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May 29, 2014

Marguerite Friedlander
Administrative Law Judge
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Randy Buchanan*
Docket PL-140180

Dear Judge Friedlander:

I am writing this letter in relation to the Brief Adjudicative Proceeding held May 28, 2014, at the Utilities and Transportation Commission in the matter of *UTC v. Randy Buchanan*, Docket PL-140180. The purpose of this writing is the public records status of documents provided by the Washington Dig Law Safety Committee (Dig Law Committee) to the Utilities and Transportation Commission (UTC or Commission). I did not find a Washington court decision or statute on the issue of whether the Dig Law Committee constitutes a public agency for the purposes of public records.

Documents the Committee provides to the UTC for use in the course of a penalty, however, do generally become public records, subject to various exemptions. Under RCW 42.56.010(3), a public record includes any writing relating to the conduct of government or the performance of any governmental function prepared, owned, used or retained by any state or local agency. RCW 19.122.140 states that the Commission may enforce civil penalties upon written notification from the Committee that a violation has likely been committed. The documents in question qualify as writings relating to the performance of the Commission's statutory function to review the recommendation of the Dig Law Committee for the possible imposition of penalties against offenders. The Commission also retains Committee-provided documents.

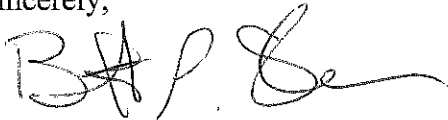
Notwithstanding the above, the public records status of the Dig Law Committee's review documents may not be dispositive in determining the admissibility of exhibits in this case. The operative question is whether a witness may sponsor documents that he or she did not

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author or personally create within the context of the Commission's administrative hearing process. WAC 480-07-495 states that a presiding officer may admit all relevant evidence provided it is the best evidence reasonably attainable in light of its necessity, availability, and trustworthiness. The Rules of Evidence applicable in general civil proceedings serve as a guide but are not determinative in the Commission's administrative hearings.

In the present case, the purpose and scope of Mr. Subsits' testimony was to demonstrate that the Commission received the documents offered as exhibits from the Dig Law Committee, and that the Committee's findings, supporting documents, and that Commission Staff's own discussions with the parties supported a penalty assessment. RCW 19.122.140 states that the Commission may enforce civil penalties when it receives written notification from the Dig Law Committee that a violation of RCW Chapter 19.122 has occurred. The Commission has followed the requisite process and provided the best evidence available stemming from that statutorily-mandated process. Staff's position is that exhibits derived from such a legislatively-created process should also qualify as relevant, necessary, and trustworthy so as to render them admissible under the terms of WAC 480-07-495.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett P. Shearer". The signature is fluid and cursive, with the first name "Brett" being the most prominent part.

BRETT P. SHEARER
Assistant Attorney General

BPS/emd

cc: Parties