or to monitor it to learn when their interests will be at issue - otherwise they may be bound by matters that are resolved in their absence. Intervenors have the responsibility to become familiar with the Council's procedural rules and guidelines to enable them to participate knowledgeably and to advance their interests effectively. Because of potential delay to the proceeding that could interfere with rights of the parties involved, and because simply appearing to give advice to one party could give the appearance of impropriety or could adversely affect the rights of others, the Council has a limited ability to instruct participants on procedural matters. Intervention is not a step to be approached casually. Becoming an intervenor in a Council adjudicative proceeding may require a significant commitment of time and financial resources.

To receive examples of petitions for intervention that have been filed in previous EFSEC cases, contact the EFSEC office.

Each petitioner for intervention and each governmental agency appearing as a party must identify the particular issue(s) or concern(s) that the petitioner or agency intends to address as an intervening party. The identification of issues must be specific enough for the Council and other parties to identify the specific problem that could cause harm to the petitioner or agency and the nature of that harm. The designation of issue(s) may be a factor in determining whether to grant intervention and will be used to organize and to manage the hearing. Parties may add additional issues later in the proceeding on the same bases on which the Council may grant late-filed

petitions for intervention.

The Council requests that each petitioner for intervention and all governmental agencies who intend to participate as intervenors submit notice of that intention on or before the deadline for intervention, October 22, 2002.

### **Late Intervention for Good Cause Shown**

Upon issuance of a draft Environmental Impact Statement (DEIS) for public comment (at a date to be announced later), parties who have been granted intervenor status may petition the Council to permit them to add new issues based on new information or issues that have been identified in the DEIS. At this time, other persons may also petition the Council to intervene for the first time if they can establish that new information identified in the DEIS, not previously known or reasonably discoverable, demonstrates that an interest of theirs could be impaired or impeded by the proposed project. Persons may seek late intervention or expansion of the issues they may address as parties at other times, but must also demonstrate that their petition to do so is based upon new information, not previously known to them or reasonably discoverable by them, and that their petition is made within a reasonable period after discovering that information.

### **Notice of Intention to Conduct a Prehearing Conference – November 5, 2002**

The Washington State Energy Facility Site Evaluation Council will convene an initial prehearing conference at 1:00 p.m., November 5, 2002, in Rowe Six Conference Center located in Building 1, 4224 6th Ave. SE, Lacey, Washington, 98504. The purpose of this prehearing conference will be to hear petitioner's responses to the Applicant's objections to petitions for intervention, as well as to rule on other procedural and scheduling matters. A detailed notice of first prehearing conference will be sent at a later date to all parties, all petitioners for intervention, and all persons who ask to receive such notices.

### **Notice of Schedule For Responses To Petitions For Intervention**

The Applicant must file any objections to intervention requests with EFSEC no later than 5 p.m. October 29, 2002. The Applicant's objections must be filed in accordance with the Draft Hearing Guidelines, which are being furnished to the Applicant. If other recipients of this Notice wish to review these Guidelines, which may be discussed at the First Prehearing Conference, contact the EFSEC office or view the Guidelines on EFSEC's internet site at [www.efsec.wa.gov](http://www.efsec.wa.gov). The Applicant must file one original and 15 copies with the Council no later than the deadline indicated above. Copies must be served to all statutory parties and petitioners for intervention.

Petitioners' responses to the Applicant's objections to intervention requests should be presented orally at the first prehearing conference which is scheduled for November 5, 2002, for any review of the basis of their intervention. If there are objections, petitioners must be prepared to respond to any objections filed. Appearance by telephone does not constitute an acceptable appearance, and will not be considered by the Council for the November 5<sup>th</sup> prehearing conference.

## **Other Opportunities for Public Participation**

Besides formal intervention, public participation in the EFSEC process is accommodated in several additional ways. First, under RCW 80.50.080, the Counsel for the Environment represents "the public and its interest in protecting the quality of the environment"; second, RCW 80.50.090(3) affords an opportunity for members of the public to present testimony in the hearing without having to intervene formally. Third, the public has the opportunity to participate in the environmental review portion of the Council's process through comments on the draft Environmental Impact Statement.

When evidentiary hearings begin, the Council plans to schedule specially-designated sessions for the purpose of receiving the testimony of members of the public, at one or more times and places to be set by later notice of hearing. The Council will maintain a copy of current records of the hearing at its offices in Olympia for the use of persons who may wish to review them. Mr. Michael Lufkin has been designated as Counsel for the Environment by the Attorney General under RCW 80.50.080 to represent the public and its interest in protecting the quality of the environment. Persons wishing to contact Counsel for the Environment should contact him directly at the address, e-mail or telephone number listed on Attachment A.

To obtain additional information about the intervention process, please contact the EFSEC office at (360) 956-2121.

More specific information about the project is available from EFSEC's office or from reviewing the application at public libraries at the following locations:

### **Olympia, WA:**

Washington State Library  
Washington State Library - Joel M. Pritchard  
Branch  
6880 Capitol Blvd South  
Olympia, WA, 98504-5513  
(360) 704-5200

EFSEC  
925 Plum Street SE, Building 4  
Olympia, WA, 98504-3172  
360-956-2121

### **Whatcom County, WA:**

Whatcom County Public Library - Blaine Branch  
610 - 3rd Street  
Blaine, WA 98230  
360) 332-8146

Whatcom County Public Library - Ferndale Branch  
2222 Main Street  
Ferndale, WA 98248  
(360) 384-3647

Bellingham Library  
210 Central Avenue  
Bellingham, WA, 98225-4421  
(360) 676-7794

**Canada:**

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Ocean Park Library  
City of Surrey  
12854 17th Avenue  
Surrey, BC V4A 1T5  
(604) 502-6449

White Rock Public Library  
15342 Buena Vista Avenue  
White Rock, BC V4B 1Y6  
(604) 541-2205

**On the Internet:**

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[www.efsec.wa.gov/bpcogen.html](http://www.efsec.wa.gov/bpcogen.html)

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

Dated in Olympia, Washington this 18<sup>th</sup> day of September, 2002



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Allen J. Fiksdal, EFSEC Manager

**Addresses of the Council and representatives of known parties**  
**BP Cherry Point Cogeneration Project Application No. 2002-01**

**Note: Parties petitioning to intervene must serve petitions to all of the addresses below.**

**BP West Coast Products, LLC. Applicant:**

<p>Mike Torpey          BP West Coast Products, LLC.          4519 Grandview Road          Blaine, WA 98230</p> <p>E-mail: <a href="mailto:Torpeym1@bp.com">Torpeym1@bp.com</a></p> <p>Phone: (360) 371-1757          Fax: (360) 371-1402</p>	<p>Karen McGaffey          Attorney at Law          Perkins Coie LLP          1201 Third Avenue, Suite 4800          Seattle, WA 98101</p> <p>E-mail: <a href="mailto:mcgak@perkinscoie.com">mcgak@perkinscoie.com</a></p> <p>Phone: (206) 583-8888          Fax: (206) 583-8500</p>
<p><b>Energy Facility Site Evaluation Council</b></p>	<p><b>Counsel for the Environment</b></p>
<p>Mr. Allen J. Fiksdal          EFSEC Manager          Energy Facility Site Evaluation Council          925 Plum Street SE, Building 4          PO Box 43172          Olympia, WA 98504-3172</p> <p>E-mail: <a href="mailto:allenf@ep.cted.wa.gov">allenf@ep.cted.wa.gov</a></p> <p>Phone: (360) 956-2252          Fax: (360) 956-2158</p>	<p>Michael Lufkin          Assistant Attorney General          Counsel for the Environment          Office of the Attorney General          Ecology Division          2425 Bristol Ct SW          Olympia, WA 98504-0117</p> <p>E-mail: <a href="mailto:MichaelL@atg.wa.gov">MichaelL@atg.wa.gov</a></p> <p>Phone: (360) 586-3649          Fax: (360) 586-6760</p>