

**FINDINGS, CONCLUSIONS AND DECISION  
OF THE HEARING EXAMINER FOR  
THURSTON COUNTY**

**CASE NO:** 2011104089 (Littlerock Power Line Upgrade)

**APPLICANT:** Puget Sound Energy, Inc.

**SUMMARY OF REQUEST:**

The Applicant requests a shoreline substantial development and a shoreline conditional use permit to replace a number of electric power poles along Littlerock Road and to remove a number of poles on the Erskine Road easement, each of which are in the Conservancy environment under the Shoreline Master Program.

**LOCATION OF PROPOSAL:**

The work within the jurisdiction of the Shoreline Management Act would take place along the Littlerock Road right-of-way between Maytown Road and 133<sup>rd</sup> Avenue SW, as shown on Ex. 3, and on the Erskine Road easement just south of Maytown Road, as also shown on Ex. 3. The legal description for the entire project, including area both within and outside of Shoreline Management Act jurisdiction, is set out at Ex. 1, p. 2.

HEARING EXAMINER DECISION IN NO. 2011104089

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## SUMMARY OF DECISION:

The permits are granted, subject to conditions.

## HEARING AND RECORD:

The hearing on this request was held before the Thurston County Hearing Examiner on May 21, 2012. Exhibits 1 through 6, listed below, are admitted into the record.

Exhibit 1. Staff Report by Thurston County Resource Stewardship Department for Case No. 2011104089, prepared by Robert Smith and dated May 21, 2012. This Exhibit includes the 11-page Staff Report and Attachments a through k listed on Page 11 of the Staff Report.

Exhibit 2. Photographs of poles to be replaced along Littlerock Road and photograph of pole to be replaced on Erskine Road easement.

Exhibit 3. Site Plan, showing electricity poles to be replaced and removed.

Exhibit 4. Print-out of map from Thurston Geodata Center, showing location of proposed project and shoreline jurisdiction.

Exhibit 5. Four photographs of notice posted at site.

Exhibit 6. PSE map showing general specifications for proposed project.

At the hearing, the following individuals testified under oath:

Robert Smith, Senior Planner  
Thurston County Resource Stewardship Department  
2000 Lakeridge Drive SW  
Olympia, WA 98502

Andy Markos, AICP  
Senior Planner, Puget Sound Energy, Inc.  
3130 S. 38<sup>th</sup> Street  
Tacoma, WA 98409

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

#### FINDINGS OF FACT

1. The Applicant proposes to modify its electricity distribution system in the vicinity of Littlerock and Maytown Roads in three ways. First, the Applicant has had some problems with fallen tree limbs interrupting service along part of its existing line along Littlerock Road. The Applicant proposes to address this by replacing the wire along this segment with "tree wire", which has a coating that prevents shorts when limbs fall on it and which provides avian protection. Because tree wire is a little heavier than the existing wire, new poles are needed to properly carry the weight. To accomplish this, the

Applicant proposes to remove and replace Poles P04, P05, P05A, P06, P07, P08, P09, and P10 along Littlerock Road between Maytown Road and 133<sup>rd</sup> Avenue SW, as shown on Ex. 3.

2. The poles to be replaced will be pulled out using a boom truck, and the hole for the replacement pole will be drilled next to the location of the old pole using an auger. The hole from the old pole will be filled with gravel.

3. The second portion of the project involves the existing power line extending south from Maytown Road along the easement/right-of-way for Erskine Road to the east of Littlerock Road. A portion of this line just south of Maytown Road is difficult to access and needed access to it can damage the area around Beaver Creek. To ameliorate this problem, the Applicant proposes to remove six power poles on the Erskine Road easement south of Maytown Road. Test. of Markos. These poles would be removed using hand held equipment by crews which would enter on foot. These poles would not be replaced, thus breaking the present circuit along Erskine. The power line currently over Beaver Creek would be removed. Some other poles on the remaining line along Erskine would be replaced, according to the Applicant at Ex. 1, Attachment d.

4. To maintain needed connectivity, the Applicant proposes the third part of the project, which is to install a new power line along 133<sup>rd</sup> Avenue SW between Littlerock Road and Erskine Road. Due to vegetation, the Applicant proposes to place this new line underground. The Applicant proposes to install the underground line through standard trench installation, which it states will reduce impacts in the shoreline area.

5. In the vicinity of this project, Beaver Creek takes a meandering course toward the Black River to the west, as shown on the map at Ex. 4. Beaver Creek is subject to

the state Shoreline Management Act (SMA), Chap. 90.58 RCW, and is designated as a Conservancy environment by the Thurston Region Shoreline Master Plan (SMP).

6. Certain parts of the project described above would occur in SMA jurisdiction within 200 feet of Beaver Creek. First, as shown on Ex. 3, all the poles listed above to be replaced along Littlerock Road are in SMA jurisdiction. Second, a short portion of the new underground line along 133<sup>rd</sup> Avenue under and immediately east of Littlerock Road, as shown on Ex. 3, is subject to the SMA. Finally, Poles P20 and P21 to be removed along the Erskine easement are in SMA jurisdiction.

7. Work for all three portions of the overall project will occur between April and September. The Applicant proposes to take the erosion control measures for the entire project described on the second page of Ex. 3. The Applicant is required by law and the conditions below to meet all applicable standards for erosion control and other matters in the County's Drainage Design and Erosion Control Manual. The Public Works Department has determined that at this stage of review the proposal appears to meet all of the applicable requirements in the Drainage Design and Erosion Control Manual and the County Road Standards.

8. Power lines are already in place along Littlerock Road and the Erskine easement. The new line along 133<sup>rd</sup> Avenue will be underground. The only action in the Erskine shoreline area is to remove two poles. Thus, this proposal will not harm or obstruct any scenic views and will not damage the aesthetic qualities of the shorelines.

9. If the affected shorelines were deemed notable for their aesthetic, scenic, historic or ecological qualities, this project would not degrade those qualities and in fact will enhance aesthetic qualities.

10. With this proposal, the utility rights-of-way will be as usable for public access as before.

11. As conditioned, the proposal should protect water quality and the aquatic environment.

12. As conditioned, the proposal will not harm the public health.

#### CONCLUSIONS OF LAW

1. With exceptions not pertinent to this proposal, the SMA defines shorelines of the state to include "all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except . . . (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less " RCW 90.58.030 (2) (d). Shorelands are defined as "those lands extending landward for two hundred feet . . . from the ordinary high water mark . . ." RCW 90.58.030 (2) (f). The SMP designates Beaver Creek as a shoreline of the state, and no evidence to the contrary was offered. Thus, Beaver Creek and the land two hundred feet on either side of it are subject to the SMA.

2. The SMA requires a substantial development permit for any "substantial development" on the shorelines of the state. RCW 90.58.140 (2). "Substantial development" is defined as any development "of which the total cost or fair market value exceeds five thousand dollars . . .", RCW 90.58.030 (3) (e), adjusted for inflation by the state Office of Financial Management. The proposal in part is in the water areas of the state. The fair market value of the proposal in the shorelines exceeds the monetary threshold. Therefore, those parts of the proposal in the shorelines may be carried out only if a substantial development permit is issued.

3. A substantial development permit may be granted only if the proposal is consistent with the SMA and the local SMP. RCW 90.58.140 (2) (b).

4. The SMP at Section 3, XX defines utilities to include facilities which transport electric power. Thus, this proposal counts as utility work under the SMP. Utility transmission lines are allowed in the Conservancy environment only if a shoreline conditional use permit is issued. SMP, Section 3, XX, D, 3. Thus, a shoreline conditional use permit is also required for those parts of the proposal to be carried out in the shorelines.

5. A shoreline conditional use permit may be granted only if the proposal meets applicable standards of the SMP and the conditional use criteria in the WAC. SMP, Section One, II. B.

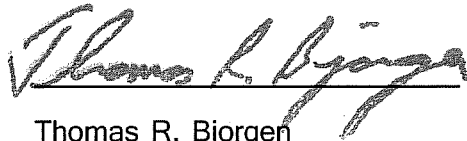
6. Beginning at p. 3, the Staff Report at Ex. 1 analyzes compliance with the SMA, the SMP, and the standards of the WAC governing shoreline conditional use permits. The Staff Report analysis is supported by the evidence and is adopted by reference. That analysis and the Findings above show that this proposal, as conditioned, meets all

applicable standards for issuance of a substantial development permit and a shoreline conditional use permit.

### DECISION

The requested shoreline substantial development permit and shoreline conditional use permit are granted, subject to Conditions 1 through 7 on p. 10 of the Staff Report at Ex. 1.

Dated this 4th day of June, 2012.

A handwritten signature in black ink, appearing to read "Thomas R. Bjorgen", written over a horizontal line.

Thomas R. Bjorgen

Thurston County Hearing Examiner





Project No. 2011104089  
 Appeal Sequence No.: \_\_\_\_\_

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

**Signature required for both Reconsideration and Appeal Requests**

\_\_\_\_\_  
 APPELLANT NAME PRINTED

\_\_\_\_\_  
 SIGNATURE OF APPELLANT

Address \_\_\_\_\_

Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$595.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

**The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).**

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a Request for Reconsideration or **\$820.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.