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BEFORE THE KING COUNTY SUPERIOR COURT  
STATE OF WASHINGTON

Coalition of Eastside Neighbors for  
Sensible Energy, a Washington non  
profit corporation

Petitioner

v.

City of Bellevue, a Washington municipal  
corporation  
Respondent

PUGET SOUND ENERGY, an

Additional Party

Citizens for Sane Eastside Energy, a  
Washington non profit corporation,  
Additional Party

Norm Hansen, Loretta Lopez, Warren  
Halverson

Additional Parties.

No. 19-2-33800-8 SEA

LAND USE PETITION  
(Chapter 36.70C.RCW)

Coalition of Eastside Neighbors for Sensible Energy, a Washington non profit  
corporation (“Petitioner” or “CENSE”) states as follows for its Land Use Petition  
 (“Petition”) to this Court for review of the land use decision issued by the City Council of  
 the City of Bellevue, affirming decisions of the Bellevue Hearing Examiner relating to

1 the application of Puget Sound Energy (“PSE”) to construct high voltage transmission  
2 lines in the City of Bellevue.

3 **1. IDENTIFICATION OF PETITIONER.**

4 CENSE is a Washington nonprofit corporation formed on August 13, 2014, that  
5 was organized to foster and promote the community welfare and safety of communities  
6 on the Eastside, including the City of Bellevue, impacted by the construction and  
7 operation of a proposed 230 kilovolt (kV) electric transmission line proposed from the  
8 south Bellevue city limits to a new electric substation just north of Interstate 90.

9 CENSE’s mailing address is 12819 SE 38<sup>th</sup> Street, # 294, Bellevue, WA, 98006-1326.

10 **2. IDENTIFICATION OF PETITIONER’S ATTORNEY.**

11 CENSE is represented in this matter by attorney J. Richard Aramburu of the Law  
12 Offices of J. Richard Aramburu, PLLC, 720 Third Avenue, Seattle, Washington 98104,  
13 telephone (206) 625-9515, email [Rick@aramburu-eustis.com](mailto:Rick@aramburu-eustis.com) (cc carol@aramburu-  
14 eustis.com).

15 **3. IDENTIFICATION OF THE LOCAL JURISDICTION MAKING THE LAND USE  
16 DECISION.**

17 A decision of the City of Bellevue is at issue in this land use petition. The  
18 address of the City of Bellevue is P.O. Box 90012, Bellevue, Washington 98009-9012.

19 **4. IDENTIFICATION OF DECISION MAKER AND LAND USE DECISIONS.**

20 Following an open recording hearing, the City of Bellevue Hearing Examiner  
21 (“Hearing Examiner” or “Examiner”) issued “Findings of Fact, Conclusions and  
22 Decision” on June 25, 2019, approving the City of Bellevue staff’s conditional use  
23 permit for the South Segment of PSE’s planned transmission line in Bellevue (branded  
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1 by PSE as “Energize Eastside”) in File No. 17-120556-LB and 17-120557-LO. A copy  
2 of the full decision of the Examiner is Attachment A hereto<sup>1</sup> and it is referenced herein  
3 as the “Examiner’s Decision.”

4  
5 Prior to the open record hearing, CENSE filed motions for a continuance and to  
6 require that the applicant produce certain documents relevant to the matters before the  
7 Examiner. The “Order Denying Motion for Continuance and Motion to Compel” by the  
8 Examiner dated March 5, 2019, is Attachment B hereto and is referenced herein as the  
9 “Motions Decision.”

10 Following procedures set forth in the Bellevue Land Use Code (“LUC”), CENSE  
11 and Additional Parties CSEE, Loretta Lopez, Norm Hansen and Warren Halverson filed  
12 appeals of the Examiner’s Decision with the Bellevue City Council. On December 2,  
13 2019, the Bellevue Council adopted Ordinance No. 6494, which denied the appeals  
14 referenced above; adopted the Hearing Examiner’s Findings of Fact and Conclusions;  
15 and approved the conditional use permit application, as conditioned, for the South  
16 Segment. Ordinance 6494 is attached hereto as Attachment C and is referenced  
17 herein as the “Council Decision.”

18  
19 **5. ADDITIONAL PARTIES TO THE APPEAL.**

20 Pursuant to RCW 36.70C.040(2)(b)(i), the applicant identified in the decisions of  
21 the City of Bellevue is Puget Sound Energy, a Washington public utility corporation.  
22 The address of the principal office of PSE, and the address of its registered agent, is  
23 355 - 110 Avenue N.E. # EST 11, Bellevue, Washington 98004. On information and  
24

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<sup>1</sup>On July 3, 2019, the Examiner issued an errata correcting two typos in the Examiner’s Decision; that  
28 errata is included in Attachment A, appended to the end of the Decision.

1 belief, PSE is also the owner of certain easements and real property to be used for  
2 construction of the South Segment under RCW 36.70C.040(2)(b)(ii). As identified in  
3 the Examiner's Decision, PSE was represented during the proceedings by Erin L.  
4 Anderson and Sara A. Leverette, Van Ness Feldman LLP, 719 Second Avenue, Suite  
5 1150, Seattle, Washington 98104-1728, Telephone (206) 802-3846, email  
6 eanderson@vnf.com, sleverette@vnf.com.  
7

8 Pursuant to RCW 36.70C.040(2)(d) the following are persons named in the  
9 written decision who had filed appeals to the local government decision maker:

10 ● Loretta J. Lopez  
11 13419 NE 33rd Lane  
12 Bellevue WA 98005  
13 email llopez@mstarlabs.com

14 ● Norm Hansen  
15 3851 136th Ave NE  
16 Bellevue, WA 98005

17 ● Warren Halverson  
18 13701 NE 32nd Pl  
19 Bellevue WA 98005

20 ● Citizens for Sane Eastside Energy (CSEE)  
21 Larry G. Johnson, Attorney for CSEE, WSBA #5682  
22 8505 129th Ave SE  
23 Newcastle, WA 98056  
24 tel.: 425 228-3786  
25 email: larry.ede@gmail.com

## 26 **6. STANDING OF PETITIONER.**

27 Petitioner CENSE has standing pursuant to RCW 36.70C.060 as follows:

28 6.1. The land use decision has prejudiced or is likely to prejudice the Petitioner.

CENSE was formed to protect and preserve the natural, environmental and  
residential values of the portions of the Eastside, including the City of Bellevue,

1 impacted by the construction and operation of a proposed 230 kilovolt (kV) electric  
2 transmission line proposed by PSE. Since 2014 CENSE has been active in  
3 commenting, participating in public hearings and other proceedings concerning the  
4 plans for the 230 kV electric transmission lines proposed by PSE. CENSE and its  
5 members would be adversely impacted by the construction and installation of the  
6 proposed transmission lines because of aesthetic, visual, community and  
7 environmental impacts which have been continuously raised, in all available fora, since  
8 the PSE proposal was filed in 2014.

10 6.2. Petitioner's asserted interests are among those that the local jurisdiction was  
11 required to consider when it made the land use decision.

12 Bellevue codes and regulations regarding applications for electric utility facilities,  
13 and conditional use permits and proceedings under the State Environmental Policy Act,  
14 Chapter 43.21C, require public participation. CENSE and its members also participated  
15 in various citizen advisory committees and public forums under LUC 20.20.255.

16 CENSE also appealed the Examiner's Decision as identified herein.

18 6.3. A judgment in favor of the petitioner would substantially eliminate or redress  
19 the prejudice to petitioner caused or likely to be caused by the land use decision.

20 If the Council Decision is reversed or remanded, the concerns expressed in  
21 Petitioner's comment letters, statements to the Examiner and in the appeal to the  
22 Bellevue City Council will be eliminated or redressed and the proposal would be  
23 modified consistent with applicable legal requirements.

24 6.4. The Petitioner has exhausted its administrative remedies to the extent  
25 required by law.

26 CENSE has filed comments on the proposal at each and every opportunity,  
27 participated in all public hearings on the proposal, including the one leading to the  
28

1 Examiner's Decision, and appealed the Examiner's Decision to the Bellevue City  
2 Council. There are no other or further administrative remedies to be exhausted.

3 **7. STATEMENT OF BACKGROUND FACTS AND STATEMENT OF ERRORS**  
4 **MADE IN THE LAND USE DECISION.**

5 **7. 1 BACKGROUND FACTS.**

6 1.1 In 2008, the Bellevue City Council adopted amendments to its land use code  
7 (LUC) to specifically regulate "electrical utilities facilities" ("EUF") in Section  
8 20.20.255 (hereinafter "Section 255"). This code section says that the  
9 application for an EUF "shall comply" with the following:  
10

11 1.1.1 *"the electrical utility facility location is a consequence of needs or*  
12 *demands from customers located within the land use district or area;"*

13 1.1.2 an operational need exists that requires *"location of the electrical utility*  
14 *facility in the district or area;"*

15 1.1.3 *"the proposed electrical utility facility provides reliability to customers*  
16 *served;"*

17 1.1.4 *"Where feasible, the preferred site alternative identified in subsection*  
18 *D.2.d of this section is located within the land use district requiring*  
19 *additional service and residential land use districts are avoided when the*  
20 *proposed new or expanded electrical utility facility serves a nonresidential*  
21 *land use district;"*

22 1.1.5 *"Describe components of the proposed electrical utility facility that relate*  
23 *to system reliability."*

24 1.2 In December, 2013, PSE announced its intention to construct an 18-mile long  
25  
26  
27  
28

1 electric transmission line from Renton to Redmond, including some 8.5 miles in  
2 the City of Bellevue. The proposal consisted of new wires and transmission  
3 towers and included a new electric substation in Bellevue (the Lakeside  
4 substation). The company claimed that the proposal was needed because of  
5 possible overloads during the winter at the substations located at each end of  
6 the proposed new transmission line corridor (the Sammamish substation to the  
7 north in Redmond and the Talbot Hill substation to the south in Renton).

9 1.3 In April, 2015, PSE and the City of Bellevue began a process to comply with the  
10 State Environmental Policy Act ("SEPA") for the proposal, including the  
11 preparation of two draft environmental impact statements. In August, 2015, the  
12 City of Bellevue made changes in the Utility Element of its comprehensive plan,  
13 determining the portion of the 18-mile transmission line proposed to go through  
14 Bellevue was "sensitive to neighborhood character."

16 1.4 During 2014, PSE convened citizen advisory committees regarding the proposal.  
17 During these meetings, PSE continuously identified its proposal as the full 18-  
18 mile transmission line passing through the City (connecting to existing  
19 substations to the north and south) and indicated that any lesser or separated  
20 proposal would not meet mandatory standards for transmission lines.

22 1.5 The Phase I Draft Environmental Impact Statement was issued on January 28,  
23 2016. The document stated the "Project Description" (page FS-1) was as follows:

24 "PSE proposes to construct and operate a major new transformer served  
25 by approximately 18 miles of new high-capacity electric transmission lines  
26 (230 thousand volts [kilovolts, or kV]) extending from Renton to  
27 Redmond."

28 On the same page, the DEIS stated: "Transmission improvements would need to

1 be tied to these two substations (in Redmond and Renton) in order to address the need  
2 for the project; . . . .” There was no discussion or consideration of a segmented or  
3 shorter transmission line in this DEIS. CENSE and others provided comments on this  
4 document, understanding the proposal was for an 18-mile transmission line.

5  
6 1.6 Certain studies were prepared by both PSE and the city regarding the need for  
7 the facility, each of which was for the full, connected, 18-mile transmission line;  
8 no consideration in such studies was given to any separated, disconnected or  
9 bifurcated shorter transmission line.

10 1.7 The Phase 2 DEIS was issued on May 8, 2017. The project description was  
11 substantially unchanged from the Phase 1 DEIS and identified the project as: “to  
12 construct and operate a major new transformer served by approximately 18  
13 miles of new (230 thousand volts [kilovolts,or (kV)] extended from Redmond to  
14 Renton”.

15  
16 Again, there was no discussion or consideration of a segmented or shorter  
17 transmission line. CENSE and others provided comments on this document as well.  
18 The deadline for comments on the Phase 2 DEIS was June 17, 2017.

19  
20 1.8 On September 8, 2017, four months after the Phase 2 DEIS was issued, and a  
21 little more than two months after the close of comments thereon, PSE submitted  
22 a formal application for its transmission line. To the surprise of all concerned,  
23 the actual application was for only a short, dead-end segment (3.3 miles) running  
24 from the south Bellevue city limits to a new substation (Lakeside) rather than the  
25 entire 18-mile line for which all prior reports were prepared and on which all  
26 review comments were based.  
27  
28



- 1 1.9 The newly reduced proposal failed to connect the line north to the Sammamish  
2 substation, the project objective expressed in prior reviews and analysis. This  
3 creates a gap in Bellevue of about 5.2 miles to the north city limit. The 3.3 mile  
4 line segment applied for is referenced as the “South Segment.”  
5
- 6 1.10 CENSE and other members of the public objected to the bifurcation of the  
7 project into two parts, as it avoided consideration of the full impacts of the project  
8 during land use review and because the shorter segment had not been  
9 presented during project review, including before various citizen advisory  
10 committees.  
11
- 12 1.11 PSE claimed that the “north segment” application would be filed soon, in late  
13 2017 or early 2018. But no application was submitted during that time frame, nor  
14 has one been submitted to the City of Bellevue (as of the dates of the hearing  
15 before the City Council). PSE has now indicated it has no timetable for filling  
16 such an application.  
17
- 18 1.12 The final EIS, still prepared for the entire line rather than just the south segment,  
19 was released on March 1, 2018.  
20
- 21 1.13 On January 24, 2019, the City of Bellevue issued its “Director’s Report” for the  
22 South Segment (referenced herein as “Staff Report”) and notified the public that  
23 an open record, public hearing would be held on the PSE application on March  
24 28, 2019.  
25
- 26 1.14 The Staff Report stated, for the first time, that the South Segment dead-end line  
27 “can function independently” but that the remainder of the line north of the  
28 proposed Richards Creek Substation would only “provide redundancy.” However,

1 PSE did not provide new or supplemental analysis of the South Segment for its  
2 September 7, 2019 application, nor did it supplement any of the environmental  
3 impact statements to reflect the change in the project proposal which created a  
4 gap in the previous 18-mile transmission proposal.  
5

6 1.15 The Staff Report set February 13, 2019 for a “prehearing conference” (“PHC”),  
7 leading to the March 28 public hearing.

8 1.16 Prior to the PHC, CENSE filed two motions with the Hearing Examiner:

9 1.16.1 A motion to continue the hearing and consolidate it with the  
10 application that PSE had indicated would be filed for the north  
11 segment of the line (running north from the Richards Creek  
12 Substation to the north Bellevue city limits).  
13

14 1.16.2 A motion to compel the production of data regarding planning  
15 studies, load flow studies and the actual and historic use of  
16 electrical energy in the area to be served by the South Segment  
17 proposal.  
18

19 1.17 PSE refused to provide the information requested and opposed the motion to  
20 compel. In its response to CENSE's motion, PSE argued:

21 “there is no need for any order to compel PSE's production of evidence  
22 beyond which the company believes is adequate in order to proceed with  
23 a Pre-Decisional hearing on their application.”

24 Further, PSE claimed:

25 “The Hearing Examiner should decline the invitation to compel the  
26 disclosure of data to be used to displace PSE's analysis of need - which  
27 was confirmed by the City and FERC as being consistent with federal  
28 planning standards - in a Pre-Decisional Hearing.”

1.18 On March 5, 2019, the Examiner denied both CENSE motions without comment

1 or explanation. The Motions Decision; see Attachment B.

2 1.19 On March 28, March 29, April 3 and April 8, 2019, a public hearing was held on  
3 PSE's South Segment by the Hearing Examiner at which testimony was  
4 presented by city staff, PSE and the public. Numerous witnesses testified for  
5 CENSE and CENSE's notebook, containing factual and legal analysis, including  
6 expert reports, was submitted.  
7

8 1.20 During the hearings, PSE did not produce or submit any supplemental analysis  
9 of the South Segment that addressed consistency with SEPA or with the  
10 Bellevue LUC for the change reducing the proposal to the South Segment  
11 reflected in the September 7, 2017 application.  
12

13 1.21 On June 25, 2019, the Bellevue Hearing Examiner issued his "Findings of Fact,  
14 Conclusions and Decision" approving the conditional use permit for the South  
15 Segment of PSE's planned transmission line in Bellevue in File No. 17-120556-  
16 LB. A copy of the full decision of the Examiner is Attachment A hereto,  
17 referenced herein as the "Examiner's Decision." On July 3, 2019, the Examiner  
18 issued an Errata Correcting typographical errors (as stated in the footnote above,  
19 the errata is appended to Attachment A).  
20

21 1.22 On July 9, 2019, CENSE filed an appeal of the Examiner's Decision to the  
22 Bellevue City Council. The Statement of Appeal included assignments of error  
23 to the Examiner's Decision and a statement of issues. On the same date,  
24 appeals were also filed by other interested participants in the Hearing Examiner  
25 hearing, Loretta Lopez, Norm Hanson, Warren Halverson and Citizens for Sane  
26 Eastside Energy (CSEE).  
27  
28

1 1.23 A closed record appeal hearing was held by the Bellevue City Council on  
2 October 16, 2019, at which argument, but no new evidence, was presented. At  
3 its November 14, 2019 meeting the City Council discussed the appeal and  
4 thereafter directed staff to draft an ordinance denying the appeals and adopting  
5 the Examiner's Findings and Conclusions and Decision.  
6

7 1.24 On December 2, 2019, the Bellevue City Council adopted Ordinance 6494,  
8 which denied the appeals of all the several appellants, adopted the Hearing  
9 Examiner Findings of Fact, Conclusions and Decision, and held that PSE was  
10 not required to submit only one conditional use permit application to Bellevue for  
11 both the North and South segments proposed within the city limits.  
12

13 1.25 Ordinance 6494 also stated that the only conditional use permit application  
14 before the Examiner was for the South Segment. That Ordinance is Attachment  
15 C hereto.

16 **7. 2 ASSIGNMENTS OF ERROR.**

17 2.1 Petitioner repeats and confirms the assignments of error to the Examiner's  
18 Decision as found in the Notice of Appeal to the Council.

19 2.2 Petitioner assigns error to Sections 1-5 found on the second page of the Council  
20 Decision, except that portion of Section 3 which provides "the only CUP  
21 application before the Hearing Examiner was for the South Segment."  
22

23 **7. 3 THE CITY HAS FAILED TO ANALYZE REASONABLE ALTERNATIVES**  
24 **AS REQUIRED BY LUC 20.20.255.**

25 3.1 In March, 2008, the Bellevue City Council adopted Ordinance 5805, which  
26 established new approval criteria for "electrical utility facilities" (hereinafter  
27  
28

1 “EUF”) which included “transmission lines” under LUC 20.50.018. Ordinance  
2 5805 was codified as LUC 20.20.255 (hereinafter “Section 255”).

3 3.2 Subsection D of Section 255 requires an “alternative siting analysis”  
4 directing that any applicant for EUF:  
5

6 *“...shall identify alternative sites, provide required content showing*  
7 *analysis relating to identified sites, describe technologies considered, and*  
8 *describe community outreach conducted for proposals relating to new or*  
9 *expanding electrical utility facilities on sensitive sites as described in this*  
10 *section.”*

11 3.3 Subsection D.1 of Section 255 in turn requires that:

12 *“Prior to submittal of the application for Conditional Use Permit required*  
13 *pursuant to subsection C of this section, the applicant shall identify not*  
14 *less than three alternative site options to meet the system needs for the*  
15 *proposed new or expanding electrical utility facility. At least one of the*  
16 *alternative sites identified by the applicant shall be located in the land use*  
17 *district to be primarily served by the proposed electrical utility facility.”*

18 3.4 Subsection D.2 of Section 255 sets forth requirements for the more detailed  
19 content of the alternative siting analysis, including:

20 3.4.1 site descriptions, including listing *“the land use districts within which the*  
21 *sites are located”* (Subsection D.2.a);

22 3.4.2 a map of the sites identified, depicting *“the proximity of the sites to*  
23 *Neighborhood Business Land Use Districts, Residential Land Use*  
24 *Districts, and Transition Areas.”* (Subsection D.2.b);

25 3.4.3 a description of which identified sites are *“considered practical or feasible*  
26 *alternatives by the applicant, and which of the sites analyzed are not*  
27 *considered practical or feasible, together with supporting information that*  
28 *justifies the conclusions reached.”* (Subsection D.2.c);

1 3.4.4 for sites identified in certain residential land use districts, additional  
2 analysis is required in Subsection D.2.b), as follows:

3 *“i. Describe whether the electrical utility facility location is a consequence*  
4 *of needs or demands from customers located within the district or area;*  
5 *and*

6 *ii. Describe whether the operational needs of the applicant require location*  
7 *of the electrical utility facility in the district or area.”;*

8 3.4.5 application of a “site selection hierarchy” (Subsection D.2.d) requires the  
9 following:

10 *“The following location selection hierarchy shall be considered during*  
11 *identification of the preferred site alternative: (i) nonresidential land use*  
12 *districts not providing transition, (ii) nonresidential Transition Areas*  
13 *(including the BelRed Office/Residential Transition (BR-ORT), and (iii)*  
14 *residential areas. The applicant may identify a preferred site alternative in*  
15 *a Residential Land Use District or Transition Area (including the BelRed*  
16 *Office/Residential Transition (BR-ORT) upon demonstration that the*  
17 *location has fewer site compatibility impacts than a nonresidential land*  
18 *use district location.”*

19 3.4.6 Subsection D.3 of Section 255 requires an explanation of the “Technology  
20 Considered for the Preferred Site Alternative,” with the following elements:

21 *“a. Describe the range of technologies considered for the proposed*  
22 *electrical utility facility;*

23 *b. Describe how the proposed electrical utility facility provides reliability to*  
24 *customers served;*

25 *c. Describe components of the proposed electrical utility facility that relate*  
26 *to system reliability; and*

27 *d. Describe how the proposed facility includes technology best suited to*  
28 *mitigate impacts on surrounding properties.”*

3.4.7 Subsection D.4 of Section 255 requires:

*“a description of all methods of community outreach or involvement*  
*conducted by the applicant prior to selecting a preferred site for the*

1                    *proposed electrical utility facility.*

2                    3.4.8 The “Decision Criteria” for Section 255 found in Subsection E requires the  
3                    applicant shall demonstrate: *“a. Compliance with the alternative siting  
4                    analysis requirements of subsection D of this section;”*

5  
6                    3.5 PSE failed to include consideration of the 3.3 mile South Segment dead-end line  
7                    in the “Alternative Siting Analysis” submitted to the City. PSE further did not  
8                    present the South Segment as an alternative for consideration during the “public  
9                    outreach” required by Section 255. The City Staff report failed to include  
10                    analysis of the South Segment in the elements of the “Alternative Siting  
11                    Analysis.”

12  
13                    3.6 Both the Hearing Examiner and City Council in their decisions failed to provide or  
14                    require the analysis and consideration required for the South Segment by the  
15                    Alternative Siting Analysis in their decisions. The failure of these decisions to  
16                    include the South Segment in the required “Alternative Siting Analysis” has  
17                    resulted in violation of the following standards of RCW 36.70C.130(1):

18                    3.6.1 *“(a) The body or officer that made the land use decision engaged in  
19                    unlawful procedure or failed to follow a prescribed process, unless the  
20                    error was harmless”;*

21  
22                    3.6.2 *“(b) The land use decision is an erroneous interpretation of the law, after  
23                    allowing for such deference as is due the construction of a law by a local  
24                    jurisdiction with expertise”;*

25                    3.6.3 *“(c) The land use decision is not supported by evidence that is substantial  
26                    when viewed in light of the whole record before the court”;*

1 3.6.4 *“(d) The land use decision is a clearly erroneous application of the law to*  
2 *the facts.”*

3 3.7 For the foregoing reasons, the Examiner’s Decision and the Council Decision  
4 should be reversed and/or remanded for compliance with the law and regulations  
5 specified above.  
6

7 **7. 4 THE ENVIRONMENTAL IMPACT STATEMENTS ARE INADEQUATE**  
8 **BECAUSE THEY DID NOT CONSIDER THE SOUTH SEGMENT**  
9 **PROPOSAL.**

10 4.1 The two draft environmental impact statements and the final environmental  
11 impact statement prepared by PSE and the City of Bellevue dealt exclusively  
12 with an 18-mile transmission proposal running from the bulk energy substation in  
13 Redmond at the north (the Sammamish substation) to the bulk energy substation  
14 in the south in Renton (the Talbot Hill substation).

15 4.2 Those impact statements did not discuss, consider or analyze the South  
16 Segment as the project proposal, except as to construction phasing for the full  
17 18-mile proposal. There was no separate analysis of technical, operational or  
18 other elements of the South Segment in these documents. None of the technical  
19 or load flow studies considered or addressed the South Segment as a separate  
20 project, despite the revelations in the reduced application that the South  
21 Segment could “function independently” of the remainder of the line to the north  
22 and the so-called North Segment would only “provide redundancy.”

23 4.3 None of the environmental impact statements prepared for the project identified  
24 the South Segment as either the preferred option or as the project proposal, and  
25 none considered the South Segment as an alternative to the originally proposed  
26  
27  
28



1 18-mile transmission line. Rather, PSE repeatedly stated such a bifurcated line  
2 would not be appropriate or feasible.

3 4.4 Under SEPA, an EIS is required to disclose a proposal's objective, the purpose  
4 and need to which the proposal is responding, issues to be resolved and  
5 environmental choices to be considered, and choices to be made among  
6 alternative courses of action. WAC 197-11-440(4).

7  
8 4.5 Under SEPA, an EIS is required to analyze reasonable alternatives. RCW  
9 43.21C.110(1)(d). Under the SEPA Rules, chapter 1997-11 WAC, an EIS must  
10 consider and describe the principal features of all reasonable alternatives that  
11 would approximate a proposal's objectives, and under WAC 197-11-786 and  
12 197-11-440(5), "Reasonable alternative" means an action that could feasibly  
13 attain or approximate a proposal's objectives, but at a lower environmental cost  
14 or decreased level of environmental degradation.

15  
16 4.6 The environmental impact statements prepared for the project were insufficient  
17 and inadequate because they failed to consider, either as the project proposal or  
18 as an alternative, the South Segment that was the subject of the September 7,  
19 2017 permit application.

20  
21 4.7 The Hearing Examiner and City Council in their decisions both relied on this  
22 inadequate analysis, resulting in violation of the following standards of RCW  
23 36.70C.130(1):

24 4.7.1 *"(a) The body or officer that made the land use decision engaged in*  
25 *unlawful procedure or failed to follow a prescribed process, unless the*  
26 *error was harmless;"*  
27

1 4.7.2 “(b) The land use decision is an erroneous interpretation of the law, after  
2 allowing for such deference as is due the construction of a law by a local  
3 jurisdiction with expertise;”

4 4.7.3 “(c) The land use decision is not supported by evidence that is substantial  
5 when viewed in light of the whole record before the court;”  
6

7 4.7.4 “(d) The land use decision is a clearly erroneous application of the law to  
8 the facts”.

9 4.8 For the foregoing reasons, the Hearing Examiner’s Decision and the Council  
10 Decision should be reversed and/or remanded for compliance with the law and  
11 regulations specified above.  
12

13 **7. 5 THE SOUTH SEGMENT DOES NOT MEET THE CRITERIA OF**  
14 **SECTION 255 : NEED AND RELIABILITY.**

15 5.1 The “Decision Criteria” under Section 255, *inter alia*, require the following:

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

18 4. The applicant shall demonstrate that the proposed electrical utility facility  
19 improves reliability to the customers served and reliability of the system as a  
20 whole, as certified by the applicant’s licensed engineer;”

20 20.20.255.E (Emphasis supplied).

21 5.2 The proposal before the Hearing Examiner and Council is the South Segment, a  
22 short, dead-end segment of the original 18-mile transmission proposal.

23 Substantially all project analysis, including need analysis, load flow studies and  
24 other documents, including SEPA and code review from 2014 to 2017, was for  
25 an 18-mile, 230 kV transmission line, not the 3.3 mile South Segment that was  
26 reviewed by the Hearing Examiner and City Council. There was no analysis of  
27  
28

1 the South Segment as *“the proposed site”* or *“the proposed electrical utility*  
2 *facility.”* In fact, analysis presented indicated that the creation of an incomplete  
3 line, such as the dead-end South Segment, was inconsistent with utility  
4 standards and practices.  
5

6 5.3 The Examiner’s Decision and the Council Decision failed to meet the criteria set  
7 forth in Paragraph 5.1 above because there was no analysis of the South  
8 Segment that was the subject of the actual application by PSE.

9 5.4 Both the Hearing Examiner and City Council, in their decisions relying on this  
10 inadequate analysis, violated the following standards of RCW 36.70C.130(1):

11 5.4.1 *“(a) The body or officer that made the land use decision engaged in*  
12 *unlawful procedure or failed to follow a prescribed process, unless the*  
13 *error was harmless;”*  
14

15 5.4.2 *“(b) The land use decision is an erroneous interpretation of the law, after*  
16 *allowing for such deference as is due the construction of a law by a local*  
17 *jurisdiction with expertise;”*  
18

19 5.4.3 *“(c) The land use decision is not supported by evidence that is substantial*  
20 *when viewed in light of the whole record before the court;”*

21 5.4.4 *“(d) The land use decision is a clearly erroneous application of the law to*  
22 *the facts.”*

23 5.5 For the foregoing reasons, the Examiner’s Decision and the Council Decision  
24 should be reversed and/or remanded.

25 //

26 /

1 **7. 6 FAILURE TO COMPEL THE APPLICANT TO PROVIDE INFORMATION**  
2 **RELEVANT TO THE CRITERIA OF SECTION 255.**

3 6.1 As described, the “Decision Criteria” of Sections 255.E.3 and E.4 require that the  
4 applicant demonstrate that *“an operational need exists that requires location or*  
5 *expansion at the proposed site”* and that the proposal *“improves reliability to the*  
6 *customers served and reliability of the system as a whole, as certified by the*  
7 *applicant’s engineer.”*

8  
9 6.2 During the review period of the proposal, CENSE and its members repeatedly  
10 requested information concerning load flow studies, projections of increased  
11 energy usage, data showing actual electric consumption and trends, all to  
12 provide comment on the claims by PSE concerning these matters. PSE  
13 continuously refused to provide such information.

14 6.3 Following the issuance of the City of Bellevue Staff Report on January 24, 2019,  
15 with its statements that the South Segment “can function independently” and the  
16 northerly elements of the project only “provide redundancy,” CENSE filed with  
17 the Hearing Examiner its “Motion to Compel Modeling Information and Data from  
18 Individual Substations in Advance of Hearing” on February 12, 2019.

19  
20 6.4 PSE refused to provide the information requested and opposed the motion in its  
21 entirety. Among other objections PSE said: “The Hearing Examiner should  
22 decline the invitation to compel the disclosure of data to be used to displace  
23 PSE’s analysis of project need. . .” and stated that “there is no need for any  
24 order to compel PSE’s production of evidence beyond which the company  
25 believes is adequate in order to proceed with a Pre-Decisional hearing on their  
26  
27  
28

1 application.”

2 6.5 On March 5, 2019, the Hearing Examiner summarily denied CENSE’s motion to  
3 compel, without analysis or reasoning. See Motion Decision, Attachment B.

4 6.6 The motion decision prevented CENSE from being able to effectively participate  
5 in the public hearing process on the South Segment application because it was  
6 denied the opportunity to review and present vital information relevant to the  
7 criteria of Section 255 to the Hearing Examiner and the Bellevue City Council.  
8 CENSE has no means to acquire such information other than from the Applicant.  
9

10 6.7 Both the Hearing Examiner and City Council in their decisions denying petitioner  
11 access to relevant information violated the following standards of RCW  
12 36.70C.130(1):  
13

14 6.7.1 *“(a) The body or officer that made the land use decision engaged in  
15 unlawful procedure or failed to follow a prescribed process, unless the  
16 error was harmless;”*

17 6.7.2 *“(b) The land use decision is an erroneous interpretation of the law, after  
18 allowing for such deference as is due the construction of a law by a local  
19 jurisdiction with expertise;”*

20 6.7.3 *“(c) The land use decision is not supported by evidence that is substantial  
21 when viewed in light of the whole record before the court;”*

22 6.7.4 *“(d) The land use decision is a clearly erroneous application of the law to  
23 the facts.”*  
24

25 6.8 For the foregoing reasons, the Examiner’s Decision and the Council Decision  
26 should be reversed, the information requested provided to the petitioner, and the  
27

1 matter remanded to allow petitioner to present the information in a supplemental  
2 public hearing.

3 **8. REQUESTED RELIEF.**

4 Based on the foregoing, Petitioner requests the Court enter the following relief:

- 5  
6 8.1 An order reversing the land use decisions listed in Paragraph 4 of this Petition,  
7 and/or remanding them for further proceedings as appropriate;
- 8 8.2 An order allowing Petitioner to supplement the record to this Court as provided  
9 by law;
- 10 8.3 An order awarding Petitioner's attorney fees and costs against the City and/or  
11 PSE, as may be provided by law;
- 12 8.4 Permission to amend this Petition to conform to the proof; and
- 13 8.5 Such other and further relief as the Court deems just and equitable.

14  
15 Respectfully submitted this 23<sup>rd</sup> day of December, 2019.

16 Law Offices of J. Richard Aramburu, PLLC

17  
18 

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