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7 **BEFORE THE WASHINGTON STATE**  
8 **EXECUTIVE ETHICS BOARD**

9 In the Matter of:

10 MIKE NELSON,

11 Respondent.

OAH Docket No. 2012-EEB-0013  
EEB No. 2011-024

CORRECTED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
FINAL ORDER

12  
13 **I. PROCEDURAL HISTORY**

14 1.1 On April 6, 2012, the Executive Ethics Board (Board) received a complaint  
15 alleging that Respondent Mike Nelson, former Solar Energy Specialist, Washington State  
16 University (WSU), may have violated the Ethics in Public Service Act by conducting activities  
17 incompatible with his public duties and post-state employment.

18 1.2 On September 14, 2012, the Board found reasonable cause to believe that a  
19 violation of the Ethics in Public Service Act occurred.

20 1.3 A prehearing conference, in which all parties participated, was held on February  
21 11, 2013, with an Administrative Law Judge (ALJ) presiding pursuant to RCW 42.52.500, and  
22 an Order Following Prehearing Conference was issued on February 13, 2013.

23 1.4 Mr. Nelson through counsel filed a Motion to Dismiss, Board staff filed a  
24 response, and a hearing on the Motion to Dismiss was held on July 12, 2013, before the Board,  
25 with the Board Chair presiding. The Board entered an Order Denying Respondent's Motion to  
26 Dismiss on July 29, 2013.

1           1.5     A status conference, in which all parties participated, was held on November  
2 14, 2013, with an ALJ presiding, and an Order Following Status Conference was issued on  
3 November 14, 2013.

4           1.6     After due and proper notice, a hearing was held before the Board. The hearing  
5 was held at the Board offices at Bristol Court in Olympia, Washington, convening on  
6 December 13, 2013 at 9:00 AM. ALJ Alice Haenle from the Office of Administrative  
7 Hearings conducted the proceedings, and Board Chair Lisa Marsh, Vice Chair Anna Dudek  
8 Ross, and members Matthew Williams III and Samantha Simmons were present. Also present  
9 was Bruce L. Turcott, Assistant Attorney General, legal advisor to the Board.

10          1.7     Board staff was represented by Chad Standifer, Assistant Attorney General.  
11 The Board's Executive Director Melanie de Leon and other Board staff members were present.

12          1.8     Mr. Nelson was present and represented by Jason B. Keyes, attorney at law.

13          1.9     Board staff offered Exhibits 1 – 9. All were admitted into evidence. The Board  
14 was provided copies of documents that were admitted as exhibits.

- 15           1.     Complaint filed by Jim Honeyford dated April 4, 2012 (9 pages).
- 16           2.     Preliminary Investigation and Board Determination dated September 14,  
17 2012 (12 pages).
- 18           3.     Email from Mike Nelson to Todd Currier of Washington State  
19 University (WSU), with attached draft letter to Mark Bohe of  
Department of Revenue (DOR) dated January 28, 2010 (3 pages).
- 20           4.     Email from Mike Nelson to Todd Currier (WSU), with attached revised  
21 draft letter to Mark Bohe (DOR) dated February 9, 2010 (4 pages).  
22 (Note: Proposed Exhibit 4 originally consisted of 6 pages. Pages 5 and  
6 were withdrawn by Board staff, offered by Respondent as an exhibit,  
and admitted as Respondent's Exhibit R13.)
- 23           5.     Email from Gary Shaver (Silicon Energy) to DOR Communications  
24 with a courtesy copy to Mark Bohe (DOR) and Mike Nelson, with  
attached letter to Mark Bohe dated February 10, 2010 (4 pages).
- 25           6.     Memo from Mike Nelson to Jake Fey (WSU) and Todd Currier (WSU)  
26 dated February 9, 2010 (1 page).

- 1 7. Letter from Beth Mills (DOR) to Gary Shaver (Silicon Energy) dated  
2 March 25, 2010 (3 pages).
- 3 8. Complaint from citizen Robert Sasko to DOR dated August 3, 2010  
4 (3 pages).
- 5 9. Letter from Beth Mills (DOR) to Gary Shaver (Silicon Energy) dated  
6 August 15, 2011 (3 pages).

7 1.10 Mr. Nelson offered Exhibits R1 – R14. All were admitted into evidence. The  
8 Board was provided copies of all documents that were admitted as exhibits.

- 9 R1. Signed statement of Mark Bohe (DOR) dated May 3, 2013 (3 pages).
- 10 R2. Signed statement of Todd Currier (WSU) dated May 10, 2013 (2 pages).
- 11 R3. Signed statement of Gary Shaver (Silicon Energy) dated May 13, 2013  
12 (1 page).
- 13 R4. Signed statement of Jong Limb (Silicon Energy) dated May 13, 2013 (1  
14 page).
- 15 R5. Signed statement of Denis Hayes (Bullitt Foundation) dated May 7,  
16 2013 (1 page).
- 17 R6. Compilation of emails from Department of Revenue Rulings to Gary  
18 Shaver (Silicon Energy) dated March 5, 15, and 19, 2010 (3 pages).
- 19 R7. March 25, 2013 DOR Approval Letter from Beth Mills to Gary Shaver  
20 (Silicon Energy) (3 pages).
- 21 R8. Mike Nelson phone records for January 29, 2010 (1 page).
- 22 R9. Mike Nelson Phone Records for March 22, 2010 (1 page).
- 23 R10. Email from Mark Bohe (DOR) to Jason Keyes *et al.*, dated August 14,  
24 2013 (1 page).
- 25 R11. Letter to Mark Bohe (DOR) from Gary Shaver requesting a  
26 determination from DOR that Silicon Energy's solar PV module be  
certified as "manufactured in Washington" (2 pages).
- R12. Letter to Gary Shaver (Silicon Energy) from Beth Mills (DOR)  
approving Silicon Energy's request to have a solar PV module certified  
"manufactured in Washington," dated February 7, 2010 (3 pages).
- R13. Preliminary Specification Sheet (2 pages).
- R14. Email string of exchanges between Gilbert Brewer (DOR) and Jim  
Honeyford (complainant) starting March 1, 2012, and ending March 8,  
2012 (5 pages).

1 1.11 The proceedings were recorded and open to the public.

2 1.12 The Board heard the testimony of Mark Bohe, Beth Mills, David Killeen,  
3 Melanie de Leon, Jong Limb, Gary Shaver, and Mike Nelson.

4 1.13 The hearing was adjourned on December 13, 2013.

5 1.14 The Board entered Findings of Fact, Conclusions of Law and Final Order (Final  
6 Order) in this matter on March 5, 2014. This Corrected Findings of Fact, Conclusions of Law  
7 and Final Order is entered to correct a typographical error in ¶ 3.6 of the Final Order that  
8 referred to Mr. Nelson's "DOR" supervisor instead of his "WSU" supervisor.

9 Based on the evidence presented, the Board enters the following Findings of Fact,  
10 Conclusions of Law and Final Order:

11 **II. FINDINGS OF FACT**

12 2.1 By written stipulation filed with the Board, the parties stipulated and agreed to  
13 the following Findings of Fact: 2.2, 2.8-2.17, and 2.20-2.22:

14 2.2 Mr. Nelson was employed by the State of Washington at Washington State  
15 University (WSU) as a Solar Energy Specialist assigned to the WSU Climate and Rural Energy  
16 Development Center from July 1, 1988 through April 1, 2010. (Stip. 1)

17 2.3 Mr. Nelson is well known in the solar energy industry and considered an expert  
18 on solar energy in Washington State. (Ex. 5, Test. of Bohe; Test. of Mills)

19 2.4 Mr. Nelson was influential in the drafting and implementation of Washington  
20 State renewable energy laws and tax incentive programs. (Test. of Bohe)

21 2.5 Electric utilities pay their customers for electricity generated by the customers'  
22 solar components and the utilities in turn receive a credit against their state taxes. Customers  
23 who use solar components that are certified as manufactured in Washington receive higher  
24 payments. (Test. of Bohe)

1           2.6     Before 2011, DOR relied heavily on the advice of WSU in the certification of  
2 Made in Washington equipment and simply accepted WSU's determination of which  
3 equipment qualified for the Made in Washington certification. (Ex. R14, p.2).

4           2.7     Mr. Nelson and Gary Shaver, current President of SiE, have been friends and  
5 solar energy colleagues since 2000 when Mr. Shaver was a student at WSU and worked for  
6 Mr. Nelson. (Test. of Shaver)

7           2.8     In early January 2010, Silicon Energy (SiE)'s majority owner, Jong Limb,  
8 became aware that Mr. Nelson was planning to retire from his position at WSU. (Stip. 2)

9           2.9     Mr. Limb contacted Mr. Nelson and initiated talks regarding Mr. Nelson's  
10 employment with SiE. (Stip. 3)

11          2.10    At a Solar Washington Membership Meeting on January 25, 2010, SiE  
12 President Gary Shaver announced that Mike Nelson would soon be joining SiE. (Stip. 4)

13          2.11    On January 28, 2010, Mr. Nelson sent an e-mail to his supervisor, Todd Currier,  
14 without comment, which contained an attached letter to Mark Bohe, a Tax Policy Specialist at  
15 DOR. The letter was a request from SiE to DOR to certify SiE's Solar Inverter as "Made in  
16 Washington." (Stip. 5; see Ex. 3) Mr. Shaver of SiE testified that they sent the letter through  
17 Mr. Nelson because they knew he could get it to Mr. Currier. (Test. of Shaver)

18          2.12    On February 9, 2010, Mr. Nelson forwarded an e-mail to Mr. Currier, with a  
19 revised draft request from SiE to DOR to certify SiE's Solar Inverter as "Made in  
20 Washington." The e-mail stated, "Todd, scan this and comment. Mike". On February 9,  
21 2010, Mr. Currier replied back to Mr. Nelson's e-mail, stating, "Mike, this looks much stronger  
22 than earlier draft. I'm certainly convinced! Todd". (Stip. 6; see Ex. 4)

23          2.13    On February 10, 2010, SiE submitted to DOR the same version of the request  
24 for certification of their solar inverter as "Made in Washington" that was attached to Mr.  
25 Currier's February 9, 2010 e-mail, without any further modifications. Transmission of this  
26

1 letter was accomplished via an e-mail from Mr. Shaver to DOR Communications, with a  
2 courtesy copy to Mark Bohe and Mike Nelson. (Stip. 7; see Ex. 6)

3 2.14 On February 9, 2010, Mr. Nelson sent a memo to Jake Fey and Todd Currier at  
4 WSU informing them of his intentions to retire from WSU on April 1, 2010. (Stip. 8; see Ex.  
5 6)

6 2.15 Mr. Nelson took leave from work for the last two weeks in March before his  
7 official last day of work at WSU on or about March 31, 2010. On March 16, 2010, Mr. Nelson  
8 started working for SiE as their Director of External Affairs while still employed by the State.  
9 (Stip. 9)

10 2.16 Mark Bohe and Beth Mills, a Tax Information Specialist at DOR, were each  
11 tasked with making the determination as to the "Made in Washington" certification request by  
12 SiE. (Stip. 10) Ms. Mills said Mr. Nelson was their technical expert on the subject, and she  
13 assumed Mr. Bohe would contact Mr. Nelson. (Test. of Mills)

14 2.17 Mr. Bohe received a phone call from Mr. Nelson on March 22, 2010. Mr.  
15 Nelson's records show that he placed a telephone call to Mr. Bohe's work telephone number  
16 and that the call's duration was less than two minutes. (Stip. 11)

17 2.18 During Mr. Nelson's March 22, 2010, phone call to Mr. Bohe, Mr. Nelson  
18 informed him that the SiE Inverter System was good and that it was "an elegant solution." Mr.  
19 Bohe thought Mr. Nelson had told him by his comment that the inverter was "good," and he  
20 also believed Mr. Nelson was still working at WSU at the time. (Test. of Bohe) In a statement,  
21 Mr. Bohe wrote, "After I hung up, it was my understanding that Mr. Nelson confirmed that the  
22 Silicon Energy inverter qualified as made in WA. I immediately told . . . Ms. Mills that Mr.  
23 Nelson had called and confirmed that the Silicon Energy inverter was made in WA." (Ex. R1,  
24 p.2) Mr. Bohe also wrote, "After that call, I thought WSU had just approved the inverter as  
25 WA made." (Ex. R1, p. 2 and pp. 2-3)  
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1           2.19 After the March 22 phone call, Mr. Bohe called Ms. Mills and said the inverter  
2 was good. Ms. Mills did not speak directly to Mr. Nelson. Subsequently, Ms. Mills issued the  
3 letter certifying the SiE Inverter System as “Made in Washington.” (Test. of Bohe, Mills)

4           2.20 On March 25, 2010, Ms. Mills sent a letter to Mr. Shaver advising him that  
5 DOR had certified SiE’s Solar Inverter System as “Made in Washington.” (Stip. 12)

6           2.21 In August 2010, DOR received a complaint alleging that SiE’s inverter was not  
7 being made in Washington and should not qualify for the added tax incentives. (Stip. 13)

8           2.22 On August 15, 2011, DOR issued a notice to SiE that DOR was intending to  
9 revoke the “Made in Washington” certification it had issued their Solar Inverter System. (Stip.  
10 14)

11          2.23 The Board found that all Findings of Fact that were not stipulated were proven  
12 by a preponderance of the evidence.

13   **III. CONCLUSIONS OF LAW**

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15          3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),  
16 which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW,  
17 with respect to employees in the executive branch of state government. The Board has  
18 jurisdiction over Mike Nelson, whose actions occurred while a state employee. The complaint  
19 was filed in accordance with RCW 42.52.410, the Board found reasonable cause pursuant to  
20 RCW 42.52.420, and an adjudicative proceeding was conducted pursuant to RCW 42.52.430  
21 and .500. All the required procedural notices have been provided.

22          3.2 The Ethics in Public Service Act governs the conduct of state officers and  
23 employees. Under RCW 42.52.430(5), a violation must be established by a preponderance of  
24 the evidence.

25          3.3 A state employee may not have interests that conflict with the proper discharge  
26 of his duties under RCW 42.52.020, which states:

1 No state officer or state employee may have an interest, financial or  
2 otherwise, direct or indirect, or engage in a business or transaction or professional  
3 activity, or incur an obligation of any nature, that is in conflict with the proper  
4 discharge of the state officer's or state employee's official duties.

5 3.4 A state employee may not accept an offer of employment or receive  
6 compensation from an employer if the circumstances would lead a reasonable person to believe  
7 the offer was made or compensation given for the purpose of influencing the state employee's  
8 performance of duties under RCW 42.52.080(4), which states:

9 No former state officer or state employee may accept an offer of  
10 employment or receive compensation from an employer if the circumstances  
11 would lead a reasonable person to believe the offer has been made, or  
12 compensation given, for the purpose of influencing the performance or  
13 nonperformance of duties by the officer or employee during the course of state  
14 employment.

15 3.5 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000  
16 per violation or three times the economic value of anything received or sought in violation of  
17 the Ethics in Public Service Act, whichever is greater. The Board may also impose the cost of  
18 investigating the complaint and order restitution for any damages sustained by the state.

19 3.6 RCW 42.52.020 provides that a state employee may not have interests that  
20 conflict with the proper discharge of his duties.

21 Respondent argues that he did not "participate" in the matter of seeking or  
22 recommending certification for the SiE inverter because he acted merely as a conduit for two  
23 emails he forwarded to his WSU supervisor from SiE's President Gary Shaver and he  
24 discussed but did not take an express position on the "Made in Washington" status of the SiE  
25 inverter on the March 22, 2010 phone call with Mr. Bohe of DOR. He also argues that the act  
26 of informing his supervisor on January 29, 2010 of his intention to work for SiE clearly  
implied that he should not be involved in the SiE certification request. (Respondent's  
Prehearing Brief at 4-6, citing EEB Advisory Opinion 98-11)



1 Mr. Nelson was a state employee, a Solar Energy Specialist at WSU, when he sent  
2 SiE's emails seeking certification to his WSU supervisor on January 28, 2010 and February 9,  
3 2010. (Findings of Fact 2.2, 2.11 and 2.12). Both of these emails were sent after SiE  
4 announced on January 25, 2010 that Mr. Nelson was going to start working for SiE (Exhibits  
5 2.9 and 2.10). Mr. Nelson did not provide a written resignation letter to his WSU supervisor of  
6 his intention to retire until February 9, 2010 – after sending the first email and on the same date  
7 as the second email. The resignation letter did not mention that he was going to work for SiE.  
8 (Findings of Fact 2.11, 2.12, and 2.14). Mr. Nelson's phone conversation with Mr. Bohe at  
9 DOR in which he discussed the SiE inverter also occurred after Mr. Nelson was already  
10 working for SiE (Finding of Fact 2.18).

11 Based on these facts, the Board finds that Mr. Nelson had an interest in his pending  
12 employment with SiE that was in conflict with the proper discharge of his duties, which were  
13 to provide technical support and expert opinion to DOR on whether SiE's inverter was eligible  
14 for "Made in Washington" certification. Mr. Nelson knew that certification would benefit his  
15 new employer and thus himself. These actions violated RCW 42.52.020. Even if Mr. Nelson  
16 did not explicit make a recommendation for certification, his actions forwarding the emails and  
17 admittedly discussing, instead of refusing to discuss, the inverter during the phone call  
18 constituted participation in the matter. And even if he had informed his supervisor, he had an  
19 obligation not to participate in the matter.

20 3.7 RCW 42.52.080(4) provides that a state employee may not accept an offer of  
21 employment or receive compensation from an employer if the circumstances would lead a  
22 reasonable person to believe the offer was made or compensation given for the purpose of  
23 influencing the state employee's performance of duties.

24 Respondent argues that Mike Nelson was hired by SiE solely on the basis of his  
25 qualifications and reputation as an expert in the solar energy field. (Respondent's Prehearing  
26 Brief at 7)

1 It is undisputed that Mr. Nelson was a state employee, a Solar Energy Specialist at  
2 WSU, and was considered an expert on solar energy in Washington State when he accepted an  
3 offer of employment with SiE (Findings of Fact 2.2, 2.3, 2.10, and 2.15) while SiE was  
4 preparing an application for certification for review by his employing agency (Findings of Fact  
5 2.11 - 2.13).

6 The Board concludes that Mr. Nelson accepted an offer of employment in violation of  
7 RCW 42.52.080(4) where the circumstances would lead a reasonable person to believe that the  
8 offer was made for the purpose of influencing Mr. Nelson's performance of his duties as a  
9 WSU employee because Mr. Nelson's reputation among state agency staff as an expert on solar  
10 energy carried so much weight within the agency. (Test. of Bohe; Test. of Mills)

11 3.8 In determining the appropriate sanction, including the amount of any civil  
12 penalty, the Board considered, under WAC 292-120-030(1)(a) and (b), the monetary cost of  
13 the violation including the cost of the violation to the state (decertifying and recertifying SiE's  
14 solar inverter system) and the value of the dual salaries received during the last half of March  
15 2010.

16 3.9 In determining the appropriate sanction, including the amount of any civil  
17 penalty, the Board determined, under WAC 292-120-030(2)(e) and (f), that the nature of the  
18 violations tended to reduce public respect for or confidence in state government or state  
19 government officers or employees and involved personal gain or special privilege to the  
20 violator.

21 3.10 In determining the appropriate sanction, including the amount of any civil  
22 penalty, the Board determined as an aggravating circumstances, under WAC 292-120-  
23 030(3)(d), that Mr. Nelson had significant official responsibility in the certification process and  
24 that under WAC 292-120-030(3)(f), Mr. Nelson incurred no other sanctions as a result of the  
25 violation.  
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**APPEAL RIGHTS**

**RECONSIDERATION OF FINAL ORDER – BOARD**

Any party may ask the Executive Ethics Board to reconsider a Final Order. The request must be in writing and must include the specific grounds or reasons for the request. The request must be delivered to Board office within 10 days after the postmark date of this order.

The Board is deemed to have denied the request for reconsideration if, within 20 days from the date the request is filed, the Board does not either dispose of the petition or serve the parties with written notice specifying the date by which it will act on the petition. RCW 34.05.470.

The Respondent is not required to ask the Board to reconsider the Final Order before seeking judicial review by a superior court. RCW 34.05.470.

**FURTHER APPEAL RIGHTS – SUPERIOR COURT**

A Final Order issued by the Executive Ethics Board is subject to judicial review under the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures are provided in RCW 34.05.510 - .598.

The petition for judicial review must be filed with the superior court and served on the Board and any other parties within 30 days of the date that the Board serves this Final Order on the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing or personal service.

A petition for review must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner’s attorney, if any;
- (3) The name and mailing address of the agency whose action is at issue;

1 (4) Identification of the agency action at issue, together with a duplicate copy,  
2 summary, or brief description of the agency action;

3 (5) Identification of persons who were parties in any adjudicative proceedings that  
4 led to the agency action;

5 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

6 (7) The petitioner's reasons for believing that relief should be granted; and

7 (8) A request for relief, specifying the type and extent of relief requested.

8 RCW 34.05.545.

9 **ENFORCEMENT OF FINAL ORDERS**

10 If there is no timely request for reconsideration, this is the Final Order of the Board.  
11 The Respondent is legally obligated to pay any penalty assessed.

12 The Board will seek to enforce a Final Order in superior court and recover legal costs  
13 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been  
14 timely filed under chapter 34.05 RCW. This action will be taken without further order by the  
15 Board.