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8 BEFORE THE BELLEVUE CITY COUNCIL
9 BELLEVUE, WASHINGTON

10 In Re

11 Puget Sound Energy Permit
12 Application(s):

13 Conditional Use (File# 17-120556-LB)

14 Critical Areas Land Use Permit (File
15 #17-120557-LO).

16 South Bellevue Segment

No. 17-120556-LB
17-120557-LO

STATEMENT OF APPEAL
of FINDINGS OF FACTS,
CONCLUSIONS AND
RULINGS/DECISIONS OF
HEARING EXAMINER DECISION

17 Comes now the Coalition of Eastside Neighborhoods for Sensible Energy,
18 ("CENSE") and provides its "written statement of the findings of fact or conclusions
19 which are being appealed" pursuant to BCC 20.35.150.A.2 pertaining to the "Findings
20 of Fact, Conclusions and Decision" entered by the Bellevue Hearing Examiner on June
21 25, 2019, hereinafter referenced as the "HE Decision" or "Decision."

22 **1. FINDINGS OF FACT, CONCLUSIONS AND DECISION APPEALED AS FOUND**
23 **IN JUNE 25, 2019 DECISION OF THE HEARING EXAMINER.**

24 **1.1 FINDINGS OF FACT APPEALED.**

25 The Hearing Examiner erred in entering the following Findings of Facts as set
26 forth in his June 25, 2019 Decision: 4, 5, 7 (as to the 230 kV upgrade concept being
27 included in the Bellevue Comp Plan), 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22a,

28 STATEMENT OF APPEAL of FINDINGS OF FACTS,
CONCLUSIONS AND RULINGS/DECISIONS- 1

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1 22b, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45,
2 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57a, 57b, 57c, 57d, 57e, 58a, 58b, 58c, 59, 60,
3 61, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 83A, 83B, 83C, 83D,
4 83E, 84, 84A, 84B, 84C, 84E, 84E, 84F, 84G, 84H and 85.

5 **1.2. CONCLUSIONS APPEALED.**

6 The Hearing Examiner erred in entering the following Conclusions as set forth in
7 his June 25, 2019 Decision: 1, 2, 3 and 4, at page 37 of the Decision.

8 **1.3. DECISION APPEALED.**

9 The Hearing Examiner erred in entering the "Decision" as set forth at Paragraph
10 VII, lines 12-15 on page 37 of his June 25, 2019 Decision.

11 **1.4. CONDITIONS APPEALED.**

12 The HE Decision includes twenty pages of "Conditions of Approval." These
13 "Conditions," singly and/or cumulatively, do not provide sufficient mitigation or
14 justification for a project that otherwise fails to meet approval criteria under applicable
15 Bellevue codes as discussed herein.

16 **2. OTHER AND SUPPLEMENTARY DECISIONS AND RULINGS APPEALED.**

17 In addition to the errors made in the Decision, the Hearing Examiner and/or City
18 Staff erred in making the following decisions, rulings or interpretations.

19 **2.1.** "Order Denying Motion for Continuance and Motion to Compel" issued by
20 the Hearing Examiner on March 5, 2019 in response to motions by CENSE, was issued
21 in error.

22 **2.2.** The City Staff and Hearing Examiner improperly bifurcated what PSE claims
23 is a single project, the "Energize Eastside"¹ project of some eighteen miles between the
24 Talbot Hill (Renton) and Sammamish substations, into two segments, the South
25 Bellevue Segment (this application and appeal) and the remainder of the project north
26

27 ¹The term "Energize Eastside" as used by PSE is a brand adopted by it and is accordingly put in quotes
28 in this appeal statement.

1 from the Richards Creek substation to Sammamish. See Letters from J. Richard
2 Aramburu to Carol Helland dated August 31, 2017, to Heidi Bedwell dated January 17,
3 2018, and to Heidi Bedwell dated March 9, 2018.

4 **2.3.** The City Staff and Hearing Examiner erred in reaching decisions on the
5 merits and consistency with applicable permit criteria of the entire 18-mile "Energize
6 Eastside" proposal when the applicant has sought land use approval for only the South
7 Bellevue Segment, limited to the southern portion of the "Energize Eastside" route in
8 the City of Bellevue.

9 **2.4.** The City erred in not providing notice of the application to all property
10 owners along the entire "Energize Eastside" project site that under BCC 20.35.120.B.2
11 the merits of the entire 18-mile "Energize Eastside" project would be considered and
12 decided in the current proceeding before the Hearing Examiner.

13 **2.5.** The draft and final environmental impact statements for the proposal are
14 inadequate because none described, nor considered reasonable alternatives, to the
15 reduction of scope of the "Energize Eastside" project to the smaller South Bellevue
16 Segment (SBS), particularly in light of the Bellevue Staff Report that states that "the
17 south portion of the Project that is the subject of PSE's current application can function
18 independently" and that the "full build out of the 'Energize Eastside' project" will include
19 a similar connection from the Sammamish substation to the north to only "provide
20 redundancy. . . ." DSD 000111. See also Assignment of error to Finding 43 in the HE
21 Decision. The South Bellevue Segment fits within the legal definition of a standalone
22 "reasonable alternative" within the meaning of WAC 197-11-786, required to be
23 considered as a part of environmental review for the "Energize Eastside" proposal.

24 **2.6.** The Hearing Examiner demonstrated bias and prejudice against persons
25 concerned about the impacts of the project in entering Finding of Fact 54, page 20-21 in
26 which he asserted that local residents:

1 questions and challenges to detail in environmental review, load studies,
2 demand studies, and the like, appeared jaded and heavily influenced by their
desire to stop the project at any cost, to preserve existing conditions.

3 These prejudicial comments violate the Appearance of Fairness Doctrine and Chapter
4 42.36 RCW because the Examiner indicates he judges the evidence presented based
5 on his perceived personal bias of local residents rather than on the merits of the
6 evidence. The City Council should reverse the decision and order a new hearing before
7 an unbiased Hearing Examiner. Such prejudicial comments ignore the City Council's
8 designation of the route as a "sensitive facility site" in the Bellevue Comprehensive Plan
9 where "there is potential for visual impacts absent appropriate siting and mitigation."
10 See Policy UT-96.

11 **2.7.** The South Bellevue Segment, as a project that could "function
12 independently," was never presented as an alternative to advisory committees or other
13 public outreach in violation of BCC 20.20.255.D.4.

14 **2.8.** The South Bellevue Segment was never reviewed as a standalone project
15 that "could function independently," nor was it disclosed that the function of the
16 segment of the proposal north of the Richards Creek substation would merely "provide
17 redundancy" during the "Alternative Siting Analysis" required under BCC 20.20.255.D.4.

18 **2.9.** The Hearing Examiner erred by not determining that the portion of the
19 "Energize Eastside" proposal north of the Richards Creek Substation should be denied
20 because it only "provides redundancy" and the South Bellevue Segment can "function
21 independently."

22 **2.10.** The application for the South Bellevue Segment is not supported by
23 planning studies, load forecasts and analysis as required by NERC Transmission
24 Planning Performance Requirements found in TPL-001-4 because, under Section 2.6.1
25 thereof, the available supporting studies are five years old or more, and under Section
26 2.6.2, "material changes" have occurred in the System represented since the prior study
27 because, *inter alia*, prior studies did not analyze that the South Bellevue Segment that
28

1 could "function independently."

2 **2.11.** To the extent that the HE Decision approved the "Energize Eastside"
3 project as a whole, the decision was not consistent with NERC Transmission Planning
4 Performance Requirements found in TPL-001-4 for the reasons stated in Paragraph
5 2.10 above, but also because PSE has not filed an application for the remainder of the
6 "Energize Eastside" project to the north and any review of that application will not occur
7 for several years into the future because PSE has no timetable for construction of that
8 future segment.

9 **2.12.** PSE and the Hearing Examiner improperly, and illegally, denied access to
10 model information and data on actual usage of electricity in the service area for
11 "Energize Eastside" to persons who have appropriate security clearance under Federal
12 and State law.

13 **2.13** City staff and Hearing Examiner erred, as a matter of fact and law, under
14 SEPA and the terms of applicable Bellevue codes, in concluding that:

- 15 • "The Partner Cities do not have the authority to compel PSE to release the
16 modeling assumption used in its utility planning process. It is up to PSE to
17 manage the release and disclosure of modeling data", and
- 18 • "The Partner Cities do not have the authority of SEPA to make a determination
19 there is not need for the proposal or change the applicant's objective or proposal
20 for purposes of review under SEPA",

21 both as stated at page J1-6 of the FEIS.

22 **2.14.** The Hearing Examiner erred in applying Process I decision criteria to the
23 current application as found in LUC 20.35.015.B when Process III procedures under
24 LUC 20.35.015.D should be applied because the proposed "Energize Eastside"
25 proposal is subject to the jurisdiction of the East Bellevue Community Council.

26 **2.15.** The Hearing Examiner and the City of Bellevue denied CENSE and others
27 due process of law by denying CENSE and other interested parties information

1 regarding the justification for the project, including modeling information and data
2 regarding present and historic use of power within the service area for the project, even
3 while the City and PSE used and relied on such information in issuing the city staff
4 report and presenting evidence to the Hearing Examiner.

5 **2.16.** The Hearing Examiner erred in approving the co-location of the new 230
6 kV transmission lines with a pipeline system which carries volatile and toxic petroleum
7 products without the explicit approval of the owner of the pipeline and based on the
8 proposition that safety measures will be developed "following detailed engineering
9 analysis of the final design" . . . "conducted at project startup." See Staff report at page
10 79.

11 **2.17.** The City of Bellevue and the "Partner Cities" erred when they issued the
12 so-called Phase 1 Draft EIS, and called for comments thereon, without issuing a Phase
13 1 Final EIS and determining that such approach is consistent with the WAC 197-11-
14 060(5)(c). See Correspondence from CENSE to the City dated March 11, 2016. The
15 Phase 1 Draft EIS was particularly deficient and inadequate because it did not disclose,
16 or analyze, that the South Bellevue Segment could "function independently" and that
17 the North Bellevue Segment only "provided redundancy." See Staff Report at page
18 111.

19 **2.18.** The City and the Hearing Examiner erred in not requiring PSE to respond
20 to requests for information from the City Staff (in a letter dated August 14, 2018)
21 following a letter from PSE (dated September 21, 2018) indicating that summer load
22 peaks have exceeded levels projected for Summer 2018. See pages 11 and 89 of the
23 Staff Report. See CENSE email of October 4, 2018 (DSD 3744).

24 **2.19** The Hearing Examiner erred in relying on PSE system-wide data under
25 Bellevue LUC 20.20.255.D.2.c.i instead of data from the immediate Bellevue area that
26 would be served by "Energize Eastside" or the South Bellevue Segment. That code
27 section requires PSE to "[d]escribe whether the electrical utility facility location is a
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1 consequence of needs or demands from customers located within the district or area."
2 This criterion is not met by using only system-wide data that includes consumption in
3 such distant areas as Kittitas County, Bellingham and Olympia.

4 **3. STANDING TO APPEAL.**

5 CENSE has standing to appeal because it is a party of record to the proceedings
6 leading up to the Project Decision, having provided extensive and detailed comments
7 on environmental documents prepared under the State Environmental Policy Act and
8 commenting and appearing at the public hearing held on this matter.

9 **4. OTHER APPEALS.**

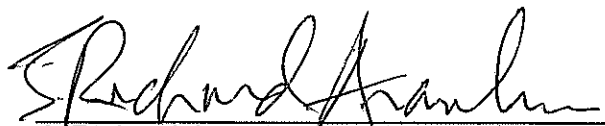
10 Appellant CENSE has read and reviewed appeals filed by CSEE and Loretta
11 Lopez and incorporates the contents of those appeals into this appeal.

12 **5. RELIEF REQUESTED.**

13 CENSE requests that the Bellevue City Council reverse the Project Decision and
14 deny the application of PSE, or in the alternative, remand the decision to the Hearing
15 Examiner for further proceedings consistent with this appeal.

16 Respectfully submitted this 9th day of July, 2019.

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19 J. Richard Aramburu, WSBA #466
20 Attorney for CENSE