

# LAW OFFICES OF J. RICHARD ARAMBURU PLLC

720 Third Avenue, Suite 2000  
Seattle, WA 98104  
Telephone 206.625.9515  
Facsimile 206.682.1376

[www.aramburulaw.com](http://www.aramburulaw.com)  
[www.aramburu-eustis.com](http://www.aramburu-eustis.com)

October 10, 2019

Mayor John Chelminiak  
Bellevue City Council  
450 110th Avenue NE  
Bellevue, WA 98004

Re: Request for Recusal from Council Appeal Hearings on PSE's proposed 230 kV Power Line ("Energize Eastside") (October 16, 2019)

Dear Mayor Chelminiak and Councilmembers:

This office represents CENSE, one of the appellants challenging a decision of the Hearing Examiner to approve a 3.3 mile transmission line proposed by Puget Sound Energy (PSE) from the proposed Richards Creek Substation to the south Bellevue city limits. Pursuant to council appeal rules, briefs on appeal have been filed by the several appellants, PSE and the City. The Council is scheduled to hear oral arguments on these appeals on October 16, 2019, at City Hall.

I write today to request, Mayor Chelminiak, that you recuse yourself from hearing or deciding the upcoming appeals due to apparent bias and prejudgment of the claims of the appellants in this appeal.

The basis for our request is as follows.

## 1. APPEARANCE OF FAIRNESS VIOLATIONS.

The PSE transmission line proposal under appeal is an "electrical utility facility" as defined in LUC 20.50.018, as it is "[A]n electrical line of at least 115kV that distributes electrical power to and from transmission switching and transmission stations to and from distribution substations, and which links generators to such stations." As such its location or expansion within the City requires compliance with LUC 20.20.255.

The "Decision Criteria" of LUC LUC 20.20.255.E include the requirement that:

3. The applicant shall demonstrate that an operational need exists that requires the location or expansion at the proposed site;

In addition, Subsection 5.a requires that for proposals located on sensitive sites, such as this proposal, the applicant "shall demonstrate . . . a. Compliance with the alternative siting analysis requirements of subsection D of this section; . . .". Subsection D.2.c of the Alternative Siting Analysis section requires the applicant to:

Describe which of the sites analyzed are considered practical or feasible alternatives by the applicant, and which of the sites analyzed are not considered practical or feasible, together with supporting information that justifies the conclusions reached. For sites located within a Neighborhood Business Land Use District, Residential Land Use District, and/or Transition Area (including the BelRed Office/Residential Transition (BR-ORT), the applicant shall:

- i. Describe whether the electrical utility facility location is a consequence of needs or demands from customers located within the district or area; and
- ii. Describe whether the operational needs of the applicant require location of the electrical utility facility in the district or area.

(Emphasis supplied.)

In the hearing before the City Hearing Examiner, CENSE and other parties presented evidence that the transmission proposal was not needed. This evidence included testimony from well qualified and experienced experts. However, the Hearing Examiner reached a conclusion that PSE had "demonstrated that an operational need exists" for PSE's transmission proposal. Under Bellevue rules, interested persons and residents may appeal the Hearing Examiner's decision to the City Council, which makes the final decision as a quasi-judicial matter. CENSE and others have appealed the Hearing Examiner's decision, specifically arguing that an operational need does not exist for the PSE transmission proposal.

In preparing for oral argument on October 16, CENSE members have consulted the Home Page on the City of Bellevue website. One of the links available at the top of the Home Page is "HOT TOPICS." See Attachment A. Clicking on "Hot Topics" takes the reader to the page devoted to "Hot Topics and Initiatives" (Attachment B) which states:

### **Hot Topics and Initiatives**

The city is dedicated to providing essential services to residents, but it focuses attention on certain issues of major importance. Hot topics include projects with or by other agencies in Bellevue that have an impact on residents.

One of the "issues of major importance" under "Hot Topics" is "Electrical Reliability."

Upon clicking that link there is another link for "Electrical Facilities Planning." There the website states that:

Puget Sound Energy is underway with Energize Eastside, an electrical facilities project to site and build approximately 18 miles of new 230-kilovolt transmission line from Redmond to Renton, through Bellevue.

See Attachment C. Clicking on the "Energize Eastside" link takes the reader to the PSE "Energize Eastside" website, which includes a variety of promotional statements and material prepared by PSE to support its project. No links or references are provided for opposing points of view or showing that appeals have been filed and are pending before the Council regarding the "Energize Eastside" proposal.

Also on the "Electrical Facilities Planning" page on the Bellevue website is a reference to "Independent Technical Analysis." The full content of that page is attached hereto as Attachment D. The first paragraph of that page references a Council meeting held on May 4, 2015, more than four years ago:

On May 4, 2015, the City Council and public heard directly from Utility Systems Efficiencies, the independent consultant hired by the city to provide an independent technical analysis of Puget Sound Energy's proposal to upgrade Bellevue and the Eastside's electric facilities infrastructure.

The website goes on to say that the USE study, with a publication date of April 28, 2015, demonstrates the following.

The latest study--and the second independent study commissioned by the City Council--confirms a need for the project to address growth in Bellevue; to address the reliability of the electric grid serving the Eastside; and a need to address regional grid power flows.

The USE analysis is the latest step in a timeline of process which has consistently demonstrated a need to upgrade electric facilities infrastructure serving Bellevue's growth and the Eastside.

(Emphasis supplied.)

Clicking on the link for "a timeline of process" takes the reader to an "Electric Facilities planning Timetable" which is essentially a flow chart. See Attachment E. On that page are the following statements:

●(from 2011) **Electrical Reliability Study** and ongoing implementation. Future System Recommendation #3 (p. 123) affirms 5-10 year capacity addition need for upgrade of existing 115kV to 230kV (Energize Eastside) based on proposed

growth within Bellevue and current load on Bellevue substations.

●(from 2014-2015) **Independent Technical Analysis concludes need for Energize Eastside to meet Eastside energy demand and Eastside system reliability.**

(Emphasis supplied.) The "Timetable" ends in 2015, with the beginning of the preliminary stages for the environmental impact statement.

This information, offered as an official position of the City of Bellevue on the City's website, plainly demonstrates that the City Council has firmly decided that there is a need for the "Energize Eastside" project, meeting the key criteria under LUC 20.20.255. Significantly, all of this material is prepared and posted by the City just days before the hearing on the several pending appeals from the Hearing Examiner's decision. It is highlighted on the Home Page of the City to provide greater visibility and importance as a "Hot Topic," informing the appellants, and the public in general, that certain decisions have been made. The material on the website amounts to clear bias and prejudice violating the appearance of fairness doctrine.

An important element here is timing. The newest material cited on the website is dated May 4, 2015, more than four years ago. The "Electric facilities planning Timetable" link ends with the beginning of the environmental impact statement review process and "scoping" which began in April 2015. Since the spring of 2015, two drafts and one environmental impact statement on the project have been prepared, an alternative siting analysis submitted by PSE, a full hearing held before the city Hearing Examiner and an appeal made to the Council; the record prepared since May, 2015 exceeds 15,000 pages. The statements on the website make clear that the need analysis of PSE's project was concluded in April, 2015, ignoring all of the work, analysis and materials provided to the City over the intervening years by interested residents and other members of the public.

Under the appearance of fairness doctrine, quasi judicial land use proceedings not only must be fair in fact, but fair in appearance:

Quasi-judicial hearings, such as the permit application hearings at issue in this case, must be conducted so as to give the appearance of fairness and impartiality. This court has stated that the appearance of fairness doctrine is satisfied "if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing." *Washington Medical Disciplinary Bd. v. Johnston*, 99 Wash.2d 466, 478, 663 P.2d 457 (1983).

*Organization to Preserve Agr. Lands v. Adams County*, 128 Wn.2d 869, 889-90, 913 P.2d 793 (1996). One of the key elements of the appearance of fairness doctrine is bias and prejudice:

A decisionmaker may be challenged under this doctrine for "prejudgment concerning issues of fact about parties in a particular case ... [or] partiality evidencing a personal bias or personal prejudice signifying an attitude for or against a party as distinguished from issues of law or policy...." *Buell v. City of Bremerton*, 80 Wash.2d 518, 524, 495 P.2d 1358 (1972). Prejudgment and bias are thus to be distinguished from the ideological or policy leanings of a decisionmaker. A challenger must present evidence of actual or potential bias to support an appearance of fairness claim. *State v. Post* 118 Wash.2d 596, 619, 826 P.2d 172, amended, 837 P.2d 599 (1992).

*Id.*, 128 Wn.2d at 890. As Judge Rosellini stated in his concurring opinion in *Westside Hilltop Survival Committee v. King County*, 96 Wn.2d 171, 180, 634 P.2d 862, (1981):

The basic concepts of the appearance of fairness are the existence of unbiased tribunals and the right to have decisions based on the evidence presented. The doctrine is constitutionally sound and has been adopted since 1898 in the case of *State ex rel. Barnard v. Board of Education*, 19 Wash. 8, 52 P. 317 (1898).

Judge Rosellini went on to say:

The United States Supreme Court has stated that the matter of procedural due process requires the appearance of fairness and fairness in fact. *Withrow v. Larkin*, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). Quasi-judicial administrative decisions will be reversed upon a showing of the probability or appearance of conflict or prejudgment. *Staton v. Mayes*, 552 F.2d 908 (10th Cir. 1977).

96 Wn.2d at 181.

Under the Land Use Code, 20.35.150, the decision of the Hearing Examiner in this case can be appealed to the City Council. Pursuant to LUC 20.35.150.A.4, a hearing is required before the Council decides on the appeals before it. Appellants are entitled to submit a written argument to the council and to provide oral argument at a quasi-judicial hearing. Appellants are entitled to a hearing before the Council that is not only fair, but provides the appearance of fairness and impartiality.

In the instant case, material appearing on the Home Page of the City under "Hot Topics" less than a week before the appeal hearing unmistakably indicates that the "need" for PSE's transmission proposal has not only been decided by the City, but "confirmed" and "consistently demonstrated," and that decision was made more than four years ago, by May of 2015 at the latest. This "Hot Topics" posting is fully voluntary and intentional, apparently to inform the public and appellants prior to the hearing exactly the position of the Council on need and electric reliability - without mentioning

that the appeal hearing is to occur.

The City website material does not describe, or even mention that CENSE and other appellants challenged whether the need for the project has been established. Indeed, expert testimony was submitted to the Hearing Examiner by CENSE and other appellants that the operational need for the project does not exist because electric loads are declining, not increasing. Further, that the operational need for the project was a result of manipulation of data, the inappropriate addition of flows to Canada in the data, and the arbitrary removal of existing peak generation. See CENSE Hearing Brief at pages 11-14. It is certainly obvious from the City's posting - so close to the appeal hearing - that appellants are wasting their time arguing questions of operational need under LUC 20.20.255 to the Council in light of the "Hot Topic" posting on the home page of the City's website.

## 2. OPEN PUBLIC MEETING ACT.

On July 25, 2019, the parties to this appeal were informed that the hearing by the Council on these appeals was scheduled for October 16, 2019. This appeal hearing will be a public meeting of the entire council.

It appears that this will be a "special meeting" of the Council, subject to the Open Public Meeting Act. Notice is required for "special meetings" as follows:

### RCW 42.30.080 **Special meetings.**

(1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body. Written notice shall be deemed waived in the following circumstances:

(a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or

(b) A member is actually present at the time the meeting convenes.

(2) Notice of a special meeting called under subsection (1) of this section shall be:

(a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;

(b) Posted on the agency's web site. An agency is not required to post a special meeting notice on its web site if it (i) does not have a web site; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site; and

(c) Prominently displayed at the main entrance of the agency's principal

location and the meeting site if it is not held at the agency's principal location.

As screen shots taken today show, with the special meeting less than a week away, special meeting notice was only posted on the City's website earlier today of the special hearing. This more than two and half months since the October 16 hearing date was confirmed (Email from Kathleen Kline to the parties, July 25, 2019 at 4:26 PM: "This is to advise you than we have scheduled the Energize Eastside Project appeal hearing for the evening of October 16, 2019." Emphasis supplied.)

Of course, the City maintains both a "Municipal Meetings Calendar" (see Attachment F) and a more general "Calendar" (Attachment G) which contain notices for meetings for both October and November. There is no mention of the "Energize Eastside" appeal hearing on either calendar. The only event on the general calendar for October 16, 2019 is a "Garden Lecture: Spring Starts in October" discussing the "ins and outs of bulb selection."

As described above, the City has advertised Electric Reliability as a "Hot Topic" and the website material fully describes work in May, 2015, and provides links to the Hearing Examiner decision and PSE's promotional "Energize Eastside" website. But there is no mention that appeals have been filed and no mention of the date the Council will hear them on its posted calendars.

The failure of the City to provide notice until just six days before the hearing, and only on its Special Meetings calendar, when the date has been established for months certainly indicates the intention to have the least possible notice to the public.<sup>1</sup> Indeed, the City considers its four year old report a "Hot Topic," but the Council decision on this four year old project review is not "hot" enough for inclusion in its Electric Reliability page or community calendars. On a more basic community level, the minimal and eleventh hour notice is an insult to appellants and other members of the public who have put in thousands of uncompensated hours commenting on environmental impact statements and the alternative siting analysis, attending multiple "community advisory meetings" as well as public hearings, and preparing appeals and briefs to the Council, all over the past five years.

The attempt to bury consideration of these appeals is yet more evidence of bias and prejudice as described above.

Council leadership must take responsibility for the postings of material demonstrating bias and the failure to provide any adequate notice of the hearing on


---

<sup>1</sup>Special meeting notices appear to be posted when a majority of councilmembers might attend a breakfast, lunch or reception; not for an important item of council business.

October 10, 2019  
Page 8

October 16, 2019. Accordingly, we ask that Mayor John Chelminiak recuse himself from any participation in the upcoming appeal proceeding.

Thank you for your attention to this request.

Sincerely,  
  
J. Richard Aramburu

JRA:cc  
cc: Clients  
cc: Appeal parties  
cc: Bellevue City Councilmembers