

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



August 14, 2012

**BY E-MAIL AND
REGULAR MAIL**

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

Re: Notice to Adopt Regulation 18706

Dear Mr. Lenkeit,

We are writing to comment on 1) the Fair Political Practices Commission ("FPPC") staff's proposed regulation § 18706, Determining Whether a Material Financial Effect Is Reasonably Foreseeable, and 2) the Regulation 18706 Supplemental Memo, dated August 13, 2012 ("Supplemental Memo"). The FPPC's proposed regulation 18706, most recently revised on August 6, 2012, provides that "[a] financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of a governmental decision before the official or the official's agency."

The Supplemental Memo provides, "it may be necessary to add some clarifying language, or possible exceptions, to cover the way certain agencies do business. Specifically, one state agency has expressed concern over the "is a named party in" at line nine of the proposed regulation, as their proceedings identify "named parties" to include certain persons who are asked to provide comment on the action, without necessarily being involved in the action. . .

Accordingly, staff's intent is to ask the Commission to adopt the proposed language set forth in subdivisions (a) and (b) on a tentative basis pending the drafting and approval of future related amendments."

We request the FPPC clarify the definition of "named party" in proposed regulation 18706 as it applies to the various kinds of proceedings at the California Public Utilities Commission ("CPUC"). We agree with FPPC staff that before the FPPC permanently adopts proposed regulation 18706, the FPPC should address the concerns of our agency as set forth below.

CPUC proceedings are divided into three categories: adjudication, ratesetting, and quasi-legislative. In fact, the statutory definition of "administrative action" in Government Code Section 82002¹

¹ § 82002. "Administrative action"; "Ratemaking proceeding"; "Quasi-legislative proceeding"

(a) "Administrative action" means either of the following:

(1) The proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(2) With regard only to placement agents, the decision by any state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system.

includes specific references to two of the three categories of CPUC proceedings. Given that this statute refers to specific kinds of CPUC proceedings, we believe the FPPC should be able to clarify in a regulation what a "named party" would be in all three kinds of CPUC proceedings. For example, a ratesetting proceeding is described in the CPUC's Rules of Practice and Procedure, Rule 1.3(e) as "proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities)." "Ratesetting" proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future.² Thus, most applications by specific utilities, whether to change rates or the rules under which they provide service, or for authority to construct facilities, are typically classified as ratesetting. Ratesetting proceedings may be initiated by a utility application, a third-party complaint, or sometimes by an order of the CPUC. Almost anyone who wants to participate in such a proceeding can do so by becoming an intervenor. We would like the FPPC to clarify in a regulation whether an intervenor in a ratesetting proceeding would be considered a "named party" under regulation 18706.

Another kind of proceeding at the CPUC is a quasi-legislative proceeding. Quasi-legislative proceedings are proceedings that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.³ An entity may file comments in a quasi-legislative proceeding and be considered a "party". We would like the FPPC to clarify in a regulation who would be considered a "named party" in such a proceeding.

A third proceeding is an adjudicatory proceeding which is defined as: "enforcement cases and complaints except those challenging the reasonableness of any rates or charges . . ."⁴ We would like the FPPC to clarify in a regulation who the named parties would be in an adjudicatory proceeding.

We would like to work further with FPPC staff to address how to apply regulation 18706 to all three kinds of CPUC proceedings.

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

Yours truly,

Lionel B. Wilson
Deputy General Counsel
SUN:rar

(b) "Ratemaking proceeding" means, for the purposes of a proceeding before the Public Utilities Commission, any proceeding in which it is reasonably foreseeable that a rate will be established, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(c) "Quasi-legislative proceeding" means, for purposes of a proceeding before the Public Utilities Commission, any proceeding that involves consideration of the establishment of a policy that will apply generally to a group or class of persons, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry.

² See also Pub. Util. Code sec. 1701.1(c)(3).

³ PU Code section 1701.1(c)(1)) or Rule 7.1(e) of the CPUC's Rules of Practice and Procedure.

⁴ Public Utilities Code Section 1701.1(c)(2).