

BEFORE THE ADDITIONAL FACILITY OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTE (ICSID)

BETWEEN:

MERCER INTERNATIONAL INC.

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

ICSID CASE NO. ARB(AF)/12/3

WITNESS STATEMENT OF ROGER GARRATT

19 March 2015

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I, Roger Garratt, declare as follows:

1. I was born on [REDACTED] I presently reside at [REDACTED]
[REDACTED]
2. I am currently Director Strategic Initiatives at Puget Sound Energy, Inc., (“PSE”) in Bellevue, Washington.
3. I have been employed by PSE since April 2003. During the period of 2006 through 2008 I was Director Resource Acquisitions, and as such was responsible for energy resource acquisition, including origination, analyses, negotiation and other aspects pertinent to the purchase under long-term contract of electric generation capacity and/or energy.
4. I have attached my *curriculum vitae* as Appendix A.
5. In this witness statement, I briefly provide some background on PSE and its Resource Acquisitions Department. I will then describe PSE’s interaction with Mercer International Inc. (“Mercer”).
6. I have personal knowledge of the matters described in this witness statement, except where based on information and belief, in which case I indicate the source of the information and my belief that it is true.
7. I have reviewed the documents attached for purposes of preparing this witness statement. I am a fact witness in this NAFTA arbitration.

A. Puget Sound Energy

8. PSE is the oldest utility in Washington state. It provides both electric and natural gas service to its customers primarily in the western areas of the state including Puget Sound.¹ PSE has more than 1.1 million electric customers.² It maintains approximately

¹ <https://pse.com/aboutpse/CorporateInfo/Pages/PSE-Primer.aspx>, R-397.

² *Id.*, R-397.

13,000 miles of power lines. It also employs approximately 2,700 staff throughout its service areas.³

9. PSE is a leader in the field of renewable energy. PSE has developed and built several large wind energy facilities and has been described as the second-largest utility owner of wind energy facilities in the United States.⁴ However, we have only entered into four long-term Power Purchase Agreements (“PPAs”) in the past decade. These PPAs include two long-term purchases of power from Washington hydro facilities, a contract with TransAlta for output from its coal-fired Centralia plant, and a contract for wind power from the Klondike III wind project in Oregon.

B. PSE’s Resource Acquisitions Department

10. As the Director of the Resource Acquisitions Department, I managed a staff consisting of approximately three managers, five analysts, six other professionals and two administrative specialists. I authorized my managers and analysts to meet with and discuss business opportunities with energy project developers. These developers often contacted my managers and analysts directly, by telephone or email, and frequently met in person with my staff with or without me.

11. As a condition of such meetings or discussions, energy project developers often requested that PSE sign a confidentiality or non-disclosure agreement in order to preserve the confidentiality of their business information. Pursuant to PSE’s internal policies, I was authorized to sign these agreements while my staff members were not. This meant that I often signed confidentiality agreements at the request of my staff so that my managers or other staff members could meet with or otherwise be informed by developers of their projects.

³ *Id.*, **R-397**.

⁴ https://pse.com/aboutpse/PseNewsroom/MediaKit/020_About_PSE.pdf, **R-398**. These wind energy facilities include the Hopkins Ridge Wind Facility with a capacity of 157 MW, the Wild Horse Wind and Solar Facility with a capacity of 273 MW and the Lower Snake River Wind Facility with a capacity of 343 MW.

12. In the event members of my staff determined a particular opportunity warranted further consideration by PSE, they would brief me on it and I would thereafter participate in or be made aware of any subsequent discussions or negotiations.

13. In the negotiation of a long-term PPA, PSE would normally require the energy developer to agree to indicative terms in a letter of intent or memorandum of understanding. Following the execution of a letter of intent or a memorandum of understanding, PSE and the energy developer would exchange multiple iterations of contractual documents, and, if negotiations were successful, would agree on the terms and conditions for a PPA that could be considered by PSE's senior management.

14. PSE's governance procedures require that any long-term power purchase agreement be approved by the company's Energy Management Committee which consists of various members of PSE's senior management. As Director Resource Acquisition, I was responsible for presenting (or supervising the presentation by a member of my staff) all potential long-term PPAs to the Energy Management Committee.

C. PSE's Interactions with Mercer

15. On June 26, 2007, I executed a Mutual Confidentiality and Nondisclosure Agreement on behalf of PSE with Mercer.⁵ I have no recollection of the execution of this agreement. Nor do I have a recollection of ever discussing Mercer, Celgar or its energy projects with representatives of Mercer or members of my staff.

16. I have searched my files, including my calendar, and I requested my staff to search the department's files for any information related to Mercer, to Celgar or its energy projects. I found no record in my files or my calendar of any meetings, phone calls or discussions with or about Mercer, Celgar or its projects. However, my staff were able to locate a copy of the June 26, 2007 Confidentiality Agreement and an electronic copy of a PowerPoint presentation from Mercer dated June 2007.

⁵ Puget Sound Energy, Mutual Confidentiality and Nondisclosure Agreement, 26 June 2007, **R-399**. PSE and Mercer executed our standard form Mutual Confidentiality and Nondisclosure Agreement [REDACTED].

17. [REDACTED]
[REDACTED]⁶ [REDACTED]
[REDACTED] No evidence exists of any further discussions with Mercer concerning this project, such as drafts of a term sheet or letter of intent, or other indices of negotiation. Nor was Mercer’s project presented to PSE’s Energy Management Committee.

18. Finally, PSE is subject to Washington’s Renewable Portfolio Standard (“RPS”), which requires larger utilities to increase their use of “renewable resources” by serving a certain percentage of their load using “renewable resources”.⁷ The RPS also defines the type of renewable resources that are eligible as renewable energy (i.e., green energy). It is my recollection that black liquor derived from pulp production was not considered an eligible “renewable resource” under Washington’s RPS when one or more members of my staff appear to have met with Mercer in 2007.⁸

* * *

⁶ Mercer International Group, Puget Sound Energy, July 2007, **R-354**.

⁷ PSE was required pursuant to the RPS to use renewable resources to serve at least 3 percent of its load by January 1, 2012, at least 9 percent of its load by January 1, 2016, and at least 15 percent of its load by January 1, 2020. *See* 19 Wash. Rev. Code § 285-040(2)(a), **R-400**. PSE could also meet these annual targets by purchasing renewable energy credits which are tradable certificates of proof of at least one megawatt-hour of an eligible “renewable resource”. *See* 19 Wash. Rev. Code § 285-030(20), **R-401**.

⁸ [Emphasis Added] *See* Initiative 937, § 3(18); available online at <http://www.secstate.wa.gov/elections/initiatives/text/i937.pdf>, **R-402**. It is my understanding that the RPS was subsequently broadened in March 2012 to include black liquor. I have also been informed that Mr. Michael McDougall of Powerex will explain certain other problems with Mercer’s eligibility as renewable energy under Washington’s RPS.

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19. I affirm that the information provided above is true and correct.

20. I affirm this witness statement in support of Canada's Rejoinder Memorial in the *Mercer International Inc. v. Government of Canada* NAFTA arbitration and for no improper purpose.

AFFIRMED BEFORE ME)
at the City of Seattle, in the State of)
Washington, this 19TH day of March,)
2015.)

_____)
A Notary Public for Washington.)

INGRID XENA, NOTARY PUBLIC
COMMISSION EXPIRES 04/15/2017)

_____)

_____)
ROGER GARRATT)

