STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

June 24, 2026

Jenifer McDonald
President
McDonald Association Management Co., Inc.
1540 River Park Drive, Suite 211
Sacramento, CA 95815-4608

**Re: Your Request for Informal Assistance**
**Our File No. I-26-052**

Dear Ms. McDonald:

This letter responds to your request for advice regarding the lobbying provisions of the Political Reform Act (the "Act").[1] Because your questions are general in nature, we are treating your request as one for informal assistance.[2]

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

## QUESTIONS

Several of your clients are in the energy sector and have engaged lobbying firms for both lobbying services and California Public Utilities Commission ("PUC") testimony services. You seek general advice on reporting obligations based on the following: a 501(c)(6) CA-incorporated mutual benefit non-profit trade association ("Association"), which is a Form 635 filer (lobbyist employer) retains a single outside consulting firm covering two distinct workstreams: (1) lobbying services on legislative and administrative matters, under which the lobbying firm ("Firm") is the registered lobbying firm for the Association (Form 602 on file); and (2) PUC proceeding services, comprising of preparation and delivery of expert testimony at public hearings, public workshops, and submissions placed in the official record of PUC

[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 18104 through 18998 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] Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

ratemaking proceedings. Based on the aforementioned, you ask the following questions regarding the reporting of payments related to PUC testimony:

1. Where the Firm's services consist entirely of communications that meet the public-proceeding exception in the Act's definition of "lobbyist," on which section of the Report of Lobbyist Employer (Form 635) should these payments be reported by the Association?

2. On which Form 635 Section must the Association report the Firm's PUC testimony fees to fulfill its reporting obligations for "other payments to influence"?

3. Under Regulation 18614 and the allocation methodology illustrated in the Lobbying Manual (Chapter 5, Ex 5.1), is separate invoicing and timekeeping supported by clearly delineated scopes of work, separately stated fee provisions, and contemporaneous time records sufficient to allocate the Firm's compensation between lobbying services (Section A/B) and PUC testimony services?

4. Where on Form 635 should the Association report the Firm's fees for written-testimony preparation in PUC ratemaking proceedings?

5. May the Association report the expenses for PUC testimony in Line E "*PAYMENTS IN CONNECTION WITH ADMINISTRATIVE TESTIMONY IN RATEMAKING PROCEEDINGS BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION"* and only report expenses for lobbying activity in Line B?

6. Must the Firm's reciprocal reporting on its Report of Lobbying Firm (Form 625) mirror the Association's characterization of the same payments – or are the Association and the Firm permitted to characterize the same payments differently (e.g., the Association reports the Firm's PUC testimony fees in Section E of Form 635 while the Firm reports the corresponding receipts as non-lobbying receipts on Form 625)?

## CONCLUSIONS

1. & 2. Once an organization qualifies as a lobbyist employer, all "other payments to influence" must be reported unless they fall specifically under an exception. Reading Sections 82002 and 82039 together, compensation paid by the lobbyist employer to an individual for the purpose of influencing legislative or administrative action is reportable even if that individual does not qualify as a lobbyist under the Act. Filers who make payments in connection with administrative testimony in ratemaking proceedings before the PUC to a lobbyist or a lobbying firm must report the lump sum of these payments in Section B of the Report of Lobbyist Employer (Form 635).

3. Yes. Separate invoicing and timekeeping, supported by clearly delineated scopes of work, separately stated fee provisions, and contemporaneous time records, and consistent with the Act's lobbyist employer and lobbying firm accounting requirements, is generally sufficient to allocate compensation between lobbying activity and PUC testimony services.

4. The Act does not require reporting of compensation related to the preparation of written testimony, even if prepared for a public hearing. As discussed below, Section 86116 (h)(1) explicitly states that "time spent preparing to appear or preparing to testify does not include time spent preparing written testimony" and would not meet the definition of the term "all other payments to influence" where the written testimony is placed in the official record of PUC ratemaking proceedings

5. Yes. Payments in connection with administrative testimony in ratemaking proceedings before the PUC, *other than payments to a lobbyist or a lobbying firm*, must be reported as lump sum payments in Section E. Payments made to a lobbyist or a lobbying firm in connection with PUC ratemaking proceedings must be reported in Part III, Section A or B.

6. The Firm's reciprocal reporting on Form 625 should mirror the Association's characterization of the same payments for the same services. The Act and associated lobbying regulations provide guidance on how payments should be reported. We urge you to contact us if you are in doubt as to the appropriate characterization of any particular payment.

## FACTS AS PRESENTED BY REQUESTER

McDonald Association Management Co., Inc. provides administrative services to a number of associations in California. The Firm occupies a relatively unusual position in the California regulatory practice market: it is both a registered lobbying firm and a PUC practitioner whose principals serve as expert witnesses in ratemaking proceedings. As noted above, the Association employs a lobbying firm for two distinct scopes of work: lobbying services on legislative and administrative matters, and PUC proceeding services, comprising the preparation and delivery of expert testimony at public hearings, public workshops, and submissions placed in the official record of PUC ratemaking proceedings. The two workstreams have distinct scopes of work, are budgeted separately by the Association, invoiced separately, and are tracked separately in the Firm's timekeeping system (as the PUC work is billed hourly, whereas the lobbying work is done under an annual retainer).

## ANALYSIS

A "lobbyist employer" includes an entity that contracts with a lobbying firm for services related to influencing legislative or administrative action. (Section 82039.5.) The Act requires lobbyist employers to disclose payments made in connection with influencing legislative and administrative action. (Section 86115.) Among other items, lobbyist employers must itemize activity expenses and payments which would not have been made except to support or assist lobbying activity. (Section 86116.)

The Act defines "administrative action" in pertinent part, as follows:

> (a)(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...

> (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."

(Section 82002 (a)(1), (b), (c)).

Section 86116(h)(1) requires lobbyist employers to report "the total of all other payments to influence legislative or administrative action . . .." Regulation 18239(d)(4) further provides that "'influencing legislative or administrative action' means communicating directly or taking any other action for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing *any* legislative or administrative action." (Emphasis added.)

The Act excepts from this definition, however, "a communication made for the purposes of influencing [a PUC proceeding]" if the communication is made "at a public hearing, public workshop, or other public forum that is part of the proceeding, or if the communication is included in the official record of the proceeding." (Section 82039(c).) If this were the only activity in which the Association engaged, it would not be a lobbyist employer based on these facts.

However, this is not the only activity in which the Association engages. You have explicitly stated that the Association is a lobbyist employer that has contracted with the Firm to represent its interests by providing lobbying services on legislative and administrative matters. Reading Sections 82002 and 82039 together, the Firm does engage in lobbying on the Association's behalf, and the Association is a lobbyist employer. Once the determination is made that the Association is a lobbyist employer, it is responsible for certain reporting, independent of the definition of lobbying. At issue here is what the Association should report on its Form 635.

Section 86116 provides a detailed accounting of the information that must be disclosed in periodic reports by lobbyist employers such as the Association. These include payments to lobbying firms, activity expenses, all contributions over $100, and "the total of *all other payments to influence legislative or administration actions* including overhead expenses and all payments to employees who spend 10 percent or more of their compensated time in any one month in activities related to influencing legislative or administrative action." (Section 86116(b), (f), (g). & (h)(1) (emphasis added).)

Section 86116(h)(2) explains the term "all other payments to influence" as used in Section 86116(h)(1):

> "A filer that makes payments to influence a ratemaking or quasi-legislative proceeding before the Public Utilities Commission, as defined in subdivision (b) or (c), respectively, of Section 82002, may, in lieu of reporting those payments pursuant to paragraph (1), report only the portion of those payments made to or for the *filer's attorneys for time spent appearing as counsel and preparing to appear as counsel, or to or for the filer's witnesses for time spent testifying and preparing to testify*, in this type of Public Utilities Commission proceeding. This alternative reporting of these payments made during a calendar month is not required to include payments made to an attorney or witness who is an employee of the filer if less than 10 percent of his or her compensated time in that month was spent in appearing, testifying, or preparing to appear or testify before the Public Utilities Commission in a ratemaking or quasi-legislative proceeding. For the purposes of this paragraph, *time spent preparing to appear or preparing to testify does not include time spent preparing written testimony*." (Emphasis added)

As such, the Association is not required to report payments related to the preparation of written testimony, even if prepared for a public hearing.

*Accounting and Reporting by Lobbying Firms and Lobbyist Employers*

Section 86110 of the Act requires lobbyists, lobbying firms, and lobbyist employers that receive payments, make payments, or incur expenses or expect to receive payments, make payments or incur expenses in connection with reportable activities to keep detailed accounts, records, bills, and receipts.

Regulation 18612(a) requires that a lobbying firm maintain a record of all payments received in connection with lobbying activity, and specifies the details required in these records. Subdivision (b) requires a lobbying firm to maintain a record of all payments made in connection with state lobbying activity, while subdivision (c) outlines the recordkeeping requirements and original source documents that must be maintained in support of all reportable lobbying activity.

Lobbyist employers are required to keep detailed records and report, among other things, payments to influence legislative or administrative action. (Regulation 18615(a)(4); Regulation 18616(a)(4).) Regulation 18615 subdivision (b) specifies acceptable accounting methods, while subdivision (c) specifies the types of records that must be maintained in support of all payments by the lobbyist employer.

Separate invoicing and timekeeping, supported by clearly delineated scopes of work, separately stated fee provisions, and contemporaneous time records, and consistent with the Act's lobbyist employer and lobbying firm accounting requirements, is generally sufficient to allocate compensation between lobbying activity and PUC testimony services, and is consistent with the lobbyist employer accounting requirements of Regulation 18615.

The Firm's reciprocal reporting should mirror the Association's characterization of the same payments for the same services. As noted above, the Act and associated lobbying regulations provide guidance on how payments should be reported. We urge you to contact us if you are in doubt as to the appropriate characterization of any particular payment.

If you have other questions on this matter, please contact me at znorton@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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