

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Puget Sound Energy (PSE)
c/o Jeff McMeekin
P. O. Box 97034, Mail Stop EST-11W
Bellevue, WA 98009-9734

File Nos: PL08-0580 (special use)
PL08-0661 (shorelines)

Requests: (1) Special Use Permit
(2) Shoreline Substantial Development/
Conditional Use and Variance Permits

Location: A corridor within Skagit County that extends approximately 14.7 miles from the Sedro-Woolley Substation (east of the City of Sedro-Woolley) south to the Skagit/Snohomish County boundary, east of State Route 9.

Parcel Nos: The project is linear and crosses multiple parcels.

Land Use Designations: Portions of Rural Reserve (RRv), Rural Village (RVR), Agricultural-Natural Resource Lands (Ag-NRL), Rural Resource-Natural Resource Lands (RRc-NRL), Secondary and Industrial Forest Natural Resource Lands(SF-NRL, IF-NRL)

Summary of Proposal: To construct approximately 10.2 miles of transmission line replacement (from 115-kV to 230-kV) and 4.5 miles of new 230-kV transmission line within PSE's existing right-of-way.

Public Hearing: After reviewing the Report of Planning and Development Services, the Hearing Examiner conducted a public hearing on April 15, 2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Puget Sound Energy (PSE) seeks land use approval for a transmission line upgrade project. As defined by the County Code, the project will be a “Major Utility Development.”

2. The total project extends from the Sedro Woolley Substation north of the Skagit River to the Horse Ranch Substation south of Lake Stevens in Snohomish County. Overall the project will span 39 miles. Of these, 14.7 will be within Skagit County.

3. The project includes construction of 4.5 miles of new 230-kV line on new poles and replacement of approximately 34.5 miles of existing 115-kV line with a new 230-kV line also on new poles. A new fiber optic line will be installed with the new transmission line. All of the new construction and 10.2 miles of line replacement will be within Skagit County. The entire project will occur within existing PSE utility corridors.

4. The purpose of the project is to increase transmission capacity and improve system reliability, help prevent power outages, and support anticipated growth in the region. The fiber optic line will increase reliability by improving electric monitoring and switching practices.

5. The 4.5 miles of new 23-kV line will be installed between the Sedro Woolley Substation and the Beaver Lake Substation to the south. The replacement line will be installed between the Beaver Lake Substation and the County line. The project spans portions of the following Township, Range and Sections of the Willamette Median:

- T35N, R5E: Sections 19, 20, 29, 30, 31, 32.
- T34N, R5E: Sections 6, 7, 18, 19, 30, 31.
- T33N, R5E: Sections 5, 6, 7, 8, 17, 20, 29, 32.

6. The project will traverse the following zoning designations:

- Rural Reserve (RRv)
- Rural Village Residential RVR)
- Agricultural Natural Resource Lands (Ag-NRL)
- Rural Resource Natural Resource Lands (RRc-NRL)
- Secondary Forest Natural Resource Lands (SF-NRL)
- Industrial Forest Natural Resource Lands (IF-NRL)

A wide variety of uses exist adjacent to the corridor, including residential, agricultural, forestry, recreational and rural land uses. In all of the subject zones, a Major Utility Development is allowed with an approved Hearing Examiner Special Use Permit.

7. The project will be located along a total of 2.6 miles within shoreline jurisdiction divided among the following areas:

- In the 100 year floodplain north of the Skagit River, the Skagit River, and Hansen Creek
- In the Nookachamps basin 100 year floodplain and the East Fork of Nookachamps Creek.
- Within 200 feet of Walker Creek or an associated wetland edge.

The shoreline environment designation for all three of these areas is Rural.

8. The proposal includes the crossing of the Skagit River with an aerial transmission line. The Skagit River at this point is a Shoreline of Statewide Significance. Under the local Shoreline Master Program (SMP) the aerial river crossing requires a Shoreline Conditional Use Permit.

9. The Shoreline Variance approvals are needed to permit the utility lines to be located within the 150-foot setback along the Skagit River, Hansen Creek and the East Fork of Nookachamps Creek.

10. Because existing right-of-way will be used, the project is not expected to result in new adverse aesthetic impacts. The new construction will be of single-post light-duty steel poles located in part between existing transmissions lines and in part within the center of a 785-foot wide utility corridor that is undeveloped except along its eastern edge. Where line replacement will occur, the old wooden H-frame poles will be replaced with new single steel poles. Generally, the new poles will be located as close as possible to the location of the old H-frame poles in order to minimize environmental impacts.

11. At the Skagit River crossing, no work will occur below the Ordinary High Water Mark, although the existing overhead line to be replaced will briefly be dropped into the river and pulled ashore. The crossing will be at the location of the existing crossing. One of the two existing structures at the crossing will be replaced but this new structure will be positioned as close as possible to the location of the existing structure, again to reduce environmental impacts.

12. The impacts of the project will principally be short-term impacts of construction. The phases are:

(1) Vegetation trimming as needed. Trimming in wetlands, streams and buffers will be avoided and minimized as feasible. Any vegetation disturbed in these areas will be replaced with low-growing species.

(2) Establishment of material yard sites for storing materials and equipment, parking vehicles and staging operations. These will be 300 by 600 foot areas located off the right-of-way on existing impervious surfaces. There will be three to five

of these sites for the entire project. There are no wetlands or streams near them. Fill and spill containment measures will be instituted for each yard.

(3) Installation of erosion and sedimentation control measures. The contractor will use Best Management Practices (BMPs) appropriate for the locations of work operations, as detailed in the project Stormwater Pollution Prevention Plan and project Temporary Erosion and Sedimentation Control Plan. The measures will include establishment of proper construction access, control of surface flow within work areas and containment of sediment within work areas. A full-time inspector will be on site to monitor compliance.

(4) Access route improvements. Routes will be selected to minimize impacts – either existing access routes or short routes to pole sites established only for construction purposes. Where stream crossings are required, bridge mats will be used if there is no existing culvert. Helicopters may be used for pole work if there is limited access to the pole structures.

(5) Pole and wire installation. New holes for steel poles will be dug with a digger derrick. Holes will be 3.5 feet in diameter and 6 to 14.5 feet deep. The typical span length between the poles will be approximately 700 feet. Pole sections will be assembled at the structure site. The new structure will be erected with a crane (or in limited access cases with a helicopter). The holes will be backfilled according to appropriate embedment requirements. Once the poles are set, the line will be strung. At either end of the section where line is being strung will be an approximately 225-foot by 85-foot tensioning and pulling site.

(6) Restoration and cleanup. As soon as construction is complete at a site, restoration will begin. Mitigation efforts will follow professional recommendations included as conditions of approval. Unused spoils that cannot be spread at pole sites will be removed for off-site disposal. Disturbed areas will be stabilized and re-vegetated as needed.

13. The project was reviewed under the State Environmental Policy Act (SEPA). Skagit County and Snohomish County acted as co-lead agencies. A Mitigated Determination of Non-Significance (MDNS) was issued on February 26, 2009. The appeal period concluded on March 27, 2009. There were no appeals.

14. The conditions placed in the MDNS are, in general, standard requirements for compliance with existing regulatory requirements. The conditions are as follows:

- a. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage Ordinance. Said measures shall remain in place until completion of the project.

- b. The applicant shall comply with all Northwest Clean Air Agency requirements.
- c. The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.
- d. The applicant shall comply with all requirements of the Skagit County Fire Marshal and all required Fire Code Standards.
- e. An engineered soils compaction report shall be required for all structures placed on fill material.
- f. The applicant shall comply with all relevant provisions of 14.24 (Skagit County Critical Areas Ordinance).
- g. Operations, maintenance and construction shall comply with WAC 173-60 and SCC 14.16.840 for noise and vibration thresholds.
- h. Washington State WACs 172-201A and 173-200 shall be complied with, as required to address surface water quality issues and ground water issues. Best management practices shall be utilized to prevent interference and/or degradation of water quality.
- i. through m. (Conditions referring to Snohomish County)
- n. The public right-of-way shall be kept clean. Tracking of mud and debris off site shall not be allowed.

15. GeoEngineers prepared a conceptual Wetland and Stream Mitigation Plan, dated February 6, 2009, finding that minor impacts to wetland and buffer functions may occur as a result of pole installation activities, but that there should be no measurable impacts to water quality or hydrologic functions. A mitigation plan was included calling for implementation of enumerated BMPs to minimize impacts, as well as compensatory mitigation at identified sites at appropriate ratios. The County Staff concluded that the plan will meet the Critical Areas Ordinance, but noted that a grading permit and additional SEPA review may be required. The Staff said that the proposed mitigation will require a financial assurance in the amount of 125% of the estimated cost of completion within Skagit County,

16. GeoEngineers also prepared a Geologically Hazardous Areas Evaluation, dated March 16, 2009. The report recommended mitigation measures for erosion and landslide hazard areas. Given the relatively low intensity of the proposed work and assuming the mitigation measures are implemented, the report concluded that the proposed construction can be completed without adversely affecting slope stability or

erosion. The Staff requested that the recommendations of the geohazard report be included as conditions of approval.

17. The applicant provided an alternative analysis showing that the proposed project using the existing corridor offers the best choice of alignment for providing utility service with the least impact on natural resource lands and elements of the environment.

18. The application was circulated to appropriate departments and agencies. Comments are included as conditions of approval.

19. The application, the MDNS, and the hearing were given appropriate notice as required by law. The parcel numbers located at the posting locations along the corridor include: P18037, P106836, P30332, P30169, P40329, P40049. PSE held a public meeting attended by about eight people. Four written comments were received during application processing. Three of these were from the same person, Ron Walt. At the hearing there was public testimony from three persons, one of whom was Mr. Walt.

20. The public comments expressed concern that PSE has not answered all questions put to them and that in the past their contractors have not been adequately supervised and have left messes. One person urged that the Wild and Scenic River status of the Skagit River should dictate more sensitivity to vegetation management at the river crossing. Another had specific concerns about the contract activities on his private road. Mr. Walt had a number of complaints, centered on past performance by PSE contractors, issues over the proper extent of PSE easements, and the adequacy of the information provided with the application. He said he is opposed to the project as laid out and urged that any approval be deferred until correct information is provided and legal issues are cleared up.

21. PSE replied to the public comments through Leann Kostek, Project Manager, and Jeff McMeekin. They noted that erosion potential should be lessened on this project by doing most of the work during the dry season. They also pointed out that a professional detailed to monitor erosion and sedimentation will be on hand during project work. They acknowledged the “exuberance” of some contractors in the past, but said PSE has learned, and is improving contractor education and supervision, and that more “seasoned” contractors are being used on this job.

22. The County expressed the opinion that operational concerns over the construction of the project are being effectively worked out. The Staff also maintained that land use approvals are limited to review of relevant regulatory requirements and that civil law issues regarding the extent of PSE easements cannot be resolved in this permit context. The Staff advised that the US Forest Service which administers the Wild and Scenic Rivers corridor has expressed no concern over this project.

23. It was noted that, in addition to conforming to County requirements, PSE must also meet requirements of the U.S. Army Corps of Engineers, the State Department of Ecology and the State Department of Fish and Wildlife.

24. After reviewing the materials in the record, the Examiner finds that the information provided was adequate to evaluate the project and reach a decision on its approval. He is not persuaded that the applicant has misrepresented the facts. He finds that appropriate measures have been proposed for controlling the work to be done and for preventing significant adverse environmental impacts.

25. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(1)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.
- (h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

26. The Staff Report analyzes the application in light of the above criteria and finds that, as conditioned, the project will be consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

27. The proposal meets the special criteria of RCW 90.58.020 for development in Shorelines of Statewide Significance. The proposal supports the statewide interest and will provide long term benefits to the people of the state by providing additional power availability and reliability to numerous communities through western Washington. New impacts on the natural character of shorelines will be minimal.

28. A Shoreline Conditional Use Permit may be approved, when the applicant can show the following (SMP 11.03):

1. That the propose use will consistent with the policies of this Master Program and policies of RCW 90.58.020.
2. That the proposed us will not interfere with the normal public use of public shorelines.
3. That the proposed use of the site and design of the project will be compatible with other permitted uses in the area.
4. That the proposed use will cause no unreasonable adverse effects to the shoreline environment designation in which it is located.
5. That the public interest suffers no detrimental effect.

29. The Examiner concurs with Staff that the proposed Skagit River crossing will meet the above criteria. The project will use an existing utility corridor. The crossing of the river will not interfere with public use of the shore or river surface. It will be compatible with the existing utility corridor use. No unreasonable adverse impacts on the shoreline environment or on the public interest have been identified.

30. Subject to the policies and regulations of the local Shoreline Master Program (SMP), utilities are permitted in Rural shoreline areas. Most of the policy concerns are met in this case by locating the project within the existing utility corridor.

31. As noted, the tabular regulations establish a shore setback for utility transmission lines of 150 feet in Rural shoreline areas. Stream crossings will occur at the Skagit River, Hansen Creek and the East Fork of Nookachamps Creek. Aerial electrical transmission lines are exempt from this setback at “approved crossings.” Since the SMP does not provide guidance on “approved crossings,” a variance from the setback is being required here.

32. Variances from the Skagit County Shoreline Management Master Program for construction waterward of the OHWM must meet the following criteria (SMP 10.03(1)):

- a. The strict application of the bulk dimensional or performance standards

set forth in this Master Program precludes a reasonable use of the property not otherwise prohibited by this Master Program.

b. The hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and, not, for example, from deed restrictions or the applicant's own actions.

c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to the adjacent properties or the shoreline environment designation.

d. The variance granted does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.

e. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

33. The proposal, as conditioned, is consistent with the variance criteria. The proposed activity is a reasonable use of property that would not be possible without the stream crossings proposed. In order to pass through Skagit County in a north-south direction along the existing corridor, the line must cross the Skagit River and the other streams involved. The need for disregarding the setback is the result of topography and not a hardship self-inflicted by the applicant. The project will be compatible with other activities in the area in that it will merely continue a long-established use and not impose new long-term impacts. To allow this utility upgrade is not a grant of special privilege but rather an advancement of the public interest in adequate and reliable electric power.

34. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.050(1)(b)(ii), SMP 9.06, 10.02(3), 11.02(1).

2. The requirements of SEPA have been met.

3. The project as proposed and conditioned meets the criteria for approval of a Special Use Permit. SCC 14.16.900(1)(b)(v).

4. A Shoreline Substantial Development Permit may be approved when the project is consistent with the policies and regulations of the SMP, applicable policies of the Shoreline Management Act and regulations adopted by the Department of Ecology. SMP 9.02. The Examiner finds that this project, as proposed and conditioned, meets these requirements. With the approval of the variances, the policies and regulations of both the Act and the SMP are satisfied. No inconsistency with Department of Ecology regulations has been identified.

5. The Skagit River crossing is consistent with the criteria for approval of a Shoreline Conditional Use Permit. SMP 11.03.

6. The various stream crossings and project features within 150 feet of the Ordinary High Water Mark meet the criteria for a Shoreline Variance. SMP 10.03(1) and (2).

7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be constructed and operated as proposed in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other permits and approvals that may be required and shall abide by the conditions thereof.

3. The applicant shall comply with all conditions of the MDNS issued on February 26, 2009.

4. The applicant shall comply with all relevant State and County statutes and regulations, including but not limited to the County Critical Areas Ordinance, the performance standards of SCC 14.16,840, the County Drainage Ordinance, and State regulations relating to water quality and noise.

5. The applicant shall obtain a utility permit to perform work within the County right-of-way.

6. A grading permit will be required, unless the project can meet all applicable exemptions.

7. The applicant shall carry out the recommendations included in the final Geologically Hazardous Area Evaluation by GeoEngineers, dated March 16, 2009.

8. The applicant shall carry out the Wetland and Stream Mitigation Plan prepared by GeoEngineers, dated February 6, 2009. The mitigation may require a grading permit

and additional SEPA review. The proposed mitigation shall require a financial assurance in the amount of 125% of the estimated cost for completion with the County.

9. If the applicant proposes any modifications of the subject project, it shall apply for a new permit or permit revision prior to the start of construction.


10. The project shall be commenced within two years of the date of final approval and completed within five years thereof or the permits shall become void.

11. Failure to comply with any condition may result in permit revocation.

DECISION

The requested Special Use Permit, Shoreline Substantial Development Permit, Shoreline Conditional Use Permit and Shoreline Variances are approved, subject to the conditions set forth above.

DONE this 13th day of May, 2009.



Wick Dufford, Hearing Examiner

Copy Transmitted to Applicant: May 13, 2009

SPECIAL USE RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

SHORELINE RECONSIDERATION/APPEL

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.

DEPARTMENT OF ECOLOGY REVIEW

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.