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BEFORE THE HEARING EXAMINER
FOR THE CITY OF RENTON, WASHINGTON

In Re

Puget Sound Energize Eastside
Conditional Use Permit
LUA18-000055, CU-H, SME

No. LUA18-000055

MOTION FOR
RECONSIDERATION BY CENSE

1. MOTION

The Coalition of Eastside Neighbors for Sensible Energy, a Washington non-profit corporation (“CENSE”) moves the Examiner to reconsider his “REVISED FINDING OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION” (the “Decision”) in this matter dated February 6, 2020, by a) ordering a Supplemental Environmental Impact Statement or supplemental review of the PSE proposal to construct only the South Bellevue segment of the transmission line proposal, b) assessing the need for the project and c) to require additional analysis of pipeline safety issues.

2. EVIDENCE RELIED UPON

CENSE relies on the hearing record developed during the public hearing held on this matter by the Hearing Examiner on January 8, 2020, and specifically on the letter from J. Richard Aramburu to the Examiner dated January 8, 2020 with attachments and

1 the letter from Pterra Consulting to Talbot Hill to the Examiner dated January 7, 2020.
2 These materials are attached to this motion.

3 **3. STATEMENT OF FACTS**

4 Puget Sound Energy (PSE) proposes to construct four miles of 230 kV
5 transmission lines through Renton as a part of its proposal to connect the Talbot Hill
6 Substation in Renton with a new electric substation (Richards Creek) in Bellevue just
7 north of I-90. PSE's proposal requires a conditional use permit in Renton. A public
8 hearing was held on PSE's proposal on January 8, 2020, at which CENSE
9 representative spoke and submitted a comment letter attached hereto as Appendix A
10 (the "CENSE Comment").

11 As that comment letter indicated, the current PSE transmission proposal
12 terminates at the proposed Richards Creek substation, with no application submitted for
13 any portion of the proposed transmission line north of that point in Bellevue. See
14 Attachment G to CENSE Comment. During review of the South Segment in Bellevue,
15 commenters asked why the Bellevue segment had been "split into two parts" and
16 "would it (the South Bellevue Segment) be functional without the other (the North
17 Bellevue Segment)". The Staff Report prepared in Bellevue answered the question as
18 follows:

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

23 See Attachment H to the CENSE Comment. This finding was repeated at page 111 of
24 the Staff report:

25 PSE's analysis supported and demonstrated that operationally, the Project must
26 include a 230 kV transmission lines connecting the Talbot Hill substation in the
27 south to a new transformer in central Bellevue. The full build out of the "Energize
28 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.

Id.

1 As explained in the CENSE Comment, the disclosure that the South segment
2 “could function independently” and the north segment would only “provide redundancy”
3 was at odds with years of representations by PSE that an 18 mile line connecting the
4 Renton Talbot Hill substation to a similar one in Redmond (Sammamish) was essential
5 to meet PSE’s needs, as stated in PSE’s alternatives analysis (“To operate the new
6 transformer it must be served by approximately 18 miles of new high capacity electric
7 transmission lines (230 kV) extending from Redmond in the north and Renton in the
8 south.”). See CENSE Comment at page 6. PSE concedes in the “Alternative Siting
9 Analysis” submitted to Bellevue that no shorter or deadend transmission alternatives
10 were considered (“all transmission line route alternatives start at PSE’s Sammamish
11 substation in Redmond and end at the Talbot Hill substation in Renton”).
12 Notwithstanding the foregoing, Bellevue staff indicated that “PSE’s analysis supported
13 and demonstrated. . .” the dichotomy between the South (“independent”) and the North
14 (“redundant”).

15 PSE has never disputed or contested this analysis, nor the statement that PSE’s
16 own analysis “supported and demonstrated” the representations. Rather, in an attempt
17 to change the subject, PSE responds that it will in fact build the north segment at some
18 indefinite time in the future. PSE explicitly declined to respond to the CENSE Comment
19 during the January 8, 2020 Renton hearing when given the opportunity by the
20 Examiner.

21 As a part of its comments, CENSE also submitted the expert analysis of Pterra
22 Consulting, a nationally recognized transmission analyst, with its principal, Ric Austria,
23 having thirty-five years of experience in reviewing transmission proposals. This analysis
24 is attached hereto as Appendix B. Pterra’s analysis established three important
25 principals in analysis of the current proposal. First, the power flow studies that have
26 been previously prepared for the longer, 18 mile line cannot be used to analyze the
27 shorter, dead-end line that terminates at the Richards Creek substation because the
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1 grid operates in an integrated fashion and elimination of any segment requires re-
2 analysis. Second, industry standard analysis that supports using a single connection to
3 energize a new substation requires an examination of whether energizing that
4 substation from the north, through northern Bellevue and Redmond, could be employed
5 to meet the objective. Third, the belated disclosure that the south segment can operate
6 independently indicates the need to reconsider other alternatives that were eliminated
7 when the 18 mile line was the only proposal considered.

8 In its comment at the Renton hearing, CENSE asked the Examiner to order
9 additional analysis of whether the “independent” south segment should be considered
10 an Alternative to the north segment.

11 In his February 6, 2020 decision, the Examiner declined to require additional
12 review of the south segment, determined that the issue of “need” was not relevant to his
13 decision and determined that the question of pipeline safety was adequately considered
14 in the existing record.

15 **4. LEGAL AUTHORITY: SUPPLEMENTAL ENVIRONMENTAL IMPACT**
16 **STATEMENT**

17 For the reasons stated below, the Hearing Examiner erred in not requiring that
18 additional analysis of the PSE proposal.

19 **4.1 PROJECT COMPLETION.** The Examiner states that “there is no reasonable
20 basis to conclude that PSE will not follow through with constructing the entire proposal”
21 (Decision at page 31, line 6-7) and “there is no evidence that PSE will not follow
22 through on the complete transmission line between the Talbot and Sammamish
23 substations. . .” (Decision at page 32, lines 1-2).

24 Given the lengthy delay in filing permit applications for the north segment (the
25 applications for the south segment were filed in September, 2017, and to date there are
26 none for any other part of the line), there is no foregone conclusion that the project will
27 be completed. However, that is not the point of this reconsideration request. As
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1 Bellevue stated in its staff report, PSE's own analysis indicates the south segment from
2 Talbot Hill to Richards Creek can "function independently" and the north segment is
3 only to "provide redundancy." However, the option of just building the south segment
4 has never been publicly studied or discussed, as demonstrated in the CENSE
5 Comment. Additional review is necessary, regardless of PSE's long term plans.

6 **4.2 IMPACT ON RENTON.** At page 32, lines 7-9, the Examiner says that a
7 review of the FEIS "doesn't reveal any change in environmental impacts to Renton
8 residents that would be caused by cutting the proposal short at the Richards Creek
9 substation."

10 The consideration of the deadend alternative at Richards Creek makes all the
11 difference to Renton residents. As transmission planning expert Pterra states in its
12 report,¹ the conclusion reached that the south line can "function independently,"
13 indicates that, if only a single feed/connection to Richards Creek substation is needed
14 to meet project need, study is necessary to determine whether that feed can be
15 provided from the Sammamish substation to the north. As Pterra says:

16 In similar fashion, I would expect that PSE would conduct separate assessment
17 of the revised EEP design. Since the revised EEP plan includes a single source
18 of 230 kV power to energize the proposed Richards Creek substation, any
19 analysis should include the alternative of energizing the new substation with new
20 transmission from the Sammamish substation to the north.

21 In addition, Pterra indicates the need for review of additional information based
22 on revised project plans:

23 Furthermore, alternatives to the EEP will also be different between the original
24 EEP and the revised EEP. Where non-wires alternatives (NWA) may be
25 infeasible for the original EEP, the same may not be the case for the revised
26 EEP. Or, where the original need may indicate transmission line upgrades, the
27 revised plan may indicate transformer replacements rather than line upgrades.

28 If it is determined, after additional study, that connection to the Richards Creek

¹During the hearing, the Examiner offered PSE's counsel the opportunity to rebut materials presented at the January 8 hearing, but PSE declined the invitation and chose to stand on information presented. The Pterra report is thus not rebutted.

1 substation could be provided from the north, and that is determined to be the superior
2 alternative, the four mile line through Renton could be avoided entirely. The Examiner
3 should order additional analysis of the pending proposal and whether alternatives that
4 avoid Renton are feasible.

5 **4.3 THE EXAMINER HAS FULL AUTHORITY TO ORDER ADDITIONAL**
6 **REVIEW UNDER SEPA.** At page 31, line 16, the Examiner states that “in the absence
7 of an administrative appeal the examiner has no authority to address the adequacy of
8 the FEIS.” Respectfully, this statement is an incorrect statement of law, and also
9 misapprehends the position of CENSE.

10 As described in the CENSE Comment, throughout the SEPA process the project
11 was described as eighteen miles of 230 kV transmission running between two existing
12 PSE substations (Talbot Hill and Sammamish) with a new 230 kV substation (Richards
13 Creek) more or less in the middle. See pages 2-6. The same theme was repeated in
14 the “Alternative Siting Analysis” prepared to meet Bellevue codes: “The transmission
15 component of the project must run between the Sammamish and Talbot Hill
16 substations.” See CENSE Comment at page 5 (emphasis supplied). It is undisputed
17 that there was no shorter or segmented proposal considered during the SEPA process.

18 Things changed when PSE only applied for permits for the South Segment in
19 Bellevue, Newcastle and Renton in September 2017. Naturally veterans of the project
20 review questioned the segmentation of the project, but were assured that the remaining
21 permit application would be forthcoming shortly (end of 2017/early 2018). When no
22 permits surfaced, PSE then said there was no timetable for north segment permits,
23 which remains its position.

24 Thereafter, the Bellevue Staff report disclosed that the only critical element of
25 the project was the South Segment connection, citing “PSE’s analysis” that
26 “operationally the Project must include the 230 kV lines connecting the Talbot Hill
27 substation in the south to a new transformer in central Bellevue” (emphasis added).
28

1 See Attachment H to the CENSE Comment at page 111. Contrast this statement with
2 the earlier one cited above, that the line “must run between the Sammamish and Talbot
3 Hill substations” (i.e., the full 18-mile proposal must be built). Significantly, both “must”
4 statements came from PSE’s own analysis of its proposal.

5 CENSE’s transmission expert Ric Austria of Pterra deemed this new information
6 significant in Pterra’s report to the Examiner. First, there is the need to have new power
7 flow analysis consistent with a proposal to deadend the project at Richards Creek:

8 If a planned transmission line is removed from a project as in the case of
9 changing the original EEP to the revised EEP, the response of the grid changes,
10 and the determination as to whether or not contingencies lead to overloads and
11 other electrical impacts also changes. Hence the need to conduct a separate
study even if the revision to a plan appears to lead eventually back to original
plan. The revised EEP will have distinct and unique loading impacts to the
original EEP.

12 Second, the understanding that just a single connection to the Richards Creek
13 substation was sufficient also requires another examination of other alternatives to the
14 project that had been dismissed earlier when the 18 mile line was the “must” project.
15 Again, the Pterra report emphasizes the importance of the new information:

16 During the course of my analysis, PSE revised EEP to upgrade only the
17 "Southern Segment," comprising of the Talbot Hill-Lakeside transmission line to
a new 230 kV transformer referenced as "Richards Creek." The South Segment
18 still includes the 4 miles that would be located in the City of Renton. Although,
the revised EEP includes components of the original EEP, it is necessary to
19 re-demonstrate performance since the electric grid operates in an integrated
fashion and removing one planned segment (in this case, the northern section of
20 EEP) represents a different design with a unique set of reliability impacts.

21 (Emphasis supplied.)

22 The foregoing information does not make the prior SEPA review necessarily
23 inadequate as the Examiner implies. Rather, the information calls for a supplemental
24 environmental impact statement (SEIS) under WAC 197-11-600(3)(b)(ii) as follows:

25 (ii) New information indicating a proposal's probable significant adverse
26 environmental impacts. (This includes discovery of misrepresentation or lack of
27 material disclosure.) A new threshold determination or SEIS is not required if
28 probable significant adverse environmental impacts are covered by the range of
alternatives and impacts analyzed in the existing environmental documents.

1 Here, recognition that the “must” element of the project has shifted from the whole 18
2 mile project considered in the previous SEPA compliance to the Talbot Hill/Richards
3 Creek connection described in the Bellevue decision is clearly new information
4 regarding the Project’s adverse impacts.² Indeed, expert testimony addressing the new
5 information indicates not only the need to review possible alternative connections from
6 the north (Sammamish to Richards Creek), but also whether the need for a single
7 connection to Richards Creek (north or south) would require a reevaluation of other
8 alternatives, including the “non-wire alternatives” discussed in the Pterra report.

9 Legal support for ordering a SEIS is found at pages 12-14 of the CENSE
10 Comment. As indicated in the Bellevue Staff report, the conclusion that the Project
11 “must include” the Talbot Hill/Richards Creek connection, that the South Segment “can
12 function independently” and that the north segment is only to “provide redundancy” all
13 came from PSE (“PSE’s analysis supported and demonstrated . . .”. Though there was
14 no citation or reference to “PSE’s analysis” for these statements by Bellevue staff, such
15 backup information is apparently available for inclusion in a SEIS.

16 References in the Examiner’s decision that “approval of an FEIS is a separate
17 decision made by the SEPA Responsible Official” by citation to WAC 197-11-460
18 misapprehends that authority. All Subsection 460 does is address the mechanics of
19 distribution and timing issues of the FEIS, not questions of adequacy of the document.

20 In a similar vein, the Examiner has stated (page 31, lines 16-18) that in the
21 absence of an administrative appeal, the appropriateness of the FEIS cannot be
22 attacked in another permit review, absent a timely appeal, citing *Wenatchee Sportsman*
23 *Assn. v. Chelan County*, 141 Wn.2d 169, 182 (2000) and *Habitat Watch v. Skagit*
24 *County*, 155 Wn.2d 397 (2005). Respectfully, neither of these cases deal with the
25 current issue. In fact the issue is disposed of by the SEPA Rules at WAC 197-11-

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27 ²Though not the preferred solution, an alternative could be to require an “addendum” to the FEIS as
28 described in WAC 197-11-600(4)(c) and WAC 197-11-706.

1 680(3)(a)(iv), which provides:

2 (iv) An agency shall provide for only one administrative appeal of a threshold
3 determination or of the adequacy of an EIS; successive administrative appeals
4 on these issues within the same agency are not allowed. This limitation does not
5 apply to administrative appeals before another agency.

6 (Emphasis supplied.) Thus even if there was an administrative appeal available in
7 Renton³ it would not be barred by the rule. Keep in mind that the situation here does
8 not involve another agency reviewing the same proposal. Bellevue's "review" of PSE's
9 "South Bellevue Segment" was for only the 3.28 mile segment, the portion within the
10 Bellevue city limits. See Attachment B to CENSE Comment letter. The Renton
11 Segment is further south and completely separated from Bellevue by the Newcastle
12 Segment (1.5 miles). This "Balkanization" of decision making and review shown on
13 Attachment B was, and is, fully avoidable if PSE had sought certification by the Energy
14 Facilities Site Evaluation Council as described in Footnote 1 in the CENSE Comment
15 letter.

16 The Examiner also errs in apparently determining that he cannot address issues
17 such as the inadequacy of the FEIS or the need for an SEIS in the present hearing. See
18 Decision at page 31, line 16 ("In the absence of an administrative appeal the examiner
19 has no authority to address the adequacy of the FEIS."). Respectfully, established law
20 provides otherwise. As noted above, local governments are not required to provide for
21 an administrative SEPA appeal and Renton has opted not to have one. However, even
22 without an appeal, public hearings held on proposals are required to consider both
23 environmental impacts and environmental documents:

24 **WAC 197-11-535 Public hearings and meetings.** (1) If a public hearing on the
25 proposal is held under some other requirement of law, such hearing shall be
26 open to consideration of the environmental impact of the proposal, together with
27 any environmental document that is available. This does not require extension of
28 the comment periods for environmental documents.

3In Footnote 10 at page 31 the Examiner correctly concludes that there is no administrative appeal of
EIS adequacy in Renton. Thus there was no obligation to file an appeal and no requirement to exhaust
that (non existent) administrative remedy.

1 (Emphasis supplied). Use of the word “shall” means the Examiner is not free to limit
2 commentary at the hearing. This provision has been expressly adopted by Renton at
3 RMC 4-9-070(O). “Environmental document” is defined in WAC 197-11-744 as “any
4 written public document prepared under this chapter,” naturally including the FEIS.
5 WAC 197-11-535(1) requires the Examiner to consider SEPA issues, appeal or not,
6 including whether a SEIS should be issued.

7 **4.4 NEED ANALYSIS AND AUTHORITY OF WUTC.** At pages 34-36 of the
8 Decision, Conclusion 8 states that need is not relevant for compliance with Renton
9 conditional use criteria. Respectfully, this analysis is in error.

10 In this section, the Examiner ignores the extensive discussion of need in the
11 SEPA analysis for the project. As set forth on page 10 of the CENSE Comment, the
12 Phase 1 Draft EIS contains a specific section on the “Purpose and Need of the
13 Energize Eastside Project.” See page 1-4 and 1-5. Indeed, the Phase 1 DEIS
14 specifically includes references to “PSE’s Eastside Need Assessment Report.” *Id.*
15 Figure 1-2 at page 1-6 is a graph showing “Eastside Customer Demand Forecast.” The
16 rhetoric here, though not quite Armageddon, is certainly scare-mongering: “Specifically
17 PSE’s estimate is that in the summer 2024 scenario, over 211,000 customers would
18 experience rotating outages on up to 9 days over a period of 16 days.”⁴ Phase 1 DEIS
19 at 1-7. Need for the project is a key factor in the DEIS, which was approved by Renton.
20 See Interagency Agreement Attachment C to the CENSE Comment Letter at its
21 Attachment A, which says that: “PSE has determined that projected electrical load
22 growth in the Eastside area of Puget Sound Energy’s operating system is outstripping

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24 ⁴Significantly, this statement lacks any kind of assessment of the probably of an outage actually
25 occurring. The Examiner spends a significant part of his decision addressing “risk analysis” for pipeline
26 failures (Decision at 9-10); so does the Phase 2 DEIS at pages 3.9-31 and 3.9-32, which addresses
27 “probability analysis, consequence analysis, conditional probabilities and risk determination;” all of this
28 language tending to minimize the probability of pipeline problems. In contrast, no such analysis is applied
to the need for the project; is the risk of a “rotating outage” of the magnitude described a 1 in 10, 1 in 100
or a 1 in 1,000,000 probability?

1 the capacity to deliver reliable sources of electricity to the region.” Indeed, many of the
2 business interests that testified at the January 8 hearing spoke of nothing but how
3 important the project is and their concern about having electric power curtailed. The
4 Examiner’s conclusion that “[t]he need for transmission corridor upgrades is not
5 relevant to the criteria above, . . .” not only defies the current record but creates a
6 situation in which only PSE (and its organized business interests) can discuss need but
7 citizens are muzzled.

8 The Examiner concludes that the need for the project is “adequately addressed
9 by the oversight and regulatory authority of the Utilities and Transportation
10 Commission.” Again, and respectfully, this misapprehends UTC jurisdiction and
11 authority. On page 35 at lines 3-13, the Examiner discusses the requirement for an
12 Integrated Resource Plan as a “tool to UTC evaluation and approval of PSE electrical
13 rates.” While true, this has nothing to do with project development because the IRP is
14 not a regulatory tool, as the legislature was careful to state that IRPs “shall not be a
15 basis to bring legal action against electric utilities.” RCW 19.280.030(9).

16 Moreover, the citation provided from the Phase 2 EIS, at page 35, lines 16-23,
17 makes clear that the UTC does not review a project until it is complete:

18 After a project is complete and before the costs are allowed to be placed
19 into the rate base, PSE must prove to the UTC that the cost to build the
project is prudent and reasonable to ratepayers.

20 (Emphasis supplied). From a land use perspective, UTC review of whether project costs
21 can be included in the rate base occurs long after the horse is out of the barn.

22 The Examiner should reconsider his ruling regarding need based on the
23 foregoing.

24 **5. LEGAL AUTHORITY: PIPELINE SAFETY**

25 The Examiner spends a considerable portion (pages 4-17) of his decision
26 addressing safety concerns for the petroleum pipeline that shares the easement with
27 PSE. Much of this analysis deals with the report prepared by EDM Services, a
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1 contractor paid for by PSE. Decision at page 7.

2 However, the Olympic Pipe Line Company (“OPL”) is responsible for pipeline
3 operations, not PSE. Neither PSE nor the Examiner have the authority to dictate to
4 OPL what measures are appropriate or necessary to assure the safety of the pipeline.
5 PSE concurs in its “Request for Correction ” at page 4, lines 18-19: “PSE has no legal
6 authority to manage or operate Olympic Pipeline’s facilities.” As such, one would expect
7 the record to show OPL’s concurrence in analysis and findings by PSE’s consultants.

8 The most there is in the record regarding OPL is an “OPL Data Request” from
9 EDM from three years ago (March 29, 2017), which includes the following OPL
10 reponse:

11 *There are also a number of proven practices and guidelines used by the industry to successfully*
12 *mitigate potential AC interference-related-corrosion on pipelines. Olympic has a program to*
13 *actively monitor and, where necessary, mitigate the impact of AC interference on its pipelines. As*
14 *part of this program, AC interference is currently monitored in the segment of the pipeline at issue.*
15 *AC grounding systems are commonly installed in connection with power transmission towers to*
16 *safely dissipate any energy to ground and, as the project plans evolve, Olympic will undertake an*
17 *engineering analysis to assess the necessity for installation of similar systems along the pipeline.*

18 However, though “project plans” have evolved since March 2017, there is no indication
19 that OPL has undertaken the engineering analysis to address these issues.

20 Reconsideration is appropriate to resolve whether OPL has approved the studies
21 and analyses done by PSE’s consultants and whether the contemplated “engineering
22 analysis” has been prepared.

23 **6. CONCLUSION.**

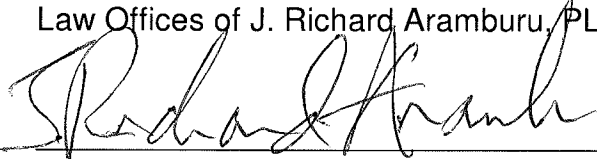
24 Based on the foregoing, CENSE requests that the Examiner reconsider his
25 February 6, 2020 Decision in the following respects.

26 6.1 to require additional analysis of the current proposal under SEPA, including a
27 supplemental EIS or other environmental documents;

1 6.2 to consider the "need" for the project; and
2 6.3 to address additional elements of pipeline safety.

3 Respectfully submitted, this 28th day of February, 2020

4 Law Offices of J. Richard Aramburu, PLLC

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7 J. Richard Aramburu, WSBA #466
8 Attorney for CENSE
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1 DECLARATION OF SERVICE

2 I am an employee in the Law Offices of J. Richard Aramburu PLLC, over eighteen
3 years of age and competent to be a witness herein. On the date below I e-mailed to
4 counsel of record copies of the foregoing Motion, addressed as follows:

5 City of Renton Hearing Examiner Phil Olbrechts, olbrechtslaw@gmail.com

6 Renton City Clerk, Jason Seth, jseth@rentonwa.gov

7 Jill Ding, Jding@Rentonwa.gov

8 Larry Johnson larry.ede@gmail.com for CSEE

9 Sara A. Leverette sleverette@vnf.com plus SAL@vnf.com, and

10 Erin L. Anderson eanderson@vnf.com (PSE attorneys, Van Ness Feldman)

11 I'sha M. Willis lwillis@vnf.com

12 I declare under penalty of perjury under the laws of the State of Washington that
13 the foregoing is true and correct to the best of my knowledge and belief.

14 DATED this 28th day of February, 2020.

15 Law Offices of J. Richard Aramburu, PLLC

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17 _____
18 Carol Cohoe, Legal Assistant