



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Mark McCrady, Former Cowlitz PUD
Commissioner

Brain Skeahan, Former Cowlitz PUD General
Manager

Respondents.

PDC Case No. 13-022
PDC Case No. 15-039

Report of Investigation

I.
Background

- 1.1 Cowlitz Public Utility District (Cowlitz PUD) is located in Longview, Washington. It provides power to utility customers in Southwest Washington. Cowlitz PUD is managed by a board of three elected Commissioners who are responsible for hiring the General Manager, developing general policy direction for the PUD, and approving the annual operating budget.
- 1.2 During 2012, the period at issue in the complaint, Cowlitz PUD's General Manager was Brian Skeahan and its three Commissioners were Merritt "Buz" Ketcham, Ned Piper, and Mark McCrady. McCrady ran for re-election in 2012, and was defeated by Kurt Anagnostou in the November 6, 2012 general election. The current board consists of Ketcham, Piper, and Anagnostou. Skeahan is no longer the General Manager, as of January 16, 2013.
- 1.3 On January 18, 2013, Ketcham filed a complaint alleging that former Commissioner McCrady and former general manager Skeahan had violated RCW 42.17A.555 by using or authorizing the use of Cowlitz PUD facilities to assist the unsuccessful 2012 re-election campaign of Commissioner McCrady. Ketcham filed the complaint two days after the PUD's Commissioners terminated Skeahan on January 16, 2013 following what Ketcham described as an internal investigation into violations of RCW 42.17A.555. Ketcham said the PUD's internal investigation found that Skeahan had used public employees and public resources to aid the campaign of incumbent

Commissioner McCrady in the November 6, 2012 election. The complaint included three allegations.

- 1.4 Ketchum contacted PDC staff shortly after filing his initial complaint and asked staff to hold off sending the complaint to the Respondents because he was attempting to gather evidence to make two additional allegations against Skeahan and McCrady. He called several days later and asked staff to disregard his request. Staff then asked the Respondents to provide a written response to the allegations in the complaint.
- 1.5 Paul Brachvogel is General Counsel for Cowlitz PUD, and held that position during 2012. On February 15, 2013, Brachvogel informed the Public Disclosure Commission (PDC) that Cowlitz PUD's board of commissioners had voted to join the complaint filed by commissioner Ketchum on January 18, 2013. Brachvogel submitted a copy of the minutes from the regular board meeting of January 22, 2013, reflecting the board's action to join Ketchum's complaint.
- 1.6 On July 8, 2013, Ketchum filed a supplement to his complaint, alleging five additional violations of RCW 42.17A.555 by Skeahan and McCrady.
- 1.7 On July 18, 2013, Brachvogel informed the PDC that Cowlitz PUD's board of commissioners had adopted a resolution on July 9, 2013, joining the supplement to the complaint filed by Ketchum on July 8, 2013. Brachvogel included a copy of the resolution.
- 1.8 The investigation was delayed for several months during 2013 because Skeahan and McCrady said they were unable to provide a timely written response to the supplement to the complaint, as requested. Skeahan and McCrady told PDC staff they were unable to provide a complete, meaningful response to the allegations because Cowlitz PUD officials were not complying with their public records requests for documents and records, including emails, in the possession of the PUD. Skeahan said that even after threatening Cowlitz PUD with legal action, he was unable to obtain all records he had requested. He said the records were necessary to being able to fully respond to allegations 4 through 8 in the supplement to the original complaint.

II.

Allegations

- 2.1 Ketcham's January 18, 2013 complaint alleged that former Commissioner Mark McCrady and former general manager Brian Skeahan violated RCW 42.17A.555 by using or authorizing the use of Cowlitz PUD facilities to assist the 2012 Mark McCrady reelection campaign for PUD Commissioner by: **(Exhibit 1)**
 - **Allegation 1** - authorizing or directing a campaign photo shoot using: (a) approximately 26 on-duty Cowlitz PUD employees; (b) PUD facilities (the PUD's 7th Avenue Electric Substation); (c) district vehicles, to transport PUD employees to the substation; and (d) a public employee as the photographer;
 - **Allegation 2** - directing the GIS Manager, a Cowlitz PUD employee, to create a "voter preference" map to analyze voter results by precinct for all of Cowlitz

County for the November 6, 2012 PUD Commissioner election, using a PUD computer and software; and

- **Allegation 3** - directing PUD staff to consider the addition of a contract provision to a Power Sales Agreement being negotiated between Cowlitz PUD and Longview Fibre in which Longview Fibre would supply a Legacy Health Care Insurance Benefit for Commissioner Mark McCrady, an employee of Longview Fibre.¹

2.2 On July 8, 2013, Ketcham filed a supplement to his complaint alleging that Skeahan and/or McCrady had further violated RCW 42.17A.555 by using or authorizing the use of Cowlitz PUD facilities to assist the 2012 Mark McCrady reelection campaign. The supplement to the complaint included the following additional allegations: **(Exhibit 2)**

- **Allegation 4** - using or authorizing the use of Cowlitz PUD facilities to prepare and/or use a campaign briefing document for an interview with the local newspaper editorial board;
- **Allegation 5** - using or authorizing the use of Cowlitz PUD facilities to prepare speaking points that assisted McCrady's 2012 campaign;
- **Allegation 6** - authorizing a delay in distributing "retirement payroll adjustment checks" to 11 senior staff members until after the 2012 election for the purpose of assisting McCrady's 2012 campaign;
- **Allegation 7** - using or authorizing the use of Cowlitz PUD facilities to prepare and/or use supplemental PUD financial reports for the purpose of assisting McCrady's 2012 campaign; and
- **Allegation 8** - authorizing a 2012 Cowlitz PUD communications plan that began evolving mid-year into a reelection plan for McCrady, and that included conducting a survey for the purpose of assisting McCrady's 2012 campaign.

III.

Summary of Investigative Findings

- 3.1 Having reviewed the allegations in the January 18, 2013 complaint and July 8, 2013 supplement, and relevant evidence, staff found that Cowlitz PUD employees and officials including Mark McCrady, Brian Skeahan, Tim Johnston, and Steve Brock used or authorized the use of PUD facilities (staff time, camera, vehicles, and other facilities) for a photo shoot in May of 2012 for the purpose of assisting Mr. McCrady's re-election campaign (**Allegation 1**). The photos in question were not used.
- 3.2 Further, PDC staff found that on September 14, 2012, Mark McCrady, Brian Skeahan, and Gary Huhta used or authorized the use of PUD facilities (staff time, computers, and

¹ On February 8, 2013, staff informed Ketcham that the PDC does not have jurisdiction over the issues raised in his third allegation, and that staff will not investigate this allegation. On May 20, 2013, Ketcham sent a letter addressed to the Commission Chair and two Commissioners, asking that the PDC reconsider its decision to not investigate allegation #3.

other facilities) to prepare a briefing document which Mr. McCrady used during an interview with the local newspaper editorial board the same day, thereby assisting his re-election campaign (**Allegation 4**).

- 3.3 Staff's review of the complaint, supplemental complaint, and relevant evidence does not indicate a use of public facilities for the purpose of assisting a candidate's campaign as alleged in **Allegations 2, or 5 – 8**.

IV. Detailed Findings

Allegation 1 - Authorizing or directing a campaign photo shoot using (a) approximately 26 on-duty Cowlitz PUD employees; (b) PUD facilities (the PUD's 7th Avenue Electric Substation); (c) district vehicles to transport PUD employees to the substation; and (d) a public employee as the photographer. (**Exhibit 1**)

- 4.1 Around 1:00 p.m. on May 25, 2012, Tim Johnston, Cowlitz PUD Manager, System Engineering, took approximately 14 photographs of Mark McCrady and approximately 25 PUD employees at Cowlitz PUD's 7th Avenue substation. The photos were taken with a Cowlitz PUD camera and were stored on a PUD computer. The photos were taken during normal work hours following the employees' normal lunch break. The employees arrived at the substation in PUD vehicles. McCrady wanted some of the photos for his personal use, and he intended to use some of the photos for a campaign brochure for his 2012 reelection campaign. Based on the advice of McCrady's campaign manager, which was later confirmed by PUD General Counsel Brachvogel, the photos were not used for campaign purposes.
- 4.2 **Mark McCrady's written response:** On February 13, 2013, Mark McCrady submitted a written response to allegation 1 (**Exhibit 3**), which is summarized below.
Concerning Allegation 1, according to McCrady:
- 4.2.1 McCrady asked Brian Skeahan if there was a volunteer or two willing to have their picture taken in front of the substation on 7th Avenue in Longview. McCrady thought there would be no violation of campaign law if it was done "off-the-clock" and from the public right-of-way. McCrady acknowledged having pictures taken at the substation, in part, for the purpose of assisting his campaign.
- 4.2.2 A few days after McCrady asked Skeahan to find one or two volunteers who worked on the substation project to meet him there during their lunch hour so he could take a few photos, Tim Johnston called McCrady and made arrangements to meet at the substation gate. On May 25, 2012, Tim Johnston and Brian Miner, a Cowlitz PUD Electrical Engineer, and members of the line crew, showed up at the substation for the photo shoot.
- 4.2.3 McCrady wanted the pictures for a two-fold purpose. He was proud of the new substation and wanted some pictures for himself. He also planned to use the pictures in a campaign brochure if they turned out well. He expected the PUD

employees to show up in their personal vehicles, but most, if not all, showed up in PUD vehicles.

4.2.4 None of the photos were used by McCrady in his campaign. When his campaign manager looked at the pictures, she told McCrady that they could not be used. Later, Cowlitz PUD General Counsel Brachvogel confirmed that the photos could not be used.

4.2.5 McCrady expected one or two volunteers to be in a photo with him in front of the substation, taken on the sidewalk and “off-the-clock,” but that did not happen. The lineman who worked on the project also showed up, and everyone ended up inside the gate. McCrady lost control of the situation, which “took on a life of its own.”

4.3 **Brian Skeahan’s written response:** On February 20, 2013, Brian Skeahan submitted a written response to Allegation 1 (**Exhibit 4**), which is summarized below: **Concerning Allegation 1, according to Skeahan:**

4.3.1 In the Spring of 2012, McCrady approached Skeahan regarding his interest in having a photograph taken of him for use in his upcoming reelection campaign. Skeahan told McCrady that he could only take a picture in an area that was accessible to the public, such as outside the front of the substation, rather than inside where public access is restricted. Skeahan also told McCrady that any participation by PUD employees would have to be voluntary, and on their own time. McCrady asked Skeahan to let staff know he might be contacting them to arrange for a photo.

4.3.2 Shortly thereafter, Skeahan spoke with Tim Johnston, the substation engineer, and gave him a “heads up” that Commissioner McCrady might call about having his picture taken in front of the substation, Skeahan did not ask Johnston to do anything further. Skeahan stood in the doorway to Johnston’s office when he spoke to him. Skeahan did not personally specifically request or direct the involvement of any PUD employees, the use of PUD equipment, or vehicles to be involved with the photos. This is the only conversation Skeahan recalls having with Johnston regarding this matter.

4.3.3 Skeahan operated under the assumption that McCrady understood that the photos needed to be in a public area such as a street or sidewalk in front of the substation. Skeahan is fairly certain that he did not know that any photos were in fact taken until after he was terminated by the PUD Commissioners and learned of Ketcham’s complaint.

4.3.4 Other than one brief conversation with Tim Johnston, Skeahan played no part in arranging for the photo. Skeahan did not specifically ask Johnston to do anything. He simply informed Johnston that McCrady would be contacting him about a photo.

4.3.5 Skeahan does not recall being part of a conversation a week before June 4, 2012 with PUD General Counsel Brachvogel and Commissioner McCrady, during

which Brachvogel advised McCrady that he should not use the photos taken at the substation for campaign purposes.

- 4.4 After reviewing the initial responses from McCrady and Skeahan to Ketcham's January 18, 2013 complaint, staff conducted telephone interviews with Steve Brock (4/11/13), Tim Johnston (4/12/13), Brian Skeahan (5/17/13), and Mark McCrady (5/30/13).
- 4.5 **Mark McCrady's 5/30/13 interview:** On May 30, 2013, PDC staff interviewed Mark McCrady. **Concerning Allegation 1, according to McCrady:**
 - 4.5.1 Shortly after filing for reelection in May 2012, McCrady was in the PUD office and had an opportunity to talk with Skeahan. He asked Skeahan if he knew of a volunteer or two who might be willing to take a picture of him in the PUD facility, for his campaign. Skeahan was adamant that it not be done on company time. McCrady remembers Skeahan saying he would contact someone about his request. Skeahan did not say who he would contact. Later, McCrady received a call from Tim Johnston.
 - 4.5.2 McCrady does not recall going to Johnston's office with Skeahan to ask Johnston if he could find a few volunteers who would be willing to be in a few pictures with him. McCrady has stopped by Johnston's office on other occasions to talk, but does not believe he stopped by with Skeahan to talk about the photos he wanted taken.
 - 4.5.3 McCrady asked Skeahan if there was someone who could take a picture with him doing his job. Skeahan told him any pictures must be taken on the public right of way, and the person must not be on PUD time.
 - 4.5.4 McCrady was the first to arrive at the substation for the photos. He expected a couple of people to participate, and was surprised when 20 or more PUD employees showed up for the photos. He thought the PUD employees were on their own time, but noticed that they arrived in PUD vehicles, and realized the situation got out of control. He said nothing to the employees, but felt bad personally that he had not made it clear what he wanted done.
 - 4.5.5 Tim Johnston took the pictures. McCrady assumed Johnston was using his own camera, and did not realize Johnston had used a PUD camera. The photo shoot took about 20 minutes, and all photos were taken inside the substation gate.
 - 4.5.6 McCrady's campaign manager told him they could not use the pictures, and her advice was confirmed by PUD General Counsel Paul Brachvogel. McCrady said that after the photo shoot incident, he asked questions of Brachvogel on a regular basis, and always followed the advice he was given. He said, for example, that a Veterans group came in and photos were taken, and the pictures could have been beneficial in his campaign, but he asked Brachvogel, and followed his advice not to use them.
- 4.6 **Brian Skeahan's 5/17/13 Interview:** On May 17, 2013, PDC staff interviewed Brian Skeahan. **Concerning Allegation 1, according to Skeahan:**

- 4.6.1 McCrady came to Skeahan and said he would like to have some photos taken. He told Skeahan he was interested in having pictures taken at the PUD substation. Skeahan was clear to McCrady that there were restrictions in where pictures could be taken. He told McCrady he could not use a photo that was taken on PUD property. McCrady asked Skeahan what he could do, not what he could not do. Skeahan told McCrady he could take pictures from a sidewalk or other location so long as it was a place available to the public.
- 4.6.2 McCrady asked Skeahan who he should talk to about arranging to have campaign photos taken, and Skeahan suggested he talk with Tim Johnston. McCrady did not contact Skeahan again to ask him to coordinate a photo shoot.
- 4.6.3 **Skeahan's contact with Tim Johnston** - Skeahan stopped by Johnston's office door and told him he had been contacted by Commissioner McCrady, and that McCrady was interested in having some pictures taken for his campaign. Skeahan told Johnston that McCrady might be contacting him. Skeahan cannot clearly say with certainty that he was alone when he stopped by Johnston's office, but his recollection is that he was alone. This was the only time Skeahan recalled talking with Johnston about the pictures. Skeahan does not believe he put indirect pressure on Johnston to coordinate taking campaign pictures for McCrady.
- 4.6.4 In his role as General Manager, Skeahan did not talk to or train Johnston about the prohibitions against using public facilities to assist a campaign for election to public office.
- 4.6.5 Skeahan was not aware of any of the organizational details that took place to arrange for the photos at the substation. McCrady did not keep Skeahan apprised of the photo shoot or the resulting photos.
- 4.6.6 Skeahan did not authorize the campaign photos taken for McCrady. To the extent he authorized any photos, he did so by telling McCrady, if he wanted to take campaign photos, he needed to take them in a public place, for example on a sidewalk in front of agency facilities.
- 4.7 **Tim Johnston's 4/12/13 Interview:** On April 12, 2013, PDC staff interviewed Tim Johnston. **Concerning Allegation 1, according to Johnston:**
 - 4.7.1 During 2012, Tim Johnston was Manager, System Engineering, for Cowlitz PUD. Johnston typically met with Skeahan about once a week. Johnston hoped to eventually become Director of Engineering, a position that reports directly to the General Manager, and to that end, Skeahan gave Johnston opportunities to develop. Johnston and Skeahan got along well.
 - 4.7.2 Skeahan and McCrady came together to Johnston's office door and talked to him for about five minutes about arranging a photo shoot for McCrady. Skeahan and McCrady stood in the doorway of Johnston's office as they talked. Skeahan did not come to Johnston alone prior to the time Skeahan and McCrady visited with Johnston in Johnston's office. Johnston got McCrady's

phone number and called him later to go over the details of the work that was discussed.

- 4.7.3 Skeahan asked Johnston if he could get a few people from engineering and a few folks from operations to meet at a substation for a picture with McCrady. Johnston suggested the 7th Avenue substation because it was a project the PUD had recently completed.
- 4.7.4 Johnston felt Skeahan's request was direct. It was made in the form of a question along the line of, "This is what we want to do. Is this something you could do for us?" It was clear what was to be done, the only question was whether Johnston was willing and able to do it. Johnston did not feel he had an option to say no because the General Manager and a Commissioner had come to his office and made a relatively simple request. Johnston replied that he could fulfill their request.
- 4.7.5 Neither Skeahan nor McCrady gave Johnston guidance about how to avoid using public facilities to assist an election campaign, for example, by reminding him that the photos needed to be taken during the employees' lunch hour, or by using personal vehicles and equipment rather than PUD vehicles or equipment.
- 4.7.6 At the time of the photo shoot, Johnston did not think about whether it was okay to use PUD employees while they were on work time, or whether it was okay to transport employees to the substation for the photo shoot using PUD vehicles. His thoughts were about whether the employees who had been invited to participate understood that they had an option to participate or not participate. Johnston was looking for employees who would participate willingly, and he was concerned about whether the supervisors had communicated to their employees that Skeahan and McCrady wanted a few "willing" folks to be in the picture, and that participation was voluntary. Johnston tried to schedule the photo shoot around the employees' lunch hour, but it ended up being done on work time.
- 4.7.7 Johnston was at the photo shoot on May 25, 2012, at the PUD substation, and took most of the photos. He switched places with one of the PUD employees so he could be in a few of the pictures. A total of 14 pictures were taken, and Johnston stored the photos on his PUD computer, and then gave the file to McCrady. The pictures not submitted with the complaint were very similar to the ones submitted. Johnston used a small digital camera that is the property of Cowlitz PUD.
- 4.7.8 About 25 Cowlitz PUD employees participated in the photo shoot at the substation. Johnston directed and arranged the poses that were taken. He talked with McCrady about the type of pictures he was looking for, and then arranged the people for the photos. The complaint included three pictures. Two were with a few people posing with McCrady, and one was a group picture with all the employees and McCrady.

- 4.7.9 The employees who agreed to be in the photo shoot arrived in PUD vehicles. The employees were in their line trucks or vans.
- 4.7.10 The photos were not used by McCrady in a campaign brochure because PUD General Counsel Paul Brachvogel found out about the photo shoot and told McCrady that it would not be appropriate to use the photos in his campaign.
- 4.7.11 A few of the PUD employees who were asked to be in the pictures, declined to participate because they were not interested in the campaign, not because of an understanding of the prohibition against using public facilities to assist an election campaign.
- 4.7.12 Johnston did not include Skeahan in his planning emails when he was recruiting employees for the photo shoot because he had been given a job to do, and did not feel it was necessary to keep Skeahan “in the loop” throughout the process.
- 4.7.13 Johnston did not know why the complaint was not filed until January 2013 when Brachvogel was aware of the photo shoot in May 2012. Johnston speculated that it would have been difficult for Brachvogel to file a complaint against McCrady when he worked with him in the same office.
- 4.7.14 Johnston believed he was directed by Skeahan and McCrady to arrange for the photo shoot. It was more than a mere suggestion. It was a request, not a demand. It was like, “Here is what we want to do, can you get this done?” There was absolutely no discussion about being careful to avoid using public facilities to arrange for and take the campaign photos. It was clear that the pictures would be taken in the substation. There was no discussion about taking the pictures outside on the sidewalk.
- 4.8 **Steve Brock’s 4/11/13 Interview:** On April 11, 2013, PDC staff interviewed Steve Brock. **Concerning Allegation 1, according to Brock:**
- 4.8.1 During 2012, Steve Brock was employed by Cowlitz PUD as the Operations Superintendent. His direct supervisor was Don McMaster, Chief Operating Officer for the PUD, who reported to Skeahan. Brock interacted with both McMaster and Skeahan, but chiefly reported to McMaster. Brock and Tim Johnston were peers. Neither supervised the other.
- 4.8.2 As evidence for Allegation 1, the complaint included a chain of nine related emails. **(Exhibit 1, pp. 7-9)**
- Email #1** was sent May 23, 2012 by Tim Johnston to Tim Fromm, Joseph Furer, Chris Marlowe, and Steve Brock. It said, “I’ve been asked to arrange for a few willing folks to meet at the 7th Ave substation for a picture with Mark McCrady. A nice cross section of employees would be good. Can you identify one or two people from each of your crews that could meet at 7th Ave substation Friday for the picture. The picture will be used in a brochure that Mark is creating. I’ll have a few other folks from Engineering with me. Obviously each of you is invited to participate as well. I was thinking we

could do the picture right after operations lunch at 11:30 Friday. It should only take a few minutes. Please confirm who can come. Thanks, Tim Johnston.”

Email #2 - On May 23, 2012, Steve Brock replied to Tim Johnston, “Tim, Is this for a campaign brochure? Just askin... Steve Brock.”

Email #3 – On May 23, 2012, Tim Johnston replied to Steve Brock, “I believe so. Just doing as the manager has requested of me.”

Email #4 – On May 24, 2012, Steve Brock replied to Tim Johnston, “Tim, Is the photo specifically about the construction of the sub? Should it just be people who worked on it? Thanks... Steve Brock”

Email #5 – On May 24, 2012, Tim Johnston replied to Steve Brock, “It’s not specific about the sub.”

Email #6 – On May 24, 2012, Steve Brock replied to Tim Johnston, “Tim, I spoke to the superintendents today about the picture and will have a number for you by the end of the day of those who are going to participate. Steve Brock”

Email #7 – On May 24, 2012, Steve Brock replied to Tim Johnston, “Tim, Looks like we will have about 25 from Ops for the photo...unless we have a big problem and have to send some guys out. Steve Brock”

Email #8 – On May 24, 2012, Tim Johnston replied to Steve Brock, “Also, I just confirmed with Mark M (Commissioner McCrady) that we will be there at 11:30. Thanks again, TJ”

Email #9 – On May 24, 2012, Steve Brock replied to Tim Johnston, “Ok...the gang will see you there at 7th Ave. Sub at 11:30... Steve Brock”

Brock confirmed that the chain of nine emails was an accurate depiction of his conversation with Tim Johnston about planning the photo shoot for Mark McCrady.

- 4.8.3 Cowlitz PUD had recently completed a remodel of the 7th Avenue substation. Johnston told Brock that the “manager” mentioned in Email #3 was Brian Skeahan.
- 4.8.4 Johnston was the primary organizer of the photo shoot. Johnston contacted Brock and asked him to find volunteers.
- 4.8.5 Brock went to the superintendents under him and asked if they had anyone willing to volunteer to be in pictures with Commissioner McCrady. On May 25, 2012, the volunteers left the Operations area after lunch, and went to the 7th Avenue substation for the photo shoot, which lasted about 20 minutes. After the photo shoot, the employees returned to their assigned jobs. The people in the pictures used their PUD vehicles to go to the substation. The miles driven with PUD vehicles were de minimis because the substation was only a few

minutes from where the volunteers ate their lunch and from their work sites. Brock attended the photo shoot and was in the pictures.

- 4.8.6 The photos included pictures of McCrady at the transformer, inside the substation, and with a group of volunteers.
- 4.8.7 Brock's only role was to contact the supervisors and ask them to find volunteers to be in the pictures. A lot of the motivation for the volunteers was pride in their work building the substation. Brock told the employees that the pictures were for McCrady's campaign, and some declined to participate.
- 4.8.8 There is a culture in the PUD to do what you are told. Brock was working in an interim position, and he, like other employees, knew to follow the directives he was given.
- 4.8.9 Brock had no idea that what he was doing was wrong. He was told by Johnston that Skeahan wanted the pictures taken at the substation. He never saw the pictures after they were taken.

Allegation 2 - Directing the GIS Manager, a Cowlitz PUD employee, to create a "voter preference" map to analyze voter results by precinct for all of Cowlitz County for the November 6, 2012 PUD Commissioner election, using a PUD computer and software. **(Exhibit 1)**

4.9 The complaint alleged that on or about November 29, 2012, Skeahan contacted Tia Christina, the Manager of the PUD Geographic Information System (GIS) Department and directed her to analyze voter results by precinct for all of Cowlitz County from the PUD Commissioner election of November 6, 2012. The complaint alleged she was directed to analyze voter preferences in a variety of different ways and to construct a voter preference map. Ketcham speculated that because it was known he might not run for reelection in 2014, Skeahan requested the analysis because he had someone in mind to run for Ketcham's position in 2014.

4.10 **Brian Skeahan's written response:** On February 20, 2013, Brian Skeahan submitted a written response to Allegation 2 in the initial complaint. **(Exhibit 4) Concerning Allegation 2, according to Skeahan:**

- 4.10.1 In early 2012, the PUD conducted a customer survey. It was the third survey performed during Skeahan's tenure with the PUD. The purpose of the survey was to ascertain citizen input on issues the PUD had been addressing, such as rates, salaries, resource acquisition, and communication efforts. All three commissioners were actively involved in the survey process.
- 4.10.2 One of the results of the survey was that customers who expressed greater dissatisfaction with the performance of the PUD tended to have higher electric bills, irrespective of household income or other considerations. After the November 2012 election, the PUD wanted to see if there was a correlation between the locations in the district with high residential electric bills, and dissatisfaction with the PUD, and the election results.

4.10.3 Skeahan asked Ms. Christina to prepare the map of the 2012 election results as a step in the process of creating an overlay with other information. The goal was to improve communication and outreach efforts, and identify whether enhanced efforts to notify residents of existing or new programs might assist improving their service experience and increase their satisfaction with the PUD.

4.10.4 The data collected by Ms. Christina was to be part of an effort to improve service and outreach in areas where it might be concluded the PUD could do better. There was no pending election, as the work was done after the election, and the 2014 elections were two years away. The GIS map has not been used because the process of overlaying the data from other sources has not been completed.

4.11 **Mark McCrady's written response:** On February 13, 2013, Mark McCrady submitted a written response to Allegation 2 in the initial complaint. **(Exhibit 3)**
Concerning Allegation 2, according to McCrady:

4.11.1 McCrady did not authorize, direct, or give tacit approval for Skeahan to have a map prepared. He did not learn about the map until he read Ketcham's complaint. McCrady has no knowledge about conversations between Skeahan and Christina.

4.11.2 McCrady has no knowledge of Skeahan's intention for the map, but noted that during the previous year the PUD underwent a major effort to "improve the brand" of the utility. Data, such as election results, contain valuable information on where efforts are succeeding and where work needs to be done.

4.11.3 McCrady and Skeahan made no plans for use of the map and had no conversations about its use. McCrady's family made it clear to him after he lost the election in 2012, that his days of being an elected official were over. As such, he had no need for any post-election analysis because he had completed his last election.

Allegation 4 - Using or authorizing the use of Cowlitz PUD facilities to prepare and/or use a campaign briefing document for an interview with the local newspaper editorial board. **(Exhibit 2)**

4.12 The supplement to the complaint alleged that at 8:00 a.m. on September 14, 2012, Skeahan directed Gary Huhta, Director of Power Supply Management, to prepare a campaign briefing document for McCrady. The complaint alleged that McCrady and his opponent, Kurt Anagnostou, were to participate in an interview with the local newspaper editorial board that afternoon, and that McCrady used the briefing material prepared by Huhta earlier that day, by copying it into a new document, adding his own title, and providing it to the Daily News Editorial Board. The complaint included contemporaneous handwritten notes from Huhta of his telephone call with Skeahan, indicating that the information was needed for an interview with the local newspaper, and mentioning McCrady's opponent, Kurt Anagnostou.

4.13 On August 27, 2014, PDC staff interviewed Gary Huhta. **Concerning the statements Huhta made in support of Allegation 4, according to Huhta:**

4.13.1 On the morning of September 14, 2012, Huhta arrived at work at 8:00 a.m. and began reviewing his emails. Shortly after 8:00 a.m., Skeahan called and stated that McCrady would be talking with the newspaper later that day about PUD's compliance with I-937 and achievement under the cost cap, and needed information about the issue right away. Skeahan outlined the information he wanted for McCrady, and asked Huhta to include the number of Washington qualifying utilities and how many of them were able to claim achievement of the cost cap under the rules of I-937.

4.13.2 Huhta did the work himself and completed it in about one hour. Skeahan made it clear that the information was needed right away. Huhta understood that he was being asked to gather information for use by McCrady in his campaign, even though the word "campaign" was not used. Huhta believed he did not have a choice about whether to compile and provide the work to Skeahan. Huhta was uncomfortable doing the work. As a result, he informed PUD General Counsel Paul Brachvogel about the work he did for Skeahan.

4.14 **Brian Skeahan's written response:** On December 12, 2013, Brian Skeahan submitted a written response to allegation 4 in the supplement to the complaint. **(Exhibit 6, pp 2 - 3) Concerning Allegation 4, according to Skeahan:**

4.14.1 Skeahan called Huhta at 8:00 a.m. on September 14, 2012 and asked him to compile information about the cost cap provisions of I-937 for McCrady. At 9:06 a.m. Huhta provided the information to McCrady by email.

4.14.2 Skeahan recalls making the call to Huhta, as noted in the complaint, however, he has no recollection of asking Huhta to prepare a "campaign briefing document" for McCrady. Huhta responded by providing a factual summary of the cost cap provisions of I-937, a list of the 17 utilities governed by I-937, and his professional conclusion concerning whether the PUD could demonstrate compliance with I-937 by means of the cost cap.

4.14.3 Skeahan forwarded to Huhta a request he received from McCrady, and Huhta responded directly to McCrady. Skeahan does not recall having specific knowledge of how McCrady intended to use this information.

4.14.4 Skeahan did not ask Huhta to reach any conclusion, other than his professional conclusion concerning whether the PUD could demonstrate compliance with I-937 by means of the cost cap, or to provide any particular "spin" to his answer, nor did Huhta run the document by Skeahan for modification or correction.

4.14.5 The issue of how the PUD complied with the requirements of I-937 was a matter of public discussion. McCrady's opponent in the 2012 Commissioner race, Kurt Anagnostou, raised the issue of I-937 compliance at the August 14, 2012 Board of Commissioners meeting by asking what the penalty amount would have been if the PUD had not met the I-937 requirements. At the

August 14 PUD board meeting, Huhta recited the penalty amounts for failing to comply with I-937. The nature of the August 14 board meeting discussion, the cost of compliance, and the discussion about whether the PUD could have somehow spent less than it did to comply, were essentially the same as what resulted from the emails in question. The 2012 Commissioner election was not the first, last, or only time this issue was discussed, nor was McCrady the only Commissioner who asked similar questions.

4.14.6 During the afternoon of September 14, McCrady presented a document to The Daily News editorial board, using the exact words prepared by Huhta, but adding the title to his document, "*Why Cowlitz PUD did not utilize the cost cap provisions under I-937.*" Following the meeting with the editorial board, during the evening of September 14, Anagnostou sent a private email to McCrady, asking for a copy of the document McCrady had provided to The Daily News editorial board regarding I-937 compliance. Two hours later, McCrady responded by saying the information consisted of four pages of the cost-cap language taken directly from RCW 194, the Renewable Energy Standards Law concerning I-937, which he said Anagnostou could find in his law library. McCrady told Anagnostou the rest of the information was a white paper he put together to explain why the PUD does not qualify to take advantage of the 4% cost cap provisions, and said Anagnostou needed to fill out a public records request for the cost cap research the utility did years ago.

4.15 **Mark McCrady's written response:** On October 7, 2013, Mark McCrady submitted a written response to Allegation 4 in the supplement to the complaint. (**Exhibit 5, pp 5 - 10**) **Concerning Allegation 4, according to McCrady:**

- 4.15.1 Ketcham's allegation is false. McCrady requested the information surrounding the Renewable Energy Requirement, otherwise known as I-937, because of questions brought forward by concerned ratepayers, not as preparation for an editorial board meeting as contended by Ketcham.
- 4.15.2 On September 12, 2012, Anagnostou and McCrady participated in a television show called Local Matters. During that show, Anagnostou made a statement that Cowlitz PUD's \$160 million investment in wind farms in Eastern Washington was not required. Anagnostou stated that it was his legal opinion that Cowlitz PUD was only required to invest 4% of its annual budget, around \$8 million per year, in renewable energy. He derided the PUD's decision to invest in wind farms.
- 4.15.3 After the show aired, McCrady began receiving calls from concerned ratepayers questioning him about Anagnostou's statement. McCrady assured the callers that Anagnostou's statements were false, and contacted Skeahan to share his concerns about the fact that Anagnostou's statement was causing great concern among the PUD's ratepayers, especially senior citizens on fixed incomes. Skeahan directed McCrady to the state website to read the language in RCW 194, and also asked Gary Huhta to respond to McCrady's concerns.

- 4.15.4 McCrady believes Anagnostou knowingly made false statements during the September 12, 2012 television show in order to tap into the frustration of ratepayers caused by the increase in local electrical rates caused by the Renewable Energy Standards law.
- 4.15.5 Anagnostou called McCrady and asked for the information he had provided to The Daily News on September 14, 2012. During that conversation McCrady told Anagnostou he did not appreciate the false statements he was making about the cost cap and other PUD issues. Anagnostou told McCrady he felt PUD General Counsel Paul Brachvogel was stonewalling his public records requests and that he would continue his tactics until Brachvogel complied with all of his information requests.
- 4.15.6 McCrady believes that as an elected official he could not stop doing his job just because he was a candidate for reelection. McCrady went to Skeahan to get factual information about I-937, the Renewable Energy Standards law, to respond to the concerns of ratepayers who had become concerned because of politically motivated falsehoods being spread by his opponent during an election campaign.

Allegation 5 - Using or authorizing the use of Cowlitz PUD facilities to prepare speaking points that assisted McCrady's 2012 campaign. **(Exhibit 2)**

- 4.16 The supplement to the complaint alleged that in May 2012, Skeahan directed Risk Manager Heather Allen to develop "speaking points" for former Commissioner Mark McCrady to aid in his reelection campaign, and that the assignment required considerable research and was outside the scope of Ms. Allen's regular duties.
- 4.17 Ketcham submitted a memo dated June 10, 2013 from Heather Allen to Gary Huhta as evidence for Allegation 5 in his supplement to the complaint. **Concerning Allegation 5, according to Allen:**
- 4.17.1 General Manager Skeahan approached Allen around the end of May 2012 and asked her to pull together information related to the District's costs by creating a Labor Cost Analysis and Benchmarking Data. The Daily News publishes the top 10 salaries of PUD employees each year which usually creates some contention with the PUD's customers. Skeahan told Allen that her report would be for Commissioner McCrady to use as "speaking points" when addressing the public.
- 4.17.2 The request for McCrady required Allen to research and pull data together from the PUD's systems from 2005 through 2011, and included an analysis of payroll costs, changes in the number of employees, operating expenses, and administrative expenses.
- 4.17.3 The information put together by Allen at Skeahan's request was outside her scope of normal benchmarking duties. In the past, Allen strictly used internal data sourcebooks to compile the Benchmarking Data report for Skeahan. The Benchmarking Data report prepared in 2012 at Skeahan's request focused more

on comparing metrics such as revenue per kWh data, financial data, operating expenses and capital expenditures for the District to other utility systems. The Labor Cost Analysis was provided to Skeahan on August 16, 2012, and the Benchmarking Data report was completed on October 17, 2012.

- 4.18 On August 26, 2014, PDC staff interviewed Heather Allen. **Concerning the statements Allen made in support of Allegation 5, according to Allen:**
- 4.18.1 Allen has been employed as the Risk Manager for Cowlitz PUD since 2009. Allen reported to Royce Hagelstein, Auditor, but Brian Skeahan asked her to prepare a Labor Cost Analysis for McCrady. In May 2012, while Allen was working, Skeahan came to her office and asked her to pull together labor costs over a six year period. Skeahan told Allen it was for McCrady's use. The research required Allen to spend approximately 40 to 60 hours from approximately June 1, 2012 to August 16, 2012 gathering information and preparing a Labor Cost Analysis that she provided to Skeahan for McCrady. Allen delivered the Labor Cost Analysis to Skeahan on August 16, 2012. Skeahan replied by email, saying, "*At first glance this is very very good.*"
- 4.18.2 Allen considered the Labor Cost Analysis work to be outside of her normal work responsibilities. Allen did not believe she had a choice about whether to perform the work for McCrady at the request of Skeahan.
- 4.18.3 The Benchmarking Data report is a report Allen prepared annually and was part of her regular benchmarking duties. The sourcebook data is typically published in the fall (September-November) and was prepared shortly after that, as time allowed. It was previously provided as early as October and as late as February. There was no set date for it to be completed. Allen did not recall being asked to prepare the report sooner than usual for McCrady.
- 4.19 **Brian Skeahan's written response:** On December 12, 2013, Brian Skeahan submitted a written response to Allegation 5 in the supplement to the complaint. **(Exhibit 6) Concerning Allegation 5, according to Skeahan:**
- 4.19.1 Ketcham has submitted a false characterization of normal work activities and a statement submitted by Allen, likely at Ketcham's request, that the work she performed was for alleged campaign "talking points" for McCrady. The evidence contains no documents that can be defined as campaign "talking points."
- 4.19.2 Skeahan asked Allen to do some benchmarking and data collection work in 2012 concerning labor costs and FTE changes per department. The purpose in compiling and analyzing the data was that Skeahan was considering staff reductions. He asked Allen to do this work because her workload was light, and he wanted to see how well she performed the work. Skeahan analyzed and discussed with other managers how staff reductions and early retirement offers might be implemented. He also sent a memo to the three PUD commissioners on September 22, 2012 concerning staff reductions, based in part on the work done by Allen, as part of 2013 budget planning and work.

4.19.3 The purpose of the benchmarking work was to get better information concerning how the PUD's spending compared to other utilities, to help the Commissioners make budget decisions about controlling costs. Skeahan denies this work resulted in campaign "talking points."

4.19.4 Skeahan submitted copies of all emails between Heather Allen and Brian Skeahan from May 1, 2012 to December 31, 2012 received from the PUD pursuant to a public records request made by Skeahan. The PUD produced approximately 45 emails. Skeahan notes that none of the emails refers to any activity other than normal work.

4.20 **Mark McCrady's written response:** On October 7, 2013, Mark McCrady submitted a written response to Allegation 5 in the supplement to the complaint. **(Exhibit 5).**
Concerning Allegation 5, according to McCrady:

4.20.1 This allegation arose from Heather Allen's statement related to gathering labor costs. McCrady requested information consistently from year to year, not just when he was up for election. He shared the information with staff and fellow commissioners.

4.20.2 McCrady requested information to help him develop the PUD's 2013 budget, which in 2012 was around \$250 million. He was not willing to stop working on the 2013 budget because there was an election in 2012. The labor information that was requested from Allen was needed to make educated decisions for the development of the 2013 budget. Comparing labor costs to other electric utilities in the region is good business and is dictated by the PUD's Compensation Policy.

4.20.3 Requesting labor data at a deeper level started back in late 2011 after a false and misleading headline ran in the local newspaper. The PUD board developed a response ad, to be paid for by the three Commissioners, but the paper would not run it. Because of the damage done to the PUD's image with ratepayers as a result of the newspaper article, the PUD began comparing its labor costs with other utilities and to other large public agencies in Cowlitz County. This information was shared with all of the PUD's Commissioners, such as in the email sent September 9, 2012 from Skeahan to the three PUD Commissioners. **(Exhibit 6)**

4.20.4 As noted in an email from Skeahan to PUD Commissioners sent September 22, 2012, there was discussion of further staff reduction for the 2013 budget **(Exhibit 6)**. McCrady needed to gather as much information as he could to make sure the PUD could sustain essential services with reduced staff. In addition, McCrady needed a deeper level of labor data because of the difficulty of getting Commissioner Ketcham to see the need to reduce the sizes of raises given to the non-union employees during the recession. In 2009, the board's disregard for controlling labor costs resulted in an unsuccessful recall attempt of Commissioners Ketcham and Piper. This greatly damaged the image of the PUD, and McCrady did not want a repeat in 2013.

Allegation 6 - Authorizing a delay in distributing “*retirement payroll adjustment checks*” to 11 senior staff members until after the 2012 election for the purpose of assisting McCrady’s 2012 campaign. **(Exhibit 2)**

4.21 The supplement to the complaint alleged that in April 2012, Skeahan directed Internal Auditor Royce Hagelstein to delay “retirement payroll adjustment checks” to 11 senior staff members until after the 2012 election. The complaint alleged that the 11 payments would have totaled \$150,198 in April 2012, and that because those payments would have been public information, they would have resulted in a negative public reaction and hurt the reelection campaign of Mark McCrady. The complaint stated that by delaying the payments until November, the total amount to be paid escalated to \$185,080.

4.22 Ketcham submitted a memo dated June 10, 2013 from Royce Hagelstein, Auditor, to Gary Huhta, Acting General Manager and Don McMaster, General Manager as evidence for Allegation 6 in his supplement to the complaint. **Concerning Allegation 6, according to Hagelstein:**

4.22.1 In early 2012, Skeahan directed staff to pay amounts under Resolution No. 2616, a resolution authorizing a reduction in compensation for top administrative personnel. The resolution stated that the reduction could not have an adverse impact on the retirement benefits for those listed in the resolution. In late March 2012, calculations were finalized and reviewed by Brachvogel, the PUD’s General Counsel. The total amount to be paid was \$150,198.06 as of March 23, 2012. In early April, employees were asked to sign a release and were told they would be paid the amount due. However, before all releases were signed and before payments could be made, Skeahan told Hagelstein that McCrady did not want the payments made until after the election. As a result, payments were made on November 21, 2012, and by then the liability had grown to \$185,080.55.

4.23 **Brian Skeahan’s written response:** On December 12, 2013, Brian Skeahan submitted a written response to Allegation 6 in the supplement to the complaint. **(Exhibit 6) Concerning Allegation 6, according to Skeahan:**

4.23.1 Resolution No. 2616 was a well meaning, but not particularly well thought out political decision by the PUD board in 2009 to eliminate merit increases for the highest paid PUD employees, while ensuring that there be no adverse impacts on the retirement benefits of the affected employees. No action was immediately taken, but during 2011, three employees who would be affected began to plan their retirements, and action had to be taken. This resulted in a dispute between HR Director Robbie Berg and Hagelstein and Brachvogel. The latter two believed that the Department of Retirement Systems (DRS) would adjust each individual’s retirement checks to compensate them, while Berg insisted that would not happen. Eventually DRS confirmed Berg’s analysis, and Hagelstein began working on an alternative method to comply with the resolution. Sometime in March 2012, Hagelstein came up with a plan that the State Auditor’s Office appeared to approve.

4.23.2 Sometime in March 2012, after the State Auditor's Office appeared to approve Hagelstein's plan, Skeahan asked Brachvogel to provide a legal opinion of the plan. Three payments were made, and board members, including but not limited to McCrady, expressed concerns regarding the amount of the payment made to one of the individuals. Based on those concerns, and the fact that Hagelstein, who had devised the payment methodology, was to receive a payment under his own plan, Skeahan stopped the process and directed that an outside party be retained to review the Resolution. An actuarial firm was selected by Skeahan, on the advice of CFO Trent Martin, to review the resolution. Skeahan did not interact with the actuarial firm, nor did he direct their work. Martin was the primary and almost exclusive interface the PUD and the actuary. To the best of Skeahan's recollection, he did not have any telephone discussions or email exchanges with the actuary. The actuary sent his final letter of supporting the reasonableness and appropriateness of the methodology and accuracy of the calculations on November 2, 2012. On November 9 and 10, 2012, Hagelstein sent memos to the PUD Board informing them of the conclusion of the process, and final payments were then made.

4.24 **Mark McCrady's written response:** On October 7, 2013, Mark McCrady submitted a written response to Allegation 6 in the supplement to the complaint. **(Exhibit 5)**
Concerning Allegation 6, according to McCrady:

4.24.1 In April and May 2012, two of the 11 people eligible for the "*retirement payroll adjustment checks*" thanked McCrady or informed him that they had received their check. A third person told him they had refused their check. These three contacts occurred close to or shortly after McCrady filed his Declaration of Candidacy for reelection in May 2012.

4.24.2 McCrady assumed the rest of the checks had been issued. He found out later that issues with the State Auditor's Office and the Department of Retirement Systems held up the process of distributing the remaining checks.

4.24.3 McCrady did not give direction to Skeahan to hold up the distribution of the checks. As one member of the Board of Commissioners, McCrady did not have the authority to order that the checks not be distributed until later.

Allegation 7 - Using or authorizing the use of Cowlitz PUD facilities to prepare and/or use supplemental PUD financial reports for the purpose of assisting McCrady's 2012 campaign. **(Exhibit 2)**

4.25 The supplement to the complaint alleged that in June 2012, Skeahan began directing Chief Financial Officer Trent Martin to develop supplemental financial reports to aid in McCrady's reelection campaign. It alleged that Skeahan referred to these reports as the "Incumbent Advantage."

4.26 Ketcham submitted two memos, both dated June 17, 2013, from Trent Martin, CFO, to Don McMaster and Gary Huhta as evidence for Allegation 7 in his supplement to

the complaint. Martin stated that the following information was provided to Skeahan electronically:

- 1) Trend of Revenues and Expenses (2007-2012)
- 2) Comparison of 2007-2011 Actual Results to Forecasted Information from 2007 Bond Offering Documents – June 8, 2012
- 3) Labor and Benefits Analysis (2008-June 8, 2012)
- 4) Swift Canal Failure Insurance Proceeds (June 12, 2012)
- 5) AMI Project Costs – June 21, 2012
- 6) Debt Overview and Summary (July 5, 2012)
- 7) Payroll and FTE Analysis (2005-August 15, 2012)

Martin stated that the additional information was provided to Skeahan by hard copy:

- 8) G&A Expense Trend and Analysis & Utility Comparisons
- 9) Detail of Outside and Professional Services
- 10) Wind Projects Summary – Net margins from inception to date
- 11) Harvest wind Investment

4.27 **Concerning Allegation 7, according to Martin:**

4.27.1 Although it was not uncommon for Skeahan to request information, beginning in June 2012, the frequency increased and the nature of the requests changed to focus on historical and trend information, and comparisons to other public power entities. Requests were made verbally and by email. None of the email requests specifically referenced McCrady's campaign. Occasionally, the verbal requests were noted as being in response to campaign related questions, statements, or articles in The Daily News.

4.27.2 On at least two occasions, Skeahan requested format changes to the information provided and indicated the information would make good talking points for McCrady as he campaigned. On one of those occasions, Martin asked whether McCrady needed to make public records requests for the information, and Skeahan indicated it was the "incumbent advantage."

4.28 On August 26, 2014, PDC staff interviewed Trent Martin. **Concerning the statements Martin made in support of Allegation 7, according to Martin:**

4.28.1 The statements in his memos, dated June 17, 2013, to supplement Ketcham's complaint are accurate and reflect what Martin was asked to do by Skeahan. None of the information he provided to Skeahan was confidential or privileged, and Martin was not told how the information would be used or the purpose of the request. The information was suitable for a variety of uses. Later, when Skeahan and Martin talked about the information, and about any needed format changes, it became clear to Martin that the purpose of requesting the information was to assist McCrady's campaign.

4.28.2 Martin did not initiate the memos in support of Ketcham's complaint. Ketcham approached Martin, told him he was preparing a supplement to his

complaint, and asked Martin to write a statement about any activity or incident he was aware of that referenced or related to McCrady's campaign.

4.28.3 At times, it was not clear if McCrady had asked Skeahan to obtain the requested information, or if Skeahan was acting on his own. Martin's first memo outlined requests for financial information about Cowlitz PUD that he received from Skeahan. Martin believed he had no choice but to provide the information because when a commissioner wants information, you give it to them.

4.28.4 Because of the nature of Ketcham's request, Martin provided a second memo describing a June 27, 2012 credit rating surveillance call involving PUD managers and representatives of Fitch Ratings, Inc. a company that provides long term credit ratings for entities. The focus of the call was feedback from Fitch after having presented to the Credit Rating Committee. During the call, Skeahan noted the upcoming election for McCrady, and indicated to the Fitch representatives that "it is my and your best interest that Mr. McCrady be re-elected."

4.29 **Brian Skeahan's written response:** On December 12, 2013, Brian Skeahan submitted a written response to Allegation 7 in the supplement to the complaint. **(Exhibit 6) Concerning Allegation 7, according to Skeahan:**

4.29.1 Martin acknowledged that he received no email requests from Skeahan requesting supplemental financial reports to assist McCrady's campaign. Martin's evidence is limited to his characterization of alleged discussions with Skeahan. None of the information listed by Martin as being requested by Skeahan are campaign talking points.

4.29.2 The purpose of the first, third, seventh, and eighth items in Martin's list of information provided to Skeahan was to get information to help the Commissioners make budget decisions about controlling costs. The purpose of the remaining items was either part of an effort to better understand the financial situation of the PUD and how it came to be, or part of other preparations for developing the 2013 operating budget.

4.29.3 McCrady's opponent in the 2012 Commissioner election, Kurt Anagnostou, raised questions about debt generally, wind project costs specifically, and AMI (automated metering infrastructure) costs through public records requests of the PUD. These issues have been a particular concern for some portions of the public, and it is not surprising that McCrady, as an elected official operating a public utility, would want PUD staff to provide information to him concerning these matters.

4.29.4 Skeahan noted that several of the items listed by Martin already existed, and were not created specifically for McCrady. For example: The document Bond Summary Overview was created December 6, 2007 by the PUD's prior CFO; The document Wind Project Summary Net Margins was created by Hagelstein on October 17, 2011; the document Swift Canal Failure Insurance Proceeds was created on June 11, 2012 by a PUD accountant.

4.30 **Mark McCrady's written response:** On October 7, 2013, Mark McCrady submitted a written response to Allegation 7 in the supplement to the complaint. **(Exhibit 5)**
Concerning Allegation 7, according to McCrady:

- 4.30.1 It is not illegal for an elected official to request the information needed to properly perform his duties. McCrady's 2012 reelection campaign occurred at the same time the PUD's commissioners, including McCrady, were developing the PUD's 2013 operating budget. The information described in Allegation 7 as "supplemental financial reports to aid in the campaign of Commissioner McCrady" was information McCrady needed to make educated decisions for the development of the 2013 budget.
- 4.30.2 An example of needed information is the Swift Insurance proceeds, which totaled around \$12 million. McCrady needed to know the exact amount held in reserve so he could determine whether rate relief could be granted by using some of the reserves.
- 4.30.3 Another example of needed information is the PUD's debt levels. McCrady needed to have an idea of how much and when the PUD could expect the individual bond issues to be paid off.
- 4.30.4 Another example of needed information is the net loss from the two wind farms Cowlitz PUD owns. McCrady needed to know what to expect for losses to build the 2013 budget. On June 15, 2012, an email providing an Updated Wind Analysis was prepared by Trent Martin, CFO, and forwarded to Skeahan and other PUD managers, and then forwarded by Skeahan to all three PUD Commissioners, including McCrady.
- 4.30.5 Martin prepared information about the cost of the smart meters project, or AMI, and about the bad debt write-off for Cameron Glass in response to a public records request made in 2012 by Kurt Anagnostou, McCrady's opponent. McCrady needed to know the details about PUD debt in order to build the 2013 budget. McCrady followed the Governance Policy of Cowlitz PUD by always submitting his requests for information to the General Manager (Skeahan).

Allegation 8 - Authorizing a 2012 Cowlitz PUD communications plan that began evolving mid-year into a reelection plan for McCrady, and that included conducting a survey for the purpose of assisting McCrady's 2012 campaign. **(Exhibit 2)**

- 4.31 The supplement to the complaint alleged that on January 17, 2012, Skeahan met with the PUD's new Manager of Communications, Brent Arnold, and laid out his "Communications" plan for 2012. The supplement to the complaint alleged that the messaging began evolving mid-year into a reelection plan for McCrady. The complaint alleged that Strategies 360 was hired to conduct a telephone survey in March 2012 that was specifically drafted by Skeahan to, among other things, inquire into the political popularity of the three sitting Commissioners. Questions 14-17 concerned the popularity of the three sitting Commissioners and Cowlitz PUD. The questions read, "Now I'm going to read you a short list of the names of some people

and organizations you may be familiar with. After I read each one, I'd like you to tell me if you have a very favorable, somewhat favorable, somewhat unfavorable or very unfavorable opinion of that person or organization. If you don't recognize the name or if you recognize the name but do not have an opinion, please just say so and we will move to the next name. Here is the first one... (Buz Ketcham; Mark McCrady; Ned Piper). Changing directions, I'd like you to consider all your experiences to date with Cowlitz Public Utility District, also known as Cowlitz PUD. Will you please tell me if you are very satisfied, somewhat satisfied, somewhat dissatisfied, or very dissatisfied with Cowlitz PUD? Or are you neither satisfied or dissatisfied?" (**Exhibit 2**).

- 4.32 Ketcham submitted an undated written statement from Brent Arnold as evidence for Allegation 8 in his supplement to the complaint. **Concerning Allegation 8, according to Arnold:**

- 4.32.1 In October 2011, Arnold became the PUD's Marketing Coordinator, and shortly thereafter he began reporting to Skeahan. Around January 2012, Arnold met with Skeahan to determine the direction and purpose of his evolving position. His office was moved nearer to Skeahan's office. Skeahan told Arnold that a public utility's General Manager is not allowed to influence a political campaign of a PUD Commissioner. Arnold eventually understood this to mean that Skeahan wanted Arnold to use his position to influence Commissioner McCrady's election campaign.
- 4.32.2 Many of the marketing ideas Arnold discussed with Skeahan seemed appropriate to Arnold. These ideas included: Promoting the PUD's positive stories in the Connected newsletter; establishing a dialogue with PUD customers through Community Meetings; finding new avenues to reach customers that are not currently engaged; expanding communications channels (Facebook, Twitter, blog, direct mail) to reach additional demographics; and improving the PUD's relationship with the local daily newspaper.
- 4.32.3 Arnold realized that these ideas could allow the PUD to influence voters, especially those who were hard to reach by traditional campaign avenues. Arnold believed that the PUD's marketing efforts should try to move the public's opinion of the PUD in a favorable direction while promoting the programs and technological improvements designed to benefit customers in the future. He felt that helping the PUD's customers better-connect with the PUD's Commissioners would allow the public's concerns to be addressed, and if these activities indirectly benefitted Commissioner McCrady, then so be it.
- 4.32.4 In March 2012, the PUD hired Strategies 360 to conduct a survey of Cowlitz PUD customers. Customer surveys are common and are typically conducted every two years. Arnold believed the timing of the March 2012 survey was suspect because the PUD had recently initiated a rate increase and they knew customers were unhappy. It was unclear whether a survey at that time would provide accurate information. Based on the survey, a media plan was developed with the help of Strategies 360. Skeahan was actively involved in

developing the survey questions, and was especially interested in the Commissioner's name recognition and Daily News questions.

- 4.32.5 Later, Arnold came to believe that one of Skeahan's main purposes of the PUD's marketing program was to ensure a favorable result for McCrady in the November 2012 election. Arnold could not recall specific conversations with Skeahan, but believed the purpose and tone of the conversations were apparent – winning the November election for McCrady. Skeahan regularly asked Arnold how many Connected newsletters were left to be sent out before the November election, implying that Arnold had a short time left to generate the expected results. According to Arnold, the marketing outline ramped up in June 2012 and decreased in December.
- 4.32.6 Arnold made a conscious decision to not engage in marketing efforts that crossed the line into the realm of being campaign driven versus for the PUD's best interest. Arnold focused the PUD's marketing efforts on what was best for the PUD and not for McCrady's campaign.
- 4.32.7 Skeahan was a catalyst for the PUD's Community Meeting program. He had organized similar programs for previous employers, and thought it was a good time to initiate the program for Cowlitz PUD. Skeahan explained that the fall was a good time to initiate the Community Meeting program because that is when heating bills start to rise. Although the meetings were thought of earlier in 2012, they did not take place until the fall. Those areas thought to have the most influence on the Commissioner election were scheduled near to the election.
- 4.32.8 McCrady was a frequent visitor to the PUD at this time. He had many closed-door sessions with Skeahan that resulted in visits to Arnold's cubicle where he was often directed to modify the PUD's marketing message as a consequence. Arnold was asked either by Skeahan or McCrady to make information available to McCrady regularly. Arnold saw the requests as an effort to provide McCrady with ammunition for his campaign. After McCrady lost the election, Arnold felt somewhat responsible for McCrady's loss because he had been told so often by Skeahan of the importance of marketing with regard to a favorable election result.
- 4.33 On August 29, 2014, PDC staff interviewed Brent Arnold. **Concerning the statements Arnold made in support of Allegation 8, according to Arnold:**
- 4.34 Gary Huhta approached Arnold around June 2013 because he had heard Arnold was willing to talk about what happened during 2012. Arnold agreed to talk and summarized his work on the PUD's Communication Plan during 2012. Arnold felt uncomfortable during 2012 because he felt pressure from Skeahan to put out messages building up the PUD's image in order to indirectly assist McCrady's campaign for reelection. Arnold feared he would lose his job if he did not implement the Communication Plan as it was developed.
- 4.35 During the summer and fall of 2012, Skeahan repeatedly asked Arnold how many more newsletters were going to be sent out before the November 2012 election. A

supplemental newsletter called PUD Press was planned for an October 2012 distribution, but for a variety of reasons it did not happen. Newsletters and Community meetings were planned for June to November 2012, but then dropped off in December. The reduced activity may have occurred in part because after McCrady lost the election, Skeahan became focused on dealing with the reality of a new Commissioner.

- 4.36 After the Strategies 360 survey was completed in March 2012, a Communications Plan was developed with the assistance of Strategies 360 and implemented during the remainder of 2012. After the election, when McCrady was replaced by Kurt Anagnostou, the relationship with Strategies 360 was terminated.
- 4.37 On September 2, 2014, PDC staff conducted a follow-up interview with Brent Arnold. **Concerning the statements Arnold made in support of Allegation 8, according to Arnold:**
- 4.37.1 It is very important to Arnold that he accurately describe the events that occurred during 2012 concerning the development and implementation of the PUD's Communications Plan.
- 4.37.2 When Arnold met with Strategies 360 and Skeahan to develop a Communications Plan for the PUD, based on the recently completed survey, it was clear to him that the plan was, in part, to present a positive image of the PUD, and that to do so would assist McCrady's reelection effort. The word election was used during some conversations, although no specific conversations could be recalled about implementing a specific action to benefit McCrady's election campaign.
- 4.37.3 The Communications plan was completed in May 2012 and was for the remainder of 2012. The primary purpose was to help Arnold learn his job. Arnold had conversations in October 2012 with Skeahan about extending the plan into the following year. Arnold felt the plan should have had a December 2012 component.
- 4.37.4 Arnold evaluated what he was asked to do, and if he felt the request was to directly benefit McCrady's reelection campaign, he did not do it. For example, Arnold was asked to put together a special mailing called PUD Press, that would have cost around \$5,000 to develop and mail. Arnold felt it was designed to benefit McCrady's reelection, and was not comfortable completing the project before the election. The project required extensive work, and was not completed.
- 4.37.5 The Communications Plan called for Community meetings with Commissioners attending the meetings in their respective district. A Community meeting was scheduled and held during October 2012 in Longview with Commissioner McCrady's attending.
- 4.37.6 Skeahan repeatedly asked Arnold how many more newsletters would go out by November. Arnold interpreted this as Skeahan implying that he had until

November to create a positive image of the PUD that would benefit McCrady's reelection effort.

- 4.38 **Brian Skeahan's written response:** On December 12, 2013, Brian Skeahan submitted a written response to Allegation 8 in the supplement to the complaint. **(Exhibit 6) Concerning Allegation 8, according to Skeahan:**

- 4.38.1 In a December 11, 2011 email to Commissioners McCrady, Ketcham, and Piper, Skeahan shared the content of a recent meeting he had with Brent Arnold where he and Arnold discussed Skeahan's concerns and desires for moving forward with the PUD's communication efforts. Skeahan asked Arnold to schedule time with each of the Commissioners as a starting point for developing the communication plan. He concluded by saying it would take a team effort of the Board, Skeahan, Dave Andrew (former Communications Director) and the informed advice of Strategies 360, and the information that comes from the polling work. He told the Commissioners the end result should be a plan with clear tasks and timelines they could all buy off on.
- 4.38.2 Ketcham characterizes the work performed by Strategies 360 in 2012 as essentially campaign work on behalf of McCrady's election. This allegation is disingenuous because all three PUD Commissioners, Ketcham, Piper, and McCrady, were aware of and supported the communications plan that Strategies 360 was hired to help staff develop.
- 4.38.3 The PUD Commissioners have long been frustrated by what they felt was unfair treatment by the local media. Over the years, the Commissioners have tried various approaches for communicating with the local newspaper and other media outlets, including monthly newsletters in bills and customer surveys. In 2011, Dave Andrew, the PUD's longtime staff member who had been in charge of community and government relations, as well as communications efforts, took a different job within the PUD, and the board hired Brent Arnold from outside the organization to take on the communications portion of the job.
- 4.38.4 The Commissioners were interested in conducting a customer survey, as they had done twice previously, and also wanted outside help reviewing and making recommendations for the PUD's communications approach. The PUD had a positive pre-existing relationship with Strategies 360, and the Commissioners were very involved in this effort from the beginning throughout 2012.
- 4.38.5 Ketcham's complaint stated that *"360 was hired to conduct a telephone survey in March 2012 that was specifically drafted by Skeahan to, among other things inquire into the political popularity of the three sitting commissioners."* Ketcham's statement that Skeahan drafted the survey is false. In an email sent March 1, 2012 to Commissioners Ketcham, Piper, and McCrady, and to Dave Andrew and Brent Arnold, Skeahan provided a copy of the final draft of the survey questions developed by Strategies 360. The email states, *"This is the final version of the poll. If you find something you can't live with let Dave or Brent know first thing in the morning. The guys we pay*

to know this stuff think this is pretty much it and there is a method to it.”

Strategies 360, not Skeahan, drafted the survey, and the PUD Commissioners were made aware of the survey, and approved its use (**Exhibit 6**).

- 4.38.6 Skeahan kept all three PUD Commissioners informed about the Strategies 360 work. On February 16, 2012, he notified the Commissioners about the Community Key Informant interviews, which included a list of names submitted by each Commissioner, and a request that the Commissioners approve the final list of names (**Exhibit 6**). On March 8, 2012, Skeahan sent an email to all three Commissioners, forwarding a Strategies 360 email about their attendance at the focus group meetings. On March 16, 2012, Skeahan sent an email to all three Commissioners, forwarding an email he had received from Arnold concerning a Commissioner’s request for a copy of a DVD of the focus group meeting conducted in conjunction with a survey in a previous year (**Exhibit 6**). At the March 13, 2012 Commissioner meeting, Skeahan informed all three Commissioners that Strategies 360 had begun the actual survey (**Exhibit 6**).
- 4.38.7 It was determined by all parties, including all three Commissioners, that a series of public meetings would be held from the fall through early winter in 2012 to discuss various PUD issues with the public. The last meetings were held November 13 and December 4, 2012, which were after the November 6, 2012 general election. The timing of the meetings coincided with the preparation of the following year’s budget and work plans.
- 4.38.8 Ketcham was fully aware of and involved with all aspects of the 2012 PUD communications effort and did not complain about it being a McCrady campaign effort until it became politically expedient to do so.
- 4.38.9 In his statement supporting Allegation 8, Arnold attempts to portray the 2012 communications plan as a McCrady campaign effort. However, in response to a request by The Daily News, Arnold delivered the Strategies 360 contracts to a reporter who covers the PUD, for review. After delivering the contracts, Arnold stated in an October 30, 2012 email to McCrady, ***“My feeling, based upon his tone and body language is that he didn’t think there was a story (because there isn’t). That said, you never know what Andre will require him to do.”***
- 4.38.10 In a June 14, 2013 email, Gary Huhta asked Brent Arnold, Heather Allen, Royce Hagelstein, and Trent Martin to review their statements in support of Ketcham’s supplemental complaint and look to further developing their written explanation, providing more context to each circumstance. He provided a copy of Ketcham’s January 8, 2013 complaint and his draft supplemental complaint, and suggested that they could use either as examples for the type of information to be included in their statements. On June 17, 2012, Arnold responded, saying, ***“Please let me know if this is any better for you. I’m sorry that I am not able to come up with any more detail than what I have.”***

4.38.11 In an email to Ketcham sent June 28, 2013, after several back and forth comments about draft surveys in 2011 and 2012, Arnold stated, ***"I have no idea of when/if the survey was carried out. Since I started on October 10, 2011, I have not heard anything about a political survey."***

4.38.12 On July 10, 2013, Al Aldrich of Strategies 360 sent an email to PUD employees Don McMaster, Paul Brachvogel, and Dave Andrew discussing the purpose of the 2012 survey, the question in the survey about the PUD Commissioners, and the allegation in Ketcham's supplemental complaint that the survey was a "political tool" not available to the challenger (**Exhibit 6**).

4.38.13 According to Aldrich, the survey was intended and designed to gather factual information about how the PUD's customers felt about a number of issues related to the PUD and their rates and bills from the PUD. The purpose of the survey was to give Strategies 360 enough information to prepare a strategic communications plan designed to improve communications with the PUD's customers-owners. The survey was designed and conducted by Strategies 360, after meeting with several people in the PUD management group and meeting with all three of the Commissioners individually to gain their perspectives.

4.38.14 The questions were drafted by Strategies 360 and were approved by the PUD, including a review by the Commissioners. The question about the participant's opinion about each Commissioner is a question very commonly asked in polls of various types, and was intended to help Strategies 360 gauge the potential benefits of recommending using the Commissioners in an active way with the public in the new strategic communications plan that Strategies 360 would be developing. Strategies 360 does not see how this question would be useful in a political campaign.

4.39 **Mark McCrady's written response:** On October 7, 2013, Mark McCrady submitted a written response to Allegation 8 in the supplement to the complaint. (**Exhibit 5**)
Concerning Allegation 8, according to McCrady:

4.39.1 Allegation 8 is completely false. On October 11, 2011, Skeahan sent an email to all three Commissioners documenting a meeting he had with Brent Arnold (**Exhibit 5**). The direction of the new communication plan was stated in the email, and it did not change substantially from that point forward. Ketcham endorsed the new communication plan by voting for the 2012 budget that supplied funding for the plan.

4.39.2 In two emails sent December 20, 2011 and December 26, 2011, Skeahan informed all three Commissioners of a change in the communications strategy and sought their input and approval. On March 1, 2012, Skeahan sent an email to all three Commissioners finalizing the poll questions and encouraging anyone who had any problems with the questions or the path forward to speak up. In addition, all three Commissioners met with the Strategies 360 staff for formal interviews. The March email was over two months before there were any announced candidates for McCrady's board position (**Exhibit 5**).

4.39.3 In an email sent October 30, 2012, McCrady explained to staff of The Daily News that the allegation that the PUD had hired Strategies 360 to assist his campaign was false and without merit. In a separate document provided to The Daily News, McCrady explained how in early 2012, the Cowlitz PUD Board directed Skeahan to develop a communication plan to keep citizens informed of the PUD's new program that would be rolled out in 2013. The actions taken as a result of the work with Strategies work included: revamping the PUD's website; a larger presence in the social media world; a new community outreach strategy; an updated communications strategy, including weekly advisory sessions. Strategies 360 has helped Cowlitz PUD on legislative issues.

4.39.4 In an email from Brent Arnold to McCrady sent October 30, 2012, Arnold stated, after he delivered copies of the PUD's contracts with Strategies 360 to The Daily News, *"My feeling, based upon his tone and body language is that he didn't think there was a story (because there isn't). That said, you never know what Andre will require him to do."*

V. Scope

5.1 PDC staff reviewed the following documents:

- January 18, 2013 complaint filed by Merritt 'Buz' Ketcham that was joined by the Cowlitz PUD Commissioners on February 15, 2013.
- July 8, 2013 Supplement to complaint filed by Merritt 'Buz' Ketcham that was joined by the Cowlitz PUD Commissioners on July 18, 2013.
- February 13, 2013 response from Mark McCrady to January 18, 2013 complaint.
- February 20, 2013 response from Brian Skeahan to January 18, 2013 complaint.
- October 7, 2013 response from Mark McCrady to July 8, 2013 supplement to complaint.
- December 12, 2013 response from Brian Skeahan to July 8, 2013 supplement to complaint.
- Communications Plan received August 29, 2014.

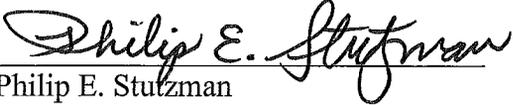
5.2 PDC conducted the following interviews:

- Telephone interview with Steve Brock on April 11, 2013;
- Telephone interview with Tim Johnston on April 12, 2013;
- Telephone interview with Brian Skeahan on May 17, 2013;
- Telephone interview with Mark McCrady on May 30, 2013;
- Telephone interview with Trent Martin on August 26, 2014
- Telephone interview with Heather Allen on August 26, 2014
- Telephone interview with Gary Huhta on August 27, 2014
- Telephone interview with Brent Arnold on September 2, 2014

V.
Laws and Rules

- 6.1 **RCW 42.17A.555** prohibits elected officials, their employees, and persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of assisting a candidate's campaign or for the promotion of, or opposition to, any ballot proposition. This prohibition does not apply to activities that are part of the normal and regular conduct of the office or agency.
- 6.2 **WAC 390-05-273** states, in part: "Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

Respectfully submitted this 10th day of October, 2014.


Philip E. Stutzman
Director of Compliance

List of Exhibits

- Exhibit 1** Complaint received January 18, 2013 from Merritt 'Buz' Ketcham
- Exhibit 2** Supplement to complaint received July 8, 2013 from Merritt 'Buz' Ketcham
- Exhibit 3** Mark McCrady's February 13, 2013 response to complaint
- Exhibit 4** Brian Skeahan's February 20, 2013 response to complaint
- Exhibit 5** Mark McCrady's October 7, 2013 response to supplement to complaint
- Exhibit 6** Brian Skeahan's December 12, 2013 response to complaint