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No. 74464-0-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

PUGET SOUND ENERGY, INC.,
Appellant/Cross-Respondent,

vs.

EAST BELLEVUE COMMUNITY COUNCIL,
Respondent/Cross-Appellant, and
CITY OF BELLEVUE,
Respondents.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 MAY 23 PM 4:07

BRIEF OF RESPONDENT CITY OF BELLEVUE

CITY OF BELLEVUE
OFFICE OF THE CITY ATTORNEY
Chad R. Barnes, WSBA No. 30480
Assistant City Attorney
Attorney for City of Bellevue
450 – 110th Avenue NE
Bellevue, WA 98004
(425) 452-6829

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I. INTRODUCTION

This matter involves Puget Sound Energy's (PSE) proposal to link the Lake Hills and Phantom Lake electrical substations with an additional 115kV transmission line in order to increase reliability and meet future demands. The project underwent over four years of regulatory permit analysis before being approved by the City of Bellevue (City).¹ However, without consideration of the project as a whole, the East Bellevue Community Council (EBCC) disapproved PSE's conditional use permit focusing exclusively on the EBCC's own parochial concerns. The City requests that the trial court's Order dismissing PSE's LUPA petition be reversed and Resolution No. 550 be vacated.

II. ASSIGNMENTS OF ERROR

The City joins in the assignments of error and legal arguments put forth in Puget Sound Energy Inc's Opening Brief.

III. (PSE) STATEMENT OF THE CASE

The City incorporates PSE's statement of the case.

IV. SUMMARY OF ARGUMENT

The City provides the following brief argument and recitation of the facts from the record to assist the Court in understanding the

¹ PSE originally applied for the project in December, 2011. Prior to its application PSE engaged the City for several years regarding siting for the project. Linking the Phantom Lake and Lake Hills substations has been part of PSE's Electrical Facilities Plan since 1993. AR 76, 81.

arguments asserted by PSE and to point out factual errors made by the EBCC.

V. ARGUMENT

148TH Avenue is not an “Urban Boulevard”.

The City’s Comprehensive Plan outlines aspirational goals balancing the needs of residential neighborhoods with utilities and a coordinated design esthetic. In this matter, the EBCC’s findings in support of Resolution No. 550 mischaracterize the nature of 148th Avenue under the City’s Comprehensive Plan. The EBCC’s finding No. 9 asserts that 148th Avenue is an “Urban Boulevard”² and thus siting electrical facilities along the route is incompatible with the Comprehensive Plan. AR 3016-3020. Simply put, nothing in the City’s Comprehensive Plan prevents electrical facilities from being sited along 148th Avenue. Instead, the City’s Comprehensive Plan provides, in part, that the City will:

Work with Puget Sound Energy to implement the electrical service system servicing Bellevue in such a manner that new and expanded transmission and substation facilities are compatible and consistent with the land use pattern established in the Comprehensive Plan.

UT-72; AR 240.

² Notably, the City’s Comprehensive Plan does not use the term “urban boulevard” nor does it designate 148th Avenue as an “urban boulevard.” Instead, the City has an urban boulevard’s initiative, which is a program that explores ways to improve neighborhood livability and character as well as the environment through increased tree canopy, natural drainage practices and enhanced streetscapes. 148th Avenue is not part of the urban boulevard initiative.

Additionally, the City's Comprehensive Plan states:

Design, construct, and maintain facilities to minimize their impact on surround neighborhoods.

UT-5; AR 237.

Here, the City undertook a Comprehensive Plan Policy Analysis weighing the competing goals, aspirations and policies within the plan. The City found that the proposed route along 148th Avenue with over \$856,740.00³ pledged by PSE toward environmental mitigation and restoration work was compatible with the Comprehensive Plan. By running the proposed transmission lines down a major arterial (148th Avenue) the proposal avoids established single family neighborhoods in favor of more commercial corridors. See Comprehensive Plan – Policy Analysis, AR 236-245. In contrast, the EBCC's findings underlying Resolution 550 and disapproving the project do not address the project as a whole and focus only on the EBCC's narrow concerns regarding the aesthetics of 148th Avenue. The EBCC's disapproval of this project reaches beyond its jurisdiction, affecting over 12,400 citizens served by the substations at issue. Many of these customers reside outside the EBCC's jurisdiction and thus will not benefit by increase electrical reliability due to the EBCC's disapproval. See Staff Report Addressing Project Need and Service Area, AR 120-122.

³ See AR 133.

In short, to the extent that the EBCC characterized 148th Avenue as an “urban boulevard” thus suggesting that the street is entitled to special protection or consideration under the Comprehensive Plan the EBCC is both factual and legally mistaken. Here, by mischaracterizing the nature of 148th Avenue, the EBCC attempts to support its not-in-my-backyard concerns at the expense of the project and the City as a whole.

VI. CONCLUSION

The City joins in positions put for in PSE’s Opening Brief and requests that the trial court’s Order dismissing PSE’s LUPA petition be reversed and Resolution No. 550 be vacated.

Dated this 23rd day of May, 2016.

Respectfully submitted,

CITY OF BELLEVUE
OFFICE OF THE CITY ATTORNEY
Lori M. Riordan, City Attorney

A handwritten signature in black ink, appearing to read 'C.R. Barnes', written over a horizontal line.

Chad R. Barnes, 30480
Assistant City Attorney
Attorney for City of Bellevue

DECLARATION OF SERVICE

I, Kelly M. Thibodeau, declare under penalty of perjury under the laws of the State of Washington that on May 23, 2016, I caused **BRIEF OF RESPONDENT CITY OF BELLEVUE** to be served on the persons listed below:

Erin L Anderson
Rita V. Latsinova
Sara A. Leverette
Stoel Rives, LLP
600 University Street, Suite 3600
Seattle, WA 98101
Email: erin.anderson@stoel.com
Email: rita.latsinova@stoel.com
Email: sara.leverette@stoel.com

Kathleen J. Haggard,
Andrea L. Bradford
Porter Foster Rorick, LLP
601 Union Street, Suite 800
Seattle, WA 98101
Email: kathleen@pfrwa.com
Email: andrea@pfrwa.com

Dawn Findlay Reitan
Inslee Best Doezie & Ryder
P.O. Box 90016
Bellevue, WA 98009
Email: dreitan@insleebest.com

By way of:

Email and regular U.S. Mail on May 23, 2016.

DATED at Bellevue, Washington on this 23rd day of May, 2016.



Kelly M. Thibodeau, Declarant
Legal Secretary

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STATE OF WASHINGTON
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