

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY,**

**Respondent.**

**Docket UE-220066  
Docket UG-220067**

**PUGET SOUND ENERGY’S MOTION  
TO STRIKE CENSE’S REPLY TO  
PUGET SOUND ENERGY’S  
RESPONSE TO COALITION OF  
EASTSIDE NEIGHBORHOODS FOR  
SENSIBLE ENERGY’S PETITION  
FOR INTERVENTION**

1. Pursuant to WAC 480-07-375, Puget Sound Energy (“PSE”) moves to strike the Coalition of Eastside Neighborhoods for Sensible Energy’s (“CENSE”) Reply to PSE’s Response to CENSE’s Petition for Intervention (“Reply”), which was improperly filed with the Commission on February 25, 2022. The Commission should grant PSE’s motion for three reasons.
2. First, WAC 480-07-355, which governs intervention in a proceeding, does not allow for a intervening party to file a reply. Furthermore, WAC 480-07-370(5) which concerns pleading standards before the Commissions, including for petitions, expressly states that a reply to a response to a petition is not permitted without prior approval of the Commission “upon a

showing of good cause.”<sup>1</sup> CENSE does not show good cause or request permission from the Commission to reply to PSE’s Response. Nor did the Commission direct or invite a reply. This disregard for the Commission’s rules, process and procedure is indicative of how CENSE will disrupt the orderly process of the proceeding if it is allowed to intervene.

3. Second, CENSE provides no explanation or reason why a reply is necessary, as required under WAC 480-07-370(5)(b). Instead, CENSE uses the Reply as an attempt to make arguments that should have been made in its initial petition, even though the new arguments fail. CENSE used the Reply to make irrelevant arguments attacking the Energize Eastside project and Public Counsel rather than arguing the merits of its intervention. The Commission should reject this attempt to circumvent its rules.

4. Finally, CENSE does not argue it has a substantial interest. The **new** argument is that Public Counsel does not have the resources to oppose the Energize Eastside project, and other intervenors have not indicated immediate opposition, so it is in the public interest to allow CENSE’s intervention.<sup>2</sup> CENSE provides no precedent for this position because there is none. Mere opposition to a project by a private interest group, does not create a public or a substantial interest. To the contrary, CENSE’s interest is limited to a predetermined opposition to the Energize Eastside project, in large part because the Energize Eastside project, which would be built largely along the existing transmission corridor but with taller poles, would affect the views

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<sup>1</sup> WAC 480-07-370(5)(a) (“A party **must not file a reply without permission** from the commission, which the commission will grant **only upon a showing of good cause**”) (emphasis added).

<sup>2</sup> Reply at p. 1.

from the homes of CENSE’s members. CENSE does not purport to represent, and will not represent, the broader public interest. CENSE does not claim its organization has an area of extensive expertise like transmission planning; rather they primarily claim they have individuals they want to hire to support their opposition position, contingent on funding.<sup>3</sup> CENSE’s sole purpose is to oppose Energize Eastside.<sup>4</sup> If this is the new standard, any group of litigious customers could intervene simply based on their opposition to a project and their concern that Public Counsel might disagree with their position. The Commission explicitly rejected this exact line of argumentation that Public Counsel’s representation would be insufficient in the Avista case.<sup>5</sup>

5. CENSE claims coordinating with Public Counsel or engaging in the public comment process is insufficient because the Energize Eastside project is moving forward.<sup>6</sup> The implication is if CENSE is allowed to intervene, construction can somehow be stopped. This shows a complete misunderstanding of the purpose of a rate case and the role of the Commission. It also demonstrates that CENSE will seek to expand the issues beyond the scope of the Commission’s authority and disrupt and delay the process.

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<sup>3</sup> Public Council and Commission staff can work with the individuals CENSE proffered as “experts”, even though the Bellevue Hearing Examiner found their “reports were defective and simply not credible, because they failed to follow industry practice.” *In re Conditional Use Permit Application for the South Bellevue Segment of the Energize Eastside Project*, City of Bellevue Hearing Examiner DSD File No. 17-120556-LB, Findings of Fact, Conclusions, and Decision, ¶¶ 57a-57e (June 25, 2019). A partial copy of the decision is attached as Attachment A.


<sup>4</sup> Reply at p. 4-5.

<sup>5</sup> See *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 15 (June 28, 2019) (denying intervention because the intervenor’s interests were “adequately represented by Public Counsel, whose sole responsibility is to represent residential and small commercial ratepayers before the Commission”).

<sup>6</sup> Reply at p. 6.

6. In summary, CENSE cites no Commission precedent to support its positions, ignored Commission rules in order to file an improper Reply on the Friday afternoon before the Prehearing Conference, and demonstrates a deep misunderstanding of the rate case process.
7. For these reasons, the Commission should strike the Reply and deny CENSE's requested intervention.

**PERKINS COIE LLP**

By   
Sheree Strom Carson, WSBA #25349  
Pamela J. Anderson, WSBA #37272  
Donna L. Barnett, WSBA #36794  
David S. Steele, WSBA #45640  
Byron C. Starkey WSBA #55545  
Attorneys for Puget Sound Energy

# Attachment A

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BELLEVUE**

In the Matter of the:	)	
	)	
<b>Conditional Use Permit Application</b>	)	DSD File No. 17-120556-LB
<b>for the South Bellevue Segment of the</b>	)	
<b>Energize Eastside Project</b>	)	FINDINGS OF FACT,
	)	CONCLUSIONS, AND
<b>PUGET SOUND ENERGY, Applicant</b>	)	DECISION
	)	

**I. SUMMARY of DECISION.**

The applicant has met its burden of proof to demonstrate that a preponderance of the evidence supports the conclusion that its application for a Conditional Use Permit (CUP) merits approval. Accordingly, the pending Conditional Use Permit application is approved, subject to conditions.

**II. BACKGROUND and RELEVANT CODE PROVISIONS.**

There is no dispute that a conditional use permit is mandated for this project because the application is for new or expanding electrical utility facilities proposed on sensitive sites described and depicted on Figure UT.5a (revised to Map UT-7) of the Utilities Element of the City of Bellevue Comprehensive Plan. (*LUC 20.20.255.C; Staff Report, pages 7-8, and Attachment F, a copy of Comp. Plan Map UT-7.*)

In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing regarding the Conditional Use Permit application at issue. Under applicable City codes, a CUP is a Process I land use decision processed in accord with LUC 20.35.100-140.

**DECISION APPROVING CONDITIONAL USE  
PERMIT FOR THE SOUTH BELLEVUE SEGMENT  
OF THE ENERGIZE EASTSIDE PROJECT, PUGET  
SOUND ENERGY, APPLICANT –  
FILE NO. 17-120556-LB**

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450 – 110<sup>TH</sup> AVENUE NE  
P.O. BOX 90012  
BELLEVUE, WASHINGTON 98009-9012

1 would have to acknowledge that the existing powerlines and utility corridor were already in  
2 place when they moved into their homes. Their questions and challenges to details in  
3 environmental reviews, load studies, demand studies, and the like, appeared jaded and  
4 heavily influenced by their desire to stop the project at any cost, to preserve existing  
5 conditions. Some expressed their desire to see all lines removed and the corridor used as a  
6 greenway.

7 55. Like other project opponents, CENSE and CSEE representatives voiced concerns but  
8 did not offer sufficient, relevant, authoritative, or credible evidence that would rebut the  
9 findings and recommendations made in the Staff Report.

10 56. The “need” studies, analysis of alternatives, pipeline safety reports and other  
11 substantive materials provided by the applicant were thoroughly reviewed, challenged, and  
12 revised by Staff and independent consultants engaged by the City to review applicant  
13 submittals for this project. Independent consultants confirmed that PSE studies and reports  
14 were conducted in a manner generally accepted by professionals specializing a particular  
15 subject matter, like system reliability, pipeline safety, pole design and the like.

16 57a. Again, third-party reviews confirmed the substance of the applicant’s key submittals  
17 at issue in this CUP application. At the close of the hearing, attorneys for the two opposition  
18 groups, CENSE and CSEE, asked the Examiner to carefully read the Lauckhart and  
19 McCullough materials, included in the record, to see how the applicant has failed to satisfy  
20 approval criteria, mostly the requirement to show operational need. Having read and re-read  
21 the opposition reports and evidence, and the independent studies prepared by Stantec and  
22 USE, one finding and conclusion became crystal clear – the applicant reports, forecasts, and  
23 data analyses were in compliance with applicable industry standards. The opponents failed  
24 to rebut the independent consultant reviews of PSE’s work involved in this application  
25 process, all of which concluded that PSE was planning and reviewing data in accord with  
26 industry practice and standards.

27 57b. On the other hand, PSE firmly established that several key aspects of opposition  
28 reports were defective and simply not credible, because they failed to follow industry  
29 practice. Rebuttal testimony from Mr. Nedrud was powerful and credible. He showed how  
30 Mr. McCullough’s presentation, which showed far less demand than PSE forecasts, failed to  
31 properly account for several considerations required by industry practice and applicable  
32 federal electrical system planning mandates (NERC requirements) described by Ms. Koch  
33 during her testimony. Mr. Nedrud showed how Mr. McCullough’s research analysis  
34 presented at the hearing only considered current loads to make load forecasts. This leads to  
35 erroneous results, because such analysis fails to include consideration of weather events (at  
36 peaks/extremes), projections of economic activity, population projections, building permits,

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1 and conservation goals. *Testimony of Mr. Nedrud, and his rebuttal slides presented at the*  
2 *hearing, included in the record as Ex. A-17.* Further, Mr. Nedrud demonstrated how Mr.  
3 Marsh’s illustrations challenging demand data used by PSE were problematic, because the  
4 focus was on consumption (use) and not peak demand.

5 57c. Consumption is the amount of electricity that customers use over the course of a year.  
6 “Consumption” is also called “use” or “energy”. “Demand” is customer usage at any given  
7 moment in time. “Peak Demand” is the maximum amount of electricity that PSE customers  
8 will demand at any given time.

9 57d. The City’s consultant addressed the difference of “use versus demand” in its  
10 Independent Technical Analysis:

11 *“Bellevue’s Resource Conservation Manager (RCM) program stats on declining energy use are*  
12 *reflecting a decline in the average use per customer. The DSM programs, solar, etc. are showing*  
13 *success with this decline. **But, that is one piece of the story - the energy piece on a per customer***  
14 ***basis. The number of customers continues to increase, and the aggregate peak usage (peak***  
15 ***demand), is continuing to increase. Growth in peak demand drives the size and amount of***  
16 ***infrastructure required and drives the issue of grid reliability.**” (USE report, included as*  
17 *Attachment D to the Staff Report, found at DSD 000663-000739, on page 9 of 76; emphasis*  
18 *added).*

19 57e. In October of 2015, the Federal Energy Regulatory Commission (FERC) dismissed a  
20 complex challenge to the Energize Eastside Project raised by CENSE, CSEE, Larry Johnson,  
21 and others (identified by FERC as “Complainants”), which was supported by sworn  
22 testimony from Mr. Lauckhart, CSEE’s principal witness in this matter. The FERC decision  
23 includes the following passage, which applies just as well to this Decision: “*Complainants*  
24 *discuss alleged flaws in the load flow studies that Puget Sound conducted for the Energize*  
25 *Eastside Project. However, Complainants do not demonstrate that the studies violated any*  
26 *applicable transmission planning requirements or were otherwise unjust, unreasonable, or*  
*unduly discriminatory or preferential. Complainants do not cite anything that would require*  
*Puget Sound to use the study inputs and assumptions that Complainants prefer instead of the*  
*inputs and assumptions that Puget Sound used.” (FERC Order Dismissing Complaint by*  
*CENSE, CSEE, et al., issued Oct. 21, 2015, included in the record at DSD 000656, complete*  
*Order at DSD 000630-000659). As in the FERC challenge, in this hearing process Mr.*  
*Lauckhart alleged flaws in the load flow reports that PSE relied upon to demonstrate need*  
*for its Energize Eastside Project, among other things. He did not rebut the favorable reviews*  
*provided by independent consultants engaged by the city regarding PSE’s supporting studies.*  
*Mr. Lauckhart and other project opponents did not demonstrate that the studies used by PSE*  
*violated any applicable transmission planning requirements or were otherwise unjust,*  
*unreasonable, or unduly discriminatory or preferential. Opponents do not cite anything that*

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1 would require PSE to use the study inputs and assumptions that they prefer instead of the  
2 inputs and assumptions that PSE used.

3 58a. Several opposition speakers directed attention to parts of the city’s code that they read  
4 to say to that electrical facilities should be located where the need exists. In response, City  
5 staff argued that city codes do not mandate an entirely new utility corridor if fewer site  
6 compatibility impacts occur in a residential area than some other zoning district, and that the  
7 South Bellevue Segment proposal is the most feasible, lowest-impact option, emphasizing  
8 that the existing powerline route has been in the same place for decades, that poles have been  
9 in place in the same neighborhoods for many years, and that no new right-of-way is required  
10 as part of this project. The Staff Report, at pages 41-47, explains how the route selected by  
11 PSE has fewer site-compatibility impacts than other options.

12 58b. Even if the City’s code could be read to require electrical facilities to only locate in  
13 areas that benefit or need the new or expanded electrical facility in question, in this situation,  
14 that is precisely what is proposed, because “load-shedding” – i.e. rolling blackouts – is  
15 currently part of PSE’s corrective action plan (CAP) options in neighborhoods throughout  
16 the Eastside, including residential neighborhoods that are located along the route of the South  
17 Bellevue Segment. Given these circumstances, there truly is a critical “need” for the project  
18 to prevent such problems going forward in the residential areas located along the route.

19 58c. Pole designs, placement, heights, and wire-connections on poles, were all analyzed to  
20 generate conditions that minimize view impacts to the fullest extent reasonable, while still  
21 achieving the project objectives, including enhancing the reliability and redundancy in the  
22 power-transmission system that serves the City of Bellevue, including neighborhoods and  
23 businesses in the area affected by this South Bellevue Segment proposal.

24 59. The Examiner adopts and incorporates the City of Bellevue’s administrative decision  
25 approving the associated Critical Area Land Use Permit (CALUP) issued for this project,  
26 under File No. 17-120557-LO, which was not appealed, as unchallenged findings,  
conclusions, and conditions of approval, that all provide support for the requested  
Conditional Use Permit, including without limitation:

- Findings and Conclusions re: Critical Areas Report Decision Criteria – General  
Criteria, LUC 20.25H.255.A.4, on page 104 of the Staff Report, which reads as  
follows:

The resulting development is compatible with other uses and development in the same land use  
district.

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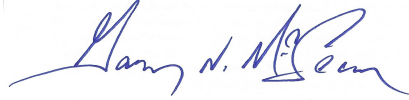
**VI. CONCLUSIONS of LAW.**

1. As explained above, the record includes credible, un rebutted, and substantial proof that the Conditional Use Permit application satisfies all applicable decision criteria specified in applicable city LUC 20.30B.140, as conditioned herein.
2. Similarly, the record includes credible, un rebutted, and substantial proof that the proposal satisfies the additional criteria for Electrical Utility Facilities, set forth in LUC 20.20.255, as conditioned herein.
3. Based on the record, and all findings set forth above, the applicant established that more than a preponderance of the evidence supports the conclusion that its permit application merits approval, meeting its burden of proof imposed by LUC 20.35.340(A).
4. Any finding or other statement contained in this Decision that is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

**VII. DECISION.**

Based on the record, and for the reasons set forth herein, the requested Conditional Use Permit for the South Bellevue Segment of the Energize Eastside Project should be and is hereby approved, subject to the following conditions of approval, which are incorporated herein by reference.

ISSUED this 25<sup>TH</sup> Day of June, 2019



\_\_\_\_\_  
Gary N. McLean  
Hearing Examiner

Attachments: Conditions of Approval, 20 pages; and Exhibit List.

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