

The Honorable Melinda Young  
Hearing Dates: Friday, May 22, 2020  
Friday, August 14, 2020  
W/Oral Argument

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

COALITION OF EASTSIDE  
NEIGHBORS FOR SENSIBLE  
ENERGY, a Washington non-profit  
corporation,

Petitioner,

v.

CITY OF BELLEVUE, a Washington  
municipal corporation, and  
PUGET SOUND ENERGY, INC., a  
Washington public utility corporation,

Respondents.

No. 19-2-33800-8 SEA

RESPONDENT CITY OF  
BELLEVUE'S RESPONSE TO  
OPENING BRIEF OF PETITIONER  
CENSE

(Chapter 36.70C RCW)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**I. INTRODUCTION**

Petitioner Coalition of Eastside Neighbors for Sensible Energy (CENSE) challenges the City of Bellevue’s (City) decision approving Puget Sound Energy, Inc.’s (PSE) application for a Conditional Use Permit (CUP) as well as the adequacy of the environmental review supporting the City’s decision. The CUP is part of a linear infrastructure project (“Energize Eastside project” or “the Project”) that extends from the city of Renton in the south to the city of Redmond in the north. PSE has applied for permits from Bellevue, Renton, the city of Newcastle, and unincorporated King County in order to construct the first phase of the Energize Eastside project.

The City reviewed PSE’s CUP application for well over a year for consistency with applicable provisions in the City’s Land Use Code (LUC), held four (4) days of public hearing before the Hearing Examiner, and then adjudicated multiple appeals to the City Council that challenged the Hearing Examiner’s approval of the CUP. In addition to this land use review of PSE’s CUP application, the cities of Bellevue, Renton, Newcastle, and Redmond (collectively, “the Partner Cities”) subjected the entire Energize Eastside project to environmental review under the State Environmental Policy Act (SEPA), chapter 43.21C RCW, which culminated in issuance of the March 1, 2018 Final Environmental Impact Statement (Final EIS). The exhaustive land use and environmental record developed by the City and the Partner Cities, respectively, fully supported the City’s approval of PSE’s CUP application.

Nevertheless, CENSE contends the City’s review and approval of the CUP was unlawful and inconsistent with the LUC, and CENSE believes the Partner Cities’ environmental review violated SEPA. The fundamental and, ultimately, fatal problem

1 with CENSE’s opposition to the City’s CUP approval and the larger Energize Eastside  
2 project is that it finds no support in the land use and environmental record. Instead,  
3 the evidence in the record before the Court shows that CENSE’s legal arguments have  
4 no merit, and based on this record, the Court should deny this appeal in full.

5 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

6 The relevant facts and procedural history provided below track the Partner Cities’  
7 environmental review of the Energize Eastside project and the City’s approval of PSE’s  
8 CUP for the South Bellevue Segment of the Project. The City provides citations for  
9 every factual statement contained in this Response Brief and submits paper and  
10 electronic copies of excerpts of record to facilitate the Court’s review of this matter.<sup>1</sup>

11 **A. The Partner Cities’ Environmental Review for the Energize Eastside**  
12 **Project.**

13 PSE’s Energize Eastside project is a linear infrastructure project to upgrade  
14 sixteen (16) miles of high voltage transmission lines from Renton to Redmond and  
15 construct a new substation in Bellevue (the “Richard’s Creek substation”). AR 001319.  
16 The CUP approved by the City and challenged by CENSE is part of the Energize  
17 Eastside project and permits construction of the Richards Creek substation and  
18 upgrading 3.3 miles of transmission lines within the southern city limits of Bellevue. *Id.*  
19 at 000009, 000040, 001319. The Final EIS and the City’s land use review refer to this  
20 portion of the Energize Eastside project as the “South Bellevue Segment.” *Id.* at  
21 001319, 006838, 006860, 006904-6905.  
22  
23  
24

25 <sup>1</sup> All citations to the Administrative Record (AR) and Reporter Transcripts (TR) include citation to the specific page numbers.

1 The purpose of the Energize Eastside project is to meet local electricity peak  
2 demand growth and to protect electrical grid reliability in the Eastside of King County,  
3 roughly defined as extending from Redmond in the north to Renton in the south, and  
4 between Lake Washington and Lake Sammamish. *Id.* at 000011, 001321, 006812,  
5 006815. The work anticipated by the Project is limited to the existing utility corridor,  
6 which has existed for almost a century, and PSE’s proposed transmission lines and  
7 associated infrastructure will generally be in the same location as the existing utility  
8 infrastructure. *Id.* at 000010-11. These infrastructure upgrades in this particular location  
9 have been anticipated by the City’s Comprehensive Plan for many years. *Id.* at 000011,  
10 000027, 001426, 002205.

11 The Partner Cities and King County all have permitting authority over the Project.  
12 *Id.* at 000018, 001319, 006811-6813, 006823. Given this shared jurisdiction, the  
13 Partner Cities joined together to conduct environmental review of the Project under  
14 SEPA, and the City acted as the lead agency for this environmental review. *Id.*; AR  
15 001387. The Partner Cities’ environmental review included preparation of a Phase 1  
16 Draft Environmental Impact Statement (“Phase 1 Draft EIS”) and Phase 2 Draft EIS,  
17 released in January 2016 and May 2017, respectively, and culminated in the issuance  
18 of the March 1, 2018 Final EIS. *Id.* at 000018-21, 001387; *see generally* AR 006793-  
19 13385. The City’s Environmental Coordinator, or “SEPA Responsible Official” under  
20 WAC 197-11-788 and WAC 197-11-910, certified that the environmental review  
21 complied with SEPA at each stage of the EIS process. *Id.* at 006794, 006806, 011620-  
22 11621, 012466-12467.

1 An EIS is the most detailed form of environmental review required under SEPA  
2 and is prepared when an agency determines that it is probable that a project would  
3 have significant environmental impacts. AR 001387; WAC 197-11-400. The Phase 1  
4 Draft EIS evaluated a broad range of potential technological alternatives to address  
5 PSE's identified transmission facility deficit, including the feasibility and environmental  
6 impacts of wire solutions and non-wire solutions. AR 000018, 001325, 001387, 06838-  
7 6839, 012469-12470, 012531-012532, 012563-12569, 012572-1265, 012592-12593,  
8 012597-12600. The Phase 1 Draft EIS explained the concept of "redundancy," stating  
9 "[t]o ensure adequate capacity even when some equipment is not working, a substantial  
10 degree of redundancy is needed in distributed generation resources" (*id.* at 012608) and  
11 "[i]f adequate system redundancy is not provided, electrical power production would  
12 likely not meet the demand during certain times" (*id.* at 012985).

14 Based on the findings of the Phase 1 Draft EIS and the purpose of the Energize  
15 Eastside project, PSE determined that a wire-based solution was the only feasible and  
16 reasonable project alternative to meet the Project objectives. *Id.* at 001325, 011642,  
17 011645, 011659-11700. The Phase 2 Draft EIS then conducted a project-level  
18 evaluation of potential environmental impacts and alternatives associated with overhead  
19 transmission lines and the Richards Creek substation. *Id.* The Phase 2 Draft EIS  
20 reiterated that redundancy provides a very important tool to protect PSE's electrical  
21 system reliability. *Id.* at 011637.

22 Together, the Phase 2 Draft EIS and Final EIS analyzed fourteen (14)  
23 transmission line routing alternatives, including north, central and south Bellevue  
24 alternatives for the Project. *Id.* at 000018, 006837. Based on the results of the Phase 2  
25

1 Draft EIS analysis, PSE proposed utilizing the existing transmission line utility corridor  
2 as the route of the Project. *Id.* at 000018-22, 000024, 00026-27, 000039-58, 001325,  
3 001417, 006838-6842, 006847-6848. The corridor was established in the 1920s and  
4 early 1930s, and current uses, including homes, were developed over time adjacent to  
5 PSE's facilities. *Id.* at 000010-11, 001340, 006847. By limiting the infrastructure  
6 improvements to the existing corridor, PSE's proposal is compatible with the uses and  
7 development in south Bellevue that have been associated with the transmission line  
8 corridor for decades. *Id.* at 000019, 000026-27, 001327-1328, 001417, 006826.

9 The environmental analysis undertaken by the Partner Cities presented a  
10 comprehensive environmental assessment of the entire Project, with discreet sections  
11 devoted to construction of the Richards Creek substation and the transmission line  
12 upgrades in the South Bellevue Segment. *Id.* at 000018-21, 001387-1398, 006801-  
13 6863, 006891-7182, 007204-7212. Per WAC 197-11-060(5), the Final EIS  
14 supplemented the environmental analysis in the Phase 1 Draft EIS and Phase 2 Draft  
15 EIS and provided full analysis of alternatives and potential and cumulative  
16 environmental impacts associated with the construction and operation of the Energize  
17 Eastside project. *Id.* at 006818-006822.<sup>2</sup>

19 //  
20 //  
21 //

22  
23 \_\_\_\_\_  
24 <sup>2</sup> Based on public comment, the Partner Cities' environmental review and the City's CUP  
25 approval evaluated the environmental risk associated with interaction between the Project and  
two underground petroleum pipelines operated by the Olympic Pipeline Company. *See, e.g.,* AR  
000028-30, 001391-1393, 007078. However, because CENSE does not challenge any of this  
analysis, the City does not discuss it in this Response Brief.

1           **B.     PSE’s Phased Construction Plan for the Energize Eastside project.**

2           The Final EIS also disclosed and considered PSE’s phased construction plan for  
3 the Project. AR 006823, 006866. Specifically, the Final EIS disclosed and considered  
4 PSE’s phased construction and permitting schedule as follows:

5           **Construction Phasing and Schedule.** Construction of the transmission lines  
6 would typically take approximately 12 to 18 months (over two construction  
7 phases) and would be constructed concurrently with construction of the  
8 Richards Creek substation. Under certain conditions, construction can be  
9 accelerated or slowed down depending on the number of crews working at the  
10 same time. The project is expected to be built in phases, with the south end  
11 (from the Talbot Hill substation to the proposed Richards Creek substation)  
12 being the first phase, followed by the north phase as soon as design,  
13 permitting, and energization of the south phase would allow.

14 *Id.* at 006866. The Final EIS then explained the utility and benefit of PSE’s phased  
15 construction and permitting schedule:

16           The project needs to be built in two construction phases to keep the Lakeside  
17 substation energized, thereby keeping the transmission system on-line to serve  
18 customers. During the construction of the south phase, the Lakeside substation  
19 will be served from the north and likewise, once the south phase is complete, it  
20 will be used to serve the Eastside while the north half is constructed.

21 *Id.* Thus, the Final EIS not only disclosed and evaluated PSE’s phased schedule, but it  
22 also explained to the public and future decisionmakers that this schedule allows PSE  
23 to keep the transmission line on-line to serve customers during construction while the  
24 northern phase, located in north Bellevue and Redmond, is permitted and constructed.  
25 *Id.*; AR 000021-22.

          PSE has already submitted permit applications to the City, Renton, Newcastle,  
and unincorporated King County for land use approval in connection with the first

1 construction phase of the Project. *Id.* at 000010, 001319, 006822.<sup>3</sup> The CUP approval  
2 before this Court, as well as the permit applications PSE has submitted to the other  
3 jurisdictions, are consistent with the phased construction plan analyzed in the Final  
4 EIS. *Id.* at 006823, 006866. In fact, the Final EIS examined PSE’s specific application  
5 details for the South Bellevue and Newcastle Segments concurrent with the final stage  
6 of environmental review:

7 PSE submitted two permit applications to the Cities of Bellevue and Newcastle  
8 for the initial phase of project construction; the permit applications included more  
9 detailed, site-specific information for portions of the project alignment (namely,  
10 the Bellevue South Segment, the Richards Creek substation site, that portion of  
11 the Bellevue Central Segment that contains the Lakeside substation, and the  
12 Newcastle Segment). The permit applications include refined, site-specific  
13 information for project components such as proposed pole types and locations,  
14 as well as vegetation survey and clearing data. The Partner Cities decided that  
15 the analysis in the Final EIS should reflect the most up-to-date data and  
16 information, which because of the permit applications differs in level of detail from  
17 segment to segment.

18 *Id.* at 07557, 006887. Still, the Final EIS never stated that the first phase of construction  
19 would be limited to the South Bellevue Segment, or that the first phase of construction  
20 from Renton to Bellevue, standing alone, can feasibly attain or approximate PSE’s  
21 stated objectives for the larger Energize Eastside project. *Id.* at 006823, 006866.

22 **C. The Independent Analysis of Project Need.**

23 At each phase of the multi-year environmental review process and throughout  
24 the City’s land use process, CENSE, its members, its experts, and its attorney  
25

---

<sup>3</sup> The Renton Hearing Examiner issued a Decision approving the Energize Eastside project permit applications that PSE submitted in Renton, and the Renton Hearing Examiner Decision, as well as CENSE’s opposition to that Decision, is publicly available at:

<https://edocs.rentonwa.gov/Documents/Browse.aspx?id=8095664&dbid=0&repo=CityofRenton>



1 submitted public comment objecting to the Project. *Id.* at 006426-6428, 06491-6498,  
2 006503-6507, 006738-6739, 007736-7740. A recurring objection raised by CENSE is  
3 that the Project is not needed, or that PSE failed to demonstrate the South Bellevue  
4 Segment is needed, or that the City cannot evaluate PSE's demonstration of operational  
5 need unless PSE shares certain energy "consumption data" with CENSE. *Id.*; see  
6 Opposition at 16-21.

7 Between 2012 and 2015, PSE and the City commissioned three studies that  
8 confirmed PSE's stated need for the Energize Eastside project. AR 000013, 001323-  
9 1324, 001420-1424. The City then commissioned an independent analysis by Utility  
10 System Efficiencies, Inc. (USE Study), which evaluated PSE's system, again confirmed  
11 the need for the Project, and was presented to the City Council on May 4, 2015. *Id.* at  
12 001978-2053, 001282. Thereafter, the independent consulting firm Stantec Consulting  
13 Services, Inc. reviewed PSE's analysis of Project need and confirmed the analysis  
14 followed standard industry practice (Stantec Report). *Id.* at 000013, 001864-1873.  
15

16 The Stantec Report stated the following with respect to Project need:

17 *[A]n overloaded electrical system overheats. During peak load periods, operators*  
18 *use CAPs [corrective action plans] to turn off (referred to as opening) lines from*  
19 *either Sammamish or Talbot Hill substation to reduce heating on certain system*  
20 *transformers and lines so that they will not be destroyed. They may be able to*  
21 *keep the Eastside area supplied with electricity, but in doing so large areas of the*  
22 *Eastside may only be fed from one source. If something happens to that source,*  
23 *such as a tree falling into a line, or a car accidentally taking out a pole, or a piece*  
24 *of equipment fails due to fatigue, at that moment the last viable connection to a*  
25 *power source is gone and the lights go out. Even worse, as load continues to*  
*grow, or the area hits the coldest winter or hottest summer on record, the*  
*operator will be left with a decision: who will have power and who will not. Until*  
*the peak period is over, in order to reduce overloads to an acceptable level, large*  
*portions of the Eastside area could be left without power. A further possible*  
*consequence would be that hospitals, nursing homes, fire departments, police*  
*stations and other critical support services must run on emergency power or are*

1           *without power. In this situation the event has become not just an inconvenience*  
2           *but a hazard....*

3           *Regional electrical reliability is important to local communities. Without a reliable*  
4           *regional backbone, energy generated by a wide variety of sources could not be*  
5           *efficiently delivered to the population areas that need it. All the utilities in the*  
6           *Northwest bear some responsibility to keep the transmission system in working*  
7           *order. However, a local utility's main role is its customers and each has a legal*  
8           *duty to provide electricity to customers in its service area.*

9           *The local utility has two roles to play. On the community level, it needs to provide*  
10          *an adequate infrastructure of facilities and equipment that can reliably deliver*  
11          *energy to its local customers. As a regional player, the utility provides its*  
12          *customers access to the larger interconnected system while making sure its*  
13          *system is as reliable as its regional neighbors' systems and not a detriment to the*  
14          *whole.*

15          *The Energize Eastside Project is designed to bring the needed infrastructure to*  
16          *supply the local need. Any regional benefits that it provides would be added*  
17          *benefits of a stronger regional source, but these are not the primary reasons why*  
18          *the project has been proposed. The transmission capacity deficiency is driven*  
19          *primarily by local rather than regional growth. If the entire region surrounding the*  
20          *Eastside was eliminated or disconnected from Sammamish and Talbot Hill*  
21          *substations, and replaced with an independent 230 kV source of power at both*  
22          *ends, the result would be the same. The Eastside 230 -115 kV system as it exists*  
23          *cannot supply the projected load under all circumstances, with the required levels*  
24          *of reliability that the community and neighboring utilities expect.*

25          AR 000016-17, 001871-1872.

            The Stantec Report explained that PSE is required to provide adequate  
infrastructure to meet peak “demand” periods. *Id.* at 000017, 001872. “Demand” is  
expressed in kilowatts or megawatts (kW or MW) and represents usage at a single point  
in time, much like a car’s speedometer shows miles per hour (mph) at a precise  
moment in time. AR 001986; TR 000456-459. As required by the National Electric  
Reliability Corporation (NERC), PSE’s determination of need for the Project is based on  
peak demand periods, that is, spikes in demand due to winter cold snaps or summer

1 heat waves, for example. AR 000014-18, 001864-1873; TR 000053-57, 000065-66,  
2 000462-463. PSE must plan to meet peak demand to avoid blackouts. *Id.*; TR 000061.

3 By contrast, “use,” “energy” and “consumption” refer to the amount of power  
4 consumed over a period of time, such as over an hour or a year, and are expressed in  
5 kilowatt-hours and megawatt-hours (kWh and MWh), much like a car’s odometer shows  
6 total miles driven. AR 001986; TR 000456-459, 000462-463. Of course, a transmission  
7 system must be capable of delivering power when it is in very high demand, not just at  
8 times when usage is moderate or low. If a system cannot meet peak demand, power  
9 outages affect everyone, including residential uses and the critical support services like  
10 the hospitals, nursing homes, fire departments, and police stations identified in the  
11 Stantec Report. AR 000026, 001872.

12 **D. PSE’s CUP Application for the South Bellevue Segment.**

13 On September 8, 2017, PSE applied for permits from the City for the South  
14 Bellevue Segment of the Energize Eastside project. *Id.* at 001314-1315, 001321-1325.  
15 PSE submitted two land use permit applications to the City for the South Bellevue  
16 Segment simultaneously: (1) the CUP at issue in this lawsuit, and (2) a Critical Areas  
17 Land Use Permit (CALUP). *Id.*<sup>4</sup>

18 Consistent with the analysis in the Final EIS, the South Bellevue Segment CUP  
19 application requested approval to construct the Richards Creek substation and to  
20 upgrade 3.3 miles of 115-thousand volt (kV) transmission lines with 230 kV lines within  
21  
22

23  
24 <sup>4</sup> Neither CENSE nor any other party challenged the City’s approval of the CALUP and that City  
25 decision is now final and not subject to any direct or collateral challenge by CENSE in this  
lawsuit. AR 000006-7, 000027.

1 the existing utility corridor. *Id.* at 001314, 001319, 006860. The Richards Creek  
2 substation is the “driving piece” of PSE’s CUP proposal and will “step down” bulk  
3 electricity to provide service throughout the Eastside. TR 000456, 000713; AR 000010-  
4 11, 000021-22, 001551, 006866.

5 PSE’s CUP application was subject to the Electrical Utility Facilities provisions in  
6 LUC 20.20.255 and the CUP decision criteria in LUC 20.30B.140. *Id.* at 000005-6,  
7 001416. The Electrical Utility Facilities provisions in LUC 20.20.255 imposed  
8 additional requirements on PSE’s proposal above and beyond standard CUP  
9 provisions, including an Alternative Siting Analysis (ASA) and additional decision  
10 criteria in LUC 20.20.255.E. *Id.* at 001354-1357, 001420-1426. Consistent with the  
11 requirements in LUC 20.20.255.D, PSE submitted an ASA, containing four (4) parts  
12 with fourteen (14) subparts and four (4) attachments, with its CUP Application  
13 materials. *Id.* at 001534-1566.

14  
15 The ASA considered three siting alternatives for the transmission line upgrades  
16 and proposed substation (LUC 20.20.255.D.1). *Id.* at 001354-1357, 001541-1553. The  
17 ASA described the sites, the land use districts within which the sites are located,  
18 mapped the location of the sites, provided justification for locating the infrastructure  
19 upgrades in the existing utility corridor, and depicted the proximity of the sites to  
20 neighborhood business land use districts, residential land use districts, and transition  
21 areas (LUC 20.20.255.D.2.a-c). *Id.* at 001355, 001541-1556, 001568-1574. The ASA  
22 explained that “[t]he Energize Eastside Project will provide an upgraded, reliable  
23 transmission system serving the Eastside generally and adjacent uses specifically.  
24 The Project is needed because cumulatively, demand on the Eastside is increasing,  
25

1 including in areas along the South Bellevue Segment” (LUC 20.20.255.D.2.c.i-ii). *Id.* at  
2 001543.

3 The ASA also provided a location selection hierarchy, as required by LUC  
4 20.20.255.D.2.d., and described the range of technologies PSE considered for its  
5 proposal, how the proposal provides reliability to the customers served, how the  
6 components relate to system reliability, and how the proposal includes technology best  
7 suited to mitigate impacts on surrounding properties. *Id.* at 001355-56, 001545-1547,  
8 001553-1562. The ASA explained the community outreach PSE conducted over many  
9 years prior to submittal of the CUP application. *Id.* at 001356-1357, 001562-001565.

10 **E. The City’s Process I (Hearing Examiner Quasi-Judicial Decision)**  
11 **Land Use Process.**

12 The City processed PSE’s CUP application pursuant to the City’s Process I LUC  
13 provisions, codified at LUC 20.35.100 to 20.35.150.<sup>5</sup> Process I land use decisions  
14 require public notice of the application, a period for public comment, and a public  
15 meeting. LUC 20.35.120 – 20.35.127; AR 001319-1321, 001399. Because PSE’s  
16 proposal was for electrical utility facilities, LUC 20.20.255 requires an additional public  
17 meeting as part of the land use process. *Id.* at 001399.

18 Under Process I, the City’s Land Use Director issues a recommendation to the  
19 Hearing Examiner, and the Hearing Examiner, after holding a public hearing, issues a  
20 decision on the application. LUC 20.35.130 – 20.35.140. The Hearing Examiner’s  
21 decision may be appealed to the City Council, and the LUC requires that the Council  
22

23  
24 \_\_\_\_\_  
25 <sup>5</sup> For the Court’s convenience, a true and correct copy of LUC 20.35.100 to 20.35.150 is  
attached to this Response Brief as Attachment A.

1 “shall accord substantial weight to the decision of the Hearing Examiner.” *Id.* at  
2 20.35.150.A.7.a. The City Council’s quasi-judicial decision on appeal is the City’s final  
3 decision. *Id.* at 20.35.150.D.<sup>6</sup>

4 **F. The Land Use Director’s Recommendation of Approval with**  
5 **Conditions.**

6 Consistent with Process I, following the public meetings, and after accepting  
7 public comments for over fifteen (15) months, the City’s Land Use Director  
8 recommended approval of PSE’s CUP on January 24, 2019. AR 001314, 001354-1357,  
9 001420-1436. In connection with the Director’s recommendation, the Development  
10 Services Department (DSD) issued a 151-page Staff Report with fifty-three (53)  
11 conditions of approval and ten (10) separate attachments. *Id.* at 001314-2825.

12 The Staff Report included a discussion of PSE’s proposal (AR 001319, 001321-  
13 1338), a lengthy SEPA discussion (*id.* at 001387-1398), and an in-depth explanation of  
14 why PSE’s proposal was consistent with the City’s Comprehensive Plan (*id.* at 001426-  
15 1432, 002206-2232). The Staff Report analyzed and incorporated the independent  
16 studies that described the need to address Eastside transmission capacity, including the  
17 Stantec Report, USE Study, and the results of PSE’s forecasts. *Id.* at 000013, 001323-  
18 1324, 001864-1873, 001977-2053, 005545-005057. The Staff Report confirmed that  
19  
20  
21

22 <sup>6</sup> CENSE represents to the Court, on page 18 of its Opening Brief, that PSE’s CUP application  
23 was subject to LUC 20.35.337.A and 20.35.340.A and that the Hearing Examiner “makes a  
24 recommendation on the proposal after the public hearing.” This is not correct. PSE’s proposal  
25 requires a Process I land use decision by the Hearing Examiner after a public hearing, and in  
the absence of any appeal to the City Council, that Hearing Examiner decision is the City’s final  
decision. See LUC 20.35.140 – 20.35.150. The LUC provisions cited and excerpted by CENSE,  
*i.e.*, LUC 20.35.337.A and 20.35.340, have no bearing on this matter whatsoever, and the Court  
should disregard that portion of CENSE’s Opening Brief in its entirety.

1 power outages affect everyone, including residential uses and critical support services.  
2 AR 000026, 001405, 001425-1426, 001872.

3       Importantly, the Staff Report explained in detail why PSE’s proposal satisfied the  
4 ASA requirements in LUC 20.20.255.D, the Conditional Use decision criteria in LUC  
5 20.30B.140, and the Electrical Utility Facilities decision criteria in LUC 20.20.255.E. *Id.*  
6 at 001327-1328, 001354-1360, 001420-1436. The Staff Report memorialized the public  
7 comments received by the City, the issues raised by the comments, and the City’s  
8 responses to the comments. *Id.* at 001399-1415.

9                   **G. The Prehearing Motions Filed by CENSE.**

10       Although not required by City Code, the City published notice of a February 13,  
11 2019 Prehearing Conference when it issued the Staff Report and Director’s  
12 recommendation. *Id.* at 001315. CENSE took advantage of this courtesy notice and  
13 filed multiple motions in an attempt to stop the City’s land use process. *Id.* at 00841.  
14 The motions argued that PSE had violated SEPA by applying for permits for the South  
15 Bellevue Segment without simultaneously applying for permits for the northern segment  
16 of the Project. *Id.* at 001068. The motions also asked the Hearing Examiner to compel  
17 PSE to produce certain information and energy “consumption data” that CENSE  
18 believed was necessary for the hearing. *Id.* at 001108.

19       In response, the City explained that phased construction and permitting for a  
20 linear infrastructure project does not violate SEPA and that State law and the LUC do  
21 not allow the City to abandon its mandatory land use processes based on CENSE’s  
22 opposition to PSE’s CUP application. *Id.* at 000931-939. PSE opposed CENSE’s  
23 request for production, arguing that CENSE’s request was unnecessary for the Process  
24  
25

1 I public hearing and would thwart both the processing of PSE's CUP application and the  
2 public's right to safe, reliable power. *Id.* at 000987-1002.

3 Although the Hearing Examiner denied CENSE's motions and kept the hearing  
4 on calendar as scheduled, he allowed CENSE to continue to raise these same  
5 arguments throughout the 4 days of hearing, and PSE and the City continued to  
6 respond to CENSE's arguments throughout the hearing. TR 000605-611, 000654-655,  
7 000682-687. The Hearing Examiner also addressed CENSE's legal arguments at  
8 length in his Decision. AR 000020-26, 000032-39.

9 **H. The Process I Public Hearing.**

10 1. Public Testimony:

11 The Hearing Examiner conducted a public hearing on the CUP over the course of  
12 four (4) days between March 28, 2019 and April 8, 2019. On the first two (2) days of  
13 hearing, the Hearing Examiner received public testimony from approximately fifty-six  
14 (56) individuals. AR 000846, 000007-8, 000022-23. Local residents, business owners,  
15 community leaders, and health care professionals testified in support of PSE's CUP  
16 application, citing the need for safe and reliable power as Bellevue and the Eastside  
17 continue to grow. *Id.* at 000022-23, 000032-33; TR 000101-108, 000110-113, 000121-  
18 124, 000148-157, 000161-164, 000173-174, 000241-245, 000250-252, 000285-288.

19 Conversely, many citizens who live along the existing utility corridor opposed  
20 PSE's application, primarily opposing PSE's finding of Project "need" and voicing  
21 concerns with hazards posed by co-located electrical lines over the existing Olympic  
22 petroleum pipeline. AR at 000016, 000023, 000026, 000033; TR 000593-595. All told,  
23 approximately twenty (20) speakers expressed support for PSE's CUP application and  
24  
25



1 approximately thirty (30) people expressed opposition. AR 000032. In addition to the  
2 public testimony, the Hearing Examiner received roughly two-hundred and twenty (220)  
3 comments from citizens and businesses in support of and in opposition to PSE's  
4 application. *Id.* at 000846.

5 2. CENSE provides hours of testimony and argument during the hearing:

6 The Hearing Examiner was generous in allowing CENSE, its members, its  
7 experts, and its attorney to present their opposition to PSE's CUP application and the  
8 larger Energize Eastside project. On the first day of the hearing, the Hearing Examiner  
9 provided CENSE with thirty (30) minutes to present argument from counsel and  
10 testimony from CENSE's expert witness. TR 000090-91, 000130-133, 000146-147. On  
11 the second day, CENSE presented thirty-five (35) additional minutes of testimony, along  
12 with legal argument. *Id.* at 000296-297.

13 As the public hearing progressed, the Hearing Examiner overruled PSE's  
14 objections and granted CENSE an additional fifteen (15) minutes of closing argument.  
15 *Id.* at 000621-622, 000644, 000652-653. By the close of the hearing, CENSE had  
16 provided over two (2) hours of presentation, testimony, legal argument, and public  
17 comment; and the Hearing Examiner admitted and considered a total of thirteen (13)  
18 discreet motions, briefs, and written exhibits from CENSE. AR 000841-843, 001312.

19 3. DSD's participation in the public hearing:

20 At the outset of the public hearing, City Staff provided a summary of PSE's  
21 application, the Staff Report, the applicable decision criteria under the LUC, and the  
22 Process I provisions in the LUC. TR 000016-30; AR 013387-13398. During rebuttal,  
23 DSD provided expert testimony from Mark Johnson, the City's environmental  
24  
25

1 consultant, who managed the EIS process from start to finish. TR 000580-597. At the  
2 close of this presentation, Mr. Johnson and the City's Land Use Director confirmed that  
3 no new information had been proffered during the public hearing that would change the  
4 conclusions reached during the EIS and land use processes, respectively. TR 000593-  
5 596, 000699.

6 DSD's closing statement rebutted CENSE's arguments that PSE's phased  
7 construction plan violated SEPA or that the Energize Eastside project assessed in the  
8 Final EIS had changed based on this phased construction plan. TR 000681-687; see  
9 also AR 006812-6835, 006866. DSD also provided a summary of the City's work and  
10 the findings in the Staff Report; responded to CENSE's various challenges to PSE's  
11 demonstration of operational need; and explained why PSE's proposal complied with  
12 the applicable decision criteria found in LUC 20.20.255.E. TR 000676-706.

13  
14 4. PSE's presentation during the public hearing:

15 Throughout the hearing, PSE provided substantial evidence that demonstrated  
16 the Energize Eastside project and the attendant South Bellevue Segment are needed to  
17 meet local electricity peak demand growth and protect electrical grid reliability from  
18 Redmond in the north to Renton in the south. For example, the testimony of PSE's  
19 Director of Planning, Catherine Koch, established that there is no legitimate dispute  
20 regarding PSE's responsibility to plan and operate the electrical system consistent with  
21 federal standards and guidelines. AR 000011, 013432-13441; TR 000052-63. In turn,  
22 PSE's Director of Electrical Operations, Dan Koch, provided lengthy testimony and  
23 submitted written comment explaining why PSE is required to plan for peak demand  
24 and worst-case scenarios and why any dereliction of this duty by PSE could lead to  
25

1 severe consequences for Bellevue residents and businesses. AR 000014, 000024,  
2 013407-013430; TR 000043-52.

3 Furthermore, Jens Nedrud, PSE's Manager of Electrical System Planning,  
4 provided persuasive, material, and substantial expert testimony confirming the proposal  
5 is consistent with PSE's System Plan. AR 000017-18, 000024-25, 013443-13452; TR  
6 000062-75. Mr. Nedrud and Mr. Koch each specifically refuted the arguments provided  
7 by CENSE regarding project need:

8 **Mr. Koch:** ...As you heard from my colleague, Mr. Nedrud, PSE continues to  
9 revisit the need for Energize Eastside annually. We've confirmed under the  
10 applicable TPL planning standards that this project is needed to serve customers  
11 in Bellevue specifically and the Eastside more broadly. I appreciate this need,  
12 especially because I'm the director of electric operations and I oversee the  
13 development of the corrective action plans or "CAPs," and CAPs are needed  
14 when peak demand is, has the potential to exceed the delivery capacity if there  
15 are temporary system deficiencies. And, as we know, **peak demand in Bellevue  
16 has been going up along with the rest of the Eastside, and we are now  
17 ready to use CAPs in Bellevue, as the threshold has been exceeded three  
18 times in the last two years, as we've shown. CAPs now mean load shedding  
19 or forced outages, which we work hard to avoid. But consistent with NERC  
20 criteria, we must now plan for them until the Energize Eastside project is  
21 complete.**

22 TR 000562 (emphasis added); see *id.*

23 The Hearing Examiner found the testimony provided by PSE's expert witnesses  
24 credible and persuasive:

25 *The Examiner finds that Mr. Koch, Mr. Nedrud, Ms. Koch, and other PSE  
witnesses appeared credible and forthright during their testimony presented at  
the public hearing. Even after hearing challenges and dismissive remarks about  
their opinions and work related to this project, Mr. Koch, Mr. Nedrud and other  
PSE witnesses appeared thoughtful and genuinely concerned that the current  
PSE system could soon be forced to use load-shedding (rolling blackouts) to  
address problems arising from peak demand on existing substations and  
powerlines, negatively impacting Bellevue residents and businesses.*

1 AR 000014. In addition to this testimony, PSE submitted twenty-five (25) exhibits that  
2 supported approval of its CUP application and refuted the opposition presented during  
3 the hearing. AR 013407-13593.

4 PSE's closing statement highlighted the independent reports prepared by the  
5 City's consultants that, coupled with PSE's expert testimony, supported approval of the  
6 CUP and showed, "[i]f a transmission system is not planned to sufficiently handle peak  
7 demand, the system will fail." TR 000719-731. PSE rebutted CENSE's challenges to  
8 the integrity of PSE's ASA and explained why the City's exhaustive land use review also  
9 supported approval of the CUP. *Id.* at 000710-718, 000732-742.

10 **I. The Hearing Examiner Decision.**

11 The Hearing Examiner issued his Decision on June 25, 2019. AR 000004-40.  
12 The thirty-seven (37) page Decision detailed why the technical studies, expert  
13 testimony, and argument presented by PSE established that several key aspects of the  
14 opposition presented by CENSE were defective and not credible. *Id.* at 000023-26. The  
15 Decision addressed CENSE's objections to PSE's construction plan and found that the  
16 environmental review undertaken by the Partner Cities supported approval of the CUP.  
17 *Id.* at 000020-21.

18 The Decision quoted at length from the Stantec Report (*id.* at 000016-17) and  
19 held that, even taking CENSE's arguments at face value, PSE had satisfied LUC  
20 20.20.255.E and established operational need for the South Bellevue Segment:  
21

22 *Even if the City's code could be read to require electrical facilities to only*  
23 *locate in areas that benefit or need the new or expanded electrical facility in*  
24 *question, in this situation, that is precisely what is proposed, because "load-*  
25 *shedding" – i.e. rolling blackouts – is currently part of PSE's corrective action*  
*plan (CAP) options in neighborhoods throughout the Eastside, including*  
*residential neighborhoods that are located along the route of the South Bellevue*

1            *Segment. Given these circumstances, there truly is a critical “need” for the*  
2            *project to prevent such problems going forward in the residential areas located*  
3            *along the route.*

4            *Id.* at 000026. The Hearing Examiner also found that the vast majority of comments  
5            opposing the Project came from individuals with personal motivations like potential view  
6            impacts to their residential properties, even though most of these opposition witnesses  
7            moved into their homes after the existing powerlines and utility corridor were already in  
8            place. *Id.* at 000023-24.

9            Tellingly, these opponents of the Energize Eastside project and the South  
10            Bellevue Segment CUP “appeared jaded and heavily influenced by their desire to stop  
11            the project at any cost, to preserve existing conditions.” *Id.* at 000024. The Hearing  
12            Examiner concluded that CENSE, its representatives, and other opponents articulated  
13            their concerns but did not offer sufficient, relevant, authoritative, or credible evidence  
14            that would rebut the findings and recommendations made in the Staff Report or the  
15            substantial evidence presented by PSE throughout the land use process. *Id.* at 000024.

16            Ultimately, the Hearing Examiner approved PSE’s requested CUP, with  
17            conditions. *Id.* at 000040, 000042-61. The Hearing Examiner did not adjudicate the  
18            adequacy of the Final EIS because the City does not provide for an administrative  
19            appeal of EIS adequacy. *Id.* at 000072, 000958-959; TR 000574-575, 00577, 00685.  
20            Under BCC 22.02.150.B, any challenge to the adequacy of an EIS must be reserved for  
21            an appeal to Superior Court. *Id.*

22            **J.        The Appeals to the City Council.**

23            CENSE, three (3) members of CENSE, and their co-opponent Citizens for  
24            Sensible Eastside Energy (CSEE) filed administrative appeals of the Hearing Examiner  
25

1 Decision. AR 000128-129, 000132. All of the appellants, PSE, and DSD provided  
2 written briefs to the City Council, and the Council held a limited public hearing on  
3 October 16, 2019. *Id.* at 000065, 000097. At the hearing, CENSE and the other  
4 appellants were afforded thirty (30) minutes of oral argument, which was double the  
5 amount of time allowed under the City Council rules. TR 001099. At the close of the  
6 hearing, the Mayor explained that the City Council would review the voluminous record  
7 and issue its decision at a later date. *Id.* at 001165-1166.

8 On November 14, 2019, at a duly noticed public meeting, the City Council  
9 directed City staff to draft an Ordinance adopting the Hearing Examiner's Decision. TR  
10 001192-1193. During this meeting, the Mayor provided a lengthy explanation of why  
11 the Hearing Examiner's Decision was supported by material and substantial evidence in  
12 the record. TR 001177-1190. The Mayor specifically explained why PSE had satisfied  
13 the LUC criteria requiring PSE to demonstrate operational need (*id.* at 001181-1185),  
14 and he addressed CENSE's objections to PSE's phased construction plan for the  
15 Energize Eastside project (*id.* at 001187-1188).

17 On December 2, 2019, the City Council formally and unanimously, with one  
18 recusal, adopted the Hearing Examiner's Decision and denied the four appeals through  
19 the enactment of Ordinance 6494. AR 000001-3; TR 01202-1203. CENSE then filed  
20 the current lawsuit challenging the City's CUP approval for the South Bellevue Segment  
21 and the Partner Cities' environmental review of the Energize Eastside project.

22 //

23 //

24 //

25 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**III. STATEMENT OF THE ISSUES**

1. Did the City engage in an unlawful procedure when it approved PSE's CUP application for the South Bellevue Segment of the Energize Eastside project?
2. Did the City err when it concluded that PSE complied with the Electrical Utility Facility Decision Criteria in LUC 20.20.255.E?
3. Is the environmental review conducted by the Partner Cities for the Energize Eastside project inadequate as a matter of law?

**IV. LEGAL ANALYSIS**

**A. Standards of Review.**

1. Standard of Review for the CUP approval:

CENSE's challenge to the City's CUP approval is brought pursuant to the Land Use Petition Act, chapter 36.70C RCW (LUPA). Under LUPA, CENSE carries the burden of establishing that the City erred under at least one of six standards of review. *Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Assocs.*, 151 Wn.2d 279, 288, 87 P.3d 1176 (2004). The standards alleged by CENSE are:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court; [or]
- (d) The land use decision is a clearly erroneous application of the law to the facts.....

RCW 36.70C.130(1)(a), (b), (c) & (d).

1 A reviewing court considers only the administrative record and gives “substantial  
2 deference to both the legal and factual determinations of a hearing examiner as the  
3 local authority with expertise in land use regulations.” *Lanzce G. Douglass, Inc. v. City*  
4 *of Spokane Valley*, 154 Wn. App. 408, 415, 225 P.3d 448 (2010) (citing *City of Medina*  
5 *v. T-Mobile USA, Inc.*, 123 Wn. App. 19, 24, 95 P.3d 377 (2004)). Evidence and any  
6 inferences are viewed “in a light most favorable to the party that prevailed in the highest  
7 forum exercising fact finding authority.” *Id.* (citing *City of University Place v. McGuire*,  
8 144 Wn.2d 640, 652, 30 P.3d 453 (2001); *Willapa Grays Harbor Oyster Growers Ass’n*  
9 *v. Moby Dick Corp.*, 115 Wn. App. 417, 429, 62 P.3d 912 (2003)); *Woods v. Kittitas*  
10 *County*, 162 Wn.2d 597, 617, 174 P.3d 25 (2007). Here, the Hearing Examiner, like a  
11 trial judge, exercised the requisite fact finding authority. LUC 20.35.137.

12 Under the substantial evidence standard applicable to RCW 36.70C.130(1)(c),  
13 there must be a sufficient quantum of evidence in the record to persuade a reasonable  
14 person that the declared premise is true. *Wenatchee Sportsmen Ass’n v. Chelan*  
15 *County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). Similarly, a finding is clearly  
16 erroneous under subsection (d) when, although there is evidence to support it, the  
17 reviewing court is left with the definite and firm conviction that a mistake has been  
18 committed. *Id.*

19  
20 2. Standard of Review for EIS Adequacy:

21 The Hearing Examiner and City Council did not adjudicate the adequacy of the  
22 Final EIS because the City does not provide for an administrative appeal of EIS  
23 adequacy. BCC 22.02.150.B; see AR 000985-959; TR 000574, 000577, 000685. As a  
24 result, the administrative decision of EIS adequacy by the City’s Environmental  
25



1 Coordinator, who is the SEPA Responsible Official under WAC 197-11-788 and 197-11-  
2 910, not the City's subsequent quasi-judicial decision on the CUP, is the decision that  
3 CENSE challenges as inconsistent with the requirements of SEPA. *Glasser v. City of*  
4 *Seattle, Office of Hearing Exam'r*, 139 Wn. App. 728, 739-740, 162 P.3d 1134 (2007).

5 This Court's review of EIS adequacy is *de novo*, but the Court gives "substantial  
6 weight" to the Environmental Coordinator's determination that the EIS is adequate. *Id.*  
7 (citing RCW 43.21C.090; *Klickitat County Citizens Against Imported Waste v. Klickitat*  
8 *County*, 122 Wn.2d 619, 633, 860 P.2d 390, 866 P.2d 1256 (1993) (citing R. Settle, *The*  
9 *Washington State Environmental Policy Act: A Legal and Policy Analysis* § 14(a)(i) (4th  
10 ed.1993)). The Court's *de novo* review is tempered by both the deference to agency  
11 discretion required by SEPA, at RCW 43.21C.090, and the "rule of reason." *Id.*; *Cheney*  
12 *v. Mountlake Terrace*, 87 Wn.2d 338, 344-45, 552 P.2d 184 (1976).

13  
14 Under the "rule of reason," the EIS must present decision makers, in this case  
15 the City of Bellevue, with a "reasonably thorough discussion of the significant aspects  
16 of the probable environmental consequences" of the agency's potential land use  
17 decision. *Glasser*, 139 Wn. App. at 740 (citing *Klickitat Cnty.*, 122 Wn.2d at 633, 860  
18 P.2d 390 (quoting *Cheney*, 87 Wn.2d at 344-45, 552 P.2d 184)); *Residents Opposed to*  
19 *Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 311,  
20 197 P.3d 1153 (2008) (citation omitted). Thus, the determination by the City's  
21 Environmental Coordinator that the Final EIS was adequate "shall be accorded  
22 substantial weight" under SEPA, and this judicial deference mandated by SEPA,  
23 combined with the "rule of reason," is the appropriate standard of review for adjudication  
24 of CENSE's challenge to EIS adequacy. *Id.*; RCW 43.21C.090.  
25

1           **B.     Applicable Decision Criteria under LUC 20.20.255.E.**

2           PSE's CUP application was subject to the Electrical Utility Facilities provisions in  
3 LUC 20.20.255 and the CUP decision criteria in LUC 20.30B.140.<sup>7</sup> Under the LUC  
4 20.20.255.E decision criteria, PSE was required to demonstrate that its CUP application  
5 complied with the following statutory requirements:

- 6           1. The proposal is consistent with Puget Sound Energy's System Plan;
- 7           2. The design, use, and operation of the electrical utility facility complies with  
8 applicable guidelines, rules, regulations or statutes adopted by state law, or any  
9 agency or jurisdiction with authority;
- 10          3. The applicant shall demonstrate that an operational need exists that requires the  
11 location or expansion at the proposed site;
- 12          4. The applicant shall demonstrate that the proposed electrical utility facility  
13 improves reliability to the customers served and reliability of the system as a  
14 whole, as certified by the applicant's licensed engineer;
- 15          5. For proposals located on sensitive sites as referenced in Figure UT.5a of the  
16 Utility Element of the Comprehensive Plan, the applicant shall demonstrate:
- 17           a. Compliance with the alternative siting analysis requirements of [LUC  
18 20.20.255.D];
- 19           b. Where feasible, the preferred site alternative identified in subsection  
20 D.2.d of this section is located within the land use district requiring  
21 additional service and residential land use districts are avoided when  
22 the proposed new or expanded electrical utility facility serves a  
23 nonresidential land use district;
- 24          6. The proposal shall provide mitigation sufficient to eliminate or minimize long-term  
25 impacts to properties located near an electrical utility facility.

LUC 20.20.255.E.1-6.

---

<sup>7</sup> CENSE does not argue the City erred when it concluded PSE's proposal complied with the CUP decision criteria in LUC 20.30B.140, so this issue is not before the Court. *Holder v. City of Vancouver*, 136 Wn. App. 104, 107, 147 P.3d 641 (2006) (a party abandons an issue on appeal by failing to pursue it or by failing to brief it).

1 CENSE argues that PSE failed to comply with LUC 20.20.255.E.3 and LUC  
2 20.20.255.E.5, violated the ASA requirements in LUC 20.20.255.D, and that the Hearing  
3 Examiner failed to conduct a fair hearing. Based on these arguments, CENSE  
4 contends that the Hearing Examiner engaged in unlawful procedure (RCW  
5 36.70C.130(1)(a)) and that the City's approval of PSE's CUP application was an  
6 erroneous interpretation of law (RCW 36.70C.130(1)(b)), not supported by substantial  
7 evidence (RCW 36.70C.130(1)(c)), and a clearly erroneous application of the law to the  
8 facts (RCW 36.70C.130(1)(d)). Opening at 20-21, 34.

9 **V. LEGAL ARGUMENT**

10 **A. The City did not engage in an unlawful procedure when it approved**  
11 **PSE's CUP application.**

12 CENSE argues that the Hearing Examiner engaged in an unlawful procedure in  
13 violation of RCW 36.70C.130(1)(a) because the Hearing Examiner did not compel PSE  
14 to provide CENSE with "significant information relevant to mandatory code criteria." *Id.*  
15 at 16. CENSE claims the Hearing Examiner violated the appearance of fairness  
16 doctrine (RCW 42.36.110), failed to provide the "minimal requirements for a public  
17 hearing," and lacked substantial evidence to support his Decision because he did not  
18 compel PSE to produce data "concerning the actual consumption of electricity in the  
19 area." Opening at 16-21.

20 CENSE's "unlawful procedure" argument completely ignores the record  
21 developed over the 4 days of public hearing before the Hearing Examiner. CENSE  
22 fully participated in that public hearing, and the Hearing Examiner devoted hours of  
23 public hearing time to CENSE, its members, its experts, and its attorney so that  
24 CENSE could present and refine its opposition to PSE's CUP application and the  
25

1 larger Energize Eastside project. AR 000841-843, 001312; TR 000090-91, 000130-  
2 133, 000146-147, 000296-297. When PSE objected to the Hearing Examiner's  
3 decision to grant CENSE this "super party" status during the public hearing, the  
4 Hearing Examiner explained his rationale:

5 **PSE Attorney:** *Your Honor, I'm going to object simply to maintain the record.  
6 Closing argument is reserved to the City and the applicant....*

7 **Hearing Examiner:** *Oh, I recognize that. But we do have a legal issue that's  
8 floating around, and I just want to make sure that the record is fully developed  
9 and I'm fully informed before I address the issue. And if I have people in front of  
10 me that can tell me why I'm right or wrong, I like to take advantage of that. I'm not  
11 one who doesn't listen to people. I think it's better to hear from more than less.*

12 TR 000621-622. Later, the Hearing Examiner explained why he had deviated from his  
13 standard practice and would allow CENSE and another Project opponent extra time to  
14 provide legal argument at the hearing:

15 **Hearing Examiner:** *And I will tell you, it is not my practice to have closing  
16 arguments from everyone who came. It's just not. The parties are entitled closing  
17 arguments, and intervenors are allowed that too. But here because we do have  
18 legal issues that were raised, raised by CENSE citizens group and [co-opponent  
19 CSEE] joined in that, I think what I'm going to do is, I'm going to allow [CENSE]  
20 and [CSEE] to make their arguments, and I will limit them as to time. And then I  
21 will turn to the Department and to the applicant.*

22 *Id.* at 0000644.

23 CENSE is correct that the appearance of fairness doctrine, Chapter 42.36 RCW,  
24 applies to the City's quasi-judicial decision approving PSE's CUP application, and  
25 "[t]he doctrine requires that public hearings which are adjudicatory in nature meet two  
requirements: the hearing itself must be procedurally fair, [citation omitted], and it must  
be conducted by impartial decisionmakers. [citation omitted]." *Raynes v. City of  
Leavenworth*, 118 Wn.2d 237, 245-246, 821 P.2d 1204 (1992). The Hearing Examiner,  
like a trial judge, is an impartial decisionmaker who is required to maintain control of

1 the hearing, rule on the admissibility of evidence, and evaluate the credibility of  
2 individuals who testify.

3 CENSE is incorrect in claiming that the Hearing Examiner violated the  
4 appearance of fairness doctrine here. Over the course of 4 days, and in addition to the  
5 hours of opposition submitted by CENSE and its attorney, the Hearing Examiner  
6 received testimony from 56 individuals and approximately 220 comments from citizens,  
7 businesses, community leaders, and health care professionals in support of and in  
8 opposition to PSE's CUP application. AR 000022-23, 0000032-33, 000846; TR  
9 000101-108, 000110-113, 000121-124, 000148-157, 000161-164, 000173-174,  
10 000241-245, 000250-252, 000285-288. At the close of the public hearing, the attorney  
11 for CENSE's co-opponent, CSEE, praised the Hearing Examiner's procedurally fair  
12 and equitable administration of the public hearing:  
13

14 **Attorney for CSEE:** *First of all, I want to thank you, Mr. Hearing Examiner, for*  
15 *giving us such complete attention and your energies in this. This is a very*  
16 *complex case. I've been the arbitrator under the mandatory arbitration system in*  
17 *over four dozen cases. I know what it's like to sit in your position, and I*  
*appreciate what you're doing and want to thank you. You've been very fair and*  
*given us plenty of opportunity, and that's really important in a case of this*  
*magnitude.*

18 TR 000666. CENSE's "unlawful procedure" argument under RCW 36.70C.130(1)(a)  
19 cannot be reconciled with this admission by its co-opponent or with the substantial  
20 evidence in the record showing that the Hearing Examiner acted as a fair and impartial  
21 decision maker consistent with the appearance of fairness doctrine.

22 Furthermore, CENSE admits that under the decision criteria in LUC  
23 20.20.255.E.3, PSE was required to demonstrate operational need for its electrical  
24 utility proposal. Opening at 19:3-4. In other words, the City's LUC does not require a  
25 project opponent to refute operational need but instead requires that the project

1 applicant demonstrate operational need. LUC 20.20.255.E.3. PSE explained to the  
2 Hearing Examiner and CENSE, repeatedly, that PSE’s evaluation of operational need  
3 is based on peak demand and not on the volume of energy consumed over time. AR  
4 000017, 000025, 001864-1873, 13518-13525; TR 000456-459, 000462-463. No  
5 amount of “consumption data” would have invalidated the evidence submitted by PSE,  
6 and no amount of “consumption data” would have remedied CENSE’s flawed  
7 opposition to the Energize Eastside project. AR 000014, 000016-17, 000024, 001871-  
8 1872, 013410-013430; TR 000043-52.

9 The record shows that the Hearing Examiner treated CENSE, the public, PSE,  
10 and City Staff fairly throughout the hearing, and the record contains no evidence that  
11 the Hearing Examiner holds any bias towards any person, party, expert, or attorney  
12 who appeared at the hearing. There is no credible argument that the City failed to  
13 follow proper procedure under RCW 36.70C.130(1)(a), or violated the appearance of  
14 fairness doctrine, and CENSE’s allegations to the contrary have no merit.

15  
16 **B. The City did not err when it concluded that PSE complied with the  
17 Electrical Utility Facility decision criteria in LUC 20.20.255.E.**

18 CENSE’s arguments that the City’s land use decision is an erroneous  
19 interpretation of the law (RCW 36.70C.130(1)(b)) or a clearly erroneous application of  
20 the law to the facts (RCW 36.70C.130(1)(d)) are primarily based on CENSE’s belief  
21 that PSE failed to demonstrate operational need. CENSE argues, without evidentiary  
22 support, that the City violated LUC 20.20.255.E or LUC 20.20.255.D.2.c, D.2.d, or D.3  
23 because PSE’s determination of operational need for the Energize Eastside project is  
24 insufficient to support the City’s CUP approval for the “standalone” South Bellevue  
25 Segment. Opening at 21-34.

1 Underlying all of these arguments is CENSE’s convoluted claim that it is  
2 unlawful for PSE to characterize the entire Energize Eastside project as needed when  
3 the Final EIS and Staff Report acknowledged that the southern portion of the Project,  
4 from Renton to Bellevue, could function independently while the northern segment,  
5 from Bellevue to Redmond, is constructed. Opening at 13-16, 24-27; AR 001413,  
6 006866. Essentially, CENSE’s entire lawsuit is based on the dual premises that PSE  
7 cannot establish operational need for the South Bellevue Segment and that PSE’s  
8 phased construction schedule for the Energize Eastside project invalidates the land  
9 use review conducted by the City, the ASA submitted by PSE, and the environmental  
10 review undertaken by the Partner Cities. Opening at 12-14, 21-38.

11  
12 1. The record shows that PSE demonstrated an operational need exists  
as required by LUC 20.20.255.E.3:

13 Under the Electrical Utility Facilities decision criteria in LUC 20.20.255.E.3, PSE  
14 is required to “demonstrate that an operational need exists that requires the location or  
15 expansion at the proposed site.” LUC 20.20.255.E.3. As explained throughout this  
16 Brief, PSE must plan to meet peak demand to avoid blackouts. AR 000014-18,  
17 001864-1873. If PSE’s system cannot meet peak demand, power outages affect  
18 everyone, including residential uses along the South Bellevue Segment of the Project  
19 and critical support services like hospitals, nursing homes, fire departments, and police  
20 stations. *Id.* at 000026, 001872.

22 The Hearing Examiner held that there truly is a critical “need” for the South  
23 Bellevue Segment of the Project to prevent load-shedding and blackouts in residential  
24 areas. *Id.* at 000026. The Hearing Examiner’s findings regarding PSE’s demonstration  
25 of “operational need” under LUC 20.20.255.E.3 were consistent with the findings of the

1 USE Study commissioned by the City and the Stantec Report prepared in connection  
2 with the environmental review of the Energize Eastside project. *Id.* at 000013, 001864-  
3 1873, 001978-2053. The Staff Report and Hearing Examiner Decision referenced,  
4 analyzed, and incorporated these independent studies confirming operational need  
5 into the City's land use review of PSE's CUP application. *Id.* at 000013, 001323-1324,  
6 001420-1424, 001864-1873, 001977-2053.

7 During the public hearing, PSE submitted overwhelming evidence showing the  
8 Energize Eastside project and the specific components included in the South Bellevue  
9 Segment CUP application are necessary to address very real Eastside transmission  
10 capacity deficiencies. *Id.* at 000014, 000024-25; TR 000043-75, 000416-417, 000456,  
11 000483-484, 000562, 000713, 000731. PSE's expert testimony and written comments  
12 explained why PSE is required to plan for peak demand and worst-case scenarios and  
13 why any dereliction of this duty by PSE could lead to severe consequences for  
14 Bellevue residents and businesses. *Id.* As the Hearing Examiner found, "load-  
15 shedding' – i.e. rolling blackouts – is currently part of PSE's corrective action plan  
16 (CAP) options in neighborhoods throughout the Eastside, including residential  
17 neighborhoods that are located along the route of the South Bellevue Segment." AR  
18 000026.

19  
20 Throughout the hearing, CENSE and other Project opponents summarily  
21 dismissed PSE's expert testimony and viewed PSE's "concerns about potential  
22 blackouts to be idle threats of doom to generate support for the project." AR 000014.  
23 However, the Hearing Examiner found that all of PSE's witnesses were genuinely  
24 concerned that the current PSE system could soon be forced to use rolling blackouts  
25



1 to address problems arising from peak demand on existing substations and  
2 powerlines. *Id.* The Hearing Examiner also found that while PSE’s operational need  
3 analysis was heavily vetted and verified by independent third-party reviewers,  
4 CENSE’s rebuttal analysis was flawed and unreliable. *Id.* at 000013, 000017-18,  
5 000024-25. All of these legal and factual determinations by the Hearing Examiner are  
6 entitled to substantial deference. RCW 36.70C.130(1)(b); *Lanzce G. Douglass, Inc.*,  
7 154 Wn. App. at 415 [citations omitted].

8 CENSE nonetheless claims that operational need for the Project has now  
9 changed based on PSE’s phased construction plan. To support this claim, CENSE  
10 incorrectly states that the Staff Report disclosed PSE’s phased construction plan “for  
11 the first time” (Opening at 24), but the record shows that the Final EIS and PSE’s  
12 application materials disclosed PSE’s phased construction plan and the independent  
13 utility of the southern phase of the project, extending from Renton to Bellevue (AR  
14 000021-22, 001539, 006866). In fact, CENSE had complained about PSE’s phased  
15 construction schedule for over a year before the Staff Report was even published. AR  
16 006491-6498, 006503-6507.

18 CENSE next characterizes PSE’s CUP application for the South Bellevue  
19 Segment as a “truncated, dead-end line” but fails to provide any evidence showing  
20 PSE has abandoned the larger Energize Eastside project. Opening at 25-26. Instead,  
21 CENSE quotes a statement from the Phase 2 Draft EIS statement explaining that  
22 redundancy is needed for an adequate electrical utility system—“[b]y having lines from  
23 two different directions, a substation can continue to be supplied even if one line goes  
24 down”—and misrepresents to this Court that redundancy is a new concept, first  
25

1 disclosed in the Staff Report. *Id.* at 23-24; AR 011637. CENSE then argues that the  
2 northern segment of the Project would “only” provide redundancy, suggesting that the  
3 concept of “redundancy” is unimportant or superfluous. Opening at 24-25.

4 To the contrary, and as both the Phase 1 Draft EIS and the Phase 2 Draft EIS  
5 explained years before the Staff Report was issued by the City, redundancy provides a  
6 very important tool to protect electrical system reliability. AR 011637, 012608, 012985  
7 (If adequate system redundancy is not provided, electrical power production would  
8 likely not meet peak demand). But even removed from CENSE’s incorrect, misleading,  
9 and contradictory statements concerning the stated need for redundancy in PSE’s  
10 system, CENSE points to no evidence in the record establishing that PSE has  
11 abandoned the northern segment of the Project or that south Bellevue residents are  
12 immune to power outages resulting from an electrical utility system that cannot meet  
13 peak demand. *Id.* at 000026, 001872.

14 CENSE has spent years opposing the Energize Eastside project and, more  
15 recently, PSE’s CUP application for the South Bellevue Segment. As the Hearing  
16 Examiner found, “[s]peculation about alternatives and skepticism about PSE’s study  
17 data used to demonstrate ‘need’ for the project is healthy, and it led to a thorough  
18 analysis of almost every substantive comment or suggestion made by topic throughout  
19 the review process.” *Id.* at 000033. The independent studies in the record and PSE’s  
20 testimony and evidence, individually and collectively, established that the Energize  
21 Eastside project and the attendant South Bellevue Segment are needed to meet local  
22 peak demand and protect reliability, and CENSE’s arguments to the contrary should be  
23 rejected.  
24  
25

1                   2. The record shows that PSE complied with the Electrical Utility  
2                   Facilities decision criteria in LUC 20.20.255.E:

3                   LUC 20.20.255.E.5 requires that PSE shall demonstrate compliance with the  
4                   ASA requirements in LUC 20.20.255.D. In turn, the ASA requirements in LUC  
5                   20.20.255.D require that PSE identify alternative sites, provide required content  
6                   showing analysis relating to identified sites, describe technologies considered for the  
7                   proposal, and describe community outreach conducted for proposals relating to new or  
8                   expanding electrical utility facilities on sensitive sites as identified on Map UT-7 of the  
9                   City's Comprehensive Plan. LUC 20.20.255.D. CENSE correctly points out that the  
10                  purpose of the ASA requirements in LUC 20.20.255.D is "to increase transparency of  
11                  the siting process for [PSE] and the public, while also ensuring the utility's ability to  
12                  meet system needs." Opening at 21.

13                 This Court is not required to parse or even track CENSE's disjointed claim that  
14                 PSE's ASA violated LUC 20.20.255.D. This is not necessary because the record  
15                 shows that, consistent with LUC 20.20.255.D and as part of the CUP application, PSE  
16                 submitted an ASA that considered: (1) three siting alternatives for the transmission line  
17                 upgrades and proposed substation; (2) the relationship of each alternative alignment to  
18                 the location of the actual demand for electrical service and to improved customer  
19                 reliability; (3) the City of Bellevue's location selection hierarchy contained in LUC  
20                 20.20.255.D.2; (4) the impacts of PSE's proposed alignment compared to a  
21                 nonresidential siting; and (5) the community outreach undertaken by PSE and the input  
22                 received as a result of that outreach. AR 000019, 001354-1357, 001535-1566.

24                 The Staff Report confirmed PSE's compliance with each subsection contained  
25                 in LUC 20.20.255.D and explained why the alternative selected by PSE is consistent

1 with surrounding residential uses. *Id.* at 001327-1328, 001354-1357, 001425-001435.  
2 The Hearing Examiner also found that the ASA “contains sufficient information  
3 regarding the methodology employed, the alternative sites analyzed, the technologies  
4 considered, and the community outreach undertaken to satisfy the requirements of  
5 LUC 20.20.255.D.” *Id.* at 000019. CENSE does not address, much less refute, any of  
6 this evidence in the record, and given the substantial deference afforded the Hearing  
7 Examiner, CENSE cannot show the City’s approval of the CUP involved any erroneous  
8 interpretation of LUC 20.20.255.E or 20.20.255.D.

9 To the extent CENSE argues that PSE’s ASA submittals are inconsistent with  
10 the Partner Cities’ environmental review or that LUC 20.20.255.D requires an  
11 evaluation of the South Bellevue Segment that PSE failed to provide, these arguments  
12 have no merit. The South Bellevue Segment is being constructed and permitted in  
13 exactly the same manner and as part of the same phased sequence identified in the  
14 Final EIS, and there has been no change in how the Energize Eastside project or the  
15 South Bellevue Segment was described and assessed in the Partner Cities’  
16 environmental review. AR 000019, 001354-001357, 001417, 001539, 001545-1547,  
17 001553, 001562, 006823, 006866. And, again, there is simply no evidence in the  
18 record showing PSE has abandoned the larger Energize Eastside project in favor of a  
19 “truncated, dead-end line” as CENSE claims.  
20

21 Finally, CENSE’s Opening Brief primarily focuses on alleged violations of the  
22 ASA submittal requirements in LUC 20.20.255.D, rather than any failure to satisfy the  
23 Electrical Utility Facility decision criteria under LUC 20.20.255.E. As the Hearing  
24 Examiner correctly held, CENSE’s argument that PSE’s ASA or selected site is invalid  
25

1 or inconsistent with the requirements delineated in LUC 20.20.255.D fails as a matter  
2 of law. AR 000027. This is because CENSE failed to appeal the City's approval of the  
3 CALUP issued by the City, and CENSE cannot now collaterally attack any aspect of  
4 the final CALUP approval or the electrical utility facility siting determinations evaluated  
5 and permitted by the City therein. *Id.*; *Wenatchee Sportsmen*, 141 Wn.2d at 172, 180-  
6 182, 4 P.3d 123; *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410-411, 120 P.3d  
7 56 (2005).

8 3. CENSE's segmentation argument has no merit.

9 It is well-settled that SEPA prohibits the "piecemealing" of environmental review.  
10 *Merkel v. Port v. Brownsville*, 8 Wn. App. 844, 851, 509 P.2d 390 (1973). SEPA allows  
11 phased review in certain circumstances, but SEPA prohibits the practice of conducting  
12 environmental review only on current segments of a project and postponing  
13 environmental review of later segments until construction begins. *Concerned Taxpayers*  
14 *Opposed to Modified Mid-South Sequim Bypass v. State, Dept. of Transp.*, 90 Wn. App.  
15 225, 231 & fn. 2, 951 P.2d 812 (1998) (citing *Cathcart-Maltby-Clearview Community*  
16 *Council v. Snohomish County*, 96 Wn.2d 201, 210, 634 P.2d 853 (1981)). The SEPA  
17 Rules specifically prohibit environmental review that divides a larger system into  
18 exempted fragments, avoids discussion of cumulative impacts, or avoids consideration  
19 of impacts that are required to be evaluated in a single environmental document. WAC  
20 197-11-060(5)(d)(ii) & (iii).

21  
22 CENSE fails to recognize that phased construction and permitting for a linear  
23 infrastructure project is not an example of piecemeal environmental review prohibited  
24 SEPA. As the Final EIS makes plain, the Energize Eastside project is a single project  
25

1 within the jurisdiction of multiple permitting agencies who will consider various permit  
2 applications subject to different land use processes. AR 006823, 006812-6835. The  
3 fundamental problem with CENSE's "segmentation" argument is that conflates and  
4 confuses SEPA's prohibition against piecemeal environmental review (WAC 197-11-  
5 060(5)(d)(ii) & (iii)) with PSE's phased construction and permitting schedule for the  
6 Project. AR 000021-22.

7 The Hearing Examiner recognized that CENSE's "segmentation" argument was  
8 legally dubious, factually incorrect, and unsupported by the record:

9 *The Final EIS facilitated broad public participation and informed decision-*  
10 *making for both requested permits, the unchallenged CALUP and the Conditional*  
11 *Use Permit addressed herein. The review process for the South Bellevue*  
12 *Segment is the antithesis of any alleged failure to study, failure to disclose, or*  
13 *improper "segmentation" or "piecemealing" as some opponents argued....*

14 *Opposition arguments that challenged the pending application as improper*  
15 *"segmentation", "piecemealing", an undisclosed last-minute change, a strategic*  
16 *surprise, and the like, are factually incorrect. The Final EIS used to inform the*  
17 *public and decisionmakers in reviewing the pending application fully discloses*  
18 *that the South Bellevue Segment can function independently, and that the new*  
19 *transmission line will be developed in phases. It also explains a public benefit*  
20 *rationale for PSE's proposed phased construction schedule for the Energize*  
21 *Eastside Project – keeping the transmission system on-line to serve customers*  
22 *during construction.*

23 *Id.* Even if the north and south segments of the Energize Eastside project are combined  
24 for environmental review under SEPA, this does not mean that the north and south  
25 segments of the Project must be combined by PSE for land use permitting purposes.

CENSE would also prefer that the City force PSE to apply for the north Bellevue  
segment of the Energize Eastside project so that the East Bellevue Community Council  
(EBCC) may consider PSE's proposal. The EBCC is a community municipal  
corporation created under chapter 35.14 RCW that has permitting authority for certain

1 land use subjects within its geographic jurisdiction. RCW 35.14.040. However, PSE's  
2 CUP for the South Bellevue Segment is not within the EBCC's jurisdiction; the EBCC  
3 does not have any permitting authority over this land use decision; and the City cannot  
4 force a land use review process that is inconsistent with state law and City Code based  
5 on CENSE's opposition to the Project. *Id.*<sup>8</sup>

6 To the extent CENSE argues that approval of PSE's application for the South  
7 Bellevue Segment somehow constitutes a *de facto* approval for the northern segment,  
8 this curious argument is also wrong on the law and the facts. As the Mayor explained  
9 when the City Council adjudicated CENSE's administrative appeal, "[t]he only CUP  
10 application before the hearing examiner was for the south Bellevue segment, and his  
11 decision makes clear that he is only approving the south Bellevue segment subject to  
12 specific conditions of approval as stated in Section 7 on page 37 of his decision." TR  
13 001188. The City, as the permitting authority, processes the permits that it receives  
14 from the applicant, not the permits CENSE wishes PSE would submit to the City.

15  
16 **C. CENSE has failed to show that the environmental review undertaken  
17 by the Partner Cities is inadequate as a matter of law.**

18 SEPA requires agencies to integrate environmental concerns into their  
19 decision-making processes and study and explain the environmental consequences  
20 before pursuing actions. *Stempel v. Dep't of Water Res.*, 82 Wn.2d 109, 117-118, 508  
21 P.2d 166, 171 (1973). SEPA contemplates circumstances such as the Energize

22  
23  
24 <sup>8</sup> Land use permit applications within the EBCC's jurisdiction are subject to a completely  
25 different permit process, Process III (see LUC 20.35.300 – 20.35.365), under the City's LUC. Future CUP applications submitted may well be subject to Process III under the LUC, but the City has not received, much less approved, any CUP applications from PSE that would be subject to Process III or within the EBCC's jurisdiction under RCW 35.14.040.

1 Eastside project where multiple agencies have permitting authority over a single  
2 project. See WAC 197-11-922 to -948; and WAC 197-11-055(5). In such a situation,  
3 the lead agency prepares the EIS for the proposed project, and other agencies with  
4 jurisdiction over the project use the EIS prepared by the lead agency to inform their  
5 permitting decisions. WAC 197-11-050(2)(b); WAC 197-11-600(3)(c).

6 SEPA requires that an agency consider alternatives to a proposed action. RCW  
7 43.21C.030(c)(iii). The purpose of the EIS is to facilitate the decision-making process;  
8 it need not list every remote, speculative, or possible effect or alternative. *Klickitat*  
9 *Cnty.*, 122 Wn.2d at 641, 860 P.2d 390. Instead, EIS alternatives must “include  
10 actions that could feasibly attain or approximate a proposal's objectives, but at a lower  
11 environmental cost or decreased level of environmental degradation.” WAC 197-11-  
12 440(5)(b); AR 006814. Supplemental environmental review is not required when  
13 probable significant adverse environmental impacts are covered by the range of  
14 alternatives and impacts analyzed in the existing environmental documents. WAC  
15 197-11-600(3)(b)(ii).  
16

17 CENSE argues that the Partner Cities’ environmental review was inadequate  
18 under SEPA because it should have considered the South Bellevue Segment as an  
19 alternative under WAC 197-11-440(5)(b). The first problem with this EIS adequacy  
20 challenge is that it assumes, without support in the record, that construction of the  
21 South Bellevue Segment alone is a viable alternative to construction of the larger  
22 Energize Eastside project.

23 The purpose of the Energize Eastside project is to meet local electricity peak  
24 demand growth and to protect electrical grid reliability in the Eastside of King County,  
25



1 from Redmond in the north to Renton in the south. *Id.* at 001321, 006815, 011637.  
2 CENSE does not explain how construction of the South Bellevue Segment as a  
3 “standalone” project would provide adequate electrical infrastructure to meet peak  
4 demand periods, or protect electrical grid reliability from Redmond to Renton, or  
5 provide necessary redundancy to ensure electrical power production remains on-line  
6 when equipment in the north or the south is not working. CENSE’s EIS adequacy  
7 challenge fails because CENSE provides no evidence showing that the South  
8 Bellevue Segment alone can feasibly attain or approximate PSE’s stated objectives  
9 for the Energize Eastside project as required by WAC 197-11-440(5)(b).

10 A related fallacy of CENSE’s EIS adequacy challenge is that it assumes  
11 construction of the South Bellevue Segment is synonymous with construction of the  
12 southern phase of the Project from Renton to Bellevue. CENSE provides no evidence  
13 to support this contention either, and CENSE willfully ignores the permit applications  
14 PSE has already submitted in jurisdictions adjacent to the City, which both the Final EIS  
15 and the Staff Report discussed. AR 000010, 001319, 006822. Simply put, the South  
16 Bellevue Segment is not the same thing as the larger southern permitting and  
17 construction phase across multiple jurisdictions as described in the Final EIS and Staff  
18 Report. *Id.*

19  
20 Moreover, the Final EIS never stated that the first phase of construction from  
21 Renton to Bellevue, standing alone, can feasibly attain or approximate PSE’s stated  
22 objectives for the Energize Eastside project. Nevertheless, CENSE assumes, again  
23 without evidence in the record, that because the southern portion of the Project,  
24 extending from Renton to Bellevue, can function independently, it follows that this  
25

1 southern portion of the Project can also attain or approximate PSE's objectives for the  
2 Project. However, the fact that the southern portion of the Project can function  
3 independently while the northern segment is permitted and built does not mean that the  
4 southern portion, standing alone, can meet local electricity peak demand growth and  
5 protect electrical grid reliability from Renton to Redmond. CENSE's entire EIS  
6 adequacy challenges requires a leap of faith finding that construction of the southern  
7 portion of the Project would render the northern portion superfluous, but this is not what  
8 the Final EIS or the Staff Report disclose when discussing the utility and public benefit  
9 of PSE's phased construction plan. AR 001319, 001539, 006866.

10 A final fatal problem with CENSE's EIS adequacy challenge is that it ignores  
11 the actual content of the environmental record before this Court. The Phase 1 Draft  
12 EIS evaluated a broad range of potential technological alternatives to address the  
13 identified transmission facility deficit; the Phase 2 Draft EIS provided project-level  
14 analysis of potential environmental impacts and alternatives associated with overhead  
15 transmission lines and the Richards Creek substation; and the Final EIS built upon this  
16 earlier analysis and evaluated alternatives and potential and cumulative environmental  
17 impacts associated with the construction and operation of PSE's proposed alignment  
18 in the existing utility corridor. *Id.* at 000018, 001325, 001387, 006818-006822, 06838-  
19 6839, 011642, 011645, 011659-011700, 012469-12470, 012531-012532, 012563-  
20 12569, 012583-12584, 012586-12587, 012592-12593, 012597-12600. The  
21 environmental record shows that the Final EIS provided full analysis of potential  
22 environmental impacts in the South Bellevue Segment and across all jurisdictions from  
23 Renton to Redmond. AR 006821-6822, 006824-6835, 006891-7182.

1 All told, the Phase 2 Draft EIS and Final EIS analyzed fourteen (14) transmission  
2 line routing alternatives. *Id.* at 000018, 06837. The Partner Cities’ environmental review  
3 certainly included a “reasonably thorough discussion of the significant aspects of the  
4 probable environmental consequences” of the Project within the South Bellevue  
5 Segment and across all jurisdictions with permitting authority. *Glasser*, 139 Wn. App. at  
6 740 (citing *Klickitat Cnty.*, 122 Wn.2d at 633, 860 P.2d 390 (quoting *Cheney*, 87 Wn.2d  
7 at 344–45, 552 P.2d 184)); *Residents Opposed to Kittitas Turbines*, 165 Wn.2d at 311,  
8 197 P.3d 1153 (citation omitted). As a result, the Final EIS presented the City with  
9 sufficient information for a reasoned decision; the City complied with its SEPA  
10 obligations under WAC 197-11-440(5)(b); and CENSE’s EIS adequacy challenge  
11 should be denied.  
12

13 **VI. CONCLUSION**

14 For the foregoing reasons, the City respectfully requests that this Court enter an  
15 Order denying Petitioner CENSE’s Land Use Petition and dismissing this lawsuit.

16 DATED this 12<sup>th</sup> day of May, 2020, at Bellevue, WA.

17 CITY OF BELLEVUE  
18 OFFICE OF THE CITY ATTORNEY  
Kathryn L. Gerla, City Attorney

19 /s/ Matthew B. McFarland  
20 Matthew B. McFarland, WSBA# 51675  
21 Assistant City Attorney  
for Respondent City of Bellevue  
22 City Attorney's Office  
450 110th Avenue N.E.  
23 P. O. Box 90012  
Bellevue, WA 98009  
24 Tel: (425) 452-6829 Fax: (425) 452-7256  
Email: [mmcfarland@bellevuewa.gov](mailto:mmcfarland@bellevuewa.gov)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury of the laws of the State of Washington that he/she caused to be served in the manner indicated below true and correct copies of the RESPONDENT CITY OF BELLEVUE'S RESPONSE TO OPENING BRIEF OF PETITIONER CENSE and EXCERPTS OF ADMINISTRATIVE RECORD on the parties listed below:

To:

**Attorney for CENSE**  
J. Richard Aramburu  
Aramburu & Eustis, LLP  
720 Third Avenue, Suite 2112  
Seattle, WA 98104  
*rick@aramburu-eustis.com*

Loretta Lopez  
13419 NE 33rd Lane  
Bellevue, WA 98005  
*llopez@mstarlabs.com*

**Attorney for PSE**  
Erin L. Anderson  
Van Ness Feldman LLP  
719 Second Ave, STE 1150  
Seattle, WA 98104  
*eanderson@vnf.com*

Norm Hansen  
3851 136th Ave NE  
Bellevue, WA 98005  
*hansennp@aol.com*

**Attorney for PSE**  
Sara A. Leverette  
Van Ness Feldman LLP  
719 Second Ave, STE 1150  
Seattle, WA 98104  
*sleverette@vnf.com*

Warren Halverson  
13701 NE 32nd PI  
Bellevue, WA 98005  
*Whalvrsn1@frontier.com*

Citizens for Sane Eastside Energy  
c/o Larry G. Johnson  
8505 129th Ave SE  
Newcastle, WA 98056  
*larry.ede@gmail.com*

By:  Email

By:  Mail  
 Email  
 E-service (LGR 30)  
 Messenger  
 Facsimile

DATED this 12th day of May, 2020, at Bellevue, WA.

/s/ Jason W. Banks  
Jason W. Banks, Legal Assistant

# **ATTACHMENT A**

### **20.35.100 Process I: Hearing Examiner quasi-judicial decisions.**

A. LUC 20.35.100 through 20.35.150 contain the procedures the City will use in implementing Process I. This process begins with a complete application, followed by notice to the public of the application and a public comment period, during which time an informational meeting will be held. If required by the State Environmental Policy Act (SEPA) a threshold determination will be issued by the Environmental Coordinator. The threshold determination may be issued in conjunction with issuance of the Director's recommendation on the application. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to issuance of the Director's recommendation. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will also be resolved prior to issuance of the Director's recommendation.

B. Following issuance of the Director's recommendation, a public hearing will be held before the City Hearing Examiner. If a SEPA Determination of Nonsignificance (DNS) was issued (no EIS required) and an appeal of the DNS has been filed, the appeal hearing on the DNS will be combined with the public hearing on the Director's recommendation. Following the public hearing, the Hearing Examiner will issue a written report which will set forth a decision to approve, approve with modifications, or deny the application. The Examiner's report will also include a final City decision on any DNS or other Process II appeal.

C. The decision of the Hearing Examiner on a Process I application is appealable to the City Council. The City Council action deciding the appeal and approving, approving with modifications, or denying a project is the final City decision on a Process I application. (Ord. 4972, 3-3-97, § 3)

### **20.35.120 Notice of application.**

A. Notice of application shall be provided, pursuant to the requirements of this section, within 14 days of issuance of the notice of completeness for an application for a Process I land use decision. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats).

B. The Director shall provide notice of the application as follows:

1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed in a newspaper of general circulation in the City;
2. Mailed notice to owners of real property within 500 feet of the project site including the following information:
  - a. The date of application;
  - b. The project description and location;
  - c. The types of City permits or approvals applied for;
  - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits or approvals required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings or public hearings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation;
3. Mailed notice of the application including at least the information required in subsection B.1 of this section to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

C. The applicant shall provide notice of the application as follows:

1. Posting of two signs or placards on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of

installation and removal of the signs or placards. (Ord. 6425, 10-1-18, § 24; Ord. 5718, 2-20-07, §§ 1, 3; Ord. 5481, 10-20-03, § 18; Ord. 5089, 8-3-98, § 41; Ord. 4972, 3-3-97, § 3)

### **20.35.125 Minimum comment period.**

- A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's recommendation on a Process I application will not be issued prior to the expiration of the minimum comment period.
- B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.
- C. The Director may accept and respond to public comments at any time prior to the closing of the public hearing record.
- D. For projects requiring review under the State Environmental Policy Act (SEPA), a single comment letter may be submitted to the Director or the Environmental Coordinator addressing environmental impacts as well as other issues subject to review under the approval criteria for the Process I decision. (Ord. 4972, 3-3-97, § 3)

### **20.35.127 Public meetings.**

A public meeting is required for all Process I applications. The Director may require the applicant to participate in the meeting to inform citizens about the proposal. Public meetings shall be held as early in the review process as possible for Process I applications. Notice of the public meeting shall be provided in the same manner as required for notice of the application. The public meeting notice will be combined with the notice of application whenever possible. (Ord. 4972, 3-3-97, § 3)

### **20.35.130 Director's recommendation.**

A written report of the Director making a recommendation to the Hearing Examiner for approval, approval with conditions or with modifications, or for denial shall be prepared. The Director's recommendation shall be based on the applicable Land Use Code decision criteria, shall include any conditions necessary to ensure consistency with City development regulations,



and may include any mitigation measures proposed under the provisions of the State Environmental Policy Act (SEPA). (Ord. 4972, 3-3-97, § 3)

### **20.35.135 Public notice of Director's recommendation.**

#### **A. Notice of Recommendation, SEPA Determination, and Hearing Examiner Hearing.**

1. Public Notice of the availability of the Director's recommendation shall be published in a newspaper of general circulation. If a Determination of Significance (DS) was issued by the Environmental Coordinator, the notice of the Director's recommendation shall state whether an EIS or Supplemental EIS was prepared or whether existing environmental documents were adopted. If a Determination of Nonsignificance (DNS) is issued, the DNS may be issued and published in conjunction with the Director's recommendation except as provided in the Environmental Procedures Code, BCC 22.02.031 and 22.02.160. The notice of recommendation shall also include the date of the Hearing Examiner public hearing for the application, which shall be scheduled no sooner than 14 days following the date of publication of the notice.
2. The Director shall mail notice of the recommendation and public hearing to each owner of real property within 500 feet of the project site.
3. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of recommendation.
4. The Director shall mail notice to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use decisions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.
5. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats). (Ord. 5718, 2-20-07, §§ 1, 4; Ord. 5481, 10-20-03, § 19; Ord. 4972, 3-3-97, § 3)

### **20.35.137 Hearing Examiner public hearing.**

#### **A. Participation in Hearing.**

Any person may participate in the Hearing Examiner public hearing on the Director's recommendation by submitting written comments to the Director prior to the hearing or by submitting written comments or making oral comments at the hearing.

#### **B. Transmittal of File.**

The Director shall transmit to the Hearing Examiner a copy of the Department file on the application including all written comments received prior to the hearing, and information reviewed by or relied upon by the Director or the Environmental Coordinator. The file shall also include information to verify that the requirements for notice to the public (notice of application, notice of SEPA decision, and notice of Director's recommendation) have been met.

#### **C. Hearing Record.**

The Hearing Examiner shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing. (Ord. 4972, 3-3-97, § 3)

### **20.35.140 Hearing Examiner decision.**

#### **A. Criteria for Decision.**

The Hearing Examiner shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code. The applicant carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall deny the application.

#### **B. Limitation on Modification.**

If the Hearing Examiner requires a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided

pursuant to LUC 20.35.135, the Hearing Examiner shall conduct a new hearing on the proposal as modified.

**C. Conditions.**

The Hearing Examiner may include conditions to ensure a proposal conforms to the relevant decision criteria.

**D. Written Decision of the Hearing Examiner.**

The Hearing Examiner shall within 10 working days following the close of the record distribute a written report supporting the decision. The report shall contain the following:

1. The decision of the Hearing Examiner; and
2. Any conditions included as part of the decision; and
3. Findings of facts upon which the decision, including any conditions, was based and the conclusions derived from those facts; and
4. A statement explaining the process to appeal the decision of the Hearing Examiner to the City Council.

**E. Distribution.**

The Office of the Hearing Examiner shall mail the written decision, bearing the date it is mailed, to each person who participated in the public hearing. (Ord. 4972, 3-3-97, § 3)

## **20.35.150 Appeal of Hearing Examiner decision.**

A. A Process I decision of the Hearing Examiner may be appealed to the City Council as follows:

1. **Who May Appeal.** The decision of the Hearing Examiner may be appealed by any person who participated in the public hearing as provided for in LUC 20.35.137, or by the applicant or the City.
2. **Form of Appeal.** A person appealing the decision of the Hearing Examiner must file with the City Clerk a written statement of the findings of fact or conclusions which are

being appealed and must pay a fee, if any, as established by ordinance or resolution. The written statement must be filed together with an appeal notification form available from the Office of the City Clerk.

3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 14 days following the date the decision of the Hearing Examiner was mailed.

4. Hearing Required. The City Council shall conduct a closed record appeal hearing in order to decide upon an appeal of the decision of the Hearing Examiner. The decision on any such appeal shall be made within such time as is required by applicable state law.

5. Public Notice of Appeal Hearing.

a. Content of Notice. The City Clerk shall prepare a notice of an appeal hearing containing the following:

i. The name of the appellant, and if applicable the project name, and

ii. The street address of the subject property, and a description in nonlegal terms sufficient to identify its location, and

iii. A brief description of the decision of the Hearing Examiner which is being appealed, and

iv. The date, time and place of the appeal hearing before the City Council.

b. Time and Provision of Notice. The City Clerk shall mail notice of the appeal hearing on an appeal of the decision of the Hearing Examiner no less than 14 days prior to the appeal hearing to each person entitled to participate in the appeal pursuant to LUC 20.35.150.A.6.a.

6. Closed Record Hearing on Appeal to City Council.

a. Who May Participate. The applicant, the appellant, the applicable Department Director, or representative of these parties may participate in the appeal hearing.

b. How to Participate. A person entitled to participate may participate in the appeal hearing by: (1) Submitting written argument on the appeal to the City Clerk

no later than the date specified in the City Council's Rules of Procedure; or (2) making oral argument on the appeal to the City Council at the appeal hearing. Argument on the appeal is limited to information contained in the record developed before the Hearing Examiner and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council.

c. Hearing Record. The City Council shall make an electronic sound recording of each appeal hearing.

7. City Council Decision on Appeal.

a. Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant has carried the burden of proof and the City Council finds that the decision of the Hearing Examiner is not supported by material and substantial evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.

b. Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modifications to ensure conformance with the criteria under which the application was made.

c. Findings. The City Council shall adopt findings and conclusions which support its decision on the appeal.

d. Required Vote. A vote to grant the appeal or grant the appeal with modifications must be by a majority vote of the membership of the City Council. Any other vote constitutes denial of the appeal.

B. Following resolution of any Process I appeal, the City Council shall take final action to approve, approve with modifications, or deny the project.

1. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications an application in order to ensure conformance with the approval criteria specified in the Code or process under which the application was made.

2. Findings of Fact and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the ordinance approving or approving with modifications the application. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

**C. Required Vote.**

The City Council shall adopt an ordinance which approves or approves with modifications the application by a majority vote of the membership of the City Council.

**D. Effect of Decision.**

The decision of the City Council on the application is the final decision of the City and may be appealed to Superior Court as provided in LUC 20.35.070.

**E. Commencement of Activity.**

Subject to LUC 20.35.070 the applicant may commence activity or obtain other required approvals authorized by the Process I decision the day following the effective date of the ordinance approving the project or approving it with modifications. Activity commenced prior to the expiration of the full appeal period, LUC 20.35.070, is at the sole risk of the applicant. (Ord. 6417, 5-21-18, § 59; Ord. 5089, 8-3-98, § 42; Ord. 4978, 3-17-97, § 10; Ord. 4972, 3-3-97, § 3)