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
www.aramburu-eustis.com

January 8, 2020

Honorable Phil Olbrechts
Renton Hearing Examiner
City of Renton
1055 S Grady Way
Renton, WA 98057

Re: Application of Puget Sound Energy for Conditional Use Permits for Four Miles of 230 kV Transmission Lines: Application LUA18-000055,CUP-H,SME

Dear Examiner Olbrechts:

This office represents the Coalition of Eastside Neighbors for Sensible Energy (CENSE), a non-profit corporation formed on August 13, 2014, to foster and promote the welfare and safety of communities on the Eastside, including the City of Renton, impacted by the proposed construction and operation of new 230 kV electric transmission lines by Puget Sound Energy (PSE). Approximately four miles of those lines would be located in the City of Renton.

We write to the Examiner to recommend denial of the proposal as inconsistent with applicable Renton code criteria. In the alternative, we ask that the Examiner remand this matter to city staff for preparation of a supplemental draft and final environmental impact statement because of the failure to consider the actual project proposal or reasonable alternatives. The basis for this request is set forth herein.

1. PROJECT HISTORY.

Beginning in December, 2013, PSE began promoting its "Energize Eastside" proposal. That proposal was for the installation and operation of new 230 kV transmission lines running between two substations on the Eastside: the Sammamish substation (in Redmond) and the Talbot Hill substation (in Renton), and connection with a new substation to be constructed in Bellevue just north of I-90 (Richards Creek). A drawing showing the PSE's original plan is Figure 1-1, page 1-2 of the FEIS for the project. A copy of that figure is Attachment A to this letter. The proposal included approximately 16 miles of transmission lines running through five cities on the eastside, Redmond, Kirkland, Bellevue, Newcastle and Renton, as shown on Figure 2-1 of the

FEIS, at page 2-8. See Attachment B to this letter. This diagram shows about 7.24 miles of the proposed line north of the proposed Richards Creek substation and 8.78 miles to the south, a total of 16.02 miles. *Id.*

PSE claims that the "Energize Eastside" proposal is necessary to address deficiencies in its electric system, principally the overloading or failures of the existing Sammamish and Talbot Hill substations during times of peak demand on the PSE system. The cost of the proposal, to be paid for entirely by ratepayers, is vague; PSE indicates the cost as between $150,000,000 and $300,000,000.

In December, 2014, the five cities through which the transmission lines were proposed entered into an "Interagency Agreement" (the "IAA") regarding SEPA compliance for the PSE proposal. See Attachment C. The Cities agreed that an EIS would be prepared for the proposal (Section 1.2) with the City of Bellevue as the "nominal lead agency" and the other cities as "co-lead agencies." Each City, however, would process an individual project application for the portion of the line within its jurisdiction based on its own land use and environmental regulations. IAA at page 3. In Attachment A to the IAA setting forth the "Project Description," the "New Transformer and Transmission Line" was described as follows:

> The most viable solution considered was a combination of adding a new substation with a 230 kV transformer connecting it with the Talbot and Sammamish substation (sic) via a new 230 kV transmission line."[1]

In an unusual procedure, PSE and the Cities agreed to prepare <u>two</u> draft environmental impact statements (Phases 1 and 2), solicit comments on each, and then prepare a final EIS, each of which is part of the record here. Also in an unusual move, PSE did <u>not submit</u> a permit application prior to the initial SEPA review; the DEISs were prepared on a *concept* of a new substation plus the 16 miles of transmission.

The Phase 1 DEIS was issued in January 2016. On page 1-4 it stated that:

> The Phase 1 Draft EIS broadly evaluates the general impacts and implications associated with feasible and reasonable options available to address PSE 's identified objectives for the proposal. The evaluations conducted during Phase 1 will be used to narrow the range of alternatives for consideration in the Phase 2

[1]Under the terms of the Energy Facilities Siting Act, chapter 80.50 RCW, adopted in 1970, the Washington Energy Facilities Site Evaluation Council (EFSEC) has authority to act on PSE's transmission proposal under RCW 80.50.060(3) if PSE requests certification. PSE acknowledged the authority of EFSEC to approve the project, but has not requested certification. See FEIS, Appendix J, page J1-11. Even if one of the jurisdictions currently considering the PSE applications denies approval, PSE could still seek EFSEC certification to override such disapproval.

> Draft EIS. The Phase 2 Draft EIS will be a project-level evaluation, describing impacts at a site-specific and project-specific level.

On page 1-1 of the Phase 1 DEIS, the question was asked: "What is the Project that is being evaluated in this draft EIS?" The answer was:

> PSE is proposing to construct and operate a new 230 kV to 115 kV electrical transformer served by approximately 18 miles of new high-capacity electric transmission lines extending from Renton to Redmond.

At page 1-15, the "major steps to develop the Phase 1 DEIS" were described:

> Programmatic alternatives were defined through an iterative process with input by the EIS Consultant Team, PSE, City of Bellevue and other partner cities. After examining the materials provided by PSE regarding its planning process for the project, alternatives were selected that would broadly define different ways of approaching the deficiency in transmission capacity, identified by PSE. One approach would use 230 kV transmission as PSE proposes, one would use alternative methods that would minimize the need for new transmission lines; and one would use 115 kV transmission lines along with substation upgrades.

No alternatives were identified that might use a shorter 230 kV transmission line or dead-end the line somewhere along its 16 mile length. There was certainly no discussion of only a Talbot Hill to Richards Creek connection.

During scoping for the Phase 1 DEIS, comments were received under the heading of "Upgrade/Adjust Existing Electrical System," including: "Several changes and adjustments to the electrical system were proposed as potential solutions." Phase 1 DEIS at 2-50. One was the possibility of disconnecting the line in central Bellevue to assure that the new lines would not be used to transmit power to Canada. At page 2-51 the Phase 1 DEIS said such break in the lines was "not considered viable for several reasons: . . ." One was:

> Being interconnected also allows economies of scale of both transmission and generation facilities. Finally, the solution could reduce the supply of power to the Eastside, necessitating additional conservation, generation or storage beyond that considered in other alternatives in the EIS.

The next bullet point on the same page said:

> Disconnecting the north and south sections of the route at a central Bellevue substation to prevent non-Eastside load from being carried on this line during peak period of demand on the Eastside would deprive the Eastside of power supply needed during these (peak) periods. Separating the system in central

> Bellevue from the regional grid would also not meet FERC mandatory reliability standards.[2]

(Emphasis supplied.) Based on these statements, the alternative of separating the north and south systems was not included in the Phase 1 DEIS. See page 2-50 in Attachment D to this letter.

Following a comment period of the Phase 1 DEIS, the Phase 2 DEIS was issued in May 2017. The project description was carried over, *word-for-word,* from the Phase 1 DEIS. See Fact Sheet, page 1. On page 1-1, the "Energize Eastside" project was further defined as follows:

> PSE's analysis concluded that the most effective solution was to add a 230-115 kV transformer within the center of the Eastside to relieve stress on the existing 230-115 kV transformers that currently supply the area. This would need to be fed by new 230 kV transmission lines from the north and south. By having lines from two different directions, a substation can continue to be supplied even if one line goes down.

(Emphasis supplied.) This exact language was carried over to the Final DEIS issued in March, 2018. See page 1-3. As noted above, this was nearly the exact project description found in the December, 2014 Interagency Agreement.

On page 1-4, the FEIS emphasized the importance of "ensuring that a proposal that is the subject of environmental review is properly defined." This page goes on to say:

> The process of defining the proposal includes an understanding of the need for the project, to enable a thorough understanding of the project's objectives (see Section 1.8 of the Phase 1 DEIS) and technical requirements and to accurately identify feasible and reasonable project alternatives for consideration in the EIS.

Section 1.8.2 of the FEIS stated that PSE's "proposed project" includes two main components, the first of which was:

> **New 230 kV overhead transmission lines,** connecting the Sammamish substation in Redmond and the Talbot Hill substation in Renton, a distance of approximately 16 miles.

---

[2]In the past, PSE has contended that an Order from the Federal Agency Regulator Commission dated October 13, 2015 approved the project as consistent with planning requirements. While that is inaccurate, the proposal before FERC was the entire 16 miles proposal, not the current proposal that dead-ends just north of I-90. See the letter from Pterra Consulting discussed later in this letter.

At the same time the Phase 2 DEIS was being prepared, PSE also submitted an "alternative siting analysis" to the City of Bellevue. In various places, this document confirmed that the project under consideration was the 16 mile Sammamish/Talbot Hill line and continuously asserted that this "bookend" connection was essential to the project. The following are several references in that document to the 16 mile line:

Page 2:

> After extensive study, PSE determined that the most effective solution to meet increased electricity demand and to comply with federal performance requirements is the addition of a 230 kV/115 kV substation in the center of the Eastside load area – the Richards Creek substation – and the upgrading of 115 kV transmission lines with 230 kV transmission lines constructed between the Sammamish (Redmond) and Talbot Hill (Renton) substations.

(Emphasis supplied.)

Page 3:

> To limit the need to construct new facilities (and the associated environmental impacts), when looking at the entirety of the Energize Eastside Project, all transmission line route alternatives start at PSE's Sammamish substation in Redmond and end at the Talbot Hill substation in Renton. PSE considered various routing options for the entire line, including five route options in the South Bellevue Segment.

(Emphasis supplied.)

Page 5:

> The Project is needed because cumulatively, demand on the Eastside is increasing, including in areas along the South Bellevue Segment. The transmission line component of the project must run between the Sammamish and Talbot Hill substations. It must also connect with the proposed Richards Creek substation.

(Emphasis supplied.)

Page 5:

> Based on operational best practices, the ideal location for the new 230 kV substation is located in close proximity to PSE's existing 115 kV Lakeside substation. In addition, operationally, the transmission line must transverse through the City of Bellevue from the north to the south, making it impossible to completely avoid areas of residential zoning.

(Emphasis supplied.)

Page 13:

> Three 230-115 kV substation sites were considered for the Energize Eastside Project - referred to as Westminster, Vernell, and Richards Creek. These sites were selected for consideration because they are all owned by PSE; meet the

> objectives to site the 230 kV transformer at a central location between the existing 230 kV power sources at Sammamish substation in Redmond and Talbot substation in Renton; accommodate the necessary improvements to serve the required 230 kV transmission lines to bring power to the centralized transformer; and distribute power to the existing network of 115 kV transmission lines.

Page 23:

> The new 230 kV to 115 kV transformer is the principal component that will allow the Eastside electrical system to reliably operate and meet Federal Planning standards. To operate the new transformer it must be served by approximately 18 miles of new high-capacity electric transmission lines (230 kV) extending from Redmond in the north and Renton to the south.

(Emphasis supplied.)

As noted above, the analysis contains multiple imperatives, i.e. that the proposal "must" connect the bookend substations. There was no discussion, or even a passing reference, to an alternative that would dead end in Bellevue and not complete the "electrical circuit" between the Sammamish and Talbot Hill substations. The cited pages are attached hereto as Attachment E.

2. APPLICATION FOR THE DEAD-END SOUTH SEGMENT.

As described above, in the period from December 2013 to August 2017, PSE insisted in multiple forums that the project must include not only the new substation at Richard Creek, but connections to the bookend substations at Sammamish and Talbot Hill. Thus it was a surprise to all concerned, that when it actually filed an application in Bellevue, it was only for the short, 3.3 mile segment from the proposed Richards Creek substation south to the Newcastle city limits, a dead-end transmission line, the "South Bellevue Segment" shown on Figure 2-1 (Attachment B). Applications for the lines in Newcastle and Renton were also filed; the combined portion of the proposal between the Richards Creek and Talbot Hill substation is referenced herein as the "South Segment."

The explanation offered for the shortened proposal was that PSE was intending to build the line in segments and the South Segment was the first to be built. The application was submitted after the comment period for the Phase 2 DEIS ended in July, 2017 so there was no opportunity to provide comment on whether the SEPA analysis previously prepared was sufficient for the South Segment.

In response to claims that it was seeking a strategic advantage by retreating to a more bite-size, easy to swallow segment, PSE claimed that the application for the rest of the project was coming along right away, i.e. by the end of the year (2017). But when that time came and went, PSE backtracked and said the north application would

be filed in early 2018. When no application was filed then, PSE finally stated that they were busy with the south segment and that there was really no timetable at all for the north application. To date, there has been no application for the North Segment in Bellevue or otherwise and no indication when it might be submitted.

The application for the South Segment made to Bellevue did not provide any analysis of how the abbreviated line would meet project objectives and needs that were identified in the two DEISs that had been prepared.

The Final EIS was issued in March, 2018. However that document continued to identify the proposal as the entire original project "connecting the Sammamish substation in Redmond and the Talbot Hill substation in Renton, a distance of 16 miles." Page 1-10. The FEIS reiterated that the new substation "would need to be fed by new 230 kV transmission lines from the north and south." See Pages 1-3 and 1-5. Amazingly, the FEIS did not provide analysis of the South Segment, only mentioning submission of "applications for the first phase of the project, including Renton, Newcastle, and the southern portion of the project in Renton." FEIS at page 1-11. That information is repeated at FEIS page 2-5.

The South Bellevue Segment was reviewed by the Bellevue Development Services Department during 2018 and into 2019. On January 24, 2019, Bellevue issued its Staff Report dealing with what it called the "South Bellevue Segment," the 3.3 mile dead-end line. However, in response to a question of whether the South Segment would be functional if only one (south) segment was permitted without the other (the north) segment; the Staff Response was:

> The south segment of the Project provides additional capacity that addresses the Project need and could function whether or not the north segment is built. The north segment would provide redundancy in the supply of 230 kV power to the substation.

Staff Report at 100 (Attachment H hereto). On page 111, the Staff Report discusses the 3.3 mile South Bellevue Segment and states:

> PSE's analysis supported and demonstrated that operationally the Project must include 230 kV lines connecting the Talbot Hill substation to the south to a new transformer in central Bellevue. The full build out of the Energize Eastside project will include a similar connection from the Sammamish substation in the north to provide redundancy, but the south portion of the Project that is the subject of PSE's current proposal can function independently.

Attachment H (emphasis supplied). No citation or reference was provide to "PSE's analysis" discussed in the Staff Report.

As described above, the conclusions reached by the Bellevue staff were at odds with analysis that was previously prepared for the proposal. Both the Phase 1 DEIS and Phase 2 DEIS were very clear that the project "must" include connections to the north and south. Indeed, the Phase 1 DEIS made clear that a separation of the project in central Bellevue "*would not meet FERC reliability standards*." It appears that PSE knew all along that a truncated version of its proposal would meet need and that the portion of the project to the north was only redundant.

The South Bellevue Segment proceeded to hearing before the Bellevue Hearing Examiner, who approved the South Bellevue Segment, which decision was affirmed by the Bellevue City Council.

In making its Decision on appeal, the Bellevue council made it very clear that it was not considering or approving future additions to the south segment, determining in Ordinance 6494 that "the only conditional use permit before the Hearing Examiner was for the South Bellevue Segment." See Attachment G.

3. SEPA REVIEW INSUFFICIENT WITHOUT CONSIDERATION OF THE SOUTH SEGMENT AS A PROPOSAL OR ALTERNATIVE.

As described above, elaborate and expensive environmental review has taken place over more than three years that identified the proposal as a 16 mile transmission line. Moreover, PSE's submissions insisted the project "must" provide connections between the bookend substations at Sammamish and Talbot Hill and that anything less than the full project would be unacceptable. On that basis, multiple alternatives proposed by CENSE and others were rejected as not fulfilling the Project need.

Though PSE claimed that the South Segment is actually the first phase of its proposal, that claim cannot be accepted. First, it has been two and a half years since the South Bellevue Segment application was made, and there is still no application for any other segment of the proposal. Indeed this delay indicates that PSE's claim that the full transmission corridor is urgently needed (as early as the winter of 2017-18 or by summer of 2018, FEIS at 1-5) cannot be accepted.

Second, even if permit applications for the north segments are received tomorrow, the fact remains that this connection is actually only for "redundancy." That the South Segment is an "independent" feature requires an inquiry into what features of that project result in its independence, which features make the North Segment "redundant" and whether additional alternatives exist. To answer this question, CENSE has retained Pterra Consulting to review the transmission proposal made by PSE, and it has provided a letter to the Examiner dated January 7, 2020 which is included as Section 5.2 in the CENSE Notebook. As shown by its resume attached to its letter, Pterra has over 35 years of experience in electric power transmission planning, operation design and engineering.

Pterra has been involved in the review of PSE's needs analysis using power flow models. Letter at 1. However, Pterra notes that PSE has revised its project to upgrade only the "South Segment" as previously described herein. Though noting the South Segment will use some components of the original 16 mile proposal, Pterra concludes:

> it is necessary to re-demonstrate performance since the electric grid operates in an integrated fashion and removing one planned element (in this case the northern section of EEP[3]) represents a different design with a unique set of reliability impacts.

Furthermore, Pterra states:

> Since the revised EEP plan include a single source of 230 kV power to energize the proposed Richards Creek substation, any analysis should include the alternative of energizing the new substation with new transmission from the Sammamish substation to the north.

Indeed, Pterra concludes that the alternatives to transmission may be different between the original EEP and the revised EEP, including possible non-wires alternatives or "transformer replacements" rather than line upgrades. See page 2. As noted previously, the existing record contains no power flow or other transmission analysis of the South Segment or a possible "North Segment."

Relevant to review of the four miles of proposed transmission in Renton is whether a connection from the Sammamish substation to the proposed new substation at Richards Creek will resolve PSE's transmission needs without construction in Renton. Also relevant is whether the reduced scale of the project opens the opportunity for other alternatives which do required new transmission. These would include energy storage, demand response and other options that would focus new resources where demand is increasing, the downtown areas of Bellevue.

The last minute disclosure that in fact project need could be met by a dead-end line, with the remainder of full line providing "redundancy," calls out for additional review and analysis for two reasons.

A. NEW PROPOSAL.

As noted above, the requirement that a proposal be "properly defined" is a critical element in the environmental review process under WAC 197-11-060(3)(a). See FEIS at page 1-5: "the process of defining a proposal includes an understanding of the need for the proposal, to enable a thorough understanding of the project's objective and

[3] "EEP" is the Energize Eastside full 16 mile proposal.

technical requirements and to accurately identify feasible and reasonable project alternatives for consideration in the EIS." (Emphasis supplied.) The FEIS goes on to say (page 1-5): "An understanding of the need for the project helps to clarify the objectives used to develop project alternatives."

In fact, the proposal has changed from that defined in December, 2014. The four-mile Renton line is now part of the South Segment, which was never identified as the proposal in the Phase 1 DEIS and Phase 2 DEIS. Interested citizens, public agencies and others commented based on the proposal defined as: "a new 230 kV transformer in the center of the Eastside, which would be fed by new 230 kV transmission lines for the north and south (Stantec)." Importantly, none of the technical reports cited by PSE considered, much less even mentioned, an independent South Segment. As the Pterra letter indicates, the South Segment "represents a different design with a unique set of reliability impacts" which has not been studied.

Remand for providing analysis of the South Segment should be ordered to comply with SEPA.

Analysis of the actual proposal is critical for Renton as well. If there are alternatives identified that do away with the need for the South Segment, the environmental and community impacts of the four miles of line in Renton will be eliminated.

B. NEW AND NOT PREVIOUSLY CONSIDERED ALTERNATIVE.

Even if remand is not necessary to analyze the proposal actually before the Examiner, it is necessary to require SEPA analysis of a reasonable alternative not previously disclosed by the applicant.

As stated very well in the FEIS:

> The process of defining the proposal includes an understanding of the need for the project, to enable a thorough understanding the project's objectives (see Section 1.8 of the Phase 1 Draft EIS) and technical requirements, and. According to WAC 197-11-060(3)(a)(iii), proposals should be described in ways that encourage considering and comparing alternatives, and agencies are encouraged to describe proposals in terms of objectives rather than preferred solutions. An understanding of the need for the project helps to clarify the objectives used to develop project alternatives.

FEIS pages 1-4 and 1-5 (copies of these pages are Attachment F hereto).

Under SEPA, a "reasonable alternative" means:

> an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures.

WAC 197-11-786. Indeed SEPA itself requires consideration of alternatives:

> The State Environmental Policy Act of 1971 (SEPA) directs that "alternatives to the proposed action" be included in an EIS. RCW 43.21C.030(c)(iii). Under the Washington Administrative Code, consideration by the County Council of reasonable alternatives is mandatory. WAC 197-11-440(5)(b). SEPA rules define "reasonable alternatives" as less environmentally costly action that "could feasibly attain or approximate a proposal's objectives." WAC 197-11-786.

King County v. Central Puget Sound Growth Management Hearings Bd., 138 Wn.2d 161, 182, 979 P.2d 374 (1999) (emphasis supplied).

In this regard, the EIS Consistency Analysis prepared for the City does not forestall the need for a remand. Though the purpose of that analysis is not clear, it does not deal with the question of whether the South Segment is appropriate for analysis. Indeed, it does not even recognize the South Segment, continuing the mantra that the project is the entire original proposal:

> The Renton PSE upgrade is part of the larger Energize Eastside Project that would also occur in the cities of Bellevue, Redmond, and Newcastle, and in unincorporated King County (see Figure 1-1,Regional Map, and Figure 1-2, Entire Energize Eastside Project).

See page 1-1.

As described above, the PSE proposal, since its inception in 2013, has been the construction of “a new 230 kV transformer in the center of the Eastside, which would be fed by new 230 kV transmission lines from the north and south.” FEIS at page 1-5 (see Attachment F). No shorter alternative was considered or included in any environmental review.

> However, during review in Bellevue, it was concluded by Bellevue staff that:
>
> The south segment of the Project provides additional capacity that addresses the Project need and could function whether or not the north segment is built.

Plainly this admission from the Lead Agency for the project indicating that the South Segment would “attain or approximate [the] proposal’s objectives” accordingly makes

the South Segment a "reasonable alternative."

WAC 197-11-440(5)(c)(v)" requires the EIS to:

> Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action.

As noted, it was never disclosed in the environmental impact statements prepared that the South Segment as a standalone project could meet "Project need." Important to project review, as found in the "Proposal Description" in Attachment A to the IAA, is the identification of "Viable Solutions" as follows:

> Viable solutions have to solve the various power flow issues in the Eastside as well as satisfying longevity criteria, be constructable, and cost effective. A ten year study horizon was used between 2012 and 2022. To develop the potential solutions, the following categories were identified: demand side reductions; generation transformer additions with minimal reinforcement, and transformer with new transmission line. Each solution type was then subjected to power flow analysis using the base cases described in the Needs Report as well as an extensive list of contingencies.

(Emphasis supplied.) However, as confirmed by Pterra, the "South Segment" has never been "subjected to power flow analysis," considered essential in the IAA. All of the studies conducted by either PSE or the City of Bellevue have analyzed the entire 16 mile proposal, not the South Segment. "Power flow analysis" is one of the "technical requirements" that the FEIS (at page 1.4) considers important to "accurately identify the feasible and reasonable project alternatives for consideration in the EIS." With something substantially less than the full 16 mile project now able to "address project need," an understanding is needed of what changes have occurred in project analysis and whether other non-wires alternatives might address project need.

4. A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT SHOULD BE ORDERED BY THE EXAMINER.

As described above, SEPA compliance to date is inadequate and incomplete because of the failure to review the South Segment as either the proposed project or an alternative. To resolve this insufficiency, a Supplemental Environmental Impact Statement (SEIS) should be ordered.

Washington caselaw and regulations address when an SEIS is required:

> WAC 197-11-600(3)(b) provides that a supplemental EIS is required if there are either: "Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts ...; or New information indicating a

> proposal's probable significant adverse environmental impacts. (*This includes discovery of misrepresentation or lack of material disclosure.*)" (italics ours). *See also Citizens for Clean Air v. City of Spokane*, 114 Wash.2d 20, 34, 785 P.2d 447 (1990); *West 514, Inc. v. Spokane County*, 53 Wash.App. 838, 845, 770 P.2d 1065, *review denied*, 113 Wash.2d 1005, 777 P.2d 1050 (1989).

Kiewit Const. Group Inc. v. Clark County, 83 Wn.App. 133, 142, 920 P.2d 1207, (Div. 2 1996). *See also Citizens for Clean Air v. City of Spokane,* 114 Wn.2d 20, 34, 785 P.2d 447 ("Substantial changes in a proposal or new information about adverse environmental impacts may create a need for a SEIS. See WAC 197-11-600(4)(b)."). Similarly in *West 514, Inc. v. County of Spokane*, 53 Wn.App. 838, 845, 770 P.2d 1065 (1989), the court addressed requirements for a supplemental EIS.

> WAC 197-11-600(4)(d)(ii) states a supplemental EIS should be prepared if there is "[n]ew information indicating a proposal's probable significant adverse environmental impacts". (Italics ours.) While "probable" is used to distinguish likely impacts from those that are remote or speculative, it "is not meant as a strict statistical probability test". WAC 197-11-782. "Significant" involves context and intensity. "An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred." WAC 197-11-794(2).
>
> In *Barrie v. Kitsap Cy. Boundary Review Bd.*, 97 Wash.2d 232, 235, 643 P.2d 433 (1982), the court noted that passage of time alone is not "significant new information", and the lead agency must determine whether the new information is significant. It quoted the discussion of what is significant contained in *National Indian Youth Coun. v. Andrus*, 501 F.Supp. 649, 663-64 (D.N.M.1980), aff'd sub nom. *National Indian Youth Coun. v. Watt*, 664 F.2d 220 (10th Cir.1981):
>
> > Any project ... will, undoubtedly, generate "information" as it progresses.... [I]n order for "new circumstances or information" to attain the status of "significant" these must reach that level where, reasonably, it becomes necessary to focus attention once more upon the environmental aspects of a project.... An otherwise unguarded reading of this subpart could unleash a procedural plague ...
>
> *Barrie,* 97 Wash.2d at 235-36, 643 P.2d 433. Further, "every remote and speculative consequence of an action [need not] be included in the EIS." *Cheney v. Mountlake Terrace,* 87 Wash.2d 338, 344, 552 P.2d 184 (1976).

Is the change in the proposal from a 16 mile line to an 8.78 mile line a significant change? Is the eleventh hour revelation that the South Segment can "operate independently" and that the remainder of the line only provides "redundancy" significant? These are major changes in the proposal requiring additional review.

There is a question of whether these circumstances amount to a "lack of material

disclosure." Was the independence of the South Segment based on a change in circumstances? Given that the circumstances of need, and mechanisms to address it has been the subject of intense scrutiny for more than four years, it seems unlikely that this alternative would have slipped by PSE. It seems much more likely that the disclosure of this alternative was simply held back.[4]

The complete study of the South Segment is critical to review, especially in Renton. The South Segment as presently envisioned will eliminate 5.24 miles of transmission in Bellevue, relieving that community of the adverse environmental impacts. But, if the South Segment can operate independently from Renton's Talbot Hill substation to the new Richards Creek substation, can the North Segment similarly operate independently from the Sammamish substation to Richards Creek? This alternative was never analyzed, much less even mentioned.[5] Given the magnitude of the impacts, a supplemental EIS is necessary to allow consideration of the merits of the recently disclosed alternatives.

5. CONCLUSION.

As demonstrated herein, despite the length of the various EIS's, the proposal's SEPA review is incomplete and inadequate. The existing documentation fails to give a thorough analysis of the South Segment, either as a proposal or alternative. The Examiner should deny the present application and remand to staff for preparation of a Supplemental EIS following the procedures therefor in the SEPA rules.

Sincerely,

J. Richard Aramburu

JRA:cc
cc: Clients

[4]Keep in mind that PSE enjoys a 9.8% return on investment for its projects per the Washington Utilities and Transportation Commission, which would be collected from PSE rate payers.

[5]The preparation of an SEIS will not unduly delay the project. While an application for the 1.5 miles of the project has been filed in Newcastle (another part of the South Segment), no hearings have been scheduled pending completion of supplemental review of the proposal by that community.