



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 10, 2016

Ms. Evann Whitelam, Esq.
Nielsen Merksamer
Parrinello Gross & Leoni LLP
2350 Kerner Boulevard, Suite 250
San Rafael, California 94901

Re: Your Request for Advice
Our File No. A-16-071(a)

Dear Ms. Whitelam:

This letter responds to your request for advice on behalf of your client, Pacific Gas and Electric Company (PG&E) regarding the gift of travel provisions of the Political Reform Act (the "Act").¹ Please note that this letter is based only on the facts presented, and the FPPC is not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71). Any advice the Commission provides therefore assumes that the facts you provided to us are complete and accurate. (*In re Oglesby* (1975) 1 FPPC Ops. 71). Likewise, we offer no opinion on the application of laws other than the Act. Finally, this letter supersedes *Whitelam* Advice Letter A-16-071 in its entirety.

QUESTIONS

1. Can the tour of the Pacific Gas & Electric Company ("PG&E") Energy Education Center, the 4.4-mile shuttle ride between the PG&E Energy Education Center and the Diablo Canyon Power Plant, and the Diablo Canyon Power Plant tour itself be considered a single site for purposes of Regulation 18942.1(c)(2)?
2. Will PG&E have any state reporting obligations as a lobbyist employer since PG&E is registered to lobby agencies with officials who will participate in these tours?

CONCLUSIONS

1. While the tour of the PG&E Energy Education Center, the 4.4-mile shuttle ride between the PG&E Energy Education Center and the Diablo Canyon Power Plant, and the Diablo Canyon Power Plant tour itself are not considered a single site for purposes of Regulation 18942.1(c)(2), each of the phases, including the travel, qualify as informational material and would not be a gift.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Informational material provided to an official for the purpose of assisting him or her in performing official duties (and that does not also provide a personal benefit) is not reportable.

FACTS

Your client, PG&E, plans to hold on-site tours of its Energy Education Center and Diablo Canyon Power Plant—both located in the San Luis Obispo area—for various state and local public officials. The purpose of the tour is to provide the officials with a full understanding of the power plant and its role in the region and state.

1. *The Energy Education Center.* The public officials will provide for their own transportation to the San Luis Obispo area, where the Power Plant operates. The officials will park in the PG&E Energy Education Center parking lot, which is located 4.4 miles from the Power Plant. The public officials first will be guided around the PG&E Energy Education Center. You stated that the PG&E Energy Education Center features exhibits on a range of topics, from PG&E's green vehicle fleet to safely-managed used nuclear fuel. At this point in the tour, the public officials will be able to view information PG&E makes publically available about the Power Plant, which is an important perspective on the Power Plant. Public officials will view non-moveable exhibits like a replica fuel assembly and containment dome cross section model in order to understand how the plant was constructed and operates.

2. *The 4.4-mile shuttle ride between the Energy Education Center and the Diablo Canyon Power Plant.* The officials will then board a shuttle, where pertinent information about the Diablo Canyon Power Plant, safety and the Power Plant's impact on the surrounding area will be provided to the officials. PG&E personnel are able to provide background information about the Diablo Canyon Power Plant and context about the surrounding area during the communal shuttle ride. You stated that the shuttle ride from the PG&E Energy Education Center to the Diablo Canyon Power Plant will be the only point in the tour in which the public officials are able to physically view and simultaneously be provided information about the surrounding area. The shuttle ride from the PG&E Energy Education Center into the Diablo Canyon Power Plant would include travel to an area of the site that is legally inaccessible to the public, as the Diablo Canyon Power Plant is closed to the public for significant safety and national security reasons. However, part of the travel is on public roads.

3. *The Diablo Canyon Power Plant.* The final stop will be a tour of the entire Diablo Canyon Power Plant facility. The participants will then be returned to the Education Center by the shuttle. PG&E offers the same tour to community stakeholders. The only difference between the tour offered to the general public and the tour offered to public officials is an additional focus on state policy on the public official tour. The purpose of the tour is to provide a full understanding of the Power Plant, its relationship with the region and its relationship with the state. The Diablo Canyon Power Plant is legally inaccessible to the public. For safety and practical reasons, PG&E requires tour participants to park at the Education Center. There is very limited parking at the boundary of the site. There are 4 parking spaces reserved for security officers.

ANALYSIS

Gifts, Generally

One purpose of the Act is to reduce improper influences on public officials through gift giving. Section 82028(a) of the Act defines a gift as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received,” including “a rebate or discount [...] unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

The Act imposes three requirements on state and local officials who receive gifts:

- First, state and local officials may not accept gifts totaling more than \$460 in a calendar year from a single source. (Section 89503.)
- Second, certain state and local officials must report any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the calendar year on their statements of economic interests. (Sections 87200 - 87210.)
- Third, public official may not make, participate in making, or use their position to influence the outcome of a governmental decision if the decision: i) involves someone who gave the official a gift(s) worth \$460 or more; and ii) the gift was given within 12 months leading up to the governmental decision. (Sections 87100 and 87103(e).)

“Informational Material” Exception

Regulation 18942 provides:

“For purposes of Sections 82028, 82030, and the gift regulations, except as otherwise indicated, the following payments that otherwise meet the definition of gift as provided in Section 82028, subdivision (a) are neither gifts nor income:

“(1) Informational material as defined by Regulation 18942.1.”

Regulation 18942(a)(1) further provides:

“ ‘Informational material’ means any goods or service that serves primarily to convey information and that is provided to the official for the purpose of assisting him or her in the performance of his or her official duties or the duties of the elective office he or she seeks.

“Informational material may include:

“(a) Books, reports, pamphlets, calendars, periodicals, photographs, audio and video recordings, flash drives, CD-ROMS, or DVD ROMS or other similar

recordings, or free or discounted admission to informational conferences or seminars.

“(b) Scale models, pictorial representations, maps, and other such items, provided that when the item has a fair market value in excess of the gift limit amount specified in Regulation 18940.2, the burden shall be on the recipient to demonstrate that the item is informational material.”

Regulation 18942.1(c) provides a limited exception for travel as informational material. Informational material includes:

“(c) On-site demonstrations, tours, 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 serves as the means by which the information is conveyed and is integral to the conveyance of the information, such as an aerial tour over an area.

“(2) The transportation is provided solely at the site of a demonstration, tour, or inspection, including to and from an area of that site that is legally inaccessible to the public.

“(3) The transportation is to or from a site when there is no reasonable, publicly-available commercial transportation available to that site and the transportation provided is limited to the segment for which public transportation is not available.”

As an initial matter, you ask if the Energy Education Center, the 4.4-mile shuttle ride between the PG&E Energy Education Center and the Diablo Canyon Power Plant, and the Diablo Canyon Power Plant tour itself can all be considered a single site for purposes of Regulation 18942.1(c). The term “site,” in the context of the regulation refers to the location the demonstrations, tours, or inspections occur. Thus, the Energy Education Center and the Diablo Canyon Power Plant are two separate sites covered by the exception. To include public roadways between separate sites would vastly expand the exception and virtually swallow the rule.

However, transportation is not automatically considered a gift under Regulation 18942. There are three specific exceptions. Regulation 18942.1(c)(2) and (3) do not apply to your facts. Subdivision (c)(2) exempts the transportation if it is provided solely *at* the site of a demonstration, or to and from the site if it is otherwise legally inaccessible to the public. In a prior version of this advice letter, subsequently superseded by this letter, we analyzed the transportation between the sites as on roads that were not public. However, you reaffirmed that these were public streets, therefore subdivision (c)(2) would not apply. Subdivision (c)(3) exempts transportation to or from a site when there is no reasonable, publicly-available commercial transportation available to that site and the transportation provided is limited to the segment for which public transportation is not available. Again, based on your facts, public transportation is available to both sites.

The remaining exemption, provided in subdivision (c)(1), provides that transportation is exempt from the definition of gift when the transportation serves as the means by which the information is conveyed and is integral to the conveyance of the information, such as an aerial tour over an area.

You noted that the officials will ride the shuttle with PG&E staff that will provide pertinent information about the Diablo Canyon Power Plant as well as the Power Plant's impact on the surrounding area.² Pertinent information about the Diablo Canyon Power Plant include safety and the Power Plant's impact on the surrounding area. Moreover, PG&E has structured the tour in this manner because there is limited parking at the Diablo Canyon Power Plant. As such, there are safety concerns with multiple vehicles parked near the Power Plant entrance. Based on your facts the transportation between the two tour sites is also exempt from the definition of gift.³

Reporting

Informational material provided to an official for the purpose of assisting him or her in performing official duties (and that does not also provide a personal benefit) is not reportable.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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² We assume the information will be fact based and will not include lobbying on state policy/rules/regulations. If it did include lobbying on state policy/rules/regulation, this may affect our analysis of PG&E's reporting obligations.

³ Of course any other benefits, other than the informational tour, could still be gifts absent an exception.