

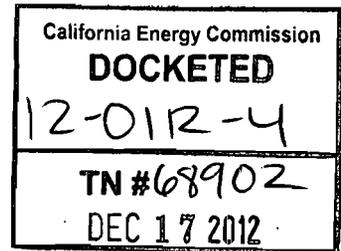
CALIFORNIA ENERGY COMMISSION

1516 Ninth Street
Sacramento, California 95814

Main website: www.energy.ca.gov



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|-------------------------------------|---|----------------------|
| In the matter of: |) | Docket No. 12-OIR-04 |
| |) | |
| Proposed Amendments to Energy |) | Order No. 12-1212-05 |
| Commission Conflict of Interest |) | |
| Regulations, California Code of |) | |
| Regulations, Title 20, Section 2402 |) | |



**Order Instituting a Rulemaking
to Amend the Energy Commission’s Conflict-of-Interest Regulations**

I. PURPOSE OF THE PROCEEDING

The California Energy Commission, pursuant to the authority vested by section 87306 of the Government Code, proposes to amend the listing of designated positions and assigned disclosure categories in its conflict of interest regulation, Title 20, section 2402 (Appendix). Every two years, state agencies such as the Energy Commission are required to submit to the Fair Political Practices Commission (“FPPC”) a report identifying changes in their conflicts of interest code, including but not limited to, all new positions which are designated to file the annual “Form 700” Statement of Economic Interests, as well as changes to the disclosure categories for the types of reportable financial interests. (Gov. Code, § 87306.)

The proposed amendments will modify, delete, and add designated positions and assigned disclosure categories to ensure that all current employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code, are appropriately categorized.

II. BACKGROUND

The Political Reform Act of 1974 (Gov. Code, § 87100 et seq.) requires that each state agency adopt a conflict of interest code applicable to certain positions affiliated with the agency. In addition, Government Code section 87306, subdivision (b), mandates that each state agency submit a biennial report that identifies all new positions that must file a Form 700 Statement of Economic Interests, any changes in the list of reportable sources of income, and relevant changes in the duties assigned to existing positions. The Energy Commission must submit the next biennial report to the Fair Political Practices Commission by March 1, 2013. (Gov. Code, § 87306, subd. (b).)

The standard for whether an employee must report a particular financial interest is whether the employee is involved in the making or the participation in the making of decisions which may foreseeably have a material effect on any financial interest. (Gov. Code, § 87302, subd. (a).) Financial interests include investments, business positions, interests in real property, and sources of income. (*Ibid.*)

III. PROCEDURAL REQUIREMENTS

Fair Political Practice Commission regulations specify the notice and comment procedures for proposing conflict of interest code amendments. (Cal. Code of Regs., tit. 2, § 18750, subd. (c).) Principal requirements include preparing a Notice of Intention that summarizes the proposed amendments, filing the Notice with the Office of Administrative Law for publication in the California Regulatory Notice Register, posting the Notice within the Energy Commission, making available the proposed amendments (express terms) for Energy Commission employee comment during a 45-day period, preparing a written explanation of the reasons for the proposed amendments, and stating the time and place of any public hearing on the proposed amendments. (*Ibid.*)

After Energy Commission consideration and potential adoption of the proposed amendments, adopted amendments are submitted to the Fair Political Practices Commission for review. Submission for this cycle of proposed amendments is due on March 1, 2013.

In addition to requirements imposed by the Government Code and the FPPC implementing regulations, Energy Commission regulations require the adoption of this OIR and to conduct the rulemaking proceeding in accordance with sections of the Administrative Procedure Act. (See Cal. Code Regs., tit. 20, section 1222, subd.(a) [referencing sections 11346.4, 11346.5, and 11346.8 of the Government Code].)

- Section 11346.4 of the Government Code requires a notice of proposed action to be published in the California Regulatory Notice Register at least 45-days before the end of the public comment period, along with other notification requirements such as posting to the agency's website. Per FPPC regulations for amending the conflict of interest code, the document containing the proposed regulatory changes is titled a Notice of Intention. It will be published in the Regulatory Notice Register at least 45-days before the end of the comment period. (Cal. Code of Regs., tit. 2, § 18750, subd. (c)(4).) The Energy Commission will comply with all other applicable notice requirements included in the Government Code and FPPC regulations.
- Section 11346.5 describes requirements for the content of the notice, such as notice of any hearing, descriptions of cost impacts, and evaluation of reasonable alternatives. These requirements are similar to the requirements for the content of the Notice of Intention required by FPPC regulations. (See, e.g., Cal. Code of

Regs., § 18750, subd.(c)(3)(E) [requiring a statement of the time and place of any public hearing],) The Energy Commission will follow all other applicable notice requirements included in the Government Code and FPPC regulations.

- Section 11346.8 sets procedures for a public hearing on the rulemaking, including requirements for the agency to permit oral statements, to provide notice of the hearing, and to consider all relevant matter. The section also sets procedures to provide notice for sufficiently-related changes to the proposed amendments for at least a 15-day period. The Energy Commission anticipates that the hearing for consideration of adoption of these amendments will take place on February 13, 2013 and will follow all requirements. At this time, the Energy Commission does not anticipate the need for a 15-day comment period.

IV. ENERGY COMMISSION WRITTEN COMMENT PERIOD

The written comment period will be specified in the Notice of Intention (Cal. Code of Regs., tit. 2, § 18750, subd. (c)(3)(D).) The comment period is tentatively scheduled to begin December 28, 2012 and end on February 13, 2013.

All written comments must be received at the following address by the date specified in the Notice:

Docket No. 12-OIR-04
California Energy Commission
1516 Ninth Street, MS-4
Sacramento, California 95814-5512

or via e-mail to:

docket@energy.ca.gov

Please direct any questions about this proceeding to Robin Mayer, Energy Commission Staff Counsel, at robin.mayer@energy.ca.gov, or (916) 651-2921.

V. DIRECTIVES TO STAFF

The Energy Commission directs Commission Staff to take all actions reasonably necessary to implement the rulemaking, including but not limited to, preparing a Notice of Intention and filing the Notice with the Office of Administrative Law and the Fair Political Practices Commission, making proposed amendments available for written comment during a 45-day period, and preparing an order to consider adoption of the proposed amendments.

It is so Ordered.

CERTIFICATION

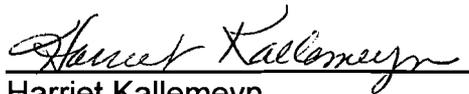
The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on December 12, 2012.

AYE: Weisenmiller, Douglas, Peterman, McAllister

NAY:

ABSENT:

ABSTAIN:



Harriet Kallemeyn

Secretariat

California Energy Commission