

**EXH. DRK-27
DOCKETS UE-220066/UG-220067 et al.
2022 PSE GENERAL RATE CASE
WITNESS: DAN'L R. KOCH**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

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

In the Matter of the Petition of

PUGET SOUND ENERGY

**For an Order Authorizing Deferred
Accounting Treatment for Puget Sound
Energy's Share of Costs Associated
with the Tacoma LNG Facility**

Docket UG-210918

**FIRST EXHIBIT (NONCONFIDENTIAL) TO THE PREFILED
TESTIMONY OF**

DAN'L R. KOCH

**ON BEHALF OF PUGET SOUND ENERGY IN SUPPORT OF THE
MULTIPARTY SETTLEMENT STIPULATION AND AGREEMENT ON
REVENUE REQUIREMENT AND ALL OTHER ISSUES EXCEPT
TACOMA LNG AND PSE'S GREEN DIRECT PROGRAM**

AUGUST 26, 2022

Before Hearing Examiner
Gary N. McLean

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

)	
In the Matter of the:)	
)	
Conditional Use Permit Application)	DSD File No. 17-120556-LB
for the South Bellevue Segment of the)	
Energize Eastside Project)	FINDINGS OF FACT,
)	CONCLUSIONS, AND
PUGET SOUND ENERGY, Applicant)	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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1 As explained in LUC 20.35.140.A, the Hearing Examiner *shall approve* a project or
 2 approve with modifications if the applicant has demonstrated that the proposal complies with
 3 the applicable decision criteria of the Bellevue City Code, and the applicant carries the
 4 burden of proof and must demonstrate that a preponderance of the evidence supports the
 5 conclusion that the application merits approval or approval with modifications. In all other
 cases, the Hearing Examiner shall deny the application. The preponderance of the evidence
 standard is equivalent to “more likely than not.”¹

6 ***Conditional Use Permit Decision Criteria:*** The decision criteria for a Conditional Use
 7 Permit is found in LUC 20.30B.140, which explains that the City may approve or approve
 with modifications an application for a conditional use permit if:

- 8 A. The conditional use is consistent with the Comprehensive Plan; and
- 9 B. The design is compatible with and responds to the existing or intended character,
 10 appearance, quality of development and physical characteristics of the subject
 property and immediate vicinity; and
- 11 C. The conditional use will be served by adequate public facilities including streets,
 12 fire protection, and utilities; and
- 13 D. The conditional use will not be materially detrimental to uses or property in the
 14 immediate vicinity of the subject property; and
- 15 E. The conditional use complies with the applicable requirements of this Code.

16 ***Additional Criteria for Electrical Utility Facilities:*** Because the proposal is to construct or
 17 expand electrical facilities, the provisions of the City’s Land Use Code specifically
 18 addressing Electrical Utility Facilities, found in LUC 20.20.255.E, must be satisfied. Prior
 19 to submittal of any Conditional Use Permit application, a detailed Alternative Siting Analysis
 20 was required. See LUC 20.20.255.D. In addition to the requirements set forth above for a
 Conditional Use Permit, as detailed in Part 20.30B LUC, all proposals to locate or expand
 electrical utility facilities shall comply with the following:

- 21 1. The proposal is consistent with Puget Sound Energy’s System Plan;
- 22 2. The design, use, and operation of the electrical utility facility complies with

23 ¹ *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 414 (2005).

1 hearing opened, the Examiner granted a request to allow Bellevue residents the opportunity
2 to speak first, followed by people from other places. Most people observed the hearing rules.
3 People offered a wide-range of comments, with project supporters focusing on the need for
4 reliable power in the City, and opponents repeating themes and issues raised in written
5 comments analyzed throughout the EIS process and in the Staff Report. Several of the public
6 witnesses spoke twice.

7 51. A large share of the public comments opposing the project focused on pipeline safety
8 concerns. The applicant and staff properly note that pipeline safety issues are some of the
9 most detailed topics addressed in mitigation measures and conditions of approval proposed
10 in the FEIS and the Staff Report. Many of the opposition comments and presentations made
11 during the public hearing focused on the “need” issue, with little pushback given to portions
12 of the Staff Report that address how the project can be designed and conditioned to comply
13 with applicable city standards for such facilities. Many opponents questioned whether any
14 alternatives or routes ever really needed to be studied in the first place, reasoning that if
15 there’s no real need, then there is no reason for the project.

16 52. As noted in previous findings, “need” was analyzed over the past few years, and one
17 thing has not and shows few signs of changing – Bellevue and the Eastside are booming.
18 Even if growth were to grind to a halt, the rapid pace of growth and demand since the 115kv
19 lines along the corridor were last substantially improved, decades ago, makes challenges to
20 “need” and assertions that “demand just does not support the project” problematic.

21 53. Doing nothing, and simply maintaining the status quo, is not a responsible choice.
22 The Phase 2 Draft EIS concluded that “Under the No Action Alternative, PSE would continue
23 to manage its system in largely the same manner as at present. This includes maintenance
24 programs to reduce the likelihood of equipment failure, and stockpiling additional equipment
25 so that in the event of a failure, repairs could be made as quickly as possible. *Implementation
26 of the No Action Alternative would not meet PSE’s objectives for the proposed project, which
are to maintain a reliable electrical system and to address a deficiency in transmission
capacity on the Eastside. Implementation of the No Action Alternative would increase the
risk to the Eastside of power outages or system damage during peak power events.” (Phase
2 DEIS, discussion of No Action Alternative at Sec. 2.1.1, included in the Record at DSD
010246-247, emphasis added).*

27 54. While thoughtful and caring about their homes, neighborhoods, families, neighbors
28 and environmental stewardship, the vast majority of comments opposing the project came
29 from people with personal motivations like potential view impacts they believe will occur if
30 the project goes forward. While some people complained about the existing powerlines and
stray static events that can make your hair stand up on a misty day, most opposition witnesses

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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.

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

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

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

57b. On the other hand, PSE firmly established that several key aspects of opposition
24 reports were defective and simply not credible, because they failed to follow industry
25 practice. Rebuttal testimony from Mr. Nedrud was powerful and credible. He showed how
26 Mr. McCullough’s presentation, which showed far less demand than PSE forecasts, failed to
properly account for several considerations required by industry practice and applicable
federal electrical system planning mandates (NERC requirements) described by Ms. Koch
during her testimony. Mr. Nedrud showed how Mr. McCullough’s research analysis
presented at the hearing only considered current loads to make load forecasts. This leads to
erroneous results, because such analysis fails to include consideration of weather events (at
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 **VI. CONCLUSIONS of LAW.**

- 2 1. As explained above, the record includes credible, un rebutted, and substantial proof
3 that the Conditional Use Permit application satisfies all applicable decision criteria specified
4 in applicable city LUC 20.30B.140, as conditioned herein.
- 5 2. Similarly, the record includes credible, un rebutted, and substantial proof that the
6 proposal satisfies the additional criteria for Electrical Utility Facilities, set forth in LUC
7 20.20.255, as conditioned herein.
- 8 3. Based on the record, and all findings set forth above, the applicant established that
9 more than a preponderance of the evidence supports the conclusion that its permit application
10 merits approval, meeting its burden of proof imposed by LUC 20.35.340(A).
- 11 4. Any finding or other statement contained in this Decision that is deemed to be a
12 Conclusion of Law is hereby adopted as such and incorporated by reference.

13 **VII. DECISION.**

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

18 ISSUED this 25TH Day of June, 2019

19 

20 _____
21 Gary N. McLean
22 Hearing Examiner

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

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**NOTICE OF RIGHTS
TO REQUEST CLARIFICATION OR RECONSIDERATION,
AND TO APPEAL**

This Decision has been issued by the Hearing Examiner who has specific authority to address Type I quasi-judicial matters following a public hearing. *See LUC 20.35.100.*

REQUEST FOR CLARIFICATION OR RECONSIDERATION – As provided in Rule 1.25 and 1.26 of the Bellevue Hearing Examiner Rules of Procedure, a party may file a written request for clarification or reconsideration of this Decision within five (5) working days after the date of issuance. Additional requirements and procedures concerning Requests for Clarification or Reconsideration are found in Rule 1.25 and 1.26 of the Hearing Examiner Rules of Procedure.

RIGHT TO APPEAL – TIME LIMIT – Persons and entities identified in Land Use Code (LUC) 20.35.150, may appeal a Process I decision of the Hearing Examiner to the Bellevue City Council by filing a written statement of the Findings of Fact or Conclusions of Law which are being appealed, and paying a fee, if any, as established by ordinance or resolution, no later than 14 calendar days following the date that the decision was mailed. The written statement must be filed together with an appeal notification form, available from the City Clerk. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than **5:00 p.m. 14 calendar days following the date that the decision was mailed.** (*Because this Decision has been mailed on June 25, 2019, the appeal deadline is July 9, 2019.*)

TRANSCRIPT OF HEARING – PAYMENT OF COST – An appeal of the Hearing Examiner’s decision requires the preparation of a transcript of the hearing before the Hearing Examiner. Within thirty (30) days of the decision which is appealed from, the appellant shall order from the City Clerk, on a form provided by the Clerk, a full transcript of the hearing before the Hearing Examiner. At the time the order for transcription is placed, the appellant shall post security in the amount of One Hundred Dollars (\$100.00) for each hearing hour to be transcribed. If appellant fails to post security, the appeal shall be considered abandoned.

Additional requirements and procedures concerning appeals filed with the Council are found at Resolution 9473 and in the City of Bellevue Land Use Code.

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