

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 6, 2011

**VIA E-MAIL AND
FIRST CLASS MAIL**

Mr. William Lenkeit
Commission Counsel
California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Notice to Adopt Amendments to Regulations 18942.1 and 18946.2

Dear Mr. Lenkeit:

We are writing to comment on the Fair Political Practices Commission ("FPPC") staff's proposed Amendments to Regulations 18942.1 and 18946.2. We are commenting on behalf of the California Public Utilities Commission (CPUC) staff. Once again, we appreciate the FPPC staff for all of their efforts in proposing amendments to the FPPC's gift regulations and for allowing us to give substantial input during this process. We have a few further suggestions we would like to make.

Proposed Regulation 18942.1

Proposed Regulation 18942.1(c) provides in part:

- (c) On-site demonstrations, tour, or inspections. Transportation provided to or in connection with an on-site demonstration, tour, or inspection is also considered "informational material" when any of the following apply:
- (1) The transportation substantially and directly assists in, and is integral to, the conveyance of the information.
 - (2) The transportation is to or from a site that is legally inaccessible to the public.
 - (3) The transportation is provided solely at the site of an on-site demonstration, tour, or inspection and substantially assists in the conveyance of the information.

- (4) The transportation is to or from a site when there is no reasonable, publicly-available commercial transportation within 50 miles of that site and the transportation provided is limited to the segment for which public transportation is not available.

We recommend that proposed Regulation 18942.1(c) should read:

(c) On-site demonstrations, tour, or inspections. Transportation provided to or in connection with an on-site demonstration, tour, or inspection is also considered "informational material" when any of the following apply:

- (1) The transportation substantially and directly assists in, and is integral to, the conveyance of the information.
- (2) The transportation is to or from a site that is legally **or practically** inaccessible to the public.
- (3) The transportation is provided solely at the site of an on-site demonstration, tour, or inspection and substantially assists in the conveyance of the information.
- (4) The transportation is to or from a site when there is no reasonable, publicly-available commercial transportation within 50 miles of that site and the transportation provided is limited to the segment for which public transportation is not available.

We recommend the FPPC modify proposed Regulation 18942.1(c)(2) to include transportation to sites that are practically inaccessible to the public, to deal with situations that we have encountered several times, such as, CPUC personnel needing to travel by helicopter to inspect transmission tower construction by a utility, to ensure that the construction meets the mitigation requirements imposed by the CPUC.

In this situation, there are transmission tower sites located in the Angeles National Forest that are within 50 miles of publicly available commercial transportation. These areas are not closed off to the public and therefore are not legally inaccessible. However, there are no roads going to the sites. Indeed, a condition of the construction of these towers is that the construction be done using helicopters so that there is not a need for roads, thereby minimizing ground disturbance. Helicopter transportation, therefore, is the only means of

transportation. Many of these sites need to be monitored several times. Accordingly, although these sites are legally accessible they are not practically accessible.

The CPUC, in fact, has previously requested FPPC formal advice regarding this issue. The FPPC responded in the Sun Advice Letter, A-09-004, that the helicopter rides to access remote tower sites provided by the utility to CPUC consultants¹ did not constitute gifts so long as the travel was not extravagant or lavish.

We agree with the FPPC that this transportation is not a gift. We would also argue that, if under any new definition of "personal benefit", the FPPC determines that such transportation could fall under the definition of "gift" contained in Government Code section 82028(a), the "informational material" exception should nevertheless apply.

In the Sun Advice Letter, these tower sites were not legally inaccessible to the public and were within 50 miles of commercial transportation. Therefore, in order to include as "informational material" this helicopter transportation, we recommend the FPPC modify proposed Regulation 18942.1(c)(2) to include transportation to sites that are practically inaccessible to the public.

§ 18946.2. Exception --- Valuation of Gifts: Attendance at Invitation-Only Events

Throughout proposed Regulation 18946.2, the FPPC staff gives the option of including a "guest" in the valuation of an official's gifts at an invitation-only event. If the FPPC adopts the suggested option to include a "guest" in this regulation, then, for example, the pro-rata share of the cost of the food, catering services, entertainment and any item provided to the guest will be added to the value of the gift received by the official. It is therefore important to understand who is a "guest" within the meaning of this regulation. We find the term somewhat unclear. We think it refers to the situation where the invitation received by the "guest" is sufficiently controlled by the official such that under other provisions of the gift regulations, the invitation for the "guest" is considered a gift to the official. However, this interpretation is not clear from just reading proposed Regulation 18946.2. Accordingly, we suggest that either a definition of "guest" be added to

¹ We asked the FPPC to assume that these were "consultants" of the CPUC under the Political Reform Act (Act).

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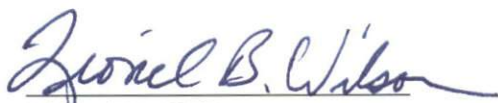
proposed Regulation 18946.2 or that the term "guest" be replaced by a more descriptive term such as "guest invited by the official" or "guest chosen by the official".

Conclusion

For the reasons stated above, we believe the FPPC should make the above revisions to the proposed gift regulations.

This letter is being sent to you by e-mail, so you will receive this information as soon as possible, as well as by first class mail.

Yours truly,



Lionel B. Wilson
Deputy General Counsel

LBW:ngs