

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

**CASE NO:** 2012100421 (Military Road Power Line Upgrade)

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

**SUMMARY OF REQUEST:**

The Applicant requests a shoreline substantial development permit and a shoreline conditional use permit to install new electric power poles and line on the Military Road right-of-way in the shoreline area of the Deschutes River.

**LOCATION OF PROPOSAL:**

The right-of-way of Military Road where it crosses the Deschutes River on an existing bridge in a portion of the southwest quarter of Section 12, Township 16 N, Range 1 West, W.M.

**SUMMARY OF DECISION:**

HEARING EXAMINER DECISION IN NO. 2012100421

The permits are granted, subject to conditions.

#### HEARING AND RECORD:

The hearing on this request was held before the Thurston County Hearing Examiner on August 20, 2012. Exhibits 1 through 3, listed below, are admitted into the record.

Exhibit 1. Staff Report by Thurston County Resource Stewardship Department for Case No. 2012100421, prepared by Robert Smith and dated May 21, 2012. This Exhibit includes the 10-page Staff Report and Attachments a through i listed on Page 10 of the Staff Report.

Exhibit 2. Two sheets containing aerial photograph of project site, drawings of project details, and site plan.

Exhibit 3. Two photographs of notice posted at site.

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

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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 connect an existing overhead power line on the east side of the Deschutes River with an existing underground power line to the west of the river. The Applicant would make this connection by constructing an approximately 1865 foot long, 12,500 volt power line along the right-of-way of Military Road, crossing the Deschutes River above an existing bridge. Eight new power poles would be installed as part of the project. The proposal uses the shortest route to make this connection.

2. This new connection will improve the reliability and level of service of electrical service in the area.

3. The shoreline of the Deschutes River where the proposed project would cross it is designated Conservancy under the state Shoreline Management Act (SMA), Chap. 90.58. Work proposed within the jurisdiction of the SMA would consist of installing two new poles on opposite sides of the river, each about 100 feet upland from its ordinary high water mark, and stringing wire between them.

4. Uses surrounding the project site include rural single-family residences, farms, and forest land.

5. The bridge and road are already in place. The installation of power poles and line will not obstruct any scenic view or damage or degrade any shoreline aesthetic qualities.

6. The proposal will not interfere with normal public use of the shorelines.

7. With the existing bridge, the lines placed over the river will not obstruct any boat traffic.

8. Poles will be placed by drilling a hole, placing the pole in it, and filling up the hole.

9. The Applicant is required by the incorporated conditions to comply with the County Drainage Design and Erosion Control Manual. This includes compliance with erosion control measures during construction to prevent any sediment from reaching the river.

10. The Applicant is required by conditions below to restore any disturbed area to pre-development elevation and to replant it with native or pre-existing species.

11. The new power line could be placed in a conduit or passage under the river. This, however, could result in sedimentation in the river and would require significant

engineering to bring the line up through the bridge abutments and onto the bridge. Given the absence of any adverse effect from the proposed overhead line and these difficulties with an underground route, the latter should be deemed not to be feasible under the applicable policies and regulations of the Shoreline Master Program for the Thurston Region (SMP).

12. The Applicant proposes to employ standard and customary safeguards to prevent damage to the environment or adjacent properties if an accident occurs.

13. The proposal will not cause any significant adverse effects to the shoreline environment.

14. The proposal is compatible with other authorized uses in the area and with uses planned for the area under the County Comprehensive Plan and the SMP.

15. Similar proposals would not have a cumulative adverse effect when considered with this proposal.

16. The County Resource Stewardship, Public Works and Public Health and Social Service departments recommend approval subject to conditions, which are incorporated below.

#### **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). Under these standards the Deschutes River at this location 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 shorelines of the state. The fair market value of the proposal in the shorelines exceeds the monetary threshold, as adjusted by the Office of Financial Management. 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. 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.

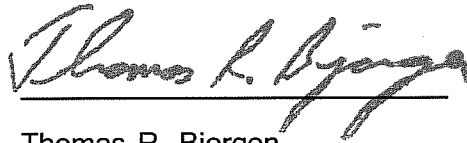
6. Beginning at p. 3, the Staff Report at Ex. 1 analyzes compliance with the SMA, the SMP, and the standards of the WAC governing shoreline conditional use permits. The Staff Report analysis is supported by the evidence and is adopted by reference. That analysis and the Findings above show that this 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 6 on p. 9 of the Staff Report at Ex. 1 and to the following condition:

The Applicant shall restore any disturbed area in the shoreline jurisdiction to pre-development elevation and replant it with native or pre-existing species.

Dated this 4th day of September, 2012.

A handwritten signature in black ink, reading "Thomas R. Bjorgen". The signature is written in a cursive style and is positioned above a solid horizontal line.

Thomas R. Bjorgen

Thurston County Hearing Examiner



## DEPARTMENT RECOMMENDATION

Based on the above analysis, the Resource Stewardship Department recommends **approval** of the Shoreline Substantial Development Permit and Shoreline Conditional Use Permit subject to the following conditions:

1. Prior to or in conjunction with the issuance of any building permits, all applicable regulations and requirements of the Thurston County Public Health and Social Services department, Public Works Department, Fire Marshall, and Thurston County Resource Stewardship Department shall be met.
2. All on-site construction activities shall fully comply with noise limitations outlined in WAC 173-60.
3. All activities shall fully comply with the Thurston County Stormwater Drainage Design and Erosion Control Manual (TCC 15.05) throughout all phases of the proposed project.
4. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.
5. All removed debris and waste materials resulting from this project must be disposed of at an approved site. Property owners, developers, and contractors are encouraged to recycle all possible left over construction, demolition, and land clearing (CDL) materials and reduce waste generated. Please visit <http://1800recycle.wa.gov> to find facilities that recycle construction, demolition, and land clearing materials in your area.
6. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, The Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).

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Robert Smith  
Senior Planner





Project No. 2012100421 SSDP  
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 3.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

#### **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.

#### **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.

**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.

**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.