



MEMORANDUM

Date: May 4, 2015

To: Mayor Balducci and City Councilmembers

From: Lori Riordan, City Attorney
Myrna Basich, Assistant City Manager/City Clerk

Subject: Council's consideration of the permit applications by Puget Sound Energy for a 115 kV overhead transmission line connecting the Lake Hills and Phantom Lake Substations

Before you this evening at Item 10(a) is action on the Hearing Examiner's recommendation to approve, with Conditions, PSE's applications for a Conditional Use Permit and a Shoreline Conditional Use Permit to construct a new 115 kV overhead transmission line connecting the existing Lake Hills and Phantom Lake substations. As noted in the attached memo provided for your April 20 meeting, **due to the quasi-judicial status of this matter, no additional evidence or public comment can be considered by Council in rendering a decision on the Examiner's recommendation.**

Current status of the matter before Council:

On April 20, Council heard the Staff Report, had the opportunity to ask staff questions, received responses, and began discussion. At the conclusion of that discussion, **Mr. Stokes moved, and Deputy Mayor Wallace seconded, that the Hearing Examiner's recommendation be approved and that legislation be prepared for Council discussion and action on May 4, 2015.**

It was determined that if Councilmembers have questions or concerns, or wish to suggest a new condition or modify a Hearing Examiner's condition, based on the record, they should work with the City Attorney over the next week-and-a-half. If proposing that conditions be amended, Councilmembers are asked to provide the City Attorney with specifics in the record to support their proposed modifications so alternative versions of the ordinance may be developed for Council's consideration. Any such proposals should be provided in writing for Council consideration in the May 4 Meeting Packet or Desk Packet.

Council decision on the application

For your guidance, the Council shall accord substantial weight to the recommendation of the Hearing Examiner.

The Land Use Code does not specify what burden of proof is required to support your decision, but because this is a civil matter an appropriate standard of proof would be a preponderance of evidence. Therefore, if a majority of Council concludes that the Hearing Examiner's recommendation is supported by "sufficient evidence to convince a fair-minded person" of the correctness of his Findings of Fact, Conclusions and Recommendation, then the Council would vote to approve the permit and adopt the Examiner's recommendation. If the Council concludes that additional conditions should be included in the permit, then it will be necessary to do so based upon a preponderance of the evidence contained in the record.

If a majority of the Council believes that the record does **NOT** contain sufficient evidence on any of the statutory criteria for granting a CUP, Council may remand the matter to the Hearing Examiner to take additional evidence on that particular criterion. If remanded, the instructions to the Examiner should provide sufficient detail to be clear to the Examiner, staff and the applicant so as to avoid confusion. The permit should be denied only if the Council finds that, overall, the Examiner's Findings, Conclusions and Recommendations are NOT supported by substantial evidence in the record.

The applicable decision criteria for Conditional Use permits, electrical utilities facilities and Shoreline Conditional Use permits immediately follow this memo.

Ongoing quasi-judicial process:

As a reminder, this is an ongoing quasi-judicial matter in which the Council acts as judges and must maintain fairness and impartiality. As noted earlier, staff have been capturing communications received by the full Council at the Council@Bellevuewa.gov address and your individual City email accounts, and will be prepared to report out on any new communications received since the April 20 meeting. You will be asked on Monday night to complete any partial disclosures made on April 20, together with any ex parte communications you have received individually, either in person, via phone, on personal email accounts or via other formats, since that time. The City Attorney will once again walk you through the disclosure protocol when this item is taken up on Monday night.

If any ex parte communications are to be disclosed, Councilmembers should be prepared to state the following on the record:

- Names of persons with whom the communications occurred,
- Whether the communications were written or oral, and
- The substance of the communications (if written, include emails or the written documents; if voicemail, include a transcript if one exists).

Please contact City Attorney Lori Riordan at 452-7220 or Myrna Basich at 452-2733 if you have questions or need additional information about any of the above process-related information.

If you have any questions about the Decision or criteria for making the decision, please contact City Attorney Lori Riordan by email or at 452-7220.

cc: Brad Miyake, City Manager
Kate Berens, Deputy City Manager
Pam Bissonnette, Interim Deputy City Manager

Applicable Decision Criteria
Conditional Use Permit application by Puget Sound Energy

Conditional Use Permit:

- A. The conditional use is consistent with the Comprehensive Plan.
- B. The design is compatible with and responds to the existing or intended character, appearance, quality of development and physical characteristics of the subject property and immediate vicinity.
- C. The conditional use will be served by adequate public facilities including streets, fire protection and utilities.
- D. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property.
- E. The conditional use complies with the applicable requirements of this Code.

Additional criteria for Electrical Utility Facilities:

- A. The proposal is consistent with Puget Sound Energy's System Plan.
- B. The design, use, and operation of the electrical utility facility complies with applicable guidelines, rules, regulations or statutes adopted by state law, or any agency or jurisdiction with authority.
- C. The applicant demonstrated that an operational need exists that requires the location or expansion at the proposed site.
- D. The applicant demonstrated that the proposed electrical utility facility improves reliability to the customers served and reliability of the system as a whole, as certified by the applicant's licensed engineer.
- E. Because the proposal is located on sensitive sites as referenced in Figure UT.5a of the Utility Element of the Comprehensive Plan, the applicant fully complied with the Alternative Siting Analysis requirements of LUC 20.20.255.D.
- F. Where feasible, the preferred site alternative is located within the land use district requiring additional service and residential land use districts are avoided when the proposed new or expanded electrical utility facility serves a nonresidential land use district.
- G. The proposal, as conditioned, will provide mitigation sufficient to eliminate or minimize long-term impacts to properties located near an electrical utility facility.

Shoreline Conditional Use permit:

- A. The proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Bellevue Shoreline Master Program; and
- B. The proposed use will not interfere with the normal public use of public shorelines; and
- C. The proposed use of the site and design of the project will be compatible with other permitted uses within the area; and
- D. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located; and
- E. The public interest suffers no substantial detrimental effect; and
- F. The proposed use complies with all requirements of WAC 173-14-140; and
- G. The proposed use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property; and
- H. The proposed use will be served by adequate public facilities including streets, fire protection, water, stormwater control and sanitary sewer; and
- I. The proposed use will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and
- J. The proposed use has merit and value for the community as a whole; and
- K. The proposed use is in accord with the Comprehensive Plan; and
- L. The proposed use complies with all other applicable criteria and standards of the Bellevue City Code.