

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2002-01:
BP WEST COAST PRODUCTS, L.L.C.
BP CHERRY POINT COGENERATION
PROJECT

AMENDED STIPULATION
BETWEEN COUNSEL FOR THE
ENVIRONMENT AND BP WEST
COAST PRODUCTS, LLC

I. Introduction

A. Parties

BP West Coast Products, L.L.C. (“BP”) has filed an Application seeking a Site Certification Agreement (SCA) from the Energy Facility Site Evaluation Council (“EFSEC” or the “Council”) to construct and operate the proposed BP Cherry Point Cogeneration (Project). The Project is a proposed 720 megawatt (MW) natural gas fired, combined cycle cogeneration facility. BP filed its application with EFSEC on June 3, 2002, and submitted an amended application on April 22, 2003. For purposes of this stipulation, BP shall mean BP and its successors and assigns.

The Counsel for the Environment (“CFE”) is a statutory party to the proceedings before EFSEC and is charged with representing the public and its interest in protecting the quality of the environment. RCW 80.50.080. For purposes of this stipulation, CFE shall mean the Assistant

Attorney General appointed under RCW 80.50.080 or another Assistant Attorney General within the Attorney General's office should the CFE position be amended or otherwise changed.

B. Purpose and Intent

The Project consists of a 720 MW natural gas fired, combined -cycle cogeneration facility and associated facilities, including a natural gas supply pipeline, a natural gas compressor station, and approximately 0.8 miles of new electrical transmission lines. Through this stipulation ("Stipulation"), the Counsel for the Environment and BP (collectively "the Parties") set forth the obligations, commitments, and restrictions that the Parties intend to have incorporated into the Site Certification Agreement ("SCA") as conditions for the Project should EFSEC recommend, and the Governor approve, that the Project be certified. The obligations and restrictions set forth in the Stipulation relate to the construction and operation of the Project facilities at the Project site, as these components were proposed in the April 22, 2003 amended application. So long as the conditions outlined in this Stipulation are included in the SCA, CFE fully supports the issuance of an SCA for the Project.

C. Resolution of Issues and Reservation of Rights

BP has undertaken site impact assessments to identify actual and potential impacts to the environment expected from construction and operation of the Project facility, natural gas pipeline, and electrical transmission line. In addition, a draft environmental impact statement ("DEIS") has been completed by EFSEC, with a final EIS to be completed after receipt and review of comments on the DEIS. The Parties agree that this Stipulation is intended to resolve all issues raised by CFE in its July 7, 2003 Consolidated Statement of Issues. The commitments set forth within this stipulation fully resolve the issues identified by CFE in the Consolidated Statement of Issues. Therefore, CFE agrees not to request any further mitigation or conditions in the SCA.

This Stipulation between the Parties is based upon BP's amended application submitted to EFSEC on or around April 22, 2003. If BP changes its application in the future, CFE reserves the right to be heard on any new issue resulting from a change to BP's application that substantially affects the environmental impacts of the Project.

If approved by EFSEC, the conditions outlined in this Stipulation shall be incorporated as binding portions of any SCA issued by EFSEC to BP for the project. As such, if BP or any successor or assign to BP proposes any amendment to the SCA affecting this settlement, BP shall inform CFE of such proposed amendment. CFE reserves the right to oppose any such amendment and appear before EFSEC on the matter and to reopen legal issues relevant to the amendment including those that CFE identified in its July 7, 2003 Consolidated Statement Issues before EFSEC.

CFE reserves its rights, and this settlement agreement shall not affect its ability to comment on documents related to the Project, including, but not limited to, the Draft Environmental Impact Statement, the Prevention of Significant Deterioration permit ("PSD" permit), the National Pollutant Discharge Elimination System ("NPDES") permit, and/or any other permits issued by EFSEC for the Project. However, neither CFE nor BP may advocate any mitigation or permit restrictions that are inconsistent with those found in this Stipulation in any proceedings concerning the Project, and CFE may not advocate mitigation or permit restrictions in addition to those found in this Stipulation.

II. Resolution of Issues

A. Greenhouse Gas Emissions

The Parties recognize that the Project will emit greenhouse gases ("GHGs"), and that GHGs are an important world wide environmental concern with potential negative consequences for Washington state. BP has established a voluntary corporate objective that commits BP to no

net increase in GHG emissions throughout its worldwide operations above year 2002 baseline emission levels (90.8 MT/year) through 2012.

The Parties acknowledge that the Project has been designed to maximize efficiencies and thereby minimize GHG emissions. The Project is a cogeneration facility and will export an average of 510,000 pounds of steam per hour to the BP Refinery. If the Refinery generated that amount of steam with its boilers, it would emit approximately 331,000 metric tonnes of carbon dioxide (“CO₂”) per year. These emissions will be avoided by the Project.

When operational, the CO₂ emission rate for this Project will also be significantly lower than many electrical generating facilities in the United States. To the extent that electrical demand will be met by the Project instead of by other less efficient and greater emitting facilities, the operation of the Project will result in fewer CO₂ emissions than would otherwise occur. To quantify this net reduction, BP retained a consultant to use a sophisticated computer model to evaluate CO₂ emissions in the Western United States in scenarios with and without the Project. The consultant concluded that the scenario that included the Project would result in a significant net reduction in CO₂ emissions per year.

CFE does not accept the assertion that the power produced and sold by BP will displace power produced by older, less efficient power plants. This reluctance is based upon the inability to determine whether market conditions will actually yield the outcome predicted in the modeling. For this reason, CFE does not accept economic dispatch as an appropriate mitigation measure to address global warming. Nevertheless, the Parties agree that if such economic dispatch does in fact ultimately occur, it would provide an environmental benefit that compliments the CO₂ mitigation strategy set forth in detail below. Credits that might be associated with this economic dispatch effect under any existing or future statute, regulations or program remain the sole and exclusive property of BP.

The Parties agree that the SCA should include conditions that take into account the possibility that the Project ownership may change in the future. Therefore, the Parties agree that the following conditions should be included in the SCA:

1. **BP Ownership & BP's Corporate Policy.** If BP holds an equity (ownership) interest in the Project, BP shall voluntarily offset its ownership (equity) share in the Project's emissions through GHG emission reductions within BP's worldwide operations, consistent with its voluntary corporate policy. BP shall provide EFSEC with a copy of the independent audit of BP's greenhouse gas emissions prepared on an annual basis under that policy. However, in the event that BP changes, discards or significantly alters its current corporate GHG objective such that the result is a lesser commitment to GHG emission reduction than provided in subsection 2 below, BP shall be required to mitigate Project GHG emissions according to subsection 2 below.
2. **Mitigation Requirement.**

In the event that BP sells the Project to a third party, or BP changes, discards or significantly alters its current corporate GHG objective as described above, the following GHG mitigation requirements shall apply.

 - a. The Certificate Holder shall mitigate 23% of the Project's actual CO₂ emissions on an annual basis. Mitigation may be accomplished by any combination of
 - i. Boiler Offsets - CO₂ emissions avoided as a result of the Project providing steam to the BP Refinery.

- ii. Other Offset Projects – The implementation of offset projects approved in advance by EFSEC.
 - iii. Funding to an Approved Organization - Providing funding to an approved organization that implements GHG reduction projects, such as the Climate Trust. The amount to mitigate each metric tonne of CO₂ will be \$0.87 for the first year of the Project's operation, and will increase in subsequent years according to the Producer Price Index for All Commodities (WPU-00000000) as reported by the Bureau of Labor Statistics.
- b. Timing and Verifying Actual Emissions and Boiler Offsets.
- i. Sixty (60) days prior to the start of the Project's commercial operation, the Certificate Holder shall pre-pay mitigation based upon the Project's maximum potential CO₂ emissions for the first year of operation minus the CO₂ emissions expected to be avoided by providing steam to the Refinery, either by provide funding to an approved organization and notifying EFSEC, or by providing EFSEC with documentation demonstrating the implementation of an approved offset project.
 - ii. One year and thirty (30) days following the start of the Project's commercial operation, the Certificate Holder shall file with EFSEC a report documenting the Project's actual CO₂ emissions for the first year of operations and the actual amount of CO₂ emissions avoided by providing steam to the Refinery during that year. The report will also present a reconciliation of the mitigation obligation for the first year

and the mitigation provided. If the Certificate Holder has provided more mitigation than is due, then the Certificate Holder would receive a credit against its obligation for the following year. If the Certificate Holder has provided less mitigation than is due, it would provide the additional mitigation owed. The Certificate Holder shall also pre-pay mitigation for the next year's maximum potential CO₂ emissions in the manner described in subsection (i) above at that time. This process shall continue on an annual basis for the 30-year assumed life of the Project, except that the cost per tonne will be adjusted by the PPI ratio as indicated in subsection 2.a.iii above.

- iii. An example is provided in Exhibit 10.1 admitted in the hearing record.
- c. Approved Organizations. If the Certificate Holder elects to satisfy its mitigation obligation by provided funding to an approved organization as described above, it shall provide funding to an organization qualified to administer such funds and that has been approved by EFSEC. In selecting mitigation projects, the approved organization shall give preference and priority to offset projects located within Whatcom County or the immediate surrounding counties where the Project is located, and second within the state of Washington. The organization shall file biennial reports with the Council on actual offsets achieved and a statement of costs for the period. The organization may seek approval from EFSEC to bank money received from BP for a period of up to three years so that larger mitigation projects may be pursued. In no instance shall the organization use more than ten percent

(10%) of the total funds received for selection, monitoring, evaluation, management and enforcement of contracts.

3. If BP sells a portion of the Project to a third party, then assuming BP's voluntary policy is still in effect, BP shall voluntarily offsets its ownership (equity) share of the Project's CO₂ emissions as provided in subsection 1 above, and the third-party Certificate Holder shall mitigate its ownership (equity) share of the CO₂ emissions as provided in subsection 2 above.

B. Regional Air Quality

The Parties recognize the high value that the citizens of Whatcom County and the Province of British Columbia place on maintaining the region's air quality. The Parties also recognize that the Project is designed to minimize emissions of air pollutants through the use of Best Available Control Technology and to significantly reduce the existing emissions at the BP Refinery by providing steam for refinery processes. In addition to the permitting requirements that may be set forth in a Prevention of Significant Deterioration ("PSD") permit, the Parties agree that the following conditions should be included in the SCA

1. Removal of Refinery Boilers. BP shall decommission the Refinery's #1, #2, and #3 boilers within six months of the Project's entry into commercial operation. Upon completion of the decommissioning, the Certificate Holder shall provide EFSEC with written notification and proof that the boilers have been decommissioned at the refinery.
2. Solar Connection School Project. BP shall offer to fund and implement the "Solar Connection" program at one school in each of Whatcom County's seven (7) school districts for a period of ten (10) years, beginning with the first school year following the commencement of commercial operations. The program consists of

the installation of a demonstration (3-5kW) solar generating system, the provision of curriculum materials exploring the science and benefits of renewable energy sources that have been developed by the National Energy Education Development Project, and the participation of BP employees in instructional portions of the program. The Certificate Holder will discuss the program with appropriate representatives of the Whatcom County School Districts and selected schools to determine whether they are interested in implementing the program. The Certificate Holder shall have no obligation to fund or implement this program if the Project is not constructed and operated.

3. Alternative Project: Commute Trip Reduction Program. In the event that, despite the good faith efforts of the Parties, the Certificate Holder is unable to implement the Solar Connection School Project described in subsection 2 above, the Certificate Holder shall participate in the Whatcom County Commute Trip Reduction (“CTR”) Program by contributing \$10,000 annually to the CTR Program for ten (10) years. The initial payment shall be made at least ninety (90) days prior to the beginning of commercial operations of the Project, and on each of the nine anniversaries thereafter. The Certificate Holder shall have no obligation to provide funding to the Whatcom County CTR Program if the Project is not constructed and operated.

C. Construction Material Reuse

The Parties agree that the SCA should include the following condition:

The Certificate Holder shall develop and implement a plan to reuse construction and construction waste materials to the extent feasible. The construction reuse

plan shall be submitted to EFSEC for review and approval ninety (90) days prior to the start of construction of the project.

D. Site Restoration

The Parties agree that the SCA should include the following conditions:

The Certificate Holder is responsible for site restoration pursuant to Council Rules. At least ninety (90) days prior to the beginning of site preparation, the Certificate Holder shall submit to the Council its initial site restoration plan. At a minimum, the initial site restoration plan shall address both the possibility that site restoration occurs at the end of the useful life of the Project and also the possibility of the Project being suspended or terminated during construction. The plan shall comply with the Council's rules and shall include at least the following components:

- a. A description of the assumptions underlying the plan. For example, the plan should explain the anticipated useful life of the Project, the anticipated time frame of site restoration, and the anticipated future use of the site.
- b. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.
- c. An initial plan for disposing of hazardous materials (if any) present on the site, and remediating hazardous contamination (if any) at the site.
- d. An initial plan for restoring the site, including the removal of structures and foundations and the regrading of the site, if appropriate.
- e. Provisions for retaining systems owned and operated by the Whatcom County and/or any other local municipality.
- f. Provisions for retaining and protecting wetlands mitigation sites.

g. Provisions for restoration of the electrical transmission line and natural gas pipeline if applicable.

Prior to beginning site preparation, BP must obtain approval from the Council of the initial site restoration plan. The Certificate Holder shall be required to post a bond to secure site restoration only if, at any time following execution of the SCA, the Certificate Holder's Standard & Poors credit rating falls below "BBB-/Stable" or its Moody's credit rating falls below "Baa3/Stable," unless another corporate entity with credit rating at least equal to those levels provides a formal corporate guarantee making that corporate entity jointly liable for site restoration expenses.

E. Conditions Precedent to BP Obligations

Unless otherwise provided in the specific agreements entered into between BP and other entities referred to in this agreement, all obligations of BP are conditioned upon the following:

1. Receipt of all governmental approvals necessary for the siting and construction of the BP Cherry Point Power Project,
2. Receipt of a final executed Site Certification Agreement (SCA) pursuant to Chapter 80.50, Revised Code of Washington, and
3. Obtaining necessary project financing and deciding to proceed with construction of the Project.

III. Withdrawal of Objections and Generation Terms

A. Withdrawal of Objections

Therefore, based on approval of this Stipulation, CFE stipulates to the withdrawal of its issues from the adjudicative hearing, but reserves its right to otherwise participate in the adjudicated hearing process pursuant to the terms herein.

B. Support of Stipulation

The Parties support this Stipulation, and fully support the issuance of a SCA for the Project subject to the conditions set forth in this Stipulation. The Parties understand this Stipulation is subject to review and approval by EFSEC.

C. General Provisions

1. Support of Stipulation. The Parties shall cooperate in submitting this Stipulation promptly to EFSEC for acceptance, and shall support adoption of this Stipulation in proceedings before EFSEC, through testimony or briefing, as resolution of the issues included within this Stipulation. No Party to this Stipulation, or its agents, employees, consultants or attorneys will engage in any advocacy contrary to EFSEC's adoption of this Stipulation as resolution of the issues included within this Stipulation. Each Party shall make available a witness or witnesses in support of this Stipulation, if a hearing is determined necessary by EFSEC. To the extent that any pre-filed testimony of any Party's witness conflicts with the terms of this Stipulation, the Parties agree that the terms of this Stipulation supersede the recommendation in that Party's testimony. CFE reserves the right to attend the hearing and participate in the support and defense of this Stipulation. CFE also reserves the right to be heard on any issue raised by any other party or any member of EFSEC in the matter that affects the statutory duties of CFE. In participating in any proceeding before EFSEC, CFE will support certification of the Project and

will not advocate any conditions or mitigation requirements in addition to those outlined in this Stipulation.

2. Entire Stipulation. The Parties acknowledge that this Stipulation is the product of negotiation and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes the Parties' entire agreement on all matters set forth herein.

3. Termination Rights. If EFSEC rejects or modifies this Stipulation or attempts to impose additional mitigation payments or costs, the Parties reserve their individual and collective rights to terminate this Stipulation. Before a party exercises its right to terminate this Stipulation, both parties shall use their best efforts to take all reasonable actions necessary to keep the terms of this Stipulation intact or re-negotiate this Stipulation in a mutually satisfactory manner.

COUNSEL FOR ENVIRONMENT

BP WEST COAST PRODUCTS, L.L.C.

Mary Barrett
Assistant Attorney General

Mark Moore
Cogeneration Project Manager

DATE: December ____, 2003.

DATE: December ____, 2003.