

**BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action  
Against:

Brian Skeahan

Respondents.

Case No. 15-039

**STIPULATION AS TO FACTS,  
VIOLATIONS AND PENALTY**

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent Brian Skeahan, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

**JURISDICTION**

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

**FACTS**

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.

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.
3. Commissioner McCrady ran for reelection 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, following his termination by the Board.

### **Campaign Photo Shoot During Mark McCrady's 2012 Campaign**

4. In the Spring of 2012, Skeahan approached Tim Johnston, Cowlitz PUD Manager of Systems Engineering. Mr. Johnston reported to Director of Engineering Ray Johnson, who reported to Chief Operating Officer Don McMaster, who reported to General Manager Brian Skeahan. Skeahan believes that he approached Johnston alone, and stated that Johnston would receive a request from McCrady concerning arrangements for a photo shoot.
5. Johnston testified that he recalls he was approached by Skeahan and McCrady together. Johnston testified that during their conversation, Respondent Skeahan asked Johnston if Johnston could arrange for Cowlitz PUD engineering and operations staff to meet at a substation to take a picture with McCrady. Johnston testified that he understood the photos were intended for use in McCrady's reelection campaign, and that he followed the direction he believes he received from Skeahan and McCrady. Johnston made arrangements for the photo shoot with the assistance of Steve Brock, Cowlitz PUD Operations Superintendent.
6. Skeahan believes he provided appropriate guidance to McCrady regarding the need to avoid the use of public facilities to assist McCrady's campaign. In his testimony, McCrady confirmed that he received the guidance that Skeahan described.
7. Skeahan acknowledges that he did not provide similar guidance to Johnston concerning the need to avoid the use of public facilities to assist a candidate's

campaign, as required in Skeahan's role as General Manager of the PUD, for example by reminding Johnston that the photos requested by McCrady needed to be taken during PUD employees' lunch hour, or by using personal vehicles and equipment rather than PUD vehicles or equipment.

8. Around 1:00 p.m. on May 25, 2012, Johnston took approximately 14 photographs of McCrady with approximately 25 Cowlitz PUD employees at Cowlitz PUD's 7th Avenue substation. The employees were on work time following their normal lunch break. The employees arrived at the substation in Cowlitz PUD vehicles.
9. Johnston took the photos with a Cowlitz PUD camera. The photos were then stored on a Cowlitz PUD computer. Johnston later provided copies of the photos to McCrady.
10. McCrady requested the photos for his personal use, including to assist his re-election campaign. However, the photos were not used for campaign purposes.

**Preparation and Use of Campaign Briefing Document During McCrady's 2012 Reelection Campaign**

11. At approximately 8:00 on the morning of September 14, 2012, Skeahan called Gary Huhta, Cowlitz PUD Director of Power Supply. Skeahan told Huhta that McCrady would be talking with the newspaper later that day, and had requested information concerning the PUD's compliance with I-937, a Washington State initiative concerning renewable energy.
12. Huhta prepared contemporaneous handwritten notes of his September 14, 2012 telephone call with Skeahan. The notes indicate that the requested information regarding the PUD's compliance with I-937 would be for McCrady to use in responding to statements by McCrady's election opponent Kurt Anagnostou. Huhta's notes indicate that Skeahan asked Huhta to produce the information McCrady requested within the hour, or by 9:00 am.

13. Huhta testified that he understood from Skeahan's comments that the information was being requested for use by McCrady in his campaign, although the word "campaign" was not used.
14. On September 14, 2012 at 9:12 a.m., Huhta emailed the requested information to McCrady by including the information in the body of the email. Later on September 14, 2012, McCrady presented a document to The Daily News, using the exact words prepared by Huhta, without any change other than the addition of a title to the document.

### **STATUTORY AND RULE AUTHORITY**

15. **RCW 42.17A.555** states, in part: "No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office[.]

[T]he foregoing provisions of this section shall not apply to the following activities:

(3) Activities which are part of the normal and regular conduct of the office or agency."

16. **WAC 390-05-273** defines the "normal and regular conduct" of a public office or agency as "*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.*"

### **VIOLATIONS**

17. Based on the Stipulation of Facts set forth above, Respondent Brian Skeahan does not admit to any wrongdoing, but stipulates that the Commission would likely find that he violated RCW 42.17A.555 by authorizing the use of Cowlitz PUD facilities to assist a candidate's campaign.

18. In the interest of avoiding the risk and expense of a contested proceeding, Mr. Skeahan agrees to pay a civil penalty as discussed below.

**PENALTY**

19. Based upon the Stipulation of Facts and Violations set forth above, Respondent Brian Skeahan agrees to pay a total civil penalty of \$1,000 with \$500 suspended on the following conditions:

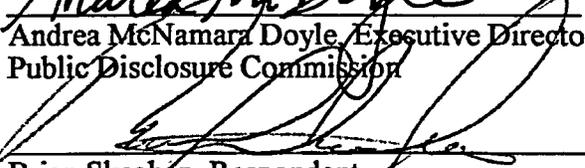
- a. Mr. Skeahan is not found to have committed any violations of RCW 42.17A within four years of the date of the final order in this matter.
- b. Mr. Skeahan pays the non-suspended portion of the penalty (\$500) within 30 days of the date of the final order.

20. Respondent Brian Skeahan affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.

21. The Public Disclosure Commission agrees this agreement constitutes a final dispensation of any and all allegations against Respondent Skeahan contained in the complaint, and with this agreement terminates any pending investigation or action regarding Skeahan.

  
Andrea McNamara Doyle, Executive Director  
Public Disclosure Commission

10/22/14  
Date Signed

  
Brian Skeahan, Respondent

10/21/14  
Date Signed

# **INFORMATION ABOUT APPEALS AND ENFORCEMENT OF FINAL ORDERS**

## **APPEALS**

### **RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION**

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office so it is received within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150*. (Note that the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

### **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

A final order issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 - .574.

## **ENFORCEMENT OF FINAL ORDERS**

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.