

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

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

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

(Chapter 36.70C RCW)

THIS MATTER was heard before the Honorable Melinda Young, the undersigned judge of the above-titled court. The Land Use Petition Act (LUPA) appeal by Petitioner Coalition of Eastside Neighbors for Sensible Energy (CENSE) challenges Respondent City of Bellevue's decision to approve Puget Sound Energy, Inc.'s (PSE) application for a Conditional Use Permit (CUP) for the South Bellevue Segment of the Energize Eastside project. CENSE also challenges the adequacy of the environmental review conducted by the cities of Bellevue,

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

PSE Ex. A-3 - 000002

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1 Renton, Newcastle, and Redmond (collectively, “the Partner Cities”) for the entire Energize
2 Eastside project under the State Environmental Policy Act (SEPA).

3 The City of Bellevue, PSE and CENSE appeared in this matter through their attorneys
4 of record, and this Court heard the arguments presented by counsel at the February 14, 2020
5 Initial Hearing and during the May 22, 2020 and August 14, 2020 hearings on the merits. The
6 Court has reviewed the following records in connection with this LUPA appeal and SEPA
7 challenge:

8 1. Petitioner CENSE’s February 6, 2020 Motion on Procedural and Jurisdictional
9 Matters;

10 2. Respondent City of Bellevue’s February 12, 2020 Response to CENSE’s
11 Procedural and Jurisdictional Motion;

12 3. Petitioner CENSE’s April 21, 2020 Opening Brief and all attachments thereto;

13 4. Respondent City of Bellevue’s May 12, 2020 Response to Opening Brief of
14 Petitioner CENSE and all attachments thereto;

15 5. PSE’s May 12, 2020 Response to CENSE Opening Brief and all attachments
16 thereto;

17 6. Petitioner CENSE’s May 19, 2020 Reply Brief of Petitioner CENSE and all
18 attachments thereto;

19 7. The Certified Administrative Record of Proceedings (RCW 36.70C.110);

20 8. The Excerpts of Record submitted by Petitioner CENSE, Respondent City of
21 Bellevue, and PSE;

22 9. The March 28, 2019; March 29, 2019; April 3, 2019; and April 8, 2019 Certified
23 Transcripts of Proceedings before the City of Bellevue Hearing Examiner;
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1 10. The October 16, 2019; November 14, 2019; and December 2, 2019 Certified
2 Transcripts of Proceedings before the City of Bellevue City Council; and

3 11. All of the argument presented by the parties at the February 14, 2020; May 22,
4 2020; and August 14, 2020 hearings on this matter.

5 Based on the Court’s review of the foregoing and hearing the argument presented by the
6 parties at the February 14, 2020; May 22, 2020; and August 14, 2020 hearings, the Court now
7 enters the following Findings of Fact, Conclusions of Law, and Order:

8 **FINDINGS OF FACT**

9 1. PSE’s Energize Eastside project is a linear infrastructure project to upgrade
10 sixteen (16) miles of high voltage transmission lines from Renton to Redmond and to construct
11 a new substation in the City of Bellevue (the “Richards Creek substation”). AR 001319.

12 2. The Energize Eastside project is a single project within the jurisdiction of
13 multiple permitting agencies who will consider various permit applications subject to different
14 land use processes. AR 006823.

15 3. The purpose of the Energize Eastside project is to meet local electricity peak
16 demand growth and to protect electrical grid reliability in the Eastside of King County, roughly
17 defined as extending from Redmond in the north to Renton in the south, and between Lake
18 Washington and Lake Sammamish. AR 000011-13, 001321, 006812-6815, 011637.

19 4. The work anticipated as part of the Energize Eastside project is limited to the
20 existing utility corridor, which has existed for almost a century, and PSE’s proposed
21 transmission lines and associated infrastructure will generally be in the same location as the
22 existing utility infrastructure. AR 000010-11, 001327, 001340.
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1 5. Although the Partner Cities and King County each have land use permitting
2 authority over portions of the Energize Eastside project, the City of Bellevue (City) was
3 designated as the lead agency for the Partner Cities’ environmental review of the project. AR
4 000018, 001319, 001387, 006812-6813, 006823.

5 6. The Partner Cities’ environmental review included preparation of a Phase 1
6 Draft Environmental Impact Statement (“Phase 1 Draft EIS”) and Phase 2 Draft EIS, released in
7 January 2016 and May 2017, respectively, and culminated in the issuance of the March 1, 2018
8 Final EIS. AR 000018-21, 001387, 006793-13385.

9 7. The environmental analysis presented a comprehensive environmental
10 assessment of the entire Energize Eastside project throughout each jurisdiction, extending from
11 the cities of Renton to Redmond. AR 000018-21, 001387-1398, 006821-6822, 006824-6835,
12 006891-7182, 007204-7212.

13 8. The Phase 2 Draft EIS and Final EIS analyzed fourteen (14) transmission line
14 routing alternatives. AR 000018, 06837.

15 9. The environmental analysis considered potential environmental impacts in the
16 South Bellevue Segment associated with construction of the Richards Creek substation and the
17 transmission line upgrades in south Bellevue. *See* Final EIS (AR 006826, 006860, 006904-
18 6905, 006916, 006923-6928, 006942-6948, 006981-6982, 006986, 007011, 007021-7022,
19 007033-7034, 007053, 007073, 007111, 007135) & Phase 2 Draft EIS (AR 011683-11686,
20 011735-11743, 011760-11763, 011769-11770, 011809-11811, 011814-11816, 011818-011823,
21 011825).

1 10. The Final EIS also disclosed and considered PSE’s phased construction plan for
2 the Energize Eastside project, and explained the utility and benefit of PSE’s phased
3 construction and permitting schedule. AR 006823, 006866, 007557.

4 11. The Energize Eastside project needs to be built in two construction phases to
5 keep the transmission system on-line to serve customers. AR 006823, 006866. During the
6 construction of the south phase, the Lakeside substation will be served from the north, and after
7 the south phase is complete, the Richards Creek substation will be used to serve the northern
8 phase, located in north Bellevue and Redmond, while this northern phase is permitted and
9 constructed. AR 000021-22, 006823, 006866, 007557.

10 12. Contrary to CENSE’s arguments, the Final EIS never stated that the first phase
11 of construction would be limited to the South Bellevue Segment, or that the first phase of
12 construction from Renton to Bellevue, standing alone, can feasibly attain or approximate PSE’s
13 stated objectives for the Energize Eastside project. AR 006823, 006866.

14 13. Permitting and construction of the South Bellevue Segment will not result in any
15 significant unavoidable adverse environmental impacts in central Bellevue or north Bellevue,
16 and the Final EIS did not identify any significant unavoidable adverse environmental impacts in
17 central or north Bellevue as a result of the entire Energize Eastside project. AR 006826,
18 007209-7212.

19 14. Between 2012 and 2015, PSE and the City commissioned three studies that
20 confirmed PSE’s conclusion that the Energize Eastside project is needed to meet local
21 electricity peak demand growth and to protect electrical grid reliability. AR 000013, 001323-
22 1324, 001420-1424.
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1 15. The City also separately commissioned an independent analysis by Utility
2 System Efficiencies, Inc. (USE Study), which evaluated PSE’s system and again confirmed the
3 need for the Energize Eastside project. AR 001282, 001978-2053.

4 16. The independent consulting firm Stantec Consulting Services, Inc. reviewed
5 PSE’s analysis of project need (Stantec Report), confirmed that PSE’s analysis followed
6 standard industry practice, and confirmed the Energize Eastside project is designed to bring the
7 needed infrastructure to supply the local need. AR 000013, 00016-17, 001864-1873.

8 17. The Stantec Report explained that PSE must plan for peak demand periods and
9 potentially employ Corrective Action Plans (CAPs) to protect an overloaded system and reduce
10 heating on certain system transformers and lines so that they will not be destroyed. AR 000016-
11 17, 001871-1872.

12 18. CAPs, load-shedding, and blackouts adversely affect everyone, including
13 residential uses and critical support services like hospitals, nursing homes, fire departments, and
14 police stations. AR 000026, 001872.

15 19. Consistent with the phased construction plan for the Energize Eastside project
16 identified in the Final EIS, PSE submitted permit applications to the City, Renton, Newcastle,
17 and unincorporated King County for land use approval in connection with the first construction
18 phase of the Energize Eastside project. AR 000010, 001319, 006822, 007557.

19 20. PSE submitted two land use permit applications to the City for the South
20 Bellevue Segment of the Energize Eastside project simultaneously: (1) the CUP at issue in this
21 lawsuit, and (2) a Critical Areas Land Use Permit (CALUP). AR 001314-1315, 001321-1325.

22 21. The City’s approval of the CALUP has not been challenged by CENSE or any
23 other party and is now final. AR 000006-7, 000027.
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1 22. PSE’s CUP application to the City requested approval to construct the Richards
2 Creek substation and to upgrade 3.3 miles of 115-thousand-volt (kV) transmission lines with
3 230 kV lines within the existing utility corridor in south Bellevue. AR 000009, 001314,
4 001319, 006860.

5 23. PSE’s CUP proposal for the South Bellevue Segment of the Energize Eastside
6 project is located in a land use district that currently accommodates the utility corridor and
7 requires the service that PSE’s proposal will provide. AR 000022-26, 001328, 001340, 001357,
8 001539, 001543.

9 24. The South Bellevue Segment of the Energize Eastside project is being
10 constructed and permitted in exactly the same manner and as part of the same phased
11 construction sequence identified in the Final EIS. AR 000018-22, 001319, 001539, 006823,
12 006826, 006838, 006842, 006860, 006866, 07557.

13 25. PSE’s CUP application is subject to the Electrical Utility Facilities provisions in
14 the City’s Land Use Code (LUC), at LUC 20.20.255, and the CUP decision criteria in LUC
15 20.30B.140. AR 000005-6, 001416.

16 26. The Electrical Utility Facilities provisions in LUC 20.20.255 impose additional
17 requirements on PSE’s proposal above and beyond standard CUP provisions, including an
18 Alternative Siting Analysis (ASA) and additional decision criteria in LUC 20.20.255.E. AR
19 001354-1357, 001420-1426.

20 27. Consistent with the requirements in LUC 20.20.255.D, PSE submitted a
21 comprehensive ASA that described three siting alternatives, the land use districts within which
22 the sites are located, mapped the location of the sites, provided justification for locating the
23 infrastructure upgrades in the existing utility corridor, and depicted the proximity of the sites to
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1 neighborhood business land use districts, residential land use districts, and transition areas. AR
2 001355, 001541-1556, 001568-1574.

3 28. The ASA submitted by PSE provided a location selection hierarchy, as required
4 by LUC 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 components
6 relate to system reliability, and how the proposal includes technology best suited to mitigate
7 impacts on surrounding properties. AR 001355-56, 001545-1547, 001553-1562. The ASA
8 explained the community outreach PSE conducted over many years prior to submittal of the
9 CUP application. AR 001356-1357, 001562-001565.

10 29. The ASA also explained that the Energize Eastside project is needed because
11 cumulative demand on the Eastside is increasing, including in areas along the South Bellevue
12 Segment. AR 001543.

13 30. Within the City of Bellevue, the CUP application for the South Bellevue
14 Segment is subject to a different land use process (Process I) than a CUP application for the
15 northern construction phase (Process III). AR 00931-938, 01320-1321, 006823.

16 31. Under the City's Process I land use process, the City's Land Use Director issues
17 a recommendation to the Hearing Examiner, and the Hearing Examiner, after holding a public
18 hearing, issues a decision on the application. LUC 20.35.130 – 20.35.140. The Hearing
19 Examiner's decision may then be appealed to the City Council, and the City Council's quasi-
20 judicial decision on appeal is the City's final decision. *Id.* at 20.35.150.

21 32. On January 24, 2019, the City's Land Use Director recommended approval, with
22 conditions, of PSE's CUP application. AR 001314, 001354-1357, 001420-1436. In connection
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1 with the Director's recommendation, the City issued a 151-page Staff Report with fifty-three
2 (53) conditions of approval and ten (10) separate attachments. AR 001314-2825.

3 33. The Staff Report explained in detail why PSE's proposal satisfied the ASA
4 requirements in LUC 20.20.255.D, the Conditional Use decision criteria in LUC 20.30B.140,
5 and the Electrical Utility Facilities decision criteria in LUC 20.20.255.E. AR 001314-001347
6 (overview of PSE's South Bellevue Segment proposal and the Energize Eastside project),
7 001354-001360 (PSE compliance with the ASA requirements in LUC 20.20.255.D), 0001325,
8 001387-001398 (SEPA analysis), and 001420-001432 (PSE compliance with the Electrical
9 Utility Facilities Decision Criteria in LUC 20.20.255.E and the City's Comprehensive Plan).

10 34. Prior to the public hearing before the Hearing Examiner, CENSE filed multiple
11 motions, arguing that PSE had violated SEPA by applying for permits for the South Bellevue
12 Segment without simultaneously applying for permits for the northern segment of the Energize
13 Eastside project. CENSE also asked the Hearing Examiner to compel PSE to produce certain
14 energy "consumption data" that CENSE believed was necessary for the public hearing. AR
15 00841, 001068, 001108.

17 35. Although the Hearing Examiner denied CENSE's pre-hearing motions, he
18 allowed CENSE to raise the same arguments throughout four (4) days of hearing, and PSE and
19 the City continued to respond to CENSE's arguments throughout the hearing. TR 000605-611,
20 000654-655, 000682-687. The Hearing Examiner also addressed CENSE's legal arguments at
21 length in his Decision. AR 000020-26, 000032-39.

22 36. Over the course of the 4 day public hearing, the Hearing Examiner received
23 public testimony from approximately fifty-six (56) individuals. AR 000846, 000007-8, 000022-
24 23.
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1 37. Local residents, business owners, community leaders, and health care
2 professionals testified in support of PSE’s CUP application, citing the need for safe and reliable
3 power as the City and the Eastside continue to grow. AR 000022-23, 0000032-33; TR 000101-
4 108, 000110-113, 000121-124, 000148-157, 000161-164, 000173-174, 000241-245, 000250-
5 252, 000285-288. Conversely, many citizens who live along the existing utility corridor
6 opposed PSE’s application, primarily opposing PSE’s finding of project “need” and voicing
7 concerns with hazards posed by co-located electrical lines over the existing Olympic petroleum
8 pipeline. AR at 000016, 000023, 000026, 000033; TR 000593-595.

9 38. Throughout the public hearing, the Hearing Examiner allowed and encouraged
10 CENSE and its members to present their public comments, expert testimony, and legal
11 arguments in opposition to PSE’s CUP application and the Energize Eastside project. TR
12 000090-91, 000130-133, 000146-147, 000296-297, 000621-622, 000644, 000652-653.

13 39. North Bellevue residents who are members of CENSE and do not reside in south
14 Bellevue also testified at the public hearing in opposition to PSE’s CUP application for the
15 South Bellevue Segment. AR 000170-206.

16 40. By the close of the hearing, CENSE had provided over two (2) hours of
17 presentation, expert testimony, legal argument, and public comment; and the Hearing Examiner
18 admitted and considered a total of thirteen (13) motions, briefs, and written exhibits from
19 CENSE. AR 000841-843, 001312.

20 41. Contrary to CENSE’s argument in its motions and during the public hearing,
21 PSE’s evaluation of operational need is based on peak demand and not on the volume of energy
22 consumed over time. AR 000017, 000025, 001864-1873, 13518-13525; TR 000456-459,
23 000462-463.
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1 42. If PSE's system cannot meet peak demand, power outages affect everyone,
2 including residential uses along the South Bellevue Segment of the Energize Eastside project
3 and critical support services like hospitals, nursing homes, fire departments, and police stations.
4 AR 000014-18, 000026, 001864-1873.

5 43. The Hearing Examiner issued his Decision on June 25, 2019. AR 000004-40.
6 The Decision detailed why the technical studies, expert testimony, and argument presented by
7 PSE established that several key aspects of the opposition presented by CENSE were defective
8 and not credible. AR 000023-26. The Decision addressed CENSE's objections to PSE's
9 construction plan and found that the environmental review undertaken by the Partner Cities
10 supported approval of the CUP. AR 000020-21.

11 44. The Hearing Examiner found that the Staff Report, attachments to the Staff
12 Report, and testimony and evidence submitted by PSE during the public hearing established
13 that PSE satisfied the requirements of LUC 20.20.255.E.3, which requires PSE to demonstrate
14 operational need for its electrical utility proposal. AR 000013-14, 000024-25, 001323-1324,
15 001420-1424, 001864-1873, 001977-2053; TR 000043-75, 000416-417, 000456, 000483-484,
16 000562, 000713, 000731.

17 45. The Hearing Examiner concluded that CENSE, its representatives, and other
18 opponents articulated their concerns but did not offer sufficient, relevant, authoritative, or
19 credible evidence that would rebut the findings and recommendations made in the Staff Report
20 or the substantial evidence presented by PSE throughout the land use process. AR 000024.
21 Ultimately, the Hearing Examiner approved PSE's requested CUP, with conditions. AR
22 000040, 000042-61.
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1 (b) The land use decision is an erroneous interpretation of the law, after
2 allowing for such deference as is due the construction of a law by a
local jurisdiction with expertise;

3 (c) The land use decision is not supported by evidence that is substantial
4 when viewed in light of the whole record before the court; [or]

5 (d) The land use decision is a clearly erroneous application of the law to
the facts.....

6 RCW 36.70C.130(1)(a), (b), (c) & (d); *Pinecrest Homeowners Ass'n v. Glen A.*
7 *Cloninger & Assocs.*, 151 Wn.2d 279, 288, 87 P.3d 1176 (2004).

8 2. In reviewing a LUPA decision, a reviewing court considers only the
9 administrative record and gives “substantial deference to both the legal and factual
10 determinations of a hearing examiner as the local authority with expertise in land use
11 regulations.” *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 415, 225
12 P.3d 448 (2010) (citing *City of Medina v. T-Mobile USA, Inc.*, 123 Wn. App. 19, 24, 95 P.3d
13 377 (2004)).

14 3. Evidence and any inferences are viewed “in a light most favorable to the party
15 that prevailed in the highest forum exercising fact finding authority.” *Id.* (citing *City of*
16 *University Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001)).

17 4. Under the substantial evidence standard applicable to RCW 36.70C.130(1)(c),
18 there must be a sufficient quantum of evidence in the record to persuade a reasonable person
19 that the declared premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d
20 169, 176, 4 P.3d 123 (2000). A finding is clearly erroneous under RCW 36.70C.130(1)(d) only
21 when, although there is evidence to support it, the reviewing court is left with the definite and
22 firm conviction that a mistake has been committed. *Id.*

1 5. CENSE's has not sustained its burden of establishing that the Hearing Examiner
2 engaged in an unlawful procedure in violation of RCW 36.70C.130(1)(a) or that the City
3 violated the appearance of fairness doctrine, chapter 42.36 RCW.

4 6. "The [appearance of fairness] doctrine requires that public hearings which are
5 adjudicatory in nature meet two requirements: the hearing itself must be procedurally fair, and it
6 must be conducted by impartial decisionmakers." *Raynes v. City of Leavenworth*, 118 Wn.2d
7 237, 245-246, 821 P.2d 1204 (1992), citations omitted.

8 7. The record shows that CENSE and the public fully participated in the public
9 hearing and that the City allowed CENSE, its members, its experts, its attorneys, and the public
10 substantial opportunity to participate in the land use process and the public hearing before the
11 Hearing Examiner.

12 8. There is substantial evidence in the record showing that the Hearing Examiner
13 acted as a fair and impartial decision maker and lawfully administered the public hearing. AR
14 000022-23, 0000032-33, 000841-843, 000846, 001312; TR 000090-91, 000101-108, 000110-
15 113, 000121-124, 000130-133, 000146-157, 000161-164, 000173-174, 000241-245, 000250-
16 252, 000285-288, 000296-297, 000621-622, 0000644, 000666.

17 9. The Hearing Examiner correctly concluded that PSE complied with the
18 Electrical Utility Facility decision criteria in LUC 20.20.255.E and satisfied the ASA
19 requirements in LUC 20.20.255.D.

20 10. The Hearing Examiner correctly found that "'load-shedding' – i.e. rolling
21 blackouts – is currently part of PSE's corrective action plan (CAP) options in neighborhoods
22 throughout the Eastside, including residential neighborhoods that are located along the route of
23 the South Bellevue Segment." AR 000026.
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1 11. The Hearing Examiner correctly found that PSE’s CUP proposal for the South
2 Bellevue Segment is located in a land use district that currently accommodates the utility
3 corridor and requires the service that PSE’s proposal will provide. AR 000022-26, 001328,
4 001340, 001357, 001539, 001543.

5 12. CENSE provides no evidence showing that south Bellevue residents are
6 immune to power outages resulting from an electrical utility system that cannot meet peak
7 demand. AR 000026, 001872.

8 13. CENSE’s argument that operational need has changed based on PSE’s phased
9 construction plan is not supported by the record because the South Bellevue Segment is being
10 constructed and permitted in exactly the same manner and as part of the same phased
11 construction sequence described and assessed in the Partner Cities’ environmental review. AR
12 000019, 000021-22, 001354-001357, 001417, 001539, 001545-1547, 001553, 001562, 006491-
13 6498, 006503-6507, 006823, 006866.

14 14. Although CENSE characterizes PSE’s CUP application for the South Bellevue
15 Segment as a “truncated, dead-end line,” CENSE provided no evidence establishing that PSE
16 has abandoned the larger Energize Eastside project and/or the northern portion of the project,
17 extending from north Bellevue to Redmond.

18 15. The Staff Report concluded correctly that PSE submitted an ASA that complied
19 with the requirements of LUC 20.20.255.D. AR 000019, 001327-1328, 001354-1357, 001425-
20 001435, 001535-1566.

21 16. The Hearing Examiner concluded correctly that the ASA “contains sufficient
22 information regarding the methodology employed, the alternative sites analyzed, the
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1 technologies considered, and the community outreach undertaken to satisfy the requirements of
2 LUC 20.20.255.D.” *Id.* at 000019.

3 17. Given the substantial deference afforded the Hearing Examiner, CENSE failed
4 to sustain its burden to show that the City’s approval of the CUP involved any erroneous
5 interpretation of LUC 20.20.255.E or LUC 20.20.255.D.

6 18. CENSE failed to appeal the City’s approval of the CALUP issued by the City,
7 and the Hearing Examiner correctly held that CENSE cannot collaterally attack any aspect of
8 the final CALUP approval or the electrical utility facility siting evaluated and permitted by the
9 CALUP. AR 000027; *Wenatchee Sportsmen*, 141 Wn.2d at 172, 180-182, 4 P.3d 123; *Habitat*
10 *Watch v. Skagit County*, 155 Wn.2d 397, 410-411, 120 P.3d 56 (2005).

11 19. Phased construction and permitting for a linear infrastructure project is not an
12 example of piecemeal environmental review prohibited by SEPA or inconsistent with *Merkel v.*
13 *Port v. Brownsville*, 8 Wn. App. 844, 509 P.2d 390 (1973).

14 20. SEPA allows phased review in certain circumstances, but SEPA prohibits the
15 practice of conducting environmental review only on current segments of a project and
16 postponing environmental review of later segments until construction begins. *Concerned*
17 *Taxpayers Opposed to Modified Mid-South Sequim Bypass v. State, Dept. of Transp.*, 90 Wn.
18 App. 225, 231 & fn. 2, 951 P.2d 812 (1998) (citing *Cathcart-Maltby-Clearview Community*
19 *Council v. Snohomish County*, 96 Wn.2d 201, 210, 634 P.2d 853 (1981)).

20 21. The SEPA Rules specifically prohibit environmental review that divides a larger
21 system into exempted fragments, avoids discussion of cumulative impacts, or avoids
22 consideration of impacts that are required to be evaluated in a single environmental document.
23 WAC 197-11-060(5)(d)(ii) & (iii). The City’s two-phased EIS process properly and fully
24 disclosed and analyzed the potential impacts of the *entire* Project (Redmond, Bellevue,
25 Newcastle, and Renton).

1 22. Within the three-volume document, it also assessed the impacts to specific
2 subsections and under a range of alternative routing option—including the South Bellevue
3 Segment. There is no credible claim that the Project’s SEPA review was improperly segmented.

4 23. The comprehensive and exhaustive environmental review conducted by the
5 Partner Cities for the Energize Eastside project did not divide the project into exempted
6 fragments, avoid discussion of cumulative impacts, or avoid consideration of impacts that are
7 required to be evaluated in a single environmental document.

8 24. *Merkel v. Port v. Brownsville*, 8 Wn. App. 844, 509 P.2d 390 (1973) does not
9 support CENSE’s “segmentation” argument or require that PSE submit all land use permit
10 applications for the entire Energize Eastside project simultaneously. No portion of the Energize
11 Eastside project is subject to the Shoreline Management Act (SMA), and the City of Bellevue’s
12 local electrical utility regulations, land use processes, and attendant CUP approval for the South
13 Bellevue Segment of the project is not the functional equivalent of the systematic state-wide
14 shoreline management required by the SMA, chapter 9.58 RCW.

15 25. In this case, the Final EIS does not disclose any significant unavoidable adverse
16 environmental impacts in central Bellevue or north Bellevue as a result of construction of the
17 South Bellevue Segment or from construction of the entire Energize Eastside project. AR
18 000018-22, 001319, 001539, 006823, 6826, 006838, 006842, 006860, 006866, 7209-7212,
19 07557.

20 26. The Partner Cities complied with the procedures established by SEPA, fully
21 considered the potential environmental effects of the entire Energize Eastside project across all
22 jurisdictions, and there is no evidence in the record that construction of the South Bellevue
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1 Segment will cause or create significant unavoidable adverse environmental impacts to central
2 Bellevue or to north Bellevue.

3 27. SEPA contemplates circumstances such as the Energize Eastside project where
4 multiple agencies have permitting authority over a single project. *See* WAC 197-11-922 to -
5 948; and WAC 197-11-055(5). In such a situation, the lead agency prepares the EIS for the
6 proposed project, and other agencies with jurisdiction over the project use the EIS prepared by
7 the lead agency to inform their permitting decisions. WAC 197-11-050(2)(b); WAC 197-11-
8 600(3)(c).

9 28. The north and south segments of the Energize Eastside project have been
10 combined for environmental review in compliance with SEPA, but SEPA does not require that
11 the north and south segments of the project must be combined by PSE for land use permitting
12 purposes.

13 29. PSE's CUP for the South Bellevue Segment is not within the East Bellevue
14 Community Council's (EBCC) jurisdiction, and the EBCC does not have any permitting
15 authority over land use decisions outside of its jurisdiction. RCW 35.14.040.

16 49. Under the City's LUC, the CUP application for the South Bellevue Segment is
17 subject to a different land use process than a CUP application for the northern construction
18 phase, and the record shows that the only CUP application before the City at the time of
19 approval was for the South Bellevue Segment of the Energize Eastside project. AR 001314-
20 1315, 001321-1325; TR 001188.

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22 B. The SEPA Challenge
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1 1. SEPA requires agencies to integrate environmental concerns into their decision-
2 making processes and study and explain the environmental consequences before pursuing
3 actions. *Stempel v. Dep't of Water Res.*, 82 Wn.2d 109, 117-118, 508 P.2d 166, 171 (1973).

4 2. An EIS is the most detailed form of environmental review required under SEPA
5 and is prepared when an agency determines that it is probable that a project would have
6 significant environmental impacts. AR 001387; WAC 197-11-400.

7 3. Under SEPA, the Court's review of EIS adequacy is *de novo*, but the Court gives
8 "substantial weight" to the Environmental Coordinator's determination that the EIS is adequate.
9 *Glasser v. City of Seattle, Office of Hearing Exam'r*, 139 Wn. App. 728, 739-740, 162 P.3d
10 1134 (2007) (citing RCW 43.21C.090; *Klickitat County Citizens Against Imported Waste v.*
11 *Klickitat County*, 122 Wn.2d 619, 633, 860 P.2d 390, 866 P.2d 1256 (1993) (citing R. Settle,
12 *The Washington State Environmental Policy Act: A Legal and Policy Analysis* § 14(a)(i) (4th
13 ed.1993)).

14 4. The Court's *de novo* review gives deference to agency discretion required by
15 SEPA, at RCW 43.21C.090, and the "rule of reason." *Id.*; *Cheney v. Mountlake Terrace*, 87
16 Wn.2d 338, 344-45, 552 P.2d 184 (1976).

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

5 7. SEPA requires that an agency consider alternatives to a proposed action. RCW
6 43.21C.030(c)(iii). Although the purpose of the EIS is to facilitate the decision-making process,
7 it need not list every remote, speculative, or possible effect or alternative. *Klickitat Cnty.*, 122
8 Wn.2d at 641, 860 P.2d 390. Instead, EIS alternatives must “include actions that could feasibly
9 attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased
10 level of environmental degradation.” WAC 197–11–440(5)(b); AR 006814.

11 8. Under SEPA, supplemental environmental review is not required when probable
12 significant adverse environmental impacts are covered by the range of alternatives and impacts
13 analyzed in the existing environmental documents. WAC 197-11-600(3)(b)(ii).

14 9. CENSE fails to provide any evidence showing that the South Bellevue Segment
15 alone can feasibly attain or approximate PSE’s stated objectives for the Energize Eastside
16 project as required by WAC 197-11-440(5)(b).

17 10. CENSE fails to provide any evidence that construction of the South Bellevue
18 Segment as a “standalone” project would meet local electricity peak demand growth and protect
19 electrical grid reliability in the Eastside of King County, from Redmond in the north to Renton
20 in the south, or provide necessary redundancy to ensure electrical power production remains on-
21 line when equipment in the north or the south is not working. AR 001321, 006815, 011637.

22 11. The environmental record confirms that the Partner Cities’ environmental
23 review complied with SEPA as the Final EIS provided full analysis of potential environmental
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1 impacts in the South Bellevue Segment and across all jurisdictions from Renton to Redmond.
2 AR 000018, 001325, 001387, 006818-006822, 006824-6835, 06838-6839, 006891-7182,
3 011642, 011645, 011659-011700, 012469-12470, 012531-012532, 012563-12569, 012583-
4 12584, 012586-12587, 012592-12593, 012597-12600.

5 12. The Partner Cities’ environmental review complied with SEPA because it
6 included a “‘reasonably thorough discussion of the significant aspects of the probable
7 environmental consequences’” of the Energize Eastside project within the South Bellevue
8 Segment and across all jurisdictions with permitting authority. *Glasser*, 139 Wn. App. at 740
9 (citing *Klickitat Cnty.*, 122 Wn.2d at 633, 860 P.2d 390 (quoting *Cheney*, 87 Wn.2d at 344–45,
10 552 P.2d 184)); *Residents Opposed to Kittitas Turbines*, 165 Wn.2d at 311, 197 P.3d 1153
11 (citation omitted).

12 **ORDER**

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14 Now, therefore, it is hereby ORDERED that the City of Bellevue’s decision approving
15 PSE’s CUP application, with conditions, is AFFIRMED, and Petitioner CENSE’s LUPA appeal
16 is DENIED. Likewise, Petitioner CENSE’s challenge to the adequacy of the environmental
17 review undertaken by the Partner Cities for the Energize Eastside project is DENIED.

18 Over the course of the underlying land use process and when issuing its decision on this
19 matter, the City did not engage in an unlawful procedure; the City’s approval of PSE’s CUP
20 application was not an erroneous interpretation of the law; the City decision was supported by
21 substantial evidence in the record before this Court; and the City’s decision was not a clearly
22 erroneous application of the law to the facts present in the record. RCW 36.70C.130(1)(a), (b),
23 (c) & (d). The City did not err when it approved PSE’s CUP application for the South Bellevue
24 Segment of the Energize Eastside project or when it certified that the Final EIS was adequate.
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1 For each of the foregoing reasons, Petitioner CENSE’s Land Use Petition, brought under chapter
2 36.70C RCW, and SEPA challenge, brought under chapter 43.21C RCW, are DENIED in full.

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4 DATED this 21st day of September, 2020.

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THE HONORABLE Melinda Young
King County Superior Court Judge
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-33800-8
Case Title: COALITION OF EASTSIDE NEIGHBORS FOR SENSIBLE
ENERGY VS CITY OF BELLEVUE
Document Title: ORDER

Signed by: Melinda Young
Date: 9/21/2020 9:00:00 AM



Judge/Commissioner: Melinda Young

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